

43, 1946

In the Privy Council.

No. 43 of 1944.

BSH

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

UNIVERSITY OF LONDON
W.C.1.
23 OCT 1958
INSTITUTE OF ADVANCED
LEGAL STUDIES
Appellant

CASE FOR THE A.-G. OF QUEBEC

11706

BETWEEN

THE ATTORNEY-GENERAL OF CANADA (Intervenant)

AND

THE ATTORNEY-GENERAL OF THE PROVINCE OF
QUEBEC (Plaintiff)

10 - - - - Respondent

AND BETWEEN

THE BANK OF MONTREAL (Defendant)

- - Appellant

AND

THE ATTORNEY-GENERAL OF THE PROVINCE OF
QUEBEC (Plaintiff)

- Respondent.

(Consolidated Appeals.)

CASE FOR RESPONDENT

THE ATTORNEY-GENERAL OF THE PROVINCE OF
QUEBEC.

Record.

20 1. The Bank of Montreal (hereinafter called "the Bank") and the
Attorney-General of Canada have each appealed from a judgment of the
Court of King's Bench (in appeal) of the Province of Quebec of June 29th,
1943, affirming the judgment of the Superior Court, Demers J. (October 6th,
1941) which held the Quebec Statute 3 Geo. VI (1939), Chapter 28, entitled
"An Act Respecting Certain Vacant Property Without an Owner" to
be constitutional. The Court of King's Bench consisted of Letourneau
C.J., St. Germain, Walsh, Francoeur and Marchand JJ., Marchand J.
dissenting.

p. 116, l. 30.
p. 20, l. 20.

2. This statute (hereinafter called "the Act") by Section 1 provides :

30 "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.

“Several claims may be joined in the same demand for the recovery of such property from one and the same depository.”

3. Section 2 of the Act provides that such property shall be subject to the application of Sections 2 to 5 inclusively of “An Act Respecting Escheats and Property Confiscated to the Crown” (Loi des biens en déshérence ou confisqués). 10

4. These texts are now embodied in Sections 7 and 8 of Chapter 102 of the Revised Statutes of Quebec, 1941.

p. 70, l. 14. **5.** Section 2 of the Escheat and Confiscation Act provides that property so devolving to the Crown shall be under the control of the Minister of Lands and Forests.

p. 70, l. 24. **6.** By Sections 3 and 4, such property may be sold, alienated or otherwise transferred by the Lieutenant-Governor-in-Council gratuitously, unconditionally or conditionally upon such conditions as he may impose or deem equitable. 20

p. 70, l. 39. **7.** By Section 5, the Lieutenant-Governor-in-Council may also dispose in like manner of all interest in, right over or pretensions to the said property.

p. 8, l. 10-
p. 9, l. 2;
p. 21, l. 19. **8.** Following upon this legislation demand was made upon the Bank Appellant to pay the sum of \$15,732.49, representing deposits of moneys, securities and credits in its head office or branch offices in the Province of Quebec which had not been the subject of any operation or claim for thirty years or more as being vacant property under the Act. The Bank declining, suit was brought. 30

9. The Bank contested contending that the Act was not applicable to it, it not being a “credit institution,” or to the amounts claimed from it and that so far as the said statute purported to apply to banks it was *ultra vires* the Quebec Legislature as encroaching upon the jurisdiction of the Parliament of Canada to legislate exclusively in relation to Banking under Section 91 of The British North America Act, and as being in conflict with the provisions of The Bank Act (24-25 Geo. V, Chapter 24).

10. The Attorney-General of Canada intervened, likewise challenging the constitutionality of the Act as being aimed principally at banks and in reality legislation respecting Banking and conflicting with Sections 92 and 115 of The Bank Act of Canada, and therefore *ultra vires*. 40

p. 20, l. 44-
p. 27, l. 40. **11.** The trial judge Demers J. held the banks to be credit institutions, that their deposits although not regular deposits as described by the

Quebec Civil Code were what are known as irregular deposits and that both regular and irregular deposits fell within the ambit of this legislation ; that this legislation related to Property and Civil Rights in the Province and was not a law on banking operations and did not conflict with the provisions of Sections 92 and 115 of The Bank Act ; and holding the Act to be *intra vires*, condemned Appellant Bank to pay the amount claimed.

10 **12.** The Court of King's Bench on appeals by the Bank and the Attorney-General of Canada unanimously rejected the contention of the Bank that the Act did not embrace chartered banks. The decision is reported in Quebec Reports [1943] K.B. 543. p. 117, l. 20 ;
p. 124, l. 21 ;
p. 138, l. 40 ;
p. 142, l. 11.

13. Letourneau C.J. was inclined at the outset to consider the Act as infringing upon Section 115 of The Bank Act and for that reason *ultra vires*, but on reconsideration came to the conclusion of the majority for the reason that the provisions of The Bank Act deal with the rights and obligations of banks as " trustees " in possession of a trust and do not deal with the rights of ownership in and to the said trusts, which rights of ownership fall within the sovereign provincial jurisdiction over Property and Civil Rights in the Province. p. 118, l. 5-
p. 121, l. 33.
p. 121, l. 34-
p. 122, l. 40.

