

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 being Chapter 57 of the Statutes of Canada 1934, and its amending Act, The Natural Products Marketing Act Amendment Act 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, MANI-  
TOBA, ALBERTA AND SASKATCHEWAN - - *Respondents.*

RECORD OF PROCEEDINGS.

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ON APPEAL FROM THE SUPREME COURT  
OF CANADA.

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IN THE MATTER of a Reference as to whether the Parliament of Canada had legislative jurisdiction to enact the Natural Products Marketing Act being Chapter 57 of the Statutes of Canada 1934, and its amending Act, The Natural Products Marketing Act Amendment Act 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, MANI-  
TOBA, ALBERTA AND SASKATCHEWAN - - *Respondents.*

RECORD OF PROCEEDINGS.

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No. 1.

Order of Reference by the Governor-General in Council.

P.C. 3460

CERTIFIED to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 5th November, 1935.

The Committee of the Privy Council have had before them a report, dated 31st October, 1935, from the Minister of Justice, referring to the Natural Products Marketing Act, 1934, being Chapter 57 of the Statutes of  
10 Canada, 1934, and according to its long title "An Act to improve the methods and practices of marketing of natural products in Canada and in

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Order of Reference by the Governor-General in Council, 5th November 1935.

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Reference  
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export trade, and to make further provision in connection therewith” and to its amending Act, The Natural Products Marketing Act Amendment Act, 1935, being Chapter 64 of the Statutes of Canada, 1935.

The Minister observes that doubts exist or are entertained as to whether the Parliament of Canada had jurisdiction to enact the said Acts, or either of them in whole or in part, and that it is expedient that the question should be referred to the Supreme Court of Canada for judicial determination.

The Committee, accordingly, on the recommendation of the Minister of Justice, advise that the following question be referred to the Supreme Court of Canada, for hearing and consideration, pursuant to section 55 of the Supreme Court Act,—

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?

E. J. LEMAIRE,  
Clerk of the Privy Council.

*In the  
Supreme  
Court of  
Canada.*

No. 2.

**Order of Supreme Court of Canada for Inscription of References  
Nos. 1, 2, 3, 4 and 5, and Directions.**

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No. 2.  
Order for  
inscription  
of Refer-  
ences and  
Directions,  
14th Nov-  
ember 1935.

IN THE SUPREME COURT OF CANADA

BEFORE : The Right Honourable the Chief Justice of Canada

THURSDAY, the 14th day of November, A.D. 1935.

IN THE MATTER of the questions referred to the Supreme Court of Canada as to whether the Parliament of Canada had legislative jurisdiction to enact

(a) Section 498A of the Criminal Code, being Chapter 56 of the Statutes of Canada, 1935;

(b) The Dominion Trade and Industry Commission Act, 1935, 30 being Chapter 59 of the Statutes of Canada, 1935;

(c) The Employment and Social Insurance Act, being Chapter 38 of the Statutes of Canada, 1935;

(d) The Weekly Rest in Industrial Undertakings Act, being Chapter 14 of the Statutes of Canada, 1935; The Minimum Wages Act, being Chapter 44 of the Statutes of Canada, 1935; and The Limitation of Hours of Work Act, being Chapter 63 of the Statutes of Canada, 1935;

(e) 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.

*In the  
Supreme  
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inscription  
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ences and  
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ember 1935  
—continued.

UPON the application of the Attorney-General of Canada for directions as to the inscription for hearing of the cases relating to the questions herein referred by His Excellency the Governor-General in Council for hearing and consideration by the Supreme Court of Canada pursuant to the provisions of section 55 of the Supreme Court Act, R.S.C. 1927, chapter 35; upon hearing  
10 read the Orders in Council, dated November 5, A.D. 1935, Nos. P.C. 3451, 3452, 3453, 3454 and 3460, respectively, setting forth the said questions; upon hearing read the affidavits of Charles P. Plaxton filed herein; and upon hearing what was alleged by counsel for the Attorney-General of Canada, and for the Attorneys-General of the Provinces of Ontario, Quebec, New Brunswick, Prince Edward Island, Manitoba, British Columbia, Saskatchewan and Alberta, respectively; the Attorney-General of the Province of Nova Scotia not being represented on such application, by counsel, although duly notified.

IT IS ORDERED that the said References be inscribed for hearing at the  
20 present sittings of this Honourable Court and be heard the 15th day of January, A.D. 1936.

AND IT IS FURTHER ORDERED that the respective Attorneys-General of the several Provinces of Canada be notified of the hearing of the argument upon the said References by sending to each of them by registered letter on or before the 1st day of December, A.D. 1935, a Notice of Hearing of the said References together with a copy of this Order.

AND IT IS FURTHER ORDERED that one printed Case for all of the said References be filed on or before the 1st day of December, A.D. 1935, and that three copies thereof be delivered to the Ottawa Agents of the Attorneys-  
30 General of the several Provinces of Canada.

AND IT IS FURTHER ORDERED that the Attorney-General of Canada and the Attorneys-General of the several Provinces of Canada be at liberty to file separate factums of their respective arguments on each of said References, on or before the 10th day of January, A.D. 1936, and that the said Attorneys-General be at liberty to appear personally or by counsel upon the hearing of the said References.

(Sgd.) L. P. DUFF,  
C.J.

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*In the  
Supreme  
Court of  
Canada.*

No. 3.

Notice of Hearing of References Nos. 1, 2, 3, 4, and 5.

IN THE SUPREME COURT OF CANADA.

No. 3.  
Notice of  
hearing of  
References,  
18th Nov-  
ember 1935.

IN THE MATTER of the questions referred to the Supreme Court of Canada as to whether the Parliament of Canada had legislative jurisdiction to enact

(a) Section 498A of the Criminal Code, being Chapter 56 of the Statutes of Canada, 1935;

(b) The Dominion Trade and Industry Commission Act, 1935, being Chapter 59 of the Statutes of Canada, 1935;

(c) The Employment and Social Insurance Act, being Chapter 38 of the Statutes of Canada, 1935;

(d) The Weekly Rest in Industrial Undertakings Act, being Chapter 14 of the Statutes of Canada, 1935; The Minimum Wages Act, being Chapter 44 of the Statutes of Canada, 1935; and The Limitation of Hours of Work Act, being Chapter 63 of the Statutes of Canada, 1935;

(e) 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.

TAKE NOTICE that the References herein have, by order of the Right Honourable the Chief Justice of Canada, dated the 14th day of November, A.D. 1935, been inscribed for hearing at the present sittings of the Supreme Court of Canada, and to be heard on the 15th day of January, A.D. 1936; and you are hereby notified of the hearing of the said References pursuant to the terms of the said Order, copy of which is hereto annexed.

Dated at Ottawa, this 18th day of November, A.D. 1935.

W. STUART EDWARDS,

Solicitor for the Attorney-General of Canada. 30

To : The Attorneys-General  
of the several Provinces of Canada.

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## No. 4.

## Factum of the Attorney-General of Canada.

*In the  
Supreme  
Court of  
Canada.*

## PART I

## STATEMENT OF CASE.

No. 4.  
Factum  
of the  
Attorney-  
General of  
Canada.

1. By Order of His Excellency the Governor-General in Council, dated 5th November, 1935 (P.C. 3460) (Record p. 4), the following question was referred to the Supreme Court of Canada for hearing and consideration, pursuant to s. 55 of the Supreme Court Act:—

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?”

2. The texts of the principal Act and of its amending Act are contained in official prints thereof which will be found attached to this factum, pursuant to the direction of the Right Honourable the Chief Justice of Canada.

3. The principal Act by s. 3 authorizes the Governor in Council to establish a board, consisting of such number of persons as he may from time to time determine, to be known as the Dominion Marketing Board, to 20 regulate the marketing of natural products as in the Act provided.

By s. 2 (c) “‘marketing’ includes buying and selling, shipping for sale or storage and offering for sale.”

By s. 2 (e) as amended “‘natural product’ includes animals, meats, eggs, wool, dairy products, grains, seeds, fruit and fruit products, vegetables and vegetable products, maple products, honey, tobacco, lumber and such other natural product of agriculture and of the forest, sea, lake or river and such article of food or drink wholly or partly manufactured or derived from any such product, and such article wholly or partly manufactured or derived from a product of the forest as may be designated by the Governor 30 in Council.”

