5,1943

In the Privy Council

No. 20 of 1942.

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

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 RESPONDENTS

THE CANADIAN BANKERS' ASSOCIATION and
THE MORTGAGE LOANS ASSOCIATION OF ALBERTA.

1.—The Canadian Bankers' Association represents the chartered banks of Canada. Each of them has as its charter the Bank Act of Canada, 24 & 25 George V. (1934) and their names are listed in Schedule A to that Act. RECORD —

2.—The Mortgage Loans Association of Alberta represents eight life insurance companies, five loan companies, six trust companies, three land companies and eight other firms or companies that carry on business in the Province of Alberta.

3.—The Debt Adjustment Act, 1937, and its amendments to date are cited in the Order of Reference and the questions referred to the p. 3, l. 10

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Supreme Court of Canada with respect to such legislation are set out in the Order.

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4.—The majority opinion of the Supreme Court of Canada (Duff C.J.C., Rinfret, Davis, Kerwin, Hudson and Taschereau JJ.) was that the first interrogatory should be answered by stating that the enactment in question is *ultra vires* in whole, and that as regards the second, third, fourth and fifth interrogatories, it follows from the answer to the first that "the said Act as amended" is not operative in respect of any of the matters

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mentioned in those interrogatories. Crocket J. dissented.

5.—The Act constitutes a Board, known as "The Debt Adjustment Board," appointed by the Lieutenant Governor-in-Council (Sec. 3), which is given the right, with the approval of the Lieutenant Governor-in-Council, to delegate its powers to persons appointed by the Board (Sec. 4). The Board is empowered to make inquiries with regard to the property of any resident debtor or resident farmer (Sec. 6). It is constituted a body politic and corporate (Sec. 7).

6.—Actions, suits and proceedings to enforce payment against resident debtors in respect of debts created before 1st July, 1936, shall not be commenced or continued without a permit issued by or on behalf of the Board, an exception being made, however, with regard to taxes, certain rates, and debts for hospital service. A permit once issued may be cancelled or suspended by the Board. The sheriff is prohibited from effecting any seizure or distress unless a permit of the Board is filed with him (Sec. 8). The Board is given unrestricted power to grant or refuse a permit or to adjourn an application therefor (Sec. 10).

7.—The Board is empowered, on request, to conduct negotiations to bring about agreements between resident debtors and their creditors, with the object of bringing about a reduction of debts having some relation to the debtor's ability to pay (Secs. 21 to 25).

8.—If a resident farmer who has come under the provisions of The Farmers' Creditors Arrangement Act, 1934 (24 & 25 George V, Canada, Chapter 53), defaults on a proposal confirmed by the Board of Review under that Act, no proceedings of any kind may be brought against him without a permit of the Board (Sec. 26). No chattel mortgage given by a resident farmer after 1st May, 1934, to secure any past indebtedness shall be effective unless approved by the Board within 60 days of its date (Sec. 27). In cases where resident farmers have insufficient assets the Board may order the sale of mortgaged goods or chattels of the farmer free from the mortgage or may authorise a farmer who has charged a share of his crop to retain free from such charge sufficient thereof to meet his needs (Secs. 28 and 29). Rights under share crop leases held as collateral are restricted to one-third

of the net crop in any year subsequent to 1935, after deduction of one year's taxes on the land (Sec. 30).

9.—Any person aggrieved by any action of the Board may appeal to a judge of the Supreme Court sitting with a jury of six persons, the question of the action of the Board being declared to be a question of fact for the determination of the jury (Sec. 36). There is, however, no appeal from an action of the Board in adjourning an application for a permit under Section 10.

10.—The Act makes no exception with regard to chartered banks, bodies corporate governed by the provisions of The Bank Act passed by the Parliament of Canada in the exercise of the powers conferred upon it by Section 91, sub-section 15, of the British North America Act.

11.—The business and powers of banks are set forth in The Bank Act commencing at Section 75. Banks are expressly empowered by The Bank Act to take mortgages upon real and personal property as additional security for debts or liabilities contracted to the bank (Sec. 79), and to take action or proceedings to sell any land or chattels under a power of sale in a mortgage thereof to the bank (Sec. 80).

