

46, 1938

In the Privy Council.

UNIVERSITY OF LONDON
W.C. 1
No. 48 of 1938.
26 OCT 1956
ADVANCED
LEGAL STUDIES

ON APPEAL FROM THE SUPREME COURT OF CANADA.

44885

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
- “ 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.

BETWEEN

THE ATTORNEY GENERAL OF ALBERTA - - - *Appellant*

AND

THE ATTORNEY GENERAL OF CANADA; THE CANADIAN PRESS AND NEWSPAPERS' ASSOCIATIONS; THE ALBERTA PRESS; THE CHARTERED BANKS OF CANADA AND THE ATTORNEY GENERAL OF BRITISH COLUMBIA - - - *Respondents.*

**CASE FOR THE ALBERTA PRESS.**

Submitted by: NORTHWESTERN PUBLISHERS LIMITED (Edmonton Journal); SOUTHWESTERN PUBLISHERS LIMITED (Calgary Herald); LETHBRIDGE HERALD COMPANY LTD (Lethbridge Herald); ALBERTA FREE PRESS LIMITED (Edmonton Bulletin); ALBERTAN PUBLISHERS LTD (Calgary Albertan); MEDICINE HAT NEWS LTD (Medicine Hat News); and THE ALBERTA DIVISION, CANADIAN WEEKLY NEWSPAPERS' ASSOCIATION (Comprising eighty Weekly Newspapers).

ALBERTA PRESS

- RECORD.  
pp. 5-9. 1. This is an appeal by the Attorney-General for the Province of Alberta (by special leave) from a judgment of the Supreme Court of Canada upon an Order of Reference dated 2nd November, 1937, (pursuant to the provisions of the Supreme Court Act) by the Governor-General in Council to said Court, of questions respecting the validity of three Bills passed by the Legislature of Alberta in 1937.
- p. 9, l. 1.  
p. 9, l. 4. 2. The first and second questions inquired whether " an Act Respecting the Taxation of Banks " and " An Act to Amend and Consolidate the Credit of Alberta Regulation Act " were respectively *intra vires*.
- pp. 15-17. 3. These Respondents are particularly concerned regarding the subject matter of the third question which related to Bill No. 9, generally referred to as the " Press Bill." The Question to the Court relating to this Bill is as follows :— 10
- p. 9, l. 8. " Question 3. Is Bill No. 9 " (passed by the Legislative Assembly of the Province of Alberta at the third session thereof, in 1937) " entitled ' An Act to Ensure Publication of Accurate News and Information ' or any of the provisions thereof and in what particular or particulars or to what extent, *intra vires* of the legislature of the Province of Alberta ? " 10
- Doc. 37,  
p. 2, ll. 8,  
et seq.  
pp. 15-17. 4. Speaking generally, the Press Bill provides facilities whereby criticism of Government policies and the publication of news not satisfactory to the Government concerning its policies and activities can be curtailed or, in default of compliance with onerous and impossible conditions, prohibited. 20
- p. 16, l. 9.  
p. 17, l. 4.  
p. 17, l. 19. 5. More specifically, Bill No. 9 requires newspaper proprietors, who publish anything regarding Government policies or activities, to publish on the demand of the Chairman of the Social Credit Board of the Province of Alberta (a Board constituted under the authority of the Social Credit Act) amplifying or correcting statements dictated by the Chairman of the Board; to disclose the names of writers of editorials and articles; and to disclose the names of persons furnishing information. The sanctions to enforce compliance with these requirements are fine and suspension or prohibition of publication on the initiative of the Chairman and the adjudication of the Lieutenant-Governor-in-Council. 30
6. Bill No. 9 is dealt with more in detail post pages 15 to 16.
7. One of the grounds of attack on all three Bills was that they were part of a general plan of legislation consisting of a number of enactments passed by the Legislature of Alberta in the years 1936 and 1937 which purported to introduce a new economic system known as Social Credit, and which encroached upon the exclusive legislative authority of the Dominion Parliament in relation to banking, the regulation of trade and commerce, and other subjects not within Provincial jurisdiction under section 92 of the British North America Act. 40

8. These Respondents contend that independently of these other enactments, Bill No. 9 is *ultra vires* for the reasons hereinafter set out. post pp.  
17-21,  
22-23.

9. It is necessary, however, in connection with the point respecting the interdependence of the legislation, to deal with the enactments referred to. These are listed in the Order of Reference which alleges that the "avowed object of the present Government of Alberta" has been "to inaugurate in the said Province a new economic order upon the principles or plan of the theory known as Social Credit," and that the enactments specified were "more or less directly related to the policy of effectuating that object." It is in this aspect that these related Acts, Bills, and Orders-in-Council have to be examined in some detail. p. 5, l. 13.  
p. 5, l. 18.

10. The other legislation and governmental Acts presently in force or proposed which are most closely connected with the plan itself are:—

(1) The Alberta Social Credit Act (1937) first session, Ch. 10 (hereinafter referred to as "the Social Credit Act"); p. 85.

(2) The Bill entitled "An Act Respecting the Taxation of Banks" (reserved) (sometimes referred to as "the Bank Taxation Bill."); p. 9.

(3) The Bill to Amend and Consolidate the Credit of Alberta Regulation Act, 1937, being Bill No. 8, third session (reserved) (sometimes referred to as "the Bank Bill"); p. 11.

(4) The Licensing of Trades and Businesses Act, 1937, third Session, Ch. 1 (hereinafter referred to as "the Trades and Businesses Act"). p. 123.

11. The central pillar of the plan is the Social Credit Act (1937). It superseded the Social Credit Measures Act (1936), ch. 5, and also the Alberta Credit House Act (1936), C.1. p. 85.  
p. 29.  
p. 35.

12. The preamble to the superseded Social Credit Measures Act recites that the present monetary system is—

"obsolete and a hindrance to the efficient production and distribution of goods." p. 29, l. 12.

and contains the following statement of the general objects of Social Credit principles—

"to bring about the equation of consumption to production and to afford to each person a fair share in the cultural heritage of the people in the Province." p. 29, l. 23.

Section 2 of this superseded Act declares that—

"the people of the Province are entitled to the full benefit of the increment arising from their association" p. 30, l. 1.

and Section 3 and Section 7 empower the Lieutenant-Governor-in-Council, after investigation, to

". . . adopt and to put into operation any measures designed to facilitate the exchange of goods and services or any proposal p. 31, l. 2.

