THE ATTORNEY-GENERAL FOR ALBERTA AND G. C. WINSTANLEY (DEFENDANTS) ..... APPELLANTS;

AND

ATLAS LUMBER COMPANY LIMITED (PLAINTIFF) ..... RESPONDENT.

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* Oct. 10, 11.
* Dec. 20.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA

Constitutional law—Debt Adjustment Act, Alberta, 1937, c. 9, s. 8—Provincial statutory prohibition against commencement of action against resident debtor for recovery of money recoverable as liquidated demand or debt, without permit from provincial Board—Enactment invalid in so far as affecting right of action on promissory note—Bills of Exchange Act, R.S.C., 1927, c. 16, ss. 74, 134, 135, 136—B.N.A. Act, 1867, ss. 91(18), 92(13) (14)—Conflict between Dominion and Provincial legislation—Dominion legislation paramount.

The *Debt Adjustment Act*, Alberta, 1937, c. 9, by s. 8 enacted that "no action or suit for the recovery of any money which is recoverable as a liquidated demand or debt in respect of any claim enforcible by virtue of any rule of law or equity or by virtue of any statute * * * shall be taken * * * by any person whomsoever against a resident debtor in any case" unless the Board constituted by the Act and appointed by the Provincial Government issues a permit consenting thereto.

In an action brought without a permit in the Supreme Court of Alberta against a resident debtor upon a promissory note, it was *held* that a defence pleading said Act could not prevail; that said s. 8 of the Act, in so far as it affects a right of action on a promissory note, is *ultra vires* the Provincial Legislature. (Judgment of the Appellate Division, Alta., [1940] 2 W.W.R. 437, affirming judgment of Ewing J., [1940] 1 W.W.R. 35, affirmed in the result).

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

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Per the Chief Justice and Kerwin J.: In so far as said legislation extends to actions upon bills of exchange and promissory notes, it is plainly repugnant to the enactments in ss. 74, 134, 135 and 136 of the *Bills of Exchange Act*, R.S.C., 1927, c. 16 (which, or substantially the same, enactments have been in the Act since 1890), which, read together, affirm the unqualified right of the holder of a note to sue upon it in his own name and to recover judgment from any party liable on it; and which enactments are necessarily incidental to the exercise of the powers conferred upon the Dominion Parliament by s. 91 (18) of the *B.N.A. Act*. On the passing of the *Bills of Exchange Act* the jurisdiction of a province, if it ever possessed any, to enact such legislation as s. 8 of said *Debt Adjustment Act* (in so far as it extended to actions upon bills and notes) was superseded because it could not be enforced without coming into conflict with the paramount law of Canada. It would not make any difference if said s. 8 were expressed in the form of limiting the jurisdiction of the courts of Alberta. In pith and substance such an enactment, if operative, imposes a condition upon suitors to whom it applies governing them in the exercise of their rights to enforce causes of action vested in them; and, if it contemplates such an action as the present one, it purports to qualify rights in respect of which the Parliament of Canada has legislative jurisdiction in virtue of s. 91 (18) of the *B.N.A. Act*, and has exercised that jurisdiction by affirming them unconditionally. (*Attorney-General for Ontario* v. *Attorney-General for the Dominion*, [1896] A.C. 348, at 359, 365, 366, and *Attorney-General for Ontario* v. *Attorney-General for the Dominion*, [1894] A.C. 189, at 200-201, cited).

Per Rinfret J.: The prohibition in said s. 8 of the Provincial Act goes to the right to sue—a substantive right; it is not a matter of mere procedure. Under said *Bills of Exchange Act* (ss. 74, 134, 135), the holder of a note has the right to sue thereon in his own name and to enforce payment against all parties liable. That right is enforcible by action in the provincial courts (*Board* v. *Board*, [1919] A.C. 956, at 962; also said provisions of the *Bills of Exchange Act* shew that Parliament intended the right to be enforcible by an action in court—the only method open to enforce payment and recover). With respect to matters coming within the enumerated heads of s. 91 of the *B.N.A. Act*, the Parliament of Canada may give jurisdiction to provincial courts and regulate proceedings in such courts to the fullest extent (*Valin* v. *Langlois*, 3 Can. S.C.R. 1, at 15, 22, 26, 53, 67, 76, 77, 89, and 5 App. Cas. 115, at 117-118; *Cushing* v. *Dupuy*, 5 App. Cas. 409, at 415). Said provisions of the *Bills of Exchange Act* relate directly to the matter of head 18 in s. 91 of the *B.N.A. Act;* and therefore defendants' contention, that the provincial legislation was not necessarily incidental to legislation with respect to bills and notes and therefore the Dominion legislation could not encroach on provincial powers to make laws in regard to matters under heads 13 and 14 of s. 92 of the *B.N.A. Act*, could not prevail (*Tennant* v. *Union Bank of Canada*, [1894] A.C. 31; *Cushing* v. *Dupuy*, 5 App. Cas. 409; *Proprietary Articles Trade Assn.* v. *Attorney-General for Canada*, [1931] A.C. 310, at 326-327). The right to sue or to enforce payment or to recover on a bill or note is of the very essence of bills of exchange; it is one of the essential characteristics of a bill or note; the matter falls within the strict limits of s. 91 (18) of the

B.N.A. Act; it flows from the provisions establishing negotiability, which has become the primary quality of a bill or note and in which consist the true character and nature of these instruments; the provisions relating to the right to sue, to enforce payment and to recover before the courts are not incidental; they are the very pith and substance of the statute. The Dominion legislation is valid; the Alberta legislation, in so far as it applies against the institution of an action on a promisorry note, is in direct conflict with it, is overridden by it, and is *ultra vires* on the ground that it attempts to take away from the Alberta courts a jurisdiction conferred on them by the Parliament of Canada with respect to a matter within the exclusive legislative authority of that Parliament; and to that extent it must be held inoperative (*John Deere Plow Company* v. *Wharton,* [1915] A.C. 330; *Board of Trustees of the Lethbridge Northern Irrigation District* v. *Independent Order of Foresters,* [1940] A.C. 513). Whatever jurisdiction there may have been in the province on the subject has been superseded by the Dominion legislation (*Attorney-General for Ontario* v. *Attorney-General for the Dominion et al.,* [1896] A.C. 348, at 369, 370).

