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No. 20 of 1942.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT
OF CANADA.

IN THE MATTER of a REFERENCE AS TO THE VALIDITY OF
THE DEBT ADJUSTMENT ACT 1937, STATUTES OF ALBERTA
1937, Chapter 9 as amended, and as to the operation thereof.

BETWEEN

THE ATTORNEY-GENERAL OF ALBERTA - *Appellant*

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AND

THE ATTORNEY-GENERAL OF CANADA, THE
CANADIAN BANKERS ASSOCIATION, THE
MORTGAGE LOANS ASSOCIATION OF
ALBERTA AND THE ATTORNEY-GENERAL
OF SASKATCHEWAN - - - - *Respondents.*

CASE OF THE APPELLANT

THE ATTORNEY-GENERAL OF ALBERTA.

Record.

1. This is an appeal from a majority judgment of the Supreme Court
of Canada (Duff C.J., Rinfret, Davis, Kerwin, Hudson and Taschereau JJ.,
20 Crocket J., dissenting) dated the 2nd December 1941 on a Reference to it
by the Governor-General in Council under Section 55 of the Supreme
Court Act (Revised Statutes of Canada 1927 c. 35). The subject of the
reference and of this appeal is as to the validity and operation of "The
Debt Adjustment Act 1937," being Chapter 9 of the Statutes of Alberta
1937, as amended by Chapter 2 of the Statutes of Alberta 1937 (3rd Session),
Chapter 27 of the Statutes of Alberta 1938, Chapter 5 of the Statutes of
Alberta 1938 (2nd Session), Chapter 81 of the Statutes of Alberta 1939,
and Chapter 42 of the Statutes of Alberta 1941.

p. 58.

2. By an Order in Council dated the 19th May 1941 the Governor-
30 General in Council after referring to a judgment dated the 20th December
1940 in the case of *The Attorney-General for Alberta and Winstanley vs.*
Atlas Lumber Company (1941), 87 S.C.R., in which the Supreme Court of

p. 3, l. 5.
et seq.

Record. Canada held that the said Act as then amended could not operate notwithstanding the generality of the terms thereof, to preclude the holder of a promissory note from taking action thereon to enforce judgment, referred the following questions to the Supreme Court of Canada for hearing and consideration :—

p. 4, l. 33. (1) Is The Debt Adjustment Act 1937, being Chapter 9 of the Statutes of Alberta 1937, as amended by Chapter 2 of the Statutes of Alberta 1937 (3rd session), Chapter 27 of the Statutes of Alberta 1938, Chapter 5 of the Statutes of Alberta 1938 (2nd session), Chapter 81 of the Statutes of Alberta 1939, and Chapter 42 of the Statutes of Alberta 1941, *ultra vires* of the Legislature of Alberta, either in whole or in part, and if so, in what particular or particulars or to what extent ? 10

p. 4, l. 40. (2) Is the said Act as amended operative in respect of any action or suit for the recovery of moneys alleged to be owing under or in respect of any bill of exchange or promissory note ?

p. 4, l. 43. (3) Is the said Act as amended operative in respect of any proceedings taken to enforce any judgment obtained in any action or suit for the recovery of moneys owing under or in respect of any bill of exchange or promissory note ? 20

p. 5, l. 1. (4) Is the said Act as amended operative in respect of any action or suit for the recovery of money or interest thereon, or both, not being money or interest alleged to be owing under or in respect of any bill of exchange or promissory note, whether or not such money or interest is secured upon land situated in the said province, in the following cases, namely, where such action or suit is for the recovery of :—

(A) the principal amount of such money and interest, if any, where the same are payable in the said province ;

(B) the principal amount of such money and interest, if any, where the same are payable outside the said province ; 30

(c) the interest only upon such money.

p. 5, l. 12. (5) If the answer to any part of the parts (A), (B) and (C) of question (4) is in the negative, is the said Act as amended operative in respect of any proceedings taken to enforce any judgment obtained in any action or suit in respect of which such answer is given ?

p. 6, l. 1
et seq.