The powers of the Board are made exercisable in respect of a “regulated product”; and this expression is defined by sec. 2 (g) as follows:—

(g) “regulated product” means a natural product to which a scheme approved under this Act relates, but does not include

(i) in case the said scheme relates only to the product of a part of Canada, such product in so far as it is produced outside that part of Canada;

(ii) in case the said scheme relates only to the product marketed outside the province of production, such product 40 in so far as it is marketed within the province of production;

(iii) in case the said scheme relates only to the product exported, such product in so far as it is not exported.

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4. The powers of the Board are set forth in broad terms in par. (a) of sec. 4, ss. 1 of the Act as follows :—

“ 4. (1) The Board shall, subject to the provisions of this Act, have power

“(a) to regulate the time and place at which, and to designate the agency through which the regulated product shall be marketed, to determine the manner of distribution, the quantity and quality, grade or class of the regulated product that shall be marketed by any person at any time, and to prohibit the marketing of any of the regulated product 10 of any grade, quality or class.”

Then follows a series of paragraphs in which are more specifically described the Board's functions and powers. To exempt from any determination or order any person or class of persons engaged in the production or marketing of the regulated product or any class, variety or grade of such product; to conduct a pool for the equalization of returns received from the sale of the regulated product and to compensate any person for loss sustained by withholding from the market or forwarding to a specified market any regulated product pursuant to an order of the Board, except in specified cases; to compensate any person in respect of any shipment made pursuant 20 to any determination or order of the Board to a country whose currency is depreciated, in relation to Canadian currency, for loss due to such depreciation; to assist by grant or loan the construction or operation of facilities for preserving, processing, storing, or conditioning the regulated product and to assist research work relating to the marketing of such product; to require any or all persons engaged in the production or marketing of the regulated product to register their names, addresses and occupations with the Board, or to obtain a licence from the Board, subject to cancellation for violation of any provision of the Act or regulation made thereunder; to require returns of full information relating to the production and marketing 30 of the natural product from all persons engaged therein and to inspect the books and premises of such persons; to pay the operating and necessary expenses of the Board; to co-operate with any board or agency established to regulate the marketing of any natural product of such province and to act conjointly with any such provincial board or agency.

In addition, by sec. 4, ss. 2 to 8, inclusive, the Board is empowered whenever a scheme for regulation by a local board has been approved, to authorize the local board to exercise such of the powers of the Board outlined in s. 4 as may be necessary for the proper enforcement of the scheme of regulation, and at any time to withdraw such authority from the local 40 Board; to require the local Board to furnish full information from time to time relating to the production and marketing of the regulated product and to advise the local board in all matters relating to the exercise of its powers; to impose (whether the Board be exercising the powers conferred by this Act or by provincial legislation or whenever the board or a local board co-operates or acts conjointly with any provincial board or agency) for the purposes of any scheme of regulation, charges and tolls in respect



of the marketing of the whole or any part of the regulated product which shall be payable by such persons engaged in the production or marketing of the regulated product as the Board decides to authorize the local board or such provincial board or agency to act as its agent to collect and disburse the charges or tolls imposed; to utilize, or authorize the local board or provincial board or agency to utilize, the fund created by charges or tolls so imposed for the purposes of such scheme of regulation including the creation of reserves; and any charge or toll so imposed by the Board is declared to be a debt due to the Board recoverable by legal action.

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10 5. The "schemes" to which the Act applies are such marketing schemes as are approved by the Governor in Council and s. 5, ss. (4) provides as follows:—

(4) Before any scheme is approved the Governor in Council shall be satisfied,

(a) that the principal market for the natural product is outside the province of production; or

(b) that some part of the product produced may be exported.

6. Under s. 5, ss. (1) schemes may be submitted for approval by a representative number of persons engaged in the production and marketing  
20 or the production or marketing of a natural product, or under s. 9 the Minister designated by the Governor in Council to administer the Act may propose a scheme for the marketing or the regulation of the marketing of a natural product in inter-provincial or export trade whenever he is satisfied that the trade and commerce in such product is injuriously affected by marketing conditions through the lack of a local board.

7. S. 10 provides that, whenever a scheme of regulation relates to an area of production which is confined within the limits of a province, the Governor in Council may authorize any marketing board or agency established under the law of that province to be, and to exercise the functions  
30 of, a local board with reference to the said scheme.

S. 11 empowers the Board to exercise any power conferred upon it by or pursuant to provincial legislation with reference to the marketing of a natural product and to authorize the local board to exercise any such power.

In point of fact each of the nine Provinces in 1934 passed statutes to enable their respective governments to give effect, in their respective Provinces, to the provisions of the Dominion Act and regulations made thereunder. These provincial statutes are set out in the appendix to this factum.

40 8. S. 12 authorizes the Governor in Council to regulate or restrict the importation into Canada of any natural product which enters Canada in competition with a regulated product or regulate or restrict the exportation from Canada of any natural product.

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9. Part II of the Act (ss. 16 to 26) provides for investigations by the Minister at the request of the Board or upon his own initiative,

“into the cost of production, wages, prices, spread, trade practices, methods of financing, management policies, grading, transportation and other matters in relation to the production and marketing, adaptation for sale, processing or conversion of any natural or regulated product.” (s. 17)

The term “spread” is defined in s. 16 (b) as follows :—

“(b) ‘spread’ means and includes :—

(i) the charge made by any person by way of commission, 10  
flat charge or otherwise for selling any natural or regulated  
product;

(ii) the charge made by any person for the storage, con-  
ditioning, re-conditioning, packing, wrapping or otherwise  
preparing for market any natural or regulated product;

(iii) the difference or spread between the price at which  
any natural or regulated product is purchased and the price  
at which it is sold;

(iv) the difference between the price at which any natural  
or regulated product is purchased and the sale price of the 20  
product resulting from the adaptation for sale, processing  
or conversion of the aforesaid natural or regulated product.”

10. S. 22 provides as follows :—

“22. Every person who, to the detriment or against the interest of the public, charges, receives or attempts to receive any spread which is excessive or results in undue enhancement of prices or otherwise restrains or injures trade or commerce in the natural or regulated product, shall be guilty of an indictable offence and liable to a penalty not exceeding five thousand dollars or to two years’ imprisonment, or if a corporation, to a penalty not exceeding ten thousand dollars.” 30

11. Secs. 23 and 24 provide for prosecutions in a manner similar to that provided for in the Combines Investigation Act.

12. S. 26 of the Act provides as follows :—

“26. If it be found that Parliament has exceeded its powers in the enactment of one or more of the provisions of this Act, none of the other or remaining provisions of the Act shall therefore be held to be inoperative or *ultra vires*, but the latter provisions shall stand as if they had been originally enacted as separate and independent enactments and as the only provisions of the Act; the intention of Parliament being to give independent effect to the 40  
extent of the powers to every enactment and provision in this Act contained.”

PART II.

SUBMISSION OF THE ATTORNEY-GENERAL OF CANADA.

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13. It will be submitted on behalf of the Attorney-General of Canada that these Acts are within the legislative jurisdiction of the Parliament of Canada as being,

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(a) legislation in relation to a matter not coming within the classes of subjects by the British North America Act exclusively assigned to the Legislatures of the provinces, and, therefore, within the legislative jurisdiction of the Dominion Parliament;

10 (b) legislation in relation to the Regulation of Trade and Commerce;

(c) legislation (as to the provisions authorizing the imposition of charges and tolls) of a necessarily incidental or ancillary character, and, moreover, legislation in relation to the raising of money by any mode or system of taxation;

(d) legislation in relation to Agriculture and to Sea Coast and Inland Fisheries; and

20 (e) legislation, as to some of the provisions of the principal Acts (notably s. 4 (1) (g) and Part II thereof), of a necessarily incidental or ancillary character and, moreover, legislation in relation to Statistics and The Criminal Law.

14. *Relevant provisions of British North America Act.*—The relevant provisions of the British North America Act appear to be 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 the Classes of Subjects next hereinafter enumerated; that is to say,—

- 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.

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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 10 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.

95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; 20 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.

