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.*

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

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.*

RECORD OF PROCEEDINGS.

In the Supreme Court of Canada.

No. 1. Order of Reference by the Governor-General-in-Council, 19th May, 1941.

No. 1.

Order of Reference by the Governor-General in Council.

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 19th May, 1941.

P.C. 3543.

The Committee of the Privy Council have had before them a report, dated 17th May, 1941, from the Minister of Justice, representing:

That among the statutes of the Province of Alberta is a statute entitled " The Debt Adjustment Act 1937," being chapter 9 of the Statutes of Alberta 1937, which statute was 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;

In the Supreme Court of Canada.

No. 1. Order of Reference by the Governor-General-in-Council, 19th May, 1941 —*continued.*

That by a judgment dated March 14th, 1941, of the Honourable Mr. Justice O'Connor, of the Supreme Court of Alberta in the case of the North American Life Assurance Company, plaintiff, and Minnie Helen McLean, defendant, the said Act, as amended, was held to be *ultra vires* of the Legislature of Alberta for the reason that in the opinion of the learned Judge the legislation was in its true nature and character in relation to insolvency and as such constituted an invasion of the legislative field already fully occupied by Acts of Parliament namely, the Bankruptcy Act and the Farmers' Creditors Arrangement Act ;

That by enactment of the Legislature assented to on April 8th, 1941, the Debt Adjustment Act 1937, was further amended by an Act entitled " The Debt Adjustment Act 1937, Amendment Act 1941," being chapter 42 of the Statutes of Alberta 1941 ;

That by a judgment dated December 20th, 1940, in the case of *Attorney-General for Alberta and Winstanley* v. *Atlas Lumber Company* (1941) 87 S.C.R., the Supreme Court of Canada held (affirming the decision of the Court of Appeal of Alberta) that the aforesaid Debt Adjustment Act 1937, as 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 payment.

That the Attorney-General of the Province of Alberta has represented that it is urgently required in the public interest that an authoritative decision as to the validity of the Debt Adjustment Act 1937, as amended, as aforesaid, be obtained at the earliest possible moment ; and

That the Minister of Justice is of opinion that the questions as to the validity and operation of the said Act, as amended, are important questions of law touching the constitutionality and interpretation of this provincial legislation.

The Committee, therefore, on the recommendation of the Minister of Justice, advise that, pursuant to the authority of section 55 of the Supreme Court Act, the following questions be referred to the Supreme Court of Canada for hearing and consideration, namely :—

(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 ?

(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 ?

(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 ?

(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 ;

(*c*) the interest only upon such money.

(5) If the answer to any 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 ?

(Sgd.) A. D. P. HEENEY,
Clerk of the Privy Council.

No. 2.

Order for Inscription of Reference.

In the Supreme Court of Canada.

Before

The Right Honourable The Chief Justice of Canada.

Tuesday, the 20th day of May, A.D. 1941.

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.

Upon the application of the Attorney-General of Canada for directions as to the inscription for hearing of the reference relating to the above questions referred by His Excellency the Governor General in Council for hearing and consideration of the Supreme Court of Canada under the provisions of section 55 of the Supreme Court Act, and upon hearing read the Order in Council of the 19th day of May, 1941 (P.C. 3543) setting forth the said questions, and upon hearing what was alleged by counsel for the Attorney-General of Canada and for the Attorney-General of Alberta and for the Mortgage Loans Association of Alberta ;

It is ordered that the said reference be inscribed for hearing at the present sittings of this Honourable Court on the 24th day of June, 1941 ;

In the Supreme Court of Canada.

No. 2. Order for Inscription of Reference, 20th May, 1941 —*continued.*

And it is further ordered that the respective Attorneys-General of the Provinces of Alberta, British Columbia, Manitoba, New Brunswick, 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 by sending to each of them by registered post (air mail) on or before the 23rd day of May, 1941, a notice of hearing of the said reference and a copy of the said Order in Council together with a copy of this order ;

And it is further ordered that the Canadian Bankers' Association and the Mortgage Loans Association of Alberta shall be notified by the Attorney-General of Canada of the hearing of the argument by sending to each of them by registered post (air mail) on or before the 23rd day of May, 1941, a notice of hearing of the said reference together with a copy of the said Order in Council and a copy of this order ;

And it is further ordered that the Attorney-General of Canada shall file with the Registrar of the Supreme Court the printed case on the said reference on or before the 14th day of June, 1941, and serve copies forthwith upon the said Attorneys-General of the said Provinces as well as upon the Canadian Bankers' Association and the Mortgage Loans Association of Alberta.

And it is further ordered that the said Attorney-General of Canada and the said respective Attorneys-General of the said Provinces as well as the Canadian Bankers' Association and the Mortgage Loans Association of Alberta be at liberty to file factums of their respective arguments on or before the 19th day of June, 1941, and to appear and be heard by counsel on the argument of the said reference.

And it is further ordered that notice of the said reference be given in the Canada Gazette on or before the 24th day of May, A.D. 1941.

(Sgd.) L. P. DUFF,
C.J.C.

No. 3. Notice of Hearing, 21st May, 1941.

No. 3.

Notice of Hearing.

In 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.

Take Notice that the Reference herein has by Order of the Right Honourable the Chief Justice of Canada, dated the 20th day of May, 1941, been inscribed for hearing at the present sittings of this Honourable Court on the 24th day of June, 1941, and notice is hereby given of the hearing of the said

Reference pursuant to the terms of the said Order, copy of which is hereto annexed.

Dated at Ottawa, this 21st day of May, A.D. 1941.

W. STUART EDWARDS,
Solicitor for the Attorney-General of Canada.

To: The Attorney-General of Alberta.
The Attorney-General of British Columbia.
The Attorney-General of Manitoba.
The Attorney-General of New Brunswick.
The Attorney-General of Nova Scotia.
The Attorney-General of Ontario.
The Attorney-General of Prince Edward Island.
The Attorney-General of Quebec.
The Attorney-General of Saskatchewan.
Mortgage Loans Association of Alberta.
Canadian Bankers' Association.

In the Supreme Court of Canada.

No. 4. Factum of The Attorney-General of Alberta.

No. 4.

Factum of the Attorney-General of Alberta.

INDEX.

ALPHABETICAL LIST OF CASES:

Alphabetical List of Cases—*contd.*

Part I.

STATEMENT OF FACTS.

1. This case comes before the Court by Order in Council pursuant to Section 55 of the Supreme Court Act, by which questions were referred as to the validity and operation of "The Debt Adjustment Act 1937," being Chapter 9 of the Statutes of Alberta 1937, and amendments thereto.

2. The Act creates a Board to be known as "The Debt Adjustment Board" consisting of from one to three members to be appointed by the Lieutenant-Governor in Council (Sect. 3).

In the Supreme Court of Canada.

No. 4.
Factum of The Attorney-General of Alberta
—continued.

3. The Act has relation to " Resident Debtors " and " Resident Farmers." These terms are defined by section 2 (*c*) and (*cc*).

4. Parts I and III of the Act relate to Resident Debtors; Part IV to Resident Farmers; Part V is general (Part II was repealed).

5. The governing section in relation to " Resident debtors " is Section 8. This section provides that none of the following proceedings may be taken by any person against a Resident Debtor unless the Board has issued a written permit consenting thereto :—

(*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, recession, 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.;

(*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.

It is also provided that Section 8 shall not apply to any contract made after July 1st, 1936.

6. Section 9 provides that no permit shall be granted in respect of proceedings on a farm mortgage or agreement for sale if those proceedings lead to foreclosure by reason of the fact that because of the depreciation in values caused by abnormal economic conditions, the security cannot, for the time being, be sold to realise its fair price under normal conditions.

7. Section 10 provides that on application by a creditor for a permit the Board may make such inquiries as it deems proper and may issue or refuse a permit or adjourn the application for such length of time as it deems advisable under the circumstances.

8. Section 11 provides that the time during which proceedings are prohibited shall not be counted under the Statute of Limitations.

9. Part III relates to proceedings by the Board by way of effecting voluntary adjustments of a Resident Debtor's debts. The Board may act under this part on application of the debtor or his creditor. It is provided that any agreement reached shall be binding and enforceable in law.

10. Part IV makes provision as 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.

(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.

11. Part V :—

Section 36 provides for appeal from the Board's orders to a judge and jury of six persons.

Section 38 provides that such parts of the Act as may conflict with future Federal legislation may be suspended.

Section 39 provides that " the provisions of this Act shall not be so " construed as to authorise the doing of any act or thing which is not " within the competence of the Legislature."

12. The Order in Council making the Reference refers to the decision of Mr. Justice O'Connor holding the Act to be ultra vires. Since that judgment the sections on which the learned Judge relied have been repealed with such slight exceptions as are hereinafter referred to.

13. The Reference also refers to *Winstanley's Case* in which judgment was given by this Honourable Court in December last deciding that the Act could not operate to preclude the holder of a promissory note from taking action thereon.

Part II.

It is submitted :—

First. The Act comes within the provisions of the B.N.A. Act, Section 92 (13) (14) and (16).

Second. The Act is not in relation to any of the classes of subjects enumerated in Section 91 and in particular, it is not in relation to any of the following :—

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

B. Bills of Exchange and Promissory Notes—Section 91 (18). (Except as determined to the contrary by *Winstanley's Case* 1941 S.C.R. 87.)

C. Interest—Section 91 (19).

Third. The appointment of the Debt Adjustment Board is not in contravention of Section 96 of the B.N.A. Act.

Fourth. The legislation is not in relation to property and civil rights outside the province.

Fifth. If any of the provisions of the Act are ultra vires they are severable and the other parts are valid.

Part III.

ARGUMENT.

History of the Legislation.

There has been legislation in Alberta of this type 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 be taken except by leave of a judge. It was confined in its operation to certain areas in the Southern and South-Eastern portions of the province.

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 the 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 Director's certificate.

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.

In 1933, the principle of the legislation was further broadened by the passing of the Debt Adjustment Act 1933, Ch. 13 of 1933. 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. The certificate was also continued and the creditor and the debtor were 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), and the Act under review in this Reference is the 1936 Act, amended and consolidated in 1937, and amended in 1938, 1939 and 1941.

FIRST—SECTION 92 B.N.A. ACT.

It is submitted that the statute is in relation to matters coming within the classes of subjects enumerated in the following subsections of Section 92 of the B.N.A. Act, viz. :—

(13) Property and Civil Rights in the Province ;

(14) The administration of Justice in the Province . . . including Procedure in Civil Matters in those Courts ;

(16) Matters of a purely local or private nature in the Province.

A. Property and Civil Rights :

The Statute as a whole deals with Property in the Province and Civil Rights in the Province :

Citizens Insurance Co. v. *Parsons*, 7 A.C. 96.

Sir Montague Smith referring to the words " civil rights " said at page 110 :—

" The words are sufficiently large to embrace in their fair and ordinary meaning, rights arising from contract, and such rights are not included in express terms in any of the enumerated classes of subjects in Section 91.———"

Again at page 111, referring to the Quebec Act 14 Geo. III, Ch. 83, Sir Montague says :—

"———In this statute the words ' property ' and ' civil rights ' are plainly used in their largest sense ; and there is no reason for holding that in the statute under discussion they are used in a different and narrower one———"

See also *Attorney-General for Manitoba* v. *Manitoba Licence Holders' Association* [1902] A.C. 73, 79.

Workmen's Compensation Board v. *Canadian Pacific Railway Co.* (1920) A.C. 184, 191, 192.

B.—Administration of Justice, including procedure in civil matters.

It is submitted that Sections 8 and 26 in particular of the Act are in relation to matters coming within the class of subjects enumerated in Section 92 (14).

Regina v. *Bush*, 15 O.R. 398.

This case dealt with the power of a provincial legislature to pass a statute authorising the appointment of Justices of the Peace. It has many times been cited with approval as defining the extent of the powers given to the provincial legislatures under sub-head 14 of Section 92.

Street J. after quoting the words of sub-head 14, says at page 403 :—

"———Now these words, standing alone and without any interpretation or context, appear to me to be sufficient, had no other clause in the Act limited them, to confer upon the Provincial legislatures the right to regulate and provide for the whole machinery connected with the administration of Justice in the Provinces, including the appointment of all the Judges and officers requisite for the proper administration of justice in its widest sense, reserving only the procedure in criminal matters."

The learned Judge then referred to the limitation upon the words of said sub-head 14 by Sections 96 (the appointment by the Governor-in-Council of Judges), 100 (as to payment of salaries of Judges), and 101 (giving power to Parliament to establish a general Court of Appeal and additional Courts) : and at page 404, says :—

" Everything coming within the ordinary meaning of the expression ' the administration of justice,' not covered by the sections which I have referred to, therefore, remain, in my opinion, to be dealt with by the Provincial Legislatures in pursuance of the powers conferred upon them by par. 14 of sec. 92, excepting only what has been subtracted

" from these powers by the other sections which I have quoted. This is " the result at which I have arrived by comparing together the different " sections of the Act with the object of finding whether any good reason " exists for not giving to the words of par. 14 their ordinary meaning " . . .———"

This case was cited with approval by the Chief Justice of Canada in the Reference *re* authority to perform functions vested by the Adoption Act and other Ontario Statutes reported in (1938) S.C.R. 398 at pages 406 and 416. At pages 416 and 417 the Chief Justice says :—

"———If the provinces have no authority to increase the jurisdiction " of the County Courts without depriving them of their character " as such, then no such jurisdiction exists anywhere. As Mr. Justice " Strong, speaking for this Court said in *Re County Courts of* " *British Columbia* (21 S.C.R. 446) ' The jurisdiction of parliament to " ' legislate as regards the jurisdiction of provincial courts is, I consider, " ' excluded by subsection 14 of S. 92 before referred to inasmuch as " ' the constitution, maintenance and organisation of provincial courts " ' plainly includes the power to define the jurisdiction of such courts, " ' territorially as well as in other respects. This seems to me too plain " ' to require demonstration.' "

It is submitted that under sub-head 14 of Section 92 the legislature may destroy a right of action, take away from and grant jurisdiction to the Courts and place restrictions upon and conditions precedent to the bringing of an action in the provincial courts. Reference may be made to the following Saskatchewan cases :—

Maley v. *Cadwell* (1934) 1 W.W.R. 51.

Micas v. *Moose Jaw and Atty.-Gen.* (1929) 1 W.W.R. 725 ; (1929) 3 D.L.R. 89.

Beiswanger v. *Swift Current* (1930) 3 W.W.R. 519 ; (1931) 1 D.L.R. 407.

Haultain C.J.S. says at page 56 of the first mentioned case :—

"———The Legislature has exclusive jurisdiction to make laws in relation " to property and civil rights in the province and in relation to the ad- " ministration of Justice in the province, including the constitution, " maintenance and organisation of provincial courts of civil jurisdiction. " It creates the Courts and bestows and prescribes their jurisdiction, and " may at any time, enlarge or circumscribe or otherwise alter that juris- " diction. It may in my opinion abolish any existing right of action, or " postpone it by moratorium under its power to legislate in relation to " property and civil rights. It may also, in my opinion, prescribe upon " what terms or under what circumstances, or upon compliance with " what conditions precedent, any action may be taken or continued and " may delegate such powers to any person———"

In *Beiswanger* v. *Swift Current* cited supra, Turgeon J.A. (now C.J.S.) said at page 520 of the W.W. Report :—

" But, in my opinion, the Legislature acting in pursuance of its " jurisdiction over property and civil rights in the province in respect to " matters not assigned to the Parliament of Canada by the British North " America Act 1867, Ch. 3, has the power to prevent or postpone the " bringing of actions in tort by one person against another, or to make " the bringing of such actions dependent upon the consent of a person " or a body appointed by law, its control of the subject matter being " supreme and unlimited : *Hodge* v. *Reg.* 9 A.C. 117, 132."

The reference of the learned Judge to *Hodge's case* is to the following statement by Lord Fitzgerald at page 132 :—

"———when the British North America Act enacted that there should " be a legislature for Ontario and that its legislative Assembly should " have exclusive authority to make laws for the province and for pro- " vincial purposes in relation to the matters enumerated in Section 92, " it conferred powers not in any sense to be exercised by delegation from " or as agents of the Imperial Parliament but authority as plenary and " as ample within the limits prescribed by Section 92 as the Imperial " Parliament in the plenitude of its power possessed and could " bestow. . . ."

C.—Matters of a purely local or private nature within the province—Sect. 92 (16).

See : *The Liquor Licence Act Case* [1896] A.C. at 365.
I Cameron at 495.

SECOND—SECTION 91, B.N.A. ACT.

The Act is not in relation to any of the classes of subjects enumerated in Section 91 and, in particular, is not in relation to any of the following :—

A.—Bankruptcy and Insolvency—Sect. 91 (21).
B.—Bills of Exchange and Promissory Notes—Sect. 91 (18).
C.—Interest—Sect. 91 (19).

It is proposed to deal with each of these three headings separately. Before doing so, it is desirable to examine briefly the pith and substance of the Statute. It is now well established that if the Statute is in its pith and substance within one or more of the sub-heads of Sect. 92 and relates to such matters it is immaterial that it may affect matters over which the Parliament of Canada has exclusive authority.

Canadian Pacific Railway Co. v. *Bonsecours* [1899] A.C. 376.
Lymburn v. *Mayland* [1932] A.C. 318.
Attorney-General for Manitoba v. *Manitoba License Holders' Association* [1902] A.C. 73.
Spooner Oils v. *Turner Valley Conservation Board* (1932) 3 W.W.R. 477 ; (1932) 4 D.L.R. 750, 758, affirmed on this point in (1933) S.C.R. 629, 648, 649.

The Alberta Act in its pith and substance is in relation to the postponement of payment of debts by Resident Debtors in order to prevent undue hardship on them by the sacrifice of their property by forced sale at times and

In the Supreme Court of Canada.

No. 4. Factum of The Attorney-General of Alberta —*continued.*

under conditions when they could not realise their fair market value or for other reasons. 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.

A. Bankruptcy and Insolvency—Sect. 91 (21).

The Act does not relate to bankrupts or insolvent persons or persons who have committed acts of bankruptcy or to compositions of the debts of such persons.

The Reference speaks of the Judgment of Mr. Justice O'Connor in the case of *North American Life Assurance Co.* v. *McLean* (1941) 1 W.W.R. 430. In that case His Lordship was of the opinion that the legislation in its true nature and character was in relation to insolvency. His Lordship referred to the following sections of the Alberta Act in support of his opinion, viz.: Secs. 6, 8, 10, Part II (Secs. 12 to 20), 24, Part III, Sec. 28, 37. These sections are no longer in the Act except: Sec. 6 in part, Sec. 8, Sec. 10 in part, Part III in part.

It is submitted that the Act as presently constituted is supplemental to the Bankruptcy Act and The Farmers' Creditors Arrangement Act and does not invade the field of Bankruptcy or Insolvency. There are other grounds than bankruptcy or insolvency which may move the legislature to postpone the enforced payment of a debt. One such ground is indicated in Section 9 of the Act. If the debtor, though insolvent, is forced to sacrifice his property in order to pay his debt the legislature may well consider it advisable to delay enforcement so the sacrifice may be avoided. This is the principle of the Moratorium Statutes which have existed in the provinces since the last war.

The Alberta Act is divided into two parts :—

One. The provisions relating to the postponement of proceeding. Section 8.

Two. The provisions as to compositions. Part III.

One. Postponement—Section 8. There is nothing in this part referring to bankruptcy or insolvency. It relates to Resident Debtors generally. If a debtor has committed an act of bankruptcy under Section 3 of the Bankruptcy Act and a creditor presents a petition under Section 4 the debtor thereafter is subject to the provisions of that Act. He is then outside the jurisdiction of the provincial courts operating as such. In this event Section 8 of the Alberta Act has no application. See also Sect. 39.

Two. Compositions—Part III, Sections 21, 22, 23. The Board shall endeavour to bring about an amicable arrangement for the payment of the Resident Debtor's indebtedness. This duty may arise as incidental to a postponement of the right of the creditor to sue or directly on the application of a debtor.

There is in this Part no condition of bankruptcy or insolvency required to give jurisdiction to the Board.

It is true that under Sect. 21 the Board " shall inquire into his ability " to pay his just debts either presently or in the future " and under Section 23

" the Board shall endeavour to bring about an agreement whereby the secured " and unsecured debts of the debtor are reduced to an amount in accord with " the ability of the Resident Debtor to pay either presently or in the future." This does not indicate insolvency. It is ability to pay not disability. A man owing $1,000.00 who must sacrifice a $10,000.00 property to realise $1,000.00 is not insolvent but his ability to pay in the present or immediate future is quite different from the man who owes $1,000.00 and has $2,000.00 in cash. It is a relative ability to pay and not an absolute ability which is involved. The concluding words of Section 23 indicate this is the meaning.

A. G. Ontario v. *A. G. Canada* (Voluntary Assignments Case) 63 L.J.P.C. 59 at 62 ; [1894] A.C. 189 at 193 ; 1 Cameron at 454.

" But it is argued that, inasmuch as this assignment contemplates " the insolvency of the debtor, and would only be made if he were in- " solvent, such a provision purports to deal with insolvency, and therefore " is a matter exclusively within the jurisdiction of the Dominion Parlia- " ment. Now it is to be observed that an assignment for the general " benefit of creditors has long been known to the jurisprudence of this " country and also of Canada, and has its force and effect at common " law quite independently of any system of bankruptcy or insolvency, " or any legislation relating thereto."

This quotation referred to voluntary assignments. These are now included in the Bankruptcy Act. In the Alberta Act we are considering not assignments but compositions, which equally with assignments are only ancillary to bankruptcy legislation if made prior to an act of bankruptcy.

The compositions in the Bankruptcy Act are in Sections 11 to 19. These relate only to compositions by an insolvent debtor, against whom a receiving order has been made or who has made an authorised assignment under the provisions of the Bankruptcy Act. The provisions for compositions in the Alberta Act " have their force and effect independently of any system of bankruptcy or insolvency or any legislation relating thereto."

In all the provinces are statutes relating to the enforcement of judgments. There are equitable executions and judgment summonses by which debtors who are " judgment proof " are examined by the Courts as to their ability to pay. It is usual for orders to be made for monthly payments. It has never been suggested that such provisions are bankruptcy legislation and ultra vires.

The Farmers' Creditors Arrangement Act Case [1937] A.C. p. 402-3. Plaxton 349-350.

It was there held :—

" The justification for such proceedings by a creditor, generally " consist in an act of bankruptcy by the debtor, the conditions of which " are defined and prescribed by the statute law."

Referring to the Farmers' Creditors Arrangement Act their Lordships said :—

" It cannot be maintained that legislative compositions by which " bankruptcy is avoided, but which assumes insolvency, is not property

In the Supreme Court of Canada.

No. 4. Factum of The Attorney-General of Alberta —*continued.*

" within the sphere of bankruptcy legislation. (In Re Companies' " Creditors Arrangement Act 1934, S.C.R. 659.) The Act here in question " relates only to a farmer who is unable to meet his liabilities as they " become due."

L'Union St. Jacques de Montreal v. *Belisle* (1874) L.R. 6 P.C. 31 at p. 38. 1 Cameron p. 206 at p. 212 :—

" The fact that this particular society appears upon the face of the " Provincial Act to have been in a state of embarrassment, and in such " a financial condition that, unless relieved by legislation, it might have " been likely to come to ruin, does not prove that it was in any legal " sense within the category of insolvency."

B. Bills of Exchange and Promissory Notes—Sect. 91 (18).

1. Consideration of *Winstanley's Case :*

A. G. Alberta and Winstanley v. *Atlas Lumber Co. Ltd.* 1941 S.C.R. 87.

This was an action by the holder against Winstanley as the maker of a promissory note. The defendant pleaded Section 8 (*a*) of the Debt Adjustment Act. The issue was not as to the validity of this Act generally, but as to the validity or application of Section 8 (*a*).

(1) The Chief Justice, concurred in by Mr. Justice Kerwin, held that the section was repugnant to Sections 74, 134, 135 and 136 of the Bills of Exchange Act. That these sections were necessarily incidental to the exercise of the Dominion powers under Section 91 (18) and superseded Section 8 (*a*) of the Alberta Act so far as it related to Bills and Notes.

(2) Mr. Justice Rinfret held that these sections in the Bills of Exchange Act were more than ancillary—they were part of the class of subject " Bills of exchange and promissory Notes " and that consequently so far as Section 8 was in conflict therewith it was ultra vires.

(3) Mr. Justice Crocket did not accede to the contention that the rights conferred by SS. 74, 134 and 135 of the Bills of Exchange Act to sue, recover thereon and enforce payment thereon in provincial courts are not subject to provincial legislation relating to the jurisdiction of provincial courts and procedure in civil matters therein. His Lordship thought, however, that these sections in the Bills of Exchange Act were necessarily incidental to the class of subject 91 (18) and as the two enactments conflict the federal must prevail.

(4) Mr. Justice Davis put a different interpretation on Section 74 and the other mentioned sections of the Bills of Exchange Act. He did not think the Dominion Statute in any way dealt with access to the courts, general or particular, provincial or dominion. He thought the words in Sect. 74 " the holder of a bill may sue on the bill in his own name " meant only " not liable to be defeated in an action on the ground that the action had been brought by the wrong party."

His Lordship held the part of the Act relied upon as a defence in the action was ultra vires because " a province cannot validly pass " legislation ,at least in relation to a subject matter within the exclusive

" competency of the dominion which puts into the hands of a local ad- " ministrative agency the right to say whether or not any person can " have access to the ordinary courts of the province."

(5) Mr. Justice Hudson (concurred in by Mr. Justice Taschereau) held that Sect. 74 of the Bills of Exchange Act " expressly recognises a right of action on a note." He held that the Alberta Act places in the hands of a provincial body the right to say whether or not certain classes of rights may be established or enforced through the Courts.

" There may be administration of law outside of the courts short of " empowering provincial officers to perform judicial functions but in " respect of matters, falling within the Dominion field a province would " not be justified in doing anything which would destroy or impair " rights arising under the laws of Canada."

The Dominion has power to impose duties upon courts established by the provinces in furtherance of the laws of Canada and " a province could not interfere with, nor take away the jurisdiction thus conferred." His Lordship pointed out that a right of action on a promissory note was a civil right governed by the laws of Canada and for that reason excluded from the provincial field.

His Lordship further stated :—

" We are not concerned here with the law of executions, exemptions " from seizure or property rights, and it is neither necessary nor advisable " to discuss the validity of the Debt Adjustment Act insofar as it affects " matters not directly in issue in this action."

2. Effect of *Winstanley's Case.*

This case must be accepted as definitely deciding that Section 8 (*a*) of the Alberta Act is either ultra vires or superseded so far as relates to promissory notes or bills of exchange. It is not now proposed to argue to the contrary before your Lordships but for the purposes of the record in the event of this Reference going further it is formally submitted as follows :—

(1) That this Act is not in conflict with the language of the Bills of Exchange Act and that the interpretation of Sections 74 and 134-5-6 as given by Mr. Justice Davis is right.

(2) That the subject matter of these sections does not come within the class of subjects enumerated in Sect. 91 (18).

(3) That the provisions of Sect. 8 conferring on the Adjustment Board the power to grant or refuse permission to sue is within provincial powers.

(4) That if the provisions of the Bills of Exchange Act are in conflict with those of the Debt Adjustment Act, to that extent the former Act is ultra vires.

3. Consideration of the other subsections of Section 8 of the Alberta Act insofar as they relate to Bills and Notes :—

(1) It is submitted that *Winstanley's case* related only to the right of a holder of a note to sue in the provincial courts and that the powers

In the Supreme Court of Canada.

No. 4. Factum of The Attorney-General of Alberta —*continued.*

of the province in relation to the enforcement of a judgment by execution was not involved or decided. See judgment of Hudson J. ante.

(2) It is submitted that subsections (*b*) (*d*) and (*e*) of Section 8 of the Alberta Act are valid enactments in relation to execution and that their application to a judgment on a promissory note is not beyond provincial competence. They are not in relation to Bills and Notes, nor are they an interference with actions in the Courts. They are valid provincial laws of general application in relation to property and civil rights in the province.

(3) It is submitted that when the holder of a promissory note sues and obtains judgment, the note has merged in the judgment. Expressed differently, his rights have ceased to be those of a holder of a promissory note and have become those of a judgment creditor. Thereupon, it is submitted the Debt Adjustment Act applies as it does to all judgments of the provincial courts in any kind of action.

In *King* v. *Hoare,* 13 M. & W. 495; 153 E.R. 206; Baron Parke at p. 504 said :—

" If there be a breach of contract, or wrong done, or any other cause " of action by one against another, and judgment be recovered in a court " of record, the judgment is a bar to the original cause of action, because " it is thereby reduced to a certainty, and the object of the suit attained, " so far as it can be at that stage; and it would be useless and vexatious " to subject the defendant to another suit for the purpose of obtaining " the same result. Hence the legal maxim, ' Transit in rem Judicatam ' " —the cause of action is changed into matter of record, which is of a " higher nature, and the inferior remedy is merged in the higher. This " appears to be equally true where there is but one cause of action, " whether it be against a single person or many. The judgment of a " Court of record changes the nature of that cause of action and prevents " its being the subject of another suit, and the cause of action, being " single, cannot afterwards be divided into two."