Crocket J., while not acceding to the contention that the rights conferred by ss. 74, 134 and 135 of the *Bills of Exchange Act* upon holders of bills and notes to sue, enforce payment and recover thereon in provincial courts, are not subject to provincial legislation relating to the jurisdiction of provincial courts and to procedure in civil matters therein, was not prepared to hold that the prohibitory enactment of said s. 8 (1) of the Alberta statute does not conflict with said Dominion legislation; and he held that if there is conflict, then the Dominion legislation, strictly relating, as it does, to bills of exchange and promissory notes as one of the classes of subjects specially enumerated in s. 91 of the *B.N.A. Act,* in the sense of being necessarily incidental thereto, prevails over the provincial legislation.

Per Davis J.: The Alberta enactment is one of general application, not aimed at, nor legislation in relation to, bills of exchange or promissory notes. Sec. 74 of the *Bills of Exchange Act* deals only with the rights acquired by negotiation, and the words "the holder of a bill" "may sue on the bill in his own name" mean only that he is not liable to be defeated in an action on the bill on the ground that the action has been brought by the wrong party (reference to *Sutters* v. *Briggs,* [1922] A.C. 1, at 15). The Dominion statute is not in any way dealing with access to any court. But the Alberta enactment is *ultra vires* the province. Where legislative power is divided, as in Canada, between a central Parliament and local legislative bodies and the administration of justice in the provinces, including the constitution, maintenance and organization of provincial courts, is given over to the provinces (with the appointment of the judges in the Dominion), a province cannot validly pass legislation, at least in relation to subject-matter within the exclusive competency of the Dominion, which puts into the hands of a local administrative agency the right to say whether or not any person can have access to the ordinary courts of the province. The Debt Adjustment Board of Alberta is an administrative body and is not validly constituted to receive what is in fact judicial authority (*Toronto* v. *York,* [1938] A.C. 415, at 427).

Per Hudson and Taschereau JJ.: The Alberta enactment does not purport to amend or limit the jurisdiction of the Supreme Court of Alberta,

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but to place in the hands of a provincial body the right to say whether or not certain classes of rights, some of which may arise under the laws of Canada, may be established or enforced through the courts. In s. 92 (14) of the *B.N.A. Act,* which gives to the province the exclusive right to make laws in relation to "the administration of justice in the Province," etc., the expression "administration of justice," read in connection with the whole Act, must be taken to mean the administration of justice according to the laws of Canada or the laws of the province, as the case may be. Normally the administration of justice should be carried on through the established courts, and the Province, though it has been allotted power to legislate in relation to the administration of justice and the right to constitute courts, cannot substitute for the established courts any other tribunal to exercise judicial functions (*Toronto* v. *York,* [1938] A.C. 415). There may be administration of law outside of the courts short of empowering provincial officers to perform judicial functions, but in respect of matters falling within the Dominion field a province could not do anything which would destroy or impair rights arising under the laws of Canada. The Dominion has power to impose duties upon courts established by the provinces, in furtherance of the laws of Canada, and a province could not interfere with nor take away the jurisdiction thus conferred (*Valin* v. *Langlois,* 5 App. Cas. 115; *Cushing* v. *Dupuy,* 5 App. Cas. 409). Sec. 74 of the *Bills of Exchange Act* expressly recognizes a right of action on a promissory note. That right of action is one governed by the laws of Canada and therefore excluded from the provincial legislative field. The Alberta enactment is not properly a law as to procedure in courts; it provides for extra-judicial procedure. A province cannot impose extra-judicial control over rights of action under the laws of Canada.

APPEAL by the defendants from the judgment of the Appellate Division of the Supreme Court of Alberta (1) affirming the judgment of Ewing J. (2).

The plaintiff sued to recover upon a promissory note made by the defendant Winstanley. The defendant pleaded the *Debt Adjustment Act,* c. 9 of the Statutes of Alberta of 1937 and amendments, and said that the plaintiff had not been granted a permit under the said Act to commence the action. Ewing J. held that there was direct conflict between the provisions of the *Bills of Exchange Act,* R.S.C., 1927, c. 16, and the provisions of the said *Debt Adjustment Act* as applied to promissory notes; and that the Dominion legislation must prevail; and that the plaintiff should be permitted to proceed with its action without a permit. The formal judgment adjudged and declared that the said *Debt Adjustment Act,* "in so far as the same affects Promissory Notes, is *ultra vires* the powers of the Provincial Legislature" and "that the plain-

(1) [1940] 2 W.W.R. 437; [1940] 3 D.L.R. 648.
(2) [1940] 1 W.W.R. 35; [1940] 3 D.L.R. 648 (at 649-656).

tiff has the right to proceed with this action without a permit of the Debt Adjustment Board". The judgment of Ewing J. was affirmed by the Appellate Division.

The facts, pleadings and legislation involved are more particularly set out in the reasons for judgment in this Court now reported.

The plaintiff, upon its reply to the statement of defence, gave notice to the Attorney-General for Alberta, who was represented on the trial of the action and on the appeal to the Appellate Division (which court had, previously to the hearing of the appeal, made an order adding him as a party defendant).

Special leave to appeal to the Supreme Court of Canada was granted to the defendants by the Appellate Division of the Supreme Court of Alberta.

W. S. Gray K.C. and *H. J. Wilson K.C.* for the appellants.

W. H. McLaws K.C. for the respondent.

F. P. Varcoe K.C. for the Attorney-General of Canada.

The judgment of the Chief Justice and Kerwin J. was delivered by

THE CHIEF JUSTICE—On the 9th of May, 1939, the respondent company sued the defendant, Winstanley, upon a promissory note dated the 9th of October, 1935, payable on demand for One Thousand Dollars ($1,000.00) and interest at the rate of eight per cent., the payee's name on the note being the Revelstoke Sawmill Company which, it was alleged, had endorsed the promissory note to the plaintiff. The defendant, the maker of the note, set up this defence:—

> In answer to the Plaintiff's Statement of Claim herein, the Defendant pleads the Debt Adjustment Act, being Chapter 9 of the Statutes of Alberta for 1937 and amendments, and says that the Plaintiff has not been granted a permit under the said Act to commence this action.

