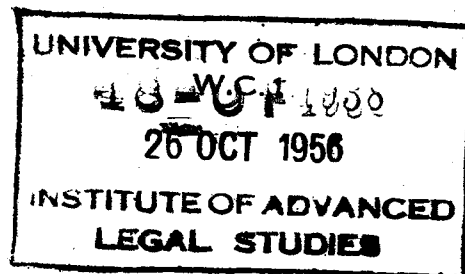


46, 1938



No. 36.

IN THE SUPREME COURT OF CANADA.

IN THE MATTER OF THREE BILLS PASSED BY THE LEGISLATIVE ASSEMBLY OF THE PROVINCE OF ALBERTA AT THE 1937 (Third Session) THEREOF, ENTITLED RESPECTIVELY :

- “ An Act Respecting the Taxation of Banks ”;
- “ An Act to Amend and Consolidate the Credit of Alberta Regulation Act ”; and
- 10 “ An Act to Ensure the Publication of Accurate News and Information ”;

and reserved by the Lieutenant-Governor for the signification of the Governor General's pleasure.

FACTUM OF THE CANADIAN PRESS AND CANADIAN NEWSPAPERS ASSOCIATIONS

Bill No. 9 “ The Accurate News and Information Act ” if it should become law would have a serious effect on The Canadian Press, Canadian Daily Newspapers Association and Canadian Weekly Newspapers Association, the three organizations on whose behalf this factum is filed. All the daily newspapers of Alberta are members of The Canadian Press and of Canadian
20 Daily Newspapers Association and a majority of the weekly newspapers of Alberta are members of the Canadian Weekly Newspapers Association. A short explanation of the objects and scope of the activities of these three Associations seems to be desirable. They are all co-operative Associations operated without purpose of gain. Canadian Daily Newspapers Association and Canadian Weekly Newspapers Association have for their object the
5 furtherance of the interests of their members in matters other than the gathering and dissemination of news, this being the function of The Canadian Press. The Canadian Press was incorporated under the Dominion Companies Act by Letters Patent dated 18th November, 1910, under the name
30 “ Canadian Press Limited.” By chapter 109 of 13-14 George V. (Dominion) this name was changed to “ The Canadian Press ” and the Corporation's charter was amended. Section 4 of this Act provides that the business of the Corporation shall not be carried on for the purpose of gain and any surplus or profit arising from the Corporation's business shall not be distributed among its members, but shall be applied in furtherance of the Corporation's activities in such manner as the directors shall decide. Section 7 of the Act gave to the Company certain powers in lieu of those conferred by the Letters Patent by which it was incorporated, which include the following :

- 40 (a) to carry on the business of a news agency in all its branches and for that purpose to collect and gather news by cable, telegraph,

telephone, wireless or any other means either through its own agents or through its members and the newspapers owned or represented by them or by any other appropriate means and to distribute such news on a co-operative basis among and for the use of its members for publication in newspapers owned or represented by them subject to such rules, regulations and conditions as may be prescribed from time to time by the by-laws of the Corporation;

(b) to enter into contracts and arrangements with any other person, firm or corporation carrying on a like business for the exchange of news;

(c) to purchase, install, lease, own and operate means for the transmission of news including telephones, telegraph instruments, wireless instruments and other apparatus for long distance communication.

The Canadian Press obtains its news, which it distributes among its members, from three sources,— (a) the pooled news reports of its members (b) news gathered by the various Canadian Press Bureaus in Canada, in London and in New York, and (c) news purchased from or exchanged with Associated Press of New York, L'Agence Havas of Paris, and Reuter's Limited of London. In addition to furnishing news reports to its members The Canadian Press, through its central bureau at Toronto, supplies at its own expense, daily news bulletins to the Canadian Broadcasting Corporation which are broadcasted over a national network of radio stations. It will be seen from this brief explanation that "The Accurate News and Information Act" or any other similar legislation by a provincial Legislature affects very vitally The Canadian Press.

It is submitted that the proposed legislation is *ultra vires* of the Legislature of the Province of Alberta upon the following among other grounds:

(a) The true subject of the legislation is censorship of the press, which is not within the subjects enumerated in section 92 of The British North America Act and consequently falls within the power of the Dominion Government "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 provinces" or in the alternative falls within the exception found in sub-head 10 (a) of section 92 of The British North America Act as an undertaking extending beyond the limits of the province.

(b) If the legislation is what it purports to be, an Act to ensure the publication of accurate news and information, its subject is Criminal law. The Dominion Parliament by section 136 of the Criminal Code has made it an offence to publish wilfully and knowingly any false news whereby injury or mischief is or is likely to be occasioned to any public interest. The Alberta Legislation now under consideration seems to be an attempt to supplement this provision of the Criminal Code.

(c) The Act is part of a larger body of legislation which has for its avowed object the introduction into the Province of Alberta of a new political and economic system known as "Social Credit." The key note of this system is the so-called monetization of provincial credit, which must mean the creation and issue of currency or paper money, by the Province.

10 (d) The proposed legislation attempts to constitute the Lieutenant-Governor in Council a court to try the question as to whether any newspaper has been guilty of any contravention of any of the provisions of the Act.

