

1964  
June 15, 16  
Sept. 4

BETWEEN :

SHELDON IRWIN PORTER ..... SUPPLIANT;

AND

HER MAJESTY THE QUEEN ..... RESPONDENT.

*Crown—Petition of Right—Claim for repayment of money paid to Crown under Group Annuity Contract—Authorization and execution of contract by municipal corporation—Lack of knowledge of suppliant of terms of annuity plan—Government Annuities Act, if valid, not subject to Ontario Insurance Act—Conflict between federal and provincial legislation—Object of legislation—Pith and substance of legislation—Federal legislation in the public interest—Declaration of Parliament*

<sup>1</sup> [1952] Ex. C.R. 258.

<sup>2</sup> Memoranda of unreported judgments, [1953] 2 S.C.R. viii.

<sup>3</sup> (1917-30) 12 T.C. 927.

as to object of legislation—Civil rights—Government Annuities Act, R.S.C. 1952, c. 132, ss. 4 and 6(3)—Municipal Act, R.S.O. 1937, c. 266, s. 404(41a)—British North America Act, 1867, ss. 91 and 92.

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This is a Petition of Right of a former member of the Police Department of the City of Sudbury, Ontario, for a declaration that the *Government Annuities Act*, R.S.C. 1952, c. 132 is *ultra vires* and that the suppliant is entitled to repayment of the contributions made by him under a Group Annuity Contract between the Crown and the City of Sudbury.

The suppliant joined the Sudbury Police Department and applied for participation in the Group Annuity Plan in 1953. In 1960 he left the Police Department, and, in due course, received a Statement of Benefits under the Group Annuity Contract showing that he was entitled to a life annuity of \$378.57 commencing October 1, 1990, and guaranteed for five years.

*Held*: That the suppliant has no right against the Crown by reason of the fact that no copy of the Bylaw pursuant to which application was made by the City of Sudbury for a Group Annuity Contract under the *Government Annuities Act* was given to him because paragraph 4 of Article IV thereof, requiring a copy of the By-law to be given to every employee, has no reference to persons becoming employees after the commencement date of the Plan, paragraph 4 of Article IV is directory only, a breach of the By-law by City officials does not confer any rights against the Crown and the Group Annuity Contract provides that the Government shall have no responsibility for the Plan except as expressly provided in the Contract.

2. That the Group Annuity Contract was duly authorized and executed.
3. That the suppliant's participation in the plan was properly made a condition to his employment as a police constable.
4. That any lack of knowledge on the suppliant's part of the terms of the plan was not such as to affect the validity of his status as a registered member of the plan.
5. That failure to give the suppliant a copy of the By-law cannot operate to vitiate his participation in the plan when such failure is first raised after he left the employment of the City.
6. That if the *Government Annuities Act* is a valid exercise of Parliament's legislative authority, the Crown, in exercising the authority conferred thereby, is not subject to the provisions of the *Ontario Insurance Act*.
7. That when a valid federal enactment comes in conflict with provincial legislation, the federal enactment prevails.
8. That the operations under the *Government Annuities Act* differ from those of a person in private business selling annuities in two respects only, viz. the object of the operations under the *Government Annuities Act* is not to make a profit but to promote thrift so that provision may be made for old age, and the annuities sold under the *Government Annuities Act* cannot be rescinded by agreement between the purchaser and the seller as they could be if the transaction were one between subject and subject.
9. That while the operations authorized by the *Government Annuities Act* are operations that are the ordinary activities of persons engaged in a business that is subject to the legislative jurisdiction of the provincial legislatures, the objective is quite different from that pursued

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by private business and, rather than being one of profit, it is to provide further facilities for the promotion of habits of thrift among the people of Canada so that provision may be made for old age.

- 10 That whether the "pith and substance" of the *Government Annuities Act* be the authorization of annuity contracts between the Crown and the subject or the provision of further facilities for the promotion of thrift among the Canadian people so that provision may be made for old age, it does not fall under s. 91(1A) of the *British North America Act* nor is it an Act, the pith and substance of which is to enable the Government of Canada to carry on business of a class that is subject to regulation exclusively by the provincial legislatures.
- 11. That Parliament may employ monies raised by taxation "for making contributions in the public interest to individuals, corporations or public authorities" provided that the law enacted for that purpose is not so framed as to "encroach upon the classes of subjects which are reserved to provincial competence" and it follows that Parliament may authorize the Crown to enter into contracts with individuals in circumstances that do not necessarily involve the expenditure of monies raised by taxation where the dominating reason for the scheme is the "public interest".
- 12 That the *Government Annuities Act* expressly declares the scheme to be "in the public interest" and there are no circumstances that would constrain the Courts to hold that that declaration is colourable.
- 13. That the *Government Annuities Act* does not affect the civil rights of any person, nor does it encroach on any of the classes of subjects reserved to the provincial legislatures.
- 14. That the *Government Annuities Act* is *intra vires* and there is no basis for the suppliant's claim that the Crown holds monies received from him otherwise than subject to and in accordance with the Group Annuity Contract between the Crown and the City of Sudbury.
- 15. That the suppliant is not entitled to any of the relief sought by the Petition of Right.