121. All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted 30 free into each of the other Provinces.

15. *Governing principles of interpretation.*—In the interpretation of the foregoing provisions of the British North America Act, the following propositions relative to the legislative competence of the Parliament of Canada and of the Provincial Legislatures, respectively, were laid down by the Judicial Committee of the Privy Council in *Attorney-General for Canada v. Attorney-General for British Columbia* (1930) A.C. 111, 118, and reaffirmed in the case of *In re Regulation and Control of Aeronautics in Canada* (1932) A.C. 54, 71, 72, as having been established by the decisions of that Board :—

(1) The legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in s. 91, is of paramount authority, even though it trenches upon matters assigned to the provincial legislatures by s. 92; see *Tennant v. Union Bank of Canada* (1894) A.C. 31.

(2) The general power of legislation conferred upon the Parliament of the Dominion by s. 91 of the Act in supplement of the power to legislate upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench on any of the subjects enumerated in s. 92 as within the scope of provincial legislation, unless these matters have attained such dimensions as to affect the body politic of the Dominion : see *Attorney-General for Ontario v. Attorney-General for the Dominion* (1896) A.C. 348.

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10 (3) It is within the competence of the Dominion Parliament to provide for matters which, though otherwise within the legislative competence of the provincial legislature, are necessarily incidental to effective legislation by the Parliament of the Dominion under a subject of legislation expressly enumerated in s. 91; see *Attorney-General of Ontario v. Attorney-General for the Dominion* (1894) A.C. 189; and *Attorney-General for Ontario v. Attorney-General for the Dominion* (1896) A.C. 348.

20 (4) There can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be *ultra vires* if the field is clear, but if the field is not clear and the two legislations meet the Dominion legislation must prevail; see *Grand Trunk Ry. of Canada v. Attorney-General of Canada* (1907) A.C. 65.

To these propositions may be added the following principles relative to the scheme of self-government for Canada provided by the British North America Act and the nature and scope of the legislative powers confided to the Dominion Parliament by s. 91 :—

30 (a) The powers distributed between the Dominion on the one hand and the provinces on the other hand “ cover the whole area of self-government within the whole area of Canada ” : *Attorney-General for Ontario v. Attorney-General for Canada* (1912) A.C. 571, 581, 583, 584; *Bank of Toronto v. Lambe* 12 A.C. 575, 587; and “ whatever is not thereby (the B.N.A. Act) given to the Provincial Legislatures rests with the Parliament ” : *Bank of Toronto v. Lambe, ibid supra*.

40 (b) The powers so conferred endow the Dominion Parliament and the Provincial Legislatures within their respective spheres with “ authority as plenary and as ample . . . as the Imperial Parliament in the plenitude of its power possessed and could bestow ” : *Hodge v. The Queen*, 9 A.C. 117, 132; *In re The Initiative and Referendum Act* (1919) A.C. 935, 942; *Croft v. Dunphy* (1933) A.C. 156, 163, 164; and “ It is not made a statutory condition that the exercise of such power shall be, in the opinion of a court of law, discreet. In so far as they possess legislative jurisdiction, the discretion committed to the parliaments, whether of the Dominion or of the provinces, is unfettered ” : *Union Colliery Company of British Columbia v. Bryden*, (1899) A.C. 580, 584, 585.

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(c) “ While the courts should be jealous in upholding the charter of the Provinces as enacted in s. 92, it must no less be borne in mind that the real object of the Act was to give the central Government those high functions and almost sovereign powers by which uniformity of legislation might be secured on all questions which were of common concern to all the provinces as members of a constituent whole ” : *The Aeronautics Reference* (1932) *A.C.* 54, 70, 71.

(d) “ Once it is found that a particular topic of legislation is among those upon which the Dominion Parliament may competently legislate as being for the peace, order and good government of Canada or as being one of the specific subjects enumerated in s. 91 of the British North America Act, their Lordships see no reason to restrict the permitted scope of such legislation by any other consideration than is applicable to the legislation of a fully Sovereign State ” : *Croft v. Dunphy* (1833) *A.C.* 156, 163.

16. “ *Pith and substance* ” of legislation as a whole of controlling importance.—In determining whether the Acts now in question can receive effect as a lawful exercise of the legislative authority of the Parliament of Canada,

“ The Courts must ascertain the ‘ true nature and character ’ of the enactment: *Citizens’ Insurance Co. v. Parsons* (1881) 7 *A.C.* 96, Vol. 1, p. 267; its ‘ pith and substance ’ : *Union Colliery Co. v. Bryden* (1899) *A.C.* 580, Vol. 1, p. 564; and it is the result of this investigation, not the form alone, which the statute may have assumed under the hand of the draughtsman, that will determine within which of the categories of subject matters mentioned in Secs. 91 and 92 of the legislation falls; and for this purpose the legislation must be ‘ scrutinized in its entirety ’ : *Great West Saddlery Co. v. The King* (1921) 2 *A.C.* 91, 117 ” : *Attorney-General for Ontario v. Reciprocal Insurers* (1924) *A.C.* 328, 337.

17. *The Act is legislation for the Peace, Order and Good Government of Canada.*—It is submitted that The Natural Products Marketing Act, as amended, is, in its pith and substance, legislation for the regulation of the marketing of natural products as defined therein in aspects and for purposes which lie outside of, and transcend, the scope of the classes of matters assigned exclusively to the Provinces. The said Act is, therefore, within the legislative competence of the Dominion Parliament in the exercise of its residuary power to make laws for the peace, order and good government of Canada, in so far as the subject matter does not relate to one or more of the specific classes of subjects enumerated in s. 91 of the British North America Act as particular instances of the general power assigned to the Dominion.

Marketing schemes may be approved by the Governor in Council under the authority either of s. 5 or of s. 9 of the Act. In the case of schemes approved under s. 5, the scheme may relate to the whole of the regulated

product or only to such part as is marketable outside the province of production or as is exported from Canada (s. 5 (4) (f) ); but it is clearly an essential condition of the approval of any scheme under s. 5 (whatever be the scope of the scheme) that the Governor in Council shall be satisfied (a) that the principal market for the natural product is outside the Province of production, or (b) that some part of the product produced may be exported. Schemes may be approved under s. 9 only when the Minister in proposing the scheme and the Governor-General, in approving it, are satisfied that the trade and commerce in a natural product is injuriously affected by marketing conditions through the lack of a local board; and the schemes which may be so proposed and approved are limited to schemes for the marketing or the regulation of the marketing pursuant to s. 4 of the Act of such product in interprovincial and/or export trade.

It is with reference to schemes of the foregoing character—that is to say, essentially involving the regulation of the marketing of natural products in inter-provincial or export trade, that the Dominion Marketing Board (and, by delegation, the local boards) exercise the powers conferred by the Act. No doubt schemes may be approved under s. 5 of the Act which contemplate and require the regulation of the marketing of natural products within, as well as outside, the province of production; but, the dominant object of the Act being the regulation of the marketing of natural products in interprovincial and export trade, it must be assumed that such a scheme would be approved only when control over marketing of a natural product within the province of its production would be a necessary incidental feature of the scheme in order to secure effective regulation of the marketing of such product in interprovincial or export trade.

18. The regulation of the marketing of natural products, in these aspects, is clearly outside the field of provincial legislative jurisdiction. The decisions establish that provincial legislation which directly interferes with interprovincial or with foreign trade is *ultra vires* of the provincial legislature: *Rex v. Nat Bell Liquors Ltd.* (1922) A.C. 128, 136; *Attorney-General for Ontario v. Attorney-General for Canada* (1896) A.C. 348, 368, 371, answers to questions 3 and 4. Accordingly, the following provincial enactments have been held to fall outside provincial legislative jurisdiction: in *Hudson Bay Company v. Heffernan* (1917) 3 W.W.R. 167, a Provincial enactment prohibiting keeping of liquor within the province for export to other provinces or foreign countries; in re *The Grain Marketing Act, 1931*, (Sask.) (1931) 2 W.W.R. 146, a Provincial statute creating a compulsory wheat pool for the marketing of all grain grown in the province and destined to be marketed either within or without the province; and in *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction* (1931) S.C.R. 357, a Provincial enactment providing for compulsory control of the marketing outside the province of tree fruits and vegetables grown within the province. Except that it is applicable to the Dominion as a whole and not merely to a single province, the legislation now in question is similar in objects and character to that considered by this Court in *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction* *ibid supra*.