In *Maclaren's Bills* 6th (1940) Edition, p. 370, the following statement is made :—

" Discharge by merger——A bill may also be discharged by being " merged in a security of a higher nature, such as a bond, mortgage, or " the like. So a judgment recovered on a bill operates as an extinguish- " ment of the original debt as between the defendant and the plaintiff " or any subsequent party, the bill being merged in the judgment."

See also *Commercial Life Assurance Company of Canada* v. *Cadenhead* (1931) 3 W.W.R. 653 at 654-5.

(4) In *Royal Bank of Canada* v. *Workmen's Compensation Board of Nova Scotia,* 1936, S.C.R. 560, the issue was whether the claim of the Workmen's Compensation Board under the Provincial Workmen's Compensation Act took priority over the lien of the Bank under Section 88

of the Bank Act. The Court, without dissent, held that it did. Davis J., speaking of the Workmen's Compensation Act, says, at p. 569 :—

> " It is a provincial measure of general application for the benefit " of workmen employed in industry in the province and is not aimed " at any impairment of bank securities though its operations may " incidentally in certain cases have that effect. In my opinion this " is not a case where there is any conflict of legislative authority. " If it is possible to do so the different enactments should be con- " strued and applied so as to give an adequate and proper place and " function to each of them. When banks in this country take, as " is well known they so often do, under Section 88, security on all " the raw materials and goods in process of manufacture of a customer " and thereby accept a qualified ownership in the property used in " or produced by the industry of its customer, they cannot expect " to hold such property free and clear of those burdens on the " industry that are of general application throughout the particular " province in which the bank is doing business."

(5) Equally so, it is submitted, there is no conflict between the Bills of Exchange Act and those subsections of Section 8 of the Debt Adjustment Act preventing all judgment creditors and execution creditors whether their causes of action originally were in contract or in tort from proceeding against the real or personal property in the province belonging to the judgment debtor or execution debtor, as the case might be. Applying Mr. Justice Davis' remarks in the *Royal Bank case* (supra), it may be said that the above quoted provisions of the Debt Adjustment Act are " provincial measures of general application for the benefit of " debtors " in the province and is not aimed at any impairment of " the rights of holders of promissory notes, " though its operations may incidentally in certain cases have that effect."

(6) In *Attorney-General for Ontario* v. *Attorney-General for Canada* [1894] A.C. 189 (Ontario Assignments Act case)

Lord Herschell L.C. said at p. 198 :—

> " Their Lordships proceed now to consider the nature of the " enactment said to be ultra vires. It postpones judgments and " executions not completely executed by payment to an assignment " for the benefit of creditors under the Act. Now there can be no " doubt that the effect to be given to judgments and executions " and the manner and extent to which they may be made available " for the recovery of debts are prima facie within the legislative " powers of the provincial parliament. Executions are a part of the " machinery by which debts are recovered, and are subject to regula- " tion by that parliament. A creditor has no inherent right to have " his debt satisfied by means of a levy by the sheriff, or to any " priority in respect of such levy. The execution is a mere creature " of the law which may determine and regulate the rights to which " it gives rise."

In the Supreme Court of Canada.

No. 4. Factum of The Attorney-General of Alberta —*continued.*

(7) It is submitted that the Bills of Exchange Act has not enacted ancillary legislation in relation to the enforcement or collection of judgments by executions or other similar remedies which are repugnant to Section 8.

It is submitted that Sections 74, 134, 135 and 136 of the Bills of Exchange Act do not purport to give the judgment creditor a right to collect on the judgment by provincial machinery and at the same time to over-ride the provincial laws enacted in relation to such machinery.

(*a*) Section 74 (*b*) provides that a holder in due course may enforce payment against all parties liable on the bill.

It is submitted that this provision goes no further than 74 (*a*), which provides that the holder may sue in his own name. In the one case it says he may sue. In the other it says " he may enforce payment (by suit)." It surely cannot mean that he can enforce payment by suit followed by execution in defiance of the provincial laws relative to execution. Nor can it mean that the holder in due course under (*b*) has a more extensive remedy than the holder under (*a*), who may sue. The right to sue is in relation to courts established under the constitution where the judges are appointed and paid by the Dominion. The provisions as to execution are not in the constitution and are not part of the machinery of government established by its provisions. It may be that the Dominion could appropriate the provincial machinery and provide for a federal right of execution in defiance of all provincial regulations and restrictions such as priorities, etc., but to do so would require apt and unequivocable language.

(*b*) Section 135 provides that in case of dishonour the holder may recover from any party liable on the bill. It is submitted that recover means " recover judgment " and not recovery on the judgment. See: 53 *Corpus Juris* p. 655-6; Webster's dictionary; Century Dictionary. In the context parliament was not dealing with methods of recovery as such but the rights of parties to take advantage of available methods of recovery.

(8) It is proposed to direct the Court's attention to some of the consequences which would attend an affirmative answer to Question 3 of the Reference.

Section 8 of the Debt Adjustment Act is one of a number of Statutes *in pari materia.* It belongs to the same body of general Provincial Statutes as the Seizures Act, Chapter 16 of Statutes of Alberta, 1933; the Execution Creditors Act, Chapter 8 of Statutes of Alberta, 1934; the Exemptions Act, Chapter 41 of Statutes of Alberta, 1941.

(*a*) The Seizures Act.

It is submitted that if Section 8 of the Debt Adjustment Act is ineffective to restrain an execution creditor, whose original claim was based upon a promissory note, from taking proceedings by way of seizure of his debtor's goods, then equally it would not be competent to provide

in the Seizures Act itself (e.g. Section 5 of that Act) that the sheriff was to exercise his right to seize only after first obtaining, or having filed with him, a permit from the Debt Adjustment Board or any other administrative body set up by Provincial legislation.

From that it follows that none of the many restrictive provisions contained in the Seizures Act can be enforced against the execution creditor where the execution is one arising out of a dishonoured promissory note. Examples of such restrictions are :—

(i) No sale of lands until after expiration of one year (Section 17).

(ii) Debtor must be served with Notice of Seizure and a Notice of Objection (Section 23).

(iii) Where no Notice of Objection creditor cannot take further steps until after expiration of 14 days (Section 26).

(iv) Where Notice of Objection filed creditor must apply for an Order for Sale and Judge may refuse application (Section 27).

(v) Sheriff may adjourn sale by auction (Section 30).

(vi) Debtor may apply to Judge to restrain creditor from further proceeding and Judge may, if it be deemed proper, release the seizure (Section 32).

To repeat, if a judgment creditor who was originally the holder of a promissory note can, by virtue of Sections 74 and 135 of the Bills of Exchange Act, ignore the requirements of Section 8 of the Debt Adjustment Act, equally it would seem that he can ignore the requirements of Sections 17, 23, 26, 27, 30 and 32 of the Seizures Act. In other words, if there be conflict between the Bills of Exchange Act and the Debt Adjustment Act, there is similar conflict between the Bills of Exchange Act and the Seizures Act.

(*b*) The Exemptions Act.

Similarly the Exemptions Act, Chapter 48 of Statutes of Alberta 1941, which cuts down and restricts the right of an execution creditor to satisfy his execution out of his debtor's goods, might be said to conflict with Sections 74 and 135 of the Bills of Exchange Act in so far as it interferes with the right of the holder of a promissory note as a judgment creditor to " enforce payment " from his judgment debtor.

The Exemptions Act has been in force in Alberta since the establishment of the Province. It applies to all writs of execution however obtained. Its validity and its applicability to executions founded upon promissory notes has never been questioned. It is submitted that if a judgment creditor who was originally the holder of a promissory note can ignore the requirements of Section 8 of the Debt Adjustment Act because that Section conflicts with rights conferred upon him by the Bills of Exchange Act, equally it would seem that when he has reduced his claim to judgment and execution he can ignore the Exemptions Act which constitutes a serious invasion of his rights as an execution creditor.

4. It is submitted that if Sections 74 and 135 of the Bills of Exchange Act are so interpreted as repugnant (in so far as concerns bills and notes) to

provincial legislation applying to all classes of judgment creditors and execution creditors alike, then those sections of the Dominion Statute are ultra vires.

The general rule was stated in *Attorney-General for Canada* v. *Attorney-General for British Columbia* [1930] A.C. 111 (the Fisheries Case), at p. 118, where Lord Tomlin said :—

> " It is within the competence of the Dominion Parliament to pro-
> " vide for matters which though otherwise within the legislative com-
> " petence of the provincial legislature, are necessarily incidental to
> " effective legislation by the Parliament of the Dominion upon a subject
> " of legislation expressly enumerated in s. 91 ; see *Attorney-General for*
> " *Ontario* v. *Attorney-General for the Dominion* (1894, A.C. 189) ; and
> " *Attorney-General for Ontario* v. *Attorney-General for the Dominion* [1896]
> " A.C. 348."

In the *Fisheries case*, it was held that Dominion legislation which imposed licences upon commercial fish canneries and curing establishments was invalid as not directly or incidentally within Section 91, sub-head 12 (Sea Coast and Inland Fisheries).

In *City of Montreal* v. *Montreal Street Railway* [1912] A.C. 333, the Dominion Railway Act by Section 8, ss. (*b*) provided that every provincial street railway should be subject to the provisions of the Dominion Act relating to the through traffic upon such street railway and all matters appertaining thereto.

The Board of Railway Commissioners made an Order requiring the provincial street railway to enter into agreements with another railway (admittedly subject to Dominion regulation) with which it was physically connected, with a view to preventing unjust discrimination against customers of the federal railway.

It was argued that such a provision and the Order referred to were necessarily incidental or ancillary to subjects of legislation assigned exclusively to Parliament by Section 91, sub-head 2 and Section 92, sub-head 10.

At p. 344, Lord Atkinson, delivering the judgment of the Judicial Committee, said :—

> " It follows, therefore, that the Act and Order if justified at all must
> " be justified on the ground that they are necessarily incidental to the
> " exercise by the Dominion Parliament of the powers conferred upon it
> " by the enumerated heads of s. 91. Well, the only one of the heads
> " enumerated in s. 91 dealing expressly or impliedly with railways is
> " that which is interpolated by the transfer into it of sub-heads (*a*), (*b*)
> " and (*c*) of sub-s. 10 of s. 92. Lines such as the Street Railway are not
> " amongst these. In other words, it must be shown that it is necessarily
> " incidental to the exercise of control over the traffic of a federal railway,
> " in respect of its giving an unjust preference to certain classes of its
> " passengers or otherwise, that it should also have power to exercise
> " control over the ' through ' traffic of such a purely local thing as a
> " provincial railway properly so called, if only it be connected with a
> " federal railway."

* * * * * * *

" The right contended for in this case is in truth the absolute right " of the Dominion Parliament wherever a federal line and a local pro- " vincial line connect to establish, irrespective of all consequences, this " dual control over the latter line whenever there is through traffic " between them, at least of such a kind as would lead to unjust discrimina- " tion between any classes of the customers of the former line. In their " Lordships' view this right and power is not necessarily incidental to the " exercise by the Parliament of Canada of its undoubted jurisdiction and " control over federal lines, and is therefore, they think, an authorised " invasion of the rights of the Legislature of the Province of Quebec."

It cannot be contended that it is " necessarily incidental to effective legislation " regarding Bills of Exchange and promissory notes that Parliament must provide that an execution creditor whose claim was originally founded upon a promissory note is to be preferred over all other execution creditors in the Province, in the face of valid provincial legislation designed to prevent just such discrimination.

The Bills of Exchange Act provides that the holder of a bill may sue on the bill in his own name (Section 74, par. *a*), if he be a holder in due course he may enforce payment against all parties liable on the bill (Section 74, par. *b*); in case of dishonour, the holder may recover from any party liable on the bill (Section 135).

The foregoing provisions may be proper and necessary in a codification of the law merchant, but it is submitted that it is not essential to the scheme of the Bills of Exchange Act that it should go further and provide that the holder of a promissory note may, after he has reduced his claim to judgment and execution, proceed against the goods and lands of his debtor, without regard to any restrictions of the provincial laws, and in the result obtain satisfaction of his judgment and execution to the exclusion of other judgments and executions which otherwise would rank pari passu with his in the Sheriff's hands.

In the *Winstanley case*, supra, the Chief Justice of Canada, referring to Sections 74, 134, 135 and 136 of the Bills of Exchange Act, stated at p. 94 :—

" Section 8 of the Debt Adjustment Act, if (as the appellants contend " and I agree) it extends to actions upon bills of exchange and pro- " missory notes, is plainly repugnant to the enactments of the Bills of " Exchange Act in the sections mentioned above. Nor can I think it " susceptible of dispute that the enactments are ' necessarily incidental " to the exercise of the powers conferred upon the Dominion Parliament ' " by section 91 of the British North America Act in relation to bills of " exchange and promissory notes."

It is respectfully submitted that His Lordship's remarks were intended to be confined to the right of the holder of a bill to sue in the Courts and were not intended to imply that an attempt by Parliament to over-ride provincial laws applicable to execution creditors generally would also be necessarily incidental to the exercise of the legislative power over Bills of Exchange and Promissory Notes.

In the Supreme Court of Canada.

No. 4. Factum of The Attorney-General of Alberta —*continued.*

C. Interest.

There are two questions to be considered :—

One. Is the Alberta Act in its true nature and character in relation to interest ?

Two. Although not in relation to interest but of a provincial power is it superseded because repugnant to Section 2 of the Interest Act ?

Taking them in order :

One. The true nature and character of the Act—

It is submitted that the Act in its pith and substance is not in relation to interest, but affects interest only incidentally as was the case in *Ladore* v. *Bennett* [1939] A.C. 468.

The true nature and character of the enactment is generally to grant relief to Resident Debtors from the consequences of forced sale of their assets at a time and under conditions which would be disastrous because impossible fully to realise their value.

It is to be noted that Section 8 does not attempt to reduce the debt or interest and in no way impairs the obligation. It is provided that the time out is not counted in the Statute of Limitations. The enactment is no more in relation to interest than is the Statute of Limitations itself. The one says the action must be brought within a certain period. The other says the action may be postponed. Each provision is for legitimate provincial purposes and has no relation to interest as such.

The relevant cases are :

Ladore v. *Bennett* [1939] A.C. 468.

The facts are fully stated in the headnote and it will be noted that provincial legislation was held valid which authorised the Ontario Municipal Board to authorise and approve the funding and refunding of the debts of the amalgamated municipalities under which former creditors of the old municipalities received debentures of the new city of equal amount but with the interest scaled down in various classes of debentures. Arrears of interest were dealt with by paying a composition in cash. The legislation in question which, by an amendment of 1936 was made to apply, will be found in Part III of the Department of Municipal Affairs Act, Chapter 16 of 1935 (Ont.) Sections 24 et seq. Section 33 reads in part as follows :—

> " 33. Where a municipality has become subject to this part the " Board, with respect to the debenture debt and debentures of the " municipality and interest thereon and with respect to any other " indebtedness thereof, shall have power to authorise and order . . .
>
> " (*g*) postponement or of variation in the terms, times and " places for payment of the whole or any portion of the debenture " debt and outstanding debentures and other indebtedness and " interest thereon and variation in the rates of such interest. . . ."

It was argued that inasmuch as this legislation had the effect of reducing the interest on the municipal debentures and thus preventing the bond-

holders from collecting the interest agreed to be paid, it was in conflict with Section 2 of the Interest Act, Chapter 102, Revised Statutes of Canada, 1927, quoted below.

This contention was not given effect to.

Lord Atkin said at page 480 :—

" Counsel for the plaintiffs attacked the whole of the proceedings " in connection with these municipalities on three grounds. He said " that the relevant statutes and the authorities which they purported " to give were ultra vires the Legislature of Ontario because they invaded " the field of the Dominion as to (91) Bankruptcy and Insolvency (s. 91 " (21) of the British North America Act, 1867) ; (2) Interest (s. 91 (19)) ; " and were not within the exclusive powers of the Province, because " (3) they affected private rights outside the Province."

See also *Day* v. *City of Victoria*, 53 B.C.R. 140 (1938, 3 W.W.R. 161). The headnote in the B.C. report reads as follows :—

" The plaintiff brought this action on behalf of himself and all other " debenture holders of the City of Victoria, for a declaration that the " Victoria City Debt Refunding Act, 1937, is ultra vires of the Legis- " lature of British Columbia, on the grounds : (*a*) that it is legislation " relative to and affecting debentures that have been sold outside the " Province that are negotiable and payable and owned by persons and " corporations living and domiciled outside the Province, (*b*) that the " Act purports to legislate in regard to civil rights of such holders of " debentures that subsist outside the Province ; (*c*) that Section 4 of the " Act is ultra vires as it prohibits actions being brought in the Courts " of the Province against the defendant corporation by debenture " holders ; (*d*) that section 25 is ultra vires as it confiscated property " belonging to debenture holders outside the Province ; (*e*) that said Act " is in conflict with the Interest Act. It was held that the pith and " substance of the Act was to destroy the civil right of debenture holders " outside the Province to return of principal at the mature date and " arbitrarily to fix the rate of interest payable during the extended " period, which was beyond the power of the Province.

" Held, on appeal, reversing the decision of Robertson J., that the " Provincial Legislature was competent to enact this statute under the " powers conferred by the B.N.A. Act under the specific heads (8) and " (13) of Section 92, i.e., ' Municipal institutions in the Province,' ' Pro- " perty and civil rights in the Province.' "

The statute in *Day's case* had refunded the debenture indebtedness of the City of Victoria by the issue of new debentures bearing the same rate of interest as the original debentures until their date of maturity and thereafter at a reduced rate. In other words the time for payment of the outstanding debentures was extended but at a reduced rate of interest.

Sloan J.A. says at page 150 of the B.C. Report :—

"———Is this Act, then, one not relating exclusively to subject matters " within section 92, but one also in relation to interest ? In my opinion,

" with respect, it is an Act in relation to subject-matters assigned ex-
" clusively under section 92 (8), (13) and is not one in relation to any
" subject-matter within the exclusive legislative competence of the
" Dominion.

" It does not purport to be an Act relating generally to interest,
" and while some of the provisions contained therein ' affect ' interest
" as an incident in the effectuation of the general scheme of the enact-
" ment, nevertheless it cannot, in my opinion, be said to be an Act
" ' in relation to ' interest———"

This decision received the specific approval of the Judicial Committee of the Privy Council in : 10

Lethbridge Northern Irrigation District v. *Independent Order of Foresters* [1940] A.C. 513.

Involved in the *Foresters case* was the validity of certain Statutes of Alberta reducing the interest payable on provincially guaranteed debentures and on provincial debentures. These Statutes were held ultra vires as being, in pith and substance, acts dealing with " interest " within the meaning of head 19 of S. 91 of the British North America Act. The Board distinguished the case of *Ladore* v. *Bennett* and *Day* v. *Victoria* and in doing so, approve of the latter decision and reaffirmed its decision in *Ladore* v. *Bennett.* 20

Viscount Caldecote L.C. says at page 532 :—

"———The decision of the Court of Appeal of British Columbia in *Day*
" v. *Victoria* (City) holding the Victoria City Debt Refunding Act 1937
" intra vires of the Provincial Legislature was also cited as a case in
" which it was held permissible for a provincial legislature to pass an act
" relating to interest. On examination, the decision is found to give no
" support to the appellants' argument. The act there in question did
" not purport to be an act relating generally to ' interest ' and while
" some of its provisions dealt with interest as an incident effecting the
" general object of the enactment, it was held rightly, as their Lordships 30
" think, not to be an act in relation to interest or to conflict with the
" Dominion Interest Act———"

Two. Is the Alberta Act repugnant to Sect. 2 of the Interest Act and so superseded ?

This question arises only on the assumption that the Alberta Act is intra vires—being in relation to matters coming within provincial classes of subjects as enumerated in Section 92.

Section 2 of the Interest Act is as follows :—

" Except as otherwise provided by this or by any other Act of the
" Parliament of Canada any person may stipulate for, allow and exact 40
" on any contract or agreement whatsoever any rate of interest which
" is agreed upon."

It is submitted that this section relates only to the formation of the contract and means that it is lawful in the making of a contract to " stipulate

for, allow and exact " such rate of interest as may be agreed upon. The word " exact " means to demand claim or require.

The history of the section shows that it merely removes penalties and does not deal with a right of action. It should be read as if the words " without penalty " were inserted after the word " may " in the second line.

The earlier Statutes of Upper Canada, such as 51 Geo. III, C. IX (1811) found in Revised Statutes of Upper Canada, Vol. I, p. 175, declared it to be unlawful to collect more than six per cent. interest on a loan and declared contracts calling for a greater rate of interest void and provided that persons accepting a higher rate of interest should forfeit treble the value of the money lent. From time to time these restrictions were altered or removed and Chapter 85 of the Statutes of 1858 of the Province of Canada contained as Section 2 the following :—

> " It shall be lawful for any person or persons other than those " excepted in this Act, to stipulate for, allow and exact on any contract " or agreement whatsoever, any rate of interest or discount which may " be agreed upon."

This was obviously a Statute to remove restrictions and penalties.

In the Consolidated Statutes of 1859, page 682, the section appears without the words " It shall be lawful " and reads as follows :—

> " Except as hereinafter provided, any person or persons may " stipulate for, allow and exact on any contract or agreement whatsoever, " any rate of interest or discount, which may be agreed upon."

The omission of the words " It shall be lawful " does not change the meaning and effect of the section. See Section 8 of C. 29 of the Consolidation. The section of the Interest Act has been brought forward in practically the same form to R.S.C. 1927, C. 102, s. 2.

It is submitted therefore that the section merely authorises what had been at one time unlawful and does not give a right of action which can be said to conflict with the statute under review.

Lethbridge Irrigation District v. *Independent Order of Foresters* [1940] A.C. 513 ; 109 L.J.P.C. at 72.

In this case some remarks of the Lord Chancellor seem to be opposed to the views advanced here. His Lordship says :—

> " Even if it could be said that the Act relates to classes of subjects " in Section 92 as well as to one of the classes in Section 91 this would " not protect the provincial act against the Interest Act. Section 2 of " the Interest Act reads as follows." His Lordship quotes and proceeds : " This provision cannot be reconciled with the Act Ch. 12 of Alberta " 1937 and Dominion legislation properly enacted under Section 91 and " already in the field must prevail in territory common to the two " parliaments."

There are several answers which are respectfully made to this part of Lord Caldecote's judgment :—

(*a*) It is not a necessary part of the judgment ;

In the Supreme Court of Canada.

No. 4. Factum of The Attorney-General of Alberta —*continued.*

(*b*) It does not appear that the history of Section 2 of the Interest Act had been called to the attention of the Board.

(*c*) His Lordship refers to the Act as relating to both a provincial class of subject and to a federal class of subject. The present Act only relates to a provincial class and affects only incidentally a federal class. In this connection it was an act expressly reducing interest to which he referred.

(*d*) These objections are directly in conflict with the Privy Council's decision in *Ladore and Bennett* and that of the B.C. Court of Appeal in *Day* v. *Victoria*, both of which are approved by His Lordship in the *Lethbridge case*. As to the *Day case* His Lordship says :—

> " The Act did not purport to be an act relating generally to " interest and while some of its provisions dealt with interest as an " incident affecting the general object of the enactment, it was held " rightly as their Lordships think not to be an act in relation to " interest or to conflict with the Dominion Interest Act."

THIRD—JUDICIAL FUNCTIONS.

Has the enactment conferred on the Debt Adjustment Board judicial functions so as to encroach on Federal powers under Section 96 of the British North America Act ?

The Section reads as follows :—

> " 96. The Governor General shall appoint the Judges of the Superior, " District and County Courts in each province except those of the Courts " of Probate in Nova Scotia and New Brunswick."

The only function of the Alberta Board approaching a Judicial one is in Section 10, as follows :—

> " 10. Upon the receipt of any application by or on behalf of a creditor " in writing in such form and containing such particulars as may be " prescribed by the regulations for a permit to commence or continue " any action or proceedings against a resident debtor, the Board shall " proceed to make such inquiries as it may deem proper into the circum- " stances, and thereupon may either issue a permit or may refuse or " adjourn the application for such length of time as the Board may deem " advisable under the circumstances."

This is not a function that was ever performed by a Superior or any other Court and even if it had been, to give jurisdiction to an administrative Board would not make it a Court of the kind described in Section 96. It would be more logical, it is submitted, in such a case to describe the Board as a tribunal other than one of those specified in Section 96.

The recent case of *Toronto Corporation* v. *York Corporation* [1938] A.C. 415 is distinguishable.

The Ontario Municipal Board Act, 1932, gave the Municipal Board powers formerly exercised by a Superior Court. For example, see the following sections :—

" 41. The board shall for all purposes of this Act have all the powers " of a court of record and shall have an official seal which shall be judicially " noticed.

" 42. The board shall as to all matters within its jurisdiction under " this Act have authority to hear and determine all questions of law or " of fact.

" 43. The board shall have exclusive jurisdiction in all cases and " in respect of all matters in which jurisdiction is conferred on it by " this Act or by any other general or special Act."

" 45. The board for the due exercise of its jurisdiction and powers " and otherwise for carrying into effect the provisions of this or any " other general or special Act, shall have all such powers, rights and " privileges as are vested in the Supreme Court with respect to the " amendment of proceedings, addition or substitution of parties, attend- " ance and examination of witnesses, production and inspection of " documents, entry on and inspection of property, enforcement of its " orders and all other matters necessary or proper therefor."

Notwithstanding these provisions the Judicial Committee held that the Municipal Board was primarily, in pith and substance, an administrative body and held the Act valid, apart from those Sections giving the Board the functions of a Superior Court.

The judgment cannot be of wide application and was based on the particular provisions above quoted.

At page 427 of the report, Lord Atkin said :—

"———It is not validly constituted to receive judicial authority ; so far " therefore as the Act purports to constitute the Board a court of Justice " analogous to a Superior, District or County Court it is pro tanto " invalid———"

See the comment of Duff C.J.C. upon this decision at pages 412 and 413 of the *Reference re certain Ontario Statutes* reported in (1938) S.C.R. 398.

The *Toronto and York case* held valid those provisions of the Act dealing with the powers of examination, inspection and discovery of documents, etc. Somewhat similar provisions occur in Section 6 of the Act under review. It is submitted, therefore, that *Toronto* v. *York* has no application to the facts of the present case but rather such cases as :—

Shell Company of Australia v. *Federal Commission of Taxation* [1931] A.C. 275 ; see judgment of Lord Sankey L.C. at pages 296 and 298.

Spooner v. *Turner Valley Gas Conservation Board* (1932) 3 W.W.R. 477, 492.

Kowhanko v. *Tremblay Company Ltd.* (Manitoba) (1920) 1 W.W.R.481.

Attorney-General for Quebec v. *Slanec* (1933) 2 D.L.R. 289.

Consideration here must be given to the decision of Mr. Justice Davis in *Winstanley's case* (1940) S.C.R. at p. 105 :—

" A province cannot validly pass legislation at least in relation to a " subject matter within the exclusive competency of the Dominion which

In the Supreme Court of Canada.

No. 4. Factum of The Attorney-General of Alberta —*continued.*

" puts into the hands of a local administrative agency the right to say " whether or not a person can have access to the ordinary courts of the " province."

It is submitted as follows :

(1) Mr. Justice Davis' opinion is confined to the right of access to the ordinary courts of the province, the judges of which he points out are appointed by the Dominion (and he might have added are remunerated by the Dominion).

His Lordship did not decide the question of the right of the Province to limit the operation of its own laws as to execution.

(2) His Lordship did not decide that the province could not restrict the right to sue a Resident Debtor for debts coming under Section 92 (13).

(3) It is now established that the powers of the Dominion and the provinces embrace the entire field of government within Canada so that there is no class of subject in relation to which either the Dominion or a province may not legislate. It is submitted that it is to the province and not to the Dominion that power has been given to deal with executions.

Fifth :

FOURTH—CIVIL RIGHTS OUTSIDE PROVINCE.

Question 4 of the Reference relates to the contention that where debts are payable outside the province the Statute is invalid or inapplicable to such cases because it interferes with civil rights outside the province.

It is submitted that this question is settled by the Judicial Committee in *Ladore* v. *Bennett* cited supra and by its approval of *Day* v. *Victoria* as stated in the *Foresters case* also cited supra.

It is submitted that the Act in question does not in any way deal with or affect civil rights outside the Province. It does not prevent actions being brought, in proper cases, outside the province. It deals solely with actions proposed to be brought within the province and is procedural in its character. If a person comes to a provincial court, he must comply with the provincial statutes and rules of procedure. The right of action in a province is a civil right within that province.

See *Allen* v. *Trusts and Guarantee Co.* (1937) 2 W.W.R. 257.

Harvey C.J.A. says at page 264 :—

"———The right of action in this case is of course a civil right in the " province and a proper subject of legislation by provincial statute, and " since I have come to the conclusion that the right of action exists, it " is necessary to see if it is subject to any limitation by the provincial " statute."

It has been held by the Appellate Division of the Supreme Court of Alberta that the statute in question, so far as Section 8 is concerned, is procedural.

See *Mutual Life* v. *Levitt* (1939) 1 W.W.R. 530.

