43, 1946

In the Privy Council

No. 43 of 1946

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

BETWEEN:

BANK OF MONTREAL,

(Defendant) **APPELLANT,**

— and —

THE ATTORNEY GENERAL OF THE PROVINCE OF QUEBEC,

(Plaintiff) **RESPONDENT,**

— and —

THE ATTORNEY GENERAL OF CANADA,

INTERVENANT.

CASE FOR THE BANK OF MONTREAL

LAWRENCE JONES & CO.,
Agents for Appellant
The Bank of Montreal.

In the Privy Council

No. of 1946

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

BETWEEN:

BANK OF MONTREAL,

(Defendant) APPELLANT,

— and —

THE ATTORNEY GENERAL OF THE PROVINCE OF QUEBEC,

(Plaintiff) RESPONDENT,

— and —

THE ATTORNEY GENERAL OF CANADA,

INTERVENANT.

CASE FOR THE BANK OF MONTREAL

---

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 Superior Court of the Province of Quebec rendered by the Honourable Mr. Justice Demers on the 6th day of October, 1941, which condemned the Defendant to pay to the Province of Quebec the sum of $15,732.49 with interest and costs. Record p. 116 p. 20

Record

2. The Bank of Montreal is a chartered bank subject, at the time the action was taken, to the Bank Act of 1934 (24-5 Geo. V cap. 24), a statute enacted by the Parliament of Canada under the authority of section 91 of the British North America Act. In the normal course of its business, the Bank of Montreal like all chartered banks receives funds on deposit from its customers and uses these funds for various purposes but chiefly to make loans to governments, corporations and private persons. Some of the deposit accounts remain inactive for long periods of time and the Province of Quebec's efforts to appropriate them to its use have resulted in the present litigation.

3. Prior to the enactment of the Quebec statute 3 Geo. VI cap. 28, upon which the action in this case is based, the Province of Quebec had several times attempted unsuccessfully to appropriate inactive bank balances under the ordinary rules of law in force in Quebec concerning absentees, irregular successions, etc. Four typical cases are reported in the Official Reports of the Superior Court of Quebec in volume 76, pages 149-175. The courts having held that the Province could not lawfully appropriate these assets, the statute here in question was enacted in an attempt to effect the Provincial objective and, on the basis of that statute, the action which is the subject matter of this appeal was launched against the Bank of Montreal.

p. 9 4. In contesting the action, the Bank of Montreal, in its plea, contended (a) that the statute 3 Geo. VI cap. 28 by its terms is not applicable to the Bank of Montreal nor to the amounts claimed, and (b) that insofar as the statute may purport to be applicable to the Bank of Montreal or to the amounts claimed, the statute is unconstitutional as being *ultra vires* of the legislature of the Province of Quebec, and therefore null and void.

p. 6 5. The Attorney General of Canada intervened in the action on 20th November, 1940 to challenge the constitutionality of the statute.

pp. 15 & 20 6. No evidence was adduced at trial, the facts being admitted in the pleadings or in certain admissions dated respectively 27th February, 1941 and 2nd October, 1941 filed by the parties.

7. For purposes of convenience the principal texts of law involved are grouped under this paragraph and read as follows:—

(a) Section 1 of 3 Geo. VI cap. 28 reads as follows:—

"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."

The French version reads:—

"1. Sont réputés des biens vacants et sans maître appartenant à Sa Majesté aux droits de la province les dépôts de sommes d'argent et de titres et tous avoirs en espèces ou en titres, avec les fruits produits, dans les établissements de crédit et tous autres établissements qui reçoivent des fonds ou des titres en dépôt, lorsque ces dépôts ou avoirs n'ont fait l'objet, de la part des ayants droit, d'aucune opération ou réclamation depuis trente ans ou plus."

(b) The relevant provisions of the British North America Act are the following:—

"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, ...

.....

Record

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."

(c) Among the relevant provisions of the Bank Act of 1934 (24-5 Geo. V cap. 24) are the following:—

"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 nine 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 a enactment or law relating to prescription."