In reply the respondent company alleged, *inter alia,* as follows:—

> (1) The promissory note referred to in the Statement of Claim was made and taken pursuant to and in accordance with the provisions of "The Bills of Exchange Act", being Chapter 16 of the Revised Statutes of Canada, 1927, and amendments thereto, and the Parliament of the Dominion of Canada has the exclusive power of legislating with respect

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to promissory notes and bills of exchange, and the rights of the Plaintiff are determined by the provisions of the said "The Bills of Exchange Act" and not otherwise.

(2) The said "The Bills of Exchange Act" gives to the Plaintiff an immediate cause of action on the said promissory note against the Defendant, upon default being made in paying the said promissory note when it became due and payable, and the immediate right to sue thereon.

* * *

(5) The said Debt Adjustment Act and amendments thereto are *ultra vires* the Legislature of the Province of Alberta in so far as the provisions of the said Act are applicable to the promissory note referred to in the Statement of Claim and a permit under the said Act is not necessary before commencing this action.

The pertinent enactment of the *Debt Adjustment Act* set up in the statement of defence is section 8, which is in these words:—

8. (1) Unless the Board or any person designated by the Board under the provisions of this Act, issues a permit in writing giving consent thereto,—

(*a*) no action or suit for the recovery of any money which is recoverable as a liquidated demand or debt in respect of any claim enforcible by virtue of any rule of law or equity or by virtue of any statute, except money payable in respect of rates and taxes payable pursuant to any statute, and debts owing to a hospital for hospital services;

* * *

shall be taken, made or continued by any person whomsoever against a resident debtor in any case.

* * *

The trial Judge and the Court of Appeal for Alberta unanimously held that the defence set up in the pleadings by the appellant, Winstanley, is without legal validity.

By *The Alberta Act,* under which the Province of Alberta came into existence (4 and 5 Edward VII, Chap. 3, sec. 3) it was provided:—

The provisions of *The British North America Acts,* 1867 to 1886, shall apply to the province of Alberta in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion, as if the said province of Alberta had been one of the provinces originally united, except in so far as varied by this Act and except such provisions as are in terms made, or by reasonable intendment may be held to be, specially applicable to or only to affect one or more and not the whole of the said provinces.

By section 91 of the *British North America Act,*—

* * * * it is * * * declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,— * * * 18. Bills of Exchange and Promissory Notes. * * * * And 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.

By Chap. 33, 53 Victoria, the Parliament of Canada enacted the *Bills of Exchange Act, 1890.* Sections 38 and 57 were reproduced in the *Bills of Exchange Act,* Chap. 119, R.S.C., 1906, as section 74, which corresponds textually to section 38 of the parent Act, and as sections 134, 135 and 136 which correspond to section 57, slightly altered in form without change in substance or effect. These enactments of R.S.C., 1906, appear in the revision of 1927 (Chap. 16) without change as to the numbers of the sections or otherwise, and still retain that form.

The substantive question in controversy, as I view it, does not lend itself to extended discussion. Sections 74, 134, 135 and 136 of the *Bills of Exchange Act,* read together, affirm the unqualified right of the holder of a promissory note to sue upon the note in his own name and to recover judgment from any party liable on it damages according to the measure defined by sections 134 and 136. These enactments were in force when the *Debt Adjustment Act* was passed in 1937. The appellants contend that by section 8 of that Statute a condition is imposed upon this unqualified right of the holder of a promissory note to sue upon it, a condition that he shall first obtain the consent of a Board appointed by the Government of the Province.

I think it is convenient at this place to reproduce textually the well-known passage in the judgment of Lord Watson in *Attorney-General for Ontario* v. *Attorney-General for the Dominion* (1); Lord Watson is here, of course, speaking for the Judicial Committee:—

> It was apparently contemplated by the framers of the Imperial Act of 1867 that the due exercise of the enumerated powers conferred upon the Parliament of Canada by s. 91, might, occasionally and incidentally, involve legislation upon matters which are *prima facie* committed exclusively to the provincial legislatures by s. 92. In order to provide against that contingency, the concluding part of s. 91 enacts that "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." It was observed by this Board in *Citizens' Insurance Co. of Canada* v.

(1) [1896] A.C. 348, at 359.

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Parsons (1) that the paragraph just quoted "applies in its grammatical construction only to No. 16 of s. 92." The observation was not material to the question arising in that case, and it does not appear to their Lordships to be strictly accurate. It appears to them that the language of the exception in s. 91 was meant to include and correctly describes all the matters enumerated in the sixteen heads of s. 92, as being, from a provincial point of view, of a local or private nature. It also appears to their Lordships that the exception was not meant to derogate from the legislative authority given to provincial legislatures by these sixteen subsections, save to the extent of enabling the Parliament of Canada to deal with matters local or private in those cases where such legislation is necessarily incidental to the exercise of the powers conferred upon it by the enumerative heads of clause 91. That view was stated and illustrated by Sir Montague Smith in *Citizens' Insurance Co. of Canada* v. *Parsons* (2) and in *Cushing* v. *Dupuy* (3); and it has been recognized by this Board in *Tennant* v. *Union Bank of Canada* (4) and in *Attorney-General of Ontario* v. *Attorney-General for the Dominion* (5).

Their Lordships observed further at page 365:—

In the able and elaborate argument addressed to their Lordships on behalf of the respondents it was practically conceded that a provincial legislature must have power to deal with the restriction of the liquor traffic from a local and provincial point of view, unless it be held that the whole subject of restriction or abolition is exclusively committed to the Parliament of Canada as being within the regulation of trade and commerce. In that case the subject, in so far at least as it had been regulated by Canadian legislation, would, by virtue of the concluding enactment of s. 91, be excepted from the matters committed to provincial legislatures by s. 92.