- RECORD. which is calculated to bring about the equation of consumption to production and thus ensure to the people of the Province the full benefit of the increment arising from their association."
- p. 35. 13. The superseded Alberta Credit House Act of 1936 made provision for the establishment of Credit Houses by the government, designed to furnish the people entitled to what was called therein " Alberta credit " with facilities for receiving the same.
- p. 85. 14. The Social Credit Act repealed these two Acts. " Social Credit " is defined, by an amendment, as :—
- p. 103, l. 27. " the power resulting from the belief inherent within society 10
- p. 117, l. 9. that its individual members in association can gain the objectives they desire."
- p. 85 at 15. The Social Credit Act recites (*inter alia*) that the—
- p. 86, l. 1. " existing means or system of distribution and exchange of wealth is considered to be inadequate, unjust and not suited to the welfare, prosperity and happiness of the people of Alberta."
- pp. 88–89. 16. The Social Credit Act provides for setting up two Bodies, viz.; the Social Credit Board, whose members are named in the Bill and whose functions are executive, administrative, and advisory, and a " Provincial Credit Commission " of from three to five members who are to be appointed 20
- p. 89, l. 6. by the Board and to hold office for ten years unless removed by the Board upon address of the Legislative Assembly. To this Commission is entrusted the duty of bringing into effect in the Province the new economic order founded upon the principles known as Social Credit.
17. From a perusal of the Social Credit Act and of the repealed Acts, it appears that these principles are, primarily, as follows :—
- p. 86, l. 9. (a) That there exists an " unused capacity of the industries and people of the Province of Alberta to produce wanted goods and services " ;
- p. 30, l. 6. (b) That this capacity is unused because of the lack or absence 30 of purchasing power in the consumers in the Province (preamble and S. 3 of repealed " Social Credit Measures Act " ); and
- p. 91, l. 25. (c) That this purchasing power can be made to " conform to " the capacity of the people of the Province to produce wanted goods and services by the issuance of Treasury Credit Certificates against a Credit Fund or Provincial Credit Account established by the Commission each year, representing the monetary value of this
- p. 89, l. 28. " unused capacity " (Secs. 5 (1) and 7).
- p. 91, l. 25.
- p. 86, l. 8. 18. This " unused capacity " is called by the Act " Alberta credit " 40
- p. 95, l. 30. (Sec. 2 (a) ). It can be used to pay by means of " credit vouchers " issued
- p. 96, l. 8. against " Treasury Credit Certificates " a " per capita consumers' dividend " of not less than five per cent. of the Provincial Credit Account

(Sec. 18), or to make non-interest-bearing advances of "Alberta credit" for certain purposes (Sec. 5, ss. 3); or to be issued in the form of "discount vouchers" to consumers who buy goods at retail stores to serve as a retail discount at a rate to be established by the Commission "without any extraneous influence and advice" (Sec. 5 (2)), which rate is to be "applicable to purchases of goods and services from retailers" (Sec. 15 (1)). This "retail discount rate" is that percentage which unused productive capacity bears to total productive capacity (Sec. 14).

p. 90, l. 10.

p. 90, l. 4.

p. 94, l. 1.

p. 93, l. 7.

19. The provisions of Sec. 6 show the unquestioning submission to be accorded to the Commission. Subsection (b) of this Section makes it unlawful for anyone (no matter how honestly)

p. 91, l. 13.

"... to induce, or attempt to induce, any such member or employee (of the Commission) to make any decision or order, or to take any action with respect to any matter within the authority of the Commission;"

20. This provision, when taken in conjunction with the penalty section (Sec. 45) which makes any violation of the Act punishable with a fine of not more than \$1,000, or imprisonment of not more than six months "or both," shows how absolute are the powers of the Commission and how repugnant to democratic institutions is the Government policy which proposes to set up such a body. This is one of the policies which is to be the subject of the Board Chairman's self-promulgated statements which, as Bill No. 9 provides, a newspaper must publish on pain (*inter alia*) of having the publication of the newspaper banned.

p. 103, l. 16.

The other provisions of the Act provide chiefly for the setting up of machinery to carry out this new economic plan.

21. The Bank Taxation Bill (Question No. 1) provides for onerous and manifestly prohibitive taxes on banks doing business in the Province.

p. 9.

22. The Bank Bill (Question 2 of the Order of Reference) is designed to supersede "The Credit of Alberta Regulation Act" passed at the second session in 1937, which Act was disallowed by the Governor-General.

p. 11.

p. 111.

23. Changes made by the Bank Bill were to substitute for the words "banker and business of banking" in the earlier Act the words "credit institution" and "business of dealing in credit," and to exclude, in the definition of the latter term, transactions which are banking "within the meaning of that word" in Section 91 (15) of the British North America Act. Section 9 of the Bank Bill purports to repeal the disallowed Act.

p. 12, l. 11.

p. 15, l. 11.

24. The Bank Bill recites—

p. 11, l. 22.

40 "Whereas the extent to which property and civil rights in the Province may be enjoyed depends upon the principles governing the monetization of credit and the means whereby such credit is made available to the Province and to the people collectively and individually of the Province."

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pp. 11-14.

25. Without analyzing this Bill in detail, its design is that all institutions dealing in credit (other than transactions which are "banking" as above) shall only operate in the Province under a yearly license from the Provincial Credit Commission, and that every application for a license

p. 12, l. 30. (Sec. 3, ss. 3)

"shall be accompanied by an undertaking . . . whereby the applicant undertakes to refrain from acting or assisting or encouraging any person or persons to act in a manner which restricts or interferes with the property and civil rights of any person or persons within the Province."

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p. 13, l. 20.

p. 13, ll. 29-30.

p. 14, l. 15.

26. Provision is made for the appointment of "one or more local Directorates" to supervise, direct, and control the policy of the "business of dealing in credit" of the credit institutions. A majority of the members of such Directorates is to be appointed by the Social Credit Board. Carrying on business by any credit institution without a license, or violation of any of the provisions of the Act, involves a penalty of \$10,000 a day (Sec. 5).

p. 123, l. 12.

27. The Trades and Businesses Act applies to all trades, businesses, industries, employments and occupations carried on in the Province save such as are presently licensed under or are the subject of existing legislation. It does not, however, apply to farmers, ranchers, farm laborers or domestic servants or unskilled laborers nor to any business subject to the control of the Public Utility Commission, nor to any business or occupation exempted from its operation by the Lieutenant-Governor-in-Council.

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p. 124.

28. Generally speaking, this Act gives the Minister of Trade and Industry complete power, by a system of registration and licensing, over the business and occupational activities of all persons or corporations carrying on any of the businesses or occupations to which it is made by the Minister to extend.

p. 125, l. 32.

p. 125, l. 18.

29. The Minister has the uncontrolled power, if he is satisfied that it is in the public interest, to refuse to allow any person or corporation to carry on a business or engage in an occupation covered by the Act (Sec. 8 (a)), and the Minister may in his discretion suspend or cancel any subsisting licence and refuse to issue a licence to any person whose licence has been cancelled (Sec. 7).

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p. 125, l. 12.

30. Very heavy penalties are imposed for the carrying on of business or engaging in occupations by any unlicensed person or corporation, as well as for contravention of any regulation made by the Minister (Secs. 5 and 6).

p. 118.