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Control over local trade in a regulated product within a province may, no doubt, be involved under a marketing scheme approved under the Act. But if such control be exerted (as it must be assumed it would be) merely for the purpose of ensuring the attainment of the central object of the Act, namely, effective control over interprovincial and export trade of such product, the legislation is not legislation in relation to, notwithstanding that it may incidentally or consequentially “affect,” civil rights in the province, nor *pari ratione* is it legislation in relation to a matter of a merely local or private nature in the province: *Gold Seal Limited v. Attorney-General for Alberta* (1921) 62 *S.C.R.* 424, 460, *per Duff, J.* :—

“The fallacy lies in failing to distinguish between legislation affecting civil rights and legislation ‘in relation to’ civil rights. Most legislation of a repressive character does incidentally or consequently affect civil rights. But if in its true character it is not legislation ‘in relation to’ the subject matter of ‘property and civil rights’ within the provinces, within the meaning of section 92 of the British North America Act, then that is no objection although it be passed in exercise of the residuary authority conferred by the introductory clause.”

It is submitted, therefore, that the subject matter of the legislation now under consideration lies outside all of the classes of subjects enumeratively entrusted to the Provinces under s. 92; and if so, it follows that it must be within the legislative competence of the Dominion Parliament, for “the Federation Act exhausts the whole range of legislative power and . . . whatever is not thereby given to the Provincial Legislatures rests with Parliament.”

19. *The Act is an Act in relation to the regulation of trade and commerce.*—The decisions upon the judicial interpretation of the Dominion Parliament’s power to regulate trade and commerce establish that it confers authority for :—

(1) The regulation of the external trade and commerce of Canada: *Citizens Insurance Co. v. Parsons* 7 *A.C.* 96, 113; *The Insurance Reference* (1916) 1 *A.C.* 588, 597; *Attorney-General for British Columbia v. Attorney-General for Canada* (1924) *A.C.* 222, 225; *Lawson v. Interior Tree, Fruit and Vegetable Committee of Direction* (1931) *S.C.R.* 357, 371;

(2) The regulation of trade in matters of interprovincial concern: *Citizens Insurance Co. v. Parsons*, *ibid supra*; *Lawson v. Interior Tree, Fruit and Vegetable Committee of Direction*, *ibid supra*; *Gold Seal Ltd. v. Attorney-General for Alberta* (1921) 62 *S.C.R.* 424; *Attorney-General for Ontario v. Attorney-General for Canada* (1896) *A.C.* 348, 368, 371; and

(3) The general regulation of trade affecting the whole Dominion; *John Deere Plow Co. v. Wharton* (1915) *A.C.* 330, 340.

Furthermore, the view that the power to regulate trade and commerce can be invoked only in aid of a power Parliament possesses independently of it was definitely repudiated by the Judicial Committee in *Proprietary*



*Articles Trade Association v. Attorney-General for Canada* (1931) A.C. 310, 326.

A brief survey of the decisions above cited will be found in par. 15 of the Factum on behalf of the Attorney-General of Canada in the Reference concerning s. 498A of the Criminal Code.

20. In its true nature and character and its pith and substance, the legislation now in question is primarily concerned with the regulation of trade, as trade, in aspects of interprovincial and national concern. What was said by this Court in *Lawson v. Interior Tree, Fruit and Vegetable Committee of Direction*, *ibid supra*, at pp. 365, 366, of a similar statute passed by the Legislature of the Province of British Columbia, is no less true of the statute now in question, namely,—

“Contract is no doubt involved, as the control of property is involved; but the central purpose of the legislation is to assume direct control of the trade as trade. Its aim is to regulate the producer and shipper as trader; as proprietor and contractor, it affects him directly and necessarily, but only as a means of governing him in carrying on his trade.”

It is submitted that here, as in the case of the statute considered in the Lawson case, the legislation in its true nature and character and in its pith and substance involves the regulation of trade with other provinces and with foreign countries not merely as an incident of a scheme for controlling local trade but as being of the essence of the statute and of the object and character of the activities of the Board set up under it. It is not an attempt to regulate in the Provinces individual trades or particular occupations, as such, by a licensing system and otherwise or local works and undertakings as such. The legislation is distinguishable in this respect from that which was held by this Court to be *ultra vires* of the Dominion Parliament in *The King v. Eastern Terminal Elevator Co.* (1925) S.C.R. 434. Neither is it an attempt to regulate or control, otherwise than in a necessarily incidental or ancillary way sanctioned by the concluding words of s. 91 of the British North America Act, local trade as such. In its characteristic and ruling provisions, the legislation is mainly directed to control of trade in matters of interprovincial, national and foreign concern. It is, therefore, legislation referable to the exclusive Dominion power to regulate trade and commerce.

21. *The Act is an Act in relation to agriculture and sea coast and inland fisheries.*—Natural products are defined in these Acts in such a manner as to make legislation in relation thereto legislation in relation to agriculture and in relation to sea coast and inland fisheries, and therefore, authorized under s. 95 and head 12 of s. 91 of the British North America Act.

The legislation is designed in effect to foster agriculture and fisheries by endeavouring to obtain better market conditions for the natural products thereof. Notwithstanding its form, it is submitted it is not legislation to deal with commodities, as such, after they have been produced by those engaged in agriculture or in fishing, but legislation designed to foster the

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pursuit of agriculture and fishing by methods intended to obtain for the producer fair returns for his labours. The definition of natural products, as originally enacted in 1934, carefully excluded anything but strictly natural products of agriculture and of the forest, sea, lake or river and any article of food or drink wholly or partly manufactured or derived from any such product. The amendment of 1935 included articles wholly or partly manufactured or derived from a product of the forest. It would appear that this was done so that a marketing scheme might be approved to cover pulp and paper. This might appear, at first blush, to be foreign to the ordinary meaning of agriculture, but it is submitted that this word is used 10 in s. 95 to apply to the natural growth of the soil of the provinces, and that legislation for the orderly marketing of pulp and paper derived from the forest lands of the several provinces is legislation in relation to the use and exploitation of these lands as areas assigned to the production of periodical crops.

The decision of this Court in the case of *The King and Eastern Terminal Elevator Company*, 1925 S.C.R. 434, and the decision of the Privy Council in *Attorney-General for Canada v. Attorney-General for British Columbia and others* (1930) A.C. 111, have not been overlooked, but it is submitted that the legislation there considered dealt with the products involved as 20 commodities in trade and not from the viewpoint of fostering the agricultural or fishing industries by which they had been produced.

22. *The Act provides for raising money by a mode or system of taxation.*— It is submitted that the charges and tolls which the Dominion Marketing Board is authorized by the Act (s. 4 (4) (6)) to impose for the purposes of any scheme of regulation in respect of the marketing of the whole or any part of a regulated product are taxes the imposition of which the Parliament of Canada was competent to authorize in the exercise of its exclusive power to raise money by any mode or system of taxation: see s. 91 (3) of the B.N.A. Act. These charges and tolls are imposed (1) under the authority 30 of Parliament; (2) by a public body; (3) for public purposes, namely, for the purpose of defraying the operating and necessary expenses of the local boards established under the Act as well as the creation of reserves and other purposes; and (4) their payment is rendered enforceable by law. These elements are sufficient on the authority of the recent decisions, to impart to such charges and tolls the character of taxes: *Lower Mainland Dairy Products Sales Adjustment Committee v. Crystal Dairy Limited* (1933) A.C. 168, 175, 176; *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction* (1931) S.C.R. 357, 362, 363: *In re Grain Marketing Act* (1931) 2 W.W.R. 146, 153, 154. It is submitted, moreover, that the authorization 40 of such charges and tolls may be justified as being necessarily incidental or ancillary to effective legislation upon the subject matter of the Act under other enumerated heads of s. 91.

It is further submitted that the imposition of such charges and tolls under the authority of Parliament is entirely consistent with the provisions of s. 121 of the British North America Act. The real object of this section

(the text of which is set out in par. 14 above) is to prohibit the establishment of customs duties affecting interprovincial trade in the products of any Province of the Union, as was held by three of the learned Judges of this Court in *Gold Seal Limited v. Attorney-General for Alberta* (1921) 62 S.C.R. 424, 456, 466, 470. The charges and tolls authorized to be imposed under the present legislation are not of the nature of customs duties. "Customs" are "duties charged upon commodities on their importation into or exportation out of a country:" *Attorney-General for British Columbia v. McDonald Murphy Lumber Co.* (1930) A.C. 357, 364. But the charges and tolls in question are authorized to be imposed not on the exportation or carriage of regulated products from one province into another, but rather, in the words of the statute, "in respect of the marketing of the whole or any part of the regulated product," whether this occurs within or outside the province.

