

9, 1937

In the Privy Council.

No. 103 of 1936.

ON APPEAL FROM THE SUPREME COURT  
OF CANADA.

IN THE MATTER of a Reference as to whether the Parliament of Canada had legislative jurisdiction to enact The Natural Products Marketing Act, 1934, being Chapter 57 of the Statutes of Canada, 1934; and its amending Act, The Natural Products Marketing Act Amendment Act, 1935, being Chapter 64 of the Statutes of Canada, 1935.

BETWEEN

THE ATTORNEY GENERAL OF BRITISH COLUMBIA *Appellant*

AND

THE ATTORNEY GENERAL OF CANADA AND THE  
ATTORNEYS GENERAL OF THE PROVINCES OF  
ONTARIO, QUEBEC, NEW BRUNSWICK, MANITOBA,  
ALBERTA AND SASKATCHEWAN - - - *Respondents.*

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CASE FOR THE RESPONDENT  
THE ATTORNEY GENERAL OF CANADA.

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1. This is an appeal by special leave from the judgment of the Supreme Court of Canada pronounced on the 17th day of June, 1936, answering a question referred to the said Court for hearing and consideration by Order of His Excellency the Governor General in Council, dated November 5th, 1935, P.C. 3460, pursuant to the provisions of Section 55 of the Supreme Court Act, touching the constitutional validity of the Natural Products Marketing Act, 1934, and its amending Act of 1935.

RECORD.  
pp. 74-75.  
pp. 56-57.  
pp. 3-4.

2. The question referred to Court was as follows :—

10 Is The Natural Products Marketing Act, 1934, as amended by The Natural Products Marketing Act Amendment Act, 1935, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?

p. 4,  
ll. 13-16.

Case for the Respondent The  
Attorney-General of Canada.

RECORD.

3. The full text of the principal Act and of its amending Act, referred to in the said question, will be found in the official prints thereof which are separate documents on this appeal and are attached hereto. The Act provides for the regulation of the marketing, under control of a Dominion Board, of natural products of agriculture or of the forest, sea, lake or river whenever a marketing scheme relating thereto has been submitted to and approved by the Governor in Council after he has been satisfied that the principal market for such natural product is outside the province of production or that some part of the product produced may be exported.

4. The relevant provisions of the British North America Act, 1867, 10 contained in sections 91, 92, 95 and 121 thereof are the following :

“ 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 foregoing 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 20 the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The Public Debt and Property.

2. The Regulation of Trade and Commerce.

3. The raising of Money by any Mode or System of Taxation.

. . . . .

6. The Census and Statistics.

. . . . .

12. Sea Coast and Inland Fisheries.

. . . . .

30

27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

. . . . .

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 RECORD.  
Laws in relation to Matters coming within the Classes of Subjects  
next hereinafter enumerated; that is to say,—

. . . . .  
13. Property and Civil Rights in the Province.  
. . . . .

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

10 “ 95. In each Province the Legislature may make Laws in  
relation to Agriculture in the Province, and to Immigration into the  
Province; and it is hereby declared that the Parliament of Canada  
may from Time to Time make Laws in relation to Agriculture in all  
or any of the Provinces, and to Immigration into all or any of the  
Provinces; and any Law of the Legislature of a Province relative  
to Agriculture or to Immigration shall have effect in and for the  
Province as long and as far only as it is not repugnant to any Act  
of the Parliament of Canada.  
. . . . .

20 “ 121. All Articles of the Growth, Produce, or Manufacture  
of any one of the Provinces shall, from and after the Union, be  
admitted free into each of the other Provinces.”

5. On the hearing of argument on February 3rd and 4th, 1936, before p. 57,  
Duff, C.J. and Rinfret, Cannon, Crocket, Davis and Kerwin, JJ., counsel ll. 7-20.  
were heard on behalf of the Attorney General of Canada as well as on behalf  
of the Attorneys General of the Provinces of Ontario, Quebec, New  
Brunswick, Manitoba, British Columbia, Alberta and Saskatchewan.

6. On the 17th day of June, 1936, as aforementioned, the Court  
delivered judgment, answering the Question referred to the Court as  
30 follows :

“ The statute, in the unanimous opinion of the Court, is *ultra* p. 57,  
*vires.*” ll. 27-28.

7. The unanimous judgment of the Court was delivered by the Chief p. 57,  
Justice of Canada. Upon an elaborate review of the decisions the learned ll. 37-44;  
Chief Justice held that the statute could not be justified as competent pp. 58-73;  
legislation in the exercise of the Dominion Parliament’s exclusive legislative p. 74,  
power in relation to “ the regulation of trade and commerce ” or under its ll. 1-27.  
general authority to make laws “ for the peace, order and good government  
of Canada.” The learned Chief Justice stated that, in effect, this statute  
40 attempted and, indeed, professed, to regulate in the Provinces of Canada,  
by the instrumentality of a commission or commissions appointed under the  
authority of the statute, trade in individual commodities and classes of

