43, 1946

In the Privy Council.

No. 43 of 1944.

ON APPEAL FROM THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC (APPEAL SIDE).

BETWEEN

THE ATTORNEY-GENERAL OF CANADA (*Intervenant*) APPELLANT

AND

THE ATTORNEY-GENERAL OF THE PROVINCE OF QUEBEC ... ... (*Plaintiff*) RESPONDENT

AND BETWEEN

THE BANK OF MONTREAL ... (*Defendant*) APPELLANT

AND

THE ATTORNEY-GENERAL OF THE PROVINCE OF QUEBEC ... ... (*Plaintiff*) RESPONDENT

AND

THE ATTORNEYS-GENERAL OF SASKATCHEWAN, ALBERTA and MANITOBA ... ... INTERVENERS.

(Consolidated Appeals)

CASE FOR THE ATTORNEY-GENERAL OF CANADA.

RECORD

1.—This is an Appeal from a Judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) dated the 29th day of June, 1943, dismissing, by a majority, the Appeals of the Bank of Montreal and the Attorney-General of Canada from a Judgment of the Honourable Mr. Justice Demers dated the 6th day of October, 1941, whereby it was adjudged that the Bank of Montreal should pay to the Respondent the sum of $15,732.49 with interest and costs and that the Intervention of the Attorney-General of Canada be dismissed. p. 116 p. 20

2.—The question for determination is whether Chapter 28 of the Statutes of Quebec of 1939 is within the powers conferred on the provincial legislature by Section 92 of the British North America Act.

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3.—The relevant provisions of the British North America Act read as follows :

" 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,—

* * * * *

15. Banking, Incorporation of Banks, and the Issue of Paper Money.

16. Savings Banks.

* * * * *

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."

" 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,—

* * * * *

13. Property and Civil Rights in the Province."

" 109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same."

The relevant provisions of the Bank Act, chapter 24 of the Statutes of Canada 1934 read as follows :

" 4. The provisions of this Act apply to the several banks enumerated in Schedule A to this Act, and to every bank incorporated after the first day of January, one thousand one hundred and thirty-four, whether this Act is specially mentioned in its Act of incorporation or not, but not to any other bank except as hereinafter specially provided, nor to the Bank of Canada, except as hereinafter specially provided."

(The Bank of Montreal is one of the banks enumerated in Schedule A).

" 75. (1) The bank may

* * * * *

(d) engage in and carry on such business generally as appertains to the business of banking."

" 92. (2) The liability of the bank, under any law, custom or agreement to repay moneys heretofore or hereafter deposited with it and interest, if any, shall continue, notwithstanding any statute of limitations, or any enactment or law relating to prescription."

" 114. (1) The bank shall, within thirty days after the close of each calendar year, transmit or deliver to the Minister a return as at the end of such calendar year.

* * * * *

(b) of all amounts or balances in respect of which no transactions have taken place, or upon which no interest has been paid, during the five years prior to the date of such return :

Provided that, in the case of moneys deposited for a fixed period, the said term of five years shall be reckoned from the date of the termination of such fixed period."

" 115. (1) If, in the event of the winding-up of the business of the bank in insolvency, or under any general winding-up Act, or otherwise, any moneys payable by the liquidator, either to shareholders or depositors, remain unclaimed,

(a) for the period of three years from the date of suspension of payment by the bank ;

(b) for a like period from the commencement of the winding-up of such business ; or

(c) until the final winding-up of such business, if the business is finally wound up before the expiration of the said three years,

such moneys and all interest thereon shall, notwithstanding any statute of limitations or other Act relating to prescription, be paid to the Minister, to be held by him subject to all rightful claims on behalf of any person other than the bank.

(2) If a claim to any moneys so paid is thereafter established to the satisfaction of the Minister he may direct payment thereof to be made to the person entitled thereto, together with interest on the principal sum thereof, at the rate of three per centum per annum for a period not exceeding six years from the date of payment thereof to the Minister as aforesaid : Provided that no such interest shall be paid or payable on such principal sum unless interest thereon was payable by the bank paying the same to the Minister.

(3) Upon payment to the Minister as herein provided, the bank and its assets shall be held to be discharged from further liability for the amounts so paid."