And again at page 366:—

It has been frequently recognized by this Board, and it may now be regarded as settled law, that according to the scheme of the British North America Act the enactments of the Parliament of Canada, in so far as these are within its competency, must override provincial legislation.

Section 8 of the *Debt Adjustment Act*, if (as the appellants contend and I agree) it extends to actions upon bills of exchange and promissory notes, is plainly repugnant to the enactments of the *Bills of Exchange Act* in the sections mentioned above. Nor can I think it susceptible of dispute that the enactments are "necessarily incidental to the exercise of the powers conferred upon the Dominion Parliament" by section 91 of the *British North America Act* in relation to bills of exchange and promissory notes. On the passing of the *Bills of Exchange Act* of 1890, therefore, the jurisdiction of any province of Canada, if it ever possessed any, to enact such legislation was, to borrow the

(1) (1881) 7 App. Cas. 96, at 108.
(2) (1881) 7 App. Cas. 96, at 108, 109.
(3) (1880) 5 App. Cas. 409, at 415.
(4) [1894] A.C. 31, at 46.
(5) [1894] A.C. 189, at 200.

language of the same judgment (at p. 369), "superseded" because it could not be enforced "without coming into conflict with the paramount law of Canada."

I do not think it would make any difference if section 8 were expressed in the form of limiting the jurisdiction of the courts of Alberta. In pith and substance such an enactment, if operative, imposes, I repeat, a condition upon suitors to whom it applies governing them in the exercise of their rights to enforce causes of actions vested in them; and, if it contemplates such an action as this, it purports to qualify rights in respect of which the Parliament of Canada has legislative jurisdiction in virtue of section 91 (18), and has exercised that jurisdiction by affirming them unconditionally.

Once again, the Dominion Parliament has seen fit "to deal with" those rights (to adapt the language of Lord Herschell, L.C., speaking for the Judicial Committee in *Attorney-General for Ontario* v. *Attorney-General for the Dominion* (1) "as part of a * * * law" concerning bills of exchange and promissory notes; and the provincial legislatures are consequently "precluded from interfering with this legislation inasmuch as such interference would affect the * * * law of the Dominion Parliament" touching that subject.

This is the ground upon which, as it appears to me, the defence to the action and (consequently) this appeal, demonstrably fail.

RINFRET J.—In this case, action was brought by the respondent, Atlas Lumber Company Limited, to recover from the appellant Winstanley the amount due on a promissory note for $1,000 payable on demand, with interest at 8% per annum, said note being dated the 9th of October, 1935.

In answer to the respondent's statement of claim, the appellant Winstanley pleaded the *Debt Adjustment Act*, being chapter 9 of the Statutes of Alberta for 1937 and amendments, and said that the respondent had not been granted a permit under the said Act to commence its action and that, therefore, it could not proceed to judgment thereon.

(1) [1894] A.C. 189, at 200 and 201.

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In reply, the respondent invoked the *Bills of Exchange Act,* being chapter 16 of the Revised Statutes of Canada (1927) and amendments thereto. It alleged that the Parliament of the Dominion of Canada had the exclusive power to legislate with respect to promissory notes and that the rights of the respondent were determined by the provisions of the said *Bills of Exchange Act,* and not otherwise. That Act gave the plaintiff an immediate cause of action on the promissory note held against the appellant Winstanley, upon default being made in paying the said promissory note when it became due and payable, and the immediate right to sue thereon. The respondent contended that it was not subject to the provisions of the *Debt Adjustment Act* with respect to the said promissory note and that the right of recourse against Winstanley was not subject to, or conditional upon, the granting of a permit under the said statute.

The reply further stated that the respondent had made application under the provisions of the *Debt Adjustment Act* for a permit to commence proceedings in the trial division of the Supreme Court of Alberta against the appellant Winstanley on the promissory note in question, that he had complied with the provisions of the said Act, but that the officers authorized under the Act in that behalf refused a permit.

The respondent further replied that, if it should be contended that the *Debt Adjustment Act* and amendments was meant to cover a case such as this one, then it was *ultra vires* the Legislature of Alberta, in so far as the provisions of the said Act were intended to be applicable to the promissory note referred to in the respondent's statement of claim, and a permit under the *Debt Adjustment Act* was not necessary before commencing the action.

Simultaneously with the filing of the respondent's reply, notice was served upon the Attorney-General for Alberta that the respondent had, by its reply, pleaded that the Adjustment Act and amendments thereto were *ultra vires* the Legislature of the Province of Alberta, in so far as it may be contended that the Act applied to an action under a promissory note made and taken in accordance with the provisions of the *Bills of Exchange Act.* Counsel for the Attorney-General appeared and took part in the trial.

In the Appellate Division, the Court ordered that he be added as a party in the case and that the style of cause be amended accordingly.

In this Court, the Attorney-General of Alberta appeared as appellant, together with Winstanley, the debtor on the promissory note.

Both the trial court and the Appellate Division came to the conclusion that, to the extent that the *Debt Adjustment Act* purported to include within its operation the debt sued upon here, it was *ultra vires* of the provincial legislature.

In the result, the respondent was permitted to proceed with his action without a permit from the Adjustment Board, and the question is whether the concurrent judgments below ought to be confirmed.

The material provisions of the *Debt Adjustment Act* (c. 9 of the Statutes of Alberta, 1937) read in part as follows:

> 8. (1) Unless the Board or any person designated by the Board under the provisions of this Act, issues a permit in writing giving consent thereto,—
>
> (*a*) no action or suit for the recovery of any money which is recoverable as a liquidated demand or debt in respect of any claim enforcible by virtue of any rule of law or equity or by virtue of any statute, except money payable in respect of rates and taxes payable pursuant to any statute, and debts owing to a hospital for hospital services;
>
> * * *
>
> shall be taken, made or continued by any person whomsoever against a resident debtor in any case.

