5,1943

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,*

AND

THE ATTORNEY-GENERAL OF MANITOBA ... ... *Intervenant.*

CASE FOR THE ATTORNEY-GENERAL OF CANADA.

Record.

1. This is an appeal by special leave from a judgment of the Supreme Court of Canada dated the 2nd December, 1941, which answered certain questions concerning the constitutional validity of the Debt Adjustment Act, 1937, of the Province of Alberta as amended by five later Acts, which had been referred to the Supreme Court for hearing and consideration pursuant to section 55 of the Supreme Court Act (Revised Statutes of Canada, 1927, chapter 35) by the Governor-General in Council by an Order made on the 19th May, 1941. pp. 58-60. pp. 3-5.

2. The Debt Adjustment Act, 1937, is chapter 9 of the Statutes of Alberta, 1937, and the amending Acts mentioned in the Order-in-Council are 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. References in this Case to " the Act " mean the Debt Adjustment Act, 1937, as so amended.

3. By reason of the definitions in section 2 the protection of the Act is given only to residents of Alberta, to the estates of deceased residents, and to family corporations with their head offices or principal places of business in Alberta. The general effect of the Act is as follows :—

(i) By sections 3 and 7 " The Debt Adjustment Board " is constituted as a corporation with 1, 2 or 3 members appointed by the Lieutenant-Governor in Council, each of whom may act as the Board. Provision is also made for local committees, if appointed by the Lieutenant-Governor in Council, to co-operate with the Board. By section 4 the Board may appoint agents and, subject to the approval of the Lieutenant-Governor in Council, delegate functions to such agents.

(ii) By section 8, except under a written permit issued by the Board or any person designated by it (which permits the Board may at any time cancel or suspend) no person shall (except in respect of contracts where the whole of the original consideration arose after the 30th June, 1936) begin or continue against a resident debtor as defined in section 2 (*e*) any proceeding enumerated in a very comprehensive list (to which the Lieutenant-Governor in Council may add) of actions, suits, executions, attachments, garnishments, seizures or distresses. By section 26 a permit is required even to take proceedings against a resident farmer who has failed to carry out a proposal confirmed under the Dominion Farmers' Creditors Arrangement Act (Statutes of Canada, 24 and 25 George V chapter 53 as amended).

(iii) By section 9 the issue of a permit is forbidden in respect of any proceedings founded on a mortgage or agreement to sell lands being farmed if the proceedings lead to foreclosure merely because the security cannot for the time being realise its fair ordinary value under normal conditions.

(iv) By section 21, the Board, on the application of either a resident debtor or a creditor, is to endeavour to bring about an amicable arrangement for the settlement of the resident debtor's debts in full or by a composition.

(v) By section 23, the Board is to try to arrange the reduction of debts to accord with the debtor's ability to pay having regard to his average income since the debt was incurred or, if the debtor is a farmer, the productive capacity of his farm and equipment and the average net price of agricultural produce.

(vi) By section 27, chattel mortgages given by a resident farmer from and after the 1st May, 1934, to secure past indebtedness are valid only if approved by the Board within 60 days of execution, and by section 28 the Board may authorise a resident farmer to sell his mortgaged chattels to provide himself with the necessities of life, feed for his live stock, or seed grain.

(vii) By section 29, where a resident farmer to secure money payable under a mortgage charge or agreement for sale of land becomes a lessee of such land, the rent being a share of the crop, the Board may authorise the farmer to retain for his own use so much of the share of the 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; and by section 30, in respect of a crop grown subsequently to 1935, no vendor or mortagee shall be entitled to delivery of more than one-third of the crop less the cost of threshing such one-third and less one year's taxes on the land. Record.

(viii) By section 30, a contracting out of the Act is only permitted with the approval of the Board, which cannot be given where, by reason of section 9, a permit for proceedings could not be given.

(ix) By section 36, an appeal from a decision by the Board, other than an adjournment of an application for a permit, is given to a jury of six persons directed on the law by a judge.