The Bank Act of 1934 was repealed by Section 164 of the Bank Act, Chapter 30 of the Statutes of 1944, which came into force on 1st September,

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1944, and contained provisions corresponding to those quoted above, viz. Sections 4, 75 (1), 92, 117 (1) and 119. Section 92 of the Bank Act of 1944 reads in part as follows :

" 92. * * * *

(2) Except as provided in this section, no debt owing by the bank by reason of a deposit shall be extinguished and no action to enforce payment thereof shall be barred by any statute of prescription or limitation.

(3) If in respect of any debt owing by the bank and outstanding on its books in Canada

(a) by reason of a deposit, no interest has been paid out and no other transaction has taken place and no statement of account has been requested or acknowledged by the creditor during a period of ten years, reckoned, in the case of a deposit made for a fixed period, from a date not earlier than the termination of such fixed period, or

(b) by reason of a cheque, draft or bill of exchange issued or certified by the bank, no payment has been made for a period of ten years,

the bank shall pay to the Bank of Canada an amount equal to the amount owing by the bank in respect thereof including interest, if any, to the date of payment, and thereupon the liability of the bank in respect of such debt shall cease and determine.

(4) Upon payment in respect of any debt being made to the Bank of Canada under this section, the Bank of Canada shall, if payment is demanded by the person who but for the operation of subsection three of this section would have been entitled as creditor of the bank by which such payment was made, be liable to pay at its branch in the province in which such debt was owing and payable, an amount equal to the amount so paid to it together with interest thereon for a period not exceeding twenty years, if interest was payable on such debt, at such rate and computed in such manner as may be determined from time to time by the Governor in Council and such liability may be enforced by action against the Bank of Canada in a court of competent jurisdiction in the province in which such debt was owing and payable by the bank before payment to the Bank of Canada under subsection three of this section.

(5) The Governor in Council may make regulations prescribing the time for payment by the bank to the Bank of Canada under this section, the records to be maintained or kept by the bank with reference to a debt with respect to which payment is so made, the manner of payment of any claim under subsection four of this section and the rate of interest to be paid by the Bank of Canada in respect thereof if interest is so payable and the manner of the computation thereof."

Section 1 of Chapter 28 of the Statutes of Quebec, 1939, reads in part as follows : RECORD

" 1. The following are deemed to be vacant property and without an owner, belonging to His Majesty in the rights of the Province of Quebec, deposits of money and of securities and all credits in specie or in securities, with the fruits thereof, in credit institutions and all other establishments which receive funds or securities on deposit, whenever, for thirty years or more, such deposits or credits have not been the subject of any operation or claim by the persons entitled thereto.

* * * * *"

In the Revised Statutes of Quebec of 1941, this provision was included in the Escheat and Confiscation Act, Chapter 102 of the Revised Statutes as Section 7 thereof.

4.—The Bank of Montreal was at all relevant times one of the banks to which the Bank Act, Chapter 24 of the Statutes of Canada, 1934, by virtue of Section 4 of that Act, applied and was therefore by Section 75 of the said Act authorized *inter alia* to engage in and carry on such business generally as appertains to the business of banking. Pursuant to authority from time to time vested in it, the Bank of Montreal has from time to time received moneys on deposit and its liability to repay such moneys continues, under Section 92 of the Bank Act, notwithstanding any statute of limitations or any enactment or law relating to prescription.

5.—This action was instituted by the Attorney-General of Quebec against the Bank of Montreal, under Chapter 28 of the Statutes of Quebec, 1939, for a Judgment in the sum of $15,732.49 and interest thereon in respect of certain moneys, credits or securities that are on deposit with the Bank of Montreal in its head office or branch offices in the Province of Quebec and that have not been the subject of any operation or claim by the persons entitled thereto for thirty years or more. Of these, $1,892.69 were originally deposited with Molson's Bank, which was absorbed by the Bank of Montreal. pp. 7 to 9

6.—The Bank of Montreal by its Plea filed 12th December, 1940, admitted that the several persons referred to in the Plaintiff's amended Declaration are creditors of the Bank of Montreal in the amounts set out therein and that none of the credit balances in question have been the subject of any operation or claim by the persons entitled thereto for thirty years or more. p. 10

7.—The Attorney-General of Canada intervened in the action on 20th November, 1940. pp. 6 and 7

8.—The action came on for trial before the Honourable Mr. Justice Demers of the Superior Court of Quebec who, on the 6th day of October, p. 20