The note sued on in this action is not among the exceptions stated in subsec. 1 (*a*) or any of the other subsections of section 8. In terms, section 8 prohibits an action of the nature of the one brought here by the respondent, except where a permit is issued by a Board appointed and controlled by the Provincial Government under the provisions of the Act. The prohibition goes to the right to sue. It has nothing to do with mere procedure. The right to bring an action is not procedure; it is a substantive right.

The Debt Adjustment Board has the power to grant or to refuse permits. It can do so wholly within its discretion. It may refuse a permit indefinitely and is not called upon to give reasons for its decision.

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In effect, in view of the unlimited powers of the Board, the holder of a promissory note, and more particularly the respondent, may be entirely denied access to His Majesty's courts.

It does not diminish the impropriety of the situation that, in the present case, the respondent is a federally incorporated company.

It could not be seriously disputed by the appellants herein that the *Debt Adjustment Act* applied in the premises and was meant to prevent the institution of actions, even in the case of promissory notes. The appellant Winstanley took that ground from the very start and pleaded the Act in his statement of defence. As for the Attorney-General, he intervened in the case at the trial and later was made a party for the very purpose, of which he took full opportunity, of arguing both that the Act applied and that it was well within the powers of the Alberta Legislature.

The only point remaining for decision, therefore, is the constitutionality of the legislation now before us.

Of course, it need only be stated that the *Bills of Exchange Act,* which gives to the holder of the note its rights and powers, is within the legislative competence of the Parliament of Canada. The subject of "bills of exchange" and "promissory notes" is specifically mentioned in sub-head 18 of sec. 91 of the *B.N.A. Act.*

Among the rights and powers given to the holder of a promissory note under the *Bills of Exchange Act,* is the right to "enforce payment" of the note and to "recover" from persons liable thereon by an action, *inter alia,* in the Supreme Court of Alberta:

Rights and Powers of Holder

74. The rights and powers of the holder of a bill are as follows:

(*a*) He may sue on the bill in his own name;

(*b*) Where he is a holder in due course he * * * may enforce payment against all parties liable on the bill;

* * *

134. Where a bill is dishonoured, the measure of damages which shall be deemed to be liquidated damages shall be,

(*a*) the amount of the bill;

(*b*) interest thereon * * *;

(*c*) the expenses of noting and protest.

135. In the case of the dishonour of a bill the holder may recover from any party liable on the bill * * * the damages aforesaid.

The effect of the above sections is that the holder of a bill or note has the right to sue on the bill or note in his own name, to enforce payment against all parties liable; and, in case of a dishonour of the bill or note, he may recover from any party liable under the bill both the amount of the bill with interest and the expense of noting the protest, of which it is stated that they "shall be deemed to be liquidated damages."

These rights and powers are enforceable by action in the provincial courts (*Board* v. *Board* (1)):

> If the right exists, the presumption is that there is a court which can enforce it, for if no other mode of enforcing it is prescribed, that alone is sufficient to give jurisdiction to the King's Courts of Justice. In order to oust jurisdiction, it is necessary, in the absence of a special law excluding it altogether, to plead that jurisdiction exists in some other Court.

In this case, the right is conferred, the Act does not exclude the jurisdiction of the provincial court and there is no other court in which that right could be enforced.

Further, the provisions of the Act show that Parliament intended the rights and powers conferred by it to be enforceable by an action in court. The statute expressly provides that the holder of a bill or note may enforce payment, may sue on the bill or note, and may recover from any party liable thereon. Action in the courts is the only method open to enforce payment and recover.

The appellants contend that such provisions of the *Bills of Exchange Act* exceed the powers of the Dominion Parliament, in so far as they provide for procedure in such an action, on the ground that the provincial legislature had the exclusive right to legislate with respect to the administration of civil justice in the province, the constitution of courts and the proceedings in civil matters in those courts.

They further contend that the legislation in question is not necessarily incidental to legislation with respect to bills and notes and that, therefore, in legislating on the subject, Parliament could not encroach on the powers of the provincial legislature to make laws in regard to property and civil rights in the province (sub-head 13 of sec. 92 *B.N.A. Act*) and the administration of justice in the province, including the constitution, maintenance and organization

(1) [1919] A.C. 956, at 962.

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of provincial courts, both of civil and criminal jurisdiction and including procedure in civil matters in those courts (sub-head 14 of sec. 92).

But it has long since been decided that, with respect to matters coming within the enumerated heads of sec. 91, the Parliament of Canada may give jurisdiction to provincial courts and regulate proceedings in such courts to the fullest extent.

That question was decided by this Court in *Valin* v. *Langlois* (1). An application was made to the Judicial Committee of the Privy Council for leave to appeal, and Lord Selborne (2) said:

> On the other hand, the same considerations make it unfit and inexpedient to throw doubt upon a great question of constitutional law in Canada, and upon a decision in the Court of Appeal there, unless their Lordships are satisfied that there is, *prima facie*, a serious and a substantial question requiring to be determined. Their Lordships are not satisfied in this case that there is any such question, inasmuch as they entertain no doubt that the decisions of the lower Courts were correct.

See also *Cushing* v. *Dupuy* (3).

As for the further contention of the appellants, it ought to be said that, so long as Dominion legislation directly relates to matters enumerated in the heads of sec. 91, no question of the legislation being incidental can be raised (*Tennant* v. *Union Bank of Canada* (4); *Cushing* v. *Dupuy* (5)).

