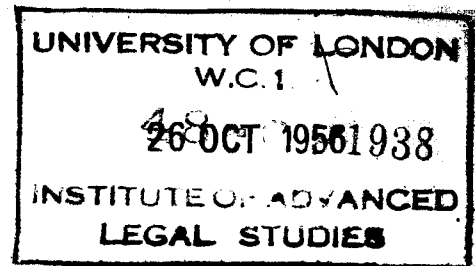


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IN THE SUPREME COURT OF CANADA

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 ATTORNEY GENERAL OF ALBERTA ON BILL NO. 1 (BANK TAXATION)

20 1. This is a reference by Order of His Excellency the Governor General in Council (P. C. 2749, dated November 2nd, 1937) under section 55 of the *Supreme Court Act*. By the Order the Court is asked for its opinion on the question of the competence of the provincial Legislature to enact statutes in the terms of certain Bills, among others Bill No. 1, entitled “ *An Act Respecting the Taxation of Banks*,” which was passed by the Eighth Legislative Assembly of the Province of Alberta at its Fifth Session and was reserved for the signification of the Governor General’s pleasure on October 5th, 1937.

2. The Bill imposes upon every bank which transacts business in the Province an annual tax of ½% on its paid-up capital and of 1% on its reserve fund. It contains provisions for the making of returns and for the imposition on default of returns or payments of penalties varying in proportion to the tax. Power is given to recover the tax and any penalties accrued due by distress.

30 3. In *Bank of Toronto v. Lambe*, (1887) 12 App. Cas. 575, a tax on banks in part calculated in the way proposed by the Bill was supported as within the legislative jurisdiction of the Legislature of the Province of Quebec. In the submission of the Attorney General of Alberta that decision is conclusive on the point of the competence of a provincial Legislature to enact a statute in the terms of the Bill.

40 4. There are certain distinctions between the tax imposed by the Bill and that imposed by the statute (45 V. c. 22) considered in *Bank of Toronto v. Lambe*. Of these the chief are the difference in the rate at which the tax on capital is computed and the imposition of separate rates on capital and reserve.

Quebec St.

5. Under the Quebec statute the tax was imposed on paid-up capital alone and the rate was lower than under the Bill. A fixed sum of \$500 was payable on the first \$500,000 of capital and further sums on the excess beyond \$500,000, these additional sums progressively decreasing in proportion to additional amounts of capital. There was no tax on reserve fund. Under the same Act there was also payable a fixed sum in respect of each of the bank's offices in the province. The total tax upon any given bank consequently depended not only on the amount of its paid-up capital but also upon the number of its branches in the province and the locality of its head office. This however is also true in Alberta, having regard to the provisions of the *Corporations Taxation Act*. 10

NOTE : The relevant provisions of the Quebec statute 45 V. c. 22 and of the Alberta *Corporations Taxation Act*, R.S.A. (1922) c. 29, s. 4, as amended by 1932, c. 46, s. 3, and 1937, (1st Sess.) c. 57, s. 2. are printed as an appendix to this factum.

6. The fact that the Bill imposes a tax calculated in part upon the reserve fund and in part upon the paid-up capital does not, it is submitted, afford any ground of distinction between the statute and the Bill. A reserve fund is no more than a further contribution to capital by the shareholders. Apart from any double liability, the resources of the bank remain the same whether the reserve fund is distributed by way of dividend and used by the shareholders for the acquisition of further shares, or is kept by the bank itself in the form of a reserve. The money which either capital or reserve represents is supplied by the shareholders for the purpose of carrying on the business of the bank. 20

7. It is also submitted that, on the point of legislative competence, no distinction can be made between the Quebec statute and the Bill by reason of any difference in the rate at which the tax is to be calculated or in the total tax burden imposed on the taxpayer. It is clear that the limit which wisdom, policy or expediency would set to the exercise of the provincial legislative power is not a matter to which a Court can have regard in deciding the question of the validity or invalidity of a provincial statute : *Attorney General for Canada v. Attorney General for Ontario (Companies Reference)*, (1912) A.C. 571, at p. 583. See also *Bank of Toronto v. Lambe*, (1887) 12 App. Cas. 575, 586; *Mount Albert v. Australasian &c. Society*, (1937) 4 All E. R. 206, 217 (P.C.). 30

8. The reasons for a Court's refusing, on a question of legislative competence, to consider the wisdom of imposing a specified tax burden are especially strong, since in such a case a decision involves an examination not only of the financial position of the taxing authority concerned but also of social and political conditions. For the discussion of matters of this kind a court of justice is obviously not an appropriate forum and a proceeding by way of a reference under section 55 of the *Supreme Court Act* is peculiarly ill-adapted for their investigation. 40

9. The inclusion in the Order of Reference of the paragraphs numbered 1 to 3, and the inclusion in the Case of the statutes referred to in these

paragraphs, suggests that it may have been considered possible to contest the competence of the provincial Legislature on the ground that the Bills in question or some of them were approved by the Legislative Assembly not as legislation on the subjects with which they purport to deal but as legislation on subjects to which the provincial legislative jurisdiction does not extend.

10. There is, however, it is submitted, no authority under which this material can be regarded as relevant. Even where legislation in form dealing with a subject over which a Legislature has jurisdiction has been
10 held to be in fact legislation on some other subject, the inference that it is so has been drawn solely from the terms of the legislation itself: *Attorney General for Ontario v. Reciprocal Insurers*, (1924) A.C. 328; *Re Insurance Act of Canada*, (1932) A.C. 41, and the cases therein referred to. See also *Re Section 498A of the Criminal Code*, (1937) A.C. 368.

