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*Jan. 11, 12, 13, 14, 17.
*Mar. 4.

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 Regulations 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.

Constitutional law—Alberta statutes—The Bank Taxation Act—The Credit of Alberta Regulation Act, 1937—The Accurate News and Information Act—The Alberta Social Credit Act—Constitutional validity—B.N.A. Act, 1867, ss. 91, 92

The Bank Taxation Act, The Credit of Alberta Regulations Act, 1937 and *The Accurate News and Information Act* are *ultra vires* of the provincial legislature of Alberta.

The Alberta Social Credit Act is *ultra vires* of the provincial legislature. Cannon J. expressing no opinion.

Per Duff C.J. and Davis and Hudson JJ.—Such legislation does not come within section 92 (13 or 16) of the B.N.A. Act; it is not within the power of that province to establish such statutory machinery with the functions for which this machinery is designed and to regulate the operation of it: such machinery, in part at least, as subject matter of legislation, comes within the field designated by "Currency," (s. 91 (14) B.N.A. Act).

Per Duff C.J. and Crocket, Davis, Kerwin and Hudson JJ.—Such machinery, as established by *The Alberta Social Credit Act*, in its essential components and features, comes under head no. 15, "Banks and Banking."

Per Duff C.J. and Davis and Hudson JJ.—Even if such legislation is not strictly within the ambit of no. 14 or no. 15, or partly in one or partly in the other, then this legislation is *ultra vires* as its subject-matter is embraced within category no. 2 of s. 91, "Regulation of Trade and Commerce."

Held, by the Court, that the *Bank Taxation Act* is not an enactment in exercise of the provincial power to raise a revenue for provincial purposes by direct taxation, but is legislation which, in its true character and by ascertaining its effect in the known circumstances to which it is to be applied, relates to "Incorporation of Banks and Banking" (s. 91 (15) B.N.A. Act).

Per Duff C.J. and Cannon, Davis and Hudson JJ.—The rate of taxation provided by that Act must be prohibitive in fact and must be known

*PRESENT:—Duff C.J. and Cannon, Crocket, Davis, Kerwin and Hudson JJ.

to the Alberta legislature to be prohibitive. It is not competent to the provinces of Canada, by the exercise of their powers of taxation, to force banks which are carrying on business under the authority of the *Bank Act* to discontinue business; and taxation by one province on a scale which, in a practical business sense, is manifestly prohibitive is not a valid exercise of provincial legislative authority under section 92. Such legislation, though in the form of a taxing statute is "directed to" the frustration of the system of banking established by the *Bank Act*, and to the controlling of banks in the conduct of their business.

Per Crocket and Kerwin JJ.—The *Bank Taxation Act*, instead of being a taxing enactment, is merely a part of a legislative plan to prevent the operation within the province of those banking institutions which have been called into existence and given the necessary powers to conduct their business by the only proper authority, the Parliament of Canada.

Held, by the Court, that *The Credit of Alberta Regulation Act, 1937*, is legislation in relation to "Banking" (s. 91 (15) B.N.A. Act); and, *per* Duff C.J. and Davis and Hudson JJ., it is also legislation in relation to "The regulation of trade and commerce" within the meaning of section 91 (2).

Per Duff C.J. and Davis and Hudson JJ.—This Act is a part of a general scheme of legislation of which *The Social Credit Act* is really the basis; and, that latter Act being *ultra vires*, ancillary and dependent legislation falls with it.

Held, by the Court (except Cannon J.) that *The Alberta Accurate News and Information Act* forms part of the general scheme of social credit legislation, the basis of which is *The Alberta Social Credit Act;* and since that Act is *ultra vires*, ancillary and dependent legislation must fall with it.

Per Duff C.J. and Davis J.—Under the constitution established by the B.N.A. Act, legislative power for Canada is vested in one Parliament and that statute contemplates a parliament working under the influence of public opinion and public discussion. The Parliament of Canada possesses authority to legislate for the protection of that right; and any attempt to abrogate that right of public debate or to suppress the traditional forms of the exercise of such right (in public meeting or through the press) would be incompetent to the legislatures of the provinces. Moreover, the law by which the right of public discussion is protected existed at the time of the enactment of *The British North America Act* and the legislature of Alberta has not the capacity under section 129 of that Act to alter that law by legislation obnoxious to the principle stated.

Per Cannon J.—The mandatory and prohibitory provisions of the *Alberta Accurate News and Information Act* 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 and of the citizens outside the province, 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 in discussing public affairs and the equal rights in that respect of all citizens throughout the Dominion. These subjects were matters of criminal law before Confederation, have been recognized by

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Parliament as criminal matters and have been expressly dealt with by the criminal code. Such an Act is an attempt by the legislature to amend the Criminal Code in this respect and to deny the advantage of section 133 (*a*) of that Code to the newspaper publishers.

REFERENCE by His Excellency the Governor General in Council to the Supreme Court of Canada in the exercise of the powers conferred by section 55 of the *Supreme Court Act* (R.S.C., 1927, c. 35) of the following questions as contained in the Order in Council referring these questions to the Court:

Whereas there has been laid before His Excellency the Governor General in Council, a report from the Minister of Justice, dated November 2nd, 1937, representing:

1. That it has been, and is, the avowed object of the present Government of the province of Alberta (since its advent to office in September, 1935) to inaugurate in the said province "a new economic order" upon the principles or plan of the theory known as Social Credit:

2. That the said government has since the date aforementioned secured the enactment by the legislature of the province of Alberta of the following statutes, more or less directly related to the policy of effectuating the object hereinbefore recited, namely:

Statutes of Alberta

1936 (1st Sess.)

Chapter 5, entitled "An Act Respecting Social Credit Measures," assented to April 3, 1936.

Chapter 6 entitled "An Act Respecting the Refunding of the Bonded Indebtedness of the Province," assented to April 7, 1936.

Chapter 66 entitled "An Act to Amend the Department of Trade and Industry Act," assented to April 7, 1936 (2nd Sess.)

Chapter 1 entitled "An Act to Provide the People of Alberta with Additional Credit," assented to September 1, 1936.

Chapter 2 entitled "An Act to Provide for the Reduction and Settlement of Certain Indebtedness," assented to September 1, 1936.

Chapter 3 entitled "An Act to Amend and Consolidate the Debt Adjustment Act, 1933," assented to September 1, 1936.

Chapter 4 entitled "An Act Respecting Prosperity Certificates," assented to September 1, 1936.

Chapter 9 entitled "An Act to Amend the Department of Trade and Industry Act," assented to September 1, 1936.

Chapter 11 entitled "An Act Respecting the Interest Payable on Debentures and Other Securities of the Province," assented to September 1, 1936.

Chapter 12 entitled "An Act Respecting the Interest Payable on the Securities of Municipalities," assented to September 1, 1936.

Chapter 16 entitled "An Act to Amend the Judicature Act," assented to September 1, 1936.

1937 (1st Sess.)

Chapter 9 entitled "An Act to Amend and Consolidate the Debt Adjustment Act, 1936," assented to June 17, 1937.

Chapter 10 entitled "An Act Respecting the Issuance and Use of Alberta Social Credit," assented to April 14, 1937.

Chapter 11 entitled "An Act Respecting Proceedings in Respect of Debentures Guaranteed by the Province," assented to April 14, 1937.

Chapter 12 entitled "An Act Respecting the Interest Payable on Debentures or Other Securities Guaranteed by the Province," assented to April 14, 1937.

Chapter 13 entitled "An Act Respecting the Interest Payable on Debentures and Other Securities of the Province," assented to April 14, 1937.

Chapter 30 entitled "An Act to Provide for the Postponement of the Payment of Certain Indebtedness," assented to April 14, 1937.

Chapter 83 entitled "An Act to Amend the Prosperity Certificates Act," assented to June 17, 1937.

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Chapter 1 entitled "An Act to Provide for the Regulation of the Credit of the Province of Alberta," assented to August 6, 1937.

Chapter 2 entitled "An Act to Provide for the Restriction of the Civil Rights of Certain Persons," assented to August 6, 1937.

Chapter 5 entitled "An Act to Amend the Judicature Act," assented to August 6, 1937.

1937 (3rd Sess.)

"An Act to Amend the Debt Adjustment Act, 1937," assented to October 5, 1937.

"An Act to Amend and Consolidate the Licensing of Trades and Businesses Act," assented to October 5, 1937.

3. That by Order in Council, dated August 17, 1937 (P.C. 1985), passed on the recommendation and for the reasons set out in the annexed report of the Minister of Justice, it was ordered that the following Acts of the legislature of the province of Alberta, intituled respectively:—

"An Act to Provide for the Regulation of the Credit of Alberta";

"An Act to Provide for the Restriction of Civil Rights of Certain Persons"; and

"An Act to Amend the Judicature Act";

being chapters one, two and five, respectively, of the statutes of the said province, 1937, assented to on the 6th day of August, 1937, and received by the Secretary of State of Canada on the 10th day of August, 1937, be disallowed; that upon the same date, the Deputy of the Governor General did certify under his sign manual and seal that the said Acts were received by him on the 10th day of August, 1937; and that by proclamation of His Honour the Lieutenant-Governor of the province of Alberta, dated August 27, 1937, published in the issue of the *Canada Gazette* of September 11, 1937 (at page 686), reciting the tenor of the said Order in Council and Certificate, the disallowance of the said Acts was duly signified.

4. That following upon the disallowance of the Acts aforementioned, the following Bills, namely:

Bill No. 1 "An Act Respecting the Taxation of Banks";

Bill No. 8 "An Act to Amend and Consolidate the Credit of Alberta Regulation Act"; and

Bill No. 9 "An Act to ensure the Publication of Accurate News and Information,"

passed by the Legislative Assembly of the province of Alberta at the 1937 (Third Session) thereof, were by His Honour the Lieutenant-Governor of Alberta, on the 5th October, 1937, reserved for the signification of the Governor General's pleasure; and that authentic copies of the Bills so reserved were received by the Secretary of State of Canada on the 12th October, 1937;

6. That in a submission set forth in a letter of October 12th, 1937, to the Right Honourable the Prime Minister of Canada, the Honourable William Aberhart, Premier of the Government of the province of Alberta, stated, with reference to said Bill No. 8: "Should there be any doubt as to the constitutional validity of the press bill, we have no objection whatever to having it referred to the courts along with the question of disallowance," and, after making certain observations with particular reference to said Bills Nos. 1 and 8, concluded: "For all these reasons we contend that the question of disallowance and the press bill might well be referred to the courts for a decision."

And whereas the Minister of Justice reports that doubts exist or are entertained as to whether the legislature of the province of Alberta has legislative jurisdiction to enact the provisions of said Bills Nos. 1, 8 and 9 (authentic copies whereof are hereto annexed); and, reserving for the time being the consideration of what advice ought to be tendered to the Governor General as to the propriety of signifying, or of withholding signification of, the royal assent to the said Bills, he is of opinion that it is expedient that the question aforementioned should be referred to the Supreme Court of Canada for judicial determination.

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice and pursuant to the provisions of section 55 of the *Supreme Court Act,* is pleased to refer and doth hereby refer the following questions to the Supreme Court of Canada for hearing and consideration:

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1. Is Bill No. 1, entitled "An Act Respecting the Taxation of Banks" 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?

2. Is Bill No. 8, entitled "An Act to amend and Consolidate the Credit of Alberta Regulation Act" 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?

3. Is Bill No. 9, entitled "An Act to ensure the 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?

E. J. LEMAIRE,
Clerk of the Privy Council.

Aimé Geoffrion K.C., J. Boyd McBride K.C. and *C. P. Plaxton K.C.* for the Attorney-General of Canada.

O. M. Biggar K.C., W. S. Gray K.C. and *J. J. Frawley K.C.* for the Attorney-General for Alberta.

W. N. Tilley K.C., R. C. McMichael K.C., W. F. Chipman K.C. and *A. W. Rogers K.C.* for the Chartered Banks.

W. N. Tilley K.C. and *H. P. Duchemin K.C.* for the Canadian Press.

J. L. Ralston K.C., S. W. Field K.C. and *R. de W. MacKay K.C.* for the Alberta newspapers.

The judgment of Duff C.J. and Davis J. was delivered by

THE CHIEF JUSTICE.—The three Bills referred to us are part of a general scheme of legislation and in order to ascertain the object and effect of them it is proper to look at the history of the legislation passed in furtherance of the general design.

It is no part of our duty (it is, perhaps, needless to say) to consider the wisdom of these measures. We have only to ascertain whether or not they come within the ambit of the authority entrusted by the constitutional statutes (the

British North America Act and the Alberta Act) to the legislature of Alberta and our responsibility is rigorously confined to the determination of that issue. As judges, we do not and cannot intimate any opinion upon the merits of the legislative proposals embodied in them, as to their practicability or in any other respect.

It will be necessary, first of all, to examine with some care the central measure, which is *The Alberta Social Credit Act,* and to arrive at a proper conception of its character from the constitutional point of view.

Various declarations throughout the enacting provisions of this statute, as well as in the preamble, leave no room for doubt as to its objects. We cite verbatim some of these declarations because we think it is important to have before us the language selected by the Legislature itself to describe the purpose of the legislation and the general nature and functions of the machinery which is to be put into operation.

To appreciate the significance of these declarations, however, it is necessary to advert to the constitution and nature of the three bodies set up by the statute for the administration of the Act as well as to the statutory definition of "Alberta Credit."

There is, first, a Board which is designated simply as "The Board"; the first members of which are named by the statute, their successors being appointed by the Legislature. Then there is the Provincial Credit Commission which is to be appointed by the Board; and here it is convenient to mention the duties of the Commission in determining the value of "Alberta Credit." "Alberta Credit" is defined by section 2 (*a*) as,

> the unused capacity of the industries and people of the province of Alberta to produce wanted goods and services.

