IN THE MATTER OF A REFERENCE AS TO THE VALIDITY OF THE DEBT ADJUSTMENT ACT, 1937, STATUTES OF ALBERTA, 1937, CHAPTER 9, AS AMENDED, AND AS TO THE OPERATION THEREOF.

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* June 24, 25, 26.
* Dec. 2.

Constitutional law—Debt Adjustment Act, Alta., 1937, c. 9 (as amended)—Constitutional validity—Object, effect, pith and substance, of the legislation—Whether laws of general application—Repugnancy to Dominion legislation—Invasion of field of legislation reserved to the Dominion—B.N.A. Act, ss. 91, 92.

The Debt Adjustment Act, 1937, Statutes of Alberta, 1937, c. 9 (as amended in 1937 (3rd session), c. 2; 1938, c. 27; 1938 (2nd session), c. 5; 1939, c. 81; and 1941, c. 42), is *ultra vires* in whole. Its effect is to take away from all creditors who are the owners of debts or liquidated demands that, apart from the Act, would be presently

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

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enforceable by law, their rights in respect of their enforceability by action or suit, and to substitute for such rights the chance of obtaining, by the arbitrary determination of a public authority, the Debt Adjustment Board (the appeal given therefrom is merely one from the arbitrary determination of one authority to the arbitrary determination of another), permission to enforce them. Such an enactment is something more than one relating to procedure; it strikes at the substance of the creditor's rights. The Act is repugnant to the provisions of Dominion statutes (instances mentioned) relating to matters within the exclusive jurisdiction of the Dominion Parliament, provisions creating or directly giving rise to or recognizing obligations in the nature of debts or liquidated demands. To establish any such authority, with its powers of selection, involving a considerable power of regulation of classes of business and undertakings over which the *B.N.A. Act* gives to the Parliament of Canada exclusive control, is incompetent to the provincial legislature.

The prohibitory provisions of the Act in question against proceedings by way of execution, etc., without the Board's permit, is *ultra vires* by reason of considerations of much the same character as those aforesaid. The Board is authorized to refuse a permit in any particular case. The pith and substance of the legislation is to establish a provincial authority empowered to exercise a discriminatory control. While in form it is legislation in relation to remedy and procedure, yet, in attempting to regulate the remedial incidents of the right in manner aforesaid, it must, when read in light of its context in the Act, in substance be regarded as a step in a design to regulate the right itself.

As to companies incorporated by the Dominion, companies with objects other than provincial objects, in relation to the incorporation, status and powers of which companies the Dominion Parliament has, under s. 91 of the *B.N.A. Act,* exclusive power to legislate:—It is true that, where the business of the company is subject to provincial legislative regulation, the provincial legislature may legislate in such a manner as to affect the business of the company by laws of general application in relation to the kind of business in which the company engages in the province—but the enactments now in question, authorizing interference with the affairs of creditors in manner aforesaid, are not a general law in this sense.

The matters dealt with by s. 26 of the Act are so related to the subject-matter of *The Farmers' Creditors Arrangement Act* as to be withdrawn from provincial jurisdiction by force of the last paragraph of s. 91 of the *B.N.A. Act.*

Also the Act constitutes an attempt to invade the field reserved to the Dominion under Bankruptcy and Insolvency.

Assuming that, by apt legislation strictly limited to enactments relating exclusively to matters within the legislative jurisdiction of a province, a Board might lawfully be constituted having some of the powers which the Debt Adjustment Board receives under the Act, yet, in any view of that question, it is impossible in the Act to disentangle what a provincial legislature might competently enact from the principal enactments of the Act constituting the Board with authority to exercise powers that the legislature is incompetent to confer upon

it; and indeed, if this were possible and the Act could be re-written excluding what is *ultra vires* from what (on said assumption) might be *intra vires*, there can be no probability that the legislature would have enacted the Act in this truncated form. The competent elements of the legislation, if such there be, not being severable from the incompetent enactments constituting the Board with the powers conferred upon it, the Act is, as a whole, *ultra vires*.

Crocket J. dissented, holding: The Act (as amended as aforesaid) is not *ultra vires*, in whole or in part, except in so far as its provisions may be found to conflict with any existing Dominion legislation strictly relating to any of the classes of subjects specially enumerated in s. 91 of the *B.N.A. Act* or as being necessarily incidental to the particular subject-matter upon which the Parliament of Canada has undertaken to legislate as falling within one or other of the said enumerated heads. The whole purpose of the Act in question is to regulate and control the enforcement of contractual obligations for the payment of money so as to safeguard during a period of financial stress the interests of unfortunate resident debtors who, owing entirely to general depreciation of values through abnormal economic conditions, find themselves in such a position that the stringent enforcement of creditors' claims might entail irreparable loss upon them. Its provisions are predominantly directed to procedure in civil matters in provincial courts. The right to sue in provincial courts is a civil right in the province, whether the claim sought to be enforced arose in the province or not. The Act is one of general application in the province, within the meaning of the authorities. None of its provisions are directed to insolvency legislation nor to banks or banking legislation, nor to the contracts of Dominion companies, carrying on business either within or without the province, though they may affect these subjects and these rights collaterally as a necessary incident to the attainment of the objects of the Act. While it was held in *Attorney-General for Alberta and Winstanley* v. *Atlas Lumber Co. Ltd.*, [1941] S.C.R. 87, that s. 8 of the Act conflicted with certain Dominion legislation strictly and necessarily relating to head 18 of s. 91 of the *B.N.A. Act* (Bills of Exchange and Promissory Notes) and that the latter must prevail, it does not follow that the Act in question must be held to be wholly *ultra vires* merely because it affects or may affect Bankruptcy or Insolvency, Banks and Banking, Interest or any other subject enumerated in s. 91 upon which the Dominion Parliament has purported to legislate as falling within one or more of those classes of subjects. "Bills of Exchange and Promissory Notes" is the only class of contracts specifically mentioned in s. 91 of the *B.N.A. Act*, and this specific enumeration may well be said to expressly withdraw that class of contracts from the exclusive jurisdiction of the province in relation to s. 92 (13), "Property and Civil Rights in the Province." (*Citizens Insurance Co.* v. *Parsons*, 7 App. Cas. 96; *Attorney-General of Ontario* v. *Attorney-General for Canada*, [1894] A.C. 189; *Ladore* v. *Bennett*, [1939] A.C. 468, and other cases, cited).