(x) By section 38, the Lieutenant-Governor in Council is empowered to suspend any provisions of the Act or to exempt therefrom certain classes of person to prevent conflict with any legislation which the Parliament of Canada may pass as to the adjustment of debts, and by section 39 the provisions of the Act are not to be construed to authorise anything not within the legislative competence of the Province.

4. The questions referred, and the answers given by the majority of the Supreme Court of Canada (Duff C.J.C., Rinfret, Davis, Kerwin, Hudson and Taschereau JJ.) are as follows:— p. 4, l. 33; p. 59, l. 35.

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?

Answer: The said Act as amended is *ultra vires* of the legislature of Alberta in whole.

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?

Answer: The said Act as amended is not operative in respect of any of the matters mentioned.

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?

Answer: The said Act as amended is not operative in respect of any of the matters mentioned.

Question 4: Is the said Act as amended operative in respect of any

Record.

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 an 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 ? 10

Answer : The said Act as amended is not operative in respect of any of the matters mentioned.

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 ?

Answer : The said Act as amended is not operative in respect of any of the matters mentioned.

p. 60, ll. 1-11. **5.** Crocket J. was of opinion that the Act is not *ultra vires* or inoperative except in so far as its provisions conflict with existing valid legislation of the 20 Parliament of Canada.

6. The Attorney-General of Canada respectfully submits that, by the authorities cited below amongst others, the following principles for determining the validity of provincial legislation under the British North America Act are established :—

(i) If a provincial statute is not legislation in relation to any legislative head of section 92 (or in relation to education, agriculture, or immigration under sections 93 and 95) then it is *ultra vires : Citizens' Insurance Company* v. *Parsons* (1881) 7 App. Cas. 96, at p. 109.

(ii) If a provincial statute *prima facie* falls within one of the legis- 30 lative heads in section 92, a further question arises whether the subject of the Act does not also fall within one of the enumerated classes of subjects in section 91, in which case the power of the provincial legislature is overborne : *Citizens' Insurance Company* v. *Parsons* (1881) 7 App. Cas. 96, at p. 109. This follows from the terms of section 91, which expressly provides that the legislative authority of Parliament under the enumerated heads is " exclusive " and that the enumerated classes of subjects in section 91 shall not be deemed to come within the enumeration in section 92. The effect of this latter provision contained in the closing words to section 91 is that the classes of subjects therein enumer- 40 ated are wholly excluded from all the legislative heads entrusted to the legislatures of the provinces under section 92 : *Attorney-General for Ontario* v. *Attorney-General for Canada* (1896) A.C. 348, at pp. 359-360.

(iii) Since the legislative authority of Parliament under the enumer-

ated heads in section 91 is " exclusive," provincial legislation in relation to any matter falling within these heads is *ultra vires* notwithstanding that the Parliament of Canada has not legislated on the subject involved : *Attorney-General for Canada* v. *Attorneys-General for Ontario, Quebec and Nova Scotia* (1898) A.C. 700, at p. 715 ; *Reference re Companies' Creditors Arrangement Act* (1934) S.C.R. 659, at p. 661. The rule that legislation in one aspect may be enacted by the provincial legislature and in another aspect by Parliament is, therefore, limited to the field in which Parliament may enact ancillary legislation, and does not extend to the field of legislation assigned exclusively to Parliament : *Attorney-General for Ontario* v. *Attorney-General for Canada* (1894) A.C. 189, at pp. 200 and 201 ; *Grand Trunk Railway Company* v. *Attorney-General for Canada* (1907) A.C. 65, at p. 68.

(iv) The legislative heads of section 92 must therefore be interpreted not to include the legislative heads of section 91 : *John Deere Plow Company Limited* v. *Wharton* (1915) A.C. 330, at p. 340 ; and moreover the provincial legislature is not authorised by section 92, even when legislating within the class of subjects therein set out as interpreted in accordance with the foregoing principles, to enact legislation which is inconsistent with or repugnant to provisions of the British North America Act other than section 91.