31. The other Acts and Bills designed to facilitate the introduction of the Social Credit plan in Alberta may be classified as follows:—

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(1) Amendment to the Treasury Department Act, August 6th, 1937, Chap. 4, 2nd Session. (This Act enables the Government to deposit

Government funds, not only in chartered banks, but in any "other institution in the Province" as the Government may appoint, and this would include the Alberta Credit House established under the Social Credit Act). RECORD. pp. 96-98.

(2) Acts Denying Access to the Courts :—

(a) Chap. 16, 2nd Session, 1936; An Act to Amend the Judicature Act, September 1st, 1936. p. 74.

(b) Chap. 11, 1st Session, 1937; An Act Respecting Proceedings in respect of Debentures Guaranteed by the Province. April 14th, 1937. p. 104.

10 (Held *ultra vires* by Ewing, J. in *I.O.O.F. vs. Lethbridge Northern Irrigation District No. 2*, 1937, 3 W.W.R. 424, Appeal pending.)

(c) Chap. 5, 2nd Session, 1937; An Act to Amend the Judicature Act, August 6th, 1937. Disallowed, August 17th, 1937. p. 119.

(This amendment prevented any action being taken in the Courts to test the validity of any Act of the Province without the permission of the Lieutenant-Governor-in-Council.)

(d) Order-in-Council September 24th, 1937. p. 120.

20 (Held *ultra vires* by Ives, J. in *Steen vs. Wallace*, 1937, 3 W.W.R. 654.)

30 (This Order-in-Council was passed after the disallowance of the above amendment to the Judicature Act of 1937. This Order-in-Council purports to prevent the Courts from determining constitutional questions by prohibiting the Clerk or Registrar of the Court from filing or entering any Pleading or other Proceeding, questioning, or contesting the constitutionality of any Act of the Province of Alberta or any regulation or order made thereunder. This Order-in-Council (declared *ultra vires* by Ives, J., *Steen vs. Wallace*, 1937, 3 W.W.R., 654) was suspended until May 1st, 1938, by a later Order-in-Council.)

(3) Acts for the Regulation of Trades and Industries :—

(a) Chap. 66, 1st Session, 1936; An Act to Amend the Department of Trade and Industry Act, April 7th, 1936. p. 34.

(b) Chap. 9, 2nd Session, 1936; An Act to Amend the Department of Trade and Industry Act, September 1st, 1936. p. 68.

(4) Acts providing for the Issue of a Species of Provincial Currency called Prosperity Certificates :—

(a) Chap. 4, 2nd Session, 1936; An Act Respecting Prosperity Certificates, September 1st, 1936. Repealed in effect—see below. p. 63.

40 (b) Chap. 83, 1st Session, 1937; An Act to Amend the Prosperity Certificates Act, June 17th, 1937, repealing in effect the above Act of September 1st, 1936. p. 110.

- RECORD. (5) Acts Affecting Banks and Their Employees :—
- p. 111. (a) Chap. 1, 2nd Session, 1937; An Act to Provide for the Regulation of the Credit of the Province of Alberta, August 6th, 1937. (Disallowed August 17th, 1937).
- p. 115. (b) Chap. 2, 2nd Session, 1937; An Act to Provide for the Restriction of the Civil Rights of Certain Persons, of August 6th, 1937. (Disallowed August 17th, 1937).
- (This Act shows how the entire series of Acts is linked up to the Social Credit plan). The preamble is as follows :—
- p. 115, l. 27. “ WHEREAS Bank Deposits and Bank Loans in Alberta are made possible mainly or wholly as a result of the monetization of the credit of the People of Alberta, which credit is the basis of the credit of the Province of Alberta; and 10
- WHEREAS the extent to which property and civil rights in the Province may be enjoyed depends upon the principles governing the monetization of credit and the means whereby such credit is made available to the Province and to the People, collectively and individually, of the Province; and
- WHEREAS it is expedient that the business of Banking in the Province shall be controlled with the object of attaining for the People of Alberta the full enjoyment of property and civil rights in the Province; ” 20
- p. 116, l. 14. Section 3 deprives any person engaged in the business of banking who is not licensed by the Provincial Credit Commission of all right to bring or defend any action in the civil Courts of the Province.
- (6) Acts Respecting Government and Private Debts :
- p. 31. (a) Chap. 6, 1st Session, 1936; An Act Respecting the Refunding of the Bonded Indebtedness of the Province, April 7th, 1936. To come into effect on proclamation and not proclaimed.
- p. 46. (b) Chap. 2, 2nd Session, 1936; An Act to Provide for the Reduction and Settlement of Certain Indebtedness, September 1st, 1936. 30
- (Held *ultra vires* by Ewing J. in *Credit Foncier v. Ross*, 1937, 1 W.W.R., 376, and by Appellate Division of S.C. of Alberta, 1937, 2 W.W.R., 354).
- p. 51. (c) Chap. 3, 2nd Session, 1936; An Act to Amend and Consolidate the Debt Adjustment Act, 1933, September 1st, 1936.
- p. 75. Repealed and re-enacted by Chap. 9, 1st Session, 1937.
- p. 70. (d) Chap. 11, 2nd Session, 1936; An Act Respecting the Interest Payable on Debentures and Other Securities of the Province, September 1st, 1936. 40
- (Held *ultra vires* by Ives J. in *I.O.O.F. v. Lethbridge Northern Irrigation District*, 1937, 1 W.W.R., 414. Act repealed April 14th, 1937).

(e) Chap. 12, 2nd Session, 1936; An Act Respecting the Interest Payable on Securities of Municipalities, September 1st, 1936. p. 73.

To come into effect on proclamation and not proclaimed.

(f) Chap. 9, 1st Session, 1937; An Act to Amend and Consolidate the Debt Adjustment Act 1936, June 17th, 1937. p. 75.

(g) Chap. 12, 1st Session, 1937; An Act Respecting the Interest Payable on Debentures and Other Securities Guaranteed by the Province, April 14th, 1937. p. 105.

10 (Held *ultra vires* by Ewing J. in *I.O.O.F. v. Lethbridge Northern Irrigation District No. 2*, 1937, 3 W.W.R., 424. Affirmed Appellate Division, 1938, 2 W.W.R., 194).

(h) Chap. 13, 1st Session, 1937; An Act Respecting the Interest Payable on Debentures and Other Securities of the Province, April 14th, 1937. p. 106.

(i) Chap. 30, 1st Session, 1937; An Act to Provide for the Postponement of the Payment of Certain Indebtedness, April 14th, 1937. p. 108.

20 (j) Chap. 2, 1st Session, 1937; An Act to Amend the Debt Adjustment Act, 1937, October 5th, 1937. p. 121.