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1941, gave Judgment condemning the Defendant, the Bank of Montreal, to pay to the Plaintiff the sum of $15,732.49 with interest and costs and dismissed the intervention of the Attorney-General of Canada with a recommendation to pay the Plaintiff's costs on the intervention.

p. 20

9.—In his reasons for Judgment, the learned Trial Judge, after summarizing the pleadings and contentions of the parties, held that a bank is a credit institution, that, while the amounts in question are not regular deposits as described by the Civil Code of Quebec, they are " irregular deposits " according to French and English law (1) and that Chapter 28 of the Statutes of Quebec, 1939, was intended to apply both to regular and irregular deposits notwithstanding that that involves two different senses being attributed to the word " deposit " in the statute. He accepted the contention of the Attorney-General of Canada that this law affects only the irregular deposits in banks as " in fact, they are the only ones which are known by the Provincial Government, the law having provided no mechanism to discover the deposits made in the other establishment." He held that the statute concerns unclaimed property in the hands of the bank and is a statute affecting property and civil rights and not a law with reference to " banking operations." He said that banks cannot, since *Bank of Toronto* v. *Lambe* (1887) 12 A.C. 575, claim that the provinces have no right to adopt laws affecting them, that here the matter is within the domain of the province as *bona vacantia* and because it is property in the province, that Sections 92 and 115 of the Bank Act are not in conflict with Chapter 28 and that Section 92 was not adopted in favour of the banks but was a law against them being merely " a declaration that there would be no prescription." He further held that Section 115 provides for the winding up of the bank and " is not intended to give any rights to the Federal Government on those unclaimed moneys but it imposes only a duty of keeping them." The law, he says, protects the depositor against the bank but " it is not money which cannot be confiscated or seized."

10.—The Attorney-General of Canada and the Bank of Montreal both appealed to the Court of King's Bench for the Province of Quebec (Appeal Side), which dismissed the appeals on the 29th day of June, 1943, Mr. Justice Marchand dissenting.

pp. 116 and 117

p. 117
p. 138

11.—The Honourable, the Chief Justice of Quebec, with whom the Honourable Mr. Justice Walsh concurred, held that Chapter 28 of the Statutes of Quebec, 1939, relates solely to " banks " when it refers to " credit institutions and all other establishments which receive funds and securities on deposit," as, except in the case of banks, deposits vest in the depositories upon the expiration of thirty years. He said that to appreciate the object of the Act it must be recognized that it was enacted to deal with bank deposits. He admitted that banks are, on principle, subject to the laws of the province and that if a depositor is absent, or

upon dying leaves no heirs, his bank deposits must be treated in the same manner as the remainder of his property, but, he said, it would be far-fetched to say that, by special enactment, a provincial legislature can, solely because it is thirty years since they were made, govern bank deposits and appropriate them by labelling them " *bona vacantia*." He said that neither the Dominion nor a province should be allowed, by concealing its purpose under well-chosen words, to exceed the legislative powers given to it nor, by giving things a definition of its own and for its own purposes, to enlarge its legislative powers. *The King* v. *National Trust Co.* 1933 S.C.R. 660, at p. 673. He said the reason for referring to *bona vacantia* when speaking of bank deposits was to create a title thereto and that " property and civil rights " should be interpreted " less Banking Operations, Bills of Exchange, Interest, etc." He said that these deposits come under " banking " which includes " every transaction coming within the legitimate business of a banker " as stated by the Privy Council in *Tennant* v. *Union Bank* (1894) A.C. 31 and that, to that extent, the Respondent's claim that the provincial legislature has sovereign power over all property is invalid. " Nothing . . . partakes more of banking than the deposits which constitute the basis thereof." He said that insofar as bank deposits are a portion of the depositor's property they fall, along with all things constituting his property, under provincial authority while as a portion of banking they fall under federal authority and that, here, the province recognized the existence of depositors or their legal representatives as it does not deal with their other property but enacts a special statute of which the sole effect is to regulate their " banking " affairs after thirty years. He held that this was an attempt to legislate contrary to Sections 92 and 115 of the Bank Act which, he said, made provision as to what was to become of deposits. He held that these provisions were not a mere law as to prescription since they enact that depositors and their legal representatives may expect to recover their deposits at any time even in the event of the bank being wound up and that the federal authority apparently considered that to be something essential to banking. He therefore came to the conclusion that the provincial Act was *ultra vires* but, after reaching that conclusion, he received the Judgment of the Supreme Court of Canada in *Provincial Treasurer of Manitoba* v. *Minister of Finance of Canada*, 1943 S.C.R. 370, and was persuaded thereby to alter his decision. He found an analogy between the trusts imposed on a trust company there under consideration and the bank's obligations to a depositor and held that, insofar as the bank and banking are concerned, it does not matter for whom the trust is exercised and the province may therefore, under its sovereign power over " property and civil rights," substitute itself for the owner.