3. By the Order for inscription of the reference made by Duff C.J. on the 20th May 1941 it was ordered *inter alia* that the Attorneys-General of the Provinces of Alberta, British Columbia, Manitoba, New Brunswick, 40

Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan be notified by the Attorney-General of Canada of the hearing of the argument on the said reference and it was further ordered that the Canadian Bankers Association and the Mortgage Loans Association of Alberta be notified by the Attorney-General of Canada of the hearing of the argument on the said reference. The Attorney-General of Saskatchewan intervened and adopted the factum of the Appellant. The Canadian Bankers Association and the Mortgage Loans Association of Alberta also intervened contending that the said Act as amended was invalid.

Record.

10 **4.** By the Judgment of the Supreme Court dated the 2nd December 1941 Duff C.J., Rinfret, Davis, Kerwin, Hudson and Taschereau JJ. were of the opinion and certified accordingly in respect of the questions referred to the Court as follows :—

p. 59, l. 30
et seq.

In answer to question numbered (1) : The said Act as amended is *ultra vires* of the legislature of Alberta in whole and in answer to questions (2), (3), (4) and (5) the said Act as amended is not operative in respect of any of the matters mentioned.

Crocket J. was of the following opinion : In answer to question (1) :
20 “ No, except in so far as its provisions may be found to conflict with any
“ existing Dominion legislation strictly relating to any of the classes of
“ subjects specially enumerated in s. 91 of the B.N.A. Act or as being
“ necessarily incidental to the particular subject matter, upon which the
“ Parliament of Canada has undertaken to legislate as falling within one
“ or other of the said enumerated heads.

p. 60, l. 1
et seq.

“ In answer to the other four questions : As the other four questions
“ involve the same considerations as have prompted me to incorporate in
“ my answer to question (1) the exception there indicated, I am unable
“ to answer the other four questions without a similar qualification.”

30 **5.** The Appellant respectfully submits that the Judgment of the majority of the Supreme Court of Canada was wrong in respect of the answer to each of the five questions and that on the true construction of the relevant provisions of the British North America Act 1867 and of the Provincial Act as amended, the Provincial Act is within the domain of provincial legislation.

40 **6.** There has been legislation in Alberta directed to the relief of distress since 1922. The first statute was the Drought Area Relief Act, Ch. 43 of 1922. Power was given to the Lieutenant-Governor in Council to direct that no proceedings against resident farmers in specified drought-distressed areas of the Province should be taken except by leave of a judge.

Record.
p. 12, l. 6.

The first so-called Debt Adjustment Act was the Act of 1923 Ch. 43 of 1923. Part I was of general application and empowered the Director appointed under that Act to confer with and advise farmers and their creditors for the purpose of bringing about amicable arrangements of the farmers' debts. Part II was limited as to the area of its operation and provided for the filing of a certificate by the Director, the effect of which was to prevent the commencement or continuance of proceedings leading to the seizure or sale of a Resident Farmer's property. Provisions were included empowering a judge to grant leave to commence or continue proceedings, notwithstanding the Directors' certificate.

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p. 12, l. 16.

In 1931 The Debt Adjustment Act 1931, Ch. 57 of 1931, was passed and was the first Act of general application throughout the province, continuing the principle of the 1923 legislation. The Director still discharged his functions of endeavouring to bring about an amicable arrangement of the farmer's debts, and retained the power to file his certificate resulting in the prohibition of proceedings against the farmer on whose behalf the certificate had been filed. As in the previous statutes, provision was made for the making of an order by a judge granting leave to proceed. An alternative right to the creditor to apply to a Board of Review rather than a judge was given in the case of mortgagees and unpaid vendors of farm lands.

p. 12, l. 26.

In 1933, the principle of the legislation was further broadened by the passing of the Debt Adjustment Act 1933, Ch. 13 of 1933. By this Act the first Debt Adjustment Board was provided for and for the first time it was provided that actions against Resident Farmers or Resident Home Owners could not be brought except by leave of the Board, both debtor and creditor being given a right of appeal to a judge from the granting or refusal of leave to proceed.

In 1936 a new Act was passed, Ch. 3 of 1936 (Second Session) to meet an economic crisis and the Act now under appeal is in effect the 1936 Act, amended and consolidated in 1937, and further amended in 1938, 1939 and 1941.