PETITION OF RIGHT for repayment of money paid to Crown under a Group Annuity Contract.

The action was tried by the Honourable Mr. Justice Jackett, President of the Court, at Sudbury.

*John A. Goodearle* and *John Ryan* for suppliant.

*D. S. Maxwell, Q.C.* and *Peter Sorokan* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

JACKETT P. now (September 4, 1964) delivered the following judgment:

This is a Petition of Right of a former member of the Police Department of the City of Sudbury in the Province of Ontario for a declaration that the *Government Annuities Act*, R.S.C. 1927, chapter 7, consolidated as R.S.C. 1952,

chapter 132, was *ultra vires* and for a further declaration, in effect, that he is entitled to be paid by the Crown an amount equal to the contributions made by him under a Group Annuity Contract (No. G. 729) between the Crown and the City of Sudbury.

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Other relief is sought by the Petition of Right but was not supported in argument.

The *Government Annuities Act* authorized the Crown in right of Canada to contract for the sale of defined classes of annuities payable to persons resident or domiciled in Canada subject to the conditions and requirements set out in the various provisions of the Act. The principal provisions of the Act are section 4 and subsection (3) of section 6, which read as follows:

4. Her Majesty, represented and acting by the Minister, may, subject to the provisions of this Act and of any Order in Council made under the authority of this Act, contract with any person for the sale

- (a) of an immediate or deferred annuity to any person resident or domiciled in Canada,
  - (i) for the life of the annuitant;
  - (ii) for a term of years certain, not exceeding twenty years, provided the annuitant shall so long live; or
  - (iii) for a term of years certain, not exceeding twenty years, or for the life of the annuitant, whichever period shall be the longer;
- (b) of an immediate or deferred annuity to any two persons resident or domiciled in Canada during their joint lives, and with or without continuation to the survivor.

6. (3) Employers of labour may, pursuant to agreement entered into with their employees in that behalf, such agreement to be of a form approved by the Minister, contract with Her Majesty for the sale to such of their employees as are domiciled in Canada of annuities otherwise purchasable by such employees as individuals under this Act; and any sums of money necessary to the carrying out of this object, whether such sums are derived from the wages of the employees solely, or partly from the wages of the employees and partly from contributions of the employers, or from contributions of the employers solely, may be paid by such employers direct to the Minister, or may be deposited in any Post Office Savings Bank to be transferred by the Postmaster General to the Minister; but unless otherwise expressly stipulated, any sums so paid shall be held for the exclusive account of the persons in whose names they were deposited, respectively.

The *Municipal Act*, R.S.O. 1937, chapter 266, as amended by chapter 30 of 1939, chapter 35 of 1941, chapter 39 of 1944, chapter 60 of 1946, and chapter 69 of 1947, authorized the council of a municipality to provide, by by-law, for "pensions for employees . . ." by arrangement with the

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Crown under the *Government Annuities Act*. See section 404, paragraph 41a.

City of Sudbury By-law No. 2916, passed on February 2, 1948 is a by-law under paragraph 41a of section 404 of the *Municipal Act* to provide pensions for full-time employees of the City. A Retirement Annuity Plan was attached to the By-law describing the main features of the pension scheme.

Pursuant to By-law No. 2916, the appropriate City officials, on February 26, 1948, executed, on behalf of the City, an application for a Group Annuity Contract which was, in effect, an offer to contract, which offer was accepted by the issuance by the appropriate officials of the Government of Canada, on behalf of His Majesty, of Group Annuity Contract No. G 729. That contract was designed to implement the retirement plan attached to By-law No. 2916.