"95. (1) The bank may, subject to the provisions of this section, without the authority, aid, assistance or intervention of any other person or official being required,

(a) received deposits from any person whomsoever, whatever his age, status or condition in life, and whether such person is qualified by law to enter into ordinary contracts or not; and

(b) from time to time pay any or all of the principal thereof, and any or all of the interest thereon, to

Record

or to the order of such person, unless before such payment the money so deposited in the bank is lawfully claimed as the property of some other person.

(2) In the case of any such lawful claim the money so deposited may be paid to the depositor with the consent of the claimant, or to the claimant with the consent of the depositor."

"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 a 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

Record

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."

p. 18 8. By an interlocutory judgment dated 10th June, 1941, the Superior Court ordered notices to be published in two Montreal newspapers calling the depositors concerned or their legal representatives. The notices pp. 18 & 19 were published and no claims were made.

p. 20 9. The Honourable Mr. Justice Demers rendered the final judgment of the Superior Court on the 6th October, 1941 and ordered the Bank of Montreal to pay to the Province of Quebec the sum of $15,732.49 with interest and costs. The intervention of the Attorney General of Canada was dismissed.

p. 20 10. In his reasons for judgment, the trial judge answered the Bank of Montreal's arguments to the effect that the Quebec statute 3 Geo. VI cap. 28 does not apply to the Bank of Montreal by saying that the Bank of Montreal is "an establishment which receives funds or securities on deposit"; that bank deposits, while not regular deposits as described in the Civil Code, are "irregular deposits" according to French and English law; that the word "deposits" in the statute means both regular and irregular deposits; that the fact that the word "bank" was not mentioned in the statute for fear of drawing attention to the possible illegality does not preclude its application to bank deposits; that the same word in a statute can have, at the same time, two different meanings.

11. As to the constitutionality of the law, the trial judge states that the mere fact that the law affects banks does not make the law unconstitutional (*Bank of Toronto v. Lamb,* 12 Appeal Cases 575); that the statute 3 Geo. VI cap. 28 is a law affecting property and civil rights not a law on banking operations. Furthermore, the statute is not in conflict with the Bank Act; section 92 of the Bank Act was not adopted in favour of the banks, but in favour of the depositor to the extent of preventing prescription from running, but the deposits remained property subject to the laws of the Province; sections 92 and 115 did not confer any right upon the banks or after their winding-up upon the Federal Government to keep unclaimed deposits forever; the depositor is protected against the bank as his money cannot be prescribed, but it can be confiscated or seized.

12. The Bank of Montreal and the Attorney General of Canada both pp. 166 & 117 appealed to the Court of King's Bench for the Province of Quebec (Appeal Side). The appeals were dismissed on the 29th day of June, 1943, the Honourable Mr. Justice Marchand dissenting.

13. In the opinion of the Honourable Mr. Justice Letourneau, Chief Justice of the Province of Quebec, with whom the Honourable Mr. Justice Walsh concurred, the statute 3 Geo. VI cap. 28 was a law affecting *bank* deposits; banks were in principle subject to the laws of the province, but the provincial Legislature could not exercise jurisdiction over bank deposits merely by labelling them *bona vacantia;* neither the Dominion nor the Provincial Government could enlarge its jurisdiction by giving things a definition of its own making to suit its own purpose (*The King v. National Trust Co.* 1933 S.C.R. 660 at p. 673); "property and civil rights" must be construed "less banking operations, bills of exchange, interest, etc."; the deposits involved come under the heading "banking" since this term includes "every transaction coming within the legitimate business of a banker" (*Tennant v. Union Bank* (1894) A.C. 31) and the Province's claim to legislative power over the deposits must fail as deposits are the very foundation of banking; bank deposits considered as part of the assets of the depositors are like their other assets subject to provincial laws, but considered as a phase of "banking" they are subject to federal authority; the provincial government recognizes the existence of the depositors or their legal representatives by enacting a special law the first and only result of which is to regulate their banking affairs after thirty years and by failing entirely to provide for the disposition of their other property; furthermore, the provincial law is in conflict with existing federal legislation, i.e. sections 92 (2) and 115 of the Bank Act of 1934; these sections provide for custody of the deposits even after thirty years and it is undoubtedly an advantage to our banking system that it should be so; the provincial Legislature may not impose limitations where the federal authority decreed that there should be none; the provisions of the Bank Act have not merely the effect of ruling out prescription since depositors are assured that, subject to the ordinary rules of law, they will recover their deposits even after the bank is wound up; the federal government considered this as something essential to "banking". The Chief Justice therefore came to the conclusion that the law was *ultra vires* and he would have allowed the appeal. However, the decision of the Supreme Court of Canada in *Provincial Treasurer of Manitoba v. Minister of Finance of Canada* (1943 S.C.R. 370) came to his notice before judgment was rendered and caused the learned judge to alter his opinion. He assimilated bank deposits to the funds dealt with in the Manitoba case and stated that it did not matter for whom the "trust" of the Bank in relation to its deposits is exercised: the Province had the right to substitute itself for the owner without disturbing the "trust", which remained subject to federal laws.