32. All these Acts, Bills, and Orders-in-Council hereinbefore summarized appear to be part of a general plan to bring into force the new Social Credit economic order in the Province of Alberta which looks to the legislative creation of a provincial system of credit in place of Bank Credit and a provincial medium of exchange in the place of money, to be used for the purposes described, the use of which within the Province is manifestly to be induced or compelled through the Government's control of business activities and of the Press, and another prominent feature of the plan appears to be the legislative cancellation or reduction of debts both governmental and private.

33. The Social Credit Act contains the principles and machinery of this plan; the Bank Taxation Bill and the Bank Bill are so designed to give the Government control of credit institutions in the Province; the Trades and Businesses Act is so designed as to give the Government control of practically all trades and business activities in the Province; Bill No. 9 is so designed to give the Government control of newspaper publicity; and the Acts and Order-in-Council denying access to the Courts are so designed as to prevent legislation, including legislation of the character above mentioned, being challenged in the Courts for constitutional invalidity.

34. The Supreme Court, consisting of six judges, unanimously held all three Bills to be wholly *ultra vires*.

35. The Chief Justice (Sir Lyman P. Duff) and Davis J., in a joint judgment delivered by the Chief Justice, proceed along the following lines:—

(a) The Chief Justice and Davis J. deal with the general plan of legislation constituted by the various enactments listed in the

- RECORD. Order of Reference, and particularly with the system of Social Credit embodied in the Social Credit Act;
- p. 142, l. 43. (b) The Chief Justice and Davis J. hold that the Social Credit Act as a whole is void as constituting an attempt to set up and provide for the regulation of the machinery for a system of credit;
- p. 150, l. 32. (c) The Chief Justice and Davis J. hold that the Board upon whose Chairman the operation of Bill No. 9 depends is non-existent, and therefore that the substantive Sections of Bill No. 9 are in-operative;
- p. 150, l. 37. (d) The Chief Justice and Davis J. hold that Bill No. 9 was 10 part of the general plan of Social Credit legislation, the basis of which was the Alberta Social Credit Act, and that since, in the view of the Court, the latter Act was *ultra vires*, the ancillary and dependent legislation must fall with it;
- p. 151, l. 1. (e) The Chief Justice and Davis J. hold that the right to freedom of discussion is an essential element of the Constitution of the Dominion and that the Parliament of Canada possesses authority to legislate for the protection of this right since, the subject matter not being exclusively a provincial matter, is necessarily vested in Parliament. 20
- p. 151, l. 34. (f) The Chief Justice and Davis J. hold that any attempt to abrogate the right of public debate or to suppress the traditional forms of the exercise of this right (in public meeting and through the press) would be incompetent to the provincial legislatures as repugnant to the provisions of the B.N.A. Act by which the Parliament of Canada is established as the legislative organ of the people of Canada under the Crown, and Dominion legislation enacted pursuant to the legislative authority given by these provisions; and that the subject matter of such legislation could not be described as a provincial matter purely, i.e., in substance, exclusively a matter 30 of property and civil rights in the province or a matter private or local in the province or legislation directed solely to the purposes specified in Section 92.
- (g) Following are some pertinent extracts from the joint judgment of the Chief Justice and Davis, J. :—
- p. 151, l. 1. “ Under the constitution established by the British North America Act, legislative power for Canada is vested in one Parliament consisting of the Sovereign, an upper house styled the Senate, and the House of Commons. Without entering in detail upon an examination of the enactments of the Act 40 relating to the House of Commons, it can be said that these provisions manifestly contemplate a House of Commons which is to be, as the name itself implies, a representative body; constituted, that is to say, by members elected by such of the population of the united provinces as may be qualified to vote.

The preamble of the statute, moreover, shows plainly enough that the constitution of the Dominion is to be similar in principle to that of the United Kingdom. The Statute contemplates a parliament working under the influence of public opinion and public discussion. There can be no controversy that such institutions derive their efficacy from the free public discussion of affairs, from criticism and answer and counter-criticism, from attack upon policy and administration and defence and counter-attack; from the freest and fullest analysis and examination from every point of view of political proposals. This is signally true in respect of the discharge by Ministers of the Crown of their responsibility to Parliament, by members of Parliament of their duty to the electors, and by the electors themselves of their responsibilities in the election of their representatives . . .

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Even within its legal limits, it is liable to abuse and grave abuse, and such abuse is constantly exemplified before our eyes; but it is axiomatic that the practice of this right of free public discussion of public affairs, notwithstanding its incidental mischiefs, is the breath of life for parliamentary institutions.

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We do not doubt that (in addition to the power of disallowance vested in the Governor General) the Parliament of Canada possesses authority to legislate for the protection of this right. That authority rests upon the principle that the powers requisite for the protection of the constitution itself arise by necessary implication from the British North America Act as a whole (*Fort Frances Pulp & Paper Co. Ltd., vs. Manitoba Free Press Co. Ltd.*, 1923 A.C. 695); and since the subject matter in relation to which the power is exercised is not exclusively a provincial matter, it is necessarily vested in Parliament.

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But this by no means exhausts the matter. Any attempt to abrogate this right of public debate or to suppress the traditional forms of the exercise of the right (in public meeting and through the press) would, in our opinion, be incompetent to the legislatures of the provinces, or to the legislature of any one of the provinces, as repugnant to the provisions of the British North America Act, by which the Parliament of Canada is established as the legislative organ of the people of Canada under the Crown and Dominion legislation enacted pursuant to the legislative authority given by those provisions. The subject matter of such legislation could not be described as a provincial matter purely, as in substance exclusively a matter of property and civil rights within the province, or a matter private or local within the province. It would not be, to quote the words of the judgment of the Judicial Committee in

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*Great West Saddlery Co. v. The King* (1921, 2 A.C. at p. 122), "legislation directed solely to the purposes specified in section 92"; and it would be invalid on the principles enunciated in that judgment and adopted in *Caron v. The King* (1924 A.C. 999, at pp. 1005 and 1006)."

(h) The Chief Justice and Davis J. refer to the question discussed in argument of the validity of the legislation considered as a wholly independent enactment, having no regard to the Alberta Social Credit Act, and state that this question presents no little difficulty. In this connection, while the Learned Judges concede to the Provinces jurisdiction to regulate newspapers in some degree, they indicate, in the following passage, their view as to a boundary beyond which provincial jurisdiction cannot go:—

p. 152, l. 18.

" . . . but the limit, in our opinion, is reached when the legislation effects such a curtailment of the exercise of the right of public discussion as substantially to interfere with the working of the parliamentary institutions of Canada as contemplated by the provisions of the British North America Act and the statutes of the Dominion of Canada. Such a limitation is necessary, in our opinion, 'in order,' to adapt the words quoted above from the judgment in *Bank of Toronto v. Lambe*, 'to afford scope' for the working of such parliamentary institutions. In this region of constitutional practice, it is not permitted to a provincial legislature to do indirectly what cannot be done directly (*Great West Saddlery Co. v. The King* (1921) A.C. at p. 100)."

p. 152, l. 43.