REFERENCE by His Excellency the Governor General in Council, pursuant to the authority of s. 55 of the *Supreme Court Act* (R.S.C., 1927, c. 35), to the Supreme Court of Canada, of the following questions for hearing and consideration, namely:

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(1) Is The Debt Adjustment Act, 1937, being chapter 9 of the Statutes of Alberta, 1937, as amended by chapter 2 of the Statutes of Alberta, 1937 (3rd session), chapter 27 of the Statutes of Alberta, 1938, chapter 5 of the Statutes of Alberta, 1938 (2nd session), chapter 81 of the Statutes of Alberta, 1939, and chapter 42 of the Statutes of Alberta, 1941, *ultra vires* of the Legislature of Alberta, either in whole or in part, and if so, in what particular or particulars or to what extent?

(2) Is the said Act as amended operative in respect of any action or suit for the recovery of moneys alleged to be owing under or in respect of any bill of exchange or promissory note?

(3) Is the said Act as amended operative in respect of any proceedings taken to enforce any judgment obtained in any action or suit for the recovery of moneys owing under or in respect of any bill of exchange or promissory note?

(4) Is the said Act as amended operative in respect of any action or suit for the recovery of money or interest thereon, or both, not being money or interest alleged to be owing under or in respect of any bill of exchange or promissory note, whether or not such money or interest is secured upon land situated in the said province, in the following cases, namely, where such action or suit is for the recovery of,—

(*a*) the principal amount of such money and interest, if any, where the same are payable in the said province;

(*b*) the principal amount of such money and interest, if any, where the same are payable outside the said province;

(*c*) the interest only upon such money.

(5) If the answer to any of the parts (*a*), (*b*) and (*c*) of question 4 is in the negative, is the said Act as amended operative in respect of any proceedings taken to enforce any judgment obtained in any action or suit in respect of which such answer is given?

The respective Attorneys-General of the Provinces of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan, and the Mortgage Loans Association of Alberta and the Canadian Bankers' Association were, pursuant to order of the Chief Justice of Canada, notified of the hearing of the Reference.

Aimé Geoffrion K.C. and *F. P. Varcoe K.C.* for the Attorney-General of Canada.

W. N. Tilley K.C., T. D'Arcy Leonard K.C., and *R. D. Tighe K.C.* for The Mortgage Loans Association of Alberta.

W. N. Tilley K.C., R. C. McMichael K.C. and *W. H. McLaws K.C.,* for The Canadian Bankers' Association.

J. W. deB. Farris K.C., W. S. Gray K.C. and *J. J. Frawley K.C.,* for the Attorney-General of Alberta.

J. M. Stevenson K.C. for the Attorney-General of Saskatchewan.

L. St-Laurent K.C. for the Attorney-General of Quebec.

The judgment of the Chief Justice and Rinfret, Davis, Kerwin, Hudson and Taschereau JJ. was delivered by

THE CHIEF JUSTICE—By section 8, subsection 1 (*a*), of the *Debt Adjustment Act,* a legal right which the owner of it is entitled to enforce is converted into a conditional right, enforceable only by grace of a permit from the Board granting to the owner of it a dispensation from the incidence of the general rule.

This authority of the Board may be considered with reference to debts arising by virtue of statutes, or legal rules, that the legislature is powerless to repeal or vary, as well as with reference to creditors whose powers and status it is incompetent to impair, or whose undertakings, or business, the legislature is incompetent to regulate.

It is most important, I think, not to lose sight of the arbitrary nature of the Board's authority. The powers of the Board, it will be noticed, may be exercised by any single member of the Board, or by any person designated by the Board, with the approval of the Lieutenant-Governor in Council. *Ex hypothesi* the debt or liquidated demand, which the Board has to consider on any application for a permit, may be one which, but for the statute, would admittedly be enforceable by law; and in discussing the operation of the enactment I shall assume that we are dealing with a debt, or demand, admittedly so enforceable.

The statute prescribes no rule, or principle, by which the Board, or its designated agent, is to be guided in granting, or refusing, a permit; nor does it give any clue to the considerations upon which the Board is to act. I do not think that any Court can, with any confidence, form a judgment as to the reasons by which the Board will be guided, except that the Board may be assumed to act in accordance with its own conception of its duty in each particular case. It is the duty of the Board, under section 10 of the Act, to make such enquiries as it may deem proper into the circumstances, but that section makes it clear, I think, that it is for the Board exclusively to

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decide what are the considerations by which it ought to be influenced in granting, or refusing, an application for a permit, or adjourning the application for such period as it "may deem advisable under the circumstances." In effect the Board is empowered to exercise in each particular case an arbitrary determination. The appeal to a jury, given by the amending statute, on which it is to decide as a question of fact whether the determination of the Board is to stand, or is to be changed, merely gives an appeal from the arbitrary determination of one authority to the arbitrary determination of another. The consequence of all this is that all creditors who are the owners of debts, or liquidated demands, that, apart from the statute, would be presently enforceable by law, have their rights in respect of their enforceability by action, or suit, taken away, and for them they have substituted the possibility of obtaining from this authority permission to enforce them.