7. In the first place it is necessary to outline briefly the scope of the disputed Act as amended. The Debt Adjustment Act 1937-1941 relates to Resident Debtors and Resident Farmers as defined by the Act provides by Section 8 the operation of which is limited to debts originally contracted prior to 1st July 1936 and to judgments obtained prior to that date, that with regard to Resident Debtors none of the following proceedings shall be taken against them without the consent of a Board established by the Act—

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(A) Action or suit for the recovery of any money as a liquidated demand or debt ;

(B) Execution, attachment or garnishee proceedings ;

(C) Sale or foreclosure of land under a mortgage ; or proceedings for cancellation, rescission, specific performance of agreement for sale of land, or for recovery of possession of land, whether in Court or otherwise ;

(D) Proceedings to sell land under a judgment or mechanics lien ;

(E) Seizures or distress under execution or lease or tenancy, lien, chattel mortgage, etc. ;

10 (F) Proceedings by lessor, etc., under Crop Payments Act ;

(G) Such other actions as are brought under the provisions of the Act by Order in Council.

With regard to Resident Farmers—

(1) Section 27 provides that any proceedings on an obligation of a farmer arising under a formulated proposal pursuant to the Farmers Creditors Arrangement Act (Federal) shall be included in those requiring a permit under Section 8.

20 (2) Section 27 provides that no chattel mortgage given by a Resident Farmer after May 1934, to secure a past indebtedness shall be valid unless approved by the Board.

(3) Sections 28–29 provide that if it is necessary for a farmer to provide himself with necessities of life or feed for stock, or seed grain, to sell property, real or personal, which has been mortgaged, he may do so, free of encumbrance, by permit of the Board.

(4) Section 39 provides that the provisions of the said Act should not be so construed as to authorise the doing of any act or thing which is not within the legislative competence of the Legislative Assembly.

30 **8.** The contentions of the Attorney-General of Canada were that the said Act as amended was wholly *ultra vires* because it was not authorised by any provision in Section 92 of the British North America Act 1867, it not being— p. 38, l. 29
et seq.

(A) legislation in relation to “ property and civil rights in the “ province ” (s. 92 (13)) ;

(B) legislation in relation to “ The administration of justice in “ the province including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, “ and including procedure of civil matters in those courts ” (s. 92 (14)) ;

Record.

(c) legislation in relation to "Generally all matters of a merely "local or private nature in the province" (s. 92 (16)) or to any other matter enumerated in Section 92.

That it was legislation in relation to bankruptcy and insolvency, is repugnant to valid Acts of Parliament in relation to bankruptcy and insolvency, namely, the Bankruptcy Act, the Farmers' Creditors Arrangement Act, the Companies' Creditors Arrangement Act and the Winding Up Act or is invalid as being an invasion of a legislative field already occupied.

That no provision of the Act as amended which, standing by itself might be constitutional, was severable.

p. 50, l. 3. **9.** The Mortgage Loans Association of Alberta contended in the main as follows: "that the legislation (in question) is contrary to the scheme "of the British North America Act because by its very nature it impairs "the sovereignty of the Dominion within its field"; and that a right of action is an essential factor to complete the Dominion Parliament's jurisdiction over the subjects assigned to it under Section 91.

10. The contentions of the Canadian Bankers Association and its argument against the said Act as amended, made on behalf of the Chartered Bankers of Canada, proceeded in the main upon the basis that the said Act as amended does not fall under any head of Section 92 of the British North America Act and does fall under Section 91.

p. 60, l. 20
et seq.

11. The opinion of the Judges of the Supreme Court on the several questions referred to them may be shortly stated as follows:—

Duff C.J., in delivering a judgment concurred in by Rinfret, Davis, Kerwin, Hudson and Taschereau JJ., after stating that by Section 8 of the said Act a legal right which the owner of it is entitled to enforce, is converted into the conditional right enforceable only by grace of a permit of the Board set up by the said Act, continued as follows: "This "authority of the Board may be considered with reference to debts arising "by virtue of statutes, or legal rules, that the legislature is powerless to "repeal or vary as well as with reference to creditors whose powers and "status it is incompetent to impair, or whose undertakings or business "the legislature is incompetent to regulate." After characterising the Board's authority "as arbitrary" and after characterising the appeal to a Judge of the Supreme Court of Alberta sitting with a jury as: "an appeal "from the arbitrary determination of one authority to the arbitrary "determination of another," his Lordship said that the Act accordingly takes away rights at present enforceable by law. That the Act as amended strikes at the substance of the creditors' rights and is repugnant to the