Ewing J. said at page 538 :—

"———If I am right in the views above expressed, the Debt Adjustment " Act 1937 does not go to jurisdiction. A careful examination of its

" terms leads also to the view that it is purely a procedural statute. It " does not purport to alter in any way the substantive rights of the " debtor or the creditor. It merely provides that the rights of the " creditor shall not be enforced against the debtor unless a permit be " obtained from the Board. It follows therefore, that the Section of the " Debt Adjustment Act 1937 in question deals with practice and pro- " cedure in a civil matter and that its provisions may be waived."

See also *Leroux* v. *Brown* (1852) 12 C.B. 801 ; 22 L.J.C.P. 1 ; 138 E.R. 1119.

In the cases of *Ladore* v. *Bennett* and *Day* v. *Victoria*, however, the substantive rights of debenture holders outside the province were affected, but as they were only affected incidentally, the Acts were not ultra vires on that account.

In *Ladore* v. *Bennett* [1939] A.C. 468, Lord Atkin says at page 482 :—

" The statutes are not directed to insolvency legislation ; they pick " out insolvency as one reason for dealing in a particular way with un- " successful institutions ; and though they affect rights outside the " Province they only affect them collaterally, as a necessary incident to " their lawful powers of good government within the Province."

In *Day* v. *Victoria*, 53 B.C. 140, Macdonald J.A. says at page 147 :—

"———I think the act is validly enacted. It is not the intendment of " the Act to interfere with the civil rights of persons or corporations " beyond the Province although as often occurs with Provincial Acts, " parties residing elsewhere may be affected by it. If, when the Act " was enacted, all debenture holders resided within the Province it " would not become ultra vires if all, or some of them, moved to another " Province. It would be immaterial whether or not a debenture holder " left the Province after the Act was passed or resided in another Province " and in the last resort it is enforceable here———"

Sloan J.A. said at page 148 :—

"———Counsel for the respondent was frank to concede that if all the " oustanding debentures were held by the citizens of and in this Province " the only question that could arise as to the constitutional validity of " this enactment would be his submission that it was an Act in relation " to interest. If this submission is, for the moment, put on one side " and effect given to his first contention, i.e., interference with extra- " territorial civil rights of foreign bondholders the Act might be intra " vires in relation to those debentures held in the Province and ultra " vires with respect to those held by persons outside the Province. This " anomalous result can only be arrived at, in my opinion, because of a " basic misconception concerning the enforceable rights of the foreign " bond holders. While it is true that the debentures are payable, at the " option of the holders, not only within but without the Province, never- " theless the right to enforce the ' substance of the obligation ' evidenced " by the debentures, is a civil right exercisable solely within the Province. " *Mount Albert Borough Council* v. *Australasian Temperance and General* " *Mutual Life Assurance Society* [1938] A.C. 224."

These latter remarks are particularly applicable to securities on land payable and held outside Alberta. There is no civil right exercisable outside Alberta with respect to such securities. They are only enforceable in the Province where the land is situate. There is no personal remedy against the mortgagor. *Judicature Act Amendment Act* (1939) Ch. 85 S. 2.

It is submitted, however, that for the reasons heretofore given and stated in *Ladore* v. *Bennett* and *Day* v. *Victoria* that the same principle applies to debts not secured on land. There is no suggestion in *Ladore* v. *Bennett* that any different rule would apply in the case on ordinary debts, the decision being based on the fact that the legislation only affected rights outside the Province collaterally, as a necessary incident to their lawful powers of good government within the Province.

See also *Vancouver Growers Ltd.* v. *McLenan et al* 53 B.C. 1940 ; (1938) 3 W.W.R. 161.

The enactment in question in this case took away certain rights of action and M. A. Macdonald J.A., in the course of his judgment, said this :—

"———It is not an answer to say that the moneys claimed in the action " arise from inter-provincial trading transactions. It is the civil right " to invoke the aid of the Court that is taken away by the Legislature. " The subject matter of the action is not material———"

The Act under review only affects the right of creditors when they seek to enforce a right of action in the Alberta Court and it is only such right and not a right outside the Province that is affected.

It is submitted that *Royal Bank of Canada* v. *Rex* [1913] A.C. 283 has no application to the questions raised here, involving a statute relating only to the right to bring an action in Alberta.

See in *Re Ogal Estate* (1940) 1 W.W.R. 665.

This case dealt with an amendment to the Intestate Succession Act 1928 (Alta.) which enabled illegitimate children of an intestate who leaves no widow or children, to inherit after a Judge was satisfied of certain facts. On the particular facts of the case, the next of kin of the deceased, resident outside of Alberta, were deprived of property they would have received but for the above statute.

Mr. Justice Ford says at page 668 :—

" There is nothing ' colourable ' about this legislation and any " interference with any civil right which may be said to exist abroad is " merely incidental to something which in my view is clearly within the " ambit of the legislative jurisdiction of the Province, namely, its right " to deal with the succession to property within the province and the " ownership of property within the province under its jurisdiction over " property and civil rights within the province———"

See also Mr. Justice Ford's reference to the explanation of Viscount Haldane's judgment in the *Royal Bank case* as given by the latter in *C.P.R.* v. *Workmen's Compensation Board* [1920] A.C. 184, where Viscount Haldane says at p. 191 :—

"———The case is wholly different from that from Alberta which was

" before the Judicial Committee in *Royal Bank of Canada* v. *The King*, " where it was held that the Provincial statute was inoperative insofar " as it sought to derogate from the rights of persons outside the Province " of Alberta who had subscribed money outside it to recover that money " from depositories outside the Province with whom they had placed " it for the purposes of a definite scheme to be carried out within the " province, on the ground that by the action of the Legislature of Alberta " the scheme for which alone they had subscribed had been altered. The " rights affected were in that case rights wholly outside the Province; " Here the rights in question are the rights of workmen within British " Columbia."

FIFTH—SEVERABILITY.

If it is determined that the Act is in any part ultra vires it is submitted that the Act is severable and that the remaining parts are valid. The purpose of the Act is to give relief to resident debtors and to resident farmers. The failure of part of the relief is not a reason to discard what remains but on the contrary.

See also Section 9 of the Act.

SIXTH—ANSWERS TO QUESTIONS

For the foregoing reasons it is respectfully submitted that the answers to the questions in this Reference should be as follows:—

Question One. Answer—The Debt Adjustment Act, 1937, being Ch. 9 of the Statutes of Alberta and amendments, is not ultra vires either in whole or in part.

Question Two. Answer—As the Court has already determined this question in *Winstanley's case* the answer must be no, but without prejudice to any party's right to submit to the contrary in the event of a further appeal.

Question Three. Answer—Yes.

Question Four. Answer—Yes in all cases.

Question Five. Answer—Alternatively if any part of Question 4 is in the negative then the answer to Question 5 is yes.

All of which is respectfully submitted.

J. W. DEB. FARRIS
W. S. GRAY
J. J. FRAWLEY

Of Counsel for the Attorney-General of Alberta.

Vancouver, B.C.,
16th June, 1941.

In the Supreme Court of Canada.

No. 5. Factum of The Attorney-General of Saskatchewan.

No. 5.

Factum of The Attorney-General of Saskatchewan.

In this Reference the Attorney-General of Saskatchewan adopts and relies on the factum filed herein by the Honourable the Attorney-General of Alberta.

ALEX. BLACKWOOD,
Deputy Attorney-General of Saskatchewan,
Solicitor for the Attorney-General of Saskatchewan.

Regina, June 16, 1941.

No. 6. Factum of The Attorney-General of Canada.

No. 6.

Factum of the Attorney-General of Canada.

PART I.

By an Order in Council of the 19th May, 1941, certain questions respecting The Debt Adjustment Act, 1937, Statutes of Alberta, are referred to this Court for hearing and consideration.

These questions are the following :—

" (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 ?

" (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 ?

" (3) Is the said Act as amended operative in respect of any pro- " ceedings 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 ?

" (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 ;

" (*c*) the interest only upon such money ;

" (5) If the answer to any 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 ? "

The Act may be summarised as to its more general features as follows :—

A Board to be known as " The Debt Adjustment Board " is constituted, the members of which are to be appointed by the Lieutenant-Governor in Council, section 3.

Unless this Board or any person designated by it, as provided in the Act, issues a permit in writing giving consent thereto, certain enumerated actions, suits or proceedings, executions, attachments, garnishments, seizures or distresses cannot be begun or continued against a debtor resident in the Province, section 8.

The enumeration is very comprehensive. There are a few excepted cases and the Lieutenant-Governor in Council may add to the enumeration any action respecting other classes of legal or other proceedings, subsection 1, paragraph (*g*).

This, however, does not apply to contracts entered into where the whole of the original consideration of the contract arose on or after the 1st July, 1936, subsection 3. The particular Act which fixed this date was Chapter 3 of 1936 (Second session) which was assented to on September 1, 1936. This Act advanced the date from July 1, 1932, which had previously been fixed by Chapter 13 of the Statutes of 1933.

The Board may at any time cancel or suspend any permit previously issued by it. Subsection 5.

No permit shall be granted in respect of proceeding founded on any mortgage or agreement for sale of lands which are being farmed if those proceedings lead to foreclosure merely because on account of depreciation in values caused by abnormal economic conditions the security cannot for the time being realise its fair ordinary value under normal conditions, section 9.

On the application of either the debtor or a creditor the Board shall endeavour to bring about an amicable arrangement for the payment of the resident debtor's indebtedness either in full or by composition, section 21.

The Board shall endeavour to bring about an arrangement whereby the debts are reduced to an amount in accordance with the ability of the debtor to pay having regard to his average income since the debt was incurred, section 23.

The permit to sue is required even in the case of a resident farmer who has failed to carry out the terms of a proposal confirmed by the Board of Review under the provisions of the Farmers' Creditors Arrangement Act, section 26.

Chattel Mortgages given by resident farmers from and after the 1st May,

In the Supreme Court of Canada.

No. 6. Factum of The Attorney-General of Canada —*continued.*

1934, as security for past indebtedness are valid only if approved by the Board within sixty days of their execution, section 27.

The Board may authorise a resident farmer to sell goods or chattels subject to a chattel mortgage given by him, to provide him with the necessities of life, feed for his live stock or seed grain, section 28.

The Board may authorise a resident farmer, lessee of land under a crop share lease entered into to secure money payable in respect of the land leased under any mortgage, charge or agreement for sale respecting such land, to retain for his own use so much of the share of crop deliverable to the lessor as the Board considers sufficient to provide the farmer with the necessities of life, feed for his live stock and seed grain, section 29.

The right of a vendor or mortgagee shall not in respect of a crop grown subsequently to 1935 operate so as to make deliverable more than one-third of the crop grown in any such year less the cost of threshing that third.

Subsequently to 1935, out of the share of crop deliverable to a vendor or mortgagee, the purchaser or mortgagor may pay one year's taxes on the land on which the crop is grown, section 30.

An appeal is given from the decision of the Board to a jury directed as to the law by a judge, section 36.

If the Parliament of Canada enacts legislation as to the adjustment of debts, the Lieutenant-Governor in Council may for the purpose of preventing conflicts between the two Acts suspend the operation of this Act as to any part or provision thereof or exempt from such part or provision certain classes of person, section 38.

The provisions of the Act shall 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, section 39.

Part II

The Attorney-General of Canada submits that the answer to question (1) should be that the Debt Adjustment Act is ultra vires as to the whole because :—

(1) It is not authorised by any provision in section 92 of the British North America Act. The following reasons will be advanced in support of this submission :—

(*a*) It is not legislation in relation to, " Property and civil rights in the province."

(*b*) It is not legislation in relation to, " The administration of justice in the province including the constitution, maintenance and organisation of provincial courts, both of civil and criminal jurisdiction, and including procedure of civil matters in those courts."

(*c*) It is not legislation in relation to, " Generally of matters of a merely local or private nature in the province " or to any other matter enumerated in section 92.

(2) It is legislation in relation to bankruptcy and insolvency.

(3) It is repugnant to valid Acts of Parliament in relation to bank-

ruptcy 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.

(4) No provision of the Act which, standing by itself might be constitutional, is severable.

The Attorney-General submits further that for the reasons already stated questions (2), (3), (4) and (5) should be answered in the negative.

PART III.

ARGUMENT.

It is a cardinal principle of interpretation of the British North America Act that if a provincial Statute is not found to be authorised under any legislative head of section 92 then it is ultra vires. The provincial Statute in question here must be justified if at all under heads 13, 14 or 16 of section 92. *Citizens' Insurance Company* v. *Parsons*, 7 A.C. 96 at page 109.

The Debt Adjustment Act is not legislation in relation to Property and Civil Rights in the Province. This Statute provides simply that no person shall have access to the courts to enforce his rights against any of the inhabitants of the province without the permission of a creature of the local Government. A large proportion of the rights so frozen by the legislature are not " civil rights in the province " within the meaning of clause 13 of section 92. The expression " civil rights in the province," cannot be given its literal or unrestricted meaning but means civil rights after subtracting those civil rights which fall to be regulated under section 91 as well as those comprising the field of the other heads of section 92. (*John Deere Plow Co.* v. *Wharton* [1915] A.C. 330 at 340.) The Debt Adjustment Act according to its terms applies to the vast array of civil rights which may be called Dominion civil rights. These include, amongst others, rights arising in connection with trade and commerce, shipping, fisheries, banking, bills of exchange and promissory notes, interest, bankruptcy and insolvency, patents and copyrights, and in addition, the right to sue given to every Dominion company by Statute. The legislature, however, is without power to legislate under the authority of head 13, in relation to such civil rights. The province cannot render such rights inoperative by legislating to take away the means by which they can be made effectual.

The intention of the legislature unquestionably was to regulate all civil rights, Dominion as well as provincial, and consequently the legislation cannot be justified under head 13 of section 92. Section 39 which provides that the Act " shall 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 " is not effective to alter the true character of the legislation.

In another respect the legislation, according to its terms, exceeds the power of the legislature to regulate civil rights in the province. The statute applies equally to civil rights outside the province. A person claiming in respect of an extra-provincial right is equally excluded from the courts of Alberta.

In the Supreme Court of Canada.

No. 6. Factum of The Attorney-General of Canada —*continued.*

The Debt Adjustment Act is not legislation in relation to " the adminis- " tration of justice in the province including the constitution, maintenance " and organisation of provincial courts both of civil and criminal jurisdiction, " and including procedure in civil matters in those courts."

It is submitted that a statute which (notwithstanding the solemn pact of Magna Carta against the denial of justice to any man) denies access to the courts except with the permission of a creature of the administration controlled by no principles or rules except its own arbitrary discretion is nothing short of an effort to establish a new legal order or system in Alberta. Head 14 of section 92, however, does not confer authority upon the local legislature to substitute for the judicial system whereby rights and obligations are freely determined in accordance with the recognised principles of law, a system whereby an administrative body is interposed with power, absolute and arbitrary, to say whether and in what cases the judicial system shall function. The responsibility of the province is to organise and maintain a judicial system for the free determination of all civil rights, whether Dominion or provincial, in accordance with recognised judicial principles.

It should be observed that the Board is not validly constituted to receive or exercise judicial authority.

Three observations should be made in connection with this submission that the statute is not authorised by head 14 of section 92 :—

First, the legislation in question is not in relation to procedure in civil matters. The right to bring an action is not procedure but a substantive right.

Secondly, the fact that the protection afforded by the statute is limited to residents of the province and the estates of deceased residents is a discriminatory feature of the legislation which indicates that neither administration of justice nor civil procedure is the " pith and substance " of the legislation.

Thirdly, it is a contradiction in terms to say that a statute which authorises the arbitrary denial of access to the courts is in relation to the administration of justice.

The Debt Adjustment Act is not legislation in relation to " Generally all Matters of a merely Local or Private Nature in the Province." There is nothing in the present Statute, however, which suggests that any local matter has attracted the attention of the legislature.

If this legislation cannot be justified under heads 13, 14 or 16 of section 92, then it is unquestionably ultra vires.

The Debt Adjustment Act is ultra vires since it constitutes an invasion of a legislative field, namely, " bankruptcy and insolvency " assigned to Parliament. At the outset the effect of the Act should be noted. The board has full power in its discretion to allow or not to allow creditors to begin any legal proceedings, to obtain or execute judgment or to continue such proceedings if begun. The permission may be recalled at any time. There are no rules governing the discretion of the board. The only appeal is to a jury whose discretion is also uncontrolled by rule.

The board is given the duty to endeavour to obtain the consent of the creditors and resident debtor to compromise claims. It is quite obvious that the power of the board as to these compromises is dictatorial. As a matter of fact, the power corresponds very closely indeed to that given to the Board of Review under the Farmers' Creditors Arrangement Act (which has been held by the Privy Council to be valid legislation in relation to bankruptcy and insolvency). The board can obtain the creditor's consent by refusing to let them sue and can compel the debtor to agree by granting permission to the creditors to sue in full. The effect of sections 8 and 21 is, therefore, to give the board full power to decide what compromises should be accepted by creditors and resident debtors.

An examination of the Act recently held by O'Connor J. to be ultra vires as being bankruptcy legislation shows that it contained specific provisions for disposition of assets and for priorities. See section 10 of Chapter 9 of the Debt Adjustment Act, 1937. The board was enabled to give such directions to the debtor as to the conduct of his affairs and the disposition of his property as the board deemed to be in the best interests of the debtor and his creditors. These were true ingredients of a bankruptcy Act. The repeal of certain provisions leaves the board, it is submitted, free in a practical sense, to do everything which it was under direction to do by the repealed provisions. It continues, no doubt, by means of its dictatorial power to give effect to the repealed provisions.

The field described in the British North America Act as " bankruptcy and insolvency " has been fully occupied by Parliament by means of the Bankruptcy Act, the Winding Up Act, the Farmers' Creditors Arrangement Act and the Companies' Creditors Arrangement Act.

No provision of the Debt Adjustment Act is severable. Consequently, it is submitted, the whole statute is ultra vires. We would not be justified in concluding that the legislature would have passed any of the provisions of the Act without the clauses objected to particularly sections 8 and 21. See *City of Toronto* v. *Township of York*, 1937, O.R. 177, per Rowell C.J.O. at page 192; see also *U.S.* v. *Reese*, 92 U.S. 214; *Warren* v. *Charleston*, 2 Gray 84; *Bootmakers* 10 C.L.R.; *Kabibia* v. *Wilson*, 11 C.L.R. 689, as to tests of severability.

No. 7.

Factum of The Canadian Bankers' Association on behalf of the Chartered Banks of Canada.

Part I.

The Debt Adjustment Act, 1937, and its amendments to date are cited in the Order of Reference at page 3 of the Record.

The Act constitutes a Board, known as " The Debt Adjustment Board," appointed by the Lieutenant-Governor-in-Council (S. 3) which is given the right, with the approval of the Lieutenant-Governor-in-Council, to delegate

In the Supreme Court of Canada.

No. 7. Factum of The Canadian Bankers' Association —*continued.*

its powers to persons appointed by the Board (S. 4). The Board is empowered to make inquiries with regard to the property of any resident debtor or resident farmer (S. 6). It is constituted a body politic and corporate (S. 7).

Actions, suits and proceedings to enforce payment against resident debtors in respect of debts created before July 1, 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 (S. 8). The Board is given unrestricted power to grant or refuse a permit or to adjourn an application therefor (S. 10).

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 (Ss. 21 to 25).

If a resident farmer who has come under the provisions of The Farmers' Creditors Arrangement Act 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 (S. 26). No chattle mortgage given by a resident farmer after May 1, 1934, to secure any past indebtedness shall be effective unless approved by the Board within 60 days of its date (S. 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 (Ss. 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 (S. 30).

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 (S. 36). There is, however, no appeal from an action of the Board in adjourning an application for a permit under Section 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, subsection 15, of the British North America Act.

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 (S. 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 (S. 80).

Part II.

The questions referred are set forth in the Order of Reference at page 4 of the Record.

The Canadian Bankers' Association submits on behalf of the chartered banks that the answer to question 1 should be that the Act as a whole is ultra vires of the legislature of Alberta. 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.

It is submitted that all the questions referred other than Number 1 should be answered in the negative.

PART III.

Question 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 ?

The Act does not deal with " property and civil rights in the Province " under head 13 of Section 92 of the British North America Act. It aims at protecting persons resident in the Province from claims and demands over which the Province has no exclusive legislative authority. It seeks to accomplish this by refusing access to the Courts of Alberta and by stopping actions already commenced. Such a method of controlling the recovery of debts over which the Province has no exclusive jurisdiction would be destructive of the whole scheme of the British North America Act. This attempted control of the Courts would have all the objectionable features that were pointed out by Lord Maugham in connection with excessive taxation by a province : *A.G. for Alberta* v. *A.G. for Canada* [1939] A.C. at pp. 128-9 :—

> " Under the guise of discriminatory taxation in the Province it " would be easy not only to impair, but even to render wholly nugatory, " the exclusive legislative authority of the Dominion over a number of " the classes of subjects specifically mentioned in s. 91 by making them " valueless. Instances could be found in bills of exchange, and pro- " missory notes, patents, and copyrights, which could be so heavily taxed " as entirely to destroy their use as well as their value in the Province."

Neither does the Act deal with " the administration of justice in the Province " under head 14 or " matters of a merely local or private nature in the Province " under head 16 of the British North America Act. Far from dealing with the " administration of justice," the Act seeks to prevent access to the courts except with the permission of a purely administrative body.

The Canadian banking system is established on the basis of having branches in every Province of Canada designed to accept deposits and to lend a large proportion of such deposits whereever the demand arises. 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 through-

In the Supreme Court of Canada.

No. 7. Factum of The Canadian Bankers' Association —*continued.*

out Canada would be frustrated. See *A.G. for Alberta* v. *A.G. for Canada* [1939] A.C. 117 at p. 132.

The Board constituted by The Debt Adjustment Act, 1937, is an administrative body not constituted to exercise judicial authority. *Toronto* v. *York* [1938] A.C. 415. *Attorney-General of Alberta and Winstanley* v. *Atlas Lumber Company Limited,* 1941 S.C.R. 87, at pp. 105 and 109.

It is submitted that the Act trenches on bankruptcy and insolvency. By the Act the creditor is deprived of his rights under Section 3 of the Bankruptcy Act particularly sub-paragraphs (*e*), (*i*) and (*j*), unless he receives a permit which the Board might arbitrarily withhold.

Prior to the 1941 amendments, The Debt Adjustment Act was held to be ultra vires of the Provincial Legislature as being legislation with respect to bankruptcy and insolvency : see *North American Life Assurance Company* v. *McLean,* 1941 1 W.W.R. 430. The Legislature by the 1941 amendments struck out certain sections of the Act specifically referred to in that judgment. No new sections were passed limiting the power or jurisdiction of the Board or changing the principles of the Act. It is submitted, therefore, that the amendment has not eliminated the objectionable features of the Act.

The Act invades the field of bankruptcy and insolvency which is under the jurisdiction of the Parliament of Canada and is an attempt to deal with matters already covered by valid Dominion legislation. *Board of Trustees of Lethbridge* v. *I.O.F.* [1940] A.C. 513.

The legislative history of Alberta discloses a persistent effort to take away the rights of creditors against individual debtors in the Province. The Debt Adjustment Act and its amendments are of the same character.

> Question 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 ?

It is unnecessary to emphasise that the Act is inoperative in so far as bills of exchange and promissory notes are concerned, in view of the decision of this Court in the case of *Attorney-General of Alberta and Winstanley* v. *Atlas Lumber Company Limited.*

> Question 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 ?

The judgment is only one step in an action. It determines the liability of a Defendant and the amount which a Plaintiff is entitled to recover—the amount for which he can enforce payment. A holder who has obtained judgment in an action on a bill of exchange or promissory note has neither " enforced payment " nor " recovered " within the meaning of Sections 74 and 134 of the Bills of Exchange Act. The issue of a Writ of Execution is a necessary further step in the action to enforce payment and to recover. A Writ of Execution is issued under Alberta Rule of Court 583 and its form is governed by Rule 603 (*a*). It is a further step in the action and is so entitled. It is directed to the Sheriff and reads :—

" We Command You that of the goods or lands of.....
" .....in the Judicial District of.....
" cause to be made.....dollars and.....
" cents, which the.....lately by a judgment
" of this court in this action dated the.....day of.....
" 19.....recovered against him and also the further sum of.....
" .....dollars and.....cents, for the
" costs, taxed to the.....in respect of
" the said judgment together with interest at the legal rate on both of the
" said sums from the date of the said judgment.....

" And That You Have the said money before and make appear
" in what manner you shall have executed this writ to the said Court at
" .....immediately after the execution
" thereof together with this writ."

The issue of a Writ of Execution is a step in the action on a bill of exchange or promissory note. It is not a proceeding outside the action. *Wharton's Law Lexicon* defines execution as " the last stage of a suit." In *Howell* v. *Bowers* 1835 2 C.M. & R. 621, 150 E.R. 264, it was held that suits in which judgment had been recovered but was still unsatisfied, were " pending suits " in the Court in which they were instituted. Therefore the right to maintain an action or suit includes the right to a Writ of Execution.

Even if the issue of a Writ of Execution was not a step in an action, the rights and powers 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 the issue of a Writ of Execution. Section 74 (*b*) provides in express terms that a holder in due course " may enforce payment against all parties liable on the bill." This is confirmed by Section 135, which also provides in express terms in the case of the dishonour of a bill the holder may " recover " from any party liable on the bill. The words " enforce payment " in section 74 (*b*) and the word " recover " in Section 135 ordinarily mean to get payment in cash. Nothing in the Statute restricts the interpretation of the words. They were not given a restricted interpretation in *The Atlas Lumber case.* In that action the only question at issue was the right to bring and maintain an action. The words were held to give that right. It logically follows from the judgment that the Bills of Exchange Act authorises the issue of execution after judgment. In *Grey* v. *Pearson* (1857) 6 H.L.C. 61, 106, Lord Wensleydale said :—

" I have been long and deeply impressed with the wisdom of the rule,
" now I believe universally adopted, at least in the Courts of Law in
" Westminster Hall, that in construing wills, and indeed statutes, and
" all written instruments, the grammatical and ordinary sense of the
" words is to be adhered to, unless that would lead to some absurdity,
" or some repugnance or inconsistency."

Section 91 gave Parliament the exclusive legislative control over the following matters :—

" 2. The regulation of Trade and Commerce ;

" 14. Currency and coinage ;
" 15. Banking 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 is limited to obtaining a judgment that cannot be enforced. Such a result could not have been in the contemplation of Parliament.

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.

Question 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 ;

(*c*) the interest only upon such money.

As to recovery of debts, whether for principal or interest and wherever payable, the answer to Question 1 applies.

As to debts, whether for principal or interest, payable outside the Province, it is submitted that the Act is inoperative. *The Royal Bank* v. *The King*, 1913 2 A.C. 283, *Ottawa Valley Power Company* v. *Hydro Electric Power Commission*, 1937 O.R. 265. *Credit Foncier* v. *Ross ; Netherlands Investment Company* v. *Fife*, 1937 2 W.W.R. 353.

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."

" Exact " means, according to Webster's Dictionary, " to enforce the payment of " and, according to Murray's Dictionary, " to demand and enforce payment of." The word " exact," therefore, has the same meaning as the words " enforce payment " in Section 74 (*b*) of The Bills of Exchange Act and includes the right to maintain an action in the Provincial Courts. The

Debt Adjustment Act is inoperative in so far as it attempts to prohibit an action in Alberta Courts to enforce payment of interest. See *Board of Trustees of Lethbridge Irrigation District* v. *I.O.F.* 1938, 2 W.W.R. at page 212 and [1940] A.C. 513.

It should be particularly noted in connection with this question, 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.

Question 5.—If the answer to any 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 ?

We refer to our submission in dealing with Question 3.

W. N. TILLEY,
R. C. MCMICHAEL,
W. H. MCLAWS,
of Counsel for The Canadian Bankers' Association.

No. 8.

Factum of The Mortgage Loans Association of Alberta.

PART I.

STATEMENT OF FACTS.

1. By an Order-in-Council dated the 19th day of May, 1941, His Excellency the Governor-General in Council referred to the Supreme Court of Canada for hearing and consideration, pursuant to the authority of section 55 of the Supreme Court Act, the questions fully set out in the said Order-in-Council and printed in full in the case.

2. By an Order of the Honourable the Chief Justice of Canada, dated May 20th, 1941, it was directed, inter alia, that The Mortgage Loans Association of Alberta should be notified of the hearing of the argument on the reference, that it be at liberty to file a factum and to be heard by counsel on the argument.

3. The Mortgage Loans Association of Alberta is an unincorporated Association representing 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.

4. Seven of such life insurance companies are incorporated by the Dominion of Canada and are carrying on business under the provisions of the Canadian and British Insurance Companies Act, 1932, c. 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.

5. These life insurance companies represent approximately 65 per cent. of the insurance business in force in Alberta and in Canada. In all, according to the last available report of the Superintendent of Insurance the total insurance in force of Dominion-incorporated life insurance companies as of December 31st, 1939, was $4,469,776,480.

6. 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.

7. Every Canadian life insurance company, with one small exception, does business in two or more provinces; over half of the business in Canada is written by companies doing business in every province.

8. 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 section 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 who reports annually to the Minister of Finance and to Parliament.

9. According to the latest report of such Superintendent for the year ended December 31st, 1939, the savings of the public deposited with such loan companies amounted to $29,132,700. The companies had issued debentures payable in Canada amounting to $57,418,689 and payable elsewhere, amounting to $13,390,796. These companies do business in the various parts of Canada, one company operating in every province of Canada.