By section 5 (1) there is to be an account in the treasury of the province known as the Provincial Credit Account. The Commission is to determine, in the manner prescribed by the Act, the value for each year of the

> unused capacity of the industries and people of the province of Alberta to produce wanted goods and services;

in other words, the value in money (section 2 (*k*)) of "Alberta Credit." This amount is to be credited to the Provincial Credit Account and "at the end of each year the amount" in this account "which shall not have been

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drawn upon in that year shall be written off." The decisions of the Board and of the Commission in the determination of the annual money value of this "unused capacity" are to be final and are to govern the Provincial Treasurer in the establishment and maintenance of the "Provincial Credit Account." It is this "Alberta Credit" annually determined and credited to the Provincial Credit Account which constitutes, according to the plan of the statute, a fund of credit that is to be employed and put into circulation through the machinery set up by the Act in order to facilitate the exchange of goods and services and generally to effectuate the purposes of the Act.

Then, there is the Alberta Credit House which is a department of the provincial administration, constituted by the Commission and a body corporate; and which is to maintain branches throughout the province.

A reference is also necessary to Treasury Credit Certificates. These are issued by the Provincial Treasurer against the Provincial Credit Account from time to time through the Credit House system.

Among the declarations expounding the purpose of the statute we refer to these:—

By the preamble it is affirmed:

> the people of Alberta, rich in natural wealth and resources both actual and potential, are yet heavily in debt and have been unable to acquire and maintain a standard of living such as is considered by them to be both desirable and possible; and
> * * * the 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.

Section 7 provides:

> It is the intent and purpose of this Act to provide for the issue of Treasury Credit Certificates to such extent as may be requisite for the purpose of increasing the purchasing power of the consumers of Alberta as to make such purchasing power conform to the productive capacity of the people of the province for the production and delivery of wanted goods and services, which capacity is declared to be the measure of Alberta Credit.

Section 31 declares:

> The Commission shall so function and administer this Act for the purpose and to the intent that the Treasury Credit Certificate Account in all branches shall be maintained in balance at all times. It is the intent of this Act to control the volume of the means of payment for goods and services in harmony with the ability of the whole province to produce and consume them on a rising standard of living, so that excess expansion of credit and a consequent undue advance in the price level

shall not occur, and that the present system of issuing credit through private initiative for profit, resulting in recurrent deflations and inflations shall cease.

With this section, section 33 should be read. It is in the following words:

In order to establish a system of circulating credit which shall at all times conform to the capacity of the industries and people of Alberta for the production of wanted goods and services; it is hereby declared to be the policy of the Legislative Assembly of Alberta to prevent the undue expansion of credit as well as to eliminate the contraction of credit in time of slackening trade. It is the true meaning and intent of this Act, whenever deemed necessary by the Commission, that the controls over supply of credit through open market operations and the discount rate shall be employed as heretofore to maintain a balanced credit structure.

To these should be added the following statements in the *Social Credit Measures Act* (1936) which has been repealed:

* * * the existence of indigence and unemployment throughout a large portion of the population demonstrates the fact that the present monetary system is obsolete and a hindrance to the efficient production and distribution of goods; and

* * * the electors of the province are favourable to the adoption in the province of a measure based on what are generally known as Social Credit principles, their general objects being 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;

and this statement from the *Credit House Act* (1936) also repealed:

2 (*a*) "Alberta Credit" means the credit provided by the Credit House for facilitating the exchange of goods and services within the province.

Section 36 (*b*) should also be noticed:

36. In addition to the specific powers conferred by this Act, the Commission shall be empowered,—

(*b*) to examine into, consider, investigate and formulate proposals having for their object the increase of the purchasing power of the consumer by means of social dividends, compensating discounts or by any other means and the payment to the producer of any commodity of a just price and the allowance to any dealer in a commodity of a fair commission on turnover, and for such purposes to ascertain all necessary facts relating thereto, and to report to the Board as to the feasibility of applying any such proposal or any modification thereof having regard to the economic circumstances of the province and of the various businesses, industries, trades and vocations of the people of the Province.

By section 42, the substance of which is given below, the Lieutenant-Governor in Council has full power to give effect to any report of the Commission in so far as its recommendations are not contrary to the policy of the statute, even to the extent of altering and supplementing the provisions of the statute itself.

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These declarations enable us to affirm with certainty (1) that the evil as the Legislature conceives it with which the statute is intended to grapple is the inability of the people of Alberta to attain to a proper standard of living by reason of the inadequate supply or the unfair distribution of purchasing power; and (2) that, broadly speaking, the enactments in the statute are designed, to employ the phraseology of the authors of the legislation, to equate purchasing power or effective demand with productive capacity; and, moreover, it is easily susceptible of demonstration by reference to the provisions of this statute in detail and to those of the cognate legislation that these measures proceed upon this fundamental postulate, viz., that the economic ills which they aim at curing arise primarily from financial causes and, particularly, from the circumstance that bank credit, which constitutes in the main, in point of volume, the circulating medium of payment and exchange in this country, is issued through private initiative for private profit. And, speaking in general terms, the statute sets up the machinery of a financial system which is to be administered by statutory authority and the predominant function of which is to provide a form of credit designated as "Alberta Credit" which is to be made accessible to consumers and others through the channels created by the Act, and which is to circulate as a medium of exchange and payment.

Alberta credit (the nature of which is described as explained above) is distributed by the Provincial Treasurer by means of Treasury Credit Certificates; and it is his duty to issue through the Credit House system Treasury Credit Certificates in such amounts and at such times as may be required for the purposes of the statute. In particular, it is his duty to issue such certificates to the branches or other agencies for the purpose of providing the credits established pursuant to the requirements of section 13 for, that is to say,

(*a*) a discount on prices to consumers at retail;
(*b*) government services;
(*c*) interest free loans;
(*d*) debt payments;
(*e*) export subsidies;
(*f*) provincial consumers' dividends;
(*g*) such other purposes as the Lieutenant-Governor in Council at the request of the Board may by order so declare.

As to the purposes mentioned in section 13 (*g*), it should be noticed that, by section 36 (*a*), in addition to the other powers conferred by the Act, the Commission is empowered to transfer Treasury Credit Certificates in any manner consistent with the purpose of this Act.

The Commission is, moreover, specifically authorized by section 5 (3) to advance Alberta credit to persons engaged in

> agriculture or manufacturing or industry * * * and * * * to defray the costs of the building of a home or for establishing or maintaining any business, vocation, calling or for public service.

It is also authorized to negotiate any transfer of Alberta credit with any person, firm or corporate body "entitled to Alberta credit."

Then the Lieutenant-Governor in Council is authorized (section 10),

> on the advice of the Board * * * (to) declare that all claims against the province for the payment of any money out of any appropriation of public money made by the Legislative Assembly * * * shall be satisfied by the transfer to such person of an amount of Alberta Credit.

equivalent to the amount of such claim, with a proviso that, in the case of contractual obligations, all parties must agree.

Municipal corporations (by s. 12) are authorized to accept transfers of Alberta credit in satisfaction of any claim and to transfer such Alberta credit to persons who are willing to accept the same in satisfaction or partial satisfaction of their claims for the carrying out of any public work.

Two principal methods are provided for securing access to Alberta Credit by the population generally as individuals. One of the means adopted for this purpose is designated the "Consumers' Dividend,"—a monthly grant of Alberta credit to everybody falling within the designation of "persons entitled to Alberta credit," which includes virtually everybody who is twenty-one years of age, a British subject, resident and domiciled in Alberta, the amount of which is determined by the Commission. The payment of these dividends is provided by Treasury Certificates issued to each branch for the amount that branch has to disburse and the branch issues credit vouchers to the recipients of the dividend in payment thereof.

The second method is by use of the retail discount rate, which constitutes, perhaps, the cardinal feature of the

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statutory plan. This is a rebate by which purchasers of goods and services are subsidized through a reduction of price compensated by a corresponding credit to the retailer. It is applicable to sales of goods and services to ultimate consumers by persons qualified to "dispense" the discount. In order to qualify for this purpose, a retailer must enter into an agreement with the Commission, one term of which, if the Commission so requires, is that he will deal only with wholesalers and primary producers who have entered into agreements with the Commission pursuant to the provisions of the statute. The discount rate is fixed by the Commission and is determined by the ratio of the money value of the "unused productive capacity" of Alberta to the value of the total capacity.

For augmenting purchasing power, the principal agency appears to be this retail discount rate. A subsidy in this form, by way of reduction of price, it is, perhaps, assumed, will not be attended with the same risk of consequential inflation as a direct subsidy to consumers; especially as the rate, being fixed by reference to the ratio between the value of unusued capacity for production and the value of total capacity may be supposed to diminish with augmentation of production. A condition of the operation of this device is, of course, the provision of some means for compensating the seller for the reduction in price and, since the province of Alberta has no legislative control over the creation of currency or legal tender or bank credits, compensation in any of these forms would ordinarily be supplied by means of taxation, or in other words, ultimately from the pockets of people living in Alberta or owning property there. Such difficulties the statutory plan proposes to avoid by the establishment of Alberta credit as a fund of credit for employment, as we have seen, as a means of exchange and payment.

The statute recognizes that extra-provincial debts will in most cases have to be paid in currency and declares that they shall be so paid when desired by the "other party"; and certain enactments of the statute appear to be intended to make provision for this. It is recognized, in other words, that it would not be practicable for Alberta to establish a system under which legal tender is wholly dispensed with.

As regards intra-provincial transactions, authority is given to everybody to receive Alberta credit in payment of

goods and services, but here again the Legislature has obviously recognized its lack of authority to make such acceptance compulsory by direct legislative enactment. Nevertheless, it is clear from the declarations above quoted, as well as from the statute as a whole that the substitution generally in internal commerce of Alberta credit for bank credit and legal tender as the circulating medium is of the very essence of the plan.

The object being to provide increased purchasing power, it is, as explained, of the essence of the scheme that this shall be brought about, not by subsidizing consumers directly, but, mainly by a rebate in prices through the application of the retail discount rate. As that necessarily involves the provision of some means for compensating the seller, and since the compensation provided is compensation out of Alberta credit, it is clear enough that this device could only be made practicable in connection with transactions where the price is paid in Alberta credit, and the discount rate will itself, of course, be paid in the same way.

The practicability of the scheme, the feasibility of it as a means of accomplishing the declared purpose of the legislation, postulates, therefore, a willingness on the part of sellers of goods and services, in Alberta transactions, to accept Alberta credit in payment; in other words, acceptance generally in Alberta of Alberta credit as the circulating medium.

The Credit House is, as already observed, the agent of the Provincial Treasurer through which Alberta credit circulates. The Credit House is to accept deposits of currency and securities, to transfer credit, to receive deposits of credit vouchers and of transfers of Alberta credit. It can convert currency and negotiable instruments on demand into Alberta credit. It is to issue credit vouchers in payment of the consumers' dividend. It is probably intended to issue discount vouchers. Alberta credit on deposit with a branch may be drawn against by a customer by means of any instrument in the form prescribed by the Commission. The forms of credit vouchers and discount vouchers and of transfers are to be settled by regulation by the Commission.

It is expressly provided that a transfer of credit becomes effective on delivery; that is to say, on presentment to a

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branch of the Credit House. In other words, it is equivalent to an order which is to be honoured on demand. Bankers' credit may be described as the "right to draw cheques on a bank"; and the practical exercise of this right involves either the transfer of credit to another on the books of the same bank, or on the books of another bank, or payment to the payee in legal tender at his discretion. A customer of the Credit House has no right to require payment of legal tender at his discretion, unless his deposit is a currency deposit, and cannot transfer such a right to another, but, save in that respect, he is, and must necessarily be, if the system is really to be operative, in relation to his account in the Credit House, in the same position as the customer of a bank.

The question arises: Is legislation of this type competent to a province as within the ambit of Property and Civil Rights within the Province (no. 13) or Matters merely local or private within the Province (no. 16); or does the subject matter of it fall within the categories of matters set apart by section 91 under the enumerated heads of that section to be exclusively regulated and controlled by the central legislative authority acting in behalf of the people of Canada as a whole?

The question thus stated puts a dilemma which is not strictly complete because, of course, a subject matter of legislation, though not within any of the enumerated heads of section 91, may still be outside the ambit of section 92.

The whole of the two sections must be considered; and, of course, in light of the judicial interpretation of them. The second of the enumerated categories of section 91 is defined by the words "The Regulation of Trade and Commerce." The same section comprises a number of other categories of subjects which in great part, at least, would, if full scope were given to the words "Regulation of Trade and Commerce" in their ordinary sense, fall under head no. 2. Among them are Currency and Coinage (no. 14); Incorporation of Banks, Banking and the Issue of Paper Money (no. 15) and Legal Tender (no. 20).

In respect of "any matter coming within any" of these "classes of subjects" the authority of the Parliament of Canada is "exclusive"; and "legislation falling strictly

within any of the classes" so enumerated "is not within the legislative competence of the provincial legislatures under section 92" (The *Fisheries* case) (1).

Indeed, by the explicit words of the concluding paragraph of section 91, "any matter coming within any of" these "classes of subjects shall not be deemed to come within the class of matters of a local and private nature" assigned exclusively to the provinces. It is settled by the decision of the Privy Council in *A.G. for Ontario* v. *A.G. for Canada* (2) (as interpreted in the *Great West Saddlery Co.* v. *The King* (3)) that if a given subject-matter falls within any class of subjects enumerated in section 91, "it cannot be treated as covered by any of those within section 92."