The distinction between right and remedy is often a useful distinction, but an enactment which takes away the remedy by action, which the law otherwise would give to the creditor in respect of his debt, and substitutes therefor the chance of obtaining, by the arbitrary act of a public authority, permission to enforce a remedy is, I think, something more than an enactment relating to procedure. It strikes, I think, at the substance of the creditor's rights. The enactment is repugnant to the provisions of Dominion statutes relating to matters within the exclusive jurisdiction of the Dominion Parliament, provisions creating or directly giving rise to, or recognizing, obligations in the nature of debts and liquidated demands: for example, certain provisions of the *Bills of Exchange Act*, section 125 of the *Bank Act*, and provisions in respect of calls made by a Dominion company upon the holders of unpaid shares (see section 44, *Companies Act*). Such instances could be multiplied.

There is another class of cases that I have just alluded to, the consideration of which leaves it, I think, very clear that in attempting to establish an authority of this character a provincial legislature is exceeding its authority. Section 91 of the *British North America Act* gives to the Parliament of Canada exclusive control over certain types

of business and undertakings. I particularly refer to two classes of business only. The first of these, that of banks, perhaps illustrates the point most strikingly. The lending of money is a principal part of the business of any bank. A debt arising from a loan by a bank to a customer will, speaking generally, fall within section 8 (1) (*a*), and the bank's right to enforce repayment is by the enactment conditioned upon the existence of a permit. It is in the power of the Board to refuse a permit in all such cases, or in the case of any particular debt. This power of selection seems to involve a considerable power of regulation of the business of the banks. It is, I think, incompetent to the legislature to establish any such authority. I think the case of banking is, perhaps, from this point of view, the most striking case, although the application of the authority of the Board to companies engaged in operating Dominion undertakings, such as Dominion railway companies and companies engaged in operating lines of ocean shipping, might well exceed the ambit of provincial authority.

What I have said is sufficient, in my opinion, to show that subsection (1) (*a*) of section 8 is *ultra vires*. I assume that debts and liquidated demands falling entirely (that is to say, exclusively) under the regulative authority of the province, as being "civil rights within the province", could be dealt with by a province by an enactment having the characteristics of section 8 (1) (*a*), but limited to such debts and demands. It is not necessary to decide it, but I assume that to be so. I do not think that section 8 (1) (*a*) can properly be construed as limited in its application to such debts and demands and it is, therefore, I think, entirely destitute of effect.

Subsection 1 (*b*) of section 8 presents a different question, but it is, in my opinion, *ultra vires* by reason of considerations of much the same character. It is no answer to say that the authority extends to all judgments; because the Board can arbitrarily refuse to grant a permit in any particular case. The Board is authorized to refuse a permit for a writ of execution where the debt sued upon is one which it has no power to regulate and to do so for any reason which to it may appear sufficient; and, of course,

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to discriminate in this respect between debts which it has power to regulate and debts in respect of which it has no such power.

We are not required to consider the authority of a provincial legislature to restrict the jurisdiction of the provincial Courts to giving declaratory judgments and to deprive them of the power to grant any consequential relief. This legislation affects the jurisdiction of the provincial Courts, but the pith and substance of it is to establish a provincial authority which is empowered to exercise the discriminatory control just mentioned. While in form this is legislation in relation to remedy and procedure, in substance this provision which attempts to regulate the remedial incidents of the right in this manner must, when it is read in light of the context in which it stands in this section 8 (1), be regarded as a step in a design to regulate the right itself.

There is a class of creditors occupying a special position which must be considered. I refer to companies incorporated by the Dominion. It is settled that in the case of companies with objects other than provincial objects, the exclusive power to legislate in relation to incorporation is vested in Parliament, and that by the joint operation of the residuary power under section 91 of the Confederation Act and the powers conferred upon Parliament in relation to the enumerated subject, the regulation of trade and commerce, this power extends to the status and powers of the company. True, where the business of the company is subject to provincial legislative regulation, the provincial legislature may legislate in such a manner as to affect the business of the company by laws of general application in relation to the kind of business in which the company engages in the province; but the provisions of this statute giving to the Board the authority to interfere with the affairs of creditors in the manner set forth in section 8 would not appear to be a general law in this sense.

A company, for example, incorporated by the Dominion with authority to carry on the business of lending money upon various kinds of security in the province, may find itself in a position, under the operation of subsections 1 (*a*) and (*b*) of section 8, in which it and other Dominion companies are precluded from enforcing their securities in

the usual way. In my view, such legislation is not competent and, accordingly, paragraphs (*c*), (*d*), (*e*) and (*f*) would appear to be incompetent, as well as paragraphs (*a*) and (*b*).

As regards interest, subsection (1) of section 8 is plainly repugnant to section 2 of the *Interest Act*. In truth, the scope of subsection (1) of section 8 is indicated by paragraph (*g*) thereof and by section 41 which withdraws from the operation of the Act debts owing to The Canadian Farm Loan Board or to The Soldiers' Settlement Board and proceedings for enforcing the payment of any such debts. I think we must conclude that subsection (1) must be treated as a whole, that is to say, that it is valid or invalid as a whole, and for the reasons I have given it is, I think, invalid. The provisions of subsection (3) limiting the application of section 8 in the manner there mentioned do not, it appears to me, affect the force of what has been said. The whole of section 8 is *ultra vires*.

As to section 26, the matters dealt with by this enactment, in my opinion, are so related to the subject-matter of *The Farmers' Creditors Arrangement Act* as to be withdrawn from provincial jurisdiction by force of the last paragraph of section 91.