10. 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. These companies held, as shown in the same report, $36,001,000 of guaranteed funds; namely of funds entrusted by the public for investment, the repayment of which has been guaranteed by the company.

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

11. 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.

12. 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 their 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.

Part II.

Argument.

13. The first question submitted is :—

(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 ?

If the answer to this question is " Yes, in whole," the other questions are thereby answered in the negative.

14. The important section of The Debt Adjustment Act is section 8. By it, actions for the recovery of money as a liquidated demand or debt either at law or in equity or under a statute (except rates and taxes payable by statute, and debts owing to a hospital for hospital services) ; proceedings by way of execution, attachment or garnishment ; actions or proceedings for the sale or foreclosure of mortgaged land, or for cancellation, rescission or specific performance of agreements for sale of land, or for recovery of possession of land, whether in Court or otherwise ; and other specified proceedings ; and any other actions that may be brought under the statute by order of the Lieutenant-Governor in Council shall not be taken, made or continued by any person whomsoever against a resident debtor without a permit in writing from or authority of the Debt Adjustment Board constituted by the province under section 3 of the Act. Contracts are excluded where the whole of the original consideration for the contract arose on or after the 1st day of July, 1936. In effect, this section bars access to the Courts with respect to a broad and general classification of claims and debts, and whether such claims and debts and the rights pertaining thereto come

In the Supreme Court of Canada.

No. 8. Factum of The Mortgage Loans Association of Alberta —*continued.*

within the classes of subjects assigned exclusively to the province or the Dominion.

Such legislation 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. If a province can take away this fundamental right of privilege of access to the Courts, it can by that means indirectly nullify much of the Dominion's jurisdiction under section 91.

Board of Trustees of Lethbridge Irrigation District v. *Independent Order of Foresters and Attorney-General of Canada* [1940] A.C. 513.

The three branches of government, Legislative, Executive and Judicial are essential to the fulfilment of sovereign power.

Under a general prohibition of recourse to the Courts the Judicial branch would not be available to the Dominion. Such a proposition is insupportable as neither a province nor the Dominion can prevent the enforcement of rights which are under the jurisdiction of the other.

Bonanza Creek Gold Mining Co. Ltd. v. *The King* [1916] 1 A.C. 566, at 579, 580.

Valin v. *Langlois* (1879), 3 S.C.R. 1 (1879) 5 App. Cas. 115.

Attorney-General v. *Flint* (1884), 16 S.C.R. 707.

In re Vancini (1904), 34 S.C.R. 621.

In specific instances such a bar has been held to be ineffective.

Board of Trustees of Lethbridge Irrigation District v. *Independent Order of Foresters and Attorney-General of Canada* [1940] A.C. 513.

Attorney-General for Alberta and Winstanley v. *Atlas Lumber Co. Limited* (1941) S.C.R. 87.

Ottawa Valley Power Company v. *The Hydro-Electric Power Commission et al.* (1937) O.R. 265.

These cases establish the broad general principle 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. Whether a right of action is expressly provided in a Dominion statute, or whether it is ancillary to Dominion legislation, or whether it is in abeyance, nevertheless the power of a province to abrogate such right of action would render the Dominion's jurisdiction and legislation impotent.

A bar of action expressed in such general terms, relating to debts and contracts wherever made and wherever to be performed or paid, affecting the rights of persons wherever resident and irrespective of whether those rights arose under any head of section 91, derogates from the Dominion's sovereignty in its field and could not have been intended by the British North America Act.

15. To support the validity of a provincial statute, the first requisite is that it must fall under one of the heads of section 92. With respect to the Debt Adjustment Act, the various heads, except 13 and 14, may be disregarded.

The right or privilege of the subject to seek justice in the King's Courts is not a civil right within the meaning of head 13. It is a different right

from that asserted by the subject when he comes into Court but it is appurtenant and essential thereto.

The Debt Adjustment Act does not purport to deal with property in the province nor is it confined to rights of action arising with respect to provincial civil rights. The debt or claim in question may be secured upon real or personal property located outside the province, or may arise under a contract over which the province has no legislative jurisdiction.

Royal Bank of Canada v. *The King* [1913] A.C. 283.

Ottawa Valley Power Company et al. v. *The Hydro-Electric Power Commission et al.* (1937) O.R. 265, at 304.

In *John Deere Plow Company Limited* v. *Wharton* [1915] A.C. 330, at 340, Viscount Haldane L.C. said :—

> " The expression ' civil rights in the province ' is a very wide one, " extending, if interpreted literally, to much of the field of the other " heads of s. 92 and also to much of the field of s. 91. But the expression " cannot be so interpreted, and it must be regarded as excluding cases " expressly dealt with elsewhere in the two sections, notwithstanding " the generality of the words."

16. Nor can the Debt Adjustment Act be supported under head 14, which reads " 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 these courts."

Under the scheme of the British North America Act, the Courts of justice must be available to the citizens of the Dominion as a whole to enforce rights whether arising under the different heads of section 91 or of section 92. The power to administer justice does not involve the power to deny justice. Nor does it imply an authority to set up an administrative body to protect local debtors by excluding their creditors from the Courts.

The Courts must be available to enforce both provincial civil rights and Dominion civil rights. Otherwise the exclusive legislative power would be meaningless.

Valin v. *Langlois* (1879), 3 S.C.R. 1 [1879] 5 App. Cas. 115.
Attorney-General v. *Flint* (1884), 16 S.C.R. 707.
In re Vancini (1904), 34 S.C.R. 621.

One of the valuable rights of every subject of the King is to appeal to the King in his Courts, and to empower a provincial legislature to deprive a subject of this right would require the clearest expression of such intention in the British North America Act.

In re The Vexatious Actions Act 1896 *and In re Boaler* [1915] 1 K.B. 21, at 36.

Chester v. *Bateson* (1920) 1 K.B. 829, 833, 837.

Such intention is not expressed in and is entirely repugnant to the British North America Act. Denial of access is a negation of justice and prevents its administration by Judges appointed by the Dominion.

In the Supreme Court of Canada.

No. 8. Factum of The Mortgage Loans Association of Alberta. —*continued.*

The Debt Adjustment Act bars actions against " resident debtors," namely debtors actually resident and living in the province (sec. 2 (*e*)) but permits actions with respect to the same type of debts against debtors not resident in the province. The Act discriminates, under section 2 (*e*), between a family corporation which has its head office or principal place of business in the province and one that has not, and under 2 (*ee*), between a company incorporated by the province and one incorporated by another province or by the Dominion. Therefore, the Act does not in any bona fide sense deal with administration of justice. Its real purpose is to obstruct the administration of justice in order, through a course of forced bargaining, to secure for a group of people in Alberta advantages at the expense of other citizens of Canada.

17. The Act confers 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. This section, together with sections 99 and 100, constitute, in the words of Lord Atkin, " three principal pillars in the temple of justice, and they are not to be undermined."

Toronto Corporation v. *York Corporation* [1938] A.C. 415 at p. 426, and at pp. 427-8.

Since the judgment of the Supreme Court in the *Winstanley case* (1941) S.C.R. 87, the Alberta Legislature has amended the Act by adding a provision (sec. 36) giving a right of appeal from the Board. The purpose and effect of this section are not quite apparent, but the section can not assist the argument for validity. It seems however to indicate that a new method of undermining the status of Judges appointed by the Dominion is on foot.

18. The Debt Adjustment Act impairs rights and obligations over which the Dominion has exclusive jurisdiction. For example, debts arising out of transactions that fall under the head " Trade and Commerce " cannot be collected except with the consent of a provincial authority. The same applies in a marked degree to bills of exchange and promissory notes, and to interest, all of which are expressly reserved to the Dominion.

Indeed the Act is broad enough to authorise an interference by the province with the status of companies incorporated by the Dominion.

The power of legislating with reference to the incorporation of companies with other than provincial objects belongs exclusively to the Dominion Parliament.

John Deere Plow Company Limited v. *Wharton* [1915] A.C. 330, at 340.

In pursuance of this power, the Dominion has incorporated companies under general statutes, such as its Companies Act, Loan Companies Act, Trust Companies Act, Canadian and British Insurance Companies Act, and under private Acts.

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.

John Deere Plow Company v. *Wharton* [1915] A.C. 330.
Great West Saddlery v. *The King* [1921] 2 A.C. 91.
Lukey and Attorney-General v. *Ruthenian Farmers Elevator Company* (1924) S.C.R.56.

In *Attorney-General for Manitoba* v. *Attorney-General for Canada* [1929] A.C. 260, at p. 267, Lord Sumner said :—

" As a matter of construction it is now well settled that, in the " case of a company incorporated by Dominion authority with power " to carry on its affairs in the Provinces generally, it is not competent " to the legislatures of those Provinces so to legislate as to impair the " status and essential capacities of the company in a substantial degree."

The right to sue, recover judgment, and enforce payment, is vital to the very existence of all companies engaged in trade and commerce throughout Canada. Its importance is emphasised by reference to the status of life insurance companies. The effect of the legislation may be examined in considering its validity.

Union Colliery Company of B.C. v. *Bryden* [1899] A.C. 580.

As recited in the Canadian and British Insurance Companies Act, 22-23 Geo. V, c. 46, the insurance business transacted within and outside of Canada by these companies constitutes an important factor in the international and interprovincial trade and commercial relations of Canada.

By section 63 of the said c. 46, such companies are authorised to invest their funds in certain securities only, the list including, in subsection 1 (*c*), " mortgages or hypothecs on real estate in Canada . . . providing that the " amount paid for any such mortgage or hypothec shall in no case exceed " sixty per cent. of the value of the real estate covered thereby."

The restrictions on the investment powers of these companies, together with other provisions in the statute, are intended to maintain the solvency of these life insurance companies so that they may fulfil their important function and discharge their liabilities under their policy contracts.

In the preamble of the said c. 46, it is recited that it is contrary to the public interest that insurance companies or associations which are unable to discharge their liabilities to policy holders in Canada as they become due, or are otherwise insolvent, should be permitted to carry on the business of insurance in Canada. Accordingly, the Act provides for inspection of these companies by the Superintendent of Insurance, acting under the direction of the Minister of Finance. By section 49 a company cannot transact business without a certificate of registry from the Minister, which is renewable from year to year. Detailed statements and returns of the company's affairs are required and the Third Schedule to the Act prescribes the bases of computing

In the Supreme Court of Canada.

No. 8. Factum of The Mortgage Loans Association of Alberta —*continued.*

the reserves to be set out in the company's statement including the maximum rate of interest that may be assumed as an earning on investments.

To prevent such companies from commencing action when default occurs on debts representing valid investments made by them, is to disable them from carrying out the purpose for which they were incorporated as an important part of the existing credit system.

Particular attention is directed to the attempt to interfere with the jurisdiction of the Dominion over interest.

Section 91 (19) of the British North America Act reserves " Interest " to the Dominion.

Section 2 of the " Interest Act " (R.S.C. 1927, Ch. 102) reads as follows :—

> " 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."

If the province can legislate under section 92, it would be able to allow proceedings in the Courts to recover interest at the rate which a provincially appointed Board would fix, but at no higher rate. Such legislation was held invalid in *Lethbridge* v. *I.O.O.F.* [1940] A.C. 513.

Other Acts passed by the Provincial Legislature may in this connection be considered " for it is often impossible to determine the effect of the Act " under examination without taking into account any other Act operating, " or intending to operate, or recently operating in the Province," per Lord Maugham in *Attorney-General for Alberta* v. *Attorney-General for Canada* [1939] A.C. 117.

By The Reduction and Settlement of Debts Act, 1936 (2nd Session), Chapter 2, the Legislature of Alberta purported to reduce debts by compelling a re-calculation at a rate of interest of 5 per cent. and fixing that rate as the maximum that could in future be collected. This Act was held invalid by the Alberta Court of Appeal.

Credit Foncier v. *Ross* (1937) 2 W.W.R. 353.

The Debt Adjustment Act, 1937, was passed immediately after such judgment of the Court of Appeal. The Act as administered by the Debt Adjustment Board forces creditors to reduce the amount owing to them and to lower the interest rate. The usual adjustment required by the Debt Adjustment Board is similar in principle and effect to that prescribed under the invalid Reduction and Settlement of Debts Act.

If a creditor will make a reduction that satisfies the Board, the Board will approve an agreement altering the terms of the debt and if default occurs afterwards, the creditor might reasonably expect the Board to grant a permit to sue but the Board is not bound to give the permit. If the creditor will not adjust his contract, he does not receive the permit. Constant adjournments without actual refusal usually bring about adjustment.

This is the natural and the intended result. A province cannot thus defeat Dominion legislation and the rights of companies and persons who loan money at interest under the protection of Dominion legislation.

Another important subject for consideration is whether the Debt Adjustment Act encroaches upon the field of jurisdiction now occupied by the Dominion under section 91 (21), Bankruptcy and Insolvency.

There cannot be much doubt that before the 1941 amendments when O'Connor J. rendered his judgment (14th March, 1941) in *North American Life Assurance Company* v. *McLean* (1941) 1 W.W.R. 430, the Act as it stood trenched upon bankruptcy. O'Connor J. deals with this aspect of the Act at pp. 433-442, and says (p. 442) :—

" the Act invades the field of insolvency already fully occupied by the
" Bankruptcy Act and the Farmers' Creditors Arrangement Act, 1934,
" and is ultra vires the Provincial Legislature."

Mr. Justice O'Connor could also have included " The Companies' Creditors Arrangement Act, 1933."

The Legislature, by the amendments made a month later, have eliminated some of the provisions upon which O'Connor J. based his judgment, and the Act as amended is now the subject of review.

" Insolvent Person " is defined under section 2 (*u*) of the Bankruptcy Act, R.S.C. 1927, c. 11, as follows :—

" (*u*) ' insolvent person ' and ' insolvent ' includes a person, whether
" or not he has done or suffered an act of bankruptcy ; (i) who is for any
" reason unable to meet his obligations as they generally become due or
" (ii) who has ceased paying his current obligations in the ordinary
" course of business, as they generally become due, or (iii) the aggregate
" of whose property is not, at a fair valuation, sufficient, or, if disposed
" of at a fairly conducted sale under legal process would not be sufficient
" to enable payment of all his obligations due and accruing due, thereout."

O'Connor J. says in *North American Life* v. *McLean* (1941) 1 W.W.R. 430, at p. 442 :—

" It does not appear to me that sec. 8 of The Debt Adjustment Act,
" 1937, is distinct from the other 42 sections of the Act which provide
" for compulsory compositions or is a separate declaration of the legis-
" lative will but rather that sec. 8 is intended to provide the machinery
" to compel creditors to reduce their debts or to supplement the re-
" mainder of the Act by preserving the assets of the debtor pending such
" composition."

While it is true that most of the compulsory composition provisions mentioned by O'Connor J. are now removed, section 8, not only remains but with added provisions.

The Board can delay indefinitely a permit under section 8 without assigning reasons and in doing so need not be governed by any principles laid down in the Act. By this means it can force a creditor to accept its proposal.

Sec. 4.—The Board has power " to make compromises between creditors and debtors." Compositions are within the sphere of bankruptcy legislation.

In re Companies' Creditors Arrangement Act [1934] S.C.R. 659; *Attorney-General for British Columbia* v. *Attorney-General for Canada* [1937] A.C. 391.

Sec. 6.—The Board may make "inquiries . . . with regard to the property of any resident debtor or resident farmer," and may examine the debtor or any other persons under oath, and has the same power as a commissioner under "The Public Inquiries Act." (R.S.A. 1922, Ch. 26 as amended (1939) Ch. 75, Sec. 2.)

Sec. 9.—Prohibits the Board from granting a permit if the proceedings lead to foreclosure by reason of depressed conditions.

Sec. 10.—The Board can grant or refuse a permit or adjourn an application "for such length of time" as the Board may deem advisable under the circumstances.

Sec. 21.—The Board "shall inquire into the validity of all claims made "against the resident debtor and his ability to pay his just debts, either "presently or in the future and shall endeavour to effect an agreement "between the resident debtor and his creditors to provide for the settlement "of the resident debtor's debts, either in full or by a composition."

Sec. 23.—The agreement should be such that "the secured or unsecured debts of the resident debtor are reduced to an amount which, in the opinion "of the Board, is in accordance with the ability of the resident debtor to "pay either presently or in the future . . ."

Sec. 26.—No proceedings, without a permit, can be taken to enforce a proposal made under the Farmers' Creditors Arrangement Act. This section is a direct attack on the Dominion's legislation, rendering it ineffective.

Sec. 28.—The Board can permit a "resident farmer" to realise upon certain of his chattels for necessities, feed for his stock and seed grain even though they are mortgaged.

Secs. 29, 30.—Permits similar inroads upon the share of crop belonging to a landlord, vendor or mortgagee. It is apparent that these sections assume a condition of insolvency.

Secs. 28-30.—Involve compulsion upon the creditor. The other provisions referred to are voluntary and, as such, standing alone, harmless. There is, however, a hidden force behind them which is to be found in section 8. There are two forms of compulsion—negative and positive. If section 8 contained the positive form of compulsion it is submitted that there would be no doubt that it was insolvency legislation.

If section 8 contains the negative form of compulsion, which it is suggested it does, it is submitted that it is none the less insolvency legislation.

Section 32 is a penalising section that operates in terrorem to enforce the bar of action under section 8. It provides a penalty of a fine not exceeding two hundred and fifty dollars and in default of payment a term of imprisonment with hard labour not exceeding three months, or both.

The whole scheme of the Act shows that its intention is that the Board

shall follow the practice of using its authority to compel creditors to reduce debts. Section 8 is indeed an effective weapon.

19. The question arises whether the Debt Adjustment Act is invalid in part only or in toto. Can it be operative as to rights of action related to matters over which the province was given specific jurisdiction under section 92 ? It is submitted that it is impossible in this case to sever the good from the bad. If the Debt Adjustment Board is improperly constituted to exercise the powers conferred on it by the Act, there is nothing in the Act that would warrant applying its provisions to an altered scheme.

In *Attorney-General of Manitoba* v. *Attorney-General of Canada* [1925] A.C. 561, involving taxation on parties connected with sales of grain futures, the Court held that the whole Act was invalid as in many cases it would in practice be indirect taxation. Viscount Haldane, at p. 568, says :—

> " In other words, if the Statute is ultra vires as regards the first " class of cases, it has to be pronounced to be ultra vires altogether. " Their Lordships agree with Duff J., in his view that if the Act is in- " operative as regards brokers, agents and others, it is not possible for " any Court to presume that the Legislature intended to pass it in what " may prove to be a highly truncated form."

The passage referred to with approval by Viscount Haldane reads (1924, S.C.R., at 323) :—

> " The effect, therefore, of eliminating from Section 3 the words ' or " his broker or agent ' would be to remove from the operation of the " statute all those transactions which are effected by brokers or agents. " I am by no means confident that an enactment expressed in such terms " would be an enactment which the legislature intended to pass, but, " however that may be, I am unable to discover in the language of " these sections any sufficient expression or evidence of intention to " pass such an enactment."

See also *Attorney-General for British Columbia* v. *C.P.R.* [1927] A.C. 934 at 938.

Attorney-General for British Columbia v. *Attorney-General for Canada* [1937] A.C. 377.

It is submitted that the Debt Adjustment Act is ultra vires in its entirety and that the answer to the first question referred to the Court should be " Yes, in whole " ; to the other questions, " No."

W. N. TILLEY.
T. D'ARCY LEONARD.
R. D. TIGHE.

---

a H

In the Supreme Court of Canada.

No. 9. Formal Judgment, 2nd December, 1941.

No. 9.

Formal Judgment.

In the Supreme Court of Canada.

Tuesday, the second day of December, A.D. 1941.

Present:

The Right Honourable The Chief Justice of Canada;
The Honourable Mr. Justice Rinfret;
The Honourable Mr. Justice Crocket;
The Honourable Mr. Justice Davis;
The Honourable Mr. Justice Kerwin;
The Honourable Mr. Justice Hudson;
The Honourable Mr. Justice Taschereau.

The Honourable Mr. Justice Davis being absent, his judgment was announced by the Right Honourable the Chief Justice 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.

Whereas by Order of His Excellency the Governor-General in Council, bearing date the nineteenth day of May, in the year of our Lord, one thousand nine hundred and forty-one (P.C. 3543), the important questions of law hereinafter set out were referred to the Supreme Court of Canada, for hearing and consideration, pursuant to section 55 of the Supreme Court Act, Revised Statutes of Canada, 1927, chapter 35:—

"(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?

"(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?

"(3) Is the said Act as amended operative in respect of any proceed-"ings 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?

"(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;

" (*c*) the interest only upon such money?

" (5) If the answer to any 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?"

And whereas the said questions came before this Court for hearing and consideration on the twenty-fourth, twenty-fifth and twenty-sixth days of June, in the year of our Lord one thousand nine hundred and forty-one, in the presence of Mr. A. Geoffrion, K.C., and Mr. F. P. Varcoe, K.C., of counsel for the Attorney-General of Canada; Mr. Louis St.-Laurent, K.C., of counsel for the Attorney-General of the Province of Quebec; Mr. J. M. Stevenson, K.C., of counsel for the Attorney-General of the Province of Saskatchewan; Mr. J. W. de B. Farris, K.C., Mr. W. S. Gray, K.C., and Mr. J. J. Frawley, K.C., of counsel for the Attorney-General of Alberta; Mr. W. N. Tilley, K.C., Mr. T. D'Arcy Leonard, K.C., and Mr. R. D. Tighe, K.C., of counsel for Mortgage Loan Association of Alberta, and Mr. W. N. Tilley, K.C., Mr. R. C. McMichael, K.C., and Mr. W. L. McLaws, K.C., of counsel for Canadian Bankers' Association; and after due notice to the Attorneys-General for the Provinces of Ontario, Nova Scotia, New Brunswick, Manitoba, British Columbia, and Prince Edward Island;

Whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said Reference should stand over for consideration, and the same having come on this day for determination;

This Court Hereby Certifies to His Excellency the Governor-General in Council, for his information, pursuant to subsection 2 of section 55 of the Supreme Court Act, that the opinions in respect of the questions referred to the Court are as follows:—

By the Court:—

In answer to the interrogatory numbered 1: The said Act as amended is ultra vires of the legislature of Alberta in whole.

In answer to the interrogatory numbered 2: The said Act as amended is not operative in respect of any of the matters mentioned.

In answer to the interrogatory numbered 3: The said Act as amended is not operative in respect of any of the matters mentioned.

In answer to the interrogatory numbered 4: The said Act as amended is not operative in respect of any of the matters mentioned.

In answer to the interrogatory numbered 5: The said Act as amended is not operative in respect of any of the matters mentioned.

In the Supreme Court of Canada.

No. 9. Formal Judgment, 2nd December, 1941 —*continued.*

By Mr. Justice Crocket :—

In answer to question 1 : 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.

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.

And that the reasons for such answers are to be found hereunto annexed, written and certified by the individual members of the Court.

(Signed) PAUL LEDUC,
Registrar.

No. 10.

Reasons for Judgment.

No. 10. Reasons for Judgment. (A) Sir L. P. Duff C.J. (concurred in by Rinfret, Davis, Kerwin, Hudson and Taschereau JJ.).

(A) THE CHIEF JUSTICE. (Concurred in by Rinfret, Davis, Kerwin, Hudson and Taschereau JJ.) :

By Section 8, subsection 1 (*a*) of the Debt Adjustment Act, a legal right which the owner of it is entitled to enforce is converted into a conditional right, enforceable only by grace of a permit from the Board granting to the owner of it a dispensation from the incidence of the general rule.

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.

It is most important, I think, not to lose sight of the arbitrary nature of the Board's authority. The powers of the Board, it will be noticed, may be exercised by any single member of the Board, or by any person designated by the Board, with the approval of the Lieutenant-Governor in Council. *Ex hypothesi* the debt or liquidated demand, which the Board has to consider on any application for a permit, may be one which, but for the statute, would admittedly be enforceable by law ; and in discussing the operation of the enactment I shall assume that we are dealing with a debt, or demand, admittedly so enforceable.

The statute prescribes no rule, or principle, by which the Board, or its designated agent, is to be guided in granting, or refusing, a permit ; nor does it give any clue to the considerations upon which the Board is to act. I do

not think that any Court can, with any confidence, form a judgment as to the reasons by which the Board will be guided, except that the Board may be assumed to act in accordance with its own conception of its duty in each particular case. It is the duty of the Board, under Section 10 of the Act, to make such inquiries, as it may deem proper, into the circumstances, but that section makes it clear, I think, that it is for the Board exclusively to decide what are the considerations by which it ought to be influenced in granting, or refusing, an application for a permit, or adjourning the application for such period as it " may deem advisable under the circumstances." 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.

The distinction between right and remedy is often a useful distinction, but an enactment which takes away the remedy by action, which the law otherwise would give to the creditor in respect of his debt, and substitutes therefor the chance of obtaining, by the arbitrary act of a public authority, permission to enforce a remedy is, I think, something more than an enactment relating to procedure. It strikes, I think, at the substance of the creditor's rights. The enactment is repugnant to the provisions of Dominion statutes relating to matters within the exclusive jurisdiction of the Dominion Parliament, provisions creating or directly giving rise to, or recognising, obligations in the nature of debts and liquidated demands: for example, certain provisions of the Bills of Exchange Act, Section 125 of the Bank Act, and provisions in respect of calls made by a Dominion Company upon the holders of unpaid shares (see Section 44, Companies Act). Such instances could be multiplied.

There is another class of cases that I have just alluded to, the consideration of which leaves it, I think, very clear that in attempting to establish an authority of this character a provincial legislature is exceeding its authority. Section 91 of the British North America Act gives to the Parliament of Canada exclusive control over certain types of business and undertakings. I particularly refer to two classes of business only. The first of these, that of banks, perhaps illustrates the point most strikingly. The lending of money is a principal part of the business of any bank. A debt arising from a loan by a bank to a customer will, speaking generally, fall within Section 8 (1*a*), and the bank's right to enforce repayment is by the enactment conditioned upon the existence of a permit. It is in the power of the Board to refuse a permit in all such cases, or in the case of any particular debt. This power of selection seems to involve a considerable power of regulation of the business of the banks. It is, I think, incompetent to the legislature to establish any

In the Supreme Court of Canada.

No. 10.
Reasons for Judgment.
(A) Sir L. P. Duff C.J. (concurred in by Rinfret, Davis, Kerwin, Hudson and Taschereau JJ.)
—continued.

such authority. I think the case of banking is, perhaps, from this point of view, the most striking case, although the application of the authority of the Board to companies engaged in operating Dominion undertakings, such as Dominion Railway Companies and companies engaged in operating lines of ocean shipping might well exceed the ambit of provincial authority.

What I have said is sufficient, in my opinion, to show that subsection (1) (*a*) of Section 8 is *ultra vires*. I assume that debts and liquidated demands falling entirely (that is to say, exclusively) under the regulative authority of the province, as being "civil rights within the province," could be dealt with by a province by an enactment having the characteristics of Section 8 (1*a*), but limited to such debts and demands. It is not necessary to decide it, but I assume that to be so. I do not think that Section (1*a*) can properly be construed as limited in its application to such debts and demands and it is, therefore, I think, entirely destitute of effect.

Subsection 1 (*b*) of Section 8 presents a different question, but it is, in my opinion, *ultra vires* by reason of considerations of much the same character. It is no answer to say that the authority extends to all judgments; because the Board can arbitrarily refuse to grant a permit in any particular case. The Board is authorised to refuse a permit for a writ of execution where the debt sued upon is one which it has no power to regulate and to do so for any reason which to it may appear sufficient; and, of course, to discriminate in this respect between debts which it has power to regulate and debts in respect of which it has no such power.

We are not required to consider the authority of a provincial legislature to restrict the jurisdiction of the provincial Courts to giving declaratory judgments and to deprive them of the power to grant any consequential relief. This legislation affects the jurisdiction of the provincial Courts, but the pith and substance of it is to establish a provincial authority which is empowered to exercise the discriminatory control just mentioned. While in form this is legislation in relation to remedy and procedure, in substance this provision which attempts to regulate the remedial incidents of the right in this manner must, when it is read in light of the context in which it stands in this section 8 (1), be regarded as a step in a design to regulate the right itself.

There is a class of creditors occupying a special position which must be considered. I refer to companies, incorporated by the Dominion. It is settled that in the case of companies with objects other than provincial objects, the exclusive power to legislate in relation to incorporation is vested in parliament, and that by the joint operation of the residuary power under Section 91 of the Confederation Act and the powers conferred upon parliament in relation to the enumerated subject, the regulation of trade and commerce, this power extends to the status and powers of the company. True, where the business of the company is subject to provincial legislative regulation, the provincial legislature may legislate in such a manner as to affect the business of the company by laws of general application in relation to the kind of business in which the company engages in the province; but the provisions of this statute giving to the Board the authority to interfere with

the affairs of creditors in the manner set forth in Section 8 would not appear to be a general law in this sense.

A company, for example, incorporated by the Dominion with authority to carry on the business of lending money upon various kinds of security in the province, may find itself in a position, under the operation of subsections 1 (*a*) and (*b*) of Section 8, in which it and other Dominion companies are precluded from enforcing their securities in the usual way. In my view, such legislation is not competent and, accordingly, paragraphs (*c*), (*d*), (*e*) and (*f*) would appear to be incompetent, as well as paragraphs (*a*) and (*b*).