(v) To apply these principles of interpretation to a particular provincial enactment, the matter " in relation to " which the enactment is enacted must be determined. For this purpose, regard must be had to the "pith and substance," "the true nature and character" of the legislation in question : *Attorney-General of Ontario* v. *Reciprocal Insurers* (1924) A.C. 328, at p. 337. To determine this it must be determined not only whether the legislation, fairly considered, falls *prima facie* within section 91 or section 92 but, in a case of difficulty, what is the effect of the legislation and also the object or purpose of the legislation since 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 : *Attorney-General for Alberta* v. *Attorney-General for Canada* (1939) A.C. 117, at p. 130. This principle is sometimes stated as being that legislation in one aspect and for one purpose may competently be enacted but in another aspect or for another purpose will be *ultra vires*. In the determination of the true " aspect " of a particular enactment it is understood that by " aspect " is meant under the decisions the aspect or point of view of the legislator in legislating—the object, purpose and scope of the legislation : that the word is used subjectively of the legislator rather than objectively of the matter legislated upon : see Lefroy's " Canada's Federal System," p. 200 ; Lefroy's " Legislative Power in Canada," p. 394.

7. When these principles are applied to the Debt Adjustment Act, the Attorney-General of Canada respectfully submits that both the effect of the

enactment and the purpose of the legislature show that the Act is in its pith and substance *ultra vires* of the legislature of Alberta in whole, and that it cannot be justified under heads 13, 14 and 16 of section 92 of the British North America Act, which appear to be the only heads under which justification could be attempted.

8. The Act does not fall, it is submitted, within the scope of legislation under head 13 in relation to " property and civil rights in the province." It has long been settled that the expression " civil rights in the province " cannot be given any wide or unrestricted meaning. It means those civil rights in the province remaining after subtracting the civil rights which fall to be regulated by Parliament within its exclusive authority under section 91 as well as those comprising the field of the other heads of section 92 : *John Deere Plow Company Limited* v. *Wharton* (1915) A.C. 330, at p. 340. A vast array of civil rights, which may be called Dominion civil rights, including 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, are excluded from section 92 by the enumerated heads of section 91. The purpose of the Alberta legislature in passing the Act was quite as much to affect Dominion civil rights as " civil rights in the province." The direct principal effect of the Act is to freeze and stultify—indeed, in substance to destroy and replace by different and inferior, imperfect and conditional rights—all rights in both classes falling within its terms. Further, it empowers the Board by use of its wide discretionary powers to regulate such rights. The Act empowers the Board indirectly to regulate rights which the province cannot directly regulate. Conclusive evidence that the Act is in effect legislation in relation to such Dominion civil rights is furnished by the extent to which the Act is repugnant to many validly enacted statutes of Parliament dealing with such rights. The effect and extent of this repugnancy is summarised below in paragraph 16. Nor are these merely incidental effects. The whole statute in its entire operation applies quite as much to Dominion as to provincial civil rights. The purpose of the legislature in enacting the statute is to provide for the regulation of the substantive rights themselves. Enforceable legal rights, including rights arising under laws which the legislature of Alberta cannot vary or repeal, are converted into conditional rights enforceable only by permission of the Board.

9. Neither, it is submitted, is the Act legislation under head 14 of section 92 in relation to " the administration of justice in the province includ- " ing the constitution, maintenance and organisation of provincial courts " both of civil and criminal jurisdiction and including procedure in civil " matters in those courts." The administration of justice means the administration of justice by law in courts of law to which unimpeded access may be had. This principle is essential in a federal system and is clearly established as fundamental in the British North America Act. Sections 96 to 100,