Record p. 117

14. It is submitted that the learned Chief Justice was in error in applying the decision of the Supreme Court of Canada in *Provincial Treasurer of Manitoba v. Minister of Finance of Canada* to this case as the facts were essentially different and altogether different legal considerations arose; he was in error particularly in holding that the province could substitute itself for the owner of the deposits under its power to deal with "property and civil rights".

Record p. 123

15. The Honourable Mr. Justice St. Germain concurs in the opinion of the trial judge and adds that a Province may, in legislating upon matters within its powers, enact laws which may incidentally affect matters under the jurisdiction of the federal authority (*Bank of Toronto v. Lamb,* 12 A.C. 575; *Attorney General for Ontario v. Attorney General for Canada,* 1894 A.C. 189); if the federal authority refrains from providing valid rules of law concerning the bank deposit contract, then the provincial civil law would apply including any amendment thereto enacted since Confederation and any special legislation adopted by the provinces on bank deposits; if Parliament had not decreed the bank deposits to be exempt from the statutes of limitations, the Quebec civil code would have applied and the depositors' rights would have lapsed after thirty years; the Provincial Legislature would have had the right to exempt bank deposits from prescription entirely as well as the Dominion Parliament; *bona vacantia* belong to the Crown in right of the province under section 109 of the British North America Act (*Attorney General of Ontario v. Mercer,* 8 A.C. 767; *The King v. Attorney General of British Columbia,* 1924 A.C. 213; *Attorney General for Alberta v. Attorney General for Canada,* 1928 A.C. 475); furthermore *bona vacantia,* in addition to being the property of the Provinces, fall within their exclusive legislative jurisdiction; the federal Parliament has no power to decree the conditions under which bank deposits are to be considered *bona vacantia.* Mr. Justice St. Germain finds no conflict between the Quebec statute now being impugned and the Bank Act of 1934; the latter did not seek to appropriate the deposits as *bona vacantia* but merely provided that the depositors' rights are not subject to prescription; if the deposits become *bona vacantia* under provincial legislation they belong to the provinces; in order to be *ultra vires* a provincial law of this type would have to interfere with banking. Mr. Justice St. Germain says that under section 95 of the Bank Act of 1934 the banks must at any time refund the amounts deposited to the depositors unless they be legitimately claimed as the property of another person; the Crown in right of the province is now claiming these deposits as *bona vacantia* declared so to be by a provincial statute within the Province's jurisdiction; the Bank cannot therefore keep the monies indefinitely; neither can the Dominion Government under section 115 of the Bank Act of 1934 claim indefinite possession of these deposits, as all escheats even of things within the legislative jurisdiction of the Dominion Parliament (such as Indian lands) belong to the Province (*St. Catherine Milling and Lumber Co. v. The Queen,* 14 A.C. 46; *Attorney General for Canada v. Attorney General for Ontario,* 1897 A.C. 199). Mr. Justice St. Germain saw in the Supreme Court of Canada's decision in *Provincial Treasurer of Manitoba v. Minister of Finance for Canada* (1943 S.C.R. 370) confirmation of his opinion; only possession of the funds is dealt with in section 115 of the Bank Act of 1934, not ownership.

