

1962  
\*June 13,  
14, 15  
June 25

BRITISH COLUMBIA POWER COR- }  
PORATION, LIMITED (*Plaintiff*) ... } APPELLANT;

AND

BRITISH COLUMBIA ELECTRIC }  
COMPANY LIMITED, ATTORNEY- }  
GENERAL OF BRITISH COLUM- }  
BIA and BRITISH COLUMBIA }  
HYDRO AND POWER AUTHORITY }  
(*Defendants*) ..... } RESPONDENTS;

AND

THE ROYAL TRUST COMPANY and }  
C. JAMES COPITHORNE (*Defend- }  
ants*) ..... } DEFENDANTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

*Crown—Receiver appointed of certain property—Crown’s interest therein dependent on validity of legislation which it had itself passed—Validity of legislation open to doubt—Crown not immune from receivership order—Jurisdiction of Court to preserve assets whose title is dependent on impugned legislation.*

*Receiver—Limitation in certain respects of receiver’s authority immaterial.*

Pending the trial of an action brought by the plaintiff corporation against the defendant company, an order was made by McInnes J. appointing one P a receiver of the undertaking, property and interests in the defendant company. An appeal from this order by the defendant company and the Attorney-General of British Columbia was allowed by a majority of the Court of Appeal. Pursuant to leave granted by this Court, the plaintiff appealed from the judgment of the Court of Appeal.

Questions arose in the action as to the constitutionality of the *Power Development Act, 1961*, 1961 (B.C.), 2nd sess., c. 4, the *British Columbia Hydro and Power Authority Act, 1962* (B.C.), c. 8, and *An Act to Amend the Power Development Act, 1961*, 1962 (B.C.), c. 50. At the time of the present appeal these points were before the Supreme Court of British Columbia on the trial of the action. The decision on the point as to the constitutional validity of these statutes automatically would determine whether the Crown had any title to the common shares of the defendant company, and whether the British Columbia Hydro and Power Authority had any right, title or interest in or to the assets of that company. It was contended that the Court had no jurisdiction to make a receivership order in order that the assets might be preserved pending the determination of those issues because, it was said, such an order cannot be made which would affect the property or interests of the Crown.

\*PRESENT: Kerwin C.J. and Taschereau, Cartwright, Fauteux, Abbott, Martland and Ritchie J.J.

*Held* (Abbott J. dissenting): The appeal should be allowed and the judgment of the chamber judge restored with certain amendments.

*Per* Kerwin C.J. and Taschereau, Cartwright, Fauteux, Martland and Ritchie JJ.: In a federal system, where legislative authority is divided, as are also the prerogatives of the Crown, it is not open to the Crown, either in right of Canada or of a Province, to claim a Crown immunity based upon an interest in certain property, where its very interest in that property depends completely and solely on the validity of the legislation which it has itself passed, if there is a reasonable doubt as to whether such legislation is constitutionally valid. In a federal system, in such circumstances, the Court has the same jurisdiction to preserve assets whose title is dependent on the validity of the legislation as it has to determine the validity of the legislation itself.

The objection that in view of the terms of the order P was not really a receiver failed. A receiver when appointed, is subject to the orders of the Court and the mere fact that his authority was limited could make no difference.

*Per* Abbott J., *dissenting*: For the reasons given by Davey J.A. in the Court below, the chamber judge was without jurisdiction to make the receivership order.

APPEAL from a judgment of the Court of Appeal for British Columbia<sup>1</sup>, allowing an appeal from a receivership order made by McInnes J. Appeal allowed, Abbott J. dissenting.

*J. J. Robinette, Q.C.*, and *D. M. Goldie*, for the plaintiff, appellants.

*Hon. R. L. Kellock, Q.C.*, and *C. W. Brazier, Q.C.*, for the defendant, respondent: British Columbia Hydro and Power Authority.

*M. M. McFarlane, Q.C.*, and *W. G. Burke-Robertson, Q.C.*, for the defendant, respondent: Attorney-General of British Columbia.

The judgment of Kerwin C.J. and of Taschereau, Cartwright, Fauteux, Martland and Ritchie JJ. was delivered by

THE CHIEF JUSTICE:—This is an appeal by the plaintiff in this action, British Columbia Power Corporation, Limited, from a judgment of the Court of Appeal for British Columbia<sup>1</sup>, dated April 19, 1962, allowing the appeal of the defendants, British Columbia Electric Company Limited, and the Attorney-General of British Columbia, from the order of McInnes J., dated March 22, 1962, appointing Henry Leslie Purdy a receiver of the undertaking, property

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<sup>1</sup>(1962), 38 W.W.R. 577.