(e) The proposed legislation would destroy the status and powers of Companies within its scope which were incorporated by Dominion charter,—because in the event of any contravention of the Act by any newspaper as to which the Lieutenant-Governor-in-Council seems to be the sole judge the Lieutenant-Governor-in-Council may suspend the publication of such newspaper, may prohibit the publication by such newspaper of anything written by any person specified in the order and the publication of any information emanating from any person or source specified in the order.
20 (See section 6 of the Bill.)

A.

It is submitted that the following provisions of the Bill make it quite clear that its object is a strict and drastic censorship of the press. Section 3 compels the publication by Alberta newspapers of any statement furnished by the Chairman "which has for its object the correction or amplification of any statement relating to any policy or activity of the Government of the Province published by that newspaper within the next preceding thirty-one days." This can be used and is intended to be used to compel the publication by Alberta newspapers of propaganda in favour of the
30 present government's policy of Social Credit. Section 4 of the Bill requires newspapers to disclose the sources of their information and the persons from whom such information was received. It is to be noted that this section is not limited to statements "relating to any policy or activity of the Government of the Province of Alberta." This would in practise deprive the newspapers of a large body of news which they receive in confidence from sources that cannot be disclosed. Section 6 empowers the Lieutenant-Governor-in-Council if satisfied that there has been a contravention of the Act to suspend the publication of the paper or to prohibit the publication in any newspaper of anything written by any person
40 specified in the order and the publication of any information emanating from any person or source specified in the order. Both the compelling of the printing of statements which the newspapers do not desire to print and may not believe to be true and the suppressing of news which the newspapers do desire to print amount to censorship of the press.

It will no doubt be contended that the Bill can be supported as legislation dealing with property and civil rights in the Province (sub-head 13

of section 92) or as a matter of merely local or private nature in the province (sub-head 16 of section 92). It is submitted that the publication of newspapers in Canada is an undertaking of national interest and importance and that it cannot be held to come within the category of property and civil rights in the province or matters of a merely local or private nature in the province merely because every newspaper has its office of publication within some particular province. The following considerations support this contention.

(1) There are upwards of 100 daily and more than 1200 weekly newspapers in Canada and these newspapers largely control the scope and character of the foreign news entering Canada and collect and disseminate without regard to provincial boundaries virtually all the domestic news which reaches the people of Canada. Their interpretation of current events and their editorial discussions of public questions exert a powerful influence on Canadian public opinion. To place the newspaper press of Canada under any control but that of the Parliament of Canada would be seriously disruptive of national unity. 10

(2) The national importance of the newspaper press of Canada has been recognized by the Dominion Government, which in 1917 and the six following years made a grant of \$50,000 to the Canadian Press to defray the cost of a coast to coast leased wire service. This grant was necessary to meet the cost of three long unproductive gaps in which there were few or no newspapers to contribute news or revenue, namely the distances between Montreal and St. John, Ottawa and Winnipeg, and Calgary and Vancouver. This grant was discontinued in 1924 with the approval of the directors of the Canadian Press and the entire cost of the news service is now met by assessment on the membership of the organization. 20

(3) The co-operative system under which Canadian Daily Newspapers operate is based necessarily on the assumption that the whole national field will be covered by the service they maintain. The news reports transmitted from every district in Canada must be made available to every other district where a Canadian Press newspaper is published and any interruption of or obstruction to this service affects prejudicially every daily newspaper in Canada. 30

(4) The field of activity of the newspaper press of Canada is essentially that of a communication utility with services covering every province of Canada and extending across the whole Dominion. In its field it furnishes an inter-provincial service equally important to that of the telegraph and telephone. 40

If due effect is given to these and other relevant considerations, the undertakings of the newspapers of Canada must be conceded to be undertakings extending beyond the limits of any one Province.

Reliance is placed on the principles enunciated by the Judicial Committee of the Privy Council in *Re Regulation and Control of Radio*

Communication in Canada (1932) A.C. 304, and in particular on the following extracts from the judgment of Viscount Dunedin :

“ Broadcasting as a system cannot exist without both a transmitter and a receiver. The receiver is indeed useless without a transmitter and can be reduced to a nonentity if the transmitter closes. The system cannot be divided into two parts, each independent of the other.”

10 “ ‘ Undertaking ’ is not a physical thing, but is an arrangement under which of course physical things are used. Their Lordships have therefore no doubt that the undertaking of broadcasting is an undertaking ‘ connecting the Province with other Provinces and extending beyond the limits of the Provinces ’.”

The leased wire service and the teleprinters with their receiving and transmitting instruments connect the newspapers of Canada in a Dominion wide network and are as essential to their national co-operative undertaking as the transmitting and receiving instruments are to radio broadcasting.

In the *Radio* case Viscount Dunedin quoted with approval the following extract from the judgment delivered by Lord Macnaghten in *Toronto Corporation vs. Bell Telephone Co. of Canada* (1905) A.C. 52.