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Furthermore, it is submitted that said s. 121 cannot stand upon a higher footing than s. 125 of the British North America Act; and that section, it has been held, does not exclude the operation of Dominion laws made in the exercise of the authority conferred by s. 91 and does not prevent the imposition of duties on goods imported by a provincial Government because,

20 "The Dominion have the power to regulate trade and commerce throughout the Dominion, and, to the extent to which this power applies, there is no partiality in its operation. S. 125 must, therefore, be so considered as to prevent the paramount purpose thus declared from being defeated:" *Attorney-General for British Columbia v. Attorney-General for Canada* (1924) A.C. 221, 225.

By parity of reasoning s. 121 cannot prevent the operation of a general regulation of trade and commerce throughout the Dominion, because, in its application, the regulation may affect transactions which involve interprovincial trade in the same manner as it may affect other transactions. 30 Of course a regulation discriminating against interprovincial trade, if such were attempted, might be obnoxious to s. 121, but it must be assumed that the power to impose charges and tolls by way of regulation of trade and commerce under the authority and for the purposes of the Act now in question will not be exercised in such manner as to impose customs or excise duties on interprovincial transactions as such.

23. *The Act is an Act in relation to Criminal Law.*—The provisions of Part II of the principal Act are ancillary legislation providing for investigations and prosecutions in much the same manner as The Combines Investigation Act.

40 S. 22 makes it a criminal offence to charge, receive, or attempt to receive, to the detriment or against the interest of the public, any spread which is excessive or results in undue enhancement of prices or otherwise restrains or injures trade or commerce in a natural or regulated product.

When, upon investigation, it is found that the statutory crime appears to have been committed, the vendor, if he is to be punished must, as under

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the Combines Investigation Act, be tried on indictment and the offence proved in due course of law.

In support of the Act, the Attorney-General for Canada will rely on the decision of this Court and on the decision of the Judicial Committee in *Proprietary Articles Trade Association v. Attorney-General for Canada* (1929) *S.C.R.* 409, and (1931) *A.C.* 310.

24. The matter of undue enhancement of prices in natural or regulated products is a matter falling within the class of subjects “the criminal law including the procedure in criminal matters.” It is only acts which result in undue enhancement of prices or otherwise restrain or injure trade or commerce in a natural or regulated product to the detriment or against the interest of the public which are affected, “and if Parliament genuinely determines that commercial activities which can be so described are to be suppressed in the public interest, their Lordships (of the Judicial Committee in the Proprietary Articles case) see no reason why Parliament should not make them crimes. ‘Criminal law’ means the criminal law in its widest sense. It certainly is not confined to what was criminal by the law of England or of any province in 1867.” (1931 *A.C.*, p. 324.) 10

25. Practices of the nature of those aimed at by these Statutes were originally within the domain of criminal law in England. 20

The following is from Russell on Crimes and Misdemeanours, 8th edition, Vol. 2, page 1775 :—

“Every practice or device by act, conspiracy, words, or news, to enhance the price of victuals or other merchandise, was held to be unlawful at common law; as being prejudicial to trade and commerce, and injurious to the public in general. Practices of this kind came under the notion of forestalling; which meant buying goods on the way to market or inducing persons not to take the goods to market in order to enhance prices or evade tolls. It was treated as including ingrossing, or buying up standing corn, or corn in sheaf, or victuals wholesale for the purpose of regrating, i.e. selling at monopoly prices, and all other offences of like nature. Spreading false rumours, buying things in the market before the accustomed hour, or buying and selling again the same thing in the same market were treated as offences of this kind. Also if a person within the realm bought any merchandise in gross, and sold the same again in gross, it was considered an offence of this nature. So the bare ingrossing of a whole commodity, with an intent to sell it at an unreasonable price, was an offence at common law. 30

“The offences of forestalling, regrating, and ingrossing were for a considerable period prohibited by statutes, which were repealed in 1772 (by 12 Geo. III, c. 71), as being detrimental to the supply of the labouring and manufacturing poor of the kingdom. But forestalling, regrating, and ingrossing continued offences at common law until 1844, when by 7 & 8 Vict., c. 24, s. 1, it was enacted ‘that the several offences of badgering, ingrossing, forestalling, and regrating 40

be utterly taken away and abolished, and that no information, indictment, suit, or prosecution shall lie either at common law or by virtue of any statute, or be commenced or prosecuted against any person for or by reason of any of the said offences or supposed offences.' ”

And the following from Blackstone, Book 4, p. 157 :—

“ Cheating is another offence, more immediately against public trade; as that cannot be carried on without a punctilious regard to common honesty, and faith between man and man. Hither therefore may be referred that prodigious multitude of statutes, which are made to restrain and punish deceits in particular trades, and which are enumerated by Hawkins and Burn, but are chiefly of use among the traders themselves. The offence also of breaking the assise of bread, or the rules laid down by the law, and particularly by the statutes 31 Geo. II, c. 29; 3 Geo. III, c. 11, and 13 Geo. III, c. 62, for ascertaining its price in every given quantity, is reducible to this head of cheating; as is likewise in a peculiar manner the offence of selling by false weights and measures; the standard of which fell under our consideration in a former volume. The punishment of bakers breaking the assise, was anciently to stand in the pillory, by statute 51 Hen. III, st. 6, and for brewers (by the same act) to stand in the tumbrel or dungcart : which, as we learn from domesday book, was the punishment for knavish brewers in the city of Chester so early as the reign of Edward the Confessor. ‘ Malam cerevisiam faciens, in cathedra ponebatur stercoris.’ But now the general punishment for all frauds of this kind, if indicted (as they may be) at common law, is by fine and imprisonment : though the easier and more usual way is by levying on a summary conviction, by distress and sale, the forfeitures imposed by the several acts of parliament.”

The criminal law of England was introduced into Canada at the conquest, and the repealing statute mentioned in the above cited extract from Russell on Crimes, 7 and 8 Vict., c. 24, s. 1, was probably not effective here and at Confederation the old common law crimes probably still were crimes in Canada. However that may be, there can be no doubt that legislation in relation thereto is legislation in relation to criminal law.

26. It will therefore be submitted on behalf of the Attorney-General of Canada that The Natural Products Marketing Act as amended is not, nor is any part thereof, *ultra vires* of the Parliament of Canada and that the question referred to this Honourable Court should, accordingly, be answered, without qualification, in the negative.

N. W. ROWELL.

L. S. ST. LAURENT.

C. P. PLAXTON.

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## APPENDIX TO FACTUM.

## No. 1.

THE ONTARIO MARKETING ACT, 1931, 21 GEO. V, 17 C. (ASSENTED TO APRIL 2ND, 1931), AS AMENDED BY THE ONTARIO MARKETING ACT, 1934, 24 GEO. V, C. 38 (ASSENTED TO APRIL 3RD, 1934, AND PROCLAIMED IN FORCE DECEMBER 17TH, 1934) (OFFICE CONSOLIDATION).

An Act to provide Better Marketing Facilities for Agricultural Products.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- |                                    |   |
|------------------------------------|---|
| Short title.                       | 1. This Act may be cited as The Ontario Marketing Act, 1931.  |
| Marketing board established.       | 2. (1) There shall be established a board to be known as "The Ontario Marketing Board," hereinafter called the "Board," which shall consist of three persons to be appointed by the Lieutenant-Governor in Council with the powers and duties hereinafter set out.    |
| Chairman, Secretary.               | (2) One of the persons so appointed shall be designated as chairman of the Board and there shall be a secretary of the Board who shall be appointed by the Lieutenant-Governor in Council.  |
| Honorariums.                       | (3) The Lieutenant-Governor in Council may pay an honorarium to the chairman and other members of the Board.  |
| Duties and powers.                 | 3. (1) It shall be the duty of the Board and they shall have power,—  |
| Survey of conditions.              | (a) to make a general survey of conditions existing in the agricultural industry in all its branches and to prepare and maintain a tabulated register of all statistical and other information so obtained;   |
| Information.                       | (b) to collect information regarding conditions as to the soil, climate and other particulars which may be useful in determining the adaptability of the various counties and districts in the Province for any particular class of farming or agricultural industry; |
| Recommendation as to packing, etc. | (c) to make recommendations as to packing, marketing and transporting of any agricultural product;  |
| Marketing facilities.              | (d) to seek the best possible local and other marketing facilities for any class of agricultural product;   |
| Diffusion of information.          | (e) to diffuse information among those concerned as to the agricultural facilities in Ontario and as to the best methods to be used in increasing productivity of the soil  |

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and the production of any particular class of agricultural products ;

Dairy products.