(i) The Chief Justice and Davis J. hold that the law by which the right of public discussion is protected existed at the time of the enactment of the B.N.A. Act and at the date (1st September, 1905) when Alberta came into the Union and that the legislature of Alberta has not the capacity under Section 129 of the B.N.A. Act (preserving the laws then in force) to alter that law by legislation obnoxious to the principle stated.

p. 153, l. 3.

p. 153, l. 9.

(j) The Chief Justice and Davis J. do not find it necessary to express an opinion on the concrete question whether Bill No. 9 is invalid as exceeding the limits indicated.

36. Cannon J. in a separate judgment proceeds as follows:—

p. 159, l. 5-  
p. 161, l. 3.

(a) Cannon J. discusses the provisions of Bill No. 9 and the Social Credit policy of the Government and holds that the Bill does not regulate the relations of the newspapers' owners with private individual members of the public but deals exclusively with expressions of opinion by the newspapers concerning Government policies and activities.

p. 161, l. 3  
et seq.

(b) Cannon J. holds that the pith and substance of Bill No. 9 is to regulate the Press of Alberta from the view point of public policy.

(c) Cannon J. points out that according to the preamble to the B.N.A. Act, the Constitution of Canada is to be similar in principle to that of the United Kingdom, *i.e.*, a democracy, and that the foundation of a democracy is free discussion throughout the nation of all matters affecting the State (subject to the limits set by the Criminal Code and the Common Law). p. 162, l. 13.

(d) Cannon J. holds that the Province cannot interfere with the status of an inhabitant of Alberta as a citizen of the Dominion to express freely his untrammelled opinion about Government policies and discuss matters of public concern. p. 162, l. 21.

(e) Cannon J. holds that the Federal Parliament has the sole authority to curtail, if deemed expedient and in the public interest, the freedom of the Press and the equal rights in that respect of all citizens throughout the Dominion. p. 162, l. 29.

(f) Cannon J. holds that no Province has the power to reduce in that Province the political rights of its citizens as compared with those enjoyed by the citizens of other Provinces of Canada. p. 162, l. 35.

(g) Cannon J. holds that Canadian citizens outside Alberta have a vital interest in having full information and comment, favourable and unfavourable, regarding the policy of the Alberta Government. p. 162, l. 37.

(h) Cannon J. holds that the mandatory and prohibitory provisions of Bill No. 9 are *ultra vires* since they "interfere with the free working of the political organization of the Dominion" and tend to "nullify" the political rights of the inhabitants of Alberta as citizens of Canada, and do not deal with matters purely private and local in that Province. p. 162, l. 24.

(i) Following is an extract from the judgment of Cannon J :— p. 162, l. 5.

"Under the British system, which is ours, no political party can erect a prohibitory barrier to prevent the electors from getting information concerning the policy of the government. Freedom of discussion is essential to enlighten public opinion in a democratic State; it cannot be curtailed without affecting the right of the people to be informed through sources independent of the government concerning matters of public interest. There must be an untrammelled publication of the news and political opinions of the political parties contending for ascendancy. As stated in the preamble of the British North America Act, our constitution is and will remain, unless radically changed 'similar in principle to that of the United Kingdom.' At the time of Confederation, the United Kingdom was a democracy. Democracy cannot be maintained without its foundation: free public opinion and free discussion throughout the nation of all matters affecting the State within the limits set by the criminal code and the common law. Every inhabitant

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in Alberta is also a citizen of the Dominion. The Province may deal with his property and civil rights of a local and private nature within the province; but the province cannot interfere with his status as a Canadian citizen and his fundamental right to express freely his untrammelled opinion about government policies and discuss matters of public concern. The mandatory and prohibitory provisions of the Press Bill are, in my opinion, *ultra vires* of the provincial legislature. They interfere with the free working of the political organization of the Dominion. They have a tendency to nullify the political rights of the inhabitants of Alberta, as citizens of Canada, and cannot be considered as dealing with matters purely private and local in that province. The federal parliament is the sole authority to curtail, if deemed expedient and in the public interest, the freedom of the press and the equal rights in that respect of all citizens throughout the Dominion. . . . No Province has the power to reduce in that Province the political rights of its citizens as compared with those enjoyed by the citizens of other Provinces of Canada. Moreover, citizens outside the Province of Alberta have a vital interest in having full information and comment, favourable and unfavourable, regarding the policy of the Alberta Government and concerning events in that Province which would, in the ordinary course, be the subject of Alberta newspapers' news items and articles." 10

p. 161, l. 15-  
p. 162, l. 2.

(j) Cannon J. holds that the provisions of Bill No. 9 entrench upon the exclusive legislative jurisdiction of the Dominion in relation to criminal law. 20

p. 175, l. 14.

37. Crockett and Kerwin JJ., in a joint judgment delivered by Kerwin J., hold that Bill No. 9 was part of the same legislative plan as the Social Credit Act which the Court considered *ultra vires* and that "the part must suffer the fate of the whole." They refrain from expressing any opinion on the other questions as to the validity of the Bill. 30

p. 175, l. 29.

38. Hudson J. holds that the three Bills referred by the Order of Reference are part of one legislative plan, the central measure of which is The Social Credit Act. He holds that in essence this legislative plan was one to set up a new form of credit and currency within a single province. He concurs in holding that the Social Credit Act was beyond the powers of the legislature. He holds that Bill No. 9 was *ultra vires* because it was ancillary to and dependent upon the Social Credit Act. He refrains from expressing any views as to the boundaries of legislative authority as between the Provinces and the Dominion in relation to the Press. 40

p. 176, l. 17.

p. 175, l. 32.

p. 176, l. 23.

39. These Respondents contend that, when taken with the other legislation and Governmental Acts set out in the Record and Summarized above, Bill No. 9 appears not as a substantive Bill dealing with the subject of accurate news, but rather as an ancillary measure enacted as part of

the legislative mechanics of imposing a new economic and Governmental order and system in Alberta, having effects far beyond its boundaries, embracing subjects outside the field of provincial legislation, and conflicting with the principles of legislative jurisdiction upon which the relations of the Dominion and the Provinces are based. In this aspect it affects the national interests of the Dominion and its citizens.

RECORD.

40. Taken with the other legislation and Governmental Acts, Bill No. 9 appears to be one of the figures in the general pattern of an attempt by a Provincial Legislature to legislate without due regard to its constitutional limitations, and to make effective any encroachment on the Federal legislative field by controlling trade and business by licenses, curbing newspaper publicity and criticism, and closing the Courts to those who by legal proceedings would challenge this assumption of legislative authority.