which provide for the appointment of judges by the Governor-General in Council, are complementary to head 14. The province establishes the courts and the Dominion mans them. It is by courts thus organised that justice is to be administered throughout Canada. Where legislative power is distributed and the lines of distinction are preserved by the courts, it is not open to either legislative body to prohibit access to the courts in any case which involves any question relating to such distinction; nor is it open to one legislative body to put into the hands of a creature of its own complete control over the courts or over the citizen's right to access thereto in matters within the sovereignty of the other legislative body in the federal union. Head 14 of section 92 does not confer authority upon the provincial legislature to substitute for the judicial system whereby rights and obligations are determined by courts in accordance with the recognised principles of law a system whereby another body is interposed with power absolute and arbitrary to say whether and in what cases the judicial system shall function. The power and responsibility of the province is to organise and maintain a judicial system for the free determination of all civil rights, whether founded on Dominion or provincial law, in accordance with recognised judicial principles. The pith and substance of the Act, ascertained by reference to its effect and the purpose of the legislature in enacting it, is to establish an entirely new arbitrary system in substitution for and in denial of the legal system for the administration of justice contemplated by the British North America Act. The Act denies access to the courts in all matters therein dealt with regardless of whether there is a constitutional question involved or whether the matter is one within the exclusive sovereignty of Parliament.

10. Moreover, the powers conferred upon the Board by the Act do not in truth relate to the administration of justice. The nature and powers of the Board are extraordinary. It is guided by no rules or principles, and is subject to no control or guidance. It constitutes within the sphere of its activity an entirely new method of affecting the rights of citizens. It can, just as a legislature might do, regulate rights according to its own views but, unlike the legislature, without stating principles. Some of the rights regulated by it are rights created by the Parliament of Canada within Parliament's exclusive legislative authority. In this way the province is seeking to do indirectly what it cannot do directly. If it is attempted to justify the Act as legislation in relation to the administration of justice under head 14 it must be on the ground that the Board and its appellate body are courts. It is true that the Board by the exercise of its wide powers determines the substantive rights between the parties, and its jurisdiction in this respect may be likened to that of a superior court. It is not, however, validly constituted to receive or exercise such judicial authority. The legislation is in this respect inconsistent with and repugnant to sections 96 to 100 of the British North America Act: *Toronto Corporation and York Corporation* v. *Attorney-General for Ontario* (1938) A.C. 415. The power to legislate in relation to procedure does not include a power generally to prohibit actions. In any event the purpose of the legislature in enacting the legislation is not to make any pro-

vision in relation to the administration of justice, but is to control access to the courts in order to regulate not merely incidentally but as its principal object the substantive rights of the parties.

11. Furthermore the Act does not fall within the description of legislation under head 16 of section 92 in relation to " generally all matters of a " merely local or private nature in the province." Although its protection is given only to debtors in the province, it purports to affect the rights of creditors wherever the creditors may reside and wherever the debts may be payable; and under sections 21 to 25 of the Act the Board is obviously required to have regard to all the just debts of a debtor whether they be debts in Alberta or not. There is indeed nothing in the Act which suggests that the legislature was dealing with " matters of a merely local or private nature."

12. The Attorney-General of Canada, therefore, respectfully submits that the Act cannot be justified under any head or heads of section 92 and that the Act is therefore *ultra vires* in whole. He further submits that, even if it were assumed that the Act comes *prima facie* within the powers of the provincial legislature under section 92, the Act is *ultra vires* as a whole because it constitutes an invasion of many legislative fields exclusively entrusted by section 91 to the Parliament of Canada, namely, " The Regulation of Trade and Commerce," " Shipping," " Fisheries," " Banking," " Bills of Exchange " and " Promissory Notes," " Interest," " Patents," " Copyrights " and in addition the status of Dominion companies. The Parliament of Canada has exclusive authority to legislate in relation to civil rights arising under these heads and to regulate the undertakings and businesses falling within these heads. Under the Act, however, the Board is given complete and arbitrary power to control access to the courts for the enforcement of rights, both Dominion and provincial, in relation to these undertakings and businesses. No principles or rules are laid down to limit or govern the exercise of this power. For instance, although a principal part of the business of banking is the lending of money, a bank's right to enforce repayment is conditioned on the grant of a permit which is in the arbitrary discretion of the Board. By the exercise of this and other powers under the Act the Board would be able, if the Act were valid, to exercise a sweeping control over these undertakings and businesses which is beyond the constitutional authority of the provincial legislature or any creature thereof.

