

In the Privy Council.

30587

No. 45 of 1939.

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

UNIVERSITY OF LONDON
W.C.1.
- 7 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

HIS MAJESTY THE KING - - - (Defendant) Appellant

AND

THE INDEPENDENT ORDER OF FORESTERS - - - (Suppliant) Respondent

AND

THE ATTORNEY GENERAL OF CANADA - - - Intervener.

CASE FOR THE ATTORNEY GENERAL OF
CANADA.

RECORD.
p. 39, l. 30.

1. This is an appeal from a judgment of the Supreme Court of Alberta, Appellate Division, dated the 5th April, 1939, dismissing the Appellant's appeal from a judgment dated the 11th day of February, 1939, of Shepherd J. whereby it was ordered and adjudged that the Provincial Securities Interest Act, 1937, was ultra vires of the Legislature of the Province of Alberta. p. 9, l. 15.

2. The Act purports to reduce the interest payable on securities issued by the Province of Alberta, and its validity depends on the following provisions of the British North America Act :

10

“ 91. It shall be lawful for the Queen, by and with the Advice
“ and Consent of the Senate and House of Commons, to make Laws
“ for the Peace, Order and good Government of Canada, in relation
“ to all Matters not coming within the Classes of Subjects by this
“ Act assigned exclusively to the Legislatures of the Provinces;
“ and for greater Certainty, but not so as to restrict the Generality
“ of the foregoing Terms of this Section, it is hereby declared that
“ (notwithstanding anything in this Act) the exclusive Legislative
“ Authority of the Parliament of Canada extends to all Matters

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A
INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

INTERVENER'S CASE

RECORD.

“ coming within the Classes of Subjects next hereinafter enumerated ;
“ that is to say—

“ 1. The Public Debt and Property.
.....

“ 4. The borrowing of Money on the Public Credit.
.....

“ 19. Interest.
.....

“ And any Matter coming within any of the Classes of Subjects
“ enumerated in this Section shall not be deemed to come within 10
“ the Class of Matters of a local or private Nature comprised in the
“ Enumeration of the Classes of Subjects by this Act assigned
“ exclusively to the Legislatures of the Provinces.

“ 92. In each Province the Legislature may exclusively make
“ Laws in relation to Matters coming within the Classes of Subjects
“ next hereinafter enumerated ; that is to say

.....
“ 3. The borrowing of Money on the sole Credit of the Province.
.....

“ 13. Property and Civil Rights in the Province. 20

“ 14. The Administration of Justice in the Province including
“ the Constitution, Maintenance, and Organization 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.”

3. The validity of the Acts may also be affected by the fact that the
Parliament of Canada has passed an Interest Act, chapter 102 of the
Revised Statutes of Canada, 1927, which contains in section 2 a provision 30
(originating in pre-confederation legislation except in New Brunswick
where it was introduced by chapter 18 of the Statutes of Canada, 1875)
that :

“ Except as otherwise provided by this or 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.”

p. 3, l. 17-p. 4,
l. 25.
p. 6, ll. 20-26.

4. The Respondent held at Toronto in the Province of Ontario securities
issued by the Province of Alberta, and demanded payment of interest at
the rates specified in the securities at Toronto, where amongst other places, 40
the interest was payable. Payment was refused, but tender was made
of interest at the reduced rates set out in the Act. The Respondent
thereupon by Petition of Right claimed a declaration that the Act was
invalid.

p. 6, ll. 26-
28.

p. 3; p. 4,
l. 40.

5. Mr. Justice Shepherd and the Appellate Division held themselves bound by previous decisions to hold the Act ultra vires the Legislature of Alberta, and rejected the Appellant's argument that these decisions can be distinguished in that the Interest Act of Canada does not apply to the Crown. These decisions are about to come up for review by the Judicial Committee of the Privy Council in an appeal, No. 107 of 1938, between The Board of Trustees of the Lethbridge Northern Irrigation District and another and The Independent Order of Foresters, the Attorney General of Canada intervening.

10 6. The Attorney General of Canada supports the arguments of the Respondent and respectfully contends that the Provincial Securities Interest Act deals entirely with matter coming within the subject of interest over which the Parliament of Canada has exclusive legislative authority; that therefore the Act cannot be justified under any of the heads of section 92 of the British North America Act; that the Act is none the less dealing with the subject of interest because it purports to affect only the interest on certain specified securities; that if, contrary to
20 be validly enacted because the Parliament of Canada has occupied the field; and that it is irrelevant whether the Interest Act of Canada does or does not apply to the Crown.

7. The Attorney General of Canada respectfully submits that the judgment of the Appellate Division of the Supreme Court of Alberta should be affirmed for the following amongst other

REASONS

1. Because the Provincial Securities Interest Act is legislation on the subject of interest over which the British North America Act vests exclusive legislative authority in the
30 Parliament of Canada.
2. Because the Provincial Securities Interest Act is not legislation in relation to any matter coming within the classes of subjects in relation to which the Legislature of Alberta may make laws.
3. Because the Provincial Securities Interest Act conflicts with the Interest Act of Canada.
4. Because the rights of the Respondent under the securities in question are rights in Ontario which cannot be affected by the Legislature of Alberta.
- 40 5. Because of the other reasons given in the decided cases by which the Courts below held themselves bound.

FRANK GAHAN.

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CASE FOR THE ATTORNEY GENERAL
OF CANADA.

CHARLES RUSSELL & CO.,

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