12.—The Canadian Banking system is established on the branch banking basis, the larger banks having branches in every Province of Canada designed to accept deposits and to lend a large proportion of such deposits wherever the demand arises. There were 174 branches of the chartered banks of Canada in Alberta at the end of 1939. If, as a result of legislation in any particular Province, collection of debts was rendered impossible the bank might be unable to repay its depositors and meet other obligations. The situation which would ensue were all the provinces to deny the banks access to the Courts would be chaotic, and banking business throughout Canada would be frustrated. (See *A.G. for Alberta* v. *A.G. for Canada*, 1939, A.C. 117, at p. 132.)

13.—Seven of the life insurance companies represented by the Respondent, The Mortgage Loans Association of Alberta, are incorporated by the Dominion of Canada and are carrying on business under the provisions of the Canadian and British Insurance Companies Act, 1932 (22 & 23 George V, Canada, Chap. 46). One life insurance company is incorporated under the laws of one of the States of the United States of America. All these companies engage in the business of life insurance throughout the whole of Canada. Some of them operate in Great Britain, in the other Dominions and in foreign countries. They are subject to the supervision and control of the Superintendent of Insurance for Canada, who reports annually to the Minister of Finance, and this report is submitted to Parliament.

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14.—The mortgages and agreements for sale secured on real estate in Alberta which are held by Canadian, British and foreign life insurance companies, amount to over $32,000,000. Throughout the whole of Canada such companies have investments in mortgages and agreements of sale that aggregate over $350,000,000.

15.—There are also loan companies, trust companies, railway companies, land companies and other joint stock companies, doing business in Alberta, that have been incorporated by the Dominion of Canada, or by Provinces of Canada other than Alberta. The loan companies operate under the provisions of the Loan Companies Act, R.S.C. 1927, c. 28, and by that Act they are empowered to receive money on deposit and to borrow money from the public by the issue of debentures. By Sec. 61 (2) *c* they may lend money on the security of improved real estate or leaseholds up to 60 per cent. of the value thereof. They are subject to the supervision and control of the same person as the life insurance companies, namely the Superintendent of Insurance. Similarly, the Trust Companies Act, R.S.C. 1927, c. 29, governs the operation of Dominion-incorporated trust companies, and they also come under the supervision of the Superintendent of Insurance. Such trust companies are authorised to receive and invest funds entrusted to them by the public and to guarantee the repayment thereof.

The investments of loan and trust companies in Alberta amount to more than $18,000,000.

16.—There are also companies doing business in Alberta that have been incorporated under various provincial statutes, such as the Companies Acts of the various Provinces, the Loan and Trust Corporations Act of Ontario, and other public statutes, and by private Acts of the Dominion of Canada or of a Province of Canada.

17.—Institutions such as Canadian life insurance companies, loan companies, and trust companies are the chief source of long-term land credit in Canada, and with the chartered banks constitute the central structure of the established economic system of Canada as it existed at the time the British North America Act was passed, and continuously since. A basic component of this system has been the recognition of interest as a proper allowance for the use of borrowed money. The business of life insurance has been built upon this allowance of interest, and all liabilities to policy-holders are calculated on the basis of an assured interest return. Likewise companies, such as loan companies, operate on the fundamental principle of borrowing money and paying interest thereon and re-lending that money at interest. Their success depends on the receipt of interest at a higher rate than they pay on their obligations.

18.—The subject of the legislation does not fall under any head of Section 92 of the British North America Act and does fall under Section 91. The Act does not deal with " property and civil rights in the Province "

under head 13 of Section 92. It aims at protecting persons resident in the Province from claims and demands over which the Province has no exclusive legislative authority. It attempts to accomplish this by refusing access to the Courts of Alberta and by stopping actions already commenced, except with the permission of a purely administrative body.

19.—Duff C.J.C. said in his reasons : p. 61, l. 10

> " In effect the Board is empowered to exercise in each " particular case an arbitrary determination. The appeal to a jury, " given by the amending statute, on which it is to decide as a " question of fact whether the determination of the Board is to " stand, or is to be changed, merely gives an appeal from the " arbitrary determination of one authority to the arbitrary " determination of another. The consequence of all this is that " all creditors who are the owners of debts, or liquidated demands, " that, apart from the statute, would be presently enforceable " by law, have their rights in respect of their enforceability by " action, or suit, taken away, and for them they have " substituted the possibility of obtaining from this authority " permission to enforce them."

20.—Neither does the Act deal with " the administration of justice in the Province " under head 14 of Section 92 or " matters of a merely local or private nature in the Province " under head 16. In seeking to prevent access to the Courts save with permission of a purely administrative body of provincial creation, the Act is far removed from " administration of justice."