I would like to quote the following passage from Lord Atkin, delivering the judgment of the Privy Council in *Proprietary Articles Trade Association* v. *Attorney-General for Canada* (6):

> If then the legislation in question is authorized under one or other of the heads specifically enumerated in s. 91, it is not to the purpose to say that it affects property and civil rights in the Provinces. Most of the specific subjects in s. 91 do affect property and civil rights, but so far as the legislation of Parliament in pith and substance is operating within the enumerated powers, there is constitutional authority to interfere with property and civil rights. The same principle would apply to s. 92, head 14, "the administration of justice in the Province", even if the legislation did, as in the present case it does not, in any way interfere with the administration of justice. Nor is there any ground for suggesting that the Dominion may not employ its own executive

(1) (1879) 3 Can. S.C.R. 1, at 15, 22, 26, 53, 67, 76, 77 & 89.
(2) (1879) 5 App. Cas. 115, at 117-118.
(3) (1880) 5 App. Cas. 409, at 415.
(4) [1894] A.C. 31.
(5) (1880) 5 App. Cas. 409.
(6) [1931] A.C. 310, at 326-327.

officers for the purpose of carrying out legislation which is within its constitutional authority, as it does regularly in the case of revenue officials and other matters which need not be enumerated.

And in this case it should be pointed out that the right to sue, or to enforce payment, or to recover on a bill or note is of the very essence of bills of exchange; it is one of the essential characteristics of a bill or of a promissory note. The matter falls within the strict limits of sub-head 18 of sec. 91. It flows from the provisions establishing negotiability, which has become the primary quality of a bill or note and in which consist the true character and nature of these instruments.

The provisions relating to the right to sue, to enforce payment and to recover before the courts are not incidental provisions; they are, in truth, the very pith and substance of the statute.

If that be so, there is no question but that the Alberta *Debt Adjustment Act* providing, as it does, that no action or suit "shall be taken, made or continued" to enforce payment of a debt—including debts evidenced by bills of exchange or promissory notes—is in direct conflict with valid Dominion legislation.

The Board created under the Provincial Act, as we have seen, has an absolute discretion to say whether or not the particular holder of a bill of exchange or of a promissory note will have the right and power to enforce payment by action or suit. The effect is to destroy the value of the negotiability of the bill or note and to deprive the holder of a bill or note of the right and power to sue and enforce payment and recover, which are conferred upon him by the *Bills of Exchange Act.*

The consequence is that the Alberta Act, being in direct conflict with the above two provisions of the *Bills of Exchange Act,* are overridden by the latter; and that, in so far as the Alberta Act may be interpreted as applying to this action, it is *ultra vires* of the Alberta Legislature, on the ground that it attempts to take away from the Alberta courts a jurisdiction conferred upon such courts by the Parliament of Canada with respect to a matter within the exclusive legislative authority of that Parliament. To that extent, the provisions of the Alberta Adjustment Act must be held inoperative (*John Deere*

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Plow Company v. *Wharton* (1); *Board of Trustees of the Lethbridge Northern Irrigation District* v. *Independent Order of Foresters* (2)). Whatever jurisdiction there may have been in the province on the subject has been superseded by the Dominion legislation (*Attorney-General for Ontario* v. *Attorney-General for the Dominion and The Distillers and Brewers' Association of Ontario* (3)).

For these reasons, it must be held that the judgment *a quo* is right and the appeal ought to be dismissed with costs.

CROCKET J.—While I cannot at all accede to the respondent's contention that the rights conferred by ss. 74, 134 and 135 of the *Bills of Exchange Act* upon holders of bills of exchange and promissory notes to sue, enforce payment and recover thereon in provincial courts, are not subject to provincial legislation relating to the jurisdiction of provincial courts and to procedure in civil matters therein, I am not prepared to hold that s. 8 (1) of the Alberta *Debt Adjustment Act* does not conflict with the Dominion enactment in prohibiting all actions "for the recovery of any money which is recoverable as a liquidated demand or debt," etc., without the consent of a Board constituted by the Provincial Government.

If the two enactments do conflict, as both courts below have adjudged, then the Dominion legislation, strictly relating, as it does, to Bills of Exchange and Promissory Notes as one of the classes of subjects specially enumerated in s. 91 of the *B.N.A. Act*, in the sense of being necessarily incidental thereto, unquestionably prevails over the provincial.

I agree that the appeal should be dismissed with costs.

DAVIS J.—The provincial legislation in question, *The Debt Adjustment Act, 1937*, of Alberta, is not aimed at bills of exchange or promissory notes; nor is it legislation in relation to bills of exchange or promissory notes. It is a statute of general application whereby no action or suit for the recovery of any money which is recoverable as a liquidated demand or debt in respect of any claim enforceable by virtue of any rule of law or equity or by

(1) [1915] A.C. 330. (2) [1940] A.C. 513.
(3) [1896] A.C. 348, at 369 and 370.

virtue of any statute (except money payable in respect of rates and taxes payable pursuant to any statute, and debts owing to a hospital for hospital services); and no proceedings by way of execution, attachment or garnishment; and no action or proceeding for the sale under or foreclosure of a mortgage on land, or for cancellation, rescission or specific performance of an agreement for sale of land or for recovery of possession of land, whether in court or otherwise; and other specified proceedings for seizure or distress; and "no action respecting such other class of legal or other proceedings as may be brought within the provisions" of the statute "by order of the Lieutenant-Governor in Council" shall be taken, made or continued in the courts of the province by any person whomsoever against a resident debtor (a person who is a debtor and who is an actual resident of and personally living in Alberta) without a permit in writing giving consent thereto issued by the Debt Adjustment Board constituted by the province pursuant to the statute. The statute further provides that such consent whenever given shall relate back to anything done in the action or other proceedings in respect of which the permit is given. The statute does not apply to any contract made or entered into by a debtor where the whole of the original consideration for the contract arose on or after the 1st day of July, 1936, but does apply to any agreement, contract, stipulation, covenant or arrangement made since that date which purports to substitute a new indebtedness in the place of any indebtedness created or arising before the 1st day of July, 1936, or to any guarantee whensoever made for the payment of any debt payable in respect of any contract, the whole of the original consideration for which arose before the 1st of July, 1936.