There remains the contention of the Attorney-General of Canada that the statute as a whole constitutes an attempt to legislate in relation to bankruptcy and insolvency. I have very carefully considered this contention and the first thing that strikes one is that the effect of section 8 (1) is, as regards debts where the creditor and debtor reside in the province and the contract has been made in the province and the debt is payable in the province, that the creditor is deprived of his right to present a bankruptcy petition. As appears from what has already been said, section 8 (1) does not merely suspend the remedy—it takes away the remedy given by law and substitutes therefor a remedy dependent upon the arbitrary consent of the Board, or the arbitrary determination of a jury. As I have already said, this, in my opinion, strikes at the debt itself and I do not think that in any Court governed by this legislation it could be successfully contended that in respect of an obligation to which the statute applies there is a "debt owing" to the creditor, within the mean-

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ing of section 4 of the *Bankruptcy Act*. Moreover, I find it impossible to escape the conclusion that Part III contemplates the use of the Board's powers under section 8 (1) to enable it to secure compulsorily the consent of the parties to arrangements proposed by it for composition and settlement. Bankruptcy is not mentioned, but normally the powers and duties of the Board under Part III will come into operation when a state of insolvency exists. It is not too much to say that it is for the purpose of dealing with the affairs of debtors who are pressed and unable to pay their debts as they fall due that these powers and duties are created. Indeed the whole statute is conceived as a means of protecting embarrassed debtors who are residents of Alberta. Most people would agree that in this point of view the motives prompting the legislation may be laudable ones. But the legislature, in seeking to attain its object, seems to have entered upon a field not open to it. The statute, if valid, enables the Board (invested with exclusive possession of the key to the Courts) to employ its position and powers coercively in compelling the creditors of an insolvent debtor and the debtor himself to consent to a disposition of the resources of the debtor prescribed by the Board. In this way the statute seeks to empower the Board to impose upon the insolvent debtor and his creditors a settlement of his affairs, which the creditors must accept in satisfaction of their claims. I cannot escape the conclusion that the statute contemplates the use of the powers of the Board in this way. I think this is an attempt to invade the field reserved to the Dominion under Bankruptcy and Insolvency.

It may be that by apt legislation strictly limited to enactments relating exclusively to matters within the legislative jurisdiction of a province, a Board might lawfully be constituted having some of the powers which the Debt Adjustment Board receives under this legislation. As already intimated, it is unnecessary to express any opinion upon that. In any view of that question, it is impossible in this legislation to disentangle what a provincial legislature might competently enact from the principal enactments of the statute constituting this Board with authority to exercise powers that the legislature is incompetent to confer upon it; and indeed, if this were possible

and the *Debt Adjustment Act* could be re-written excluding what is *ultra vires* from what I assume might be *intra vires,* there can be no probability that the legislature would have enacted the statute in this truncated form. The competent elements of the legislation, if such there be, not being severable from the incompetent enactments constituting the Board with the powers conferred upon it, the statute is, as a whole, *ultra vires.*

It follows that the first interrogatory should be answered by stating that the enactment in question is *ultra vires* in whole. As regards the second, third, fourth and fifth interrogatories, it follows from the answer to the first that "the said Act as amended" is not operative in respect of any of the matters mentioned in those interrogatories.

CROCKET J. (dissenting)—This reference raises the question of the authority of the Legislature of Alberta to enact legislation dealing with the matters to which the provisions of the Alberta *Debt Adjustment Act* are directed. The answers to the general question (1) and the other four subordinate questions submitted manifestly depend upon the scope and extent of the legislative powers committed to the Legislatures of the Provinces of Canada by s. 92 of the *British North America Act,* as read in the light of s. 91 and the intendment of the whole Act regarding the distribution of legislative authority between the Parliament of Canada on the one hand and the Provinces on the other.

We must, I think, take it as settled that provincial legislation upon matters, which *prima facie* fall within one or more of the 16 classes of subjects enumerated in s. 92 of the *B.N.A. Act,* cannot be validly superseded by any Dominion legislation of the Parliament of Canada unless the latter is necessarily incidental to the exercise of the powers conferred upon it by one or other of the 29 specially enumerated heads of s. 91, that is to say, as Lord Tomlin expressed it in *Attorney-General for Canada* v. *Attorney-General for British Columbia* (1), in his summing up of the effect of the decisions of the Judicial Committee of the Privy Council regarding the interpretation and application of ss. 91 and 92, unless such legislation "strictly

(1) [1930] A.C. 111.

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relates to subjects of legislation expressly enumerated in s. 91" or is "necessarily incidental to effective legislation by the Parliament of the Dominion upon a subject of legislation expressly enumerated in s. 91". See also *Citizens Ins. Co.* v. *Parsons* (1); *Cushing* v. *Dupuy* (2); *Tennant* v. *Union Bank of Canada* (3); *Attorney-General of Ontario* v. *Attorney-General for the Dominion of Canada* (4), and *City of Montreal* v. *Montreal Street Railway* (5).

Another principle, which bears particularly on the construction of the words "Property and Civil Rights in the Province", as used in s. 92 (13), was also distinctly laid down by the Judicial Committee in the *Parsons* case (1) at p. 109, viz., that the words "Property and Civil Rights" are there used in their largest sense, and are not limited to such rights only as flow from the law, e.g., the status of persons. There is "no sufficient reason in the language itself", said Sir Montague Smith in the judgment of the Board, "nor in the other parts of the Act, for giving so narrow an interpretation to the words 'civil rights'." This, of course, as my Lord the Chief Justice pointed out in delivering the unanimous judgment of this Court on the *Reference re the Natural Products Marketing Act* (6), is subject to the limitations expressly arising from the exception of the enumerated heads of s. 91 and impliedly from the specification of subjects in s. 92. Sir Montague himself went on to say regarding the enumerated heads of s. 91:

> In looking at s. 91, it will be found, not only that there is no class including, generally, contracts and the rights arising from them, but that one class of contracts is mentioned and enumerated, viz., "18. Bills of Exchange and Promissory Notes", which it would have been unnecessary to specify if authority over all contracts and the rights arising from them had belonged to the Dominion Parliament.