The general character of the classes of subjects enumerated in section 91, especially of those mentioned above (Trade and Commerce, Currency and Coinage, Banks and Banking, Legal Tender), is important. A comparison of the nature of these subjects with the subjects included in section 92 seems to suggest that credit (including credit in this novel form) as a medium for effecting the exchange of goods and services, and the machinery for issuing and circulating it, are among the matters assigned to the Dominion under section 91 and not among those intended to be assigned to the provinces under any of the categories of section 92.

The categories (of s. 91) mentioned having been committed for legislative action to Parliament, which represents the people of Canada as a whole, we find it difficult to suppose that it could have been intended, under the general headings Property and Civil Rights, Matters merely local or private, that a single province might direct its powers of legislation under section 92 to the introduction, maintenance and regulation of this novel apparatus for all commercial, industrial and trading operations.

For our present purpose, we are, once again, not in the least concerned with any question of the practicability of the scheme; which will necessarily depend, as we have seen, upon the general acceptance, by the people of Alberta, of

(1) [1898] A.C. 700, at 715. (2) [1896] A.C. 348, at 359.
(3) [1921] 2 A.C. 91, at 99.

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Alberta credit as a medium of payment in intra-provincial transactions. In order to test the validity of the legislation we must, we think, envisage the plan in practice as the statute contemplates it.

Our conclusion is that it is not within the power of the province to establish statutory machinery with the functions for which this machinery is designed and to regulate the operation of it. Weighty reasons could be urged for the conclusion that, as subject matter of legislation, in part at least, it comes within the field designated by "Currency" (no. 14 of section 91). We think the machinery in its essential components and features comes under head no. 15, Banks and Banking; and if the legislation is not strictly within the ambit of no. 14 or no. 15, or partly in one and partly in the other, then we are satisfied that its subject matter is embraced within category no. 2, Trade and Commerce, and that it does not come within section 92.

First, as to banking. A banker has been defined as "a dealer in credit." True, in ordinary speech, bank credit implies a credit which is convertible into money. But money as commonly understood is not necessarily legal tender. Any medium which by practice fulfils the function of money and which everybody will accept in payment of a debt is money in the ordinary sense of the words even although it may not be legal tender; and this statute envisages a form of credit which will ultimately, in Alberta, acquire such a degree of confidence as to be generally acceptable, in the sense that bank credit is now acceptable; and will serve as a substitute therefor.

Sections 31 and 33, which have been quoted above, are most important in this connection.

Furthermore, sections 32, 34 and 35 (1) all contemplate the maintenance and control of credit by operations which would appear to be substantially banking operations.

It will be observed that full powers are vested in the Commission to give effect to the general provisions of the Act by regulation; and that, moreover, the Board is invested with authority to assist any proposal calculated to "equate" consumption with production; and, furthermore, that the Lieutenant-Governor in Council, by section 42, is authorized, for the purpose of giving effect to

the intent and purpose of the statute, upon the request of the Board, to alter or supplement the provisions of the Act for the purpose of providing for matters arising out of the operation of the Act for which no provision is made, provided that such change is not contrary to the policy of the Act. The "policy" of the Act, "the intent and purpose" of the Act, are sufficiently stated in the declarations quoted above.

Since the operation of the scheme will necessarily depend upon the general employment of Alberta credit as a means of exchange and payment, we think the argument advanced in Mr. Geoffrion's factum is a sound one, that, as regards the forms of credit vouchers and discount vouchers and transfers, and the administration of the Credit House and the transaction of business as between the Credit House and its customers, provision will presumably be made in exercise of these powers for facilitating in as high degree as possible the use of Alberta credit for all the purposes of trade and commerce within Alberta; and that the forms of dealing in credit, which by long experience have commended themselves to the banking, financial and commercial community as the most convenient, will be followed as far as practicable. It is fair to infer, we think, that this is what the statute contemplates.

In substance, we repeat, this system of administration, management and circulation of credit (if, and in so far as it does not fall under the denomination "Currency") constitutes in our view a system of "banking" within the intendment of section 91; and the statute in our opinion is concerned with "banking" in that sense.

There is, if the subject matter of the statute is not strictly "currency" or "banking," or both, an alternative view of the character of it. Employing the words in their ordinary sense and detached from their context in the *British North America Act*, nobody would hesitate to say that *The Alberta Social Credit Act* is concerned with "trade and commerce." It provides the machinery for a novel system of credit and contemplates the separation of intra-provincial industry, commerce and trade from the existing system of finance (in which bank credit and legal tender constitute the media of payment); and the conduct of industrial, commercial and trading activities by the instru-

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mentality of this new system of credit through this statutory machinery; and this would appear to involve profound and far-reaching changes in the operations of commerce and trade. In this connection the comprehensive terms of section 36 (b) should be recalled. Any proposal reported to the Board by the Commission pursuant to that section can, under the powers of section 42, be given the force of statute by the Lieutenant-Governor in Council, even though that should involve an amendment of the Act. These two sections afford striking evidence of the penetrating and far-reaching character of the activities of the Board and the Commission in relation to commerce, industry and trade which the authors of the legislation had in view.

Such legislation, if not legislation in respect of banking or currency, would appear to be concerned with the regulation of trade and commerce, rather than with property and civil rights or matters merely local or private in the province.

This brings us to the question: Is such a classification forbidden by the context, or by any restriction imposed in consequence of considerations derived from the enactments and the declarations of the B.N.A. Act as a whole?

In deciding this question, we must, of course, consult the pronouncements of the Courts. It has been settled in a series of decisions that the literal meaning of the words "Regulation of Trade and Commerce" must be restricted in order to afford scope for powers which have been given exclusively to the provincial legislatures (*Bank of Toronto* v. *Lambe* (1).

It will not be necessary to review these decisions at length. The concrete questions there brought into controversy can be briefly stated. They concerned the authority of the Dominion under section 91(2) to legislate in relation to local railways and undertakings, which are specifically dealt with in section 91(29) and section 92(10) (*Montreal Street Railway* case) (2); in relation to the regulation of a particular business (*Insurance Reference*) (3); in relation to a commission appointed by the Government of Canada and empowered to make orders directed to particular traders in a given town controlling them in respect of the prices of commodities offered by them for sale in such

(1) (1887) 12 App. Cas. 575, at 587.

(2) [1912] A.C. 333.

(3) [1916] 1 A.C. 588.

town (In *re Board of Commerce Act*) (1); in relation to the public investigation of disputes between individual employers and their workers and the prohibition of strikes and lockouts pending such investigation (*Toronto Electric Commissioners* v. *Snider*) (2).

These comprise the principal relevant decisions prior to the judgment of the Privy Council in 1937 in re *Natural Products Marketing Act* (3) to which we are about to refer; and if attention be directed to the thing which was the actual subject of decision, rather than to what was said, it will be found that they are completely and accurately summed up in the observation of Lord Atkin in *A.-G. for B.C.* v. *A.-G. for Canada* (4) in these words:

> the regulation of trade and commerce does not permit the regulation of individual forms of trade or commerce confined to the province.

In our opinion, there is no kind of analogy between the legislation under review in any of these cases and *The Social Credit Act*. Neither the object of that Act, as stated in the explicit declarations quoted, nor the effect of it, if it be operative, is the regulation of any particular form of business, unless it is legislation on the subject of banking. Nor does the statute attempt the regulation of particular trades or of forms of trade or commerce through a general authority committed to a single regulating body, as in the *Board of Commerce* case (5) and in the *Reference re the Natural Products Marketing Act* (5). Nor is it a statute, such as the *Sales of Goods Act*, declaring the legal rights of parties in relation to trading or commercial transactions. It attempts, as we have said, to effect a radical reorganization of the whole system of trade and commerce within the province by the substitution of a novel system of credit for the present financial system under which the operations of trade, industry and commerce are now conducted.

Can it be said that this view ascribes to the Regulation of Trade and Commerce a meaning and effect which unduly restricts the ambit of the powers given under section 92—which fails, in the words quoted above from the judgment in *Bank of Toronto* v. *Lambe* (6), to

> afford scope for powers which are given exclusively to the provincial legislatures?

(1) [1922] 1 A.C. 191.
(2) [1925] A.C. 396.
(3) [1937] A.C. 327.
(4) [1937] A.C. 377, at 387.
(5) [1937] A.C. 327.
(6) (1887) 12 App. Cas. 575.

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The conclusion, we have already indicated, that the subject matter of this legislation would appear more naturally to fall within category no. 2 of section 91 than within section 92 under either Property and Civil Rights or Matters merely local and private, is fortified by reference to the general nature of other classes of subjects assigned to the Dominion. Assuming that the subject-matter does not fall within the more specific categories mentioned (Banking and Currency), it is closely allied to such matters. We can see, we repeat, no reason for ascribing it to nos. 13 and 16 of section 92. Where you have in the enumerated subdivisions of section 91 language which is apt for the designation of a particular matter, then you are not entitled to exclude that matter from the category so defined in the absence of some very cogent reason. The reason indicated above (the risk of unduly restricting the scope of powers intended to be vested in the provinces) which led to the exclusion from this category of the regulation of individual forms of trade and commerce, and of contracts in particular trades, and the regulation of the relations of masters and servants, have no application here; because an inspection of the structure and language of sections 91 and 92, and a comparison of the subjects of the two sections, reveals no justification for the assumption that the subject matter of this legislation belongs to any type of matters which it could have been intended to commit to the legislative jurisdiction of a single province.

We have discussed the principal decisions upon the scope of head no. 2 of section 91. It remains to consider some observations contained in the judgments in three of those cases,—the *Montreal Street Railway* case (1), the *Board of Commerce* case (2) and *Toronto Electric Commissioners* v. *Snider* (3). In the judgments in the two last-mentioned cases a view was expressed which had been adumbrated in the first of them and which can be given in a sentence from the judgment in *Toronto Electric Commissioners* v. *Snider* (4). It is to this effect:

> It is in their Lordships' opinion now clear that excepting so far as the power can be invoked in aid of capacity conferred independently under other words in s. 91, the power to regulate trade and commerce

(1) [1912] A.C. 333.
(2) [1922] 1 A.C. 191.
(3) [1925] A.C. 396.
(4) [1925] A.C. 396, at 410.

cannot be relied on as enabling the Dominion Parliament to regulate civil rights in the provinces.

It is difficult, no doubt, to reconcile this view with the concluding paragraph of section 91 already discussed; nevertheless, in a judgment delivered in *Re the Natural Products Marketing Act* (1) we unanimously expressed the opinion, and our judgment proceeded in part, at least, upon the hypothesis, that we were bound by this pronouncement in the judgment in *Snider's* case (2) and by similar pronouncements in the *Board of Commerce* case (3), as expressing the *ratio decidendi* of those decisions. It is clear now, however, from the reasons for judgment in *A.-G. for Ontario* v. *A.-G. for Canada* (4) that the Regulation of Trade and Commerce must be treated as having full independent status as one of the enumerated heads of section 91. The judgment states, referring to the former *Trade Mark Act* of 1927, that it gave.

> to the proprietor of a registered trade mark the exclusive right to use the trade mark to designate articles manufactured or sold by him. It creates, therefore, a form of property in each province and the rights that flow therefrom. * * * If challenged one obvious source of authority would appear to be the class of subjects enumerated in s. 91 (2), the Regulation of Trade and Commerce, referred to by the Chief Justice. There could hardly be a more appropriate form of the exercise of this power than the creation and regulation of a uniform law of trade marks.

This judgment recognizes the necessity of keeping the actual language of sections 91 and 92 constantly in view in applying the enactments of those sections. Paraphrases of the words of head no. 2 of section 91 have been found useful in particular cases for assigning to that head a function in the scheme of these sections which would not result in defeating one main purpose of the B.N.A. Act by substantially impairing the autonomy of the provinces in respect of matters of purely provincial concern. But such paraphrases were not framed in light of the possibility of such legislation as that now before us. Such legislation was not in the minds of the great judges who adopted them. And since in none of the cases was it strictly necessary to draw an abstract line fixing the limits of the category in question, these formulae ought not to be treated as substitutes for the words of section 91, when, as now, a totally new type of legislation has to be con-

(1) [1927] A.C. 327.
(2) [1925] A.C. 396.
(3) [1922] 1 A.C. 191.
(4) [1896] A.C. 348, at 359.

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sidered; in relation to which it would be extravagant to suggest that any question of impairment of such autonomy arises.

It remains to add that the circumstance that the statute operates only within the boundaries of the province is, in the view expressed above, immaterial.

This Act, in common with *The Credit of Alberta Regulation Act,* contains a section which it will be convenient to discuss here. It is section 50 and is in these words:

> No provision of this Act shall be so construed as to authorize the doing of any act or thing which is not within the legislative competence of the Legislative Assembly.

Speaking of similar provisions in *Rex* v. *Nat Bell Liquors, Ltd.* (1), Lord Sumner said:

> In their Lordships' opinion the real question is whether the Legislature has actually interfered with interprovincial or with foreign trade. The presence or absence of an express disclaimer of any such interference may greatly assist where the language of the Provincial Legislature does not in itself determine the question and define its effect. If, however, it is otherwise clear that there is such an interference, or that there is none and the language actually used sufficiently decides that question, there is no such sovereign efficacy in such a clause as s. 72 as to make its presence or absence in an enactment crucial.

Since, in our opinion, the substantive enactments of the statute are *ultra vires* and the statute 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 in the sense explained, s. 50 would appear, in the view expressed by the Judicial Committee, to be of no significance, as having nothing to operate upon.

Section 50 is of an entirely different character from that in question in *A.G. for Manitoba* v. *Manitoba Licenseholders Ass'n* (2).