13. Further, the object of the Act is to make provision regarding debtors in Alberta who are unable to pay their debts as and when they become due and is, therefore, legislation in relation to " bankruptcy and insolvency," which is in the exclusive legislative authority of the Parliament of Canada. The true nature and character of the Act is to establish a scheme or system of bankruptcy similar to that established by the Farmers' Creditors Arrangement Act (Statutes of Canada, 24 and 25 George V chapter 53 as amended) which by *Attorney-General for British Columbia* v. *Attorney-General for Canada* (1937) A.C. 391 was held to be legislation strictly in relation to bankruptcy and not merely incidental thereto.

14. The purpose of the legislature to establish a scheme of bankruptcy and insolvency is clear from the title of the Act as well as from its provisions. The purpose is to adjust the debts of persons unable to pay in the ordinary course. The history of the Act confirms this view. Whilst the Act, which when enacted as chapter 9 of 1937 was an amending and consolidation Act, now contains virtually no guidance to the Board in its issuance or refusal of permits (except in the special case of the refusal of a debtor under a compromise who has failed to obey the Board's directions as to payment), earlier repealed provisions gave the Board power to give 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 interest of the debtor and his creditors. These were true ingredients of bankruptcy legislation and their repeal leaves the Board free in a practical sense to do everything which it was under direction to do by the repealed provisions. The Attorney-General of Canada respectfully submits that it is a reasonable inference that the reason why the Act in its present form gives no rules for the guidance of the Board but leaves it instead a wide discretion is because any rules that could be enacted would of necessity relate to bankruptcy and insolvency, and so involve invalidity. If protection is desirable for embarrassed debtors in Alberta it is the Parliament of Canada which is alone competent to provide the required protection, and any attempt of the provincial legislature to do so is *ultra vires* equally whether the field is clear or is occupied by Dominion legislation. But in fact the field is fully occupied by legislation of the Parliament of Canada, namely the Bankruptcy Act (Revised Statutes of Canada, 1927, chapter 11), the Winding-Up Act (Revised Statutes of Canada, 1927, chapter 213), the Farmers' Creditors Arrangement Act (Statutes of Canada 24 and 25 George V chapter 53) and the Companies' Creditors Arrangement Act (Statutes of Canada 23 and 24 George V chapter 36) and the Acts amending them. The whole scheme of the Act is, it is submitted, repugnant to the scheme of this validly enacted legislation.

15. The Attorney-General of Canada therefore respectfully submits that the Act is *ultra vires* in whole and that no provision of the Act is severable and valid, for it cannot be assumed that the legislature would have passed any of the provisions of the Act without the sections which are unquestionably invalid, particularly sections 8 and 21.

16. If the Act is not *ultra vires* in whole it is, on the grounds set out above, *ultra vires* insofar as it deals with civil rights excluded from section 92 and insofar as it constitutes an invasion of the exclusive legislative authority of Parliament. The Attorney-General of Canada respectfully submits that in any case the Act is therefore *ultra vires* in relation to the matters referred to in questions 2, 3, 4 and 5 and is not operative in respect of any of those matters. The Attorney-General of Canada further respectfully submits that various provisions of the Act conflict with provisions of a great many statutes validly enacted by the Parliament of Canada, including the following :—

(i) The Interpretation Act, Revised Statutes of Canada, 1927,

chapter 1, which by section 30 provides that the creation of a corporation by the Parliament of Canada vests in such corporation a power to sue.

(ii) The Bankruptcy Act, Revised Statutes of Canada, 1927, chapter 11 as amended by the Bankruptcy Act Amendment Act, 1932 (22 and 23 George V chapter 39), which by section 2 (*u*) defines " insolvent person " as including a person, whether or not he has committed an act of bankruptcy, who is unable to meet his obligations as they generally become due or has ceased to pay his current obligations in the ordinary course of business, or whose property fairly valued or fairly sold under legal process is less than his obligations due and accruing due, and which by sections 11 to 19 deals with compositions, extensions of time for payment, and schemes of arrangement, and the enforcement thereof by the court, which by section 152 is in Alberta the Supreme Court of Alberta.