Practically the same thing was said of the phrase "Administration of Justice", as used in 92 (14), by Street J., in delivering the judgment of himself and Falconbridge J., in *Reg.* v. *Bush* (7). The words of paragraph 14 of s. 92, he said,

(1) (1881) 7 App. Cas. 96.
(2) (1880) 5 App. Cas. 409, at 415.
(3) [1894] A.C. 31.
(4) [1894] A.C. 189.
(5) [1912] A.C. 333.
(6) [1936] S.C.R. 398, at 416.
(7) (1888) 15 Ont. R. 398.

confer upon the Provincial Legislatures the right to regulate and provide for the whole machinery connected with the administration of justice in the Provinces, including the appointment of all Judges and officers requisite for the proper administration of justice in its widest sense, reserving only the procedure in criminal matters,

as reserved by 91 (27) and subject to the provisions of ss. 96-100 relating to the appointment and payment of judges of Superior, District and County Courts and the constitution of a General Court of Appeal for Canada under s. 101. This pronouncement was distinctly and unanimously approved by this Court in a judgment delivered by the learned Chief Justice. See [1938] S.C.R., at p. 406, on the Reference regarding the validity of the provisions of the Ontario Adoption, the Children's Protection and the Deserted Wives' and Children's Maintenance Acts vesting certain functions in County Court and District Court Judges, and in Police Magistrates and Juvenile Court Judges (1).

The case of *Attorney-General of Ontario* v. *Attorney-General for the Dominion of Canada* (2) seems to me to have a very special bearing upon the present case. It was cited along with *Attorney-General for Ontario* v. *Attorney-General for the Dominion* (3) by Lord Tomlin in delivering the judgment of the Judicial Committee in *Attorney-General for Canada* v. *Attorney-General for British Columbia* (4), in support of the Board's statement that

It is within the competence of the Dominion Parliament to provide for matters which, though otherwise within the legislative competence of the Provincial Legislature, are *necessarily incidental to effective legislation* by the Parliament of the Dominion upon a subject of legislation expressly enumerated in s. 91.

The 1894 case (5) involved the validity of an enactment of the Ontario Legislature relating to voluntary assignments, which the Board stated postponed judgments and executions not completely executed by payment to an assignment for the benefit of creditors under the Act. "Now there can be no doubt", the Board said,

that the effect to be given to judgments and executions and the manner and extent to which they may be made available for the recovery of

(1) *Reference re Authority to perform functions vested by the Adoption Act, the Children's Protection Act, the Children of Unmarried Parents Act, the Deserted Wives' and Children's Maintenance Act, of Ontario,* [1938] S.C.R. 398.
(2) [1894] A.C. 189.
(3) [1896] A.C. 348.
(4) [1930] A.C. 111, at 118.
(5) [1894] A.C. 189.

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debts are *primâ facie* within the legislative powers of the provincial parliament. Executions are a part of the machinery by which debts are recovered, and are subject to regulation by that parliament. A creditor has no inherent right to have his debt satisfied by means of a levy by the sheriff, or to any priority in respect of such levy. The execution is a mere creature of the law which may determine and regulate the rights to which it gives rise.

Their Lordships held that the provisions in question, relating as they did to assignments purely voluntary, did not infringe on the exclusive legislative power conferred upon the Dominion Parliament. "They would observe", the Lord Chancellor (Herschell), who delivered the judgment, continued,

> that a system of bankruptcy legislation may frequently require various ancillary provisions for the purpose *of preventing the scheme of the Act from being defeated.* It may *be necessary* for this purpose to deal with the effect of executions and other matters which would otherwise be within the legislative competence of the Provincial Legislature. Their Lordships do not doubt that it would be open to the Dominion Parliament to deal with such matters as part of a bankruptcy law, and the Provincial Legislature would doubtless be *then* precluded from *interfering with* this legislation inasmuch as such interference would affect the bankruptcy law of the Dominion Parliament. But it does not follow that such subjects, as might properly be treated as ancillary to such a law and therefore within the powers of the Dominion Parliament, are excluded from the legislative authority of the Provincial Legislature when there is no bankruptcy or insolvency legislation of the Dominion Parliament in existence.

The clear effect of this judgment, I think, is that legislation dealing with the effect of judgments and executions and the manner and extent to which they may be made available for the recovery of debts are *primâ facie* within the exclusive legislative powers of the Provinces as coming within 92 (13) and 92 (14) and that such provincial legislation must be held valid unless it is found to be inconsistent with the provisions of some existing Dominion legislation enacted in relation to one or other of the classes of subjects specially enumerated in s. 91, and *necessary* for the purpose of effecting the object to which such legislation is directed.

At the time of this decision there was no Dominion bankruptcy or insolvency legislation in force, the Dominion *Insolvent Act of 1875* having been previously wholly repealed.

I should like to refer to another case, which the Judicial Committee considered in 1898, that of *Attorney-General for*

the Dominion of Canada v. *Attorneys-General for the Provinces of Ontario, Quebec and Nova Scotia* (1), in which the Board heard an appeal from the judgment of this Court on a reference involving, *inter alia,* the validity of s. 4, Revised Statutes of Canada, c. 95, purporting to empower the grant of an exclusive right to fish in property belonging to the Provinces. It was held, affirming the judgment of this Court (2), that that enactment, so far as it purported to empower the grant of exclusive fishing rights over provincial property, was *ultra vires* of the Parliament of Canada. The clear ground of the decision was that the provision did not fall within the exclusive legislative jurisdiction of the Dominion under s. 91 (12). I quote the following passage from that judgment at p. 716:

> But whilst in their Lordships' opinion all restrictions or limitations by which public rights of fishing are sought to be limited or controlled can be the subject of Dominion legislation only, it does not follow that the legislation of Provincial Legislatures is incompetent merely because it may have relation to fisheries. For example, provisions prescribing the mode in which a private fishery is to be conveyed or otherwise disposed of, and the rights of succession in respect of it, would be properly treated as falling under the heading "Property and Civil Rights" within s. 92, and not as in the class "Fisheries" within the meaning of s. 91. So, too, the terms and conditions upon which the fisheries which are the property of the province may be granted, leased, or otherwise disposed of, and the rights which *consistently with any general regulations respecting fisheries enacted by the Dominion Parliament* may be conferred therein, appear proper subjects for provincial legislation, either under class 5 of s. 92, "The Management and Sale of Public Lands" or under the class "Property and Civil Rights". Such legislation deals directly with property, its disposal, and the rights to be enjoyed in respect of it, and was not in their Lordships' opinion intended to be within the scope of the class "Fisheries" as that word is used in s. 91.

As late as 1939 another case came before the Judicial Committee, which clearly involved the application of the same principles, and in which the Board in a judgment delivered by Lord Atkin affirmed a judgment of the Court of Appeal for Ontario, holding that certain parts of the *Ontario Municipal Board Act, 1932,* and the *Department of Municipal Affairs Act, 1935,* were *intra vires* of the Provincial Legislature. This was the case of *Ladore* v.

(1) [1898] A.C. 700.
(2) *In re Jurisdiction over Provincial Fisheries,* (1896) 26 Can. S.C.R. 444.

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Bennett (1), which arose out of the financial difficulties of four adjoining municipalities in the Province of Ontario and their amalgamation under the provisions of c. 74 of the Provincial Act of 1935 into one municipality under the name of the Corporation of the City of Windsor. Under the provisions of this Act the existing municipal corporations were dissolved and a special body called the Windsor Finance Commission was constituted with the same rights, powers and duties as by the provisions of Part III of the *Department of Municipal Affairs Act, 1935,* were conferred upon that Department, and the provisions of Part III of the latter Act were to apply to the new city. By the provisions of Part III the Ontario Municipal Board, if satisfied *inter alia* that a municipality had failed to meet its debentures or interest when due owing to financial difficulties, was given power *inter alia* to order postponement of or variation in the terms, time and places for payment of the whole or any portion of the debenture debt and outstanding debentures and other indebtedness and interest thereon, and variation in the rates of interest. A scheme having been formulated by the Windsor Commission pursuant to its powers and approved by the Ontario Municipal Board for funding and refunding the debts of the amalgamated municipalities, under which former creditors of the old independent municipalities received debentures of the new city of equal nominal amount to those formerly held, but with the interest scaled down in various classes of debentures, the Windsor Finance Commission was abolished by an amending Act of 1936, and its duties transferred to the Department of Municipal Affairs for Ontario. The plaintiff's action prayed *inter alia* for a declaration that the provisions of the *Ontario Municipal Board Act, 1932,* and the *Department of Municipal Affairs Act, 1935,* and amendments thereto, under which the funding and refunding debt scheme was effected, were *ultra vires* of the Provincial Legislature. It was contended that they invaded the legislative jurisdiction of the Dominion as to (1) bankruptcy and insolvency; (2) interest; and (3) because they affected private rights outside the Province.

On account of their peculiar applicability to the attack which is made against the validity of the Alberta *Debt*

(1) [1939] A.C. 468.

Adjustment Act in the present case, I quote the following passages from Lord Atkin's reasons:

It appears to their Lordships that the Provincial legislation cannot be attacked on the ground that it encroaches on the exclusive legislative power of the Dominion in relation to this class of subject. Their Lordships cannot agree with the opinion of Henderson, J.A., that there is no evidence that these municipalities are insolvent. Insolvency is the inability to pay debts in the ordinary course as they become due; and there appears to be no doubt that this was the condition of these corporations. But it does not follow that because a municipality is insolvent the Provincial Legislature may not legislate to provide remedies for that condition of affairs. The Province has exclusive legislative power in relation to municipal institutions in the Province: s. 92 (8) of the British North America Act, 1867. Sovereign within its constitutional powers, the Province is charged with the local government of its inhabitants by means of municipal institutions.

* * *

Efficient local government could not be provided in similar circumstances unless the Province were armed with these very powers, *and if for strictly Provincial purposes debts may be destroyed and new debts created,* it is inevitable that debtors should be affected, *whether the original creditors reside within or without the Province.* They took for their debtor a corporation which at the will of the Province could lawfully be dissolved, and of its destruction they took the risk.

* * *

It was suggested in argument that the impugned provisions should be declared invalid because they sought to do indirectly what could not be done directly—namely, to facilitate repudiation by Provincial municipalities of obligations incurred outside the Province. It is unnecessary to repeat what has been said many times by the Courts in Canada and by the Board, that the Courts will be careful to detect and invalidate any actual violation of constitutional restrictions under pretence of keeping within the statutory field. A colourable device will not avail. But in the present case nothing has emerged even to suggest that the Legislature of Ontario at the respective dates had *any purpose in view other than to legislate in times of difficulty* in relation to the class of subject which was its special care—namely, municipal institutions. For the reasons given the attack upon the Acts and scheme on the ground either that they infringe the Dominion's exclusive power relating to bankruptcy and insolvency, or that they deal with civil rights outside the Province, breaks down. The statutes are not directed to insolvency legislation; they pick out insolvency as one reason for dealing in a particuler way with unsuccessful institutions; and though they affect rights outside the Province they only so affect them collaterally, as a necessary incident to their lawful powers of good government within the Province.