By Group Annuity Contract No. G. 729, the Crown agreed to pay to each employee to be registered thereunder an annuity as determined by the provisions and conditions of the contract and the City agreed to pay to the Crown in respect of the respective employees certain amounts known as "Employee Payments", to be deducted from the employee's wages, and other payments to be made by the City on behalf of the employees, known as "Employer Payments". The contract contains a formula to determine an employee's "Normal Retirement Age" or "Retirement Date". The annuity payable to each registered employee (subject to certain options) is a life annuity commencing on his Retirement Date with a five year guarantee. The amount of the annuity is determined by the amount of the payments made in respect of him. Section 11 of the "Terms and Conditions" of the contract, which is referred to by counsel for the suppliant as the "lock-in" clause, provides that, if a Registered Employee leaves his employment before his Retirement Date without having twenty years of service, he shall receive an annuity commencing on his Retirement Date computed by reference only to the Employee Payments.

By-law No. 2916 requires that every person who becomes an employee after the effective date of the plan attached thereto, be required "as a condition of his employment" to join the plan provided for by the By-law.

In due course, after having been appointed a constable in the Police Department, the suppliant on February 3, 1953, applied for participation in the plan and authorized the City to deduct from his wages the contributions which the plan required that he pay.

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Sometime in 1960, the suppliant left the Police Department and, in due course, he received a "Statement of Benefits" under the Group Annuity Contract showing that he was entitled to a life annuity of \$378.57 commencing October 1, 1990, guaranteed for five years.

One other feature of the case must be set out before outlining the suppliant's contentions. Article IV of By-law No. 2916 reads as follows:

IV. (1) Every person who is an eligible employee under the plan on the effective date of the plan shall elect in writing within three months after the effective date whether or not he desires to join the plan.

(2) Every employee who elects to join the plan shall sign the Government form of application for registration under the plan and authorize the City in writing to deduct from his salary or wages his payments under the plan.

(3) Any employee who does not join the plan within the said three month period shall not be permitted to do so thereafter and every such employee shall be required to sign and deliver to the City a disclaimer acknowledging that he does not expect any retirement benefits hereunder.

(4) Every employee who applies to be registered under the plan shall be given a copy of this by-law at the time of application.

(5) Every person who becomes an employee after the effective date of the plan shall be required as a condition of his employment to join the plan as provided for therein.

(6) Every employee who joins the plan shall be deemed to have joined it upon the terms and conditions contained in this by-law or in the form of contract set out in the said Appendix "A".

There is no dispute on the evidence that, not only was the suppliant not, in fact, given a copy of the By-law at any time, but, at no time was he informed as to the details of the plan. It is also clear that at no time, prior to his leaving, did he request any such copy or information and indeed, when he applied to join the plan, the document that he signed contained an acknowledgment that he had received a copy of the "Retirement Annuity Plan". The suppliant now contends that his not having been given a copy of the By-law was a very serious "breach" upon which he can found his claim for relief in this Petition. The Crown contends that paragraph (4) of Article IV has no reference to persons becoming employees after the commencement date of the plan because it provides only for

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giving a copy of the By-law to an employee who "applies" to be registered, whereas paragraphs (5) and (6) of Article IV do not provide for applications by new employees. Secondly, the Crown contends that, even if paragraph (4) does apply to new employees, it is directory only. Finally, the Crown contends that, in any event, any such breach of the By-law by the City officials does not confer any rights against the Crown. I agree, for those reasons, that the suppliant has no right against the Crown by reason of the fact that no copy of the By-law was given to him. I also refer to the provision of the Group Annuity Contract that "the Government shall have no responsibility for the Plan except as expressly provided in this Contract" as an additional reason why the suppliant cannot found his claim for relief on the alleged breach of Article IV of the By-law.

The suppliant's position, while put on a number of different bases, is that

- (a) the arrangements represented by the transactions outlined above are a nullity, and
- (b) the suppliant is entitled therefore to have returned to him the "Employee Payments" made to the Crown by the City on his behalf.

The various grounds on which it is contended that the pension plan arrangements are a nullity may be summarized as follows:

- (a) the annuity contract was a *uberrimae fidei* contract under which the Crown and the City had a duty to advise the suppliant of all the terms of the contract before he elected to participate and failure to have so informed him vitiated the contract at his option;
- (b) there is a trust of the money paid to the Crown for the suppliant and the "breach" of the By-law defeated the trust;
- (c) the annuity contract is an insurance contract subject to the *Ontario Insurance Act* and is vitiated by failure to comply with the requirements of that statute that all the terms of the policy must be in a policy delivered to the insured;
- (d) the *Government Annuities Act* is beyond the power of Parliament and void;

- (e) the Group Annuities Contract is void because it was never executed on behalf of the City pursuant to an appropriate authorizing by-law;
- (f) the suppliant's participation in the contract was void because he was coerced into joining by a threat of dismissal if he did not participate.