As regards interest, subsection (1) of Section 8 is plainly repugnant to Section 2 of The Interest Act. In truth the scope of subsection (1) of Section 8 is indicated by paragraph (*g*) thereof and by Section 41 which withdraws from the operation of the Act debts owing to The Canadian Farm Loan Board or to The Soldiers' Settlement Board and proceedings for enforcing the payment of any such debts. I think we must conclude that subsection (1) must be treated as a whole, that is to say, that it is valid or invalid as a whole, and for the reasons I have given it is, I think, invalid. The provisions of subsection (3) limiting the application of Section 8 in the manner there mentioned do not, it appears to me, affect the force of what has been said. The whole of Section 8 is *ultra vires*.

As to Section 26, the matters dealt with by this enactment, in my opinion, are so related to the subject matter of The Farmers' Creditors Arrangement Act as to be withdrawn from provincial jurisdiction by force of the last paragraph of Section 91.

There remains the contention of the Attorney-General of Canada that the statute as a whole constitutes an attempt to legislate in relation to bankruptcy and insolvency. I have very carefully considered this contention and the first thing that strikes one is that the effect of Section 8 (1) is, as regards debts where the creditor and debtor reside in the province and the contract has been made in the province and the debt is payable in the province, that the creditor is deprived of his right to present a bankruptcy petition. As appears from what has already been said, Section 8 (1) does not merely suspend the remedy—it takes away the remedy given by law and substitutes therefor a remedy dependent upon the arbitrary consent of the Board, or the arbitrary determination of a jury. As I have already said, this, in my opinion, strikes at the debt itself and I do not think that in any Court governed by this legislation it could be successfully contended that in respect of an obligation to which the statute applies there is a " debt owing " to the creditor, within the meaning of Section 4 of the Bankruptcy Act. Moreover, I find it impossible to escape the conclusion that Part III contemplates the use of the Board's powers under Section 8 (1) to enable it to secure compulsorily the consent of the parties to arrangements proposed by it for composition and settlement. Bankruptcy is not mentioned, but normally the powers 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 who are pressed and unable to pay their debts as they fall due that these powers and duties are created. Indeed the

In the Supreme Court of Canada.

No. 10. Reasons for Judgment. (A) Sir L. P. Duff C.J. (concurred in by Rinfret, Davis, Kerwin, Hudson and Taschereau JJ.) —*continued.*

whole statute is conceived as a means of protecting embarrassed debtors who are residents of Alberta. Most people would agree that in this point of view the motives prompting the legislation may be laudable ones. But the legislature, in seeking to attain its object, seems to have entered upon a field not open to it. 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.

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*.

It follows that the first interrogatory should be answered by stating that the enactment in question is *ultra vires* in whole. 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 mentioned in those interrogatories.

(B) Crocket J.

(B) CROCKET J.:

This reference raises the question of the authority of the Legislature of Alberta to enact legislation dealing with the matters to which the provisions of the Alberta Debt Adjustment Act are directed. The answers to the general question (1) and the other four subordinate questions submitted manifestly depend upon the scope and extent of the legislative powers committed to the Legislatures of the Provinces of Canada by s. 92 of the British North America Act, as read in the light of s. 91 and the intendment of the whole Act regarding the distribution of legislative authority between the Parliament of Canada on the one hand and the Provinces on the other.

We must, I think, take it as settled that provincial legislation upon matters, which prima facie fall within one or more of the 16 classes of subjects

enumerated in s. 92 of the B.N.A. Act, cannot be validly superseded by any Dominion legislation of the Parliament of Canada unless the latter is necessarily incidental to the exercise of the powers conferred upon it by one or other of the 29 specially enumerated heads of s. 91, that is to say, as Lord Tomlin expressed it in *Atty.-Gen. for Canada* v. *Atty.-Gen. for B.C.* [1930] A.C. 111, in his summing up of the effect of the decisions of the Judicial Committee of the Privy Council regarding the interpretation and application of ss. 91 and 92, unless such legislation " strictly relates to subjects of legislation expressly enumerated in s. 91 " or is " necessarily incidental to effective " legislation by the Parliament of the Dominion upon a subject of legislation " expressly enumerated in s. 91." See also *Citizens Ins. Co.* v. *Parsons* [1881] 7 A.C. 96 ; *Cushing* v. *Dupuy*, 5 A.C. 409 at 415 ; *Tennant* v. *Union Bank of Canada* [1894] A.C. 31 ; *Atty.-Gen. for Ontario* v. *Atty.-Gen. for the Dominion* [1894] A.C. 189 ; and *Montreal* v. *Montreal Street Railway Co.* [1912] A.C. 333.

Another principle, which bears particularly on the construction of the words " Property and Civil Rights in the Province," as used in s. 92 (13), was also distinctly laid down by the Judicial Committee in the *Parsons case* at p. 109, viz., that the words " Property and Civil Rights " are there used in their largest sense, and are not limited to such rights only as flow from the law, e.g., the status of persons. " There is no sufficient reason in the language " itself," said Sir Montague Smith in the judgment of the Board, " nor in the " other parts of the Act for giving so narrow an interpretation to the words " ' civil rights.' " This, of course, as my Lord the Chief Justice pointed out in delivering the unanimous judgment of this Court on the reference in *re* the Dominion Natural Products Marketing Act, 1936, S.C.R., at p. 416, is subject to the limitations expressly arising from the exception of the enumerated heads of s. 91 and impliedly from the specification of subjects in s. 92. Sir Montague himself went on to say regarding the enumerated heads of s. 91 :—

> " In looking at s. 91, it will be found, not only that there is no " class including generally contracts and the rights arising from them, " but that one class of contracts is mentioned and enumerated, viz. : " ' 18. Bills of Exchange and Promissory Notes,' which it would have " been unnecessary to specify if authority over all contracts and the " rights arising from them had belonged to the Dominion Parliament."

Practically the same thing was said of the phrase " Administration of Justice," as used in 92 (14) by Street J., in delivering the judgment of Armour C.J., himself and Falconbridge J., in *Reg.* v. *Bush*, 15 Ont. R. 398 :—

> " The words of paragraph 14 of s. 92," he said, " confer upon the " Provincial Legislatures the right to regulate and provide for the whole " machinery connected with the administration of justice in the Pro- " vinces, including the appointment of all judges and officers requisite " for the proper administration of justice in the widest sense, reserving " only the procedure in criminal matters."

as reserved by 91 (27) and subject to the provisions of ss. 96-100 relating to

In the Supreme Court of Canada.

No. 10
Reasons for Judgment.
(B) Crocket J.
—continued.

the appointment and payment of judges of Superior, District and County Courts and the constitution of a General Court of Appeal for Canada under s. 101. This pronouncement was distinctly and unanimously approved by this Court in a judgment delivered by the learned Chief Justice. See (1938) S.C.R., at p. 406, on the Reference regarding the validity of the provisions of the Ontario Adoption, the Children's Protection and the Deserted Wives' and Children's Maintenance Acts vesting certain functions in County Court and District Court Judges, and in Police Magistrates and Juvenile Court Judges.

The case of the *Atty.-Gen. of Ontario* v. *The Atty.-Gen. for the Dominion of Canada* [1894] A.C. 189, seems to me to have a very special bearing upon the present case. It was cited along with the *Atty.-Gen. for Ontario* v. *The Atty.-Gen. for the Dominion* by Lord Tomlin in delivering the judgment of the Judicial Committee in *Atty.-Gen. for Canada* v. *Atty.-Gen. for B.C.*, in support of the Board's statement at p. 118, A.C. [1930], that :—

> " It is within the competence of the Dominion Parliament to provide
> " for matters which, though otherwise within the legislative competence
> " of the Provincial Legislature, are necessarily incidental to effective
> " legislation by the Parliament of the Dominion upon a subject of legis-
> " lation expressly enumerated in s. 91."

The 1894 case involved the validity of an enactment of the Ontario Legislature relating to voluntary assignments, which the Board stated postponed judgments and executions not completely executed by payment to an assignment for the benefit of creditors under the Act. " Now there can be no doubt," the Board said,

> " that the effect to be given to judgments and executions and the manner
> " and extent to which they may be made available for the recovery of
> " debts are prima facie within the legislative powers of the provincial
> " parliament. Executions are a part of the machinery by which debts
> " are recovered, and are subject to regulation by that parliament. A
> " creditor has no inherent right to have his debt satisfied by means
> " of a levy by the sheriff, or to any priority in respect of such levy.
> " The execution is a mere creature of the law which may determine
> " and regulate the rights to which it gives rise."

Their Lordships held that the provisions in question, relating as they did to assignments purely voluntary, did not infringe on the exclusive legislative power conferred upon the Dominion Parliament. " They would observe," the Lord Chancellor (Herschell) who delivered the judgment, continued,

> " that a system of bankruptcy legislation may frequently require various
> " ancillary provisions for the purpose of preventing the scheme of the
> " Act from being defeated. It may be necessary for this purpose to deal
> " with the effect of executions and other matters, which would otherwise
> " be within the legislative competence of the Provincial Legislature.
> " Their Lordships do not doubt that it would be open to the Dominion
> " Parliament to deal with such matters as part of a bankruptcy law,

" and the Provincial Legislature would doubtless be then precluded from " interfering with this legislation inasmuch as such interference would " affect the bankruptcy law of the Dominion Parliament. But it does " not follow that such subjects as might properly be treated as ancillary " to such a law and therefore within the powers of the Dominion Parlia- " ment, are excluded from the legislative authority of the Provincial " Legislature when there is no bankruptcy or insolvency legislation of " the Dominion Parliament in existence."

The clear effect of this judgment, I think, is that legislation dealing with the effect of judgments and executions and the manner and extent to which they may be made available for the recovery of debts are prima facie within the exclusive legislative powers of the Provinces as coming within 92 (13) and 92 (14) and that such provincial legislation must be held valid unless it is found to be inconsistent with the provisions of some existing Dominion legislation enacted in relation to one or other of the classes of subjects specially enumerated in s. 91, and necessary for the purpose of effecting the object to which such legislation is directed.

At the time of this decision there was no Dominion bankruptcy or insolvency legislation in force, the Dominion Insolvency Act of 1875 having been previously wholly repealed.

I should like to refer to another case, which the Judicial Committee considered in 1898, that of *The Attorney-General for Canada* v. *The Attorneys-General for the Provinces of Ontario, Quebec and Nova Scotia* [1898] A.C. 700, in which the Board heard an appeal from the judgment of this Court on a reference involving inter alia the validity of s. 4, Revised Statutes of Canada, C. 95, purporting to empower the grant of an exclusive right to fish in property belonging to the Provinces. It was held, affirming the unanimous judgment of this Court, that that enactment, so far as it purported to empower the grant of exclusive fishing rights over provincial property, was *ultra vires* of the Parliament of Canada. The clear ground of the decision was that the provision did not fall within the exclusive legislative jurisdiction of the Dominion under s. 91 (12). I quote the following passage from that judgment at p. 716 :—

" But whilst in their Lordships' opinion all restrictions or limitations " by which public rights of fishing are sought to be limited or controlled " can be the subject of Dominion legislation only, it does not follow that " the legislation of Provincial Legislatures is incompetent merely because " it may have relation to fisheries. For example, provisions prescribing " the mode in which a private fishery is to be conveyed or otherwise " disposed of, and the rights of succession in respect of it, would be " properly treated as falling under the heading ' Property and Civil " Rights ' within s. 92, and not as in the class ' Fisheries ' within the " meaning of s. 91. So, too, the terms and conditions upon which the " fisheries, which are the property of the Province, may be granted, " leased, or otherwise disposed of, and the rights, which consistently " with any general regulations respecting fisheries enacted by the Domin- " ion Parliament may be conferred therein, appear proper subjects for

" provincial legislation, either under class 5 of s. 92, ' The Management " and Sale of Public Lands ' or under the class ' Property and Civil " Rights.' Such legislation deals directly with property, its disposal, " and the rights to be enjoyed in respect of it, and was not in their " Lordships' opinion intended to be within the scope of the class " ' Fisheries ' as that word is used in s. 91."

As late as 1939 another case came before the Judicial Committee, which clearly involved the application of the same principles, and in which the Board in a judgment delivered by Lord Atkin affirmed a judgment of the Court of Appeal for Ontario, holding that certain parts of the Ontario Municipal Board Act, 1932, and the Department of Municipal Affairs Act, 1935, were *intra vires* of the Provincial Legislature. This was the case of *Ladore* v. *Bennett* [1939] A.C. 468, which arose out of the financial difficulties of four adjoining municipalities in the Province of Ontario and their amalgamation under the provisions of C. 74 of the Provincial Act of 1935 into one municipality under the name of the Corporation of the City of Windsor. Under the provisions of this Act the existing municipal corporations were dissolved and a special body called the Windsor Finance Commission was constituted with the same rights, powers and duties as by the provisions of Part III of the Department of Municipal Affairs Act, 1935, were conferred upon that Department, and the provisions of Part III of the latter Act were to apply to the new city. By the provisions of Part III the Ontario Municipal Board, if satisfied inter alia that a municipality had failed to meet its debentures or interest when due owing to financial difficulties, was given power inter alia to order postponement of or variation in the terms, time and places for payment of the whole or any portion of the debenture debt and outstanding debentures and other indebtedness and interest thereon, and variation in the rates of interest. A scheme having been formulated by the Windsor Commission pursuant to its powers and approved by the Ontario Municipal Board for funding and refunding the debts of the amalgamated municipalities, under which former creditors of the old independent municipalities received debentures of the new city of equal nominal amount to those formerly held, but with the interest scaled down in various classes of debentures, the Windsor Finance Commission was abolished by an amending Act of 1936, and its duties transferred to the Department of Municipal Affairs for Ontario. The plaintiff's action prayed inter alia for a declaration that the provisions of the Ontario Municipal Board Act, 1932, and the Department of Municipal Affairs Act, 1935, and amendments thereto, under which the funding and refunding debt scheme was effected, were *ultra vires* of the Provincial Legislature. It was contended that they invaded the legislative jurisdiction of the Dominion as to (1) bankruptcy and insolvency; (2) interest; and (3) because they affected private rights outside the Province.

On account of their peculiar applicability to the attack, which is made against the validity of the Alberta Debt Adjustment Act in the present case, I quote the following passages from Lord Atkin's reasons :—

" It appears to their Lordships that the Provincial legislation cannot be " attacked on the ground that it encroaches on the exclusive legislative

" power of the Dominion in relation to this class of subject. Their " Lordships cannot agree with the opinion of Henderson J.A., that there " is no evidence that these municipalities are insolvent. Insolvency is " the inability to pay debts in the ordinary course as they become due ; " and there appears to be no doubt that this was the condition of these " corporations. But it does not follow that because a municipality is " insolvent the Provincial Legislature may not legislate to provide " remedies for that condition of affairs. The Province has exclusive " legislative power in relation to municipal institutions in the Province : " s. 92 (8) of the British North America Act, 1867. Sovereign within its " constitutional powers, the Province is charged with the local govern- " ment of its inhabitants by means of municipal institutions.

* * * * * * *

" Efficient local government could not be provided in similar cir- " cumstances unless the Province were armed with these very powers, " and if for strictly Provincial purposes debts may be destroyed and new " debts created, it is inevitable that debtors should be affected, whether " the original creditors reside within or without the Province. They " took for their debtor a corporation which at the will of the Province " could lawfully be dissolved, and of its destruction they took the risk.

* * * * * * *

" It was suggested in argument that the impugned provisions should " be declared invalid because they sought to do indirectly what could " not be done directly—namely, to facilitate repudiation by Provincial " municipalities of obligations incurred outside the Province. It is " unnecessary to repeat what has been said many times by the Courts " in Canada and by the Board, that the Courts will be careful to detect " and invalidate any actual violation of constitutional restrictions under " pretence of keeping within the statutory field. A colourable device " will not avail. But in the present case nothing has emerged even to " suggest that the Legislature of Ontario at the respective dates had " any purpose in view other than to legislate in times of difficulty in " relation to the class of subject, which was its special care—namely, " municipal institutions.

* * * * * * *

" For the reasons given the attack upon the Acts and scheme on " the ground either that they infringe the Dominion's exclusive power " relating to bankruptcy and insolvency, or that they deal with civil " rights outside the Province, breaks down. The statutes are not directed " to insolvency legislation ; they pick out insolvency as one reason for " dealing in a particular way with unsuccessful institutions ; and though " they affect rights outside the Province they only so affect them col- " laterally, as a necessary incident to their lawful powers of good govern- " ment within the Province.

* * * * * * *

In the Supreme Court of Canada.

No. 10. Reasons for Judgment. (B) Crocket J. —*continued.*

" The question of interest does not present difficulties. The above " reasoning sufficiently disposes of the objection. If the Provincial " Legislature can dissolve a municipal corporation and create a new one " to take its place, it can invest the new corporation with such powers " of incurring obligations as it pleases, and incidentally may define the " amount of interest which such obligations may bear. Such legislation, " if directed bona fide to the effective creation and control of municipal " institutions, is in no way an encroachment upon the general exclusive " power of the Dominion Legislature over interest."

I should not have felt it necessary to deal with the foregoing cases at such length had it not been for the contention that the recent decision of this Court in *Atty.-Gen. for Alberta* v. *Winstanley* (1941) S.C.R. 87, is necessarily conclusive of the invalidity of the impugned enactment, not only with regard to actions on Bills of Exchange and Promissory Notes, but with regard to all matters which affect or may affect bankruptcy or insolvency, banks and banking, interest and all other subjects specially enumerated in s. 91. For my part I cannot accept this contention. The Court there dealt only with an action on a promissory note and held in effect that the plaintiff was entitled to bring his action for the recovery of the moneys due thereon in consequence of the provisions of ss. 74, 134, 135 and 136 of the Bills of Exchange Act, R.S.C. 1927, C. 16, without the necessity of obtaining a permit enabling it to do so under the provisions of s. 8 of the Provincial Debt Adjustment Act. The provisions of the impugned section of the provincial statute were held to conflict with these sections of the Dominion enactment as the Court construed the latter. While it was clearly enough laid down in the reasons for judgment that the impugned enactment of the provincial statute conflicted with existing Dominion legislation strictly and necessarily relating to enumerated head 18 of s. 91 and that the latter must for that reason prevail, it does not follow, I most respectfully think, that the Provincial Debt Adjustment Act must be held to be wholly *ultra vires* of the Provincial Legislature merely because it affects or may affect bankruptcy or insolvency, banks and banking, interest or any other subject enumerated in s. 91, upon which the Dominion Parliament has purported to legislate as falling within one or more of those classes of subjects. As pointed out by Sir Montague Smith in the extract I have above quoted from his judgment in the *Parsons case*, " Bills of Exchange and Promissory Notes " is the only class of contracts which is specifically mentioned in s. 91, and there is no class (of subject) which includes " generally contracts and the rights arising from them." It would seem therefore that this specific enumeration of Bills of Exchange and Promissory Notes may well be said to expressly withdraw that class of contracts from the exclusive jurisdiction of the Province in relation to 92 (13) Property and Civil Rights.

Having regard, therefore, to the decisions and pronouncements of the Judicial Committee in the cases above referred to, which—to borrow the language of my Lord the Chief Justice, in delivering the unanimous judgment of this Court in the *Natural Products case* (1936) S.C.R. 410, had their basis " in the consideration mentioned in *Parsons case* arising from the specification " of particular subjects in section 91 and from the necessity to limit the

" natural scope of the words ' in order to preserve from serious curtailment, " if not from virtual extinction, the degree of autonomy, which, as appears " from the scheme of the Act as a whole, the Provinces were intended " to enjoy,' "—as he put it in the *Lawson case* (1931) S.C.R. at p. 366,—I am constrained to differ from my brethren in the view that the Provincial Debt Adjustment Act is wholly *ultra vires* for the reasons now given.

The whole purpose of the statute, as it plainly appears to me from an examination of all its provisions, is 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' claims might entail irreparable loss upon them. Its provisions are predominantly directed to procedure in civil matters in Provincial Courts, in relation to the constitution and organisation of which Courts the Provinces within the limits already indicated unquestionably possess sovereign legislative power, as each Province does, in relation to property and civil rights within its territorial jurisdiction. It is not doubted that the right to sue in Provincial Courts is a civil right in the Province, whether the claim sought to be enforced arose in the Province or not. None of the provisions of the provincial statute are directed to insolvency legislation nor to banks or banking legislation, nor to the contracts of Dominion companies, carrying on business either within or without the Province, though they 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. How then can it be said that the impugned statute is entirely beyond the constitutional competency of the Province because it provides that no action for the recovery of money in respect of a liquidated demand or debt shall be commenced or continued, and no proceedings by way of execution, attachment, etc., taken, and no warrant of distress, chattel mortgage, conditional sale agreement or power of sale contained in a mortgage on land enforced against a resident debtor unless the Debt Adjustment Board issues a permit giving consent thereto ?

This Court has quite recently applied the principle that Dominion and foreign corporations doing business in a Province are subject to laws of general application in the Province in matters falling within the classes of subjects enumerated in s. 92, notwithstanding these corporations may incidentally be affected in their business by some of the provisions of such provincial legislation. See *Royal Bank of Canada* v. *Workmen's Compensation Board of Nova Scotia* (1936) S.C.R. 560 ; and *Home Oil Distributors* v. *Atty.-Gen. of B.C.* (1940) S.C.R. 444. That this had previously been taken for granted would appear from the following passage, which I reproduce from the judgment of Duff J., as our present Chief Justice then was, in *Lukey* v. *Ruthenian Farmers* (1924) S.C.R., cited by counsel for the Mortgage Loan Association of Alberta and the Canadian Bankers' Association, at pp. 71 and 72 as to the

In the Supreme Court of Canada.

No. 10. Reasons for Judgment. (B) Crocket J. —*continued.*

legislative power in relation to rights of Dominion corporations, the constitution of which is of course outside the purview of s. 92 :—

> " Authority of a Dominion company under residuary clause fortified " by 91 (2) embraces authority to provide for the constitution of com- " panies within the class of joint stock companies, i.e., . . . possessing " independently of provincial legislation in each of the Provinces the " authority of a juridical person, having the right to contract and having " the right to invoke the jurisdiction of the Courts, subject always, of " course, to the measures passed by Provincial Legislatures of general " application in relation to such civil rights."

It is contended, however, that the impugned statute, by authorising the Debt Adjustment Board to grant or refuse permits, gives it the unreasonable and arbitrary power to deny a creditor all access to the established courts of the Province. Whether the Board is given power arbitrarily and without investigation of the conditions and circumstances in any particular case or not does not in my opinion affect the constitutionality of the enactment. That has been laid down in so many cases as to admit of no doubt. It is emphasised particularly by Lord Herschell in his judgment in the 1898 case at p. 713, and is strikingly illustrated by some of the passages I have quoted from Lord Atkin's judgment in *Ladore* v. *Bennett*. That consideration may possibly bear on the question as to whether the provincial enactment is a mere colourable device or mere pretence, by which the Legislature has sought to do indirectly what it could not do directly. Many attacks have been made against Dominion as well as Provincial legislation on this ground, and some of them have succeeded. Once, however, it becomes clear from an examination of the provisions of an enactment that it is within the constitutional competency of the enacting Legislature, the courts have no concern as to the reasonableness or injustice of those provisions. If an enactment is of such a palpably unfair character as to offend the public conscience, the remedy lies, not with the courts of the country, but with the people to whom the Legislature is responsible, or in the power of disallowance, the responsibility for the exercise of which the B.N.A. Act has placed in the hands of the Governor in Council. I may add that a study of the whole Act has convinced me that it was not the intention of the Legislature that the Debt Adjustment Board should exercise the powers committed to it without any investigation or consideration of the facts and circumstances in any case coming before it, and that I cannot agree with the suggestion that the appeal for which the Act provides was intended to be an appeal merely to a jury of laymen. The appeal is in point of fact to a judge of the Supreme Court sitting with a jury, which can only determine the issue under proper instructions from the judge. See ss. 3 (*d*) and ss. 6, 9, 10, 21, 23, 33 and 36 (1), (3), (4), (5), (7), (8) and (10).

As to the suggestion that the Act was a colourable device to reach out at something which was beyond the competence of the Legislature, I need only refer, I think, to s. 39, which distinctly provides that the Act " shall " 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."

In the Supreme Court of Canada.

No. 10.
Reasons for Judgment. (B) Crocket J.
—*continued.*

I differ also from my brethren in their conclusion that the Debt Adjustment Act is not an Act of general application in the Province of Alberta within the meaning of the authorities.

The impossibility of answering the first question in the terms in which it is framed with any degree of definiteness or assurance must, I think, be apparent when the settled principles as to the scope and extent of the legislative power of the Provinces under the B.N.A. Act are borne in mind.

This question in the form in which it is put manifestly involves, not only the construction of every one of the numerous provisions of the Debt Adjustment Act itself, but a search for any Dominion enactments which may possibly be affected thereby, as well as the consideration in connection with each one of these latter enactments whether they strictly relate to the particular matters upon which the Dominion has purported to legislate, or are merely ancillary thereto. To adapt the language of Lord Watson in delivering the judgment of the Judicial Committee in *Atty.-Gen. for Ontario* v. *Atty.-Gen. for the Dominion* [1896] A.C. 370, if I may presume to do so, the question, being in its nature academic rather than judicial, is " better fitted for the consideration of the officers of the Crown than for a court of law."

For these reasons I can only answer question 1 as follows: 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.

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.

I therefore certify the foregoing as my opinion upon the questions submitted.

In the Privy Council.

No. 11.
Order of His Majesty in Council granting special leave to appeal, 22nd May, 1942.

No. 11.

Order of His Majesty in Council granting special leave to appeal.

(L.S.)

At the Court at Buckingham Palace.
The 22nd day of May, 1942.

Present:
The King's Most Excellent Majesty.

Lord President.
Earl of Selborne.
Mr. Secretary Attlee.
Mr. Bracken.
Mr. Evatt.

In the Privy Council.

No. 11.
Order of His Majesty in Council granting special leave to appeal, 22nd May, 1942
—continued.

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 18th day of May 1942 in the words following, viz. :—

" Whereas by virtue of His late Majesty King Edward the Seventh's " Order in Council of the 18th day of October 1909 there was referred " unto this Committee a humble Petition of the Attorney-General of " Alberta in the matter of an 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 Petitioner Appellant and the Attorneys- " General of Canada, Saskatchewan and Quebec, The Mortgage Loans " Association of Alberta and The Canadian Bankers' Association Re- " spondents setting forth (amongst other matters) that the Governor- " General of Canada in Council by Order dated the 19th May 1941 made " under Section 55 of the Supreme Court Act (R.S. Canada 1927 c. 35) " referred to the Supreme Court of Canada for its opinion certain questions " relating to the validity of the Alberta Debt Adjustment Act, chapter 9 " of the Statutes of Alberta 1937 and as to its operation : that five " questions were submitted as follows :—

" (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 ?

" (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 ?

" (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 ?

" (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 ; (*c*) the interest only " upon such money ?

" (5) If the answer to any 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 ?

" that a majority of the Court held the Act *ultra vires* ; that the majority " of the Court accordingly held that the first interrogatory be answered " by stating that the Act was *ultra vires* in whole and that it follows " therefrom that the Act is not operative in respect of any of the matters " mentioned in the second third fourth and fifth interrogatories ; that " Mr. Justice Crocket delivered a dissenting judgment; that the Petitioner " submits that the Judgments of the Supreme Court raised important " and far-reaching questions of general public interest and that the case " ought to be heard and determined by Your Majesty in Council : And " humbly praying Your Majesty in Council to order that the Petitioner " shall have special leave to appeal from the Judgment of the Supreme " Court of the 2nd December 1941 or for such further or other Order as " to Your Majesty in Council may appear fit :

" The Lords of the Committee in obedience to His late Majesty's " said Order in Council have taken the humble Petition into considera- " tion and having heard Counsel in support thereof and in opposition " thereto Their Lordships do this day agree humbly to report to Your " Majesty as their opinion that leave ought to be granted to the Petitioner " to enter and prosecute his Appeal against the Judgment of the Supreme " Court of Canada dated the 2nd day of December 1941.

" And Their Lordships do further report to Your Majesty that the " authenticated copy under seal of the Record produced by the Petitioner " upon the hearing of the Petition ought to be accepted (subject to any " objection that may be taken thereto by the Respondents) as the " Record proper to be laid before Your Majesty on the hearing of the " Appeal."

His Majesty having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

RUPERT B. HOWORTH.

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*

RECORD OF PROCEEDINGS.

BLAKE & REDDEN
17, Victoria Street, S.W.1,
for the Attorneys-General of Alberta and Saskatchewan.

CHARLES RUSSELL & CO.,
37, Norfolk Street, Strand, W.C.,
for The Attorney-General of Canada.

LAWRENCE JONES & CO.,
Winchester House, Old Broad Street, E.C.2,
for The Canadian Bankers' Association and The Mortgage Loans Association of Alberta.

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,

— AND —

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

APPENDIX OF STATUTES

TO CASE OF THE RESPONDENTS THE CANADIAN BANKERS' ASSOCIATION and THE MORTGAGE LOANS ASSOCIATION OF ALBERTA.

INDEX

BRITISH NORTH AMERICA ACT, 30 VICTORIA, CHAPTER 3.