41. In support of the contention that, in the above aspect, Bill No. 9 is *ultra vires* as being ancillary to and dependent upon the Social Credit Act and its related plan, and that such Act and plan are *ultra vires* the Provincial Legislature, these Respondents refer to the judgments in the Supreme Court of Canada and to the arguments and authorities in the Factum filed by these Respondents in the Supreme Court of Canada which is part of the Record on Appeal (*see* marginal reference).

pp. 130-143.  
pp. 150-152.  
pp. 159-161.  
pp. 174-175.  
pp. 175-176.  
Doc. 37.  
pp. 12-17.

42. Analyzing now Bill No. 9, considered substantively:—

(a) The preamble recites that 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.”

p. 15.

30 (b) Section 1 specifies the title as “The Accurate News and Information Act.” p. 15, l. 29.

(c) Section 2 defines the word “Chairman” as meaning the Chairman of the Board constituted by Sec. 3 of the Social Credit Act, and “newspaper” as being a paper containing public news, etc., published periodically in parts or in numbers at regular intervals not exceeding thirty-one days between the publication of any two of such papers, etc.

p. 15, l. 31.

p. 88, l. 1.

p. 16, l. 1.

(d) Section 3 provides that the proprietor, etc. of any newspaper published in the Province shall—

p. 16, l. 9.

40 “when required so to do by the Chairman, publish in that newspaper 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.”

## RECORD.

p. 16, l. 16-  
p. 17, l. 3.

(e) Subsections 2, 3, 4, 5, 6, and 7 of Sec. 3 particularize regarding the correcting or amplifying statement, the type in which it is to be printed and its rank or prominence as to position in the newspaper; it is to be published in the next regular issue after the day upon which the requirement for its publication is received at the newspaper office, it shall bear a certificate to the effect that it is published by the direction of the Chairman of the Social Credit Board, and it shall not contain any matter ordinarily published as advertising.

p. 17, l. 4.

(f) Section 4 provides that the proprietor, etc. of any newspaper upon being required by the Chairman in writing, shall within twenty-four hours after the delivery of the requirement—

“ . . . make a return in writing setting out every source from which any information emanated, as to any statement contained in any issue of the newspaper published within sixty days of the making of the requirement and the names, addresses and occupations of all persons by whom such information was furnished to the newspaper, and the name and address of the writer of any editorial, article or news item contained in any such issue of the newspaper as aforesaid.”

p. 17, l. 14.

(g) Section 5 deprives persons libelled by the prescribed statement of their right of action against the proprietor staff or employees of the newspaper.

p. 17, l. 19.

(h) Section 6 provides that in the event of a proprietor, etc. of any newspaper being guilty of any contravention of any of the provisions of this Act, the Lieutenant-Governor-in-Council upon a recommendation of the Chairman may by order prohibit—

(1) the publication of such newspaper either for a definite time or until further order;

(2) the publication in any newspaper of anything written by any person specified in the order;

(3) the publication of any information emanating from any person or source specified in the order.

p. 17, l. 29.

(i) Section 7 provides for—

(1) A penalty not to exceed \$500. on every person who contravenes any of the provisions of the Act or who makes default in complying with any requirement made in pursuance of the Act;

(2) A penalty not to exceed \$1,000. on every person who contravenes any of the provisions of any Order-in-Council made pursuant to Section 6 of the Act;

p. 18, l. 1.

(3) That any penalty shall be recoverable either by suit brought by the Chairman or upon summary conviction upon the information of the Chairman or some person authorized in writing by him.

43. The subject matter of Bill No. 9 is, in pith and substance, the prohibition or curtailment of the freedom of discussion in the Press of a Province in relation to Government policies and activities. RECORD.

44. These Respondents contend that this subject matter does not fall within the enumeration in Section 92 of the subjects confided to the jurisdiction of the Provincial Legislature and that it therefore falls within the general powers conferred upon the Dominion Parliament by Section 91.

45. Some considerations involved in this contention are—

10 (a) The right of freedom of discussion in the Press throughout the Dominion of Government policies and activities as an inherent element of the Constitution and of the institutions and system of democratic government in Canada similar in principle to those of the United Kingdom, in accordance with the British North America Act, and the encroachment on Federal jurisdiction arising from the prohibition or curtailment of such right; pp. 151, 152, 162.  
p. 15, l. 38.  
pp. 16, 20, 21.

(For argument and authorities see marginal reference.)

20 (b) The encroachment upon Federal jurisdiction by reason of the extraprovincial effect of the prohibition or curtailment of the freedom of discussion in the Press of a Province respecting Government policies and activities. Doc. 37,  
p. 15, l. 38;  
p. 16, l. 23;  
p. 21, l. 1-  
p. 22, l. 3.

(For argument and authorities see marginal reference.)

(c) The encroachment upon Federal jurisdiction by reason of the effect on the rights of the inhabitants of Alberta as citizens of Canada of the prohibition or curtailment of the freedom of discussion in the Press of a Province respecting Government policies and activities. Doc. 37,  
p. 20, ll. 12-  
46.

(For argument and authorities see marginal reference.)

30 (These points are dealt with in the extracts from the judgments of the Chief Justice and Davis J. quoted at pages 10 to 12 (ante) and from the judgment of Cannon J. quoted at pages 12 to 14 (ante).) pp. 151-153.  
p. 162.

40 (d) The true construction to be given to the term "civil rights" as used in section 92, heading 13 of the British North America Act, viz., that it refers to matters of private law prescribing relations between subject and subject, and not matters governed by public law which prescribes the relations between the subject and the State, and that the subject matter of Bill No. 9 is in substance a matter of public law having to do with the relations of the Government and the subject and is not concerned with civil rights under section 92, subsection 13, which regard the "meum" and "tuum" as between citizens. Doc. 37,  
p. 17, l. 1-  
p. 20, l. 11.

As stated by Cannon J.,—

"The Bill does not regulate the relations of the newspapers' owners with private individual members of the public, but

p. 161.

RECORD.

deals exclusively with expressions of opinion by the newspapers concerning government policies and activities."

(For argument and authorities see marginal reference.)

Doc. 37,  
p. 23, l. 39-  
p. 32, l. 33.

46. These Respondents also contend that the "pith and substance" and the "true nature and character" of the subject matter of Bill No. 9 is criminal law, and that the Bill is an invasion of the exclusive right of the Dominion to legislate in relation to criminal law.

(For argument and authorities see marginal reference.)

p. 159, l. 10-  
p. 160, l. 12;  
p. 160, l. 43-  
p. 162, l. 5.

In this connection reference is made to the judgment of Cannon J. (See marginal reference.)

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47. Briefly on this point the contention of these Respondents is that the whole genus of Bill No. 9 is concerned with the subjects of:—

Doc. 37,  
p. 23, l. 39;  
p. 32, l. 33.

(a) critical comments on Government (seditious or political libel), and (b) spreading false news.