21.—Section 30 of the Interpretation Act, R.S.C. 1927, c. 1, provides that :

> " In every Act, unless the contrary intention appears, " words making any association or number of persons a " corporation or body politic shall
>
> " (a) vest in such corporation power to sue and be sued, . . ."

The right to sue, being one of the inherent constitutional rights of a corporation, cannot, in the case of a Canadian company, be taken away or interfered with by provincial legislation.

22.—The Act invades the field of bankruptcy and insolvency which is under the jurisdiction of the Parliament of Canada (head 21 of Section 91). In that connection reference is made to the following extracts from the opinion of Duff C.J.C. :—

> " Bankruptcy is not mentioned, but normally the powers p. 63, l. 43
> " and duties of the Board under Part III will come into operation
> " when a state of insolvency exists. It is not too much to say
> " that it is for the purpose of dealing with the affairs of debtors

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" who are pressed and unable to pay their debts as they fall due
" that these powers and duties are created."

" The statute, if valid, enables the Board (invested with
" exclusive possession of the key to the Courts) to employ its
" position and powers coercively in compelling the creditors of
" an insolvent debtor and the debtor himself to consent to a
" disposition of the resources of the debtor prescribed by the Board.
" In this way the statute seeks to empower the Board to impose
" upon the insolvent debtor and his creditors a settlement of his
" affairs, which the creditors must accept in satisfaction of their
" claims. I cannot escape the conclusion that the statute
" contemplates the use of the powers of the Board in this way.
" I think this is an attempt to invade the field reserved to the
" Dominion under Bankruptcy and Insolvency."

23.—In addition to bankruptcy and insolvency, Section 91 gave Parliament the exclusive legislative authority over the following matters :—

" 2. The regulation of Trade and Commerce.
" 14. Currency and Coinage.
" 15. Banks, incorporation of banks and the issue of paper money.
" 16. Savings Banks.
" 17. Weights and Measures.
" 18. Bills of Exchange and Promissory Notes.
" 19. Interest.
" 20. Legal Tender."

This provides a uniform control throughout the Dominion with respect to matters of national, and even international concern. Such control with respect to bills of exchange and promissory notes would be illusory if the right given to holders by The Bills of Exchange Act (R.S.C. 1927, Cap. 16, Sections 74 (*b*), 134, 135 and 136) is limited to obtaining a judgment that cannot be enforced and could be abrogated by requiring a permit from a tribunal created by the Province.

24.—The Board constituted by The Debt Adjustment Act, 1937, is an administrative body not constituted to exercise judicial authority. The Act confers upon this tribunal an arbitrary power of veto on the exercise of judicial powers by superior, district or county courts. It strikes a fatal blow at Section 96 of the British North America Act, which requires that judges shall be appointed by the Governor General.

25.—If the answer to question 1 is that the Act is wholly *ultra vires*, then it must follow that Questions 2, 3, 4 and 5 should be answered in the negative. Even if the answer to Question 1 is other than that the Act is wholly *ultra vires*, Questions 2, 3, 4 and 5 should still be answered in the negative.

26.—Referring to Question 2, the Act is inoperative in so far as bills of exchange and promissory notes are concerned, in that it is plainly repugnant to the provisions of the Bills of Exchange Act referred to above.

27.—As to Question 3, the Act is inoperative in that proceedings to enforce a judgment (*e.g.* the issue of a writ of execution) for the recovery of moneys owing in respect of a bill of exchange or promissory note are necessary further steps in the action to enforce payment and for recovery. Even if the issue of a writ of execution was not a step in the action, the rights given to holders of bills of exchange and promissory notes by Sections 74 and 134 of the Bills of Exchange Act are broad enough to include the right to issue a writ of execution. Parliament clearly intended to give to holders of bills of exchange and promissory notes the right not only to obtain judgment, but to take all appropriate proceedings incident to enforcing payment.

28.—As to the recovery of debts (Question 4), whether for principal or interest and wherever payable, the contentions hereinbefore put forward (and not relating to bills of exchange and promissory notes) are applicable. In any event, as to debts, whether for principal or interest, payable outside the Province, it is submitted that the Act is inoperative.

29.—As to actions for interest, The Interest Act, R.S.C. 1927, Chapter 102, provides in section 2—

> " Except as otherwise provided by this or by any Act of the " Parliament of Canada, any person may stipulate or allow and " exact on any contract or agreement whatsoever any rate of " interest or discount which is agreed upon."