- provision of Dominion Statutes relating to matters within the exclusive jurisdiction of the Dominion Parliament; for example, provisions of the Bills of Exchange Act, Section 125, the Bank Act and the Companies Act, Section 44. That as Section 91 of the British North America Act gives the Parliament of Canada exclusive control over certain types of businesses and undertakings the Act as amended attempts to establish an authority in excess of the powers of provincial legislation. Two cases of businesses are given by way of example, that is to say, banks and companies engaged in operating Dominion undertakings. In his Lordship's opinion these reasons were sufficient to show that sub-section 8 (1) (A) is *ultra vires* as it is not limited to debts and liquidated demands falling exclusively under the regulative authority of the province as being "civil rights within the province." His Lordship was also of the opinion that sub-section 8 (1) (B) presents a different question but is also *ultra vires* for considerations of much the same character. The legislation affects the jurisdiction of provincial courts, but the pith and substance of it is to establish a provincial authority which is empowered to exercise discriminatory control and that while in form the legislation is in relation to remedy and procedure, in substance it attempts to regulate the right itself.
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- 20 As regards interest, his Lordship was of the opinion that sub-section 8 (1) is plainly repugnant to Section 2 of the Interest Act and that Section 26 of the Act as amended dealt with matters so related to the subject-matter of the Farmers Regulations Act, as to be withdrawn from provincial jurisdiction by the form of the last paragraph of Section 91 of the British North America Act 1867. Further it was his Lordship's opinion that the said Act as amended is an attempt to invade fields reserved to the Dominion under "Bankruptcy and Insolvency."
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- 40 His Lordship concluded as follows: "It may be that by apt legislation strictly limited to enactments relating exclusively to matters within the legislative jurisdiction of a province, a Board might lawfully be constituted having some of the powers which the Debt Adjustment Board receives under this legislation. As already intimated, it is unnecessary to express any opinion upon that. In any view of that question it is impossible in this legislation to disentangle what a provincial legislature might competently enact from the principal enactments of the statute constituting this Board with authority to exercise powers that the legislature is incompetent to confer upon it; and indeed if this were possible and the Debt Adjustment Act could be re-written excluding what is *ultra vires* from what I assume might be *intra vires*, there can be no probability that the legislature would have enacted the statute in this truncated form. The competent elements of the legislation, if such there be, not being severable from the incompetent enactments constituting the Board with the powers conferred upon it, the statute is, as a whole, *ultra vires*."
- Record.
p. 61, l. 30.
p. 61, l. 40.
p. 62, l. 9.
p. 63, l. 10.
p. 64, l. 13.
p. 64, l. 15.

Record.
p. 64, l. 36
et seq.

12. Crocket J., in a dissenting judgment after reviewing the decisions of the Judicial Committee of the Privy Council in *Citizens Insurance Co. vs. Parsons* [1881] 7 A.C. 96; *Attorney-General for Ontario vs. Attorney-General for Canada* [1894] A.C. 189 (the Assignments case); *Attorney-General for Canada vs. Attorneys-General for Ontario, Quebec and Nova Scotia* [1898] A.C. 700 (the Fisheries Case) and *Ladore vs. Bennett* [1939] A.C. 468, held—

p. 71, l. 7.

(A) that the whole purpose of the statute was to regulate and control the enforcement of contractual obligations for the payment of money so as to safeguard during a period of financial stress, the interests of unfortunate resident debtors who, through no fault of their own, but entirely owing to the general depreciation of values brought about by abnormal economic conditions, find themselves in such a position that the stringent enforcement of their creditors' claim might entail irreparable loss upon them. 10

p. 71, l. 14.

(B) that the provisions of the Act were predominantly directed to procedure in civil matters in provincial Courts, in relation to the constitution and organisation of which Courts the Provinces possess sovereign legislative power within the limits which the learned Judge indicates. 20

p. 71, l. 21.

(C) that none of the provisions of the Act are directed to insolvency legislation nor to banks or banking legislation, nor to the contracts of Dominion Companies, though such provisions may affect these subjects and these rights collaterally as a necessary incident to the attainment of the obvious object of the statute, viz. the granting of relief to hard-pressed resident debtors.

p. 73, l. 19.