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The only ground, of those enumerated in the immediately preceding paragraph, that causes me any difficulty is the contention that the *Government Annuities Act* is *ultra vires*. There is no doubt, in my view, that the Group Annuity Contract was duly authorized and executed. Similarly, there is no question that the suppliant's participation in the plan was properly made a condition to his employment as a police constable. Any lack of knowledge on his part of the terms of the plan was not such as to affect the validity of his status as a registered member of the plan. Regardless of what his rights might have been if he had insisted on having a copy of the By-law before agreeing to participate in the plan, it cannot operate to vitiate his participation when the failure to give him a copy is first raised after he left the employment of the City. Finally, if the *Government Annuities Act* is a valid exercise of Parliament's legislative authority, the Crown, in exercising the authority conferred thereby, is not subject to the provisions of the *Ontario Insurance Act*, which, as far as I am aware, is not expressed to be binding on Her Majesty. In any event, when a valid federal enactment comes in conflict with provincial legislation, the federal enactment prevails. See *Attorney General for Ontario v. Attorney General for the Dominions*<sup>1</sup> per Lord Watson, at page 366. This is not a case where the federal statute impliedly adopts the laws of the province as part of the federal enactment as was done, for example, by section 18(c) of the *Exchequer Court Act*. See *The King v. Desrosiers*<sup>2</sup> per The Chief Justice, at page 78.

I must, therefore, consider the submission that the *Government Annuities Act* is *ultra vires*.

The *Government Annuities Act* was enacted by Parliament as chapter 5 of the Statutes of Canada, 1908. That Act gives as the statutory reason for the enactment that "it is in the public interest that habits of thrift be promoted and

<sup>1</sup> [1896] A.C. 348.

<sup>2</sup> (1908) 41 S.C.R. 71.



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that the people of Canada be encouraged and aided thereto so that provision may be made for old age" and that "it is expedient that further facilities be afforded for the attainment of the said objects". Various amendments have been made to the Act since that time but it would not appear that any of them are such as to change the "pith and substance" of the Act in so far as may be relevant to determining whether it is a law in relation to a matter that falls within section 91 of the *British North America Act*.

The "further facilities" afforded to the people of Canada by the *Government Annuities Act* to promote habits of thrift "so that provision may be made for old age" were, as indicated earlier in this judgment, arrangements under which the Government of Canada sold small annuities to persons domiciled or resident in Canada. The effect of the statute is such that when a person has paid in one or more payments under an annuity contract, he cannot change his mind and get his money back but must wait and receive the annuity that he has purchased. (This is subject to an exception when the money paid is not sufficient to buy an annuity under the Act. There are also circumstances in which money is repayable on the death of the annuitant.)

The operations under the *Government Annuities Act* differ from the operations of a person in private business selling annuities in that

- (a) the object of the operations under the *Government Annuities Act* is not to make profit but to promote thrift so that provision may be made for old age, and
- (b) the annuities sold under the *Government Annuities Act* cannot be rescinded by agreement between the purchaser and the seller as they could be if the transaction were one between subject and subject.

Otherwise, the operations of the Government under the *Government Annuities Act* do not differ in any material respect from that of any private person in the annuities business.

The suppliant supported his contention that the *Government Annuities Act* is *ultra vires* by reference to the line of cases that has established that regulation of the contract of insurance and the insurance trade or business is a matter, in each province, within the exclusive jurisdiction of the provincial legislature. He referred to *Citizens' Insurance*

*Company of Canada v. Parsons*<sup>1</sup>; *Attorney-General for Canada v. Attorney-General for Alberta*<sup>2</sup>; *Attorney-General for Ontario v. Reciprocal Insurers*<sup>3</sup>; and *In re The Insurance Act of Canada*<sup>4</sup>. He might also have referred to *Reference as to Validity of Section 16 of the Special War Revenue Act*<sup>5</sup>.

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It is well established that legislation in relation to the regulation, or prohibition, of “individual forms of trade and commerce confined to the province” is not included in Parliament’s power under section 91(2) of the *British North America Act* to make laws in relation to the “Regulation of Trade and Commerce”. See *Canadian Federation of Agriculture v. Attorney-General for Quebec*<sup>6</sup> per Lord Morton of Henryton at pages 192 to 195.