(iii) The Bills of Exchange Act, Revised Statutes of Canada, 1927, chapter 16, which by section 74 entitles the holder of a bill to sue upon it in his own name and a holder in due course to enforce payment against all parties liable on the bill, and which by sections 134, 135 and 136 provides for the measure of damages on dishonour and the right to recover these damages.

(iv) The Loan Companies Act, Revised Statutes of Canada, 1927, chapter 28, which by sections 61 to 68 regulates the lending, investment and borrowing powers of such companies, whose businesses could not be carried on unless they were able to recover money lent and enforce securities given in respect of loans.

(v) The Trust Companies Act, Revised Statutes of Canada, 1927, chapter 29, which by sections 62 to 69 regulates the receipt by such companies of trust and other moneys and their investment and borrowing powers, which would similarly be defeated by inability to sue and enforce securities.

(vi) The Interest Act, Revised Statutes of Canada, 1927, chapter 102, which by section 2 creates a right except as otherwise provided to stipulate for allow and exact any rate of interest or discount which is agreed upon, and the validity of which was declared to be unquestionable in *Board of Trustees of Lethbridge Irrigation District* v. *Independent Order of Foresters* (1940) A.C. 513 at pp. 531 and 532.

(vii) The Winding-Up Act, Revised Statutes of Canada, 1927, chapter 213, as amended by 20 and 21 George V chapter 49 and 22 and 23 George V chapter 56, which provides for the winding up of insolvent companies which are within the jurisdiction of the Parliament of Canada.

(viii) The Canadian and British Insurance Companies Act, 1932 (22 and 23 George V chapter 46), which by sections 63 to 68 controls the investments of such companies, with the object of protecting policy holders, which would be defeated by inability to sue and enforce securities.

(ix) The Companies Creditors' Arrangement Act, 1933 (23 and 24 George V chapter 36), which facilitates compromises and arrangements

between companies and their creditors, and by sections 15 and 16 provides for the enforcement of orders made by a court in one province in the other provinces, and for courts and their officers to act in aid of each other on request. Record.

(x) The Bank Act, 1934 (24 and 25 George V chapter 24), particularly sections 75, 79, 80 and 81, which empower a bank to lend money and to take, hold and dispose of, by way of security for debts or liabilities to the bank, mortgages of and the rights of vendors or purchasers under agreements for the sale of real and personal property, to purchase certain real property, and to acquire an absolute title to property mortgaged to it.

(xi) The Companies Act, 1934 (24 and 25 George V chapter 33), as amended by the Companies Act Amendment Act, 1935 (25 and 26 George V chapter 55) which by section 44 authorises directors, instead of forfeiting any shares, to enforce unpaid calls by action in any competent court; by sections 122 to 124 provides for arrangements and compromises between a company and its shareholders; by section 134 provides that any description of action may be prosecuted and maintained between the company and any shareholders; and by other sections governs the liabilities of shareholders and directors.

(xii) The Farmers' Creditors Arrangement Act, 1934 (24 and 25 George V chapter 53, as amended by 25 and 26 George V chapter 20 and 2 George VI chapter 47), which makes provision for keeping farmers on the land as efficient producers notwithstanding the depressed state of agriculture, and for compromising and rearranging the debts of farmers.

17. Argument was head by the Supreme Court on the 24th, 25th and 26th June, 1941. The Attorneys-General of Alberta, Quebec and Saskatchewan supported the validity of the Debt Adjustment Act, and its validity was challenged by the Attorney-General of Canada, by the Canadian Bankers' Association and by the Mortgage Loan Association of Alberta. Judgment was reserved until the 2nd December, 1941, when the Act was declared to be *ultra vires* of the legislature of Alberta in whole. p. 59, l. 12. p. 58.