12.—The learned Chief Justice was in error, it is submitted, in holding that the decision of the Supreme Court of Canada in *Provincial Treasurer of Manitoba* v. *Minister of Finance* has any application to this case and in

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holding that the province may interfere with a bank deposit contract by substituting His Majesty for the depositor.

p. 123

13.—The Honourable Mr. Justice St. Germain, after referring to the provincial statute and the claims of the parties, held that, as he agreed with the learned Trial Judge on the other points, it was only necessary to consider the plea that the statute is *ultra vires*. He held that decisions of the Privy Council such as *Bank of Toronto* v. *Lambe* (1887) 12 A.C. 575 and *Attorney-General for Ontario* v. *Attorney-General for Canada* (1894) A.C. 189 have established that a province when enacting legislation on a subject matter within its powers can adopt laws that incidentally affect subject matters falling within the powers of Parliament, and that if Parliament refrains from adopting legislation relating to bank deposit contracts the general rules of the civil law of the province are applicable. He said that there was no reason why an enactment relating to the general civil law adopted since Confederation should not also apply and that if the general civil law can thus be amended, there is no reason why a special enactment respecting deposits is not valid unless, of course, the Dominion has adopted valid legislation on the subject matter. With reference to the interpretation of Chapter 28, he said that *bona vacantia* undoubtedly belongs to the Crown in right of the province and cited Article 401 of the Quebec Civil Code which reads as follows :

> " All estates which are vacant or without an owner, and those of persons who die without representatives or whose succession is abandoned, belong to the Crown."

He relied on *Attorney-General for Ontario* v. *Mercer* (1883) 8 A.C. 767, *The King* v. *Attorney-General for British Columbia*, 1924 A.C. 213, and *Attorney-General for Alberta* v. *Attorney-General for Canada*, 1928 A.C. 475, where it was held that escheats and *bona vacantia* are " royalties " within the meaning of Section 109 of the British North America Act. He held that, not only do *bona vacantia* belong to the Crown in right of the province, but that *bona vacantia* are within the exclusive legislative competence of the province. The point at issue is, he said, whether bank deposits are really *bona vacantia*. The Dominion Parliament could not, he said enact that under certain conditions bank deposits are *bona vacantia* and therefore vested in itself and that it follows that the province must be able so to legislate. Mr. Justice St. Germain further held that there is no conflict between Chapter 28 and Sections 92 and 115 of the Bank Act because the Bank Act does not provide that after a lapse of time deposits become *bona vacantia* and remain the property of either the bank or the federal government. For provincial legislation to be prohibited, it must, he says, interfere with banking operations. *Attorney-General for Alberta* v. *Attorney-General for Canada*, 1939 A.C. 117.

14.—Mr. Justice St. Germain was in error, it is submitted, in, among other things, holding that the legislature has legislative authority to

enact that bank deposits are, under certain circumstances, *bona vacantia*, and therefore vested in His Majesty in right of the Province. RECORD

15.—The Honourable Mr. Justice Francoeur was of opinion that the appeal should be dismissed but did not state his reasons. p. 138

