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UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES
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APPELLANT'S CASE

In the Privy Council.

No. 107 of 1938.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA (APPELLATE DIVISION).

BETWEEN

THE BOARD OF TRUSTEES OF THE
LETHBRIDGE NORTHERN IRRIGATION
DISTRICT AND L. C. CHARLESWORTH,
OFFICIAL TRUSTEE OF THE LETH-
BRIDGE NORTHERN IRRIGATION DIS-
TRICT (Defendants) Appellants,

AND

THE INDEPENDENT ORDER OF FORESTERS (Plaintiff) Respondent.

CASE OF THE APPELLANTS.

1. This is an appeal from the judgment of the Appellate Division of the Supreme Court of Alberta, dated the 23rd May, 1938, affirming by a majority the judgment of Mr. Justice Ewing, dated the 29th October, 1937, by which it was declared *inter alia* Record. p. 41. p. 11.

(a) That the Provincial Guaranteed Securities Interest Act, being Chapter 12 of the Statutes of Alberta 1937, is ultra vires the Legislature of the Province of Alberta; and

10 (b) That the Provincially Guaranteed Securities Proceedings Act, being Chapter 11 of the Statutes of Alberta 1937 is ultra vires the Legislature of the Province of Alberta in so far as it relates to the subject matter of this action.

2. The questions arising on the appeal are in substance two; the first is whether, by virtue of heads 8, 13 and 16 of section 92 of the British North America Act ("Municipal Institutions in the Province," "Property and Civil Rights in the Province," and "Generally all matters of a merely local or private nature in the Province") the Provincial Legislature can

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validly pass an Act to restrict the rate of interest on debentures, or whether it is prohibited from so doing by the reservation to the Dominion Parliament under head 19 of section 91 of the said Act, of "Interest"; and the second is whether the Provincial Legislature can validly pass an Act, under head 14 of the said section 92, ("The administration of Justice in the Province . . ."), to prohibit the bringing of an action within the Province to recover any money payable in respect of securities without the consent of the Lieutenant-Governor in Council.

3. Prior to the action out of which this appeal arises, the present Respondent (Plaintiff) had brought an action against the present Appellants 10 (Defendants) which involved the validity of a previous statute of the Alberta Legislature, The Provincial Securities Interest Act, 1936 (2nd Sess.) Chapter 11. Section 3 of that statute ran:—

"(1) Notwithstanding any stipulation or agreement as to the rate of interest payable in respect of any security,* on from and after the first day of June, 1936, the rate at which interest shall be payable in respect of any security shall be as follows:

"Where the security bears interest at the rate of" (e.g.) "six per centum, the rate of interest shall be" (e.g.) "three per centum"

"(2) No person shall be entitled to recover in respect of any 20 security any interest at a higher rate than the rate hereby prescribed in respect of that security . . . and no action shall be brought or maintained in any court of the Province in respect of any such security or for the purpose of enforcing any foreign judgment founded on any such security."

In that case, Mr. Justice Ives had given judgment on the 22nd February, 1937, declaring that the said statute was wholly ultra vires of the legislature on the grounds that the "pith and substance" of the statute was the reduction of interest; that the matter of interest is a specific subject assigned to Parliament by head 19 of the said section 91; that Parliament by the 31 Interest Act, R.S.C. 1927, chapter 102, has legislated on the subject of interest for the whole of Canada and thus occupied the whole legislative field; and that its legislation is paramount. He also held that the Provincial Legislature could not, by prohibiting the bringing of an action to recover the full interest, do indirectly what it had no power to do directly. He accordingly gave judgment for the full interest claimed.

4. After this judgment had been delivered, the statute thus held invalid was repealed, and on the 14th April, 1937, there came into force the two statutes directly involved in this appeal, being chapters 11 and 12 of 1937. By the said chapter 12, entitled the Provincial Guaranteed 40 Securities Interest Act, 1937, provision was made as to reduction of interest on "guaranteed securities," i.e., as defined by section 2, "all debentures which are guaranteed by the Province" with one exception immaterial hereto, in terms similar to those employed in section 3 (1) of the Act of 1936.

* i.e., as defined in the Act, a security issued by the Province.

(1937) 1
W.W.R.
414.