(f) to encourage in every way the best methods for the manufacture, preparation and packing of dairy products for marketing in Ontario or elsewhere ;

Generally.

(g) generally to promote the interests of the agricultural industry in Ontario as the Board may deem expedient.

10 Report to Minister.

(2) The Board shall report to the Minister of Agriculture from time to time upon its operations and whenever required by the Minister so to do shall direct every effort to the improvement and increase of marketing facilities for any particular class of agricultural products or for any particular article in any such class.

Committees acting for board.

4. The Minister, upon the recommendation of the Board may appoint committees, each of which shall consist of not more than three persons, for the purpose of assisting in carrying out the objects and purposes of the Board with regard to any class of agricultural products or with regard to any particular article in any such class, and the Minister may provide for the remuneration and expenses of any such committee.

20

Board may function under Marketing Act (Canada).

4a. The Board may with the approval of the Lieutenant-Governor in Council exercise such powers and functions under The Natural Products Marketing Act, 1934 (Canada) as may be conferred upon the Board by the Governor in Council under the authority of the said Act. (1934, c. 38, s. 2.)

Authority to Dominion Marketing Board to function in Ontario.

30

4b. The Lieutenant-Governor in Council may confer upon any board established by or under the authority of The Natural Products Marketing Act, 1934 (Canada), such powers and functions with reference to the marketing in Ontario of natural products as the Lieutenant-Governor in Council may deem necessary or expedient, provided the board is first authorized by or under the authority of the said Act to exercise such powers and functions. (1934, c. 38, s. 2.)

Incidental authority.

4c. The Lieutenant-Governor in Council may authorize all such acts, matters and things which he may deem to be necessary or expedient for the purpose of carrying out the provisions of sections 4a and 4b. (1934, c. 38, s. 2.)

40 Commencement of Act.

5. This Act shall come into force on the day upon which it receives the Royal Assent.

NOTE : The Ontario Marketing Act, 1934, provides by s. 3 that :

“ This Act shall come into force on a day to be named by the Lieutenant-Governor by his proclamation.

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AN ACT TO AID THE PUTTING INTO EFFECT, IN THIS PROVINCE, OF ANY FEDERAL ACT HAVING AS OBJECT THE MARKETING OF THE NATURAL PRODUCTS OF CANADA, AND OF ANY FEDERAL ACT RESPECTING BANKRUPTCY AS REGARDS COMPROMISES BETWEEN CREDITORS AND DEBTORS.

*(Assented to the 20th of April, 1934).*

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, 10 enacts as follows :

Lt.-Gov. in  
C. and  
orders, etc.,  
to give  
effect to :  
Certain  
acts of the  
Parliament  
of Canada ;

1. The Lieutenant-Governor in Council shall have power to do and authorize such acts and things and to make from time to time such orders and regulations as he may deem necessary or advisable to give effect in this Province :

(1) To any act of the Parliament of Canada having as object the marketing of the natural products of Canada and, without restricting the generality of such powers, to constitute a commission for the marketing of the natural products of the Province and attribute to it the necessary powers, or to take 20 part in the forming of a commission with the same object ; and

Idem.

(2) To any act of the said Parliament of Canada respecting bankruptcy and insolvency as regards compromises between creditors and debtors or any other matter within the legislative authority of the Province.

Enforcing,  
etc., of  
orders, etc.

2. All orders and regulations made under this Act shall have the force of law and shall be enforced in such manner and by such officers and authorities as the Lieutenant-Governor in Council may prescribe, and may be varied, extended or revoked by any subsequent order or regulation ; but, if any order or 30 regulation is varied, extended or revoked, neither the previous operation thereof nor anything duly done thereunder shall be affected thereby, nor shall any right, privilege, obligation or liability acquired, accrued, accruing or incurred thereunder be affected by such variation, extension or revocation.

Publication,  
etc., of  
orders, etc.

3. All orders and regulations enacted by the Lieutenant-Governor in Council under the provisions of this Act shall be published in the Quebec *Official Gazette* and shall come into force from the date of such publication or such other date as may be fixed therein. 40

Expenses.

4. All expense incurred by the Government or by the commission which it may establish for the carrying out of this Act shall be paid out of the consolidated revenue fund.



Coming into force and cessation.

5. This act shall come into force on such date as it may please the Lieutenant-Governor in Council to fix by proclamation; and it shall cease, as well as all the orders and regulations adopted hereunder, on the fifteenth day of the Session of the Legislature following that now in progress.

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No. 3.

THE NOVA SCOTIA MARKETING ACT, 1933, 23-24 GEO. V, C. 9 (PASSED 2ND MAY, 1933), AS AMENDED BY C. 58 OF THE STATUTES OF NOVA SCOTIA, 1934 (PASSED ON 2ND MAY, 1934) (OFFICE CONSOLIDATION).

10

An Act to Promote the Production, Marketing and Distribution of Natural Products.

Be it enacted by the Governor and Assembly as follows :

Short title.

1. This Act may be cited as "The Nova Scotia Marketing Act, 1933."

Board: body politic and corporate.

2. The Governor in Council may establish a Board to be known as "The Nova Scotia Marketing Board," hereinafter called "the Board."

The Board shall be a body politic and corporate.

20 Board, how constituted.

(2) The Board shall consist of such number of persons as the Governor in Council may from time to time determine.

Appoint-ments.

(3) The members of the Board shall be appointed by the Governor in Council, and the Governor in Council shall from time to time appoint one of the members of the Board to be chairman thereof.

Quorum.

(4) Such number of members of the Board as the Governor in Council may from time to time determine shall constitute a quorum.

30 Appoint-ment of officials.

(5) The Governor in Council may appoint a secretary of the Board and such officers and officials as are deemed necessary for the purpose of carrying out the provisions of this Act, and they shall be paid such salaries or remuneration as the Governor in Council may from time to time determine. (1934, c. 58, s. 1.)

Duties and powers.

3. The Board shall have power—

(a) to inquire fully into and make a general survey of the conditions existing in the agricultural, lumber, fish, coal, gypsum and other natural products, industries and any by-products thereof in all their branches and to report thereon and to prepare and maintain a tabulated register of all statistical and other information obtained.

40

(b) to make recommendations and to encourage the preparation for marketing, distributing and transporting of any natural product or by-product thereof.

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(c) to seek the best possible local and other marketing, distributing and transportation facilities for any class of natural products and the by-products thereof.

(d) to diffuse information among those concerned as to the production, marketing and distribution of natural products and the by-products thereof.

(e) to inquire fully into and report thereon of such other conditions and matters whatsoever, whether of the kind hereinbefore mentioned or not which directly or indirectly have affected or are relevant to the estate or condition of the agriculture, lumber, fish, coal, gypsum and other natural products industries in the Province as may be deemed expedient by the Board. 10

(f) generally to promote the production, marketing and distribution of natural products and the by-products thereof as the Board may deem expedient.

(g) with the approval of the Governor in Council to co-operate with any marketing board or agency established under any existing or future law of the Dominion of Canada to regulate the marketing of natural products or any of them, and to act conjointly with any such marketing board or agency. 20

(h) to accept and exercise with the approval of the Governor in Council any duties, functions, powers or authority that may be conferred on the Board by or under the authority of any existing or future law of the Dominion of Canada with reference to the marketing of any natural product.

The Governor in Council may from time to time confer on the board such other duties, functions, powers or authority as the Governor in Council deems necessary to enable the Board to exercise fully any of the duties, functions, powers or authority that the Board is authorized by Clause (h) of this Section to accept and exercise with the approval of the Governor in Council, or to enable the Province to take advantage of the provisions of any existing or future law of the Dominion of Canada with reference to the marketing of any natural product. (1934, c. 58, ss. 2, 3 and 4.) 30

Board to  
report to  
Governor  
in Council.