20 “ ‘ It was argued that the company was formed to carry on, and was carrying on, two separate and distinct businesses—a local business and a long-distance business. And it was contended that the local business and the undertaking of the Company so far as it dealt with local business fell within the jurisdiction of the provincial legislature. But there, again, the facts do not support the contention of the appellants. The undertaking authorized by the Act of 1880 was one single undertaking, though for certain purposes its business may be regarded as falling under different branches or heads. The undertaking of the Bell Telephone Company was no more a
30 collection of separate and distinct businesses than the undertaking of a telegraph company which has a long-distance line combined with local business, or the undertaking of a railway company which may have a large suburban traffic and miles of railway communicating with distant places ’.”

In delivering the judgment of the Privy Council In *Re the Regulation and Control of Aeronautics in Canada* (1932) A.C. 54 Lord Sankey, L.C. laid down four propositions as having been established by previous decisions of the Privy Council. The second of these propositions is

40 “ 2. The general power of legislation conferred upon the Parliament of the Dominion by s. 91 of the Act in supplement of the power to legislate upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench on any of the subjects enumerated in s. 92, as within the scope of provincial legislation, *unless these matters have attained such dimensions as to affect the body politic of the Dominion.*”

It is submitted that the news press of Canada has attained "such dimensions." Its national significance and importance received recognition from the Dominion Government in the form of grants to the Canadian Press aggregating \$300,000 over a period of six years. The Canadian Press has for twenty years maintained an unbroken Dominion wide organization. Its control of foreign news reports entering Canada, its comprehensive coverage of the whole inter-provincial exchange of news, the impartial character of its reports on matters of public policy, its published interpretations of international events and the editorial comments of individual newspapers on matters of public policy cannot fail to influence vitally the development of Canadian public opinion and thereby to "affect the body politic of the Dominion." 10

The effect of the Bill is to confiscate or to expropriate without compensation newspaper space and is beyond the powers of the Province.

B.

Bill No. 9 and any other legislation prescribing what the press of a province may and may not publish encroaches on the exclusive jurisdiction of the Dominion Parliament to legislate on the subject of criminal law. If an uncensored press should become an evil it can be remedied by something in the nature of censorship legislation but such legislation being in the realm of criminal law can only be enacted by the Dominion Parliament. 20

If censorship of the Press does not fall under the heading of "Criminal Law" it does fall under the heading "The Regulation of Trade and Commerce" (sub-head 2 of Section 91 of The British North America Act) having regard to the national character of the undertakings conducted by the news press of Canada.

C.

Bill No. 9 should be considered in connection with the other legislation set out in the order of reference. If it is ~~so~~ considered it will be seen that all this legislation, including Bill No. 9, has for its object the so-called "monetization of provincial credit." So far as a definition can be spelt out from this legislation monetization of provincial credit seems to involve the issue by the Province of some sort of paper money backed only by the wealth and other resources in the Province which are privately owned. That Bill No. 9 is an important part of this legislative scheme is clearly shown by the preamble to the Bill which reads: 30

"WHEREAS it is expedient and in the public interest that the newspapers published in the Province should furnish to the people of the Province statements made by the authority of the Government of the Province as to the true and exact objects of the policy of the Government and as to the hindrances to or difficulties in achieving such objects, to the end that the people may be informed with respect thereto." 40

Amend to
Trade L.

No

The "exact objects of the policy of the Government" is admittedly the establishment of a new political and economic system with the monetization of Provincial credit as its chief feature. Since the issue of paper money in any form is beyond the competence of the Provincial Legislature all legislation ancillary to this must be equally beyond the competence of such Legislature.

D.

10 Apparently the question as to whether any newspaper has been guilty of an infraction of the Act is to be determined by the Governor-in-Council on the recommendation of the Chairman of the Social Credit Board. It is submitted that this is an attempt to constitute as a Court the Governor-in-Council and the Chairman. If this is the effect of section 6 of the Act it is an attempt to appoint "Judges of the Superior, District and County Courts" in the province in defiance of section 96 of the British North America Act. This section is also open to attack on the ground that it attempts an improper delegation of the legislative power. There is no doubt that in many respects a Provincial Legislature or the Dominion Parliament may delegate its powers but any Act which involves such
20 delegation should specify the exact grounds on which and the circumstances under which the delegated authority may be exercised. It is not sufficient to provide that the delegated authority may be acted upon "in case the proprietor, editor, publisher or manager of any newspaper has been guilty of any contravention of any of the provisions of this Act."

E.

The contention that the Act is *ultra vires* of the Provincial Legislature because it destroys the status and powers of Dominion Companies publishing newspapers in Alberta will be dealt with in the factum filed on behalf of the Alberta press and the grounds there taken are adopted in this factum.

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H. P. DUCHEMIN,
A. J. THOMSON,

Counsel for The Canadian Press, Canadian Daily Newspapers Association and Canadian Weekly Newspapers Association.

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the signification of the Governor-General's
pleasure.

FACTUM
of
THE CANADIAN PRESS
CANADIAN DAILY NEWSPAPERS ASSOCIATION
and
CANADIAN WEEKLY NEWSPAPERS ASSOCIATION
in respect of “ An Act to ensure the Publication of
Accurate News and Information.”
