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 *Feb. 9
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GREGORY & COMPANY INC. (*Petitioner*) APPELLANT;

AND

THE QUEBEC SECURITIES COM- }
 MISSION ET AL. (*Defendants*) . . . } RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE,
 PROVINCE OF QUEBEC

Securities—Broker—Investment counsel—Clients outside province—Office in province and business conducted therefrom—Revocation of registration—Continuation of business—Books and documents seized—Bank accounts frozen—Injunction—Jurisdiction of Securities Commission—B.N.A. Act, 1867. s. 96—Securities Act, 1954-55 (Que.). c. 11, ss. 1, 13, 16, 44.

The petitioner, whose head office was in Montreal, was registered as a broker with the Quebec Securities Commission. It was engaged in the promotion of four mining companies operating in the Province, and published a weekly bulletin promoting the sale of the shares of these companies, offering advice regarding other mining and oil companies, and listing quotations on a number of other securities of Canadian companies. All the business was directed from the head office. The persons with whom the petitioner dealt and to whom the bulletin was mailed were residing outside the province.

Its licence was cancelled but it continued to carry on business and to publish the bulletin. The Commission seized its books and documents and ordered the petitioner's bankers to seize its funds and securities.

Contending that its business activities were not subject to the jurisdiction of the Commission, the petitioner sought a peremptory writ of injunction. The trial judge dismissed the petition, and this judgment was

*PRESENT: Taschereau, Cartwright, Fauteux, Abbott and Ritchie JJ.

affirmed by the Court of Queen's Bench. The petitioner appealed to this Court, and there formally abandoned any submissions involving the validity of the provisions of *The Securities Act*.

Held: The appeal should be dismissed; the petitioner was subject to the jurisdiction and control of the Quebec Securities Commission.

On the facts of this case, the petitioner carried on the business of trading in securities and acted as investment counsel in the Province of Quebec within the meaning and for the purposes of the Act. The fact that the securities traded by the petitioner were for the account of customers outside of the province or that its bulletins were mailed to clients outside of the province did not alter that conclusion. The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public in the province or elsewhere from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business.

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APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec¹, affirming a judgment of Deslaurier J. Appeal dismissed.

J. G. Ahern, Q.C., for the petitioner, appellant.

L. Tremblay, Q.C., for the defendant, respondent.

The judgment of Taschereau, Fauteux, Abbott, and Ritchie JJ. was delivered by

FAUTEUX J.:—For the consideration of the points raised in this appeal, it is sufficient to summarize as follows the facts leading to this litigation.

On the 6th of December, 1956, and for some time prior thereto, appellant had its head office and two branch offices in Montreal, where it was engaged in the promotion of four mining companies operating in the Province of Quebec, and it also published a weekly bulletin entitled "Gregory's Selected Securities". As required by s. 16 of the *Act Respecting Securities*, 3-4 Elizabeth II, c. 11, appellant was registered, as a broker, with the Quebec Securities Commission, the body constituted, under the said Act, for the supervision and control of trading in securities. On the 26th of October, 1956, appellant was ordered by the Commission to cease the publication of its weekly bulletins; but refused to do so. On the 6th of December, 1956, for reasons indicated in a letter addressed to appellant's solicitor by the president

¹[1960] Que. Q.B. 856.

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of the Commission, its registration as a broker was cancelled. Appellant, notwithstanding the prohibition in s. 16, continued to carry on its business. The present appeal, however, was argued on the assumption that, as from December 6, 1956, if not prior thereto, appellant dealt only with clients residing outside the Province of Quebec and that its weekly bulletins, prepared and published in Montreal, were mailed only to persons residing outside the Province of Quebec.

In January 1957, the Commission, following an investigation of appellant's activities and acting under ss. 39 and 44(a) of the said Act, caused the books and documents of appellant to be seized and ordered the Imperial Bank of Canada to hold in trust, until revocation of the order, funds to the amount of \$49,565.50 which the bank had on deposit, under its control or safe-keeping for appellant.

A few weeks later, appellant instituted the present proceedings against respondents, praying in its petition for injunction that they, their officers and employees be enjoined:

- (a) from continuing to prevent your Petitioner from having the use of the sum of \$49,565.50 in the hands of the Imperial Bank of Canada, and withheld from Petitioner by the said Bank upon orders of Respondent-corporation;
- (b) to cease depriving Petitioner of access to its books and records, cheques, documents and other things its property, so that it may be able to carry on its business unhampered and freely;
- (c) from further interference in any way with your Petitioner in the carrying out of its business, either by raids, seizures or supplying false and slanderous information concerning your Petitioner and the companies it has financed;

the whole with costs; appellant reserving its right for damages in the circumstances.

This petition for a peremptory writ of injunction was contested and, after a hearing on the merits, was dismissed by the Superior Court, and that decision was affirmed by a unanimous judgment of the Court of Appeal for the Province of Quebec¹. Hence the appeal to this Court.

Doubts having been raised, at the beginning of the hearing, as to our jurisdiction to entertain the appeal, leave to appeal was granted upon the unopposed application of counsel for appellant.