(2) The Board shall report to the Governor in Council from time to time upon its operations and whenever required by the Governor in Council so to do shall direct every effort to the improvement and increase of production, marketing and distribution facilities for any particular class of natural products or for any particular article or by-product in any such class. 40

Committee.

4. The Governor in Council upon the recommendation of the Board may appoint committees, each of which shall consist

of not more than three persons, for the purpose of assisting in carrying out the objects and purposes of the Board with regard to any class of natural products or with regard to any particular article or by-product in any such class, and the Governor in Council may provide for the remuneration and expenses of any such committee.

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Court of  
Canada.*

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Factum  
of the  
Attorney-  
General of  
Canada—  
*continued.*

10 Governor in  
Council may  
confer  
powers  
etc. on  
Dominion  
Board or  
agency.

4A. The Governor in Council may confer on any Board or agency that may be established by or under the authority of any existing or future law of the Dominion of Canada with reference to the marketing of natural products or any of them such functions, powers and authority with reference to the marketing of the same in Nova Scotia as the Governor in Council deems necessary or expedient; Provided such Board is authorized by or under the authority of such law to accept and exercise such functions, powers and authority. (1934, Chap. 58, s. 5.)

20 Regulation  
of market-  
ing in Nova  
Scotia.

4B. The Governor in Council may confer on the Board such functions, powers and authority to regulate the marketing in Nova Scotia of all or any of the products mentioned in Clause (a) of subsection 1 of Section 3 of this Act as the Governor in Council deems necessary or expedient. (1934, Chap. 58, s. 5.)

Governor in  
Council may  
authorize acts,  
etc., necessary  
to carry out  
provisions.

4C. The Governor in Council may authorize all such acts, matters and things as the Governor in Council deems necessary or expedient for the purpose of carrying out the provisions of Sections 4A and 4B of this Act. (1934, Chap. 58, s. 5.)

30 Regulations.

5. The Board may with the approval of the Governor in Council make such regulations as the Board deems necessary for carrying out the purpose and intent of this Act and for the efficient administration thereof, and such regulations shall be published in the *Royal Gazette*, and upon being so published shall have the same force and effect as if enacted in this Act, and any such regulations may be repealed, altered or amended from time to time by the Board subject to like approval and the publication of such alteration, repeal or amendment in the manner aforesaid.

Administration ex-  
penses.

6. The Governor in Council is authorized to advance annually to the Board out of the Provincial Treasury whatever sums may be required or necessary for the administration of this Act.

40 Trade repre-  
sentatives.

7. The Board may from time to time with the approval of the Governor in Council appoint one or more persons to be trade representatives at such place or places within Canada and in any other country as the Board with such approval may determine, and such persons shall perform such duties

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Supreme  
Court of  
Canada.*

—  
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of the  
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General of  
Canada—  
*continued.*

as the Governor in Council may from time to time determine, and shall receive such remuneration as the Governor in Council may fix and determine.

Act in force  
upon pro-  
clamation.

8. This Act shall come into force on, from and after, but not before, such day as the Governor in Council orders and declares by Proclamation.

No. 4.

THE NEW BRUNSWICK MARKETING ACT, 24 GEO. 5 (1934), CHAP. 19 (PASSED 27TH MARCH, 1934), AS AMENDED BY 25 GEO. 5 (1935), CHAP. 44 (ASSENTED TO 4TH APRIL, 1935) (OFFICE CONSOLIDATION). 10

An Act To Promote the Production, Marketing and Distribution of Natural Products.

Be it enacted by The Lieutenant-Governor and Legislative Assembly as follows:—

1. This Act may be cited as “The New Brunswick Marketing Act.”

1A. In this Act, unless the context otherwise requires:—

“Dominion Act” means The Natural Products Marketing Act, 1934, Chapter 57 of the Statutes of Canada, 24–25 George V. (1934); and any amendments thereto. 20

“Dominion Board” means the Dominion Marketing Board constituted under the Dominion Act:

“Dominion jurisdiction” means the legislative jurisdiction or competence of the Parliament of the Dominion;

“Marketing” includes buying and selling, shipping for sale or storage, and offering for sale;

“Natural product” means any product of agriculture or of the forest, sea, lake or river, and any article of food or drink wholly or partly manufactured or derived from any such product; 30

“Provincial Board” includes The New Brunswick Marketing Board constituted under this Act, and any agency or sub-committee constituted under this Act or the Regulations;

“Provincial jurisdiction” means the legislative jurisdiction or competence of the legislature of the Province. (1935, c. 44, s. 1.)

2. (1) There shall be established a board to be known as “The New Brunswick Marketing Board,” hereinafter called the “Board,” which shall consist of not more than three persons, 40

to be appointed by the Governor in Council, with the powers and duties hereinafter set out.

(2) One of the persons so appointed shall be designated as chairman of the Board, who shall be ex-officio a member of all sub-committees, and there shall be a secretary of the Board, who shall be appointed by the Governor in Council.

(3) The members of the Board shall receive such remuneration as the Governor in Council may from time to time determine.

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Supreme  
Court of  
Canada.*

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Factum  
of the  
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Canada—  
*continued.*

10 2A. (1) Subject to subsection (2), so far as the powers can be applied, any Provincial Board shall have and may exercise the like powers in relation to the marketing of natural products within Provincial jurisdiction as under the Dominion Act are had and exercisable by the Dominion Board in relation to the marketing of natural products within Dominion jurisdiction. (1935, c. 44, s. 2.)

20 (2) For the purpose of adapting to the uses of any Provincial board of the powers of the Dominion Board and of vesting in any Provincial Board ample powers for the control of natural products in co-operation with the Dominion Board, the Governor in Council may by regulation define the powers exercisable by the Provincial Board, and the method of their exercise and application within Provincial jurisdiction. (1935, c. 44, s. 2.)

2B. Every Provincial board may co-operate with the Dominion Board to regulate the marketing of any natural product of the Province, and may act conjointly with the Dominion Board, and may perform such functions and duties and exercise such powers as are prescribed by this Act or the regulations. (1935, c. 44, s. 2.)

30 2C. Every Provincial board may, with the approval of the Governor in Council, perform any function or duty and exercise any power imposed or conferred upon it by or pursuant to the Dominion Act, with reference to the marketing of a natural product. (1935, c. 44, s. 2.)

40 2D. The Dominion Board may, with the approval of the Governor in Council, exercise any of its powers with reference to the marketing of a natural product in any manner and under any circumstances within Provincial jurisdiction, to the like extent and with the like effect as those powers are exercisable by it pursuant to the Dominion Act with reference to the marketing of that natural product. (1935, c. 44, s. 2.)

3. (1) It shall be the duty of the Board and they shall have power

(a) to inquire fully into and make a general survey of:

(i) the conditions existing in the agricultural, lumbering, fishing, coal and other natural products

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Supreme  
Court of  
Canada.*

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Attorney-  
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*continued.*

industries, and any by-products thereof, in all their branches, and to report thereon, and to prepare and maintain a tabulated register of all statistical and other information obtained.

(ii) The conditions which have, either directly or indirectly, affected or are relevant to the present state or condition of the agricultural, lumbering, fishing, coal or other natural products industries in the Province, to such an extent as may be deemed expedient by the Board, and to 10 report thereon.

(b) to collect information regarding conditions as to the soil, climate and other particulars which may be useful in determining the adaptability of the various counties and districts in the Province for any particular class of the farming or agricultural industry.

(c) to make recommendations and to encourage the preparation for marketing, distributing and transporting of any natural products, or by-products thereof.

(d) to seek the best possible local and other market- 20 ing, distributing and transportation facilities for any class of natural products and the by-products thereof.

(e) to diffuse information among those concerned as to the production, marketing and distribution of natural products and the by-products thereof, and as to the agricultural facilities in New Brunswick, and the best methods to be used in increasing productivity of the soil and the production of any particular class of agricultural products.

(f) to encourage in every way the best methods for 30 the manufacture, preparation and packing of dairy products for marketing in New Brunswick and elsewhere.

(g) generally, to promote the production, marketing and distribution of natural products and the by-products thereof, in New Brunswick as the Board may deem expedient.