These were matters of criminal law before Confederation, have been recognized by Parliament as criminal matters, and have been expressly dealt with by the Criminal Code of Canada.

Doc. 37,  
pp. 38-45.

See Stephen's History of Criminal Law, Vol. 2, pp. 298-380, and extracts therefrom in Appendix I of Factum. (See marginal reference.)

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R.S.C.  
(1927)  
ch. 36,  
ss. 130-136.

48. (a) The Criminal Code of Canada deals with seditious offences in Sections 130 to 136. Sections 133 and 134 are as follows:—

"133. Seditious words are words expressive of a seditious intention.

"2. A seditious libel is a libel expressive of a seditious intention.

"3. A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention. R.S., c. 146, s. 132.

"134. Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than two years, who speaks any seditious words or publishes any seditious libel or is a party to any seditious conspiracy. 1930, ch. 11, s. 3."

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55-56 Vict.  
ch. 29, s. 123.  
9-10 Geo. V.  
ch. 46, s. 4.  
20-21  
Geo. V.  
ch. 11, s. 2.

A significant provision was inserted when the Criminal Code was enacted in 1892 as Section 123. It was repealed in 1919; and re-enacted in 1930 as Section 133A. It is as follows:—

"133A. No one shall be deemed to have a seditious intention only because he intends in good faith—

(a) to show that His Majesty has been misled or mistaken in his measures; or

(b) to point out errors or defects in the government or constitution of the United Kingdom, or of any part of it, or of Canada or any Province thereof, or in either House of Parliament of the United

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Kingdom or of Canada, or in any legislature, or in the administration of justice; or to excite His Majesty's subjects to attempt to procure, by lawful means, the alteration of any matter in the state; or

RECORD.

(c) to point out, in order to their removal, matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects."

(b) In effect, the Legislature of Alberta by Bill No. 9 has, these Respondents contend, attempted to amend the Criminal code by nullifying the effect of Section 133A so far as it applies to the Province of Alberta, and by punishing by confiscation, fine and prohibition in Alberta acts which are by Section 133A, without penal consequences in the rest of Canada.

(c) Spreading false news was also a subject of criminal law.

See—Statute of Westminster, 3 Edw. 1, ch. 34 (1275)—

Doc. 37,  
p. 29, l. 2.

“ Forasmuch as there have been oftentimes found in the country (devisers) of tales whereby discord or occasion of discord has many times arisen between the King and his people or great men of this realm, for the damage that hath and may therefore ensue, it is commanded that from henceforth none be so hardy to cite or publish any false news or tales whereby discord or occasion of discord or slander may grow between the King and his people or the great men of the realm; and he that doth so shall be taken and kept in prison until he hath brought him into the court which was the first author of the tale.”

(d) Spreading false news is also dealt with by the Criminal Code, as follows:—

Ch. 36,  
R.S.C.  
(1927).

“ 136. Every one is guilty of an indictable offence and liable to one year's imprisonment who wilfully and knowingly publishes any false news or tale whereby injury or mischief is or is likely to be occasioned to any public interest. R.S., c. 146, s. 136.”

Doc. 37,  
p. 31, ll. 8-  
12.

(e) Bill No. 9, Sections 6 and 7, would supplement the above penalty of one year's imprisonment for the publication of false news by further provincial penalties entailing confiscation, fine, and prohibition.

(f) Disclosure of sources was also compelled by imprisonment.

See—Statute of Westminster, 3 Edw. I, c. 34 (1275) (quoted above.).

49.—(a) These Respondents also contend that Bill No. 9 is *ultra vires* as delegating, by the provisions of Section 6, to the Lieutenant-Governor-in-Council and the Chairman of the Social Credit Board, the functions of Judges of the Superior, District, and County Courts in contravention of the provisions of the British North America Act, Sections 96, 99 and 100.

Doc. 37,  
pp. 37-38.

(For argument and authorities see marginal reference.)

Reference on this point is made to the judgment of Lord Atkin in the recent case of *Toronto v. York Township et al* (1938) 1 D.L.R., 593,

RECORD. where it was held that the portion of a Statute which vested important judicial powers in a municipal Board was *ultra vires*. In specifying the prerequisites to the exercise of the functions analogous to those of Judges of Superior, District, or County Courts, his Lordship said :—

“ The first question touches a matter of first importance to the people of Canada. While legislative power in relation to the constitution, maintenance and organisation of Provincial Courts of Civil Jurisdiction, including procedure in civil matters, is confided to the Province the independence of the Judges is protected by provisions that the Judges of the Superior, District, and County Courts shall be appointed by the Governor-General (s. 96) that the Judges of the Superior Courts shall hold office during good behaviour (s. 99) and that the salaries of the Judges of the Superior, District, and County Courts shall be fixed and provided by the Parliament of Canada (s. 100). These are three principal pillars in the temple of justice, and they are not to be undermined. Is then the Municipal Board of Ontario a Superior Court, or a tribunal analogous thereto? If it is, inasmuch as the Act of 1932 which sets it up observes none of the provisions of the sections above referred to, it must be invalidly constituted.”

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p. 17, l. 19.  
p. 16, l. 9.  
p. 17, l. 3.

(b) Section 6 of Bill No. 9 should be taken along with Sections 3 and 4 to appreciate the gravity and complexity of the issues of fact and law which the Lieutenant-Governor-in-Council and the Chairman of the Social Credit Board are to determine in deciding whether there has been a contravention of the Act. These functions, as well as the function of ordering confiscation of space, suspension, and prohibition of publication, are, it is contended, analogous to those of the tribunals whose judges are to be appointed by the Dominion.

Doc. 37,  
p. 32, l. 35—  
p. 37, l. 5.

50. (a) These Respondents also contend that Bill No. 9 is *ultra vires* insofar as it relates to newspapers owned and operated in Alberta by Dominion companies with other than provincial objects. 30

(For argument and authorities see marginal reference.)

(b) It is common ground that the three companies, Northwestern Publishers Limited, Southwestern Publishers Limited, and the Lethbridge Herald Company Limited, on whose behalf (*inter alia*) this Case is submitted, which companies respectively publish the Edmonton Journal, the Calgary Herald, and the Lethbridge Herald, were incorporated under The Companies' Act of the Dominion, the first two on September 25th, 1936, and the last on November 2nd, 1936, with appropriate publishing powers; that these companies respectively own the papers referred to; that these papers are “ newspapers ” within the meaning of the Press Bill; and that in the charter of each of such companies there appear the following words “ . . . the operations of the company to be carried on throughout the Dominion of Canada and elsewhere.” 40

(c) The effect of Bill No. 9 is, it is submitted, definitely to impair the status and essential capacities of these Dominion companies operating newspapers in Alberta. Instances of the crippling and sterilizing effect of the operation of the Bill can readily be visualized. Taking a single example: if the newspaper complies with Section 4, it inevitably dries up sources of information which are indispensable to a newspaper undertaking; if it does not comply, prohibition of publication may result.