* * *

We come now to the bills submitted. The first to be considered is Bill no. 8, "*The Credit of Alberta Regulation Act, 1937.*"

In view of what has already been said, this statute is *ultra vires* on a narrow ground. It is a licensing statute, not in the sense that it imposes taxation by way of licence, but in the sense that the licensing authority is used for the purpose of regulating the institutions to which the statute relates; that is the pith of it, and the licensing

(1) [1922] 2 A.C. 128, at 136. (2) [1902] A.C. 73.

authorities are the Provincial Credit Commission and the Social Credit Board, the commission and the board constituted under *The Alberta Social Credit Act;* and the narrow point is this: In the view already expressed, *The Alberta Social Credit Act* is *ultra vires.* The machinery it professes to constitute cannot, therefore, come into operation. Consequently, *The Credit of Alberta Regulation Act* which can only take effect through that machinery must necessarily be inoperative. Furthermore, it is quite plain, not only from the preamble of *The Credit of Alberta Regulation Act,* but also from its enacting provisions, that it is a part of the general scheme of legislation of which *The Alberta Social Credit Act* is really the basis; and that statute being *ultra vires,* ancillary and dependent legislation falls with it.

The broader ground upon which we think this legislation is *ultra vires* is this: First, it is legislation in relation to Banking. In the alternative, it is legislation in relation to the Regulaton of Trade and Commerce within the meaning of section 91 (2) of *The British North America Act.*

The statute contains no express definition of "credit." Nevertheless, the language itself in which the enactments of the statute are expressed appears to afford indicia from which it is not difficult to ascertain the kind of credit the statute contemplates. First, we have the declaration that a "credit institution" is a person or corporation whose business or any part of whose business is the business of dealing in credit. The credit we are concerned with, therefore, is something which is dealt with as part of a business.

Then, by clause (*b*), a business of this kind consists in transactions whereby such "credit is created, issued, lent * * * provided * * * by means of book-keeping entries" or "dealt in" by such means. Further, the credit is of such a character that these transactions occur in relation to it: "the payment of cheques (which have been) made, drawn or paid in by customers," the payment of other negotiable instruments which have been similarly dealt with by customers and "the making of advances and the granting of overdrafts."

We are concerned, for the present, with ascertaining the effect of clause (*a*) and of clause (*b*) minus the last member.

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Perhaps it is convenient at the outset to refer to the recital which is in these words:

> 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.

"Monetization of credit" does not seem to be a very precise expression, but it does point to the conclusion that the credit with which the statute is concerned is credit in a form in which it can be employed for the purposes of money.

Now, the language of clause (*b*), excluding, of course, the last member, is perfectly sensible as applied to bank credit. A banker is a dealer in credit. Bank credit has, in ordinary usage, the meaning which is ascribed to it in the following paragraph in the chapter on the Creation of Credit in the late Mr. Walter Leaf's volume on Banking in the Home University Library, a chapter added in the last edition by Mr. Ernest Sykes, secretary to the Institute of Bankers:

> The word credit is used in a variety of meanings between which it is not at the moment necessary to distinguish. Suffice it to say that when the creation of credit is discussed there is general agreement that by credit is meant banker's credit, that is to say, the right to draw cheques on a bank. The exercise of this right involves either the withdrawal from the bank of legal tender, in the shape of bank notes or silver and bronze coin, or the transfer of such a right to some other person in the books of the same or another bank.

In a well-known book, published in 1890 (Macleod, Theory of Credit, p. 368-9), it is said:

> When a customer pays in money into his account in the usual way of business, he sells it to the banker. * * *
>
> In exchange for the money the banker makes an entry of an equal sum in credit in favour of his customer. And it is the entry to the credit of the customer which, in the technical language of modern banking is termed a deposit * * *
>
> So when a banker discounts a bill for a customer he buys it exactly in the same way as he bought money from his customer. He creates a credit in his books in favour of his customer. And this credit created to purchase the bill is termed a deposit equally as the credit created to purchase the money * * * A deposit is simply a credit in the banker's books. It is the evidence of the right of action which a customer has to demand a sum of money from the banker. As soon as the banker has created a credit, or deposit, in his books in favour of a customer he has issued to him a right of action against himself.

It is needless to say, perhaps, that we are not in the least concerned here with controversies about the creation

of credit by bankers, touching the limits of the power of bankers in this respect, and the conditions to which the power is subject. Everybody concedes that bankers do create credit in the sense of the paragraphs just quoted. Moreover, it is not in conflict with usage to speak of such credit being "credit created, issued, lent, provided or dealt in by means of book-keeping entries."

Such language, properly understood, not incorrectly describes the practice followed in banking transactions. Speaking generally, bank credit transferable on demand and so available for commercial purposes is evidenced by book-keeping entries, and it is upon the evidence and authority of such entries that the banker and his employees daily and hourly act in the business of the bank. Such entries are for practical purposes the record as well as the evidence of the creation of bank credit and it is by means of them that such credit as a medium of payment and exchange is transferred, disbursed and dealt in.

Then, the transactions enumerated in the second member of the clause are all defined as transactions relating to "credit created, issued, lent, provided or dealt in by means of book-keeping entries" in course of the business of dealing in credit. In this country, the functions of temporary lending and the provision of transferable credits as a means of payment are performed together as a matter of course.

But it is important to emphasize that, while the payment of customers' cheques and other negotiable instruments and the making of advances and the granting of overdrafts are enumerated in the second member of the clause, they are all transactions having relation to some "credit created * * * or dealt in by means of book-keeping entries."

The essential feature of the business of dealing in credit, therefore, is, by this definition, the creation of credits and the dealing in credits by means of book-keeping entries and these related transactions. It should be noted also that, from the persons carrying on the business of dealing in credits so defined is excepted the Bank of Canada; and clause (*b*), with the last member left out of consideration, has unquestionably the effect of designating transactions which are the transactions of somebody who is carrying

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on business in banking. We are unable to read this language as extending to transactions which are not of that character. It was suggested that the transactions of a bill broker or a person engaged in discounting bills or making advances on the credit of bills or promissory notes would fall within it, but this leaves entirely out of account the all important limitation that the business of dealing in credit, by definition, is the business of somebody who is engaged in transactions of the kind specified but with the qualification that such transactions are effectuated by means of " book-keeping entries." Such language, properly understood, finds, as we have seen, a reasonable application in designating the transactions of a banker but, so far as we are aware, it has no application to the business of a bill broker or to that of a money lender who is not a banker.

It should be observed that the statute applies only to credit institutions which are carrying on business when the Act comes into force, that is, when assented to.

We come now to the final member expressed in these words:

> but does not include transactions which are banking within the meaning of the word "banking" as used in subhead 15 of section 91 of *The British North America Act,* 1867.

We repeat, clause (*b*) consists of a single sentence containing what professes to be a definition of " business of dealing in credit " as employed in the statute. The words just quoted are part of that definition. If effect is given to them, they completely destroy everything which precedes them in that definition. They reduce the definition to the single proposition that the " business of dealing in credit " in the Act "does not include transactions which are banking within the meaning of the word 'banking' as used in subhead 15 of section 91 of *The British North America Act, 1867.*"

We have come to the conclusion that we have here one of those cases in which there is a repugnancy of such a character that the last words, if any effect is to be given them, really empty the clause of all meaning as a definition and the statute of its intended effect and must be disregarded. (*The Case of Alton Woods* (1); *Clelland* v. *Ker* (2), and *Drury* 227).

(1) (1600) 1 Co. Rep. 40b, at 47b. (2) (1843) 6 Ir. Eq. 35.

If we should be wrong in this view of the construction of section 2(b), in other words, if, giving full effect to the last sentence, there is still some content left in the phrase "business of dealing in credit" then the subject-matter of the statute would appear to be within the category Regulation of Trade and Commerce within the meaning of section 91(2). We think it plain that "credit" (if not strictly confined to bank credit) here means credit which is dealt in as bank credit is dealt in, not such a credit, for example, as is created by a purchase of goods on credit in the ordinary course of business, but credit which is created, issued and so forth for the purpose of being dealt with as such.

In our opinion, legislation regulating credit from the aspect and with the purpose disclosed by the provisions of the statute as a whole, read in light of the preamble and of the cognate statutes and bills, (if it is not banking legislation) is legislation respecting matters which fall strictly within Trade and Commerce and not within any of the matters contemplated as subjects of provincial legislation within the meaning of section 92.

Section 7 of the statute is, in terms, identical with section 50 of the Social Credit Act and the observations with regard to that section apply equally to section 7.

The answer, therefore, to the question concerning this Bill is that it is *ultra vires*.

* * *

The next Bill to be considered is that respecting the Taxation of Banks: The question to be determined in relation to this Bill is this: Is it an enactment in exercise of the provincial power to raise a revenue for provincial purposes by direct taxation, or is it legislation which, in its true character, relates to Incorporation of Banks and Banking.

The judgment of the Judicial Committee in *Union Colliery Co. of B.C., Ltd.* v. *Bryden* (1) is sufficient authority for the proposition that the answer to this question is to be found by ascertaining the effect of the legislation in the known circumstances to which it is to be applied.

The rate of taxation is an annual rate of one-half of one per cent on the paid-up capital and one per cent upon the amount of the reserves as well as upon the amount of the

(1) [1899] A.C. 580.

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undivided profits. It is proper, we think, to test the effect of the legislation by considering the case of a bank—the Bank of Montreal, for example—which carries on business in every province of Canada as well as in many other places in North America and elsewhere.

The population of Alberta, in round numbers, is 800,000 and that of the Dominion, in round numbers, 10,000,000. The ratio of the first figure to the second is expressed by the fraction two twenty-fifths. It is not, we think, for our present purposes an inaccurate assumption that the volume of business carried on by such a bank in Alberta would bear a ratio to the total business of the bank in Canada not materially greater than the ratio of the Alberta population to the population of the Dominion. The annual tax, therefore, in the case of such a bank of one-half of one per cent upon the paid-up capital may be regarded as a charge upon two twenty-fifths of its total business; and, in respect of its reserves and undivided profits, one per cent, borne by the same part of its business. Indeed, it is pretty obvious that the fraction two twenty-fifths expresses a considerably higher ratio than a figure strictly in accord with the facts. This would appear to give a fair and reasonable point of view for obtaining a just idea of the practical effect of such taxation.

It is plain, of course, that if such a bank were subjected to such a levy in each of the provinces but on a scale varying with the business done in the province, or the population of the province, the total levy charged upon its business throughout the Dominion would amount to an annual impost of six and one-quarter per cent upon its paid-up capital and twelve and one-half per cent upon each of the other funds—the reserves and the undivided profits.

In our opinion, it requires no demonstration to show that such a rate of taxation must be prohibitive in fact and must be known to the Alberta legislature to be prohibitive. It is our duty, as judges, to take judicial notice of facts which are known to intelligent persons generally; and any suggestion that the profits of banking as carried on in Canada could be such as to enable banks to pay taxes to the provinces of such magnitude, having regard to the other burdens, such as municipal rates, which are levied

upon them in Canada, as well as the taxes paid in foreign countries, would be incontinently rejected by anybody possessing the most rudimentary acquaintance with affairs.

Now, this tax upon banks is of proportions which have no parallel in the Alberta system of taxation. In the same year there was a substantial increase in the taxes levied upon corporations generally, including banks. This levy now in question which was imposed later is directed exclusively against banks.

Such legislation, in effect prohibitive, although in form relating to taxation is, in truth, legislation "directed to," to quote the phrase of Lord Haldane in *Wharton's* case (1), controlling the banks in the conduct of their business, by forcing upon them a discontinuance of business, or otherwise. Such legislation, notwithstanding its form, is not within the powers of the provinces under section 92 because its subject-matter in truth is the Incorporation of Banks and Banking, one of the enumerated heads of section 91 (no. 15). The concluding paragraph of section 91 is explicit.

> Their Lordships made reference to the circumstance that the concluding words of s. 91 of *The British North America Act*, "Any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces," render it necessary to do more than ascertain whether the subject-matter in question apparently falls within any of the heads of s. 92. As is now well settled the words quoted apply, not only to the merely local or private matters in the province referred to in head 16 of s. 92, but to the whole of the sixteen heads in that section: *A.-G. for Ontario* v. *A.-G. for Canada* (2).

This is the language of the Judicial Committee in *Great West Saddlery Co.* v. *The King* (3).

The chartered banks in Alberta exercise their powers under the authority of a Dominion statute, the *Bank Act*. By that statute, a system of banking is set up by the Parliament of Canada and provision is made for the incorporation of individual banks which, on compliance with the statutory conditions, are entitled to carry on business subject to the provisions of the statute. This system of banking has been created by the Parliament of Canada in exer-

(1) [1915] A.C. 343. (2) [1896] A.C. 348.
(3) [1921] 2 A.C. 99.

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cise of its plenary and exclusive authority in relation to that subject, and any legislation by a province which, to quote again the phrase of Lord Haldane, is "so directed by the provincial legislatures" as either directly or indirectly to frustrate the intention of the *Bank Act* by preventing banks carrying on their business or controlling them in the exercise of their powers must be invalid (*G. W. Saddlery* v. *The King* (1)).

This view of the effect of the legislation is greatly strengthened by the obvious relation of the Bill to the scheme of legislation to which the other Bills already discussed belong. This relation between the Bill in question and the Social Credit legislation as a whole enables us in some degree to understand a measure which would otherwise be simply incomprehensible.