The text of section 3 (1) of this chapter 12 of 1937 runs as follows :—

“ Notwithstanding any stipulation or agreement as to the rate of interest payable in respect of any guaranteed security, on, from and after the first day of June, 1936, the rate at which interest shall be payable in respect of any security shall be as follows :

“ Where the guaranteed security bears interest at the rate of ” (e.g.) “ six per centum, the rate of interest shall be ” (e.g.) “ three per centum.”

5. The other statute involved, chapter 11, entitled The Provincially
10 Guaranteed Securities Proceedings Act, 1937, after defining “ guaranteed securities ” in the same terms as those of chapter 12, went on to provide :

“ 3. Notwithstanding anything to the contrary in any Act or in
“ any contract, and notwithstanding any rule of law or equity to the
“ contrary, no action or proceeding of any kind or description shall be
“ commenced, taken, instituted, maintained, or continued, for the
“ purpose of the recovery of any money payable in respect of any
“ guaranteed security, or for the purpose of enforcing any right or
“ remedy whatsoever for the recovery of any such money, or for the
“ purpose of enforcing any judgment or order at any time heretofore
20 “ or hereafter given or made with respect to any guaranteed security,
“ or for the purpose of enforcing any foreign judgment founded on a
“ guaranteed security, without the consent of the Lieutenant-Governor
“ in Council.”

6. The relevant portions of the (Dominion) Interest Act, R.S.C. 1927
Cap. 102, run as follows :—

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

30 7. The facts are not in dispute and may be shortly stated. The first Appellant (Defendant), a company incorporated in the Province of Alberta pp. 3-9.
under the laws of the Province, had issued a number of debentures payable as to principal and interest at the offices of certain banks not only in the Province but also in Toronto, Montreal and New York City. These debentures fell within the definition of “ guaranteed securities ” in the two statutes in question.

The second Appellant (Defendant) is the Official Trustee of the Leth- p. 4, 11, 2-10.
bridge Northern Irrigation District, and is deemed by virtue of certain statutory provisions to be the Board of Trustees of the said District. No
40 distinction need be drawn between the two Appellants for the purpose of these proceedings.

8. The Respondent (Plaintiff) held a number of the said debentures, and in respect of the instalment of interest due on the 1st November, 1937, demanded payment in Toronto. Being refused payment of more than the

Record. reduced amount made payable by the Act of 1936 mentioned in paragraph 3 of this Case, the Respondent brought the action mentioned in the said paragraph, and recovered judgment for the full amount. It was however unable actually to issue execution, as the said Provincially Guaranteed Securities Proceedings Act, chapter 11 of 1937, had meanwhile come into force, and the officials of the Court gave effect to it.

pp. 3-9. 9. The Respondent accordingly brought the present action against the Appellants on the 16th June, 1937, claiming payment both of the judgment recovered in the previous action, and of the instalment of interest which had meanwhile fallen due on the 1st May, 1937, and had been again demanded 10 at Toronto with the like result. The Respondent also claimed a declaration that the two statutes in question were ultra vires of the Provincial legislature.

pp. 10-11. 10. The Appellants (Defendants) relied upon the said two statutes as defeating the Respondent's claim and also as preventing the action being brought in the absence of leave from the Lieutenant-Governor, for which the Respondent had not applied. The Appellants brought into Court the amounts which were due for interest on the basis of the said Provincial Guaranteed Securities Act, chapter 12 of 1937, being valid.

pp. 11-12.
pp. 12-18. 11. The case was heard by Mr. Justice Ewing, who gave judgment for the Respondent. In his Reasons for Judgment he dealt first with the 20 Provincially Guaranteed Securities Proceedings Act, chapter 11 of 1937, and expressed the view that it was not possible for the Legislature to deprive the Courts of jurisdiction to interpret the Constitution, or to prevent access to the Courts for the enforcement of rights which such Legislature is not competent to take away. He thought that, although this statute made no reference to interest, it did derogate from the right to exact interest, and thus from rights with which the Province in his view could not interfere, since he regarded the Dominion Parliament as having exclusive legislative authority on the topic of interest in a case such as the present. He also held that this statute conflicted with section 2 of the Interest Act of Canada, 30 quoted above, in paragraph 6.