16. It is submitted that Mr. Justice St. Germain was in error in holding that the provincial Government has authority to enact that bank deposits are *bona vacantia* under certain conditions and in failing to distinguish this case from that of *Provincial Treasurer of Manitoba v. Minister of Finance for Canada.* He was also in error in supporting the trial judge in the latter's opinion that the statute 3 Geo. VI cap. 28 in its terms applied to the Bank of Montreal. Record

17. The Honourable Mr. Justice Francoeur concurred in the majority judgment but gave no reasons. p. 138

18. The Honourable Mr. Justice Marchand dissented from the majority opinion and would have allowed the appeal. He pointed out that the Dominion Parliament had legislated on the subject of Banks and Banking as authorized by the British North America Act and that the Bank Act of 1934 was the charter of all the Canadian banks including the Bank of Montreal; while the powers of banks in respect of the issue of paper money and in respect of discounts were determined in detail in the Act, the deposit contracts were left largely to be governed by the laws of the place where they were entered into, the customs of banking and special agreements; there is no doubt that a so-called bank "deposit" is in reality a loan for consumption (mutuum) and not a real deposit; banks may enter into real deposit contracts in respect of non-fungible things or of securities and specie for safekeeping. The right of the depositor is perpetual under section 92 of the Bank Act; it does not lapse after any period of time even if the bank disappears; it continues in the depositor, his heirs or the persons to whom it is transmitted by law or by the will of man. The Quebec statute involved in this litigation destroys this right of the depositor after his account has been inactive thirty years; there is no transmission from the depositor to the Province; the depositor is annihilated; his money in the bank becomes *bona vacantia* and he loses all connection therewith. The federal law imposes an obligation on the bank forever in favour of the depositor; the provincial law cancels that obligation and substitutes an obligation in favour of the Provincial Government. The bank cannot at the same time comply with both laws, serve both the owner given to it forever by the federal statute and the owner which the provincial statute substitutes therefor. The federal Act is prior to the Quebec statute, was adopted to regulate banking, a subject-matter over which Parliament has exclusive jurisdiction; banking includes not only the incorporation and charter of banks, but also their rights and obligations, their powers to issue paper money, their powers in respect of discounts and loans, their right to receive deposits and the obligations corresponding to the exercise of these powers. It is clear that the acts and contracts involved in banking are acts of civil law and affect property rights, but where the federal law, because of their nature as banking operations involved in the business of banking, regulates the rights and obligations which arise there- p. 139

Record

from, such law regulates banking and occupies a sphere of jurisdiction which is exclusively its own and provincial legislation may not enter that sphere, and *a fortiori* may not displace the federal law.

19. It is the first contention of the Bank of Montreal on this appeal that the Quebec statute 3 Geo. VI cap. 28 does not, by its terms, apply to the Bank of Montreal or to the amounts claimed. While the desire of the Quebec Legislature to appropriate bank balances has been clear for a long time, it has employed such involved and ambiguous phraseology in order to conceal the unconstitutionality of the statute that, on a proper interpretation, the statute does not apply to the Bank of Montreal or the inactive bank accounts in question.

