

- (b) action would have to be brought in the Exchequer Court entailing greater expense, especially where small balances were involved, than suit in the local provincial courts.
- (c) no claim could be made for interest in excess of twenty years whereas the present section 92 contains no such limitation.

#### *Bona Vacantia*

4. The right of the Crown in the right of the Province to bona vacantia is limited to goods and chattels situate in the Province. An unclaimed bank deposit in a bank in Alberta belonging to an intestate dying without heirs becomes forfeit to the Crown or, in Alberta, to the University of Alberta, by virtue of the Ultimate Heir Act, R.S.A. 1942, Chapter 213. After transfer of such deposit to the Bank of Canada the right of the Province of Alberta to claim the deposits as bona vacantia would be defeated, at least in cases where the transfer is made before the death of the depositor.

#### *Succession Duty*

5. In *Provincial Treasurer of Alberta vs. Kerr* 1933 A.C. 710 the Judicial Committee of the Privy Council held that a Province was not entitled to impose taxation in respect of personal property locally situate outside the Province. As in the case of bona vacantia, the right which the Province now has to levy succession duty upon bank deposits lying dormant in Alberta branch banks will be taken away, if the proposed section 92 is enacted.

#### *Vacant Property Statutes*

6. Alberta has no Vacant Property Act such as Chapter 28 of the Statutes of Quebec, 1939, and Chapter 57 of the Statutes of Manitoba, 1940. The Quebec Statute has been held to be valid by the Quebec Courts and is now under appeal to the Judicial Committee of the Privy Council. The Attorney General for Alberta desires to retain the full legislative rights of the Province to enact legislation in the nature of the Vacant Property statutes.

#### *Constitutional Validity of Section 92*

7. The foregoing observations are made upon the assumption that the proposed section 92 is intra vires Parliament, and the attention of the Committee has been called to the prejudice which in that event would ensue to the Crown in the right of the Province.

It is submitted, however, that the proposed legislation which discharges the bank from its liability to its depositor affects contractual rights of persons resident in Alberta and deals with property situate in Alberta. The legislative power over property and civil rights in the Province and over matters of a purely local and private nature is assigned exclusively to the Provincial Legislature under section 92, sub-heads 13 and 16 of the British North America Act. Accordingly the legislation is beyond the legislative competence of Parliament. The legislation cannot be said to be necessarily incidental to the legislative power of Parliament over banks and banking.

It is submitted furthermore that according to the principles of Private International Law any proviso to the proposed Section 92 as suggested by Counsel for the Attorney General for Quebec declaring that the section should be deemed not to affect the situs of the debt represented by an unclaimed bank deposit would be ineffective because notwithstanding such proviso the situs would have been changed not by virtue of the legislation itself but under the well known principles of Private International Law. See *The King vs.*

#### *National Trust Company, 1933, S.C.R. 670.*

8. It is submitted on behalf of the Attorney General for Alberta that in view of the foregoing considerations as to the interference with contractual