There are two other points to which we think it advisable to refer briefly. As regards the excessive magnitude of the tax, the question may be asked: Where are you to draw the line? The answer to that is, any attempt to draw an abstract line is difficult and, in dealing with questions of the kind before us, it is inadvisable to attempt it unless it be absolutely necessary. This case presents no such necessity. It is plain on the face of the Bill that the purpose of it is not to raise a revenue for provincial purposes, and equally plain that taxation of this character throughout Canada, if operative, would completely frustrate the purposes of the *Bank Act*.

The next point concerns the decision of the Judicial Committee in the *Bank of Toronto* v. *Lambe* (2). In that case counsel on behalf of the bank strongly pressed upon their Lordships the view upon which the Supreme Court of the United States acted in a series of cases (*McCulloch* v. *Maryland* (3); *Osborn* v. *United States Bank* (4); *Railroad Co.* v. *Peniston* (5)) that since, in the words of the famous dictum of Chief Justice Marshall "the power to tax involves the power to destroy," the states must be held to be deprived of the power to tax the instrumentalities of the Federal government.

(1) [1921] 2 A.C. 99, at 100.
(2) (1887) 12 A.C. 575.
(3) (1819) 4 Wheaton 436.
(4) (1824) 9 Wheaton 738.
(5) (1873) 18 Wallace 5.

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Their Lordships declined to apply this principle of interpretation to *The British North America Act* partly, it would appear, on the ground that the legislation of the provinces is subject to control by the Dominion through the power of disallowance. But the tax there in question had no sort of resemblance to that we are now considering and the question now before us did not there arise. Taxation of such a magnitude as to crush banks out of existence was put as a bare possibility and their Lordships declined to hold that such a possibility was sufficient for denying the provinces the power to exercise the right of taxation in a legitimate way.

In *Caron* v. *The King* (1), Lord Phillimore, speaking on behalf of the Judicial Committee, quoted with approval a passage from the judgment of Davies C.J. (then Davies J.) in *Abbott* v. *City of Saint John* (2) in these words:

> The province does not attempt to interfere directly with the exercise of the Dominion power, but merely says that, when exercised, the recipients of the salaries shall be amenable to provincial legislation in like manner as all other residents * * * It is said the legislature might authorize an income tax denuding a Dominion official of a tenth or even a fifth of his official income, and, in this way, paralyse the Dominion service and impair the efficiency of the service. But it must be borne in mind that the law does not provide for a special tax on Dominion officials but for a general undiscriminatory tax upon the incomes of residents and that Dominion officials could only be taxed upon their incomes in the same ratio and proportion as other residents. At any rate, if, under the guise of exercising power of taxation, confiscation of a substantial part of official and other salaries were attempted, it would be then time enough to consider the question and not to assume beforehand such a suggested misuse of the power.

The judgment proceeds:

In *Great West Saddlery Co.* v. *The King* (3) provincial legislation, which had the effect of precluding Dominion trading companies from carrying on their business in the Province unless they complied with certain special terms, was held ultra vires, as calculated to abrogate the capacity or derogate from the status which it was in the power of the Parliament of Canada to bestow; and a general principle was laid down that no provincial Legislature could use its special powers as an indirect means of destroying powers given by the Parliament of Canada.

By parity of reason the Parliament of Canada could not exercise its power of taxation so as to destroy the capacity of officials lawfully appointed by the Province.

The specific ground on which, in our opinion, this legislation is invalid is: It is not competent to the provinces of Canada, by the exercise of their powers of taxation, to

(1) [1924] A.C. 999, at 1005-6.
(2) [1908] 40 Can. S.C.R. 597, at 606-7.
(3) [1921] 2 A.C. 91.

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force banks which are carrying on business under the authority of the Bank Act to discontinue business; and taxation by one province on a scale which, in a practical business sense, is manifestly prohibitive is not a valid exercise of provincial legislative authority under section 92. Such legislation, though in the form of a taxing statute, is "directed to" the frustration of the system of banking established by the Bank Act, and to the controlling of banks in the conduct of their business.

The answer, therefore, to the question concerning this Bill is that it is *ultra vires.*

* * *

We now turn to Bill No. 9.

This Bill contains two substantive provisions. Both of them impose duties upon newspapers published in Alberta which they are required to perform on the demand of "the Chairman," who is, by the interpretation clause, the Chairman of "the Board constituted by section 3 of *The Alberta Social Credit Act.*"

The Board, upon the acts of whose Chairman the operation of this statute depends, is, in point of law, a non-existent body (there is, in a word, no "board" in existence "constituted by section 3 of *The Alberta Social Credit Act*") and both of the substantive sections, sections 3 and 4, are, therefore, inoperative. The same, indeed, may be said of sections 6 and 7 which are the enactments creating sanctions. It appears to us, furthermore, that this Bill is a part of the general scheme of Social Credit legislation, the basis of which is *The Alberta Social Credit Act;* the Bill presupposes, as a condition of its operation, that *The Alberta Social Credit Act* is validly enacted; and, since that Act is *ultra vires,* the ancillary and dependent legislation must fall with it.

This is sufficient for disposing of the question referred to us but, we think, there are some further observations upon the Bill which may properly be made.

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 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.

The right of public discussion is, of course, subject to legal restrictions; those based upon considerations of decency and public order, and others conceived for the protection of various private and public interests with which, for example, the laws of defamation and sedition are concerned. In a word, freedom of discussion means, to quote the words of Lord Wright in *James* v. *Commonwealth* (1), "freedom governed by law."

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.

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 consti-

(1) [1936] A.C. 578, at 627.

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tution itself arise by necessary implication from *The British North America Act* as a whole (*Fort Frances Pulp & Power Co. Ltd.* v. *Manitoba Free Press Co. Ltd.* (1)); 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.

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 *Great West Saddlery Co.* v. *The King* (2), "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* (3).

The question, discussed in argument, of the validity of the legislation before us, considered as a wholly independent enactment having no relation to the *Alberta Social Credit Act,* presents no little difficulty. Some degree of regulation of newspapers everybody would concede to the provinces. Indeed, there is a very wide field in which the provinces undoubtedly are invested with legislative authority over newspapers; 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

(1) [1923] A.C. 695. (2) [1921] 2 A.C. 91, at 122.
(3) [1924] A.C. 999, at 1005-6.

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* (1) "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* (2)).

Section 129 of *The British North America Act* is in these words:

> 129. Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia or New Brunswick, at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act.

The law by which the right of public discussion is protected existed at the time of the enactment of *The British North America Act* and, as far as Alberta is concerned, at the date on which the Alberta Act came into force, the 1st of September, 1905. In our opinion (on the broad principle of the cases mentioned which has been recognized as limiting the scope of general words defining the legislative authority of the Dominion) the Legislature of Alberta has not the capacity under section 129 to alter that law by legislation obnoxious to the principle stated.

The legislation now under consideration manifestly places in the hands of the Chairman of the Social Credit Commission autocratic powers which, it may well be thought, could, if arbitrarily wielded, be employed to frustrate in Alberta these rights of the Crown and the people of Canada as a whole. We do not, however, find it necessary to express an opinion upon the concrete question whether or not this particular measure is invalid as exceeding the limits indicated above.

The answer to the question concerning this Bill is that it is *ultra vires*.

(1) (1887) 12 A.C. 575.

(2) [1921] 2 A.C. 91, at 100.

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Reference re ALBERTA STATUTES

The Bank Taxation Act; The Credit of Alberta Regulation Act; and The Accurate News and Information Act.

CANNON J.—The first question referred to us by His Excellency the Governor General in Council is:

Is Bill No. 1 entitled "*An Act Respecting the Taxation of Banks*" 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?

This bill provides that every bank which transacts business in the province of Alberta shall annually pay to His Majesty for the use of the province, in addition to any tax payable pursuant to any other Act, the following taxes, namely:

(*a*) a tax of one-half of one per centum on the paid-up capital thereof;

(*b*) a tax of one per centum on the reserve fund and undivided profits thereof.

It is claimed:

1. That the tendency of the tax is that it shall be passed on and is in reality an attempt to impose a tax on the paid up capital and reserves and profits throughout Canada and abroad and, therefore, is not "direct taxation within the province";

2. The proposed taxation would destroy or nullify the status and capacity of the banks which are Dominion corporations;

3. Taxation of the character in question, if within provincial competence and adopted by all provinces would strike at the very solvency of the banks and their ability to return moneys deposited with them.

The extraordinary expansion given to the recognized power of the provinces to levy direct tax for local purposes since the decision of the Privy Council in *Bank of Toronto* v. *Lambe* (1), notably in *Abbott* v. *City of Saint John* (2); *Caron* v. *The King* (3); *Forbes* v. *Attorney-General of Manitoba,* confirmed by Privy Council (4); and also in *Judges* v. *Attorney-General of Saskatchewan* (5) must be be reviewed in order to decide the question.

In *Bank of Toronto* v. *Lambe* (1), the Privy Council said at pp. 586-587:

> Then it is suggested that the legislature may lay on taxes so heavy as to crush a bank out of existence, and so to nullify the power

(1) (1887) 12 A.C. 575.

(2) (1908) 40 Can. S.C.R. 597.

(3) [1924] A.C. 999.

(4) [1936] S.C.R. 40; [1937] A.C. 860.

(5) [1936] 4 D.L.R. 134; [1937] 2 D.L.R. 209.

of parliament to erect banks. But their Lordships cannot conceive that when the Imperial Parliament conferred wide powers of local self-government on great countries such as Quebec, it intended to limit them on the speculation that they would be used in an injurious manner. People who are trusted with the great power of making laws for property and civil rights may well be trusted to levy taxes. There are obvious reasons for confining their power to direct taxes and licences, because *the power of indirect taxation would be felt all over the Dominion.* But whatever power falls within the legitimate meaning of classes 2 and 9, is, in their Lordships' judgment, what the Imperial Parliament intended to give; and to place a limit on it because the power may be used unwisely, as all powers may, would be an error, and would lead to insuperable difficulties, in the construction of the Federation Act.

Their Lordships have been invited to take a very wide range on this part of the case, and to apply to the construction of the Federation Act the principles laid down for the United States by Chief Justice Marshall. Every one would gladly accept the guidance of that great judge in a parallel case. But he was dealing with the constitution of the United States. Under that constitution, as their Lordships understand, each state may make laws for itself, uncontrolled by the federal power, and subject only to the limits placed by law on the range of subjects within its jurisdiction. In such a constitution Chief Justice Marshall found one of those limits at the point at which the action of the state legislature came into conflict with the power vested in Congress. The appellant invokes that principle to support the conclusion that the Federation Act must be so construed as to allow no power to the provincial legislatures under section 92, which may by possibility, and if exercised in some extravagant way, interfere with the objects of the Dominion in exercising their powers under section 91. It is quite impossible to argue from the one case to the other. Their Lordships have to construe the express words of an Act of Parliament which makes an elaborate distribution of the whole field of legislative authority between two legislative bodies, and at the same time provides for the federated provinces a carefully balanced constitution, under which no one of the parts can pass laws for itself except under the control of the whole acting through the Governor-General. And the question they have to answer is whether the one body or the other has power to make a given law. If they find that on the due construction of the Act a legislative power falls within section 92, it would be quite wrong of them to deny its existence because by some possibility it may be abused, or may limit the range which otherwise would be open to the Dominion parliament."

In the *Forbes* case (1), I urged that the whole question should be reconsidered and I gave some reasons why provincial interference with the exclusive federal power of fixing the salaries of Dominion civil servants could not be upheld. I said, at page 75:

Can it be denied that, under existing conditions in Canada since the war, the reduction of the salaries of Dominion employees in proportion to the needs of the provinces or municipalities, which in some cases are very great and are increasing alarmingly, would, if added to

(1) [1936] S.C.R. 40, at 64 *& seq*

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the reductions imposed by the Dominion Parliament, amount to confiscation of a substantial part thereof and would as a necessary consequence seriously impair the efficiency, *morale* and economic independence of the national service? It is a patent fact to anyone conversant with Canadian conditions, and any attempt by a Province to confiscate, even in part, the stipend fixed by Parliament, whatever name may be given to the operation, under whatever disguise it may be presented, is an unauthorized assumption of a power which is essentially national in its scope and operation and is expressly denied to the Province by the last phrase of section 91. The Dominion alone can fix the salaries; and once fixed, they cannot be changed or reduced by the Province. According to elementary common sense, without the necessity of recourse to learned legal distinctions or disquisitions, a salary minus a tax of 2, 5 or 10 per cent is a reduced salary *pro tanto*. Such reduction in the case of Dominion servants can be effected by Parliament only in the exercise of its exclusive jurisdiction under head (8) of 91. Now the respondent contends that the Act contemplates and contains such an interference.

The majority of this Court and the Judicial Committee refused to reconsider the conclusions reached about this power of taxation in the cases of *Abbott* v. *City of Saint John* (1) and *Caron* v. *The King* (2). I quote the following from the judgment of My Lord the present Chief Justice (3):

> In *Abbott* v. *City of Saint John* (1), this Court had to consider the judgment of the very able judges who decided *Leprohon* v. *City of Ottawa* (4) and it may be worth while to devote a sentence or two to *Leprohon's* case (4).
>
> The trial judge was Mr. Justice Moss (4) (afterwards Chief Justice of Ontario). He proceeded upon principles which had been laid down in judgments of the Supreme Court of the United States, notably in the judgment of Marshall C.J. in *McCulloch* v. *Maryland* (5), the effect of which may be summed up in these words, quoted by Moss J. (4) from the judgment of Nelson J. in *Buffington* v. *Day*, reported *sub nom. The Collector* v. *Day* (6).
>
> * * * there is no express constitutional prohibition upon the States against taxing the means or instrumentalities of the General Government; but it was held, and we agree properly held, to be prohibited by necessary implication, otherwise States might impose taxation to an extent that would impair, if not wholly defeat, the operations of the Federal authorities when acting in their appropriate sphere.'
>
> Mr. Justice Moss himself proceeds:—
>
> In this case the central authority, in the exercise of its appropriate functions, appointed the plaintiff to a position of emolument. In the exercise of its proper powers it assigned to him a certain emolument. This emolument the plaintiff is entitled to receive for the discharge of duties for which the Central Government is bound to

(1) (1908) 40 Can. S.C.R. 597.
(2) [1924] A.C. 999.
(3) [1936] S.C.R. 40, at 44.
(4) (1878) 2 Ont. App. R. 522;
(5) (1819) 4 Wheat. 316.
(6) (1870) 11 Wallace 113, at 123-4.

provide. I do not find in the British North America Act that there is any express constitutional prohibition against the Local Legislatures taxing such a salary, but I think that upon the principles thus summarized in the case which I have just cited there is necessarily an implication that such power is not vested in the Local Legislature.