Crocket, J., accordingly answered the first question in the negative except so far as the provisions of the Act may be found to conflict with any Dominion legislation strictly relating to any of the classes of subjects specially enumerated in Section 91 of the B.N.A. Act or as being necessarily incidental to the particular subject-matter, upon which the Parliament of Canada has undertaken to legislate as falling within one or other of the said enumerated heads. The learned Judge stated that by reason of the exception which he had incorporated in his answer to the first question, he was unable to answer the other four questions without a similar qualification. This qualification was due to the fact that the question as phrased called for a search for Dominion enactments possibly affected but not specified which was in his opinion "better fitted for the consideration of the officers of the Crown than for a court of law." 30

13. It is respectfully submitted by the Appellant that the said Debt Adjustment Act 1937 as amended in its pith and substance is in relation to the postponement of payment of certain debts by resident 40

debtors in order to prevent undue hardship on them by the sacrifice of their property by forced sale at times and under conditions when they could not realise their fair market value. It is apparent that the legislature has considered it not in the public interest to permit Resident Debtors to be ruined in order that creditors may collect in full on debt obligations when they mature without regard to the consequences to the debtor of such proceedings.

10 **14.** The Act as amended is in the Appellant's submission concerned only with matters coming within the classes of subjects enumerated in the following sub-sections of Section 92 of the British North America Act viz. :

(13) Property and Civil Rights in the province.

(14) The administration of justice in the province, including the constitution, maintenance and organisation of provincial courts both of civil and of criminal jurisdiction and including procedure in civil matters in those courts.

(16) Generally all matters of a merely local or private nature in the province.

20 The Act is not in relation to any of the classes of subjects enumerated in Section 91 of the British North America Act and, in particular, it is not in relation to any of the following :

A. Bankruptcy and Insolvency, Section 91 (21).

B. Banking, Incorporation of Banks and the issue of paper money, Section 91 (15).

C. Bills of Exchange and Promissory Notes, Section 91 (18).

D. Interest, Section 91 (19).

Further the Act does not impair the status and powers of companies incorporated by the Dominion.

30 **15.** It is further submitted that if any provisions of the Act as amended are *ultra vires* such provisions are severable and remaining parts of the Act are valid and further that if the Act as amended affects any of the classes of subjects enumerated in Section 91 quoted above, or affects Dominion Companies, it only does so collaterally as a necessary incident of carrying out an object reserved to the Provincial Legislature by the British North America Act and is therefore within the legislative authority of the Province on the principles laid down in *Ladore vs. Bennett (supra)* and *Lymburn vs. Mayland* [1932] A.C. 318.

40 **16.** It is further submitted that the legislation in question is clearly and plainly valid with regard to all property and civil rights within the Province and to all debts not regulated by Dominion Statutes and not contracted with a Dominion agency and that in no case should the said

Record.

Act as amended be declared invalid as a whole; but if contrary to the Appellant's contention the said Act as amended invades any legislative field already fully occupied by Acts of the Dominion Parliament or conflicts with such Acts it should be held to be not *ultra vires* but inoperative within such field especially in view of Section 39 of the said Act limiting its operation to the legislative competence of the Legislative Assembly of Alberta.

17. The Appellant therefore submits that the judgment of the majority of the Supreme Court was wrong and should be reversed for the following amongst other

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REASONS.

1. Because the said Act as amended is legislation with regard to property and civil rights within the Province and with regard to the administration of justice within the Province including procedure in civil matters and generally with regard to matters of a merely local and private nature within the Province.
2. Because the said act as amended does not conflict with any valid Dominion legislation relating to any of the classes of subjects especially enumerated in Section 91 of the British North America Act 1867. 20
3. Because the said Act as amended comes within the powers of the provincial legislature or is incidental thereto.
4. Because the said Act as amended is not invalid as infringing any legislation of the Dominion validly enacted within its legislative sphere.
5. Because the legislation in question is not such as the Dominion Parliament could validly have enacted.
6. Because the Debt Adjustment Board, as constituted by the legislation is not a Superior, District or County Court within the meaning of Section 96 of the British North America Act. 30
7. Because if contrary to the Appellant's submission any of the provisions of the said Act as amended are *ultra vires*, they are severable and the remaining parts are valid.
8. Because in case of a conflict with any Dominion legislation the said Act as amended is inapplicable and is not *ultra vires* especially having regard to Section 39 of the said Act as amended. 40

WILFRID BARTON.

J. LEONARD STONE.

In the Privy Council.

No. 20 of 1942.

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