Furthermore, it would not seem that Parliament can, by an Act applicable to all Canada, make laws “in relation to matters which in each province are substantially of local or private interest” unless such matters fall within an enumerated head of section 91. See *Attorney-General for Ontario v. Attorney-General for the Dominion*<sup>7</sup> per Lord Watson at pages 360-1.

However, the *Government Annuities Act* does not purport to be a law in relation to the annuities trade in Canada and I am satisfied that its validity is not determined by the authorities to which I have referred.

What the *Government Annuities Act* does is to authorize the Government of Canada, or more precisely, Her Majesty acting upon the advice of Her Federal Ministers, to enter into contracts under which payments are made to Her Majesty in consideration of Her Majesty undertaking to pay annuities to persons resident or domiciled in Canada, the avowed object of which activity is not to make a profit but is to provide further facilities for the promotion of habits of thrift among the people of Canada so that provision may be made for old age. While, therefore, the operations that the Government of Canada is authorized to carry on are operations that are the ordinary activities of persons engaged in a business that is subject to the legislative jurisdiction of the provincial legislatures, the objective is quite different from that pursued by private business.

<sup>1</sup> (1881) 7 A.C. 96.

<sup>2</sup> [1916] 1 A.C. 588.

<sup>3</sup> [1924] A.C. 328.

<sup>4</sup> [1932] A.C. 41.

<sup>5</sup> [1942] S.C.R. 429

<sup>6</sup> [1951] A.C. 179.

<sup>7</sup> [1896] A.C. 348.

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It would appear, therefore, that the *Government Annuities Act* is valid if

- (a) Parliament may authorize the Government of Canada to engage in a business, the regulation of which is within the exclusive legislative jurisdiction of a provincial legislature, or
- (b) Parliament may, by the means adopted by this law, enact a law to provide further facilities for the promotion of thrift among the Canadian people so that provision may be made for old age.

The relevant provisions of the *British North America Act* are as follows:

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the fore-going Terms of this Section, it is hereby 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 Subject next herein-after enumerated; that is to say,—

\* \* \*

1A. The Public Debt and Property.

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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.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

\* \* \*

13. Property and Civil Rights in the Province.

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16 Generally all Matters of a merely local or private Nature in the Province.

Whether the “pith and substance” of the *Government Annuities Act* be the authorization of annuity contracts between the Crown and the subject or the provision of further facilities for the promotion of thrift among the Canadian people so that provision may be made for old age, I am of opinion that it does not fall under Head 1A of section 91 and no other head of section 91 has been suggested as supporting this legislation. If the “matter”

in relation to which that legislation was made does not fall within any of the enumerated heads of section 91, the sole question is whether that "matter" falls within any of the enumerated heads of section 92. If it does, the legislation is beyond the powers of Parliament and, if it does not, then it is a valid enactment. Parliament is authorized by section 91 to make laws in relation to any "matter" not coming within the classes of subjects assigned exclusively to the legislatures of the provinces and it has not been suggested that there is any relevant class of matter assigned exclusively to the legislatures of the provinces elsewhere than in section 92.

I am of opinion that the *Government Annuities Act* is not an Act the pith and substance of which is to enable the Government of Canada to carry on business of a class that is subject to regulation exclusively by the provincial legislature. Whether Parliament can authorize the federal executive to carry on such a business, or conversely, whether a provincial legislature can authorize the provincial executive to carry on a business that is subject to regulation exclusively by Parliament, is a question of difficulty and importance concerning which, as far as I am aware, there is no authority. Having regard to the view that I have formed concerning the *Government Annuities Act*, I need express no opinion on that question.

The pith and substance of the *Government Annuities Act*, as I understand that Act, is that the federal executive is authorized to enter into contractual relations, with persons who desire to enter into such relations, of a kind designed to promote thrift among the Canadian public so that provision may be made for old age. The question I have to decide is whether this is a law in relation to "property and civil rights in the provinces" or in relation to a matter "of a merely local or private nature in the province".

Some help, in answering this question, may be found in the decision of the Judicial Committee of the Privy Council in *Attorney-General for Canada v. Attorney-General for Ontario*<sup>1</sup>, where Lord Atkin dealt with one of the arguments used to support the *Employment and Social Insurance Act*, at page 366, as follows:

<sup>1</sup> [1937] A.C. 355.