RECORD. commodities. The powers of regulation vested in the commissions extended to external trade and matters connected therewith and to trade in matters of interprovincial concern; but also to trade which was entirely local and of purely local concern. Regulation of individual trades, or trades in individual commodities in this sweeping fashion, was not competent to the Parliament of Canada and such a scheme of regulation was not practicable "in view of the distribution of legislative powers enacted by the Constitution Act, without the co-operation of the provincial legislatures" to quote from the judgment of the Judicial Committee in the *Board of Commerce* case, (1922) 1 A.C. at 201. 10

8. Neither was the legislation valid as an exercise of the general authority of the Parliament of Canada under the introductory words in section 91 to make laws "for the peace, order and good government of Canada." The legislation admittedly affected civil rights and interfered with and controlled and regulated the exercise in every one of the provinces of the civil rights of the people in those provinces; it was said that the real subject matter of the legislation was not those civil rights which were controlled and regulated but something else. The initial clause of section 91 had been many times considered. There was no dispute now that the exception which excluded from the ambit of the general power all matters assigned to the exclusive authority of the legislatures must be given its full effect. Nevertheless, it had been laid down that matters normally comprised within the subjects enumerated in section 92 might, in extraordinary circumstances, acquire aspects of such paramount significance as to take them outside the sphere of that section. The argument was mainly supported by two sentences in the judgment of the Board in *Attorney General for Ontario v. Attorney General for Canada* (1896) A.C. 348. The learned Chief Justice then proceeded to quote from the judgment of Lord Watson in that case and to review the later decisions. Lord Watson's language was, the learned Chief Justice observed, carefully guarded. He did not say that every matter that attained such dimensions as to affect the body politic of the Dominion fell thereby within the introductory matter of section 91. But he said that "some matters" might attain such dimensions as to affect the body politic of the Dominion and, as the learned Chief Justice thought, the sentence ought to be read having regard to the context, in such manner and degree as might "justify the Canadian Parliament in passing laws for their regulation or abolition." So, in the second sentence, he was not dealing with all matters of "national concern" in the broadest sense of those words, but only those which were matters of national concern "in such sense" as to bring them within the jurisdiction of the Parliament of Canada. The necessity for Lord Watson's admonition became more clear when they recalled that there was only one case in which the Judicial Committee had held that legislation with regard to matters which were admittedly *ex facie* civil rights within a province had by reason of exceptional circumstances acquired aspects and relations bringing them within the ambit of the introductory clause. That case was *Fort Frances Pulp & Power Co. v. Manitoba Press* (1923) A.C. 695. 40

On behalf of the Dominion it was argued that the judgment in the *Aeronautics* Case (1932) A.C. 71 constituted a new point of departure. The effect of that judgment, it seemed to be argued, was that if, in the broadest sense of the words, the matters dealt with were matters of "national concern" matters which "affect the body politic of the Dominion," jurisdiction arose under the introductory clause. One sentence was quoted from the judgment in the *Aeronautics* Case which they would not reproduce because they did not think their Lordships could have intended in that sentence to have promulgated a canon of construction for sections 91 and 92. They said nothing in the judgment in the *Aeronautics* Case to indicate that their Lordships intended to detract from the judicial authority of the decisions in the *Board of Commerce* Case (1922) 1 A.C. 191 and *Snider's* Case (1925) A.C. 396. They were bound, in the learned Chief Justice's view, by the decisions in the *Board of Commerce* Case and *Snider's* Case as well as by the decision in the *Fort Frances* Case and, consistently with those decisions, they did not see how it was possible that the argument now under discussion could receive effect.

9. The Attorney General of Canada submits that the answer given by the Court to the question referred to it is wrong and that the said question should be answered, without qualification in the negative, for the reasons set out in the factum filed on behalf of the Attorney General of Canada in the Supreme Court of Canada and for the following among other

### REASONS

1. Because the legislation is in substance concerned with the regulation of export and interprovincial trade and exerts control over local trade only as a necessary incident of effective regulation of export and interprovincial trade; and the legislation is, therefore, legislation in relation to the regulation of trade and commerce under head 2 of Section 91 of the British North America Act, 1867.
2. Because no provincial legislature being competent to enact such legislation, it necessarily falls within the legislative competence of the Parliament of Canada.
3. Because the legislative jurisdiction of the Parliament of Canada to enact the legislation can be justified either under the opening words of Section 91 or under one or more of the subsections thereof and also under section 95 of the British North America Act, 1867.
4. Because the legislation, as to the provisions authorizing the imposition of charges and tolls is legislation of a necessarily incidental or ancillary character and is, moreover, legislation in relation to the raising of money by any mode or system of taxation.

5. Because the legislation, as to some of the provisions of the principal Act (notably Section 4 (1) (g) and Part II thereof) is legislation of a necessarily incidental or ancillary character and is, moreover, legislation in relation to statistics and to matters which prior to 1867 were dealt with by the criminal law.

N. W. ROWELL.

L. S. ST. LAURENT.

C. P. PLAXTON.

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CASE FOR THE RESPONDENT  
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