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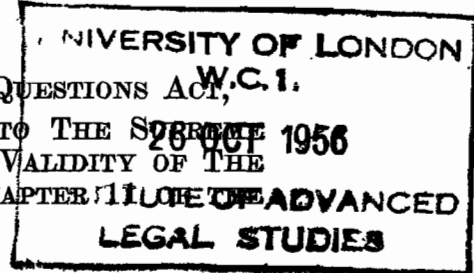
In the Privy Council.

No. 22 of 1947.

ON APPEAL FROM THE SUPREME COURT OF
ALBERTA.

(APPELLATE DIVISION.)

IN THE MATTER of THE CONSTITUTIONAL QUESTIONS ACT,
AND IN THE MATTER of A REFERENCE TO THE SUPREME
COURT OF ALBERTA TO DETERMINE THE VALIDITY OF THE
ALBERTA BILL OF RIGHTS ACT, BEING CHAPTER 11 OF THE
STATUTES OF ALBERTA, 1946.



ALBERTA CASE

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BETWEEN

THE ATTORNEY-GENERAL OF ALBERTA *Appellant*

AND

THE ATTORNEY-GENERAL OF CANADA, and
THE CANADIAN BANKERS' ASSOCIATION *Respondents*

BETWEEN

THE ATTORNEY-GENERAL OF CANADA *Appellant*

AND

THE ATTORNEY-GENERAL OF ALBERTA - *Respondent.* -

(Consolidated Appeals.)

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CASE FOR THE ATTORNEY-GENERAL OF
ALBERTA.

1. This is an appeal and cross-appeal from the judgment of the Appellate Division of the Supreme Court of Alberta pronounced the 17th day of December, A.D. 1946, upon a Reference made to that Court by the Lieutenant Governor in Council, pursuant to the provisions of The Constitutional Questions Act, chapter 115 of the Revised Statutes of Alberta, 1942, whereby the Court was requested to answer the following question with respect to the constitutional validity of The Alberta Bill of Rights Act, being chapter 11 of the Statutes of Alberta, 1946 :—

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“ Is The Alberta Bill of Rights Act, being chapter 11 of the Statutes of Alberta, 1946, *intra vires* the Legislature of Alberta, either in whole or in part, and if so, in what part or parts, and to what extent ? ”

2. By the unanimous judgment of the Court, delivered by the Honourable Chief Justice Harvey, it was declared that Part I of The Alberta Bill of Rights Act is *intra vires* of the Legislature of the Province of Alberta, and Part II is *ultra vires* of the Legislature of the Province of Alberta.

3. The question arising on this appeal is in substance :—

Whether, by virtue of heads 13 (property and civil rights in the Province), and 16 (generally all matters of a merely local or private nature in the Province), the Provincial Legislature can validly pass an Act :—

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(A) declaring that the people of Alberta are entitled to certain rights as outlined in Part I of the Act ;

(B) dealing with deposits of credit in credit institutions in the Province in respect of which the credit institutions have no corresponding reserve of currency ;

(C) authorizing a board of credit commissioners to license credit institutions which accept deposits of credit as defined by The Alberta Bill of Rights Act, and providing further that the Board may not take over or interfere with any operations which credit institutions are authorized to perform by virtue of the provisions of The Bank Act (chapter 30 of the Statutes of Canada, 1944-45), nor to impair in any way the deposits any person may have with the credit institution, nor to interfere with any person in dealing with his deposits in any way he may deem proper ;

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(D) authorizing the board to establish a capital assets account of the property of Alberta, a consolidated credit adjustment fund, and to issue, with the approval of the Lieutenant Governor in Council, certain credit certificates for regulating the issue of credit in respect of which credit institutions have no corresponding reserves of currency, and the transfer of such credit from one credit institution to another.

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4. Chief Justice Harvey delivering the judgment of the Court, held Part II of the Act to be *ultra vires* of the Provincial Legislature on the ground that although the Act deals with property and civil rights in the Province, a subject matter upon which the Province has a right to legislate under the British North America Act, nevertheless it also deals with bank and banking, a subject matter upon which Parliament is given the right to legislate, and that while the Dominion, in legislating on subject matters assigned to it, may infringe on some subject matters assigned to the Province, the converse is not true, and the right of the Province, though stated to be exclusive, is qualified, and that the Provincial Legislature on a subject matter assigned to the Provinces cannot be permitted to infringe on subject matters assigned to the Dominion.

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5. The Appellant, the Attorney-General of Alberta, humbly submits that the judgment of the Honourable Chief Justice Harvey, concurred in by the other members of the Court, is right insofar as it holds that Part I of The Alberta Bill of Rights Act is *intra vires* of the Legislature of the Province, but that the judgment is wrong in holding that Part II

is *ultra vires* of the Legislature of the Province, and in that respect, ought to be reversed, and judgment should be entered for the Appellant, the Attorney-General of Alberta, declaring that both Part I and Part II of The Alberta Bill of Rights Act are *intra vires* of the Legislature of the Province of Alberta, for the following among other

REASONS.

(A) *As to Part II of The Alberta Bill of Rights Act :*

- 10 (1) Because The Alberta Bill of Rights Act, chapter 11 of the Statutes of Alberta, 1946, is in pith and substance not legislation relating to banks and banking within the meaning of head 15 of the British North America Act, but is legislation relating to property and civil rights in the Province, or to one or more other heads of section 92 of the said Act. (Sec. 91)
- 20 (2) Because even if chapter 11 affects the subject of banks and banking, it does not invade the field of banking allotted to Parliament, by head 15 of section 91, and there is no Dominion legislation directly in conflict with it.
- 30 (3) Because the Appellate Division of the Supreme Court of Alberta erred in holding that a province legislating on matters assigned exclusively to it under the British North America Act may not affect or infringe upon a matter in respect of which Parliament is given the right to legislate under the said Act.
- 40 (4) Because the Appellate Division of the Supreme Court of Alberta erred in failing to hold that a province legislating on a subject matter exclusively assigned to it by section 92 of the British North America Act may affect and may infringe on subject matters assigned to the Dominion provided it does not conflict with existing Dominion legislation on a subject matter assigned exclusively to the Dominion under the said Act.
- (5) Because legislation with respect to credit, credit deposits and credit institutions as outlined in The Alberta Bill of Rights Act is not legislation with respect to banks and banking within the meaning of those terms as used in head 15 of section 91 of the British North America Act, but is a matter of property and civil rights under head 13 of section 92 of the British North America Act.
- (6) Because chapter 11 cannot be said to be legislation with respect to the regulation of trade and commerce within the meaning of head 2 of section 91 of the British North America Act, and it does not constitute legislation in relation to any of the other heads of section 91 of the said Act.

- (7) Because there is no real conflict between the said chapter 11 of the Statutes of Alberta, 1946, and any of the provisions of The Bank Act or The Bank of Canada Act.
- (8) Because if any of the provisions of The Bank Act or The Bank of Canada Act purport to regulate or deal in credit as defined and understood in The Alberta Bill of Rights Act to that extent these provisions are *ultra vires* the Parliament of Canada.
- (9) Because the judgment appealed from insofar as it relates 10 to Part II of The Alberta Bill of Rights Act is wrong and ought to be reversed.
- (B) *As to Part I of The Alberta Bill of Rights Act :*
Because Part I of The Alberta Bill of Rights Act is clearly within the legislative competence of the Provincial Legislature relating as it does to property and civil rights within the Province, and it is severable from Part II of the Act.

LUCIEN MAYNARD,
Attorney-General. 20

H. J. WILSON.

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