16.—The Honourable Mr. Justice Marchand would have allowed the appeal. He pointed out that the Bank Act, Chapter 24 of the Statutes of Canada, 1934, was the charter of every bank, including the Bank of Montreal, authorized to carry on banking operations in Canada. He said that, while the powers and obligations of banks subject to the Act in respect of the issue of paper money and discounts are defined and determined in detail, the Act is less detailed concerning deposits, and that the rights and obligations of parties to deposit contracts are determined by the laws governing contracts where they are made, the customs of banking and special agreements. He said that, notwithstanding the word " deposit," the contract whereby a person remits to a banker a sum of money or bills of exchange under an agreement that they will be placed to his credit and will be repaid to him or to his order is a loan for consumption (mutuum) and not a true deposit. A failure to repay is not a breach of trust or a theft. Banks can, on the other hand, enter into real deposit contracts in connection with the deposit of non-fungible things or titles that are not to be converted or even of specie for safekeeping. He reviewed the history of the relevant provisions of the Bank Act and held that the effect of Section 92, which has its origin in Section 90 of Chapter 31 of the Statutes of 1890, is that the deposit contract or loan is always in existence between the depositor and the bank. The bank is required by the statute, for the benefit of the depositor and his heirs, to repay the money deposited and the depositor's right to repayment exists forever. There is always an assign or a successor and if the obligation is not found in the depositor's hands it can always be found in the hands of those to whom it has been transmitted either by law or by the will of man. It is always the same obligation only the hand which holds it has been changed. He points out that the obligation is indestructible even if the bank disappears and that Section 115 of the Bank Act makes provision for a continuance of the obligation that Chapter 28 of the Statutes of Quebec 1939 entirely destroys. While the federal Act has said that the bank is always bound to the depositor, the provincial Act says that the bank is not bound because the obligation exists no longer and the bank is obligated to the State. The State is not the successor established by transmission. The provincial statute creates a new legal obligation. He holds, therefore, that the two statutes cannot be operative at the same time. The bank can only be obligated to one of the two owners named by the statutes, either the owner whose rights continue forever under the federal statute or the owner substituted therefor by the provincial statute. He says that the federal law was passed to regulate banking over which the Parliament of Canada p. 139

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alone has authority and that banking includes, among other things, deposits. The learned Judge was therefore of opinion that the appeals should be granted and that the action of the Respondent against the Bank of Montreal should be dismissed.

17.—The result of the decisions in the Courts below is that Chapter 28 of the Statutes of Quebec of 1939, in effect,

(a) extinguishes the liability of the bank to the depositor, and

(b) imposes a liability on the bank with respect to the deposit in favour of His Majesty in right of the province,

after the deposit has been inactive for thirty years. If the statute has this effect, it is legislation with reference to " banking." Bank deposits have always been one of the main branches of the banking business.

Foley v. *Hill* (1848) 2 H.L.C. 28, per Lord Brougham, at p. 43 ;
Brittanica Encyclopedia, 2nd Ed. Vol. 3, p. 67 et seq. ;
Falconbridge's Banking and Bills of Exchange, 5th Ed. p. 156 ;
" The Legal Nature of Bank Deposits in the Province of Quebec " (1935) 13 Can. Bar Rev. 635 ;
" Lectures on the Bank Act," Jour. Can. Bankers Ass. Vol. 13, 273, at pp. 239 and 242.

Definition of " bank " in the Shorter Oxford English Dictionary. The exclusive legislative authority in Canada with reference to "banking" is vested in Parliament by Section 91 of the British North America Act, head 15. The expression " banking " is wide enough to embrace every transaction coming within the legitimate business of a banker. *Tennant* v. *Union Bank*, 1894 A.C. 31, per Lord Watson, at p. 46. Parliament therefore has exclusive authority to legislate with reference to the deposit contract.

18.—As Parliament has exclusive legislative authority with reference to " banking," the province cannot legislate with reference thereto whether or not a particular field has been occupied by Parliament.

Union Colliery Company of British Columbia v. *Bryden*, 1899 A.C. 580, per Lord Watson at p. 588 ;

Attorney-General for Alberta v. *Attorney-General for Canada*, 1943 A.C. 356, per Viscount Maugham, at p. 370.

19.—In any event, Parliament has, by Sections 92 and 115 of the Bank Act, legislated with reference to bank deposits in a manner inconsistent with the meaning attributed by the Courts below to the provincial Act. Even if this legislation were not related directly to " banking " it would clearly be " ancillary " to that subject. If, therefore, the statute has the meaning attributed to it by the Courts below, Sections 92 and 115 of the Bank Act must " prevail."

Grand Trunk Railway of Canada v. *Attorney-General for Canada*, 1907 A.C. 65, per Lord Dunedin, at p. 68.

20.—The Quebec statute is not legislation with reference to property and civil rights in the province. The Court must ascertain the " true nature and character " of the legislation and " its pith and substance " and in doing so the words of the statute are not decisive. " It is not competent either for the Dominion or a Province under the guise, or the pretence, or in the form of an exercise of its own powers, to carry out an object which is beyond its powers and a trespass on the exclusive powers of the other." The substance of the legislation must therefore be examined " with some strictness " to determine " what it is that the legislature is really doing."