18. The reasons for judgment of the Chief Justice of Canada were concurred in by Rinfret, Davis, Kerwin, Hudson and Taschereau JJ. The Chief Justice pointed out that by section 8, subsection 1 (*a*) of the Act a legal right to enforce a debt, including a debt arising under laws that the legislature could not repeal or vary and including a debt to a creditor whose powers and status the legislature could not impair or whose undertakings or business it could not regulate, is converted into a conditional right enforceable only by permit of a Board with arbitrary powers exercisable by a single member or a delegate without the guidance of any rule or principle other than its own conception of its duty in each particular case. It is for the Board exclusively to decide what considerations should influence it, and the appeal from its arbitrary determination is merely to the arbitrary determina- pp. 60-64. p. 60, l. 20. p. 61, l. 4. p. 61, ll. 4-19.

Record.

p. 61, ll. 20-34. p. 61, l. 35-p. 62, l. 5. tion of a jury. The Act is more than procedural, and strikes at the substance of the creditor's rights; and it is repugnant to many provisions of valid Dominion statutes. The Act also infringes the exclusive control of the Parliament of Canada over certain types of business and undertakings, and most strikingly but not exclusively that of banks. A bank's right to enforce repayment of a loan is conditioned on a permit and the Board's power to refuse a permit in all such cases or in the case of any particular debt involves a considerable power to regulate the business of banks, which is incompetent p. 62, ll. 6-14. to the provincial legislature. These considerations show section 8 subsection 1 (*a*) to be *ultra vires* as it cannot be limited to debts which are exclusively civil rights within the province (with which the Chief Justice assumed without deciding that the legislature could deal).

p. 62, ll. 15-23. p. 62, ll. 24-34. p. 62, l. 55-p. 63, l. 9. Subsection 1 (*b*) is *ultra vires* for reasons of the same character. The Act affects the jurisdiction of the provincial courts, but its pith and substance is to establish a Board with power to exercise a discriminatory control; and, while in form this is legislation in relation to remedy and procedure, it is in substance a step in a design to regulate the right itself. As creditors Dominion companies occupy a special position. They are subject to provincial regulation by laws of general application to the kind of business in which the company engages in the province, but section 8 of the Act is not a general law in this sense. It would preclude Dominion money-lending companies from enforcing their securities in the usual way. All of section 8 is therefore incompetent. Moreover, subsection 1 of section 8, the scope of which is indicated by paragraph (*g*) and section 41, is plainly repugnant to section 2 of the Interest Act and other Dominion legislation. Accordingly, he held that the whole of section 8 is *ultra vires*.

p. 63, ll. 10-18.

p. 63, ll. 19-20. p. 63, ll. 21-24. The Chief Justice then held that section 26 is so related to the subject matter of the Farmers' Creditors Arrangement Act as to be withdrawn from provincial jurisdiction.

p. 63, l. 25-p. 64, l. 14. Considering the contention that the Act was an attempt to legislate in relation to bankruptcy and insolvency, the Chief Justice pointed out that section 8 (1) prevented a creditor from presenting a bankruptcy petition, as where the statute applied there is no "debt owing" within the meaning of section 4 of the Bankruptcy Act. Moreover, Part III of the Act seeks to empower the Board to impose upon an insolvent debtor and his creditors a settlement of his affairs, and this is an attempt to invade an exclusively Dominion field.

p. 64, ll. 15-29. The Chief Justice thought it unnecessary to decide whether by strictly limited provincial legislation a Board might lawfully be constituted with some of the powers of the Board under the Act, for he thought that it was impossible to disentangle competent from incompetent provisions, and that, even were it possible, there could be no probability that the Act would have been passed in its truncated form. Accordingly he held that the first question

p. 64, ll. 30-34. should be answered by stating that the Act is *ultra vires* in whole, from which it follows that the Act is not operative in respect of any of the matters mentioned in the other questions.