The learned judges in the Court of Appeal for Ontario base their conclusions upon the same grounds.

In *Abbott* v. *City of Saint John* (1), four of the five judges of this Court were clearly of the view that this reasoning was not admissible for the purpose of determining the limits of the powers vested in the provinces by *The British North America Act*. Davies J. said (at p. 606):—

> Time and again the Judicial Committee have declined to give effect to this anticipatory argument or to assume to refuse to declare a power existed in the legislature of the province simply because its improvident exercise might bring it into conflict with an existing power of the Dominion.

At page 618, I observed,

> * * * *Leprohon* v. *The City of Ottawa* (2) * * * was decided in 1877. Judicial opinion upon the construction of the *British North America Act* has swept a rather wide arc since that date; to mention a single instance only, it would not be a light task to reconcile the views upon which *Leprohon* v. *The City of Ottawa* (2) proceeded with the views expressed by the Judicial Committee in the later case of *The Bank of Toronto* v. *Lambe* (3). Indeed, although *Leprohon* v. *The City of Ottawa* (2) has not been expressly overruled, the grounds of it have been so thoroughly undermined by subsequent decisions of the Judicial Committee, that it can,—I speak, of course, with the highest respect for the eminent judges who took part in it,—no longer afford a guide to the interpretation of the *British North America Act*.
>
> *Abbott* v. *City of Saint John* (1) was approved in *Caron* v. *The King* (4) and both decisions are, of course, binding upon this Court.

In the same case of *Forbes* v. *Attorney-General of Manitoba* (5) Lord Macmillan, speaking for the Privy Council, answering the argument that if the provincial authorities can tax at 2 per cent the salary which a federal employee receives from the Dominion to enable him to live in the province and discharge his duties there, they can tax his salary to such an extent as to render it impossible for him to live and perform his duties, says that a similar argument in terrorem was advanced and rejected in the case of *Bank of Toronto* v. *Lambe* (6) and adopts Lord Hobhouse's dictum that self-governing provinces who are entrusted with the great power of making laws for property and civil rights may well be trusted to levy taxes.

(1) (1908) 40 Can. S.C.R. 597.
(2) (1878) 2 Ont. App. R. 522.
(3) (1887) 12 App. Cas. 575.
(4) [1924] A.C. 999.
(5) [1937] A.C. 260, at 270.
(6) (1887) 12 App. Cas. 575.

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I would also refer to the case of the *Saskatchewan Judges* v. *Attorney-General of Saskatchewan* (1), where the Privy Council reaffirmed, as applying to judges' salaries, the view already expounded in *Attorney-General of Manitoba* v. *Forbes* (2), above mentioned.

Prima facie, in view of the above decision, it would, therefore, seem that the assets of the banks cannot be protected by the courts against the alleged destroying power of provincial taxation any more than salaries of Dominion civil servants or the emoluments of His Majesty's judges.

Where the United States Supreme Court can exercise certain powers, the decisions above quoted seem to preclude this Court from doing the same, on account of the powers reserved to the central government under our constitution. The Privy Council has set no definite limit to the legislative competence of the provinces to levy direct taxation within the province in order to the raising of revenue for provincial purposes. If such power is used unwisely or extravagantly, against the best interest of the whole of Canada, the power of disallowance by the Governor-General in Council, or, as in this case, that of reservation by the Lieutenant-Governor, acting, presumably, according to his instructions from the central government, are the only means or safety valves provided in our "carefully balanced constitution," to see that "no one of the parts can pass laws for itself except under the control of the whole acting through the Governor-General."

It must be borne in mind, however, that in the two cases last cited the Attorney-General of Canada did not appear before the Court, did not interfere in any way to show that, in the opinion of the Federal Government, the interests of the Dominion as a body politic were at stake when the emoluments fixed by Parliament for the Judiciary or the civil service were reduced by provincial taxation. In the present reference, the Dominion takes a very strong stand and contends that this bill, linked with the two others, constitutes essential encroachment upon the exclusive powers of Parliament of legislating in relation to "banking, incorporation of banks and paper money" and is, therefore,

(1) [1937] 2 D.L.R. 209. (2) [1937] A.C. 260.

ultra vires. Perhaps, under these altered circumstances, the Privy Council, if this matter is brought before Their Lordships, will reopen the question and reconsider the scope to be given to the decisions above quoted. They may even distinguish this reserved bill from the Quebec Act considered in *Bank of Toronto* v. *Lambe* (1).

As to the question whether the tax is taxation within the province, "any person found within the province may legally be taxed there if taxed directly," according to *Bank of Toronto* v. *Lambe* (1), and also according to the same authority, "whether the method of assessing this tax is sound or unsound, wise or unwise, is a point on which we have no opinion, and are not called on to form one, for, if it does not carry the taxation out of the Province, it is for the legislature and not for the courts of law to judge of its expediency."

For my part, although I always believed that the efficiency of essentially federal services, like banking, cannot be impaired by provincial legislation, I, at first, felt myself bound by these concurrent and recent decisions to say that the Alberta Legislature is competent to enact a statute in the terms of this bill. But, after perusing with great advantage the reasons of my Lord the Chief Justice, I reach the conclusion that the bill, despite its form, does not seek to raise revenue for provincial purposes but, in its true character, aims, by erecting a prohibitive barrier, to prevent the banks from conducting their legitimate business in Alberta. Such purpose and effect must be declared *ultra vires* of the legislature of Alberta, which cannot use its special powers as an indirect means of destroying powers given by the Parliament of Canada.

The answer to the first question must be in the negative.

II.

The second question in the order of reference is the following:

> Is Bill No. 8, entitled *An Act to Amend and Consolidate the Credit of Alberta Regulation Act*, 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?

(1) (1887) 12 App. Cas. 575.

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After a full study of the matter and as I was ready to write my opinion in answer to this question, I had the advantage of reading the careful analysis of the bill prepared by my brother Kerwin and his criticism of its different clauses. I find that I could add nothing useful to his reasons. I agree with him and his conclusions; and I would, therefore, answer Question 2 in the negative. This Bill, if it became law, would constitute an invasion by the province of Alberta of the Dominion's exclusive power of regulating banks and banking.

III.

The third question put to us is the following:

> Is Bill No. 9, entitled *An Act to ensure the 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?

The order-in-council represents that it has been and is the avowed object of the present government of the province of Alberta to inaugurate in the said province a "new economic order" upon the principles or plan of the theory known as the "Social Credit"; and that the said government has since secured the enactment of several statutes more or less related to the policy of effectuating the said object. The preamble of the bill, which I will hereafter call the "Press bill" 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.

Section 3 provides that any proprietor, editor, publisher or manager of any newspaper published in the province shall, when required to do so by the Chairman of the Board constituted by section 3 of the *Alberta Social Credit Act,* 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.

And 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.

Section 5 denies any action for libel on account of the publication of any statement pursuant to the Act.

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

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

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

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

Section 7 provides for penalties for contraventions or defaults in complying with any requirement of the Act.

The policy referred to in the preamble of the Press bill regarding which the people of the province are to be informed from the government standpoint, is undoubtedly the Social Credit policy of the government. The administration of the bill is in the hands of the Chairman of the Social Credit Board who is given complete and discretionary power by the bill. "Social Credit," according to sec. 2 (*b*) of ch. 3, 1937, second session, of *The Alberta Social Credit Amendment Act* is

the power resulting from the belief inherent within society that its individual members in association can gain the objectives they desire;

and the objectives in which the people of Alberta must have a firm and unshaken belief are the monetization of credit and the creation of a provincial medium of exchange instead of money to be used for the purposes of distributing to Albertans loans without interest, per capita dividends and discount rates to purchase goods from retailers. This free distribution would be based on the unused capacity of the industries and people of the province of Alberta

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to produce goods and services, which capacity remains unused on account of the lack or absence of purchasing power in the consumers in the province. The purchasing power would equal or absorb this hitherto unused capacity to produce goods and services by the issue of Treasury Credit certificates against a Credit Fund or Provincial credit account established by the Commission each year representing the monetary value of this "unused capacity" —which is also called "Alberta credit."

It seems obvious that this kind of credit cannot succeed unless every one should be induced to believe in it and help it along. The word "credit" comes from the latin: *credere,* to believe. It is, therefore, essential to control the sources of information of the people of Alberta, in order to keep them immune from any vacillation in their absolute faith in the plan of the government. The Social Credit doctrine must become, for the people of Alberta, a sort of religious dogma of which a free and uncontrolled discussion is not permissible. The bill aims to control any statement relating to any policy or activity of the government of the province and declares this object to be a matter of public interest. 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. The pith and substance of the bill is to regulate the press of Alberta from the viewpoint of public policy by preventing the public from being misled or deceived as to any policy or activity of the Social Credit Government and by reducing any opposition to silence or bring upon it ridicule and public contempt.

I agree with the submission of the Attorney-General for Canada that this bill deals with the regulation of the press of Alberta, not from the viewpoint of private wrongs or civil injuries resulting from any alleged infringement or privation of civil rights which belong to individuals, considered as individuals, but from the viewpoint of public wrongs or crimes, i.e., involving a violation of the public rights and duties to the whole community, considered as a community, in its social aggregate capacity.

Do the provisions of this bill, as alleged by the Attorney-General for Canada, invade the domain of criminal

law and trench upon the exclusive legislative jurisdiction of the Dominion in this regard?

The object of an amendment of the criminal law, as a rule, is to deprive the citizen of the right to do that, apart from the amendment, he could lawfully do. Sections 130 to 136 of the Criminal Code deal with seditious words and seditious publications; and sect. 133 (*a*) reads as follows:—

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 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 of state; or

(*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.

It appears that in England, at first, criticism of any government policy was regarded as a crime involving severe penalties and punishable as such; but since the passing of Fox's Libel Act in 1792, the considerations now found in the above article of our criminal code that it is not criminal to point out errors in the Government of the country and to urge their removal by lawful means have been admitted as a valid defence in a trial for libel.

Now, it seems to me that the Alberta legislature by this retrograde Bill is attempting to revive the old theory of the crime of seditious libel by enacting penalties, confiscation of space in newspapers and prohibitions for actions which, after due consideration by the Dominion Parliament, have been declared innocuous and which, therefore, every citizen of Canada can do lawfully and without hindrance or fear of punishment. It is an attempt by the legislature to amend the Criminal Code in this respect and to deny the advantage of sect. 133 (*a*) to the Alberta newspaper publishers.

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

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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 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 in discussing public affairs and the equal rights in that respect of all citizens throughout the Dominion. These subjects 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. 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.

I would, therefore, answer the question as to Bill No. 9 in the negative.

The judgment of Crocket and Kerwin JJ., *re* Bank taxation Act, was delivered by

KERWIN J.—In an opinion released simultaneously with this, I have expressed my views with reference to Bill no. 8 of the Legislative Assembly of Alberta being *An Act to Amend and Consolidate the Credit of Alberta Regulation Act*. The first question of the three referred to in that opinion relates to what is known as Bill no. 1, *An Act respecting the Taxation of Banks*, and it is to that Bill that I now direct my attention.

By section 2 (*a*) thereof:—

(*a*) "Bank" means a corporation or joint stock company other than the Bank of Canada wherever incorporated and which is incorporated for the purpose of doing banking business or the business of a savings bank and which transacts such business in the province whether the head office is situate in the province and elsewhere.

By section 3, every bank which transacts business in the province is required to pay annually to the Minister (the Provincial Secretary) on behalf of His Majesty for the use of the province, in addition to any tax payable pursuant to any other Act, a tax of one-half of one per centum on the paid-up capital thereof, and a tax of one per centum on the reserve fund and undivided profits thereof. The Bill provides for returns to be made by every bank according to forms to be prescribed by the Minister, and contains additional sections to ensure the filing of such returns and the payment of the taxes.

Our attention has been called to the increase in the taxation of banks that would be effected by the provisions of this Bill. As provincial legislation stood prior to the First Session of the Alberta Legislature in 1937, the tax on all banks doing business in the province amounted to $72,200 per annum. By chapter 57 of that session a tax was imposed which would increase the sum realized by $140,000 per annum. The additional tax proposed by Bill 1 amounts to $2,081,925 in each year.

It is argued that the magnitude of the tax proposed for this one province is such that if it were applied by each of the other provinces, it would have the effect of pre-

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venting banks from exercising their functions. That, of course, is not the situation confronting us. This Bill has been passed by the Legislative Assembly of one province only and, considering the enactment by itself, the amount of the impost is to be determined by the competent taxing authority. It is not for a court to say that a certain tax is exorbitant because, in addition to any expression of opinion being the particular or, it may be, the peculiar view of an individual judge, or even of a number of judges, that is not the function of the judiciary.