11. Even, moreover, if extraneous material could ever be relevant, a comprehensive enquiry to determine its significance would be essential. No conclusion could safely be drawn from a consideration only of material selected *ex parte* by those by whom the validity of a legislative measure is called into question.

20 12. It was said in *Attorney General for Manitoba v. Attorney General for Canada*, (1929) A.C. 260, that the validity of a provincial statute does not depend upon its purpose, and this, it is submitted, must be so. The competence of a Legislature under a given constitution cannot vary according to the motive or intention, whether good or bad, of the individuals through whom at any time the legislative will is expressed. The legislative powers conferred remain fixed; their legal limits cannot vary with the circumstances of their exercise.

13. There is, moreover, a special reason for neglecting extraneous considerations in the present case. The provincial Legislature consists
30 of two parts, the Legislative Assembly, which has acted, and an Assenting Authority, which has not. If, as has been asserted, the power of giving or withholding assent is vested in the Governor-General-in-Council, any argument on extraneous material would surely be inadmissible on such a reference as this. It would involve a request that the Court should in advance express the opinion that for the Governor-General-in-Council to assent to the Bill would be unconstitutional, since in assenting to it His Excellency would, "in the guise of enacting" legislation on a subject within the legislative competence of the Legislature of which he constitutes a part, be "in truth and substance" legislating on another subject with
40 which it was beyond the competence of that Legislature to deal.

14. The Bill in question imposes a direct tax on banks for the purpose of meeting to some small extent the financial necessities of the provincial administration. If it became law by virtue of the concurrence of the Legislative Assembly and the Assenting Authority, it would, in the submission of the Attorney General of Alberta, clearly be within the competence

of the Legislature. Whether or not its enactment would be wise, politic or expedient is, in his submission, for the consideration of the Legislative Assembly and of the Assenting Authority but is not a question for decision by a court of law.

15. In the submission of the Attorney General accordingly the first question referred to this Court for its opinion under the Order of Reference should be answered in the affirmative as to all the provisions of the Bill.

O. M. BIGGAR,
W. S. GRAY,
J. J. FRAWLEY, 10
of Counsel for the
Attorney General of Alberta.

APPENDIX.

EXTRACT FROM THE QUEBEC STATUTE,
45 VICT. C. 22 (1882).

“ 1. In order to provide for the exigencies of the public service of this Province, every Bank carrying on the business of banking in this province, every Insurance Company accepting risks and transacting the business of insurance in this province, every Incorporated Company carrying on any labor, trade or business in this province, every incorporated Loan Company 20 making loans in this province, every Incorporated Navigation Company running a regular line of steamers, steam-boats or other vessels in the waters of this province, every Telegraph Company working a telegraph line or part of a telegraph line in this province, every Telephone Company working a telephone line in this province, every City Passenger Railway or Tramway Company working a line of railway or tramway in this province and every Railway Company working a railway or part of a railway in this province, shall, annually, pay the several taxes mentioned and specified in section three of this act, which taxes are hereby imposed upon each of such commercial corporations respectively.” 30

* * * *

“ 3. The annual taxes, imposed upon and payable by the commercial corporations mentioned and specified in section one of this act, shall be as follows :

I. BANKS.

(a) Five hundred dollars, when the paid up capital of the bank is five hundred thousand dollars or less than that sum ; one thousand dollars, when the paid up capital is from five hundred thousand dollars to one million dollars ; and an additional sum of two hundred dollars for each million or fraction of a million dollars of the paid up 40 capital from one million dollars to three million dollars ; and a further

additional sum of one hundred dollars for each million or fraction of a million dollars of the paid up capital over three million dollars.

(b) An additional tax of one hundred dollars for each office or place of business in the Cities of Montreal and Quebec, and of twenty dollars for each office or place of business in every other place."

EXTRACT FROM THE CORPORATIONS TAXATION ACT,
R.S.A. 1922, C. 29, AS AMENDED BY 1932, C. 46,
S. 3, AND 1937 (FIRST SESSION), C. 57, S. 2.

10 " 4. (1) Every bank transacting business in Alberta shall pay to the Minister the following taxes, that is to say :

(a) In respect of its main branch office or agency in Alberta where the total number of branches, offices and agencies of the bank in Alberta is—

- (i) more than thirty, a tax of four thousand dollars ;
- (ii) more than fifteen and less than thirty, a tax of three thousand dollars ;
- (iii) less than fifteen, a tax of two thousand dollars.

20 (b) In respect of branches, offices or agencies in Calgary, Edmonton, Lethbridge, Medicine Hat and Red Deer, not taxed under clause (a) hereof, five hundred dollars.

(c) In respect of every branch, office or agency in Alberta not taxed under clauses (a) and (b) hereof, two hundred dollars.

(d) A tax of one-tenth of one per centum on the paid up capital of the bank.

30 " (2) For the purposes of this section the main branch, office or agency of a bank shall be such branch, office or agency of the bank in Alberta as may be designated by the bank as its main branch, office, or agency by notice in writing to the Minister in the month of April in any year, and when so designated shall continue to be such main branch, office, or agency until another branch, office, or agency is so designated as aforesaid ; and if there be no such designation, then the main branch, office, or agency of the bank shall be such as may be designated from time to time by the Lieutenant Governor in Council.

IN THE SUPREME COURT OF CANADA.

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FACTUM OF THE ATTORNEY GENERAL FOR
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