The principal submission of the Attorney-General of Canada and of the respondent (plaintiff) was that the statute is in conflict with the Dominion legislation under the *Bills of Exchange Act,* R.S.C., 1927, ch. 16. Particular emphasis was put upon sec. 74 of that statute, which provides that the holder of a bill may sue on the bill in his own name. It is contended that the provincial legislation is in conflict and therefore invalid or inoperative in so far as it affects bills of exchange or promissory notes. A holder means a payee or endorsee

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of a bill or note who is in possession of it, or the bearer thereof. But the words "the holder of a bill may sue on the bill in his own name" mean only "not liable to be defeated in an action on the bill on the ground that the action has been brought by the wrong party" (see the judgment of Lord Birkenhead in *Sutters* v. *Briggs* (1)). Section 74 deals only with the rights acquired by negotiation (sec. 60), that is, by transfer according to the form required by the law merchant. Falconbridge on Banking, 5th ed., 1935, pp. 698-99.

I do not think that the Dominion statute is in any way dealing with access to any court, general or particular, provincial or Dominion. The original statute, the *Bills of Exchange Act, 1890,* was a re-enactment (with only some slight modifications with which we are not concerned) of the *Bills of Exchange Act,* 1882, as enacted by the Imperial Parliament. Our present section 74 is the original sec. 38 of the Imperial statute. The argument before us was directed to the contention that the Dominion statute expressly gave access to the courts and that the provincial legislation closed the door of the particular court in which this action was instituted, that is, the Supreme Court of Alberta, and that was a conflict, and the Dominion legislation prevailed. But, as I have said, I do not think the Dominion statute was in any way dealing with courts as such, either general or particular.

Section 92 (14) of the *British North America Act* gave the legislatures of the provinces exclusive jurisdiction in relation to "the administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts." It is of vital importance to the integrity of our system of constitutional government that full recognition be given to the rights of the provinces in the exercise of their powers by their elected legislative bodies. If they have legislative competency in relation to the matters dealt with, then that any particular enactment may appear to us to be inadvisable or unjust has nothing whatever to do with its validity.

If the constitution of the civil courts by a province and the provincial legislation governing the administration of

(1) [1922] 1 A.C. 1, at 15.

justice in a province is not adequate at any time in the view of the Parliament of Canada for the purposes of those specific matters which are within the exclusive legislative competency of the Dominion, the Parliament of Canada may itself establish additional courts, as it did in the Exchequer Court of Canada which has original as well as appellate jurisdiction, or designate any existing provincial courts, as was done in sec. 63 of the Dominion *Bankruptcy Act,* 1919, ch. 36, now sec. 152 of R.S.C., 1927, ch. 11 (pursuant to the power vested in the Dominion by sec. 101 of the *British North America Act*) "for the better administration of the laws of Canada," i.e., laws passed by the Dominion Parliament (*Consolidated Distilleries Ltd.* v. *The King* (1)).

But I am prepared to hold for the purposes of this action (both the Attorney-General of Canada and the Attorney-General of the province having been represented before us) that the provincial legislation relied upon as a defence to the action is *ultra vires* the province. Where legislative power is divided, as in Canada, between a central Parliament and local legislative bodies and the administration of justice in the provinces, including the constitution, maintenance and organization of provincial courts, is given over to the provinces (with the appointment of the Judges in the Dominion), a province cannot, in my opinion, validly pass legislation, at least in relation to subject-matter within the exclusive competency of the Dominion, which puts into the hands of a local administrative agency the right to say whether or not any person can have access to the ordinary courts of the province. The Debt Adjustment Board of Alberta is an administrative body and is not validly constituted to receive what is in fact judicial authority. *Toronto* v. *York* (2).

For the reasons above stated, I would dismiss this appeal with costs.

The judgment of Hudson and Taschereau JJ. was delivered by

HUDSON J.—In this action the plaintiff, as holder, claims from the defendant, a resident of Alberta, as maker, the amount of an overdue promissory note made and payable in Alberta. The only defence set up by the defendant

(1) [1933] A.C. 508, at 521-522. (2) [1938] A.C. 415, at 427.

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is the *Debt Adjustment Act,* being chapter 9 of the Statutes of Alberta of 1937 and amendments, and that the plaintiff has not been granted a permit under the said Act to commence the action. In reply it was claimed that this Act was *ultra vires* of the Province.

The Attorney-General of Alberta intervened to support the defence.

The action was tried before Mr. Justice Ewing, who gave judgment: (1) declaring that the *Debt Adjustment Act* of Alberta, 1937, in so far as the same affects promissory notes, is *ultra vires* the powers of the Provincial Legislature; (2) that the plaintiff has the right to proceed with this action without a permit of the Debt Adjustment Board.

On appeal, the Court of Appeal in a unanimous judgment confirmed the decision of Mr. Justice Ewing.

The *Debt Adjustment Act* of 1937, as amended, constituted a Board to be known as the Debt Adjustment Board, the member or members to be named by the Lieutenant-Governor in Council.

Section 4 empowers the Board to nominate agents who, with the approval of the Lieutenant-Governor in Council, shall have power to grant or refuse permits under the Act.

Section 6 empowers the Board to make inquiries with regard to the property of a resident debtor and the disposition made by him of the property, and may examine under oath certain persons and others.

Section 7 constitutes the Board a body politic and corporate and provides that any member of the Board is empowered to act for and on behalf of the Board.

Section 8, which is the important section, in part is as follows:

> 8. (1) Unless the Board or any person designated by the Board under the provisions of this Act, issues a permit in writing giving consent thereto,—
>
> (*a*) no action or suit for the recovery of any money which is recoverable as a liquidated demand or debt in respect of any claim enforcible by virtue of any rule of law or equity or by virtue of any statute, except money payable in respect of rates and taxes payable pursuant to any statute, and debts owing to a hospital for hospital services;
>
> * * *
>
> (*g*) no action respecting such other class of legal or other proceedings as may be brought within the provisions of this section by order of the Lieutenant-Governor in Council,—

shall be taken, made or continued by any person whomsoever against a resident debtor in any case.

Subsection 3 limits the application of the section to debts where the original consideration arose prior to the 1st of July, 1936.

Subsection 5 provides that the Board may at any time in its discretion cancel or suspend any permit which has been previously issued under this section by the Board.