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It only remains to deal with the argument which found favour with the Chief Justice and Davis J, that the legislation can be supported under the enumerated heads, 1 and 3 of s 91 of the British North America Act, 1867 (1) The public debt and property, namely (3) The raising of money by any mode or system of taxation Shortly stated, the argument is that the obligation imposed upon employers and persons employed is a mode of taxation that the money so raised becomes public property, and that the Dominion have then complete legislative authority to direct that the money so raised, together with assistance from money raised by general taxation, shall be applied in forming an insurance fund and generally in accordance with the provisions of the Act

That the Dominion may impose taxation for the purpose of creating a fund for special purposes, and may apply that fund for making contributions in the public interest to individuals, corporations or public authorities, could not as a general proposition be denied Whether in such an Act as the present compulsion applied to an employed person to make a contribution to an insurance fund out of which he will receive benefit for a period proportionate to the number of his contributions is in fact taxation it is not necessary finally to decide It might seem difficult to discern how it differs from a form of compulsory insurance, or what the difference is between a statutory obligation to pay insurance premiums to the State or to an insurance company But assuming that the Dominion has collected by means of taxation a fund, it by no means follows that any legislation which disposes of it is necessarily within Dominion competence

It may still be legislation affecting the classes of subjects enumerated in s 92, and, if so, would be ultra vires In other words, Dominion legislation even though it deals with Dominion property, may yet be so framed as to invade civil rights within the Province, or encroach upon the classes of subjects which are reserved to Provincial competence. It is not necessary that it should be a colourable device, or a pretence. If on the true view of the legislation it is found that in reality in pith and substance the legislation invades civil rights within the Province, or in respect of other classes of subjects otherwise encroaches upon the provincial field, the legislation will be invalid To hold otherwise would afford the Dominion an easy passage into the Provincial domain. In the present case, their Lordships agree with the majority of the Supreme Court in holding that in pith and substance this Act is an insurance Act affecting the civil rights of employers and employed in each Province, and as such is invalid.

I conclude from this that, in the view of the learned law lords constituting the Judicial Committee at that time, Parliament may employ monies raised by taxation "for making contributions in the public interest to individuals, corporations or public authorities" provided that the law enacted for that purpose is not so framed as to "encroach upon the classes of subjects which are reserved to Provincial competence".

The *Government Annuities Act* is not a law raising money by taxation. However, if Parliament may apply

money raised by taxation “for making contributions in the public interest to individuals, corporations or public authorities”, I am of opinion that Parliament may authorize the Crown to enter into contracts with individuals in circumstances that do not necessarily involve the expenditure of monies raised by taxation where the dominating reason for the scheme is the “public interest”. Here Parliament expressly declared that the scheme was “in the public interest” and there are no circumstances that would constrain the Courts to hold that that declaration is colourable. (It must be recognized that it is inherent in the scheme that the monies payable by way of annuity may, depending on experience, exceed the payments received for the annuities and, indeed, that they probably will, having regard to the interest allowance in the calculation of annuities, and that, to that extent the statute does involve the expenditure of monies raised by taxation.)

The only remaining question is whether, as in the case of the *Employment and Social Insurance Act*, the *Government Annuities Act* has been so framed as to invade civil rights within the province or otherwise to encroach upon the classes of subjects which are reserved to provincial competence. The *Employment and Social Insurance Act* was “an insurance Act affecting the civil rights of employers and employees in each province” and as such was invalid. The *Government Annuities Act* is not an insurance scheme nor does it affect the civil rights of any person. It merely enables any person who desires to do so to enter into a contract with the Crown that is designed to promote thrift in such a way that provision will be made for old age. I am of opinion that it does not encroach upon any of the classes of subjects reserved to the provincial legislatures.

For the above reasons, I am of opinion that the *Government Annuities Act* is *intra vires* and that there is no basis for the suppliant’s claim that the Crown holds monies received from him otherwise than subject to and in accordance with Group Annuity Contract No. G. 729.

Having come to that conclusion, I do not need to decide whether the suppliant would have had a legal right against the Crown for repayment of his contributions if the arrangements under which the Crown had received them were, in law, null and void. One of the traditional purposes of the Petition of Right is, however, to recover money or other

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property of the suppliant that is in the possession of the Crown. See Halsbury's Laws of England, 2nd Ed., Vol. 9, page 688, and *Miller v. The King*<sup>1</sup> at page 178.

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There will therefore be judgment that the suppliant is not entitled to any of the relief sought by the Petition of Right and that the respondent is entitled to costs.

*Judgment accordingly.*