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and interests of the defendant, British Columbia Electric Company Limited, pending the trial of the action and until further order. Norris J.A. and Tysoe J.A. dissented.

On May 14, 1962, a motion made that day to this Court for leave to appeal was granted, whereupon counsel for the plaintiff immediately applied to the Court to hear the appeal at the present sittings. No objection was raised to this request and it was so ordered.

Kerwin C.J.

Questions arise in the action as to the constitutionality of the *Power Development Act, 1961* of British Columbia, 1961 (B.C.), 2nd sess., c. 4, the *British Columbia Hydro and Power Authority Act, 1962* (B.C.), c. 8, and *An Act to Amend the Power Development Act, 1961, 1962* (B.C.), c. 50. All these points are now before the Supreme Court of British Columbia on the trial of the action. Quite properly no extensive argument thereon was presented to us by counsel for any of the parties represented before us, but sufficient has been shown to indicate that substantial questions arise.

It is conceded by counsel for the Attorney-General of British Columbia that the Courts have the jurisdiction to determine the constitutional validity of each of the three statutes under attack in the present proceedings. In determining that issue, the Court automatically determines whether the Crown has any title to the common shares in British Columbia Electric Company Limited, and whether the British Columbia Hydro and Power Authority has any right, title or interest in or to the assets of that company. Counsel contends, however, that the Court has no jurisdiction to make a receivership order in order that the assets may be preserved pending the determination of those issues because, it is said, such an order cannot be made which would affect the property or interests of the Crown. In a federal system, where legislative authority is divided, as are also the prerogatives of the Crown, as between the Dominion and the Provinces, it is my view that it is not open to the Crown, either in right of Canada or of a Province, to claim a Crown immunity based upon an interest in certain property, where its very interest in that property depends completely and solely on the validity of the legislation which it has itself passed, if there is a reasonable doubt as

to whether such legislation is constitutionally valid. To permit it to do so would be to enable it, by the assertion of rights claimed under legislation which is beyond its powers, to achieve the same results as if the legislation were valid. In a federal system it appears to me that, in such circumstances, the Court has the same jurisdiction to preserve assets whose title is dependent on the validity of the legislation as it has to determine the validity of the legislation itself.

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I can find no substance in the objection raised on behalf of the respondents that, in view of the terms of the order made by McInnes J., Mr. Purdy is not really a receiver. A receiver, when appointed, is subject to the orders of the Court and the mere fact that his authority was limited in certain respects can make no difference.

The appeal should be allowed and the order of McInnes J. restored with the following amendments. The second clause of the operative part of the order directs that Mr. Purdy furnish a bond, etc., "within seven days of the entry of this Order". This should be changed to read "on or before July 3rd, 1962". The following words in the third operative clause "or constitute a default in the provisions of any Trust Deed" should be deleted in accordance with the submission of counsel for the appellant. The Royal Trust Company was an appellant before the Court of Appeal and was there represented by counsel who asked that the quoted words be deleted. The Royal Trust Company was not represented before us, but in a letter to the Registrar its counsel also asked that these words be omitted. The order of McInnes J. that the costs of the motion before him be reserved for the trial judge might stand. No order as to costs was made by the Court of Appeal. The appellant will have its costs in this Court, including the costs of the motion for leave to appeal.

ABBOTT J. (*dissenting*):—I regret that I am unable to share the view of the majority of the Court that this appeal should be allowed and the judgment of McInnes J. restored. I am in substantial agreement with the reasons delivered by Davey J.A. in the Court below and I share his opinion that the learned chambers judge was without jurisdiction

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to make the order which he did. In the circumstances, I see no useful purpose to be served by adding anything to what he has said.

I would dismiss the appeal with costs.

*Appeal allowed with costs in this Court, including the costs of the motion for leave to appeal, Abbott J. dissenting.*

*Solicitor for the plaintiff, appellant: L. St. M. Du Moulin, Vancouver.*

*Solicitor for the defendant, respondent, British Columbia Electric Co. Ltd.: W. H. Q. Cameron, Vancouver.*

*Solicitor for the defendant, respondent, Attorney-General of British Columbia: M. M. McFarlane, Vancouver.*

*Solicitor for the defendant, respondent, British Columbia Hydro and Power Authority: A. T. R. Campbell, Vancouver.*

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