20. The statute purports to deal with "deposits of money and of securities and all credits specie or in securities, with the fruits thereof, in credit institutions and other establishments which receive funds or securities on deposit" (in French "les dépôts de sommes d'argent et de titres et tous avoirs en espèces ou en titres, avec les fruits produits, dans les établissements de crédit et tous autres établissements qui reçoivent des fonds ou des titres en dépôt.") The Bank of Montreal has been in existence as a bank since 1817 and has been a corporation since 1822. Its existence was continued by various legislative enactments of Lower Canada and of the Dominion of Canada and it existed "as a corporation entitled to do business as a bank" when the statute of the Parliament of Canada 31 Vic. cap. 31 came into force (1867). The Bank of Montreal's existence as a bank has been continued to the present time and it has been subject to each successive Bank Act of the Dominion and it was, at the time the action in this case was commenced, subject to the Bank Act of 1934, which was its charter. It is submitted that the Bank of Montreal is not properly or legally described as an institution of credit (or in French "établissement de crédit"), but should be described as a bank which is the name attributed to it by its charter, the Bank Act. The Bank of Montreal would not come under the phrase "other establishments which receive funds or securities on deposit" (French — "autres établissements qui reçoivent des fonds ou des titres en dépôt"). The word "deposit" in that context necessarily means a *real* deposit (i.e. the contract described in Articles 1794 to 1829 of Civil Code in which the depositary has no right to use the thing deposited and must return to the depositor identically the same thing as was deposited), because it qualifies both "funds" and "securities" and must therefore have the same meaning in relation to both. Since only a *real* deposit can exist in respect of securities, it must follow that the word "deposit" has a like meaning in respect of funds (cf. paragraph 22 below). It is not the usual function of a chartered bank to accept funds on such a basis and it is therefore an improper description of a chartered bank to term it an establishment which receives deposits of this kind.

21. The statute is derived from a French law which will be found in the "Journal Officiel" of June 26th, 1920 of which Article III reads in part as follows:— Record

> "Art. III. Sont définitivement acquis à l'Etat. . . .
> 3. Les dépôts de sommes d'argent et, d'une manière générale, tous avoirs en espèces dans les banques, les établissements de crédit et tous autres établissements qui reçoivent les fonds en dépôt ou en compte courant, lorsque ces dépôts ou avoirs n'ont fait l'object, de la part des ayants droit, d'aucune opération ou réclamation depuis trente années."

The French law specifically mentions banks, the Quebec statute does not. This omission is significant. The addition in the French version of the Quebec statute of the word "titres" after "sommes d'argent" furthermore makes untenable the contention advanced by the Province to the effect that the statute applies both to regular and so-called "irregular" deposits.

22. The statute does not apply to the amounts claimed because these amounts are not "deposits" within the meaning of the law of Quebec. It is obvious that bank deposits do not fall within the title "Of Deposit" of the Civil Code of Quebec (Articles 1794 to 1829). While the public generally refers to bank balances as "deposits", such term is obviously incorrect. A bank "deposit" is really a *loan* to the bank; a *credit* in the banker's books *(Falconbridge, Banking and Bills of Exchange,* 5th Ed. 1935 at pp. 156 and 297; *Alberta Reference Case,* 1938 S.C.R. at p. 124 where a passage from Macleod's "Theory of Credit" is cited with approval by Duff, C.J.). Furthermore, the statute purports to apply to deposits of money and of securities. Deposits of securities would constitute real deposits, not loans of securities for the the bank's use. Therefore "deposits of money" must mean real deposits of specie without any right in favour of the bank to use the money and with the obligation of returning to the depositor identically the same coin or bills as were deposited. The word "deposits" must have the same meaning in relation to one of its complements as to the other and if only one meaning is possible in respect of one complement the same meaning must apply ot the other. The sentence given by the learned trial judge: "I will loan you a horse and $100" as a case where "loan" means both a commodatum (as applied to the horse) and a mutuum (as applied to the $100) is not in point, as it must be assumed that the borrower would understand that he could use the $100, not being in the business of accepting money for safekeeping. None of the amounts claimed in the action in this case are in respect of real deposits.

23. It is submitted that the statute ought to be construed strictly as it is a law which purports to encroach on the rights of the depositors

Record

and to confiscate their property without compensation. On this point, the statute may be compared to a penal act (*Maxwell on the Interpretation of Statutes,* 7th Edition p. 245).