¹[1960] Que. Q.B. 856.

At this stage of the litigation, the validity of the motives prompting the Commission to act as it did is not questioned. Indeed, the only points submitted in support of the appeal are summarized in the three following propositions:

(i) Appellant company is not subject to the jurisdiction of the Quebec Securities Commission; it does not have to be registered with the Commission as a broker or investment counsel for it carries on, it is said, an interprovincial and international, but not an intra-provincial, trade.

(ii) Section 44(a) of the Act, under authority of which the order to the Imperial Bank was issued by the Commission, authorizes the freezing of funds on deposit with a bank. Under s. 91(15) of the *B.N.A. Act*, Parliament has exclusively the jurisdiction to legislate in relation to banks and banking; s. 44(a) of the *Act Respecting Securities* conflicts with s. 95 of the *Bank Act*, 2-3 Elizabeth II, c. 48, dealing with deposits with banks.

(iii) The order issued by the Commission under the authority of s. 44(a) is tantamount to an injunction or a writ of attachment, both of which were always, prior to Confederation, within the jurisdiction of the Superior Court to deal with. Section 44(a) offends s. 96 of the *B.N.A. Act*.

While counsel for appellant did not ask, in the conclusion of its petition, that s. 44(a) of the *Securities Act* be declared *ultra vires* of the Legislature, it is apparent that the last two propositions bring in question the validity of the section and require determination as to the matter even if, as declared by counsel for appellant, it is raised only in aid of construction of the section. The notice prescribed in like circumstances by r. 18 of the Rules of the Supreme Court of Canada was not given. This situation having been brought to his attention by this Court, counsel for appellant formally abandoned any submissions involving the validity of the provisions of the *Act Respecting Securities*.

Accordingly, there remains to be considered only the first proposition, i.e. whether, because of the character of its activities and the manner in which they were conducted, appellant is subject to the jurisdiction and control of the Quebec Securities Commission.

The fact that the securities traded by appellant would be for the account of customers outside of the province or that its weekly bulletins would be mailed to clients outside of

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the province, does not, as decided in the Courts below, support the submission that appellant was not trading in securities or acting as investment counsel, in the province, within the meaning and for the purposes of the Act Respecting Securities.

The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business. For the attainment of this object, trading in securities is defined in s. 14; registration is provided for in s. 16 as a requisite to trade in securities and act as investment counsel particularly; investment counsel is defined in s. 1; the business is regulated and certain actions or omissions in its conduct constitute infractions subject to sanctions. Section 14 and the relevant parts of ss. 16 and 1 enact:

14. The following shall constitute trading in securities:

- (a) any alienation or disposal, for a valuable consideration, of a security or of an interest in or option on a security, any solicitation for or obtaining of a subscription to a security for such a consideration and any attempt to do any of the aforesaid acts;
- (b) any underwriting of all or part of an issue of securities;
- (c) any act, advertisement, conduct, negotiation other than preliminary or transaction for the purpose or having the effect of carrying out, directly or indirectly, any operation contemplated in subparagraphs a and b or defined by the regulations as constituting a trade in securities.

* * *

16. No person shall:

- (a) trade in any security unless he is registered as a broker or security issuer or as salesman for a broker or security issuer registered as such;
- (b)
- (c) act as investment counsel without being registered as such;
- (d)

Every person who does any of the things mentioned in this section without the required registration or when such registration is suspended commits an offence.

* * *

1. In this act, the following terms mean or designate:

(1)

(2)

(3) "investment counsel"; any person or company other than a broker or a security issuer who informs or advises the public, directly or through bulletins or other publications, as to the state of the market for securities or for certain securities; or who gives advice, makes suggestions or expresses opinions as to the expediency of buying or selling securities; or who publishes or causes to be published reports respecting certain securities; or who makes a business of studying, supervising or managing the securities portfolios of particular customers, or of advising them as to the constitution and management of such portfolios and as to the investment of their funds;

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The nature of the business in which appellant was engaged and its mode of operation are set forth in the reasons for judgment of Hyde J.A. In its weekly bulletin, prepared and printed in Montreal, and mailed therefrom to some ten thousand clients in the other provinces of Canada and in the United States, appellant promoted the sale of the shares of the companies in which it was interested; offered advice regarding other mining and oil companies; and listed quotations on a number of other securities of Canadian companies, traded in the Montreal and Toronto markets, listed and unlisted. In the bulletin, it states:—"We execute orders on all exchanges and will be pleased to have the privilege of handling your security transactions." Its post-office address and telephone number in Montreal are printed on the front page. Appellant's President, who owned all of its capital stock, testified that their ordinary way of selling securities was to "contact" the client by telephone from Montreal and make an offer which was either accepted or refused. Payment was made by cheque sent to the appellant to its head office in Montreal from where all the business was directed. The shares of the four mining companies, appellant was actively promoting, were transferable only in the Province of Quebec. Customers were invited to communicate with appellant at its head office in Montreal and orders for securities were solicited by telephone from Montreal and were received by telephone in Montreal where they were completed. The payments by customers were made to the appellant by mail directed to its office in Montreal and, presumably, any payments to them were made from there. A substantial bank account was maintained in Montreal by appellant.