Union Colliery v. *Bryden*, 1899 A.C. 580 ;
Attorney-General for Ontario v. *Reciprocal Insurers*, 1924 A.C. 328, per Duff, J., at p. 337 ;
Attorney-General for Alberta v. *Attorney-General for Canada*, 1928 A.C. 475 ;
Quebec Insurance Reference, 1932 A.C. 41 ;
Attorney-General for Alberta v. *Attorney-General for Canada*, 1939 A.C. 117, per Lord Maugham L.C., at p. 130.

The Province of Quebec, acting on knowledge made available by reports made under Section 114 of the Bank Act, sought to invoke the law with reference to *bona vacantia* in connection with bank deposits left untouched for long periods of time and found it was unable to succeed for various reasons, particularly the difficulty of establishing in each case that the depositor was dead and had no heirs.

Re Hadgets (1938) 76 C.S. (Que.) 149 ;
Re Caille (1938) 76 C.S. (Que.) 156 ;
Re Massot (1938) 76 C.S. (Que.) 163 ;
Re Chamberlain (1938) 76 C.S. (Que.) 167.

Chapter 28 of the Statutes of 1939 was therefore enacted, it is submitted, for the sole purpose of vesting such bank deposits in the province in cases where Section 109 of the British North America Act is not applicable. The wording adopted was designed to eliminate any specific reference to banks and to give the statute the appearance of dealing with property and civil rights generally. That it was not the purpose of the statute to affect real deposits is clear because

(a) no provisions were inserted to enable the provincial government to ascertain when deposits became vested in the province under the statute—the province evidently relied on Section 114 of the Bank Act ;

(b) it is not customary to deposit either bank notes or specie with credit institutions on terms that the things deposited are to be returned ;

(c) money deposits not governed by the Bank Act, such as those with religious institutions or trust companies, are subject to the ordinary laws of prescription with the result that there is nothing owing to the depositor after they have been inactive for thirty years ; see Articles 2242 and 2260 of the Quebec Civil Code ;

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(d) the reference in the statute to deposits of specie has no practical application because gold is no longer a circulating medium and specie is not now used except for very small amounts—even obligations expressed to be payable in gold are construed to be obligations payable in currency equivalent to the market value of gold; *New Brunswick Railway* v. *British and French Trust Corporation*, 1939 A.C. 1; and

(e) deposits of securities can have no practical application because the only customary transactions are the renting of safety deposit boxes which are not deposits at all or the depositing of securities with some powers of administration which is a mandate and not a deposit.

The reference to credit institutions generally and to deposits of specie and securities is therefore merely camouflage for the real purpose of the legislature which was to attach so-called " deposits " of money in banks.

21.—The Attorney-General of Canada submits that the Judgment of the Court of King's Bench for the Province of Quebec is wrong and that the Respondent's Judgment against the Bank of Montreal should be reversed for the following amongst other

REASONS.

1. Because Chapter 28 of the Statutes of Quebec of 1939 is colourable legislation the true intent and purpose of which is not related to property and civil rights in the province but to banking, one of the heads of legislation assigned by Section 91 of the British North America Act to Parliament;
2. Because legislation by which a bank depositor is deprived of his rights under his deposit contract is legislation with reference to " banking " and therefore *ultra vires* the provincial legislature;
3. Because legislation by which an obligation is imposed on a bank to pay to His Majesty money deposited with it by a subject is legislation with reference to " banking " and *ultra vires* the provincial legislature;
4. Because Chapter 28 of the Statutes of Quebec of 1939 is in direct conflict with Sections 92 and 115 of the Bank Act which was properly enacted by the Parliament of Canada under power vested in it by Section 91 of the British North America Act; and
5. Because of the other reasons given by the Honourable Mr. Justice Marchand.

AIMÉ GEOFFRION.
W. R. JACKETT.

In the Privy Council.

No. 43 of 1944.

ON APPEAL FROM THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC (APPEAL SIDE).

BETWEEN

THE ATTORNEY-GENERAL OF CANADA (*Intervenant*) APPELLANT

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AND

THE ATTORNEYS-GENERAL OF SASKATCHEWAN, ALBERTA and MANITOBA INTERVENERS.

(Consolidated Appeals)

CASE FOR THE ATTORNEY-GENERAL OF CANADA.

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