24. The second contention of the Bank of Montreal is that the statute, if it is applicable to it and insofar as it may be applicable to it, is unconstitutional because it constitutes legislation in relation to banking. It is not sufficient to say in support of the constitutionality of the provincial statute that it "affects" property or civil rights; if it were so, the provincial Legislature could invade the sphere of action reserved to the Dominion at will as almost any piece of legislation will be found to "affect" property and civil rights (*Gold Seal Limited v. Attorney General of Alberta,* 62 S.C.R. 424 at page 460 per Duff, C.J.). While the statute in question in this case may "affect" property and civil rights, it is nevertheless unconstitutional because it is a statute in relation to banking, as banking is a field reserved to the Parliament of Canada.

25. The fact that a provincial statute may be couched in language which is taken from the vocabulary of the law of property or civil rights does not make it constitutional if its true effect is to legislate in relation to a subject matter within the exclusive powers of the Dominion. The "pith and substance" of the legislation must be considered and the wording of the statute is not decisive (*Union Colliery v. Bryden* 1899 A.C. 580; *Attorney General of 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 of Alberta v. Attorney General of Canada,* 1939 A.C. 117, per Lord Maugham L.C. at p. 130). The mere fact that the statute refers to such civil law institutions as *"bona vacantia"* or "deposits" and carefully avoids the use of the word "bank" will not save the statute if it be shown that under this camouflage it is legislation in relation to banking.

26. Exclusive legislative authority in relation to "banking" is vested in Parliament by section 91 (15) of the British North America Act. The term "banking" is wide enough to embrace every transaction coming within the legitimate business of a banker (*Tennant v. Union Bank,* 1894 A.C. 31 at page 46, per Lord Watson; *Alberta Reference,* 1938 S.C.R., at page 155, per Duff, C.J.). The Bank of Montreal is authorized by Section 75(1)(d) of the Bank Act of 1934 to "engage in and carry on such business generally as appertains to a bank".

27. The receipt and repayment of bank deposits have always been essential elements of banking (*Falconbridge, Banking and Bills of Exchange,* 5th Edition 1935, page 156; *Foley v. Hill,* (1848) 2 H.L.C. 28, per Lord Brougham at page 43). Under the Bank Act, this is clear from the provisions of sections 92 and 95.

28. Since the receipt and repayment of deposits are essential elements of banking, it follows that the Dominion Parliament has exclusive jurisdiction in relation to the deposit contract and that any provincial legislation in relation thereto must be invalid. The statute here in question is chiefly, if not exclusively, directed to bank deposits. *Real* deposits of money or specie are extremely rare in practice. *Real* deposits of securities are likewise most uncommon as the customary transactions in this respect are the renting of safety deposit boxes (which is not a deposit at all but a lease) or the depositing of securities with some powers of administration or sale (which constitutes a mandate and not a deposit). The statute cannot affect so-called "irregular" deposits in institutions other than banks because these become the property of the "depositaries" after thirty years of inactivity (Articles 2242 and 2260 of the Civil Code) so that there is nothing for the Province to take over under the statute. There only remain bank deposits to which the law may be directed. This analysis can lead to no other conclusion than that the statute is in relation to banking and is therefore unconstitutional.

29. In dealing with bank deposits which have been inactive for thirty years, the statute as interpreted by the Courts below would purport firstly to extinguish the liability of the bank towards its depositors; secondly to substitute for that liability a liability towards His Majesty in right of the province, thirdly to extinguish the right of the bank to use the funds deposited until they are legally claimed.

30. The right of the depositor to claim his deposit at any time even after thirty or more years of inactivity was obviously considered by Parliament to be desirable in the interests of a sound banking system. To take this right away is a clear interference with "banking". And if it can be taken away after thirty years of inactivity, it could be taken away after ten years or even one year. The Province of Manitoba now has a statute similar to the Quebec law but where the period of inactivity is twelve years. Such curtailments in the depositors' rights may shake considerably the faith of the public in the Canadian banking system, which it is the right and duty of Parliament to protect.