VI. DISTRIBUTION OF LEGISLATIVE POWERS.

Powers of the Parliament.

Legislative Authority of Parliament of Canada.

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

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, 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.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.

24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within 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.

Exclusive Powers of Provincial Legislatures.

Subjects of exclusive Provincial Legislation.

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,—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.
2. Direct Taxation within the Province in order to the Raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licenses in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

10. Local Works and Undertakings other than such as are of the following Classes:—

(*a*) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

(*b*) Lines of Steam Ships between the Province and any British or Foreign Country:

Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.

12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.

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.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely local or private Nature in the Province.

* * * * * * *

VII. JUDICATURE.

Appointment of Judges.

96. The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

Selection of Judges in Ontario, etc.

97. Until the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and the Procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor General shall be selected from the respective Bars of those Provinces.

Selection of Judges in Quebec.

98. The Judges of the Courts of Quebec shall be selected from the Bar of that Province.

Tenure of office of Judges of Superior Courts.

99. The Judges of the Superior Courts shall hold office during good Behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.

Salaries, etc., of Judges.

100. The Salaries, Allowances, and Pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in Cases where the Judges thereof are for the Time being paid by Salary, shall be fixed and provided by the Parliament of Canada.

General Court of Appeal, etc.

101. The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time, provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.

REVISED STATUTES OF CANADA, 1927, CHAPTER 1.

AN ACT RESPECTING THE FORM AND INTERPRETATION OF STATUTES.

Short Title.

Short title.

1. This Act may be cited as the Interpretation Act. R.S., c. 1, s. 1.

Rules of Construction.

* * * * * * *

Incorporation, effect of.

30. In every Act, unless the contrary intention appears, words making any association or number of persons a corporation or body politic and corporate shall

(*a*) vest in such corporation power to sue and be sued, to contract and be contracted with by their corporate name, to have a common seal, to alter or change the same at their pleasure, to have perpetual succession, to acquire and hold personal property or movables for the purposes for which the corporation is constituted, and to alienate the same at pleasure;

* * * * * * *

REVISED STATUTES OF CANADA, 1927, CHAPTER 11, AS AMENDED.

AN ACT RESPECTING BANKRUPTCY.

Short Title.

Short title.

1. This Act may be cited as the Bankruptcy Act. 1919, c. 36, s. 1.

Interpretation.

Definitions.

2. In this Act, unless the context otherwise requires or implies, the expression

* * * * * * *

"Insolvent person". "Insolvent".

(*u*) "insolvent person" and "insolvent" includes a person, whether or not he has done or suffered an act of bankruptcy,

(i) who is for any reason unable to meet his obligations as they generally become due, or

(ii) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due, thereout;

* * * * * * *

PART I.

Bankruptcy and Receiving Orders.

Acts of Bankruptcy.

Acts of bankruptcy.

3. A debtor commits an act of bankruptcy in each of the following cases:—

Assignment.

(*a*) If in Canada or elsewhere he makes an assignment of his property to a trustee for the benefit of his creditors generally, whether it is an assignment authorized by this Act or not;

Fraudulent conveyance.

(*b*) If in Canada or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof;

(*c*) If in Canada or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this Act be void as a fraudulent preference if he were adjudged bankrupt; Fraudulent preference.

(*d*) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of Canada, or, being out of Canada, remains out of Canada, or departs from his dwelling house or otherwise absents himself, or begins to keep house; Absconding.

(*e*) If he permits any execution or other process issued against him under which any of his goods are seized, levied upon or taken in execution to remain unsatisfied until within four days from the time fixed by the sheriff for the sale thereof, or for fourteen days after such seizure, levy or taking in execution, or if the goods have been sold by the sheriff or the execution or other process has been held by him after written demand for payment without seizure, levy or taking in execution or satisfaction by payment for fourteen days, or if it is returned endorsed to the effect that the sheriff can find no goods whereon to levy or to seize or take: Provided that where interpleader proceedings have been instituted in regard to the goods seized, the time elapsing between the date at which such proceedings were instituted and the date at which such proceedings are finally disposed of, settled or abandoned, shall not be taken into account in calculating any such period of fourteen days; Execution unsatisfied, goods sold by sheriff or no goods to be found. Proviso.

(*f*) If he exhibits to any meeting of his creditors any statement of his assets and liabilities which shows that he is insolvent, or presents or causes to be presented to any such meeting a written admission of his inability to pay his debts; Exhibits statement showing insolvency.

(*g*) If he assigns, removes, secretes or disposes of or attempts or is about to assign, remove, secrete or dispose of any of his goods with intent to defraud, defeat or delay his creditors or any of them; Intent to defraud.

(*h*) If he makes any bulk sale of his goods without complying with the provisions of any Bulk Sales Act applicable to such goods in force in the province within which he carries on business or within which such goods are at the time of such bulk sale; Bulk sale.

(*i*) If he gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts; Notice of suspension of payment.

(*j*) If he ceases to meet his liabilities generally as they become due. 1919, c. 36, s. 3; 1922, c. 8, s. 3; 1923, c. 31, s. 3. Ceasing to meet liabilities.

Petition and Receiving Order.

Bankruptcy petition.

4. Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy a creditor may present to the court a bankruptcy petition.

* * * * * * *

PART II.

Assignments and Compositions.

Assignments.

Where liabilities exceed $500.

9.—(1) Any insolvent debtor (other than a resident in the province of Quebec engaged solely in farming or the tilling of the soil) whose liabilities to creditors, provable as debts under this Act, exceed five hundred dollars, may, at any time prior to the making of a receiving order against him, make an assignment of all his property for the general benefit of his creditors.

* * * * * * *

Composition, Extension or Scheme of Arrangement.

Composition, extension, or scheme of arrangement.

11. Where an insolvent debtor intends to make a proposal for

(*a*) a composition in satisfaction of his debts; or

(*b*) an extension of time for payment thereof, or

(*c*) a scheme of arrangement of his affairs;

he may, after the making of a receiving order against him or the making of an authorized assignment by him, require in writing the trustee duly appointed to convene at the office of such trustee a meeting of such debtor's creditors for the consideration of such proposal.

* * * * * * *

PART III.

General.

* * * * * * *

Stay of Proceedings.

Stay of proceedings.

24. On the making of a receiving order or authorized assignment, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor or shall commence or continue any action, execution or other proceedings for the recovery of a debt provable in bankruptcy unless with the leave of the court and on such terms as the court may impose.

Secured creditors.

(2) Subject to the provisions of sections one hundred and six to one hundred and thirteen inclusive, any secured creditor or person holding security on the property of the debtor may realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed, unless the court otherwise orders.

Proviso as to rights of secured creditor or person holding security.

(3) The court shall not, however, in so ordering have power to postpone the right of any such secured creditor or person holding security on the property of the debtor as aforesaid to realize or otherwise deal with his security as aforesaid, except as hereinafter provided, namely:—

(*a*) In the case of a security for a debt due at the date of the receiving order or authorized assignment or which becomes due not later than six months thereafter, such right shall not be postponed for more than six months from such date;

(*b*) In the case of a security for a debt which does not become due until more than six months from the date of the receiving order or authorized assignment, such right shall not be postponed for more than six months from such date, unless all instalments of interest which are more than six months in arrears are paid and all other defaults of more than six months standing are cured, and then, only so long as no instalment of interest remains in arrears or defaults remain uncured for more than six months, but, in any event, not beyond the date at which the debt secured by such security becomes payable under the instrument or law creating the security, except under paragraph (*a*) hereof. 1923, c. 31, s. 10.

AN ACT RELATING TO BILLS OF EXCHANGE, CHEQUES AND PROMISSORY NOTES.

Short Title.

Short title.

1. This Act may be cited as the Bills of Exchange Act. R.S., c. 119, s. 1.

* * * * * * *

PART II.

Bills of Exchange.

* * * * * * *

Rights and Powers of Holder.

Rights of holder.

74. The rights and powers of the holder of a bill are as follows:—

May sue.

(*a*) He may sue on the bill in his own name;

Prior defects.

(*b*) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;

Title from him.

(*c*) Where his title is defective, if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and

Discharge from him.

(*d*) Where his title is defective if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill. R.S., c. 119, s. 74.

Presentment for Acceptance.

* * * * * * *

Recourse in such case.

82. Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance an immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentment for payment is necessary. R.S., c. 119, s. 82.

* * * * * * *

Liabilities of Parties.

* * * * * * *

Measure of damages.

134. Where a bill is dishonoured, the measure of damages which shall be deemed to be liquidated damages shall be,

(*a*) the amount of the bill; Amount of bill.

(*b*) interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case; Interest.

(*c*) the expenses of noting and protest. R.S., c. 119, s. 134. Expense.

135. In case of the dishonour of a bill the holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior endorser, the damages aforesaid. R.S., c. 119, s. 135. Recovery of same.

136. In the case of a bill which has been dishonoured abroad in addition to the damages aforesaid, the holder may recover from the drawer or any endorser, and the drawer or an endorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment. R.S., c. 119, s. 136. Re-exchange and interest.

* * * * * * *

Discharge of Bill.

* * * * * * *

140. Subject to the provisions aforesaid as to an accommodation bill, when a bill is paid by the drawer or an endorser, it is not discharged; but, Payment by drawer or endorser.

(*a*) where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill; Gives rights.

(*b*) where a bill is paid by an endorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements, and again negotiate the bill. R.S., c. 119, s. 140. Second negotiation.

* * * * * * * *

PART IV.

Promissory Notes.

* * * * * * *

186. Subject to the provisions of this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes. Application of Act to notes.

Terms corresponding.

(2) In the application of such provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

Provisions inapplicable.

(3) The provisions of this Act as to bills relating to

(*a*) presentment for acceptance;

(*b*) acceptance;

(*c*) acceptance *supra* protest;

(*d*) bills in a set;

do not apply to notes. R.S., c. 119, s. 186.

REVISED STATUTES OF CANADA, 1927, CHAPTER 28.

AN ACT RESPECTING LOAN COMPANIES.

Short Title.

1. This Act may be cited as the Loan Companies Act. 1914, c. 40, s. 1. Short title.

PART I.

Interpretation.

2. In this Act, unless the context otherwise requires, Definitions.

(*a*) "Minister" means the Minister of Finance and Receiver General; "Minister".

* * * * * * *

(*d*) "Superintendent" means the Superintendent of Insurance; "Superintendent".

* * * * * * *

Powers of the Company.

61. The company may invest its funds in Debentures, bonds, stocks, and securities of Canada, Provinces, Great Britain, United States, etc.

* * * * * * *

(*f*) mortgages or hypothecs on improved real estate or leaseholds, but the amount paid for any such mortgage or hypothec shall in no case exceed sixty per cent. of the value of the real estate or leaseholds covered thereby. Mortgages on improved real estate.

(2) The company may lend its money on the security of Loans.

* * * * * * *

(*c*) improved real estate or leaseholds: Provided, however, that no such loan shall exceed sixty per cent. of the value of the real estate or leaseholds which forms the security for such loan, but this proviso shall not prohibit a company from accepting as part payment for real estate sold by it, a mortgage or hypothec thereon for more than sixty per cent. of the sale price of such real estate. Improved real estate.

* * * * * * *

Borrowing Powers.

Borrowing.

64. The company may borrow money and may issue its bonds, debentures or other securities for moneys borrowed.

How bonds made payable.

(2) Bonds and debentures so issued may be made payable to order or to bearer or to registered holder or otherwise as the company deems advisable. 1914, c. 40, s. 64.

Deposits. Limit of amount to be held.

65. The company may receive money on deposit upon such terms as to interest, security, time and mode of repayment and otherwise as may be agreed upon, but the amount held on deposit shall not at any time, except as authorized by subsection two of this section, exceed the aggregate amount of its then actually paid up and unimpaired capital stock and of its cash actually in hand or deposited in any chartered bank in Canada, or such larger amount as may be authorized by the company's Act of incorporation.

Amount held on deposit increased by by-law.

(2) The company may, by by-law passed by the directors and approved by at least a three-fourths vote of the shareholders present or represented by proxy at the annual or other general meeting of the company duly called for the purpose of considering the same, increase the amount which may be received on deposit under the provisions of subsection one hereof to such an amount as the said by-law may provide, subject to the provisions of section sixty-eight of this Act and to the following conditions:—

Notice of meeting to pass by-law.

(*a*) A copy of such by-law and notice of meeting of shareholders called to approve the same shall be sent and given by registered mail to every registered debenture holder resident outside of Canada or to the chief agent or chief agents of the company for the sale of debentures of the company outside of Canada at least thirty days before the date for which the said meeting is called;

Notice in *Gazette*.

(*b*) A notice of the by-law and of the meeting of the shareholders called to approve the same shall be given in the *Canada Gazette* at least thirty days before the date for which the said meeting is called and such notice shall be continued for the space of four weeks;

By-law to provide for redemption of debentures when required by objecting debenture-holder.

(*c*) The said by-law shall provide that any debenture holder of the company who, within sixty days after the approval of the same by the shareholders, notifies the company in writing that he objects to the said by-law and makes application for the redemption of any debenture of the company held by him shall be entitled to have such debenture redeemed according to its terms on the first interest date following the receipt by the company of the said notice, and the company shall on the said interest date redeem the said debenture.

(3) All deposits of money received by the company under the provisions of this section on and after the first day of January, one thousand nine hundred and twenty-three, shall be, and be deemed to have been, received on the condition that the company shall have the right to require at least thirty days' notice for the withdrawal of the amount so deposited or any portion thereof. Notice for withdrawal of deposits.

(4) The company shall at all times maintain Reserves.

(*a*) cash on deposit in chartered banks in Canada or in joint stock banks of Great Britain; or Cash.

(*b*) securities of or guaranteed by the Government of Canada, or of or guaranteed by any province of Canada, or of or guaranteed by Great Britain, or of any municipal or school corporation in Canada; or Securities.

(*c*) loans payable on demand and fully secured by such securities; or Loans.

(*d*) a credit from chartered banks in Canada or from joint stock banks of Great Britain, subject to conditions approved by the Superintendent, Credits.

to an aggregate amount of at least twenty per cent. of the amount of money deposited with the company. 1922, c. 31, s. 4. To an aggregate of at least 20 per cent. of amount deposited.

* * * * * * *

Inspection.

71. The Superintendent shall visit personally or cause a duly qualified member of his staff to visit, at least once in each year, the head office of each company required by this Act to make returns to the Minister, and to examine carefully the statements of the condition and affairs of each company, and report thereon to the Minister as to all matters requiring his attention and decision. Examination and report on condition of company.

(2) For the purpose of such examination the company shall prepare and submit to the Superintendent such statement or statements with respect to the business, finances or other affairs of the company, in addition to that mentioned in the last preceding section, as the Superintendent may require, and the officers, agents and servants of the company shall cause their books to be open for inspection, and shall otherwise facilitate such examination so far as it is in their power. Inspection of books.

(3) The company shall on the request of the Superintendent file with the Superintendent a certified copy of its by-laws, and notice of every repeal, or addition to, or amendment of, its by-laws shall be filed by the company with the Superintendent within one month after the date of such repeal, addition or amendment. Certified copy of by-laws to be filed with superintendent.

Oaths.

(4) The Superintendent may examine under oath the officers, agents or servants of the company for the purpose of obtaining any information which he deems necessary for the purpose of such examination.

Annual report.

(5) The Superintendent shall also prepare for the Minister from the said statements, an annual report, showing the full particulars of each company's business. 1920, c. 14, s. 2; 1927, c. 61, s. 4.

166. (Thanks has been included.)

REVISED STATUTES OF CANADA, 1927, CHAPTER 29.

AN ACT RESPECTING TRUST COMPANIES.

Short Title.

1. This Act may be cited as the Trust Companies Act. 1914, c. 55, s. 1. Short title.

Interpretation.

2. In this Act, unless the context otherwise requires, Definitions.

* * * * * * *

(*b*) "Minister" means the Minister of Finance and Receiver General; "Minister".

* * * * * * *

(*e*) "Superintendent" means the Superintendent of Insurance; "Superintendent".

* * * * * * *

Powers of the Company.

62. The company may Business.

(*a*) receive money in trust for the purposes herein specified, and invest and accumulate it at such lawful rates of interest as may be obtained therefor;

* * * * * * *

(*e*) guarantee repayment of the principal or payment of the interest, or both, of any moneys entrusted to the company for investment, on such terms and conditions as are agreed upon;

* * * * * * *

Investments.

63. The company may invest trust money in Investment of trust moneys.

* * * * * * *

(*b*) first mortgages or hypothecs upon improved freehold real estate in Canada;

* * * * * * *

(2) The company may lend trust money upon the security of Lending of trust moneys.

* * * * * * *

(*b*) improved freehold real estate in Canada by way of first mortgage or hypothec thereon.

Amount of loans.

(3) The amount loaned upon the security of real estate or invested in or loaned upon the security of any mortgage or hypothec upon real estate shall not exceed sixty per cent. of the value of the real estate which forms the security for such loan or investment.

* * * * * * *

Investment of company's funds in debentures, bonds, stocks and securities of Canada, Provinces, Great Britain, United States, etc.

67. The company may invest its own funds in

* * * * * * *

(*f*) mortgages or hypothecs on improved real estate or leaseholds in Canada, but the amount paid for any such mortgage or hypothec shall in no case exceed sixty per cent. of the value of the real estate or leaseholds covered thereby.

* * * * * * *

Loans.

(3) The company may lend its own funds on the security of

* * * * * * *

Improved real estate.

(*c*) improved real estate or leasehold in Canada; but no such loan shall exceed sixty per cent. of the value of the real estate or leasehold which forms the security for such loan, but this provision shall not prohibit a company from accepting as part payment for real estate sold by it, a mortgage or hypothec thereon for more than sixty per cent. of the sale price of such real estate.

* * * * * * *

Inspection.

72. (Similar to Section 71 of the Loan Companies Act.)

REVISED STATUTES OF CANADA, 1927, CHAPTER 102.

AN ACT RESPECTING INTEREST.

Short Title.

1. This Act may be cited as the Interest Act. R.S., c. 120, s. 1. Short title.

Rate of Interest.

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. R.S., c. 120, s. 2. No restriction as to rate except as provided by statute.

STATUTES OF CANADA, 1932, 22-23 GEORGE V, CHAPTER 46, AS AMENDED.

AN ACT RESPECTING CANADIAN AND BRITISH INSURANCE COMPANIES.

[*Assented to 26th May, 1932.*]

Preamble.

WHEREAS it is desirable to define the status and powers of insurance companies incorporated by the Parliament of Canada, and by the Legislature of the late Province of Canada, and to prescribe the limitations to be placed on the exercise of such powers; and

WHEREAS it is desirable to provide for the registration of such companies and of British insurance companies which may desire to carry on the business of insurance in Canada, and for the voluntary registration of provincial companies; and

WHEREAS the said companies incorporated by the Parliament of Canada and by the Legislature of the late Province of Canada, carry on business in more than one Province of Canada and many of them carry on business in Great Britain, the other Dominions and foreign countries; and

WHEREAS the said British insurance companies, when permitted to carry on business in Canada, carry on business in more than one province; and

WHEREAS the insurance business transacted within and outside of Canada by companies incorporated by the Parliament of Canada, and by the Legislature of the late Province of Canada, and within Canada by British insurance companies, constitutes an important factor in the international and interprovincial trade and commercial relations of Canada; and

WHEREAS it is contrary to the public interest that insurance companies which are unable to discharge their liabilities to policyholders in Canada as they become due, or are otherwise insolvent, should be permitted to carry on the business of insurance in Canada; and

WHEREAS it is desirable to provide by a system of returns and inspection against such companies engaging in, or continuing to carry on, business in Canada while unable to discharge their liabilities to such policyholders as they become due or while otherwise insolvent, and to declare the conditions upon which such companies shall be deemed to be insolvent and be subject to be wound up under the provisions of the *Winding-up Act*. 1934, c. 27, s. 1.

* * * * * * *

1. This Act may be cited as *The Canadian and British Insurance Companies Act, 1932.* Short title.

2. In this Act, unless the context otherwise requires,— Definitions.

* * * * * * *

(*d*) "company" means any corporation incorporated under the laws of the Dominion of Canada or of the late Province of Canada, for the purpose of carrying on the business of insurance, and includes "fraternal benefit society" as defined by this Act; "Company".

* * * * * * *

(*h*) "Minister" means the Minister of Finance; "Minister".

* * * * * * *

(*o*) "Superintendent" means the Superintendent of Insurance. 1934, c. 27, s. 2. "Superintendent".

* * * * * * *

PART III.

Certificates of Registry.

* * * * * * *

49. The powers of any company to transact the business of insurance shall not be exercised unless the company is registered and holds a certificate of registry from the Minister. 1934, c. 27, s. 2. Registration and certificate of registry required.

* * * * * * *

Investments.

60. Save as hereinafter provided, any company registered under this Act may invest its funds, or any portion thereof, in the purchase of Investment of company's funds.

* * * * * * *

(*c*) ground rents, mortgages or hypothecs on real estate in Canada, or elsewhere where such company is carrying on its business, provided that the amount paid for any such mortgage or hypothec shall in no case exceed sixty per cent. of the value of the real estate covered thereby; or Real estate mortgages.

* * * * * * *

(2) Any such company may lend its funds or any portion thereof on the security of Lending funds.

* * * * * * *

(*b*) real estate or leaseholds for a term or terms of years or other estate or interest therein in Canada or elsewhere where the company is carrying on business: Provided, however, that no such loan shall exceed sixty per cent. of the value of the real estate or interest therein which forms the security for such loan, but this proviso shall not be deemed to prohibit a company from accepting as part payment for real estate sold by it, a mortgage or hypothec thereon for more than sixty per cent. of the sale price of such real estate. 1934, c. 27, s. 11.

Proviso.

* * * * * * *

Statements and Returns.

Annual statement.

65. The president, vice-president or managing director or other director appointed for the purpose by by-law or by the board of directors, and the secretary, actuary or manager of every company registered under this Act, shall prepare annually under their oaths, a statement of the condition and affairs of the company on the thirty-first day of December in each year, which shall exhibit the assets and liabilities of the company, and its income and expenditure during the year then ended, and such other information as is deemed necessary by the Minister from time to time.

Declaration in annual statement.

(2) Every company shall, at the time of making its annual statement of Canadian business, declare any change which has been made, since the date of deposit of its next preceding annual statement, in the charter, Act of incorporation or articles of association of the company, and any change which has been made in the head office of the company.

Forms of annual statements.

(3) The annual statement shall be in such form or forms as may, from time to time, be determined by the Minister for the purposes of this Act, and shall be deposited in the Department within two months after the first day of January in each year. 1934, c. 27, s. 16.

* * * * * * *

Inspection and Report by Superintendent.

Duties of Superintendent.

68. The Superintendent shall

Securities.

(*a*) enter in a book, under the heading of each company, the securities deposited on its account with the Minister naming in detail the several securities, their par value, their date of maturity, and value at which they are received as deposit; and such book shall be open to public inspection;

Report as to being eligible for registration.

(*b*) in each case, before the granting of any certificate of registry, or the renewal of any such certificate, make a report to the Minister that the requirements of this Act have been complied with, and that from the statement of the affairs of the company it is in a condition to meet its liabilities;

(*c*) keep a record of the certificates of registry as they are granted; Record of certificates.

(*d*) visit personally, or cause a duly qualified member of his staff to visit, the head office of each company in Canada, at least once in every year, and examine the statements of the condition and affairs of each company, and report thereon to the Minister as to all matters requiring his attention and decision; Visit head office.

(*e*) prepare for the Minister, from the said statements, an annual report, giving full particulars of the condition and affairs of each company. 1934, c. 27, s. 19. Annual report.

AN ACT TO FACILITATE COMPROMISES AND ARRANGEMENTS BETWEEN COMPANIES AND THEIR CREDITORS.

[*Assented to 23rd May,* 1933.]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

1. This Act may be cited as *The Companies' Creditors Arrangement Act, 1933.*

Definitions.

2. In this Act, including this section,—

"Court".

(*a*) "Court" means in Ontario, the Supreme Court; in Quebec, the Superior Court; in Nova Scotia, New Brunswick, British Columbia, Prince Edward Island and Alberta, the Supreme Court for each of those provinces; in Manitoba, the Court of King's Bench; in Saskatchewan, the Court of King's Bench; and in the Yukon Territory, the Territorial Court;

"Company".

(*b*) "Company" means any company or corporation incorporated by or under the authority of an act of the Parliament of Canada or by or under the authority of an act of any province of Canada and any incorporated company having assets or doing business in Canada, wheresoever incorporated, except banks, railway or telegraph companies, insurance companies and trust companies organized under or governed by the *Trust Companies Act* and loan companies organized under or governed by the *Loan Companies Act*;

"Debtor company".

(*c*) "Debtor company" means any company which is bankrupt or insolvent or which has committed an act of bankruptcy within the meaning of the *Bankruptcy Act* or which is deemed insolvent within the meaning of the *Winding-up Act,* whether or not proceedings in respect of such company have been taken under either the *Winding-up Act* or the *Bankruptcy Act,* or which has made an authorized assignment or against which a receiving order has been made under the *Bankruptcy Act,* or which is in course of being wound up under the *Winding-up Act* because the company is insolvent;

(*d*) "Shareholder" means a shareholder or member of any company to which this Act applies; "Shareholder".

(*e*) "Province" means a province or territory of the Dominion of Canada; "Province".

(*f*) "Secured creditor" means a holder of a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, all or any property of a debtor company as security for indebtedness of the debtor company, or a holder of any bond, debenture, debenture stock or other evidence of indebtedness of a debtor company secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or an assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, whether any such holder or beneficiary be resident or domiciled within or without Canada; and a trustee under any trust deed or other instrument securing any such bonds, debentures, debenture stock or other evidences of indebtedness shall be deemed to be a secured creditor for all purposes of this Act except voting at a creditors' meeting in respect of any such bonds, debentures, debenture stock or other evidences of indebtedness; "Secured creditor".

(*g*) "Unsecured creditor" means any creditor of a company who is not a secured creditor, whether resident or domiciled within or without Canada. "Unsecured creditor".

PART I.

3. Where a compromise or arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the Company, order a meeting of such creditors or class of creditors, and, if the court so determines, of the shareholders of such company, to be summoned in such manner as the court directs. Compromise with unsecured creditors.

4. Where a compromise or arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of such creditors or class of creditors, and, if the court so determines, of the shareholders of such company, to be summoned in such manner as the court directs. Compromise with secured creditors.

* * * * * * *

PART II.

Jurisdiction of Court to receive applications.

8. Any application under this Act may be made to the court having jurisdiction in the province within which the head office or chief place of business of the company in Canada is situate, or, if the company has no place of business in Canada, in the province within which any assets of the company may be situate.

Single judge may exercise powers, subject to appeal.

(2) The powers conferred by this Act upon the court may, subject to appeal as in this Act provided for, be exercised by a single judge thereof; and such powers may be exercised in chambers and either during term or in vacation.

STATUTES OF CANADA, 1934, 24-25 GEORGE V,
CHAPTER 53, AS AMENDED.

AN ACT TO FACILITATE COMPROMISES AND ARRANGEMENTS BETWEEN FARMERS AND THEIR CREDITORS.

[*Assented to 3rd July*, 1934.]

Whereas in view of the depressed state of agriculture the present indebtedness of many farmers is beyond their capacity to pay; and whereas it is essential in the interest of the Dominion to retain the farmers on the land as efficient producers and for such purpose it is necessary to provide means whereby compromises or rearrangements may be effected of debts of farmers who are unable to pay: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Farmers' Creditors Arrangement Act, 1934.* Short title.

Bankruptcy and Insolvency Provisions.

2.—(1) In this Act unless the context otherwise requires or implies, the expression Interpretation.

(*a*) "assignment" means an assignment made under the *Bankruptcy Act* by a farmer; "Assignment", "Petition", "Composition".

(*b*) "Board" means a board of review established under this Act; "Board".

* * * * * * *

(*d*) "creditor" includes a secured creditor and, notwithstanding the absence of privity of contract between the debtor and any of the persons hereinafter mentioned, a person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the debtor or any part thereof and, in case the debtor holds real property under an agreement of sale or under an assignment of an agreement of sale, the vendor of such property or any person entitled under an assignment by such vendor. 1938, c. 47, s. 1. "Creditor".

* * * * * * *

(*g*) "mortgage" includes a hypothec and also a deed of sale with a right of redemption; "Mortgage".

* * * * * * *

"Proposal".

(*j*) "proposal" means a proposal for a composition, extension of time or scheme of arrangement made hereunder. 1938, c. 47, s. 2.

Application of *Bankruptcy Act*. R.S., c. 11.

(2) Unless it is otherwise provided or the context otherwise requires, expressions contained in this Act shall have the same meaning as in the *Bankruptcy Act,* and this Act shall be read and construed as one with the *Bankruptcy Act,* but shall have full force and effect notwithstanding anything contained in the *Bankruptcy Act,* and the provisions of the *Bankruptcy Act* and Bankruptcy Rules shall, except as in this Act otherwise provided, apply *mutatis mutandis* in the case of proceedings hereunder including meetings of creditors.

* * * * * * *

Official Receivers.