However, omitting any reference to other arguments which have been adduced against the power of the Alberta Legislature to enact into law such a Bill, I believe that the time has now arrived when the question left open by this Court in *Abbott* v. *City of Saint John* (1), must be considered. In that case, which concerned the validity of a tax by provincial legislation on a Dominion official, Davies J., dealing with the contention that provincial taxation might paralyze the Dominion Civil Service, stated:—

> If, under the guise of exercising power of taxation, confiscation of a substantial part of official and other salaries were attempted, it would be then time enough to consider the question and not to assume beforehand such a suggested misuse of the power.

The decision in the *Abbott* case (1) was approved by the Judicial Committee in *Caron* v. *The King* (2) and in *Forbes* v. *Attorney-General for Manitoba* (3). As pointed out at page 270 in the latter, an argument in terrorem similar to that raised in the *Abbott* case (1) had been advanced and rejected in *Bank of Toronto* v. *Lambe* (4). While Davies J. left the question open, Lord Hobhouse, speaking for the Board in the *Lambe* case (4), contented himself with stating that

> their Lordships cannot conceive that when the Imperial Parliament conferred wide powers of local self-government on great countries such as Quebec, it intended to limit them on the speculation that they would be used in an injurious manner.

In none of the three cases decided by the Judicial Committee, nor in the *Abbott* case (1) was it suggested that the Acts in question were not true taxing enactments but it is contended at Bar that the same cannot be said of the Bill under review and it therefore becomes necessary to investigate that submission.

(1) (1908) 40 Can. S.C.R. 597.
(2) [1924] A.C. 999.
(3) [1937] A.C. 260.
(4) (1887) 12 A.C. 575.

In that connection we have been referred to certain other enactments passed by the Alberta Assembly. The first of these is *The Alberta Social Credit Act,* chapter 10 of the First 1937 Session, an Act which is still in force. It is unnecessary to detail the provisions of that Act as that has been done in the opinion delivered by My Lord the Chief Justice on the validity of Bills 1, 8 and 9. An examination of these provisions leaves no doubt in my mind that the Act is an attempt to regulate and control banks and banking as those terms are used in head 15 of section 91 of *The British North America Act.*

In the Second 1937 Session was passed *The Credit of Alberta Regulation Act.* The recitals in that Act are as follows:—

> 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
>
> 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 Alberta shall be controlled with the object of attaining for the People of Alberta the full enjoyment of property and civil rights in the province.

The Act then requires, by appropriate provisions, every banker carrying on the business of banking within the province at the time of the coming into force of the Act to take out a licence, and also every employee of a bank. Except that this Act refers to banks and the business of banking, by name, and includes employees of banks, the sections are practically the same as those of Bill 8. The first and third recitals are omitted but the second is identical in each enactment. For the reasons given by me when considering Bill 8, all of which apply with even greater force to this Act, I consider the legislation would be ultra vires of the province.

Chapter 2, *An Act to provide for the Restriction of the Civil Rights of Certain Persons,* also passed in the Second 1937 Session, recites:—

> 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

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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;

Section 3 provides:—

Any person who is an employee of a banker and who is required to be licensed pursuant to any provision of "The Credit of Alberta Regulation Act" shall not while unlicensed for any reason whatsoever, be capable of bringing, maintaining or defending any action in any Court of Civil Jurisdiction in the province which has for its object the enforcement of any claim either in law or equity.

This Act would fall with the one requiring a licence to be obtained.

On August 17, 1937, the Governor General in Council ordered that these two Acts together with one amending the *Judicature Act* be disallowed, and such disallowance was duly signified by proclamation of the Lieutenant Governor of Alberta dated August 27, 1937, and published in the *Canada Gazette* on September 11, 1937. The Third 1937 Session was opened on September 24, 1937, and it was at this session that Bills nos. 1 and 8 were passed and on October 5, 1937, reserved by the Lieutenant Governor for the signification of the pleasure of the Governor General.

It would appear to be relevant at this stage to refer to *The Reciprocal Insurers* case (1) and *In Re The Insurance Act of Canada* (2). The extract from the judgment in the former case, which was quoted with approval in the latter and there paraphrased, might, I think not inappropriately, be quoted and re-paraphrased for the purposes of the present inquiry. But what is even more important in my view is the statement in the former case, at page 332 of the report, that two Dominion statutes passed on the same day, one intituled *The Insurance Act, 1917*, and the other *An Act to Amend the Criminal Code* were complementary parts of a single legislative plan and were "admittedly an attempt to produce by a different legislative procedure the results aimed at by the authors of the *Insurance Act* of 1910 which in *Attorney-General for Canada* v. *Attorney-General for Alberta* (3) was pro-

(1) [1924] A.C. 328. (2) [1932] A.C. 41.
(3) [1916] 1 A.C. 588.

nounced *ultra vires* of the Dominion Parliament." In the present reference it is not admitted by counsel for the Attorney-General of Alberta that Bill I is part of a single legislative plan but I can draw no other conclusion. It is true that none of the other legislation referred to has been previously declared beyond the competence of the provincial legislature, but I have already indicated that, in my opinion, *The Alberta Social Credit Act, The Credit of Alberta Regulation Act,* and *An Act to provide for the Restriction of the Civil Rights of Certain Persons* are of that character.

The sequence of events after the disallowance of the three Acts is so significant that I can find no escape from the conclusion that, instead of being a taxing enactment, Bill I is merely a part of a legislative plan to prevent the operation within the province of those banking institutions which have been called into existence and given the necessary powers to conduct their business by the only proper authority, the Parliament of Canada.

If this view be correct, then it follows that the Bill is not one covered by the decision of this Court in the *Abbott* case (1) nor by the decisions of the Judicial Committee in the three cases mentioned, but is governed by the *Reciprocal Insurers* case (2) and *In Re The Insurance Act of Canada* (3).

For these reasons I would answer question 1 in the negative.

The judgment of Crocket and Kerwin JJ., *re* Credit Regulation, was delivered by

KERWIN J.—On October 5, 1937, three Bills were passed by the Legislative Assembly of the province of Alberta but were reserved by the Lieutenant-Governor for the signification of the Governor General's pleasure. Pending consideration of the advice to be tendered to the Governor General as to the propriety of signifying or withholding signification of the Royal Assent to these Bills, the Governor General in Council referred to this Court three questions as to whether these Bills, or any of the provisions thereof, and in what particular or particulars, or to what

(1) [1908] 40 Can. S.C.R. 597. (2) [1924] A.C. 328.
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extent, were *intra vires* of the Legislature of the Province of Alberta. The Bills are numbered and intituled as follows:—

Bill no. 1, "An Act Respecting the Taxation of Banks."

Bill no. 8, "An Act to Amend and Consolidate the Credit of Alberta Regulation Act."

Bill no. 9, "An Act to Ensure the Publication of Accurate News and Information."

I propose to consider question no. 2, referring to Bill no. 8. Counsel for the Attorney-General of Canada submit that it would be *ultra vires* of the provincial legislature to enact this legislation because the subject matter falls under one or more heads of section 91 of the *British North America Act, 1867*.

In the factum of the Attorney-General of Canada appears a great mass of material, some of which was referred to on the argument. The admissibility and relevancy of a great part of it was objected to, but the Court heard what counsel desired to say upon the subject without determining the issues raised. None of it was relied upon by counsel for the provincial Attorney-General. Some of this material is of such a character that it is clearly relevant and admissible while other parts are just as clearly irrelevant and inadmissible. However, it is unnecessary to determine the exact line that separates the one class from the other since, after a detailed examination of the provisions of the Bill itself, I have arrived at the conclusion that the Bill *in toto* is *ultra vires* of the provincial legislature.

The Bill contains the following recital:—

> 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.

Section 2 is the definition section and is as follows:—

> 2. In this Act, unless the context otherwise requires,—
>
> (*a*) "Credit Institution" means a person or corporation whose business or any part of whose business is the business of dealing in credit;
>
> (*b*) "Business of dealing in credit" means all business transactions in the Province of a credit institution or any other person except The Bank of Canada, whereby credit is created, issued, lent, provided or dealt in by means of bookkeeping entries,

in any case and at any time when the aggregate amount of all credit so created, issued, lent, provided or dealt in is in excess of the total amount of legal tender in the possession of the credit institution so creating, issuing, lending, providing or dealing in such credit: and includes the following transactions relating to any credit so created, issued, lent, provided or dealt in, namely, the "payment of cheques or other negotiable instruments made, drawn or paid in by customers, the making of advances and the granting of overdrafts; but does not include transactions which are banking within the meaning of the word 'banking' as used in subhead 15 of section 91 of The British North America Act, 1867";

(c) "Local Directorate" means a local Directorate constituted pursuant to section 4 of this Act;

(d) "Provincial Credit Commission" means the Commission constituted pursuant to section 4 of The Alberta Social Credit Act;

(e) "Social Credit Board" means the Board constituted pursuant to section 3 of The Alberta Social Credit Act.

By subsection 1 of section 3 "every credit institution which at the time of the coming into force of this Act is carrying on the business of dealing in credit within the province" shall within twenty-one days thereafter apply for and obtain a licence from the Commission in respect of such business, and every application is to be accompanied by the necessary fee. By subsection 3 of section 3 every such application is also to 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. By subsection 4 of section 3 the Commission is given power at any time or from time to time and without notice, to suspend, revoke or cancel the licence of any credit institution which commits a breach of the undertaking.

Under section 5, any credit institution which carries on the business of dealing in credit in the province without having first obtained a licence, or who violates any other provisions of the Act or the regulations made thereunder, is to incur a penalty of ten thousand dollars for each day during which it carries on business without a licence, "and every such penalty may be recovered by action brought on behalf of the Crown by the Provincial Treasurer in any court of competent jurisdiction as a debt due to the Crown." I refer to section 5 at this stage because by subsection 5 of section 3 any credit institution whose licence has been sus-

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pended, revoked or cancelled by the Commission is given a right to appeal to the Board but, as I read the concluding part of this subsection, no such right of appeal extends to any credit institution against which a judgment has been entered pursuant to section 5, on the ground or for the reason that the institution had acted, or assisted, or encouraged any person to act in a manner which restricts or interferes with the property or civil rights of any person within the province. That is, under section 5, the penalty referred to may be incurred by reason of several things but, if it happens that judgment is given for such penalty by reason of the specific matters referred to in the latter part of subsection 5 of section 3, the right which an institution would otherwise have to appeal to the Board from the suspension, revocation or cancellation of its licence by the Commission no longer exists.

Reverting to section 3, provision is made by subsections 6 and 7 thereof for an annual licence fee in such amount as may be fixed by the Commissioner, not exceeding an amount equivalent to one hundred dollars in respect of every building within the province in which the business of such credit institution is conducted; but, if the licence has been suspended, revoked or cancelled, the Commission may, for renewing the licence or issuing a new one, fix a fee in excess of that mentioned, provided that such increased fee is not to exceed one thousand times the fee paid or required to be paid in respect of the licence last issued to such institution.

By section 4 "for the purpose of preventing any act by such credit institution constituting a restriction or interference, either direct or indirect, with the full enjoyment of property and civil rights by any person within the Province", one or more Local Directorates (the number of which is to be in the absolute discretion of the Board) shall be appointed to supervise, direct and control the policy of the business of dealing in credit of such institution in respect of which such Local Directorate has been appointed. Each Local Directorate is to consist of five persons, three of whom are to be appointed by the Board and two by the credit institution, and provision is made for the dismissal of any of the Board's appointees.

It will be observed that under clause A of the definition section the entire business of a "credit institution" need not

be that of dealing in credit but it is sufficient if part only falls within that category. By clause (*b*) of section 2, an institution is dealing in credit, either wholly or in part, only when "*the aggregate amount of all credit * * * is in excess of the total amount of legal tender in the possession of the credit institution.*" This is important because it is only in such an event that the "business of dealing in credit" means business transactions in the province "whereby credit is created, issued, lent, provided or dealt in by means of bookkeeping entries," and the business transactions which the Bill purports to cover are only those whereby credit is created, etc., by means of bookkeeping entries.

In my opinion these transactions fall within the meaning of the term "banking" as used in head 15 of section 91 of *The British North America Act*. As pointed out by Lord Watson, speaking for the Judicial Committee, in *Tennant* v. *Union Bank of Canada* (1), the words used in head 15 of section 91, "Banking, Incorporation of Banks, and the Issue of Paper Money," are "wide enough to embrace every transaction coming within the legitimate business of a banker." The nature of such business "is a part of the law merchant and is to be judicially noticed by the Court," per Lord Campbell, during the course of the argument in *The Bank of Australasia* v. *Breillat* (2), referring to *Brandao* v. *Barnett* (3).

Accordingly, upon referring to the New English (Oxford) Dictionary we find that the word "credit," which is used in the Bill, is defined as "a sum placed at a person's disposal in the books of a bank, etc., upon which he may draw to the extent of the amount; any note, bill or other document, on security of which a person may obtain funds"; and at page 48 of the third volume of the 14th edition of the Encyclopaedia Britannica, under the title "Banking and Credit" appears the following paragraph:—

> Banks create credit. It is a mistake to suppose that bank credit is created to any important extent by the payment of money into the banks. Money is always being paid in by tradesmen and others who receive it in the course of business, and drawn out again by employers to pay wages and by depositors in general for use as pocket money. But the change of money into credit money and of credit money back

(1) [1894] A.C. 31, at 46. (2) (1847) 6 Moo. P.C. 152, at 173.
(3) (1846) 12 Cl. & F. 787.

