

ALBERTA'S CORPORATIONS TAXATION ACT

Legal Authority is of Opinion that Portion of Act is Invalid

Upon the Alberta corporation taxation act and the amendments which impose an annual tax of 20 cents per \$1,000 on the authorized capital of every company, not otherwise taxed under the act, whose authorized capital exceeds \$20,000, and which transacts business in Alberta, the total annual tax not to exceed \$500, and provides that the fact that a company is in default in the payment of its tax may be pleaded as a defence to any action brought by the company, as well as that no registrar of land titles shall register any instrument made by or in favor of any company in default, the Canadian Manufacturers Association has obtained the legal opinion of Mr. F. W. Wegenast, Toronto, who states that the validity of the amendments may be considered in relation to (a) companies locally incorporated; (b) companies incorporated by other provinces; (c) companies incorporated by the Dominion.

Three Classes of Incorporation.

"(a) As regards companies locally incorporated, the amendments are probably valid.

"(b) As regards companies incorporated by other provinces, it is arguable that the legislation is an attempt to tax property outside the province. But as companies of other provinces are entitled to recognition only upon such terms as the Alberta legislation may impose, it may be that the legislation is valid as embodying one of the conditions of the recognition of the right of a company incorporated by another province to transact business in Alberta.

"(c) As regards companies incorporated by the Dominion and authorized to carry on business in all the provinces, there are features of the amendments which are, in my opinion, *ultra vires* of the provincial legislature and which seem to me to have the effect of rendering the tax invalid. As in other constitutional cases, something will depend upon the facts of the concrete case upon which the issue is raised. For this reason it would be easier to advise upon a set of concrete facts with respect to a particular company.

Property Outside Province.

"The following features appear to support the view that the amendments are *ultra vires*—

"1. The basis of taxation is the authorized capital of the company regardless of the amount paid-up or the amount employed in the province. In *Bank of Toronto vs. Lambe*, 12 A. C. 575, the privy council upheld a provincial tax upon banks based upon their paid-up capital and the number of branches in the province. But the legislation in question goes a good deal farther; and it would be invalid as an attempt to tax property outside the province and as a clog upon the capitalization authority conferred by the Dominion.

"2. From the standpoint of property and business in the province, it would be altogether inequitable in its application to different companies. A company with a relatively small authorized capital might have all of it paid up and employed in the province, while a company with a large authorized capital might have a relatively small portion paid up and a still smaller portion employed in the province. This inequity might not be bad in itself,—that is to say, it may not be *ultra vires* of a provincial legislature to tax inequitably, but the inequality may be regarded as indicating an ulterior object—in this case to challenge corporate rights conferred by the Dominion and make their exercise conditional on compliance with provincial requirements.

Penalty of Outlawry.

"3. For non-payment of the "tax," the act purports to incapacitate companies from maintaining actions in the courts. The power to sue and be sued is expressly conferred on all Dominion companies by the Interpretation Act of Canada, and cannot be withheld as a penalty for non-payment of a tax. It is not any proper incident of taxation to impose the penalty of outlawry upon those who do not pay the tax. In other words, that part of the act dealing with the defence of actions is not taxation, and is therefore invalid as an accompaniment of the exercise of the taxing power.

"4. The act purports to interfere with the registration of title to land by companies who have not paid their "tax." This feature is also invalid as an accompaniment of a taxation measure. The power to acquire and hold real estate is

expressly given to Dominion companies by section 29 of the companies act, whatever may be the jurisdiction of the provinces with respect to the control of corporations in the matter of holding lands, and the legislation in question is not a *bona fide* exercise of such jurisdiction.

To Circumvent Privy Council.

"5. The concurrence of all the features above mentioned in a single act seem to me to stamp the measure as a palpable attempt to circumvent the decision of the privy council in the *John Deere Plow Company vs. Wharton*. If no single feature were invalid in itself, it appears to me that the courts would regard the collective effect of the legislation as constituting an attempt at interference with the corporate status and capacity of Dominion companies and as such invalid under the decision mentioned."

For these reasons Mr. Wegenast is strongly inclined to regard the whole act,—that is to say, that portion applicable to commercial corporations,—as invalid in relation to Dominion companies, and he states that if the act as a whole is not invalid, at least those portions purporting to take away companies' defences and withholding the right to register documents of title are invalid.

CANADIAN INDUSTRIAL CONDITIONS

Discussing industrial conditions in the monthly commercial letter issued by the Canadian Bank of Commerce, it is noted that very great difficulty is still being experienced in obtaining raw material for the manufacture of articles in general demand. "In many cases the failure of normal sources of supply is a very serious drawback, especially in view of the large orders now being placed by domestic buyers, and in some lines manufacturers have been forced to ask all their customers to reduce their orders or to specify the articles most urgently needed. In volume orders are very much in excess of last year, but in view of the lesser rate of consumption, this is ascribed to speculative buying in anticipation of higher prices.

"The activity in the manufacture of ammunition, which has been reported for some months, is fully maintained in volume by orders now being placed. The result is shown in the increase of exports under the head of iron and steel manufactures. In the fiscal year ending 31st March last these exports aggregated \$49,713,309, as compared with \$11,374,981 in 1914. Of last year's product the United Kingdom took 67 per cent., the United States 10 per cent., and all other countries 23 per cent.

"In the textile industries generally, wherever there is reasonable hope of obtaining a supply of labor, expansion is taking place in the form of additional buildings and plant and on the part of manufacturers unable to obtain labor for existing factories there is a disposition to erect mills in districts where operators can be obtained. The immediate future promises to afford the textile and related industries, all the business that can be handled at a satisfactory margin of profit.

"The additions and improvements now being made to the plants of many manufacturers in the steel and textile industries are designed to serve not only immediate demands but also those of the future, when competition under normal conditions will have to be met. Out of present profits there is a marked disposition to install devices of every description that will increase production on the most economical basis. While the domestic demand in British Columbia for lumber is improving, buyers from the United States are not bidding as freely as they were a few weeks ago. The mills on the eastern slopes of the mountains report an improved demand from the prairie provinces."

ANOTHER UNITED STATES FACTORY HERE

The firm of H. S. Hall, Jersey City, N.J., have rented a factory building in London, Ont., as a Canadian branch establishment. The company, which manufactures silk and chamoisette gloves, and lisle thread, will next year build a factory at London, at an estimated cost of \$25,000. The Canadian representative of the company is Mr. Charles Phillips, 52 Bay Street, Toronto.