3.—(1) The Governor in Council may appoint an Official Receiver or Receivers in each county or district or for any number of counties or districts of any province to which this Act applies as he may deem necessary or expedient.

In county, etc., where farmer resides.

(2) In the case of an assignment or petition an Official Receiver in the county or district where the farmer resides shall be the Official Receiver for the purposes of this Act and of the *Bankruptcy Act.*

Appointment.

(3) The Governor in Council may appoint any person to be an Official Receiver under this Act including the holder of any other office, whether Dominion or provincial, and the holder of any such office shall, notwithstanding anything contained in any other statute or law, be bound to perform the functions and duties of the Official Receiver.

Duties of Official Receiver.

(4) The Official Receiver shall, in the case of an assignment or petition by a farmer, perform the functions and duties of the Official Receiver, custodian and trustee under the *Bankruptcy Act* and the meetings of creditors shall be held at his office.

* * * * * * *

Compositions.

If farmer unable to meet his liabilities.

6.—(1) A farmer who is unable to meet his liabilities as they become due may make a proposal for a composition, extension of time or scheme of arrangement either before or after an assignment has been made.

Duties of Official Receiver.

(2) Such proposal shall be filed with the Official Receiver who shall forthwith convene a meeting of the creditors and perform the duties and functions required by the *Bankruptcy Act* to be performed by a trustee in the case of a proposal for a composition, extension of time or scheme of arrangement.

* * * * * * *

Farmer to execute necessary instruments.

10. Whenever a proposal has been approved by the court or whenever a proposal has been formulated and confirmed by the Board, as hereinafter provided, the court may order the farmer to execute any mortgage, conveyance or other instrument necessary to give effect to the proposal.

Court may annul composition in case of default. R.S., c. 11.

10A. Notwithstanding any of the provisions of the *Bankruptcy Act,* in any case where the affairs of a farmer have been arranged by means of a proposal for a composition, extension of time or scheme of arrangement approved by the Court or confirmed by the Board as in this Act provided, if the farmer defaults in carrying out any of the terms of the composition, extension or scheme aforesaid and if such default was not due to causes beyond the control of the farmer, the Court may, on the application of any secured or unsecured creditor, annul the composition, extension of time or scheme of arrangement, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done under or in pursuance of the composition, extension or scheme.

Farmer deemed to have committed act of bankruptcy.

(2) In any case where the Court has annulled the composition, extension of time or scheme of arrangement as provided in the next preceding subsection, the farmer shall be deemed to have committed an act of bankruptcy within the meaning of section three of the *Bankruptcy Act* and Part I of the *Bankruptcy Act* shall notwithstanding section seven thereof apply to such farmer. 1938, c. 47, s. 5.

Stay of proceedings. R.S., c. 11.

11.—(1) On the filing with the Official Receiver of a proposal, no creditor whether secured or unsecured, shall have any remedy against the property or person of the debtor, or shall commence or continue any proceedings under the *Bankruptcy Act,* or any action, execution or other proceedings for the recovery of a debt provable in bankruptcy, or the realization of any security unless with leave of the court and on such terms as the court may impose: Provided, however, that the stay of proceedings herein provided shall only be effective until the date of the final disposition of the proposal. 1938, c. 47, s. 6.

Preservation of property.

(2) On a proposal being filed the property of the debtor shall be deemed to be under the authority of the court pending the final disposition of any proceedings in connection with the proposal and the court may make such order as it deems necessary for the preservation of such property.

* * * * * * *

Provincial Boards of Review.

Board of Review.

12.—(1) The Governor in Council may, whenever he considers it expedient, establish in any province one or more Boards of Review which shall exercise in such province the jurisdiction hereinafter provided. 1938, c. 47, s. 7.

Appointment of Commissioners.

(2) A Board shall consist of a Chief Commissioner and two Commissioners who shall be appointed by the Governor in Council and shall hold office during pleasure and shall receive such remuneration as the Governor in Council may provide.

Chief Commissioner to be a judge.

(3) The Chief Commissioner shall be a judge of the court of the province invested with original or appellate jurisdiction in bankruptcy by the *Bankruptcy Act,* and one Commissioner shall be appointed as a representative of creditors and one Commissioner shall be appointed as a representative of debtors. In the event of any Commissioner other than the Chief Commissioner being unable to hear and deal with any case for any reason considered sufficient by the remaining Commissioners, then the remaining Commissioners shall name an *ad hoc* Commissioner to hear and deal with such case with all the powers of the Commissioner whose place he takes. In the event of the Chief Commissioner being unable to hear and deal with any case on the request of the other Commissioners the Minister shall name an *ad hoc* Chief Commissioner with all the powers of the Chief Commissioner. 1935, c. 20, s. 4.

Proposal.

(4) In any case where the Official Receiver reports that a farmer has made a proposal but that no proposal has been approved by the creditors, the Board shall, on the written request of a creditor or of the debtor, endeavour to formulate an acceptable proposal to be submitted to the creditors and the debtor, and the Board shall consider representations on the part of those interested.

If proposal approved.

(5) If any such proposal formulated by the Board is approved by the creditors and the debtor, it shall be filed in the court and shall be binding on the debtor and all the creditors.

Board may confirm proposal.

(6) If the creditors or the debtor decline to approve the proposal so formulated, the Board may nevertheless confirm such proposal, either as formulated or as amended by the Board, in which case it shall be filed in the Court and shall be binding upon all the creditors and the debtor as in the case of a proposal duly accepted by the creditors and approved by the Court. 1935, c. 20, s. 5.

Requests dealt with by the full Board. Proviso.

(7) Every request to formulate a proposal shall be dealt with by the full Board, but a determination of the majority shall be deemed to be the determination of the Board. Provided that the Board may direct any one or more of its members on its behalf to inspect and investigate any or all circumstances of any request for review and report to the Board. 1935, c. 20, s. 6.

How Board to base its proposal.

(8) The Board shall base its proposal upon the present and prospective capability of the debtor to perform the obligations prescribed and the productive value of the farm.

(9) The Board may decline to formulate a proposal in any case where it does not consider that it can do so in fairness and justice to the debtor or the creditors. Board may decline to formulate a proposal.

(10) For the purposes of the performance of its duties and functions hereunder a Board shall have the powers of a Commissioner appointed under the *Inquiries Act*. Powers under *Inquiries Act*.

(11) Notwithstanding anything contained in the *Bankruptcy Act*, an insolvent debtor resident in the Province of Quebec, engaged solely in farming or the tilling of the soil, whose liabilities to creditors provable as debts under the *Bankruptcy Act* exceed five hundred dollars, may make an assignment for the general benefit of his creditors in any case where the Board declines to formulate a proposal and certifies that in its opinion the debtors' affairs can best be administered under the *Bankruptcy Act*. 1935, c. 20, s. 7. Assignments by insolvent farmers in Quebec.

(12) If, in the case of a proposal filed prior to the coming into force of this subsection, a debt secured by mortgage, hypothec, pledge, charge, lien or privilege on or against any property of the farmer (hereinafter referred to as the secured debt) has not, by reason of the absence of privity of contract between the farmer and a secured creditor as herein defined, been dealt with by way of a composition, extension of time or scheme of arrangement, the farmer shall be entitled to have the proposal proceeded with or to file a new proposal, in either case, for the purpose of having the secured debt dealt with by way of composition, extension of time or scheme of arrangement in the like manner and with the like results as if this subsection had been in force at the date of the filing of the original proposal. 1938, c. 47, s. 1. Proposal filed prior to commencement of this Act.

(13) In the case of a proposal formulated by a Board of Review prior to the coming into force of this subsection whereby a secured debt was dealt with, the farmer shall, notwithstanding the absence of privity of contract between himself and a secured creditor as herein defined, be entitled to have such proposal confirmed by the Board of Review in the like manner and with the like results as if this subsection had been in force at the date of the filing of his proposal by the farmer, or if such proposal was confirmed prior to the coming into force of this subsection it shall be binding as if it had been confirmed after the coming into force of this subsection. 1938, c. 47, s. 1. Proposal formulated by a Board of Review prior to the commencement of this Act.

(14) The provisions of the two next preceding subsections of this section shall not apply in any case where by an order or judgment of a Court of competent jurisdiction the title of any farmer to any lands or chattels has been extinguished prior to the coming into force of such subsections. 1938, c. 47, s. 1. If title has been extinguished prior to the commencement of this Act.

ALBERTA RULES OF COURT
(THE CONSOLIDATED RULES OF THE SUPREME COURT) 1914, AS AMENDED.

* * * * * * *

Time to sue our *fi. fa.* to enforce payment of money or costs.

583. Every person to whom any sum of money or any costs are payable under a judgment shall be entitled immediately to issue one or more writs of *fieri facias* to enforce payment thereof, subject nevertheless as follows:—

(*a*) If the judgment is for payment within a period therein mentioned the writ shall not be issued until after the expiration of such period unless otherwise ordered.

(*b*) The court or judge may at or after the time of giving judgment stay execution for such period as shall seem just, or may remove or extend any stay already granted. (338, 364; E. 595; O. 843.)

* * * * * * *

603a. Every writ of execution for recovery of money shall be in Form E in schedule hereto with such variations as circumstances may require.

* * * * * * *

FORM E.

Rule 603a.

Writ of Execution.

Canada
Province of Alberta } In the ..... Court of .....
.....

BETWEEN:

....., Plaintiff,

—and—

....., Defendant.

GEORGE the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, KING, Defender of the Faith, Emperor of India, to the Sheriff of the Judicial District of ..... GREETING;

WE COMMAND YOU that of the goods or lands of ..... in the Judicial District of ..... you cause to be made ..... dollars and ..... cents, which the ..... lately by a judgment of this court in this action dated the ..... day of ....., 19...., recovered against him and also the further sum of ..... dollars and ..... cents for the costs, taxed to the .... in respect of the said judgment together with interest at the legal rate on both of the said sums from the date of the said judgment, and also the amount of any costs subsequent to the said judgment, certified to be payable by the execution debtor to the execution creditor, and in respect whereof this writ shall be endorsed with a direction to levy the same pursuant to Rule 645 of the Consolidated Rules of the Supreme Court, together with interest thereon at the rate of aforesaid from the date of such certificate;

AND THAT YOU HAVE the said money before and make appear in what manner you shall have executed this writ to the said court at ..... immediately after the execution thereof together with this writ.

Issued at the ..... of ....., in the Province of Alberta this ..... day of ....., A.D. 19....

.....
Clerk of the Court.

STATUTES OF ALBERTA, 1937, 1 GEORGE VI, CHAPTER 9.

AN ACT TO AMEND AND CONSOLIDATE THE DEBT ADJUSTMENT ACT, 1936.

[*Assented to June* 17, 1937.]

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

Short title.

1. This Act may be cited as "*The Debt Adjustment Act,* 1937".

Preliminary.

Definitions.

2. In this Act, unless the context requires a contrary meaning,—

"Board".

(*a*) "Board" means the Debt Adjustment Board constituted pursuant to this Act;

"Clerk".

(*b*) "Clerk" means the clerk in a judicial district and the deputy clerk in a sub-judicial district;

"Family corporation".

(*c*) "Family corporation" means a corporation, seventy-five per cent. of the stock of which is owned or controlled directly or indirectly by the members of one family, one or more of which members reside in Alberta and take an active part in the business operations of the corporation; or a corporation eighty per cent. of the stock of which is owned by persons actively employed in the business of the corporation or by such persons and their families;

"Judicial District".

(*d*) "Judicial district" includes a sub-judicial district;

"Resident Debtor".

(*e*) "Resident debtor" means a person who is a debtor and who is an actual resident of and personally living in the Province, and includes the personal representative or representatives, son, daughter, widow or widower, of a deceased resident debtor, and includes a family corporation which is a debtor and has its head office or principal place of business in the Province;

"Sheriff".

(*f*) "Sheriff" includes the deputy sheriff in a sub-judicial district.

Constitution of Board.

3. The Lieutenant Governor in Council may from time to time,—

(*a*) constitute a Board to be known as the Debt Adjustment Board, to have the general supervision and administration of this Act, consisting of either one, two or three persons, as the Lieutenant Governor may from time to time determine and prescribe the remuneration and duties of the persons appointed as the members of the Board;

(*b*) appoint such officers, clerks and employees as may be deemed necessary who shall be under the direct control of the Board;

(*c*) appoint for any designated areas one or more committees consisting of not more than three persons for the purpose of co-operating with the Board in the administration of this Act within the designated area and prescribe the powers and duties thereof;

(*d*) prescribe rules and regulations for the due administration of this Act and as to the procedure upon any proceeding under this Act, and prescribe forms, and prescribe and fix a tariff of the fees to be taken or received by any person on account of service performed by him in the course of any such proceeding or in respect of any act or thing done by such person in pursuance of this Act;

(*e*) protect any property seized under this Act against seizure in any other proceedings or for any other reason.

Agents of Board and their powers.

4. The Debt Adjustment Board may appoint such person or persons to act on its behalf as it deems advisable for the purpose of facilitating the administration of this Act and may, subject to the approval of the Lieutenant Governor in Council, confer upon any person or persons so appointed such powers as it may deem expedient including power to grant or refuse permits; to make compromises between creditors and debtors and to make orders or issue directions which the Board is authorized to make or issue under the provisions of this Act.

Powers of Board exercisable by every member.

5. All the powers and authority by this Act conferred upon the Board shall be deemed to be conferred upon and shall be exercisable by every member thereof.

Inquiries.

6. The Board and any person authorized by the Board in writing may make all such inquiries as may be from time to time deemed advisable with regard to the property of any resident debtor and as to the disposition of the property of any such person, and for that purpose the Board or any person authorized by the Board in writing may examine under oath any such resident farmer or resident home owner and his servants and agents, and any person who appears to the Board, or any person authorized by the Board in writing, to have any knowledge of the affairs of the resident farmer or resident home owner, and shall have all the powers in that behalf which may be conferred upon a commissioner appointed pursuant to *The Public Inquiries Act*.

Board a body corporate.

7.—(1) The Board constituted pursuant to this Act shall be a body politic and corporate.

Powers exercisable by members thereof.

(2) For the purpose of performing any duty or function or exercising any power which is conferred or imposed upon the Board by this Act, any member of the Board is hereby empowered to act for and on behalf of the Board, and any act or thing so done shall be deemed to have been done by the Board.

PART I.

Proceedings for which a permit is required.

8.—(1) Unless the Board or any person designated by the Board under the provisions of this Act, issues a permit in writing giving consent thereto,—

(*a*) no action or suit for the recovery of any money which is recoverable as a liquidated demand or debt in respect of any claim enforceable by virtue of any rule of law or equity or by virtue of any statute, except money payable in respect of rates and taxes payable pursuant to any statute, and debts owing to a hospital for hospital services; and

(*b*) no proceedings by way of execution, attachment or garnishment; and

(*c*) no action or proceeding for the sale under or foreclosure of a mortgage on land, or for cancellation, rescission or specific performance of an agreement for sale of land or for recovery of possession of land, whether in court or otherwise; and

(*d*) no action or proceeding to sell land under or in satisfaction of any judgment or mechanic's lien; and

(*e*) no seizure or distress under an execution or under any lease or any tenancy howsoever created, lien, chattel mortgage, conditional sale agreement, crop payment agreement or in attornment as tenant under any agreement for sale or mortgage, and no sale or other proceeding thereunder either by virtue of rights of property at common law or under a statute passed prior to this Act;

(*f*) no proceedings by a lessor, mortgagee, vendor or other person claiming possession of a share of crop in any case where the provisions of *The Crop Payments Act* apply; and

(*g*) no action respecting such other class of legal or other proceedings as may be brought within the provisions of this section by order of the Lieutenant Governor in Council,—

shall be taken, made or continued by any person whomsoever against a resident debtor in any case.

Relation back of consent of Board.

(2) The consent of the Board under this section whenever given shall relate back to anything done in the action or other proceedings in respect of which the permit is given.

"(3) This section shall not apply to any contract made or entered into by a debtor where the whole of the original consideration for the contract arose on or after the 1st day of July, 1936; but shall apply to,— Applicability of sections.

(*a*) any agreement, contract, stipulation, covenant or arrangement made since that date which purports to substitute a new indebtedness in the place of any indebtedness created or arising before the 1st day of July, 1936, or has the effect of extinguishing the last mentioned indebtedness and substituting therefor a new indebtedness or constitutes a novation of the agreement under which such indebtedness was payable; and to

(*b*) any guarantee whensoever made for the payment of any debt payable in respect of any contract the whole of the original consideration for which arose before the 1st day of July, 1936, or any contract mentioned in paragraph (*a*) of this subsection."

(4) Nothing in this section shall affect any right or remedy for the enforcement of the payment of any irrigation rates or water rentals payable pursuant to any statute or of any water rentals payable pursuant to any agreement for the supply of water for irrigating any land of a resident farmer. Irrigation rates and water rentals.

(5) The Board may at any time in its discretion cancel or suspend any permit which has been previously issued under this section by the Board. Cancellation by Board of permits.

9. No permit shall be granted in respect of any proceedings founded on any mortgage or agreement for sale of lands which are being farmed, if those proceedings lead to foreclosure merely by reason of the fact that because of the depreciation in values caused by abnormal economic conditions the security cannot for the time being be sold to realize a price which is commensurate with its fair ordinary value under normal conditions. Circumstances under which permit not grantable.

10.—(1) Upon the receipt of any application by or on behalf of a creditor in writing, in such form and containing such particulars as may be prescribed by the regulations for a permit to commence or continue any action or proceedings against a resident debtor, the Board shall proceed to make such inquiries as it may deem proper into the circumstances, and thereupon may either issue a permit or may refuse or adjourn the application, and as a condition of the refusal or adjournment may give such directions to the resident debtor as to the conduct of his affairs and the disposition of his property as it deems to be in the best interests of the debtor and his creditors. Proceedings of Board on creditors' applications and its powers.

(2) The Board may require that any person deal with and dispose of any money, choses in action or property of a resident debtor in his hands in the manner specified in the direction, and every person having in his possession any money, choses in action or property of a resident debtor shall comply with any such requirement of which he has notice. Requirements by Board as to dealings with property.

Directions in case of farmer resident debtors.

(3) Any direction given under this section in respect of a resident debtor who is a farmer shall be applicable only to so much of the money, crop, live stock and implements of the debtor as is not required for the following purposes:

(*a*) The payment of any sums necessarily borrowed, or debts necessarily incurred by the resident farmer in growing and harvesting the crop, or any sums necessarily borrowed or debts necessarily incurred by the resident farmer during the period of six months before the sale of any live stock for the purpose of feeding and preparing his live stock for the market and the provision of a sufficient amount of money for the necessary subsistence of the resident farmer and his family and for the continuance of his operations for a period of not longer than until the next ensuing harvest;

(*b*) The payment of any current taxes and any instalment of consolidated arrears payable in respect of the resident farmer's property for the year in which the direction is given; and

(*c*) Such other purposes as may be designated by the Lieutenant Governor in Council.

Computation of time under Statutes of Limitations.

11.—(1) The period during which proceedings by a creditor are prohibited under this Act shall not be included in the time within which an action or other proceeding is to be commenced under *The Limitation of Actions Act, 1935,* or under any other statute or law for the time being in force in the Province limiting or prescribing the time within which actions or proceedings are to be commenced; and any party to an action or other proceeding which has been prohibited by this Act shall have the same time for continuing such action or proceeding after the expiry of the said period as he would have had if the action or proceeding had not been prohibited, and shall not be prejudiced by reason of the delay.

(2) For the purpose of this section the proceedings mentioned and described in subsection (1) of section 8 of this Act shall, in so far as a resident and a creditor of a resident are concerned, and whether or not such creditor has applied or hereafter applies to the Board for the issue of a permit pursuant to the said subsection (1) be deemed to have been prohibited so long as this Act remains in force, subject to the provision contained in subsection (3).

(3) Upon the issue of the permit or written authority of the Board, the period subsequent to the issue thereof shall be included in the time within which the action or other proceeding affected thereby is to be commenced under *The Limitation of Actions Act, 1935,* or under any other statute or law for the time being in force in the Province limiting or prescribing the time within which actions or proceedings are to be commenced.

PART II.

Negotiation of agreements for adjustment of debts.

12. Upon receipt of an application in writing by or on behalf of a resident debtor or any creditor of a resident debtor, the Board shall confer with and advise the resident debtor or his creditor and shall endeavour to bring about an amicable arrangement for the payment of the resident debtor's indebtedness, and for that purpose the Board shall inquire into the validity of all claims made against the resident debtor and his ability to pay his just debts, either presently or in the future, and shall endeavour to effect an agreement between the resident debtor and his creditors to provide for the settlement of the resident debtor's debts, either in full or by a composition, and for the purpose of any such inquiry the Board shall have all the powers in that behalf conferred by this Act.

Agreements made through agency of Board.

13. An agreement arrived at between the resident debtor and any creditor and made by or through the agency of the Board may be informal or by parole, or partly written and partly by parole, and may be contained wholly or in part in letters written by or to the Board and such agreement may alter, modify, or rescind in whole or in part the terms of any mortgage, contract or agreement theretofore subsisting between the parties, or by the terms of which the rights of any of the parties are affected.

Duty of Board in negotiating agreements.

14. The Board shall endeavour to bring about an agreement between the resident debtor and his creditors whereby the secured or unsecured debts of the resident debtor are reduced to an amount which, in the opinion of the Board, is in accordance with the ability of the resident debtor to pay either presently or in the future, having regard to the productive capacity of the farm and equipment which the resident debtor is operating and the average net price of agricultural produce between the date when the debt was incurred and the date of adjustment, and in the event of the debtor not being a farmer his average income during the same period shall be considered.

Powers of Board where agreement in default.

15. If an agreement is arrived at between the resident debtor and his creditors whereby the creditors agree to a reduction, compromise or composition of their claims, the Board may determine from time to time the amount and manner of payment of the indebtedness of the resident debtor to his creditors under the said agreement and may give directions accordingly and if, at the expiration of a period of time prescribed by the Board, on a further hearing, it appears that the resident debtor has not complied with the directions given, the Board may, unless in its opinion, conditions justify the default, issue a permit under Part I of this Act, at any time it deems necessary to prevent the resident debtor from defeating the claims of his creditor.

Enforceability of agreements.

16. Any agreement made by a resident debtor and his creditor or creditors under the provisions of this part shall be valid and binding upon the parties thereto and shall be enforceable in law although made without consideration.

PART III.

Provisions as to Farmers.

"Resident farmer" defined.

17. "Resident farmer" means a person who is an actual resident of and personally living in the Province of Alberta who,—

(i) is personally *bona fide* engaged in farming operations in the Province; or

(ii) being the owner of a farm property, was personally *bona fide* engaged in farming operations thereon but has retired therefrom, and has either leased the said property or sold it under an agreement of sale, or transferred it and taken a mortgage thereon for purchase money on which payments are owing to him;

and includes the personal representative or representatives, son, daughter, widow or widower of a deceased resident farmer; and includes a company incorporated under any Act of the Province whose sole or main business is farming within the Province.

Necessity for permit for proceedings where default made in carrying out proposal under *"The Farmers' Creditors Arrangement Act"*.

18. In any case where a proposal has been formulated for a resident farmer pursuant to the provisions of *The Farmers' Creditors Arrangement Act,* and has been confirmed by the Board of Review under the provisions of the said Act, and the said resident farmer has failed, due to causes beyond his control, to carry out the terms of the said proposal, no creditor of the said resident farmer shall commence or continue any of the proceedings set out in section 8 hereof, unless the Board or any person designated by the Board issues a permit in writing giving consent thereto:

Non-applicability of section.

Provided that this section shall not apply in any case where default having been made as aforesaid, proceedings have been taken or continued against the debtor under the provisions of *The Farmers' Creditors Arrangement Act,* or *The Bankruptcy Act*, or in any case where the debtor has made a voluntary assignment under *The Bankruptcy Act.*

Chattel mortgages given before 1st May, 1934.

19. No chattel mortgage given by a resident farmer from and after the first day of May, 1934, to secure any past indebtedness, shall have any force or effect whatsoever unless the same has been approved in writing by the Debt Adjustment Board within sixty days next after the date of the execution thereof.

Powers of the Board as to disposal of certain encumbered chattels.

20. Upon the application of any person who is,—

(*a*) a resident farmer;

(*b*) the owner of any goods or chattels subject to a chattel mortgage given by him; and

(*c*) unable to provide himself with the necessities of life and/or feed for his live stock and/or seed grain otherwise than by the sale of goods and chattels or some part thereof,—

the Board may make an order authorizing the applicant to sell so much of such goods and chattels as the Board deems sufficient to provide him with such necessities, feed and seed as aforesaid, which goods and chattels shall be described in the order, and upon the making of any such order the right, title and interest of the mortgagee under such chattel mortgage in the goods and chattels thereby authorized to be sold shall utterly cease and determine.

PART IV.

General.

Share of crop deliverable under certain share crop leases.

21.—(1) Notwithstanding anything contained in *The Crop Payments Act*, being chapter 138 of the Revised Statutes of Alberta, 1922, or in any agreement for sale or mortgage to which that Act applies or in any share crop lease collateral to such an agreement or mortgage the right of a vendor or a mortgagee or his assignee shall not in respect of a crop grown in any year subsequent to the year 1935 operate so as to make deliverable to the mortgagee or vendor more than one-third of the crop grown in any such year, less the cost of threshing attributable to one-third of the crop.

Reduction of share of crop deliverable on payment of certain taxes.

(2) Any purchaser or mortgagor may in any year subsequent to the year 1935 out of the share of crop deliverable to a vendor or mortgagee pay one year's taxes upon the land on which the crop is grown and in such case upon production of the receipt by the proper officer for such payment the vendor or mortgagee shall be entitled only to one-third share of the crop less the amount shown upon such receipt, and less the cost of threshing as aforesaid.

Duties of Clerks of Court, Sheriffs and Registrars under Act.

22. Every Supreme Court Clerk and District Court Clerk and every Sheriff and every Registrar of Land Registration Districts shall, without fee, perform all services required to be rendered by the Board and keep a record of every instrument filed by it in its office pursuant to this Act, and may issue certified copies thereof, and every certified copy shall be evidence of the issue and filing of such instrument without proof of the signature or official character of the officer signing the same.

Wilful non-compliance with orders of Board and proceedings prohibited by Act; offences.

23. If any person makes wilful default in complying with any order, direction or condition given by the Board, or wilfully takes or continues any action or proceeding or makes or continues any seizure, or sells or disposes of a chattel in violation of the provisions of this Act, or the regulations, or if any resident in respect of whom directions have been given in pursuance of this Act makes any disposition of

anything, either real or personal property in contravention of the provisions of this Act, or makes default in complying with any directions given by the Board under the provisions of this Act, or in complying with any order, direction or condition given or imposed by the Board, then he shall be liable upon summary conviction to a fine not exceeding two hundred and fifty dollars and in default of payment to a term of imprisonment with hard labour, not exceeding three months, or to both.

Penalty.

Evidential value of documents issued by Board members, officers and agents.

24. All documents purporting to be issued in pursuance of this Act by the Board or by any officer or agent of the Board and to be signed by the Chairman or any member of the Board or any such officer or agent, shall be receivable in evidence, and shall, unless the contrary is shown, be deemed to have been so issued and signed, and it shall not be necessary to prove the handwriting or official position of the person signing the same.

Service of documents by mail.

25. Proof that any letter or package containing any documents permitted by this Act or the regulations to be served by post was properly addressed and put into the post office, and of the time when it was so put in and of the time requisite for its delivery in the ordinary course of the post shall be evidence of the fact and time of the receipt of the letter or package by the person to whom it was addressed.

Indemnification of Board, its members, officers and agents.

26. Neither the Board nor any member thereof nor any officer or agent of the Board, nor anyone acting on the instructions of the Board, or under the authority of this Act or the regulations under this Act shall be personally liable for any loss or damage suffered by any person by reason of anything in good faith done or omitted to be done, pursuant to or in the exercise or supposed exercise of the powers conferred by this Act or *The Debt Adjustment Act, 1933,* or *The Debt Adjustment Act, 1936,* or any regulations made pursuant to any of the said Acts.

Conclusiveness of actions, orders and decisions of Board.

27. Every action, order or decision of the Board as to any matter or thing, in respect of which any power, authority or discretion is conferred on the Board under this Act shall be final and shall not be questioned, reviewed or restrained by injunction, prohibition or mandamus or other process or proceeding in any Court, or be removed by *certiorari* or otherwise in any Court.

Distribution of proceeds of execution levied pursuant to permit.

28.—(1) In case any seizure under execution is made in pursuance of any permit given under the provisions of this Act, the creditors entitled to share in the proceeds of such execution shall be such persons as may be prescribed by the Debt Adjustment Board in any particular case.

(2) In case any property is seized or attached by virtue of any execution against a debtor who is a resident farmer issued,—

(*a*) by a creditor to whom he is indebted under a contract made or entered into by the debtor, where the whole of the original consideration for the debt arose after the first day of July, 1936; or

(*b*) by a creditor in an action brought to recover taxes or hospital accounts,—

the execution shall be levied on behalf of the creditor issuing the same and all other creditors to whom the debtor is similarly indebted, and for the purposes of *The Execution Creditors Act* those creditors and no other creditors shall be entitled to share in money received by the sheriff by reason of the execution.

(3) For the purposes of this section "execution" includes every writ of execution, writ of attachment, garnishee proceedings and proceedings in the nature of equitable execution.