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On these undisputed facts, one can only conclude that appellant, within the meaning and for the purposes of the *Act Respecting Securities*, did, in the Province of Quebec, (i) carry on the business of trading in securities and (ii) act as investment counsel.

Fauteux J.

This conclusion is not affected, even if, as contended for appellant, certain contracts, with respect to sales solicited by appellant, might, on the doctrine recognized and applied in the cases of *Magann v. Auger*¹ and *Charlebois v. Baril*², have been perfected outside the province. These cases are here irrelevant.

Nor is this conclusion affected by the decisions rendered in a group of cases referred to by counsel for appellant, where the incidence of export trade of farm products on the validity of certain provincial marketing acts was considered. *Lawson v. Interior Tree, Fruit and Vegetable Committee*³; *P.E.I. Potato Marketing Board v. Willis Inc.*⁴; *Reference re Farm Products Marketing Act*⁵. These decisions are also irrelevant. The *Act Respecting Securities*, 3-4 Elizabeth II, c. 11, is not marketing legislation within the meaning attending the legislation considered in these cases. In order to protect the public against fraud, it provides for the establishment and operation of a control and supervision over the conduct, in the Province of Quebec, of persons engaged, therein, in carrying on the business of trading in securities or acting as investment counsel.

The object of the Act, as shown by its provisions, is similar to that of the *Securities Fraud Prevention Act*, 1930, of Alberta, which was considered in *Lymburn and another v. Mayland and Others*⁶ and where Lord Atkin, with reference to Part I entitled "Registration of brokers and salesmen", said at p. 324:

There is no reason to doubt that the main object sought to be secured in this part of the Act is to secure that persons who carry on the business of dealing in securities shall be honest and of good repute, and in this way to protect the public from being defrauded.

¹[1901] 31 S.C.R. 186.

²[1928] S.C.R. 88, [1927] 3 D.L.R. 762.

³[1931] S.C.R. 357, 2 D.L.R. 193.

⁴[1952] 2 S.C.R. 392, 4 D.L.R. 146.

⁵[1957] S.C.R. 198, 7 D.L.R.(2d) 257.

⁶[1932] A.C. 318, 2 D.L.R. 6, 57 C.C.C. 311.

Being of opinion that the Court of Appeal reached the right conclusion in the matter, I would dismiss the appeal with costs.

CARTWRIGHT J.:—The relevant facts and the course of this litigation are set out in the reasons of my brother Fauteux and in those delivered in the courts below.

In his factum and in his opening argument counsel for the appellant made, inter alia, submissions which may be summarized as follows:

(i) That the trade in securities carried on by the appellant is interprovincial and international, that consequently it does not fall within the jurisdiction of the Quebec Securities Commission and that if regulation of such trading is thought necessary its provision lies within the legislative sphere of Parliament;

(ii) That s. 44 of the *Quebec Securities Act*, 3-4 Elizabeth II, c. 11, hereinafter referred to as "the Act", is in conflict with s. 95 of *The Bank Act*, R.S.C. 1952, c. 12 and is consequently null and void;

(iii) That the order issued by the respondent Commission to the Imperial Bank of Canada and which reads as follows,

In accordance with Section 44 of the Quebec Securities Act, we hereby order you to hold in trust, until such time as this order is revoked, in whole or in part, by this Commission, any funds or securities belonging to Gregory and Company, Inc. which you may have on deposit or under control, or for safekeeping.

is equivalent to an injunction and that the provincial legislature cannot confer the power to make such an order on a tribunal whose members are not appointed pursuant to s. 96 of the *British North America Act*.

(iv) That the provincial legislature has not the power to control the printing or dissemination of a circular which is to be distributed only to persons outside the province.

In the courts below the appellant did not give the notice to the Attorney-General required by art. 114 of the *Code of Civil Procedure*, and in this Court, he did not give the notices required by r. 18. At the hearing counsel made it clear that the failure to give these notices was the result of a considered decision which he did not wish to alter, and, as

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is pointed out in the reasons of my brother Fauteux, formally abandoned any submissions impugning the validity of the provisions of the Act.

In these circumstances, at the risk of repetition, I wish to make it clear that the judgment of this Court in this case does not by implication or otherwise decide anything as to the constitutional validity of the Act.

Although all arguments involving an attack on the validity of the Act are withdrawn I have difficulty in satisfying myself that on its true construction the Act authorizes the Securities Commission to regulate a business of the sort carried on by the appellant, but I am not prepared to dissent from the views on this point entertained by the other members of the Court and, consequently, I concur in the disposition of the appeal proposed by my brother Fauteux.

Appeal dismissed with costs.

Attorneys for the petitioner, appellant: Hyde & Ahern, Montreal.

Attorney for the defendants, respondents: L. Tremblay, Montreal.