The question of interest does not present difficulties. The above reasoning sufficiently disposes of the objection. If the Provincial Legislature can dissolve a municipal corporation and create a new one to take its place, it can invest the new corporation with such powers of incurring obligations as it pleases, and incidentally may define the amount of interest which such obligations may bear. Such legislation, if directed

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bona fide to the effective creation and control of municipal institutions, is in no way an encroachment upon the general exclusive power of the Dominion Legislature over interest.

I should not have felt it necessary to deal with the foregoing cases at such length had it not been for the contention that the recent decision of this Court in *Attorney-General for Alberta and Winstanley* v. *Atlas Lumber Co. Ltd.* (1) is necessarily conclusive of the invalidity of the impugned enactment, not only with regard to actions on bills of exchange and promissory notes, but with regard to all matters which affect or may affect bankruptcy or insolvency, banks and banking, interest and all other subjects specially enumerated in s. 91. For my part, I cannot accept this contention. The Court there dealt only with an action on a promissory note and held in effect that the plaintiff was entitled to bring his action for the recovery of the moneys due thereon in consequence of the provisions of ss. 74, 134, 135 and 136 of the *Bills of Exchange Act*, R.S.C. 1927, c. 16, without the necessity of obtaining a permit enabling it to do so under the provisions of s. 8 of the provincial *Debt Adjustment Act*. The provisions of the impugned section of the provincial statute were held to conflict with these sections of the Dominion enactment as the Court construed the latter. While it was clearly enough laid down in the reasons for judgment that the impugned enactment of the provincial statute conflicted with existing Dominion legislation strictly and necessarily relating to enumerated head 18 of s. 91 and that the latter must for that reason prevail, it does not follow, I most respectfully think, that the provincial *Debt Adjustment Act* must be held to be wholly *ultra vires* of the Provincial Legislature merely because it affects or may affect bankruptcy or insolvency, banks and banking, interest or any other subject enumerated in s. 91, upon which the Dominion Parliament has purported to legislate as falling within one or more of those classes of subjects. As pointed out by Sir Montague Smith in the extract I have above quoted from his judgment in the *Parsons* case (2), " Bills of Exchange and Promissory Notes " is the only class of contracts which is specifically mentioned in s. 91, and there is no class (of subject) which includes " generally contracts and the rights arising from them ". It would

(1) [1941] S.C.R. 87.

(2) (1881) 7 App. Cas. 96.

seem, therefore, that this specific enumeration of Bills of Exchange and Promissory Notes may well be said to expressly withdraw that class of contracts from the exclusive jurisdiction of the Province in relation to 92 (13), Property and Civil Rights.

Having regard, therefore, to the decisions and pronouncements of the Judicial Committee in the cases above referred to, which,—to borrow the language of my Lord the Chief Justice, in delivering the unanimous judgment of this Court in the *Natural Products* case (1), had their basis

> is the consideration mentioned in *Parsons* case (2) arising from the specification of particular subjects in section 91 and from the necessity to limit the natural scope of the words "in order to preserve from serious curtailment, if not from virtual extinction, the degree of autonomy, which, as appears from the scheme of the Act as a whole, the provinces were intended to enjoy",

—as he put it in the *Lawson* case (3),—I am constrained to differ from my brethren in the view that the provincial *Debt Adjustment Act* is wholly *ultra vires* for the reasons now given.

The whole purpose of the statute, as it plainly appears to me from an examination of all its provisions, is to regulate and control the enforcement of contractual obligations for the payment of money so as to safeguard during a period of financial stress the interests of unfortunate resident debtors, who, through no fault of their own, but entirely owing to the general depreciation of values brought about by abnormal economic conditions, find themselves in such a position that the stringent enforcement of their creditors' claims might entail irreparable loss upon them. Its provisions are predominantly directed to procedure in civil matters in provincial courts, in relation to the constitution and organization of which courts the provinces, within the limits already indicated, unquestionably possess sovereign legislative power, as each province does, in relation to property and civil rights within its territorial jurisdiction. It is not doubted that the right to sue in provincial courts is a civil right in the province, whether the claim sought to be enforced arose in the province or not. None of the provisions of the provincial statute are directed to insolvency legislation nor to banks or banking legislation,

(1) [1936] S.C.R. 398, at 410. (2) (1881) 7 App. Cas. 96.
(3) *Lawson* v. *Interior Tree Fruit and Vegetable Committee of Direction*, [1931] S.C.R. 357, at 366.

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nor to the contracts of Dominion companies, carrying on business either within or without the province, though they may affect these subjects and these rights collaterally as a necessary incident to the attainment of the obvious object of the statute, viz., the granting of relief to hard pressed resident debtors. How, then, can it be said that the impugned statute is entirely beyond the constitutional competency of the province because it provides that no action for the recovery of money in respect of a liquidated demand or debt shall be commenced or continued, and no proceedings by way of execution, attachment, etc., taken, and no warrant of distress, chattel mortgage, conditional sale agreement or power of sale contained in a mortgage on land enforced against a resident debtor unless the Debt Adjustment Board issues a permit giving consent thereto?

This Court has quite recently applied the principle that Dominion and foreign corporations doing business in a province are subject to laws of general application in the province in matters falling within the classes of subjects enumerated in s. 92, notwithstanding these corporations may incidentally be affected in their business by some of the provisions of such provincial legislation. See *Royal Bank of Canada* v. *Workman's Compensation Board of Nova Scotia* (1); and *Home Oil Distributors Ltd.* v. *Attorney-General of British Columbia* (2). That this had previously been taken for granted would appear from the following passage, which I reproduce from the judgment of Duff, J., as our present Chief Justice then was, in *Lukey* v. *Ruthenian Farmers' Elevator Co. Ltd.* (3), cited by counsel for the Mortgage Loans Association of Alberta and the Canadian Bankers' Association, at pp. 71 and 72 as to the legislative power in relation to rights of Dominion corporations, the constitution of which is, of course, outside the purview of s. 92:

> Authority of the Dominion under the residuary clause fortified by that under 91 (2) embraces authority to provide for the constitution of companies falling within the class of joint stock companies * * * possessing independently of provincial legislation in each of the provinces the status of a juridical person, having the right to contract, and having the right to invoke the jurisdiction of the courts, *subject always, of course, to the measures passed by provincial legislatures of general application in relation to such civil rights.*

(1) [1936] S.C.R. 560. (2) [1940] S.C.R. 444.
(3) [1924] S.C.R. 56.