Powers of the Lieutenant Governor in Council in the event of the enactment by Canada of certain legislation.

29.—(1) In case the Parliament of Canada enacts legislation as to the adjustment of debts, the Lieutenant Governor in Council may for the purpose of preventing conflict between that legislation and this Act, from time to time by Proclamation published in *The Alberta Gazette*,—

(*a*) suspend the operation of this Act or any specified part or provision or provisions thereof for a specified period or until further Proclamation; and

(*b*) declare that this Act or any specified part, provision or provisions thereof shall be no longer applicable to any specified class or classes of persons for a specified period or until further Proclamation; and

(*c*) cancel or vary any previous suspension or declaration.

(2) Every Proclamation shall take effect upon the publication thereof in *The Alberta Gazette* or upon such later date as may be named in the Proclamation for that purpose.

Construction of Act.

30. The provisions of this Act shall not be so construed as to authorize the doing of any act or thing which is not within the legislative competence of the Legislative Assembly.

Repeal.

31. *The Debt Adjustment Act, 1936,* being chapter 3 of the Statutes of Alberta, 1936 (Second Session), is hereby repealed.

Coming into force of Act.

32. This Act shall come into force on the day upon which it is assented to.

AN ACT TO AMEND THE DEBT ADJUSTMENT ACT, 1937.

[*Assented to October* 5, 1937.]

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

Short title.

1. This Act may be cited as "*The Debt Adjustment Act, 1937, Amendment Act, 1937.*"

The Debt Adjustment Act, 1937, amended.

2. *The Debt Adjustment Act, 1937,* being chapter 9 of the Statutes of Alberta, 1937, is hereby amended by striking out so much of section 3 as precedes paragraph (*b*) and by substituting therefor the following:

"3. There is hereby constituted a Board to be known as 'The Debt Adjustment Board' consisting of either one, two or three members as the Lieutenant Governor in Council may from time to time determine, and the Lieutenant Governor in Council may from time to time:

"(*a*) appoint such person or persons as members of the Board as may be deemed advisable, and prescribe the remuneration and duties of persons appointed as members of the Board;".

Section 18 amended.

3. The said Act is further amended as to section 18 thereof:

(*a*) by striking out the words "due to causes beyond his control" where the same occur therein; and

(*b*) by striking out all the words commencing with the words, "Provided that this section" and ending with the last word of the section.

Section 20*a* added.

4. The said Act is further amended by inserting therein immediately after section 20 the following new section:

"20*a*. Upon the application of any person who is:

"(*a*) a resident farmer; and

"(*b*) the lessee of any land under a crop share lease entered into for the purpose of securing the payment of any money payable in respect of the land thereby leased under any mortgage, charge or agreement for sale respecting such land; and

"(*c*) the share of crop to which he is entitled as lessee together with all other crops owned by him is such that he is unable to provide himself with the necessities of life and/or feed for his live stock and/or seed grain, otherwise than by the sale of farm machinery and live stock reasonably necessary for the working of his land, or by the sale of goods and chattels which are exempt from seizure under execution pursuant to *The Exemptions Act*,—

"the Board may make an order authorizing the applicant to retain for his own use so much of the share of crop which is deliverable to the lessor as the Board in its discretion considers sufficient to provide the applicant with such necessities and/or feed and/or seed grain; and upon any such order being made the share of crop deliverable to the lessor for the year to which the order relates shall be reduced by the amount which the lessee is by the order authorized to retain."

Ratification of certain Orders in Council.

5. Every Order in Council constituting any Debt Adjustment Board heretofore made in pursuance of any provisions of *The Debt Adjustment Act, 1931,* or *The Debt Adjustment Act, 1933,* or *The Debt Adjustment Act, 1936,* is each hereby confirmed, ratified and validated, and every constitution of a Board so made shall as and from the date of the Order in Council constituting that Board be as good, valid and effectual as if the same had been made by an Act of the Legislature.

Coming into force of Act.

6. This Act shall come into force on the day upon which it is assented to.

AN ACT TO AMEND THE DEBT ADJUSTMENT ACT, 1937.

[*Assented to April* 8, 1938.]

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

Short title.

1. This Act may be cited as "*The Debt Adjustment Act, 1937, Amendment Act, 1938.*"

The Debt Adjustment Act, 1937, section 2 amended.

2. *The Debt Adjustment Act, 1937,* being chapter 9 of the Statutes of Alberta, 1937, is hereby amended as to section 2 by inserting therein immediately after paragraph (*e*) the following new paragraph:

"(*ee*) 'Resident farmer' means a person who is an actual resident of and personally living in the Province of Alberta who,—

"(i) is personally *bona fide* engaged in farming operations in the Province; or

"(ii) being the owner of a farm property, was personally *bona fide* engaged in farming operations thereon but has retired therefrom, and has either leased the said property or sold it under an agreement of sale, or transferred it and taken a mortgage thereon for purchase money on which payments are owing to him;

and includes the personal representative or representatives, son, daughter, widow or widower of a deceased resident farmer; and includes a company incorporated under any Act of the Province whose sole or main business is farming within the Province;".

Section 8 amended.

3. The said Act is further amended as to section 8 by adding at the end thereof the following new subsection:

"(6) Nothing in this section shall apply to any proceedings for the renewal of any subsisting Writ of Execution or for the renewal of the registration thereof under *The Land Titles Act* or to the registration of any renewal statement in respect of any Bill of Sale or Chattel Mortgage, or to the registration of any renewal statement in respect of any Conditional Sale Agreement."

Section 11 struck out.

4. The said Act is further amended as to section 11 by striking out the same.

Act amended by renumbering certain Parts and inserting new Part II.

5. The said Act is further amended by renumbering Parts II, III and IV thereof as Parts III, IV and V respectively and by inserting therein immediately after Part I the following new Part:

"PART II.

"12.—(1) Upon the receipt of an application in writing in Form A in the Schedule to this Act, signed by a resident debtor or by any person authorized by him for that purpose, the Board shall issue a certificate in Form B in the Schedule to this Act, and shall file a copy thereof in the offices of the Registration Clerks in all Registration Districts, in the offices of the Clerks of the Court of all Judicial Districts and Sub-judicial Districts, in the offices of the Sheriffs for all Judicial Districts and Sub-judicial Districts and in all Land Titles Offices, and shall cause a notice to be inserted in *The Alberta Gazette* to the effect that a certificate has been filed by it in respect of such resident debtor in pursuance of the provisions of this Act.

Issuance of certificate by Board on application of resident debtor and effect thereof.

"(2) Every such application shall be attested and shall contain a list of the creditors of the resident debtor together with the amount owing to each creditor, and in case the application is signed by a person for or on behalf of the resident debtor, by an affidavit of the person so signing that he was duly authorized by the resident debtor for that purpose.

"(3) Subject to the provisions of *The Bankruptcy Act,* and *The Farmers' Creditors Arrangement Act,* and notwithstanding anything contained in any other Act, after a certificate has been filed as required by this section, no proceeding in the nature of an execution and no proceedings leading to the sale or foreclosure of real property, and no proceeding of any sort except proceedings in respect of any debt incurred after the first day of July, 1936, either in court or extra-judicial, which may lead to the seizure or sale of the property of the resident debtor named in the certificate, shall be taken or continued without the consent in writing of the Board.

"(4) Upon the receipt by the Registrar of any Land Titles Office of any such certificate, the Registrar shall, with all reasonable expedition, prepare an abstract of title as to the interest of the person named in such certificate in any land of which such person is the registered owner, and forward the same to the Board, which shall thereupon send to every other person shown by such abstract to have any interest in such land a notice to the effect that a certificate has been filed pursuant to this Act.

"(5) Notwithstanding anything in *The Seizures Act* to the contrary, if at the time of the filing of the said certificate any of the goods and chattels of a resident debtor, not consisting of growing crops, farm produce or live stock, are under seizure by virtue of any writ of execution or distress warrant, founded on any debt incurred on or before the first day of July, 1936, the Board may in its sole discretion direct either that the goods and chattels so seized be sold at such time and in such manner as the Board deems proper, and that the proceeds

of such sale be distributed, having due regard to the rights of any persons having any interest in the goods and chattels so sold, or that the same be released from seizure and be again placed in the possession of the resident debtor, and every direction so given shall be binding upon the sheriff or other person who made the seizure.

"(6) As soon as conveniently may be after the filing of a certificate, the Board shall notify the creditors of which the Board has knowledge, of the issue of the certificate and every creditor so notified shall within sixty days of the date of such notice file with the Board a sworn statement as to the amount owing to such creditor with a complete history of the debt, showing all payments made on account of principal and interest thereon together with the rate of interest charged on the said debt, and setting out full particulars of all securities held by the creditor, together with the amount at which the same are valued by him.

"(7) From and after the filing of a certificate pursuant to subsection (1) hereof and so long as such certificate remains uncancelled and in force, no sale, conveyance, mortgage or dealing of any description by the resident debtor named in such certificate with any of his personal property or with any land shall have any validity, force or effect, unless made or done with the consent in writing of the Board, which consent may be either general or specific.

"(8) No registration clerk and no Registrar of Land Titles in whose office a certificate has been filed and which remains uncancelled and in force in respect of a resident debtor, shall register any transfer, conveyance, mortgage, encumbrance or other instrument affecting any property of the resident debtor unless the same is accompanied by the consent of the Board or a certified copy thereof.

Performance without fee by certain officials of services required by the Board.

"13. Every Supreme Court Clerk and District Court Clerk and every Sheriff, Deputy Sheriff and every Registrar of Land Registration Districts shall, without fee, perform all services required to be rendered by the Board, and keep a record of every instrument filed by the Board in his office pursuant to this Act, and may issue a certified copy thereof, and every certified copy shall be *prima facie* evidence in any court of the issue and filing of such instrument without proof of the signature or official character of the officer signing the same.

Seizure and disposition by Sheriff of property of a resident debtor by order of the Board in certain cases.

"14. In any case where a certificate in respect of a resident debtor under this Part has been filed, and it is made to appear by any creditor to the Board that the resident debtor is about to abscond, or is about to sell or dispose of his property or in case for any other reason the Board considers that the rights of the creditors are in jeopardy, the Board may by writing under its hand directed to the Sheriff of the Judicial District in which such property is situate, re-

quire such Sheriff to seize such designated property and to hold and deal with the same on its behalf in such manner as the Board may in writing direct; and thereupon the Sheriff shall proceed forthwith to seize such property and to deal with the same in such manner as the Board may from time to time by writing direct, and the proper fees and expenses incurred by the Sheriff in respect of such property shall be a charge upon the said property.

Inquiries by Board and its officers as to property of a certificated debtor.

"15. The Board and any person authorized by the Board in writing may make all such inquiries as may be from time to time deemed advisable with regard to the property of any resident debtor in respect of whom a certificate has been issued under this Part and as to the disposition of any such property, and for that purpose the Board or any person authorized by the Board in writing may examine under oath any such resident debtor and his servants and agents, and any person who appears to the Board or any person authorized by the Board in writing to have any knowledge of the affairs of the resident debtor, and shall have all the powers in that behalf which may be conferred upon a commissioner appointed pursuant to *The Public Inquiries Act*.

Cancellation of certificates.

"16. In any case where it is made to appear to the Board by any creditor or creditors of a resident debtor in respect of whom a certificate has been filed that it is advisable so to do, or that the resident debtor has not complied with the provisions of section 17 of this Part, or for any other reason which the Board may deem good and sufficient, the Board may cancel such certificate in whole or in part by filing in the office in which the original certificate was filed a cancellation in Form C in the Schedule to this Act and thereupon such certificate shall cease to have any effect whatsoever, or to the extent to which the same is cancelled, as the case may be.

Payments by debtors to Board annually whilst certificate in force and disposition thereof.

"17.—(1) Every resident debtor in respect of whom a certificate has been issued under this Part shall pay to the Board in each year during which the certificate is in force,—

"(*a*) in the case of a resident farmer,—

"(i) a sum equal to one-fourth of the gross value of all grain crops grown upon the lands owned or operated by the said resident farmer, provided that no payment shall be made to the Board unless the total crops harvested by the resident farmer exceed an average of ten bushels to the acre; and

"(ii) a sum equal to one-fourth of the gross revenue obtained from the sale of live stock and produce other than grain marketed by the resident farmer;

"(*b*) in the case of all other resident debtors,—

"(i) if the debtor is a single person who has no other persons dependent upon him and living with him, a sum equal to one fourth the amount by which his gross earnings and revenue in that year exceed the sum of four hundred and eighty dollars;

"(ii) if the debtor is a married person or a single person who has another person dependent upon him and living with him, a sum equal to one-fourth the amount by which his gross earnings and revenue in that year exceed the sum of nine hundred dollars.

"(2) The Board may direct that the payments to be made to the Board under this section be made monthly, or by instalments or in such other manner as the Board may deem advisable having regard to all the circumstances of the case.

"(3) The Board may in its discretion issue a direction to a resident debtor to pay less than the amount required to be paid to the Board under subsection (1) of this section and in such case the resident debtor shall be required to pay only such amount as may be directed by the Board.

"(4) The Board may distribute the sum or sums received by it among the creditors of the resident debtor in such manner and in such amounts as the Board may deem fair and equitable, without regard to the legal or equitable rights of the creditors or any class of creditors or any creditor.

Proceedings against a resident debtor in case of disputed claims.

"18.—(1) In any case where a resident debtor in respect of whom a certificate has been issued disputes the validity of any claim and the Board is unable to effect a settlement thereof, the Board may in its discretion issue a permit authorizing the claimant to bring such action or proceedings as may be specified in the permit for the purpose of determining the dispute, and if in any such case the said action or proceedings is not taken and prosecuted with reasonable diligence, the Board shall ignore the claim in making any distribution amongst the creditors of the resident debtor.

"(2) No steps shall be taken without the permission in writing of the Board to enforce against the resident debtor any judgment or order obtained in any action or proceeding brought or taken pursuant to this section so long as the certificate in respect of such resident debtor remains uncancelled.

Directions by Board as to the disposition of crop and live stock of debtor subject to charges.

"19. In any case in which a certificate has been issued in respect of any resident debtor and so long as the same remains uncancelled and in force, the Board may in its discretion, having regard to the circumstances and necessities of the resident debtor, direct the disposal of any crop grown by the resident debtor or of any live stock of the resident debtor, or of both, notwithstanding any provisions of any

mortgage, charge or lien, or crop share lease or crop share agreement affecting the crop or any mortgage, charge or lien upon live stock except a mortgage charge or lien for securing the payment of the purchase price thereof, in such manner and at such times as to the Board seems proper, and that the proceeds thereof be paid to it, and the Board may and it is hereby authorized and empowered to appropriate and deal with the proceeds paid to it by making such payments as the Board considers necessary for the maintenance of the debtor and his family and the continuance of his operations or business and by distributing the surplus of such proceeds after the making of any such payment among such creditors or class of creditors and in such manner as the Board may deem fair and equitable.

Non-compliance with certain provisions of the Act an offence:

"20. If any person makes any wilful default in complying with the provisions of section 17 or with any order, direction or condition given or imposed by the Board, or wilfully takes or continues any action or proceeding or makes or continues any seizure, or sells or disposes of a chattel in violation of the provisions of this Act or the regulations, or if any resident in respect of whom any direction has been given in pursuance of this Act makes any disposition of any real or personal property in contravention of the provisions of this Act, or makes any wilful default in complying with any order, direction or condition given or imposed by the Board, he shall in every such event be guilty of an offence and upon summary conviction therefor be liable to a fine not exceeding two hundred and fifty dollars and in default of payment to a term of imprisonment, not exceeding three months, or to both."

Section 17 struck out.

6. The said Act is further amended as to section 17 by striking out the same.

New sections 30*a* and 30*b*.

7. The said Act is further amended by adding immediately following section 30 thereof the following new sections:

Prevalence of Act.

"30*a*. In case there is any conflict between the provisions of this Act and the provisions of *The Crop Payment Act* or any other Act, or the terms of any mortgage, agreement for sale, lease or contract, the provisions of this Act shall prevail.

Non-applicability of Act to The Canadian Farm Loan Board and to The Soldiers' Settlement Board.

"30*b*. Nothing in this Act shall apply to any debt owing to The Canadian Farm Loan Board, The Soldier Settlement Board or to any action, suit or other proceeding, including extra judicial proceedings for enforcing the payment of any such debt, or to the right of the Board to commence, take, carry on and maintain any such action, suit or proceeding."

Certain sections renumbered.

8. The said Act is further amended by renumbering section 12 thereof as section 20 and every subsequent section consecutively thereafter.

Schedule added.

9. The said Act is further amended by adding at the end thereof the following:

Schedule.

"SCHEDULE.

Form A.

"FORM A.

"(Section 12, Subsection (1).)

"IN THE MATTER of *The Debt Adjustment Act, 1937,* I, the undersigned, do hereby certify as follows:

"1. That I am resident at .....

"2. That I am personally *bona fide* engaged in farming operations at ....., in the Province of Alberta, or that I am a resident debtor other than a resident farmer.

"3. That I am the owner of the land and crops thereon, as follows:

Description of Land.	Crops Thereon.	Acreage of Crops.
.....	.....	.....
.....	.....	.....
.....	.....	.....

Strike out paragraphs which are inapplicable.

"4. That I own the following live stock and farm machinery:

Horses .....
Cattle .....
Sheep .....
Swine .....
Farm machinery .....

"5. That I am engaged in the business of .... and the assets of the business consist of the following:

.....
.....
.....

"6. That I am a wage earner employed by .... at a monthly wage of $.....

"7. In addition to the property above mentioned I own the following property:

.....
.....

"8. That I have an interest in the following property, the title to which is held by or in the name of the person whose name and address is set out opposite thereto:

Description of Property.	Name and Address of Person who has Title thereto.
.....	.....
.....	.....

"9. That I am indebted in the sum of $....., and that I am unable presently to pay such debts, and that I apprehend proceedings by one or more of my creditors leading to the forced realization of my property, or part thereof, and that unless my assets are conserved, unnecessary loss will ensue both to my creditors and myself.

"10. That the following is a list of my creditors and the amount owing to each is set out in the following statement:

Creditor.	Amount.
.....	.....
.....	.....
.....	.....
.....	.....

"Therefore, I apply to you and request you to file your certificate concerning me pursuant to the provisions of *The Debt Adjustment Act, 1937, Amendment Act, 1938.*

"And further, I undertake and agree that I will upon the filing of such certificate carry out the provisions of section 17 of the Act and obey any directions which may be given by you as to the disposition of my said crops and all my other property above described, or any part thereof, as may be given by you pursuant to any of the provisions of the said Act, and to hold the property aforesaid as bailee for you, and I constitute you my attorney to transact any of my business in my name and on my behalf, as you may think fit, and I agree to confirm and ratify your acts in so doing, and to indemnify you in respect thereof.

"Dated at ....., in the Province of Alberta, this ..... day of ....., 193....

"SIGNED in the presence of ..... } .....

"CANADA.
"PROVINCE OF ALBERTA. }

"I, ..., of ....., in the Province of Alberta, ..., make oath and say:

"That ....., of ....., named in the above written application is personally known to me, and that the said application was signed by him in my presence, and that the signature ..... thereto is my signature and that the same was signed as a witness thereto.

"SWORN at .....,
in the Province of Alberta, this ..... day of .....,
193.... } .....

"Before me—

.....
A Commissioner of Oaths.

Form B.

"FORM B.

"(Section 12, Subsection (1).)

"*The Debt Adjustment Act, 1937.*

"To the Clerk of the Court for the Judicial District of ...., and to the Registrar for the ....Alberta Land Registration District:

"This is to certify that ....., of ....., a resident debtor within the meaning of *The Debt Adjustment Act, 1937, Amendment Act, 1938,* is a person entitled to the benefit of the provisions of Part II of the said Act.

"Dated at ....., this ..... day of ....., 193....

".....
For the Debt Adjustment Board.

Form C.

"FORM C.

"(Section 16.)

"IN THE MATTER of *The Debt Adjustment Act, 1937*:

"To all Clerks of the Court and Sheriffs and Registrars whom it may concern:

"This is to certify that the certificate filed by me under the provisions of the above Act, in respect of ....., of ....., in your office on the ..... day of ....., 193...., is hereby cancelled.

"Dated this ..... day of ....., 193....

For the Debt Adjustment Board.

".....

Coming into force of Act and partial retroactive force thereof.

10. This Act shall come into force on the day upon which it is assented to and upon so coming into force section 3 shall be deemed to have been in force at all times on, from and after the seventeenth day of June, 1937.

AN ACT TO AMEND THE DEBT ADJUSTMENT ACT, 1937.

[*Assented to November* 22, 1938.]

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

Short title.

1. This Act may be cited as "*The Debt Adjustment Act, 1937, Amendment Act, 1938* (Second Session)."

The Debt Adjustment Act 1937, amended.

2. *The Debt Adjustment Act, 1937,* being chapter 9 of the Statutes of Alberta, 1937, is hereby amended by inserting therein immediately after section 30 the following new section:

New section 30*a*.

Contracts taking away benefit of Act.

"30*a*.—(1) Every covenant, condition, stipulation or agreement howsoever made, and whether made before or after the coming into force of this Act which purports to deprive any person of any right or benefit conferred upon him by virtue of any of the provisions of this Act shall be, and shall be deemed always to have been, of no force or effect unless and until the same has been approved by the Board; and such approval shall not be given in any case where such covenant, condition, stipulation or agreement is contained in or relates to any mortgage or agreement for sale in respect of which the granting of a permit is prohibited by section 9 hereof."

Applicability of section.

(2) This section shall apply to all actions and proceedings whatsoever whether commenced on or before the date of the coming into force of this section or at any time thereafter.

Coming into force of Act.

3. This Act shall come into force on the day upon which it is assented to.

STATUTES OF ALBERTA, 1939, 3 GEORGE VI,
CHAPTER 81.

AN ACT TO AMEND THE DEBT ADJUSTMENT ACT, 1937.

[*Assented to April* 3, 1939.]

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

Short title.

1. This Act may be cited as *"The Debt Adjustment Act, 1937, Amendment Act, 1939."*

Part II struck out.

2. *The Debt Adjustment Act,* being chapter 9 of the Statutes of Alberta, 1937, is hereby amended as to Part II thereof by striking out the same.

New section 40*a* continuation of Section 11, notwithstanding repeal.

3. The said Act is further amended by inserting therein immediately after section 40 the following new section:

"40*a*. Notwithstanding the repeal of section 11 of this Act effected by section 4 of *The Debt Adjustment Act, 1937, Amendment Act, 1938,* the provisions of that section shall be deemed to be continued in force so far as the same relate to any time prior to the eighth day of April, 1938."

Section 8 of *The Debt Adjustment Act, 1937, Amendment Act, 1938,* amended.

4. *The Debt Adjustment Act, 1937, Amendment Act, 1938,* is amended as to section 8 thereof by striking out the figures "20" and by substituting therefor the figures "21".

Coming into force of Act.

5. Section 2 of this Act shall come into force upon a day to be fixed by Proclamation of the Lieutenant Governor in Council, and the remainder of this Act shall come into force on the day upon which it is assented to.

STATUTES OF ALBERTA, 1941, 5 GEORGE VI,
CHAPTER 42.

AN ACT TO AMEND THE DEBT ADJUSTMENT ACT, 1937.

[*Assented to April* 8, 1941.]

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

Short title.

1. This Act may be cited as "*The Debt Adjustment Act, 1937, Amendment Act, 1941.*"

Section 6 amended.

2. *The Debt Adjustment Act, 1937*, being chapter 9 of the Statutes of Alberta, 1937, is amended as to section 6 thereof by striking out the words "and as to the disposition of the property of any such person", where they appear in the fourth and fifth lines of the said section, and by substituting therefor the words "or resident farmer", and by striking out the words "farmer or resident home owner", where they appear in the said section and by substituting therefor the words "debtor or resident farmer".

Section 8 amended.

3. The said Act is further amended as to section 8,—

(a) by adding at the end of subsection (3) the following new paragraph:

"(*c*) Any judgment which was obtained before the first day of July, 1936."

(b) by adding the following new subsection:

No execution, seizure or distress without permit.

"(7) With respect to any judgment to which this section applies, no writ or execution shall be issued by the Clerk of the Court nor shall any seizure or distress be effected by the sheriff unless the judgment creditor or execution creditor, as the case may be, shall have produced and filed with the clerk or sheriff, a permit issued by the Debt Adjustment Board giving consent to the issue of proceedings by way of execution or seizure or distress under this section.

Section 10 amended.

4. The said Act is further amended as to section 10,—

(a) by striking out all the words following the words "adjourn the application", where the same appear in the eighth line of subsection (1) thereof, and by substituting therefor the words "for such length of time as the Board may deem advisable under the circumstances";

(b) by striking out subsections (2) and (3) thereof.

Section 24 repealed.

5. The said Act is further amended as to section 24 by striking out the same.

Section 32 amended.

6. The said Act is further amended as to section 32 by striking out the same and by substituting therefor the following:

Liability for continuing action.

"32. If any person wilfully takes or continues any action or procedure or makes or continues any seizure or sells or disposes of a chattel in violation of the provisions of this Act or the regulations, he shall be liable upon summary conviction to a fine not exceeding two hundred and fifty dollars and in default of payment to a term of imprisonment with hard labour not exceeding three months or to both."

Section 36 amended.

7. The said Act is further amended as to section 36 by striking out the same and by substituting therefor the following new section:

Filing of notice of appeal.

"36.—(1) Any person who deems himself aggrieved by the action of the Board in granting or refusing a permit consenting to the taking of any action or other proceedings under this Act or in cancelling or refusing to cancel a permit previously given or in respect of any direction given by the Board, may file with the Clerk of the Supreme Court and serve upon the Board within twenty days from the date of the action of the Board then in question, a notice of appeal appealing from such action to a Judge of the Supreme Court sitting with a jury of six persons.

Deposit for jurors' fees.

"(2) At the time of filing such notice of appeal, the appellant shall deposit with the Clerk of the Supreme Court such sum as the Clerk considers sufficient for the payment of the jurors' fees and the expenses of summoning them.

Transmission of return.

"(3) Upon any such notice of appeal being given to the Board in the manner and within the time prescribed by this Act, the Board shall with all reasonable dispatch and in any event within seven days thereafter, transmit to the Clerk of the Supreme Court, a return showing the evidence, documents and other material upon which the Board acted in granting, refusing, cancelling or refusing to cancel the permit in question, or in respect of any direction given by the Board.

Application for date for hearing of appeal.

"(4) Within fifteen days after the filing of the return by the Board, the person appealing from its decision shall apply to a Supreme Court Judge to fix a date for the hearing of the appeal and for directions as to the persons to be served with notice of the hearing, the manner of service and such other directions as may be necessary for the determination of the appeal, and the appellant shall comply with the directions so given by the Court.

Fixation of date for all appeals.

"(5) If more than one notice of appeal has been filed from a decision of the Board, a judge shall, in so far as possible, fix the same date for the hearing of all such appeals and a jury selected for the hearing of the first appeal may hear any additional or subsequent appeals under this Act.

"(6) The costs incidental to the summoning of the panel, jurors' fees and all other lawful expenses in connection therewith, shall, at the end of the hearing of all appeals be apportioned between the appellants by the Clerk of the Court. Apportioning of costs.

"(7) Upon the hearing of the appeal, after the jury has been chosen and sworn, the appellant and any other person who has been served with notice of the appeal pursuant to the directions of the judge may call witnesses and introduce evidence as at the trial of an action, and the rules relating to procedure and admissibility of evidence in civil actions shall be applicable to such hearing. Calling of witnesses.

"(8) The question as to the action of the Board in withholding, granting, cancelling or refusing to cancel a permit, or in giving a direction under this Act, shall be a question of fact for the determination of the jury under proper instructions from the judge and there shall be no appeal from such determination or from any judgment or order made thereon and no proceedings in relation to any appeal or any judgment or order made thereon, shall be restrained by injunction, prohibition or any other process or proceedings in any Court nor be removable by *certiorari* or similar proceedings in any Court. Action of Board a question of fact for jury.

"(9) A copy of every judgment made on the hearing of an appeal shall be kept on file at the office of the Board. Copy of judgment.

"(10) Subject to the provisions of this Act, the procedure with respect to appeals, the hearing of the appeal and the selection of the jury, shall be governed by *The Jury Act* and the Consolidated Rules of Court in so far as they are applicable thereto." Procedure on appeal.

8. The said Act is further amended as to section 37 by striking out the same. Section 37 repealed.

9. The said Act is further amended as to section 40*a* by striking out the words "to be continued in force so far as the same relates to any time prior to the eighth day of April, 1938", and by substituting therefor the words "to have been in force and to have been continued in force as if the said section had not been repealed and the said section is hereby re-enacted as part of this Act". Section 40a amended.

10. This Act shall come into force on the day upon which it is assented to. Coming into force of Act.

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,*

AND

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

APPENDIX OF STATUTES

To case of the Respondents The Canadian Bankers' Association and The Mortgage Loans Association of Alberta.

LEONARD & LEONARD,
320 Bay Street,
Toronto, Ontario, Canada.

THE CARSWELL CO. LIMITED
PRINTERS & PUBLISHERS
TORONTO, CANADA

Lawrence Jones & Co
Winchester House
E.C. 2