20 **14.** On the question of constitutionality of the Act St. Germain J. held that banks like all other institutions are subject to the provincial civil laws and that contracts of deposit fall within the provincial jurisdiction save only in so far as the Parliament of Canada may have legislated thereon for banking purposes only ; that legislation in relation to *bona vacantia* fell exclusively within provincial jurisdiction and the Province alone was entitled to define what constituted *bona vacantia* ; that the prescriptive period of thirty years fixed by the Act was in harmony with the whole economy of Quebec civil law ; and that the Act related to Property and Civil Rights within the Province and was not legislation relating to Banking. p. 124, l. 39-
p. 135, l. 6.

30 **15.** In the opinion of St. Germain J. the Act did not conflict with The Bank Act or hamper banking operations, especially as nowhere does The Bank Act deal with the ownership of deposits but merely with the custody or immediate possession of the funds entrusted to banks. p. 135, l. 10-
p. 138, l. 35.

16. Walsh and Francoeur JJ. concurred in dismissing the appeals without giving separate reasons. p. 138,
ll. 40-45.

17. Marchand J. dissented holding that the Act destroyed and annihilated the contract of deposit entered into between the Bank receiving it and the Depositor making it, thereby purporting to override the federal legislation respecting Banks and Banking. pp. 139-144.

40 **18.** Shortly before the Court of King's Bench rendered its judgment, the Supreme Court of Canada, on May 17th, 1943, delivered an unanimous decision (Rinfret, Davis, Kerwin, Hudson and Taschereau JJ.) in *Provincial Treasurer of Manitoba vs. Minister of Finance for Canada* and in *Attorney-General of Manitoba vs. Minister of Finance for Canada and Attorney-General*

of Canada, holding *intra vires* an Act of the Manitoba Legislature called "The Vacant Property Act," being Chapter 57 of the 1940 statutes of Manitoba. The Supreme Court judgment is reported in [1943] Supreme Court Reports, page 370).

19. This Manitoba statute, in substance similar to the Quebec "Vacant Property Act," provided as follows :

" 2. All personal property, including money or securities for money deposited with or held in trust by any person in the province, which remains unclaimed by the person entitled thereto for twelve years from the time when such property, money or securities were first payable shall notwithstanding that the deposittee or trustee has delivered or paid or transferred such personal property, money or securities to any other person or official within or without the province as deposittee or trustee vest in and be payable to His Majesty in the right of the Province of Manitoba subject only to His Majesty's pleasure with respect to any claim thereafter made by any person claiming to be entitled to such property, money or securities. 10

" 3. The property set out in section 2 of this Act shall be subject to the application of 'The Escheats Act,' being chapter 64 of the Revised Statutes of Manitoba, 1940." 20

20. The main difference between the Act and the Manitoba statute is that the Act fixes a delay of thirty years before the deposits or credits are deemed to become *bona vacantia* whereas under the Manitoba law they become vested in His Majesty in the right of the Province after the lapse of twelve years.

p. 121, l. 34
et seq.

21. This Supreme Court decision proved a decisive factor in the final decision of Letourneau C.J. in concurring with the majority of the Court in King's Bench, as stated by the learned Chief Justice in his notes of judgment.

22. The Attorney-General of the Province of Quebec submits that the judgment of the Court of King's Bench should be affirmed and the Act declared valid for, among other reasons, the following 30

REASONS.

1. BECAUSE the Act, while not expressed as an amendment of the Civil Code, relates exclusively to Property and Civil Rights in Quebec and falls within head 13 of section 92 and within section 109 of The British North America Act.
2. BECAUSE legislation in relation to vacant property, escheats and *bona vacantia* falls within provincial jurisdiction and the province is entitled to define *bona vacantia* both generally and specially according to categories. 40

3. BECAUSE the Act is a general one affecting all deposits of whatever kind in all credit institutions including chartered banks and does not discriminate against banks or interfere with or affect banking operations as such or conflict with the provisions of the Bank Act.
4. BECAUSE the Act relates to depositors or their legal representatives and ultimate heirs and their property and not to banks and their property, and accordingly is not legislation in relation to Banking as contemplated in head 15 of section 91 of The British North America Act.
5. BECAUSE the case is governed by *Provincial Treasurer of Manitoba vs. Minister of Finance for Canada* (1943) Supreme Court Reports 370, which was rightly decided by the Supreme Court of Canada.
6. BECAUSE of the other reasons given by Demers J. and the majority of the judges in the Court of King's Bench.

10

L. EMERY BEAULIEU.
FRANK GAHAN.

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.*
(Consolidated Appeals.)

CASE FOR RESPONDENT
THE ATTORNEY-GENERAL OF THE
PROVINCE OF QUEBEC.

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