It is contended, however, that the impugned statute, by authorizing the Debt Adjustment Board to grant or refuse permits, gives it the unreasonable and arbitrary power to deny a creditor all access to the established courts of the Province. Whether the Board is given power arbitrarily and without investigation of the conditions and circumstances in any particular case or not does not, in my opinion, affect the constitutionality of the enactment. That has been laid down in so many cases as to admit of no doubt. It is emphasized particularly by Lord Herschell in his judgment in the 1898 case (1) at p. 713, and is strikingly illustrated by some of the passages I have quoted from Lord Atkin's judgment in *Ladore* v. *Bennett* (2). That consideration may possibly bear on the question as to whether the provincial enactment is a mere colourable device or mere pretence, by which the Legislature has sought to do indirectly what it could not do directly. Many attacks have been made against Dominion as well as Provincial legislation on this ground, and some of them have succeeded. Once, however, it becomes clear from an examination of the provisions of an enactment that it is within the constitutional competency of the enacting Legislature, the courts have no concern as to the reasonableness or injustice of those provisions. If an enactment is of such a palpably unfair character as to offend the public conscience, the remedy lies, not with the courts of the country, but with the people to whom the Legislature is responsible, or in the power of disallowance, the responsibility for the exercise of which the *B.N.A. Act* has placed in the hands of the Governor in Council. I may add that a study of the whole Act has convinced me that it was not the intention of the Legislature that the Debt Adjustment Board should exercise the powers committed to it without any investigation or consideration of the facts and circumstances in any case coming before it, and that I cannot agree with the suggestion that the appeal for which the Act provides was intended to be an appeal merely to a jury of laymen. The appeal is in point of fact to a judge of the Supreme Court sitting with a jury, which can only determine the issue under proper instruc-

(1) *Attorney-General for Canada* v. *Attorneys-General for Ontario, Quebec and Nova Scotia,* [1898] A.C. 700.
(2) [1939] A.C. 468.

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tions from the judge. See ss. 3 (*d*) and ss. 6, 9, 10, 21, 23, 33 and 36 (1), (3), (4), (5), (7), (8) and (10).

As to the suggestion that the Act was a colourable device to reach out at something which was beyond the competence of the Legislature, I need only refer, I think, to s. 39, which distinctly provides that the Act "shall not be so construed as to authorize the doing of any act or thing which is not within the legislative competence of the Legislative Assembly".

I differ also from my brethren in their conclusion that the *Debt Adjustment Act* is not an Act of general application in the Province of Alberta within the meaning of the authorities.

The impossibility of answering the first question in the terms in which it is framed with any degree of definiteness or assurance must, I think, be apparent when the settled principles as to the scope and extent of the legislative power of the provinces under the *B.N.A. Act* are borne in mind.

This question, in the form in which it is put, manifestly involves, not only the construction of every one of the numerous provisions of the *Debt Adjustment Act* itself, but a search for any Dominion enactments which may possibly be affected thereby, as well as the consideration in connection with each one of these latter enactments whether they strictly relate to the particular matters upon which the Dominion has purported to legislate, or are merely ancillary thereto. To adapt the language of Lord Watson in delivering the judgment of the Judicial Committee in *Attorney-General for Ontario* v. *Attorney-General for the Dominion* (1), if I may presume to do so, the question, being in its nature academic rather than judicial, is "better fitted for the consideration of the officers of the Crown than of a court of law".

For these reasons, I can only answer question 1 as follows: No, except in so far as its provisions may be found to conflict with any existing Dominion legislation strictly relating to any of the classes of subjects specially enumerated in s. 91 of the *B.N.A. Act* or as being necessarily incidental to the particular subject matter, upon which the Parliament of Canada has undertaken to legislate as falling within one or other of the said enumerated heads.

(1) [1896] A.C. 348, at 370.

As the other four questions involve the same considerations as have prompted me to incorporate in my answer to question 1 the exception there indicated, I am unable to answer the other four questions without a similar qualification.

I therefore certify the foregoing as my opinion upon the questions submitted.

The opinions in respect of the questions referred to the Court were certified to His Excellency the Governor General in Council as follows:—

By the Court:—

In answer to the interrogatory numbered 1: The said Act as amended is *ultra vires* of the legislature of Alberta in whole.

In answer to the interrogatory numbered 2: The said Act as amended is not operative in respect of any of the matters mentioned.

In answer to the interrogatory numbered 3: The said Act as amended is not operative in respect of any of the matters mentioned.

In answer to the interrogatory numbered 4: The said Act as amended is not operative in respect of any of the matters mentioned.

In answer to the interrogatory numbered 5: The said Act as amended is not operative in respect of any of the matters mentioned.

By Mr. Justice Crocket:—

In answer to question 1: No, except in so far as its provisions may be found to conflict with any existing Dominion legislation strictly relating to any of the classes of subjects specially enumerated in s. 91 of the B.N.A. Act or as being necessarily incidental to the particular subject matter, upon which the Parliament of Canada has undertaken to legislate as falling within one or other of the said enumerated heads.

In answer to the other four questions: As the other four questions involve the same considerations as have prompted me to incorporate in my answer to question 1 the exception there indicated, I am unable to answer the other four questions without a similar qualification.