Section 10 provides that where a creditor asks for a permit, the Board shall proceed to make such inquiries as it may deem proper, and thereupon may issue a permit or refuse or adjourn the application, and may give directions to the resident debtor as to the conduct of his affairs.

Section 23 provides that in case any person makes wilful default in complying with any order, direction or condition of the Board, or wilfully takes or continues any action or proceeding, or makes or continues any seizure, etc., in contravention of the provisions of this Act, or makes default in complying with any direction of the Board under the provisions of this Act, then he shall be liable on summary conviction to a fine, and, in default, to imprisonment.

Section 26 indemnifies the Board and its members from liability for any act done under the Act.

Section 27 provides that every action, order or decision of the Board as to any matter or thing in respect of which any power, authority or discretion is conferred on the Board shall be final and shall not be questioned, reviewed or restrained by injunction, prohibition or mandamus or other process or proceeding in any court, or be removed by certiorari or otherwise in any court.

It is further provided that the provisions of this 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.

This Act, if valid, effectually bars access to the established courts of justice in respect of a large class of rights arising under the laws of Canada as well as the laws of Alberta, unless a nominee of the Provincial Executive of his or its own free will, ungoverned by any law, chooses to give consent.

The right of the Province to pass such a law, in so far as it affects a promissory note made and payable in Alberta, is directly challenged in this action.

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The *British North America Act,* sec. 91, subsection 18, particularly enumerates as a class of subjects falling exclusively within the legislative authority of the Parliament of Canada: "18. Bills of Exchange and Promissory Notes," and under the authority of this heading the Parliament of Canada passed the *Bills of Exchange Act.* In the court below, reference was made to section 74, which provides:

> The rights and powers of the holder of a bill are as follows:
>
> (*a*) He may sue on the bill in his own name;
>
> (*b*) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill.

This section expressly recognizes a right of action on a note such as is here in question.

The action was entered in the Supreme Court of Alberta. This court was constituted by statute of the Province of Alberta and given civil and criminal jurisdiction similar to that exercised by superior courts in England and, in addition, was expressly given the jurisdiction up until then exercised by the former Supreme Court of the North West Territories. This latter court was a Dominion court created by the statutes of the Parliament of Canada and maintained and organized under Dominion authority. The express grant of this jurisdiction merely emphasizes in the case of Alberta what has always been recognized since Confederation, that a provincial court has jurisdiction to entertain actions founded on the laws of Canada as well as on the laws of the Province.

Upon the constitution of this court by the Province, qualified judges were appointed by the Dominion, as provided for in section 96 of the *British North America Act,* and thus the court was enabled to function as contemplated by the statute.

There can be no doubt that it had jurisdiction and that it was its duty to entertain this action, unless that right had been taken away by competent authority.

The *Debt Adjustment Act,* which is set up as a defence, does not purport to amend or limit the jurisdiction of the Supreme Court. What it does is to place in the hands of a provincial body the right to say whether or not certain classes of rights may be established or enforced through the courts.

The contention of the Attorney-General and of the defendant in support of this statute is based primarily on sub-head 14 of section 92 of the *British North America Act,* which reads as follows:

92. In each Province the Legislature may exclusively make laws in relation to * * *

(14) The administration of justice in the Province, including the constitution, maintenance and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

The expression "administration of justice" taken by itself is most comprehensive, but it must be read as part of the *British North America Act;* otherwise, it would enable the Legislature to make and enforce laws within the field allotted exclusively to the Dominion Parliament. The expression must mean, the administration of justice according to the laws of Canada or the laws of the Province, as the case may be.

Normally, the administration of justice should be carried on through the established courts, and the Province, although it has been allotted power to legislate in relation to the administration of justice and the right to constitute courts, cannot substitute for the established courts any other tribunal to exercise judicial functions: see *Toronto* v. *York* (1).

There may be administration of law outside of the courts short of empowering provincial officers to perform judicial functions, but in respect of matters falling within the Dominion field a province would certainly not be justified in doing anything which would destroy or impair rights arising under the laws of Canada.

The province is given the power to constitute courts, and this would imply a power to define, limit, or enlarge the jurisdiction of those courts, at least in so far as the laws of the province may be involved.

The Dominion Parliament has power to impose duties upon courts established by the provinces in furtherance of the laws of Canada, and a province could not interfere with, nor take away, the jurisdiction thus conferred: see *Valin* v. *Langlois* (2); *Cushing* v. *Dupuy* (3).

(1) [1938] A.C. 415. (2) (1879) 5 App. Cas. 115.
(3) (1880) 5 App. Cas. 409.

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In the present case, as already pointed out, the Province has not directly altered the jurisdiction of the Supreme Court of Alberta. It has set up a commission without whose approval all courts are forbidden to act within a prescribed field.

Under section 92 (14) a Provincial Legislature has power to legislate in respect of procedure in the courts in respect of matters exclusively allocated to the provinces under other headings of section 92, and no doubt to regulate procedure in those courts in respect of enforcement of the laws of Canada where Parliament has not otherwise provided and where the result is not in conflict with the laws of Canada.

It is said that a right of action on a promissory note is a "civil right" within the meaning of section 92 (13), but it is a civil right governed by the laws of Canada and, for that reason, excluded from the provincial legislative field.

However, the *Debt Adjustment Act* is not properly a law as to procedure in courts. It provides for extra-judicial procedure.

We are not concerned here with the law of executions, exemptions from seizure or property rights and it is neither necessary nor advisable to discuss the validity of the *Debt Adjustment Act,* in so far as it affects matters not now directly in issue in this action.

The real question here appears to be this: Can a province impose extra-judicial control over rights of action arising under the laws of Canada? To answer this in the affirmative would, in my opinion, conflict with the distribution of legislative power contemplated by the Constitution.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitor for the appellant the Attorney-General for Alberta: *H. J. Wilson.*

Solicitor for the appellant Winstanley: *W. B. Cromarty.*

Solicitors for the respondent: *McLaws, Redman & McLaws.*