19. Crocket, J., in his reasons for judgment, examined the principles and authorities relating to the distribution of legislative powers between the Parliament of Canada and the provinces which he considered to bear on the present case. The decision of the Supreme Court in *Attorney-General for Alberta* v. *Winstanley* (1941) S.C.R. 87, depended on a conflict between the Debt Adjustment Act and the Bills of Exchange Act in which the latter must prevail. He therefore felt constrained to differ from the view that the Act is wholly *ultra vires*, as he thought that the whole purpose of the Act is to regulate and control the enforcement of debts so as to safeguard during financial stress resident debtors who through abnormal economic conditions are in such a position that enforcement might ruin them. He thought that the provisions of the Act are predominantly directed to civil procedure. The right to sue in provincial courts is, in his view, a civil right in the province, and the Act is not directed to insolvency legislation, banking, or Dominion companies, although the relief of hard pressed resident debtors may collaterally affect these subjects. It is established that Dominion and foreign companies are subject to provincial laws of general application within section 92 of the British North America Act notwithstanding that their business is affected. Nor would the giving of unreasonable and arbitrary power to deny all access to the courts affect the constitutionality of the Act, though in his view the power is not arbitrary. In view of section 39, he did not think the Act a colourable device to extend the legislature's competence. Accordingly, he thought the Act one of general application, but an answer to the questions involved a consideration of how far the Act conflicted with existing Dominion legislation strictly relating to classes of subjects enumerated in section 91 of the British North America Act or as necessarily incidental to such legislation. He accordingly gave the answer set out in paragraph 5 of this Case.

Record.
pp. 64-73.
p. 64, l. 38-
p. 70, l. 9.
p. 70, ll. 10-41.
p. 70, l. 42-
p. 71, l. 14.
p. 71, ll. 14-19.
p. 71, ll. 19-34.
p. 71, l. 35-
p. 72, l. 10.
p. 72, ll. 11-41.
p. 72, ll. 42-46.
p. 73, ll. 1-28.

20. The Attorney-General of Canada respectfully submits that the majority of the Supreme Court correctly answered the questions referred to the Court and that this appeal should be dismissed and that the Debt Adjustment Act should be declared *ultra vires* of the legislature of Alberta in whole, or alternatively in respect of the matters mentioned in questions 2, 3, 4 and 5, or alternatively insofar as the Act is in conflict with valid legislation of the Parliament of Canada, for the following amongst other

REASONS

1. Because the Debt Adjustment Act is not legislation in relation to " property and civil rights in the province " under head 13 of section 92 of the British North America Act inasmuch as it affects all civil rights including those outside the province and those which, being within the enumerated classes of subjects in section 91, are within the exclusive legislative authority of the Parliament of Canada.

2. Because the Debt Adjustment Act is not legislation in relation to " the administration of justice " under head 14 of

section 92 inasmuch as it denies the fundamental right of free access to the courts, and seeks to prevent the enforcement of rights created by legislation validly enacted by the Parliament of Canada.

3. Because the Debt Adjustment Act in violation of sections 96 to 100 of the British North America Act purports to confer judicial authority on a Board which is not properly constituted to exercise such authority.

4. Because the Debt Adjustment Act is not legislation in relation to any other matter coming within the classes of subjects enumerated in section 92 of the British North America Act.

5. Because the Debt Adjustment Act is legislation in relation to bankruptcy and insolvency.

6. Because the Debt Adjustment Act is legislation in relation to many other matters coming within the classes of subjects enumerated in section 91 of the British North America Act and affects *inter alia* civil rights arising therefrom, the status of banks and companies incorporated under the authority of the Parliament of Canada, bills of exchange and promissory notes, interest and the regulation of trade and commerce.

7. Because the Debt Adjustment Act is in conflict with legislation validly enacted by the Parliament of Canada, particularly the legislation mentioned in paragraph 13 of this Case.

8. Because no provisions of the Act which might be valid if separately enacted are severable from provisions which are *ultra vires* of the legislature of Alberta.

9. Because, if not *ultra vires* in whole, the Act is *ultra vires* or inoperative in relation to the matters specified in the second, third, fourth and fifth questions submitted for consideration and report.

10. Because if not wholly *ultra vires* by reason of conflict with legislation validly enacted by the Parliament of Canada, the Act is invalid insofar as it is in conflict with such legislation.

D. N. PRITT.

FRANK GAHAN.

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,*

AND

THE ATTORNEY-GENERAL OF MANITOBA *Intervenant.*

CASE FOR THE ATTORNEY-GENERAL OF CANADA.

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