On the question of the validity of the Provincial Guaranteed Securities Interest Act, Chapter 12, he expressed agreement with the judgment of Mr. Justice Ives given in the case mentioned in paragraph 3 of this Case.

pp. 18-20.
pp. 11-12.
pp. 41-2. 12. The Appellants appealed from the said judgment to the Appellate Division, and on the 23rd May, 1938, their appeal was dismissed by a majority (Chief Justice Harvey and Justices Lunney McGillivray and Shepherd, Mr. Justice Ford dissenting).

pp. 42-7. 13. The Chief Justice, with whom Mr. Justice Lunney and Mr. Justice Shepherd concurred, in his Reasons for Judgment, dealt first with the 40 Provincial Guaranteed Securities Interest Act, chapter 12 of 1937. He thought its invalidity was almost too clear for argument, as it dealt in his view with interest and nothing more. He also regarded the point as concluded by a decision of the same Court in *Crédit Foncier v. Ross and the*

Attorney-General, reported in (1937) 2 W.W.R. 353, dealing with a similar statute. With regard to the Provincially Guaranteed Securities Proceedings Act, chapter 11 of 1937, he thought that this was ultra vires because it was auxiliary to the invalid legislation (chapter 12) dealing with the restriction of interest, and that the Court was entitled to have regard to the purpose with which chapter 11 was enacted, which he took to be that of seeking to give validity to chapter 12. He was accordingly in favour of dismissing the appeal.

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14. Mr. Justice Ford, on the other hand, would have allowed the appeal. pp. 47-53
 10 Assuming for the purpose of argument the invalidity of chapter 12, he thought that the action was barred by chapter 11, which he held to be not colourable but valid legislation designed to limit the enforcement within the Province of certain contractual rights.

15. Mr. Justice McGillivray was also in favour of dismissing the appeal. pp. 53-6.
 He agreed with the judgment of the Chief Justice but held also that the Provincially Guaranteed Securities Proceedings Act, chapter 11 of 1937, was invalid for the additional reason that it conflicted with the provision of the Interest Act of Canada permitting the "exaction" of interest.

16. The Appellants humbly submit that the judgments of Mr. Justice
 20 Ewing and of the majority of the Appellate Division are wrong and ought to be reversed, and that judgment should be entered for the Appellants; and that the two statutes in question should be declared intra vires of the Legislature of Alberta, for the following among other pp. 12-18, 42-47, 53-56.

REASONS.

1. Because the Provincial Guaranteed Securities Interest Act, chapter 12 of 1937, is in pith and substance not legislation relating to "interest" within the meaning of head 19 of section 91 of the British North America Act, but is legislation relating to property and civil rights in the Province, or to one or more of the other heads of section 92 of the said Act. 30
2. Because the said chapter 12 deals only with certain specified classes of contract, and the Province may validly legislate in relation to such contracts and in so doing may affect rights to interest without thereby infringing the authority of Parliament.
3. Because even if the said chapter 12 affects the subject of "interest," it does not invade the field of "interest" allotted to Parliament by the said head 19 of section 91, and there is no Dominion legislation in conflict with it. 40
4. Because there is no conflict between the said chapter 12 and section 2 of the Interest Act of Canada, which merely

removed certain restrictions previously applicable as a matter of general law to interest, and laid down the freedom of contract in relation to stipulations for interest, without purporting or attempting to override the functions of the provincial legislatures.

5. Because the said section 2 of the Interest Act of Canada, if it purported to override such provincial legislation as the said chapter 12, would be to that extent ultra vires.
6. Because the Provincially Guaranteed Securities Proceedings Act, chapter 11 of 1937, is in pith and substance legislation in relation to the Administration of Justice in the Province, or to one or more of the other sub-heads of the said section 92, and does not directly or indirectly relate to any of the matters set forth in the said section 91.
7. Because both the said statutes deal only with civil rights within the Province and do not affect rights outside it.
8. Because the rights arising under the debentures in question are rights situate in the Province of Alberta.
9. Because the judgments appealed from are wrong, and ought to be reversed.

D. N. PRITT.

W. S. GRAY.

In the Privy Council.

No. 107 of 1938.

*On Appeal from the Supreme Court of Alberta
(Appellate Division).*

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TRICT. (*Defendants*) *Appellants.*

AND

THE INDEPENDENT ORDER OF
FORESTERS (*Plaintiff*) *Respondent.*

CASE OF THE APPELLANTS.

BLAKE & REDDEN,
17, Victoria Street,
S.W.1.