The Debt Adjustment Act is inoperative in so far as it attempts to provide for interference with actions in the Alberta Courts to enforce payment of interest. It is plainly repugnant to Section 2 of the Interest Act.

30.—It should be particularly noted in connection with Question 4 that Sections 8, 27 and 28 of the Act conflict with Sections 79, 80 and 81 of The Bank Act, and for that reason are inoperative as against the chartered banks.

31.—The submissions with respect to Question 3 are referred to in answer to Question 5. If the provincial legislature has no jurisdiction to control the action or suit, it cannot indirectly accomplish the same result by controlling proceedings to enforce the judgment in the action or suit.

32.—As to whether any parts of the Act might be severable and regarded as valid, reference is made to the opinion of Duff C.J.C. After raising the question of whether a Board might lawfully be constituted with some of the powers set out in the Act, he says :

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"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*."

33.— The Canadian Bankers' Association and The Mortgage Loans Association of Alberta respectfully submit that the answers of the majority of the judges of the Supreme Court of Canada are correct and should be affirmed for the following amongst other

REASONS

(1) Because the legislation is not within any of the enumerated heads of legislative jurisdiction assigned to the Provinces by Section 92 of the British North America Act and in particular it is not legislation in relation to Property and Civil Rights in the Province (head 13), The Administration of Justice in the Province (head 14), or matters of a merely local or private nature in the Province (head 16) and is, therefore, wholly *ultra vires*.

(2) Because the legislation invades the field assigned exclusively to the Parliament of Canada by Section 91 in relation to The Regulation of Trade and Commerce (head 2), and Bankruptcy and Insolvency (head 21).

(3) Because the legislation attempts to deal with matters already covered by valid Dominion legislation such as The Bank Act, The Bills of Exchange Act, The Bankruptcy Act, The Farmers' Creditors Arrangement Act, The Interest Act, and The Interpretation Act, and is plainly repugnant to such Dominion legislation.

(4) Because the legislation is contrary to the scheme of The British North America Act in that it purports to take away the fundamental right of access to the Courts so as to impair the sovereignty of the Dominion within its field.

(5) Because the legislation in its pith and substance is designed to compel creditors to reduce debts and to affect compositions, extensions of time and schemes of arrangement which are matters of bankruptcy and insolvency.

(6) Because the Act authorizes interference by the Province with the rights, status and powers of banks and companies incorporated under Dominion authority and of companies incorporated outside Canada or by provinces other than Alberta.

(7) Because in the case of a bank or company incorporated under Dominion authority, the right to sue cannot be taken away or interfered with by provincial legislation.

(8) Because it confers upon a purely administrative body an arbitrary power of veto on the exercise of judicial powers by the Courts, and is repugnant to Section 96 of The British North America Act requiring that judges shall be appointed by the Governor-General.

(9) Because such legislation would impair the status, solvency and essential capacities of banks and insurance, loan and trust companies incorporated by the Dominion and would thereby seriously affect the existing credit system in Canada contrary to the scheme of the British North America Act.

(10 Because the legislation is a further attempt in the recent legislative history of Alberta to establish a new economic system under provincial control, contrary to the scheme of the British North America Act.

(11) Because it is impossible to disentangle from the principal enactments of the statute that are incompetent the parts, if any, that might be within provincial jurisdiction, and the Act is, therefore, *ultra vires* in its entirety.

(12) Because the opinions of the majority of the Judges in the Supreme Court of Canada are right for the reasons assigned.

R. C. McMICHAEL.
T. D'ARCY LEONARD.
C. F. H. CARSON.

In the Privy Council.

No. 20 of 1942.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER OF A REFERENCE as the validity of The Debt Adjustment Ac 1937, Statutes of Alberta, 1937, Chapter 9, amended, and as to the operation thereof.

BETWEEN

THE ATTORNEY-GENERAL OF ALBERTA... ... ... APPELLANT

AND

THE ATTORNEY-GENERAL OF CANADA, THE CANADIAN BANKERS' ASSOCIATION, THE MORTGAGE LOANS ASSOCIATION OF ALBERTA, and THE ATTORNEY-GENERAL OF SASKATCHEWAN ... RESPONDENT.

CASE OF THE RESPONDENT

THE CANADIAN BANKERS' ASSOCIATION a THE MORTGAGE LOANS ASSOCIATION ALBERTA.

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