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into money does not alter the total amount of the means of payment in the hands of the community. When a bank lends, by granting an advance or discounting a bill, the effect is different. Two debts are created; the trader who borrows becomes indebted to the bank at a future date, and the bank becomes immediately indebted to the trader. The bank's debt is a means of payment; it is credit money. It is a clear addition to the amount of the means of payment in the community. The bank does not lend money. The borrower can, if he pleases, take out the whole amount of the loan in money. He is in that respect in the same position as any other depositor. But like other depositors he is likely in practice to use credit for all major payments and only to draw out money as and when needed for minor payments.

It is not necessary to refer to the various schools of economists with their divergent views as to the extent to which banks create credit or as to the wisdom or otherwise of a state empowering such institutions to do so. It suffices that by current common understanding a business transaction whereby credit is created, issued, lent, provided or dealt in by means of bookkeeping entries is considered to be part of the business of banking as it has been practised and developed. It is well known that in addition to creating credit banks also issue, lend, provide and deal in credit by means of bookkeeping entries.

That banks are contemplated by Bill 8 as being the credit institutions to be licensed seems evident from the direction in section 3, subsection 1, that an application for a licence is to be made by "every credit institution which at the time of the coming into force of this Act is carrying on the business of dealing in credit within the province"; thus envisaging only institutions of that character which are already carrying on business; and banks are the only ones answering that description under the restrictions embodied in that part of clause (*b*) of section 2 quoted in an earlier part of these reasons and italicized. A construction might be placed upon other provisions of the Bill that would embrace such other institutions that desired to commence the defined business, but such a construction would be strained and the other is more consonant with the evident intention of the Bill as disclosed by its terms.

In addition to the terms already commented on, banks are plainly indicated by the following extract from clause (*b*) of section 2, which follows the statement of what "business of dealing in credit" means:—"and includes the following transactions relating to any credit so created, issued, lent, provided or dealt in, namely, the payment of

cheques or other negotiable instruments, made, drawn or paid in by customers, the making of advances and the granting of overdrafts." The transactions specifically mentioned form part of an ordinary banking business; and the exception of the Bank of Canada from "a credit institution or any other person," in clause (*b*) of section 2, strengthens the conclusion that banks are the institutions covered by the provisions of the Bill.

The reference in the Bill to "property and civil rights within the province" does not touch the point as almost any Act of Parliament relating to the matters assigned to its jurisdiction would affect property and civil rights, and it would still be valid. According to several decisions of the Judicial Committee, even if in some aspects the matters dealt with by this Bill could be said to fall within head 13 of section 92 (as to which I express no opinion), the final words of section 91 exclude provincial authority as the pith and substance of the Bill bring it within one of the enumerated subjects assigned to Parliament "notwithstanding anything in this Act."

The control to be exercised over credit institutions is far reaching. In addition to the undertaking required by every applicant for a licence and the provisions providing for a fee and an increased fee, and in addition to the powers conferred to suspend, revoke or cancel a licence, Local Directorates are to be appointed, a majority of whose members shall be nominees of the Board. Then, by section 8, the Commission, with the approval of the Lieutenant-Governor in Council, may make regulations: —

> (*e*) prescribing the privileges, terms, conditions, limitations and restrictions to be granted to or observed by any licensee;
>
> (*f*) prescribing the conditions upon which licences may be issued and providing for the revocation, suspension or withholding of licences;

The regulations, however, are not restricted to the matters dealt with by the Bill. While undoubtedly they could not go beyond the powers possessed by the Legislature itself, it is sufficient, according to the opening phrase of section 8, that the regulations be "not inconsistent with this Act." All these provisions are significant as indicating that the Bill is not a taxing enactment but an attempt to regulate and control every bank and the business of banking.

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There remains for consideration the effect of the concluding phrase in clause (*b*) of section 2,—

> but does not include transactions which are banking within the meaning of the word "banking" as used in subhead 15 of section 91 of *The British North America Act, 1867*.

and of section 7:—

> No provisions of this Act shall be so construed as to authorize the doing of any act or thing which is not within the legislative competence of the legislature of the province.

As to the former, it is contended by counsel for Alberta that, if, omitting the concluding phrase, only banks would be covered, the entire clause is not unintelligible but there might remain in fact no institutions to which the clause could apply; that it would, therefore, be nugatory and it could not be declared to be beyond the competence of the provincial legislature to enact the Bill as a law. But it is a sound principle in the construction of enactments that the Court will not presume an intention to enact a meaningless statute or section and here the correct interpretation appears to be that banks were intended to be and are covered by the definition, and that the last part of section 2, clause (*b*) was added in an effort to save legislation which on the proper construction of the other provisions of the Bill is unconstitutional. The same remarks apply to section 7.

In *The King* v. *Nat Bell Liquors Ltd.* (1), Lord Sumner, speaking for the Judicial Committee and discussing the effect of the repeal of a provision in the Alberta *Liquor Act* of 1916, which proposed to exclude from the operation of the Act "bona fide transactions in liquor between a person in the province of Alberta and a person in another province or in a foreign country," said at page 136:—

> In their Lordships' opinion the real question is whether the legislature has actually interfered with inter-provincial or with foreign trade. The presence or absence of an express disclaimer of any such interference may greatly assist where the language of the provincial legislature does not in itself determine the question and define its effect. If, however, it is otherwise clear that there is such an interference, or that there is none, and the language actually used sufficiently decides that question, there is no such sovereign efficacy in such a clause as s. 72 as to make its presence or absence in an enactment crucial.

This statement would appear at first sight to be in conflict with the statement by Lord MacNaghten in *Attorney General of Manitoba v. Manitoba Licence*

(1) [1922] 2 A.C. 128.

Holders' Association (1), where, in dealing with the question as to the constitutionality of the Manitoba *Liquor Act* of 1900, His Lordship observes:—

> The *Liquor Act* proceeds upon a recital that "it is expedient to suppress the liquor traffic in Manitoba by prohibiting provincial transactions in liquor." That is the declared object of the legislature set out at the commencement of the Act. Towards the end of the Act there occurs this section:
>
> "119. While this Act is intended to prohibit and shall prohibit transactions in liquor which take place wholly within the province of Manitoba, except under a licence or as otherwise specially provided by this Act, and restrict the consumption of liquor within the limits of the province of Manitoba, it shall not affect and is not intended to affect bona fide transactions in liquor between a person in the province of Manitoba and a person in another province or in a foreign country, and the provisions of this Act shall be construed accordingly." Now that provision is as much part of the Act as any other section contained in it. It must have its full effect in exempting from the operation of the Act all bona fide transactions in liquor which come within its terms.

The principle to which Lord Sumner referred was expressed somewhat differently by Viscount Haldane in *Attorney General for Manitoba* v. *Attorney General for Canada* (2). That case had to do with the constitutionality of an Act of the Manitoba Legislature providing for the collection of a tax from persons selling grain for future delivery. At page 566 of the report Viscount Haldane refers to the principle by which the courts determine whether a tax is direct or indirect, and explains:—

> It does not exclude the operation of the principle if, as here, by s. 5, the taxing Act merely expressly declares that the tax is to be a direct one on the person entering into the contract of sale, whether as principal or as broker or agent. For the question of the nature of the tax is one of substance, and does not turn only on the language used by the local Legislature which imposes it, but on the provisions of the Imperial statute of 1867.

In *Attorney General for British Columbia* v. *Attorney General for Canada* (3), the Judicial Committee determined that the Dominion *Natural Products Marketing Act,* 1934, was *ultra vires* of the Parliament of Canada. At page 387, Lord Atkin, speaking for the Board, deals with the argument advanced that certain portions of the Act at least should be declared valid. It was urged that section 9 of the Act there under consideration was a valid exercise of the powers of the Dominion Parliament because it purported to deal only with inter-provincial or export trade; and Part 2 of the Act because it went no

(1) [1902] A.C. 73, at 79. (2) [1925] A.C. 561.
(3) [1937] A.C. 377.

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further than similar provisions in the *Combines Investigation Act* and was a genuine exercise of the Dominion legislative authority over criminal law; and stress was laid upon section 26 of the Act:—

> If it be found that Parliament has exceeded its powers in the enactment of one or more of the provisions of this Act, none of the other or remaining provisions of the Act shall therefore be held to be inoperative or ultra vires, but the latter provisions shall stand as if they had been originally enacted as separate and independent enactments and as the only provisions of the Act; the intention of Parliament being to give independent effect to the extent of its powers to every enactment and provision in this Act contained.

At the foot of page 388 of the report his Lordship deals with this argument stating:—

> There appear to be two answers. In the first place, it appears to their Lordships that the whole texture of the Act is inextricably interwoven, and that neither s. 9 nor Part II can be contemplated as existing independently of the provisions as to the creation of a Board and the regulation of products. There are no separate and independent enactments to which s. 26 could give a real existence. In the second place, both the Dominion and British Columbia in their Cases filed on this appeal assert that the sections now said to be severable are incidental and ancillary to the main legislation. Their Lordships are of opinion that this is true: and that as the main legislation is invalid as being in pith and substance an encroachment upon the Provincial rights the sections referred to must fall with it as being in part merely ancillary to it.

As applicable to the present case, the principle might be stated thus:—Unless certain provisions of the Bill are severable, such expressions as are found in the last part of clause (*b*) of section 2 and in section 7 have no effect, if upon a consideration of the entire legislation the conclusion is reached that the subject matter dealt with is beyond the powers of the enacting authority. For the reasons given above, that is the conclusion I have arrived at and I would therefore answer question 2 in the negative.

The judgment of Crocket and Kerwin JJ. *re* Press Act was delivered by

KERWIN J.—The third question submitted to the Court by the Governor General in Council asks our opinion as to whether Bill No. 9 of the Legislative Assembly of Alberta, *An Act to Ensure the Publication of Accurate News and Information,* (hereafter referred to as the Press Bill) is *intra vires* of the legislature of that province. It has already been noted that this Bill was passed at the

same time as Bills 1 and 8. After reciting 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," section 2(*a*) defines the word "Chairman" as used in the Bill as "the Chairman of the Board constituted by section 3 of The Alberta Social Credit Act." By section 3 of the Press Bill "every person who is the proprietor, editor, publisher or manager of any newspaper published in the Province, shall, 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." The additional provisions of section 3 do not require our attention nor do the provisions of section 5, which prohibit any action for libel by reason of the publication of such statement.

Section 4 enacts that, within twenty-four hours after the delivery of a written requisition by the Chairman, every person who is the proprietor, etc., of any such newspaper shall give 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. Six and seven are the penalizing sections, and whatever their effect (as to which counsel disagree) must stand or fall with the substantive sections 3 and 4.

The obligations imposed by these sections become operative only upon the requisition of the Chairman of a Board, which was to be constituted under the terms of another Bill which I have already indicated is, in my opinion, ultra vires. The peculiar situation therefore exists that, in answering the question as to one piece of legislation, it became necessary to consider the provisions of another, which was not specifically referred to the Court, and the conclusion was reached that the latter was *ultra vires* of the provincial legislature; and it is by a section of that

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Bill that the Board, by virtue of the actions of whose Chairman sections 3 and 4 of the Press Bill can have any operation, was established. However, the result appears to be that the Press Bill is part of the same legislative plan that, in my opinion, is outside the powers conferred upon the provinces, and that the part must suffer the fate of the whole.

Other objections against the validity of the Press Bill were urged but I refrain from expressing any opinion upon them. They raise important constitutional questions, the consideration of which I prefer to postpone until the need to do so arises.

For the above reasons I would answer question 3 in the negative.

HUDSON, J.—I concur in the answers proposed by the other members of the Court on the various questions submitted in this reference.

It is clear that the three bills submitted are part of one legislative scheme, the central measure of which is *The Alberta Social Credit Act*. That Act has been the subject of a searching analysis by my Lord the Chief Justice and I concur in his reasons for holding that it is beyond the powers of the legislature.

Section ninety-one of the British North America Act allots exclusive legislative authority to the Dominion in all matters coming within the following classes of subjects:

91 (2) The regulation of trade and commerce;

(14) Currency and coinage;

(15) Banking, incorporation of banks and the issue of paper money;

(16) Savings banks;

(18) Bills of exchange and promissory notes;

(19) Interest;

(20) Legal tender.

Read together these have a cumulative effect, I think, much greater than if individual headings were taken separately. This is especially so when the object of the measure under consideration is the establishment by a province of a new economic order such as *The Social Credit Act*. So read they strongly reinforce the reasons already given against the validity of this Act.

It is interesting to observe that the *Bank of Canada Act,* 1934 (Dominion), establishes a central bank "to regulate credit and currency in the best interests of the economic life of the nation, to control and protect the external value of the national monetary unit and to mitigate by its influence fluctuations in the general level of production, trade, prices and employment so far as may be possible within the scope of monetary action, and generally to promote the economic and financial welfare of the Dominion." No one doubts the constitutionality of this Act; in fact the bill entitled *An Act to amend and consolidate the Credit of Alberta Regulation Act* expressly exempts from its operations the Bank of Canada.

In essence the Alberta legislative scheme is one to set up a new form of credit and currency within a single province.

I also concur in the reasons given by my Lord the Chief Justice for holding as beyond the legislative competence of the legislature the bills entitled respectively "An Act respecting the taxation of banks", and "An Act to amend and consolidate the Credit of Alberta Regulation Act."

I concur in the views of the other members of the Court that the bill entitled "An Act to ensure the publication of accurate news and information" is ultra vires, because it is ancillary to and dependent upon the *Alberta Social Credit Act,* but refrain from expressing any views as to the boundaries of legislative authority as between the provinces and the Dominion in relation to the press. It is a problem with many facets with which I hesitate to deal until presented to us in a more concrete form.