31. If the statute here in question be valid, there would be nothing to prevent any of the provinces of Canada from enacting legislation of the same type appropriating bank deposits which have remained inactive for a period of time; such period might vary from one province to another. Manitoba has already enacted confiscatory legislation of this type, which, if valid, would vest bank deposits in the provincial government after twelve years of inactivity. Other provinces might take similar steps. If legislation of this kind were valid therefore, the result would be that a depositor might have in a certain province which had not legislated on the subject, the full right guaranteed to him by the Bank Act to claim his deposit at any time in perpetuity; in another province he might lose

Record

his right after thirty years of inactivity and in another after twelve years and in yet another after three, etc. Such dissimilarity is clearly repugnant to the intention of Parliament which has made one rule and one rule only for the whole of Canada; this rule was obviously considered desirable in a country where banking is organized federally on a coast-to-coast basis and where the banks are large institutions closely supervised by the federal authority with branches throughout the country. This intention of Parliament is, needless to say, in accordance with the intention of the framers of the British North America Act who gave to the Parliament of Canada jurisdiction over banking to the exclusion of the local Legislatures.

32. Since Parliament has exclusive legislative authority with respect to "banking", the province is without jurisdiction to enact any legislation in relation thereto even if the particular field has not been occupied by Parliament (*Union Colliery Company of British Columbia v. Bryden,* 1899 A.C. 580, per Lord Watson at page 588; *Attorney General for Alberta v. Attorney General for Canada,* 1943 A.C. 356, per Viscount Maugham at page 370). But here Parliament has acted and it is the final contention of the Bank of Montreal on this appeal that the statute is in conflict with valid provisions of the Federal Bank Act which must prevail (*Cameron,* Vol. 1, page 78; *Laruc v. Royal Bank,* 1928 A.C. 187, per Viscount Cave at page 198; *Grand Trunk Railway of Canada v. Attorney General of Canada,* 1907 A.C. 65, per Lord Dunedin at page 68). It is clear that the statute is in conflict with sections 92 (2), 95 and 115 of the Bank Act of 1934.

33. On the whole, the Bank of Montreal submits that the judgment of the Court of King's Bench for the Province of Quebec is erroneous and that the judgment in favour of the Attorney General for the Province of Quebec rendered by the Superior Court against the Bank of Montreal should be reversed for the following amongst other

REASONS

(1) because the statute 3 Geo. VI cap. 28 does not apply to chartered banks and to the Bank of Montreal in particular;

(2) because the statute does not apply to the amounts claimed in the action, these not being deposits within the meaning of the statute;

(3) because the statute is a law in relation to banking and as such is *ultra vires* of the Legislature of the Province of Quebec, since banking falls within the exclusive jurisdiction of the Dominion Parliament under section 91 of the British North America Act;

(4) because legislation whereby a bank depositor is deprived of his rights to claim his deposited monies after thirty years is legislation in relation to banking and therefore *ultra vires* of the provincial Legislature;

(5) because legislation by which an obligation is placed upon a bank to pay to His Majesty in the right of the province certain amounts deposited with it by a customer is legislatoin in relation to banking and *ultra vires* of the provincial Legislature;

(6) because legislation which deprives the bank of its right to use the funds deposited with it until they are claimed by the depositor or his representatives is legislation in relation to banking and *ultra vires* of the provincial Legislature;

(7) because the statute is in conflict with sections 92, 95 and 115 of the Bank Act of 1934 which were properly enacted by the Parliament of Canada under power vested in it by section 91 of the British North America Act;

(8) because of the other reasons given by the Honourable Mr. Justice Marchand.

L. A. FORSYTH.

In the Privy Council

No. 43 of 1944

On Appeal from the Court of King's Bench for the Province of Quebec (Appeal Side) Canada

BETWEEN

BANK OF MONTREAL,

(Defendant) **APPELLANT,**

— and —

THE ATTORNEY GENERAL OF THE PROVINCE OF QUEBEC,

(Plaintiff) **RESPONDENT,**

— and —

THE ATTORNEY GENERAL OF CANADA,

INTERVENANT.

Case for the Bank of Montreal

LAWRENCE JONES & CO.,
Agents for Appellant
The Bank of Montreal.