RECORD.  
p. 17, l. 4,  
p. 17, l. 19.  
Doc. 37,  
p. 32, l. 35-  
p. 37, l. 5.

(For argument and authorities see marginal reference.)

51. (a) These Respondents also contend that the subject matter of Bill No. 9 falls within the exception to subsection 10 of Section 92 of the British North America Act whereby—

“ other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province ”

are excluded from the jurisdiction of the Provincial Legislature.

Doc. 37,  
pp. 22-23.  
Doc. 36,  
pp. 4-6.

(For argument and authorities see marginal reference.)

(b) Newspaper publicity, like broadcasting, involves the transmission of information and comment utilizing the physical instrumentalities of the printing press, the telegraph, the teletype, the radio, and the mail in the gathering and dissemination of news. These in combination constitute, it is contended, a work or undertaking connecting the various provinces.

(c) The reality of this system as an interprovincial work or undertaking can readily be tested by considering the situation if the provincial legislatures of Quebec, Ontario, Manitoba, or British Columbia, attempted to curtail or prohibit the publication of the large metropolitan dailies emanating from any of these Provinces and circulating over most of Canada. The extent of the circulation does not alter the principle, however; it only brings out the magnitude and importance of the newspaper press enterprise as a general interprovincial work or undertaking, both in the way of the receipt of inward news by the newspapers from other Provinces and the dissemination of this news outward to other Provinces.

52. These Respondents therefore respectfully submit that the judgment of the Lordships of the Supreme Court of Canada is right and should be affirmed for the following among other

## R E A S O N S

1. Because the subject matter of Bill No. 9 is not “ property and civil rights in the Province,” nor a “ matter of a merely local or private nature in the province ” (subsections 13 and 16 respectively of section 92, B.N.A. Act) nor is it otherwise within the powers of the Provincial Legislature under the B.N.A. Act. It falls properly within the powers of the Dominion Parliament under Section 91.

2. Because Bill No. 9 is *ultra vires* of the Provincial Legislature of Alberta as being ancillary to and dependent upon the Social Credit Act and its related legislative plan, which said Act and plan are wholly *ultra vires* of such Provincial Legislature under the B.N.A. Act.
3. Because Bill No. 9 purports to abrogate and restrict the right of free discussion of public affairs and to suppress and curtail one of the traditional forms of the exercise of such right through the Press, which right is an inherent element in the constitution and representative parliamentary institutions of Canada, and such abrogation and restriction is incompetent to the Provincial Legislature as not falling within the powers conferred thereon under Section 92 of the B.N.A. Act. 10
4. Because Bill No. 9 is *ultra vires* of the Provincial Legislature under the B.N.A. Act in that it effects a curtailment of the exercise of the right of public discussion through the Press so as substantially to interfere with the working of the parliamentary institutions of Canada as contemplated by the provisions of said Act and the Statutes of Canada.
5. Because Bill No. 9 is *ultra vires* of the Provincial Legislature under the B.N.A. Act as abrogating curtailing or restricting the rights of the inhabitants, not only of Alberta, but of Canada generally, as citizens of the Dominion, to the benefit of free discussion through the Press of the nation respecting policies and activities of government. 20
6. Because Bill No. 9 is *ultra vires* of the Provincial Legislature under the B.N.A. Act as substantially diminishing the rights of the inhabitants of Alberta to enjoy equally with the other citizens of Canada the benefit of free discussion through the Press respecting policies and activities of government. 30
7. Because Bill No. 9 is *ultra vires* the Provincial Legislature under the B.N.A. Act as conferring powers which, if arbitrarily used, could be employed to frustrate in Alberta the rights of the Crown and of the people of Canada as a whole, and the time and manner of enactment and the tenor of the Acts, Bills, and Orders-in-Council enacted and passed in the years 1936 and 1937 indicate an intention so to use such powers.
8. Because the law by which the right of public discussion is protected existed at the time of the enactment of the B.N.A. Act and of the Alberta Act whereby the Province of Alberta came into Confederation, and the Legislature of Alberta has not the capacity under section 129 of the B.N.A. Act to alter such law (as Bill No. 9 purports to do) by legislation obnoxious 40

to the principle of the right of free discussion in the press of matters of Government policy and activities.

9. Because the subject matter of Bill No. 9 does not fall properly within the term "civil rights" as used in section 92 of the B.N.A. Act, which relates to matters of private law prescribing the relation between subject and subject, and not matters of public law, such as are dealt with in Bill No. 9, prescribing the relations between the Government and the subject.
10. Because Bill No. 9 is *ultra vires* the Provincial Legislature as an invasion of the exclusive right of the Dominion Parliament to legislate in relation to criminal law under section 91, subsection 27 of the B.N.A. Act.
11. Because Bill No. 9 is *ultra vires* the Provincial Legislature by reason of the provisions of section 6 which purport to delegate to the Lieutenant-Governor-in-Council and the Chairman of the Social Credit Board functions analogous to those of the tribunals over which the Dominion has the sole power to appoint judges under the authority of sections 96, 99, and 100 of the B.N.A. Act.
12. Because Bill No. 9 is *ultra vires* the Provincial Legislature insofar as it related to newspapers owned and operated by Dominion companies with other than Provincial objects.
13. Because the subject matter of Bill No. 9 falls within the exception to subsection 10 of section 92 of the B.N.A. Act whereby "other works and undertakings connecting the provinces with any other or others of the provinces, or extending beyond the limits of the provinces" are excluded from the jurisdiction of the Provincial Legislature.

S. W. FIELD.

J. L. RALSTON.

# In the Privy Council.

No. 48 of 1938.

*On Appeal from the Supreme Court of Canada.*

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IN THE MATTER OF THREE BILLS PASSED BY THE  
LEGISLATIVE ASSEMBLY OF THE PROVINCE OF  
ALBERTA AT THE 1937 (THIRD SESSION) THERE-  
OF, ENTITLED RESPECTIVELY :—

“ An Act respecting the taxation of  
Banks ” ;

“ An Act to Amend and Consolidate the  
Credit of Alberta Regulation Act ” ; and

“ 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.

BETWEEN

THE ATTORNEY GENERAL OF ALBERTA  
*Appellant*

AND

THE ATTORNEY GENERAL OF CANADA;  
THE CANADIAN PRESS AND NEWS-  
PAPERS' ASSOCIATIONS; THE ALBERTA  
PRESS; THE CHARTERED BANKS OF  
CANADA AND THE ATTORNEY GENERAL  
OF BRITISH COLUMBIA - *Respondents.*

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**CASE**  
**FOR THE ALBERTA PRESS.**

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CHARLES RUSSELL & CO.,

37, Norfolk Street, Strand, W.C.2.

*Solicitors for the Alberta Press.*