(2) The Board shall report to the Premier, from time to time, upon its operations, shall act in an advisory capacity to the Premier, and, whenever required by the Premier so to do, shall direct every effort to the improvement and increase of 40 production, marketing and distribution facilities for any particular class of natural products or for any particular article or by-product in any class.

4. The Premier, upon the recommendation of the Board, may appoint sub-committees, each of which shall consist of

not more than three persons, for the purpose of assisting in carrying out the objects and purposes of the Board with regard to any particular article or by-product in any such class, and the Governor in Council may provide for the remuneration and expense of any such committee.

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Court of  
Canada.*

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Factum  
of the  
Attorney-  
General of  
Canada—  
*continued.*

10 5. (1) The Governor in Council may make such regulations as are considered necessary or advisable for carrying out the purpose and intent of this Act, and may vest in any Provincial board such authorities and powers as are considered necessary or advisable with reference to the marketing of any natural product so far as the same is within Provincial jurisdiction, and to enable any Provincial board in co-operation with the Dominion Board to exercise effective control of the marketing of natural products to the full extent intended by this Act and the Dominion Act. Such regulations shall be published in the Royal Gazette, and upon being so published shall have the same force and effect as if enacted by this Act, and any such regulations may be repealed, altered or amended from time to time by the Board, subject to the approval and publication of such alterations, repeal or amendment in the manner aforesaid.

20

(2) Without thereby limiting the generality of the provisions hereinbefore contained, it is declared that the power of the Governor in Council to make regulations shall extend to:—

(a) the appointment of marketing boards or agencies within the Province, to co-operate with and act as agents of the Dominion Board;

30 (b) the appointment of marketing boards or agencies to exercise within the Province any authority or function which may be conferred on a local board under the Dominion Act, and otherwise to co-operate and act in the administration and carrying out of any scheme for the regulation of the marketing of any natural product authorized under the Dominion Act or this Act;

(c) the approval of any scheme for the regulation of the marketing of any natural product in respect of which the approval of the Governor in Council is necessary for any purpose of the Dominion Act;

40 (d) the authorizing and giving effect to any scheme for the regulation of the marketing within the Province of any natural product;

(e) the providing for the submission of any scheme for the regulation of the marketing of any natural product to a plebiscite within the area of the Province covered by the scheme;

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*continued.*

(f) the termination and annulment of any approval given or scheme authorized by the Governor in Council under this Act;

(g) the imposition of penalties for enforcing any provision of the regulation. (1935, c. 44, s. 3.)\*

6. All charges and expenses incurred by the Government in connection with the administration of this Act shall be defrayed by the Department of Agriculture and the Department of Lands and Mines in such ratio as the Governor in Council may determine, and shall be covered by a special appropriation to be made by the Legislature for that purpose, the Governor in Council is further authorized, in its discretion, to make advances to the Board from time to time, as deemed necessary, such advances not to exceed the amount of the appropriation in any one year. 10

7. The Board may, from time to time, with the approval of the Governor in Council, appoint one or more persons to be trade representatives in such place or places within Canada and in any other country as the Board, with such approval, may determine, and such person shall perform such duties as the Governor in Council may from time to time determine, and shall receive such remuneration and necessary expenses of carrying out his duties as the Governor in Council may fix and determine. 20

NOTE: Sec. 5 of the Amending Act, 25 Geo. V, 1935, c. 44, provides that: "This Act to come in force on a day to be fixed by proclamation."

No. 5.

NATURAL PRODUCTS MARKETING ACT, 1934 (PRINCE EDWARD ISLAND), 24 GEO. V, c. 17. 30

An Act Respecting the Marketing of Natural Products.  
(Assented to April 5th, 1934.)

BE IT ENACTED by the Lieutenant-Governor and Legislative Assembly of the Province of Prince Edward Island as follows:—

Preamble. WHEREAS an Act has been introduced in the Parliament of Canada, being "The Natural Products Marketing Act, 1934."

(Objects of Act). AND WHEREAS the said Act has for its purpose inter alia the regulating and facilitating of the marketing of the natural products of Canada.

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\* Sec. 4 of the Amending Act, 25 Geo. V, 1935, c. 44, provides as follows:—  
"The repeal of Section 5 shall not affect the validity of any regulations made thereunder before the repeal thereof, but such regulations shall continue in force to the same extent as if they had been passed under Section 5 as amended."



AND WHEREAS it is desirable that enabling provincial legislation should be enacted in order that this Province may enjoy the full advantage and benefit of the proposed legislation.

AND WHEREAS to effectuate the purposes of said Act it is desirable that provision should be made for the constitution and establishment of a Provincial Marketing Board to act in co-operation with and as agent for any federal marketing board or organization constituted and established under the provisions of the proposed Federal Act;

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Court of  
Canada.*

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Factum  
of the  
Attorney-  
General of  
Canada—  
*continued.*

BE IT THEREFORE ENACTED as follows :—

- 10 Citation. 1. This Act may be cited as “The Prince Edward Island Natural Products Marketing Act.”
- Interpreta- 2. In this Act and in any regulations made thereunder  
tion. unless the context otherwise requires :—
- “ Board.” (a) “ Board ” shall mean the provincial Marketing Board established under this Act.
- “ Dominion Board.” (b) “ Dominion Board ” shall mean the Dominion Marketing Board established under the provisions of the Dominion Act cited as “ The Natural Products Marketing Act, 1934.”
- 20 “ Market- (c) “ Marketing ” includes buying and selling, ship-  
ing.” ping for sale or storage and offering for sale.
- “ Minister.” (d) “ Minister ” means the Minister designated by the Lieutenant-Governor in Council to administer this Act.
- “ Natural Product.” (e) “ Natural Product ” means any product of agriculture, or of the forest, sea, lake or river, and any article of food or drink wholly or partly manufactured or derived from any such product.
- 30 “ Regulated Product.” (f) “ Regulated Product ” means a natural product to which a scheme approved under this Act or under the Dominion Natural Products Marketing Act relates.
- Constitution of Board. 3. (1) The Lieutenant-Governor in Council may establish a board to be known as the Provincial Marketing Board for the purpose of carrying out the purposes and provisions of this Act.
- Term of Office and remuneration (2) The Board shall consist of such number of persons as the Lieutenant-Governor in Council may from time to time determine and each member shall hold office during pleasure and shall receive such remuneration as the Lieutenant-Governor in Council shall determine.
- 40 Chairman and quorum. (3) One of the members of the Board shall be appointed as chairman, and such number of members as the Lieutenant-Governor in Council shall determine shall constitute a quorum.
- Distribution of functions. (4) The Lieutenant-Governor in Council may authorise certain members of the Board to exercise the functions of the Board in respect of any product or class of product.

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Court of  
Canada.*  
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*continued.*

Assistants  
and  
employees.

(5) The Board may with the approval of the Lieutenant-Governor in Council employ such technical, professional and other officers and employees as the Board may deem necessary or desirable, and such persons shall receive such remuneration as may be fixed by the Board with the approval of the Lieutenant-Governor in Council.

Board a  
corporation.

(6) The Board shall be a body corporate and shall for the purpose of this Act possess all the powers conferred upon a corporation incorporated by Letters Patent under the Great Seal of the Province, including the power to acquire, hold and dispose of real and personal property. 10

Head Office.

(7) The head office of the Board shall be in Charlottetown in said Province.

Board to  
advise  
Minister.

(8) The Board shall exercise the powers herein conferred upon it and shall advise the Minister from time to time on matters pertaining to the administration of this Act and regulations made hereunder.

Payments  
to Board.

(9) The Lieutenant-Governor in Council may from time to time authorize payment to the Board out of the consolidated revenues of the Province of such sums of money as may be necessary for the purposes of this Act. 20

Powers of  
Board.

4. The Board shall have power :—

(a) To co-operate with and act as agent for the Dominion Board in the transaction of interprovincial and export business.

(b) To do and perform all things which a local board is authorized to do and perform under the provisions of the Dominion Natural Products Marketing Act.

(c) To pay the operating and necessary expenses of the Board. 30

(d) To inquire into and make a general survey of the conditions existing in the agricultural, fishing and other natural products, industries and any by-products thereof in all their branches and to report thereon to the Minister.

(e) To inquire into and make a general survey of the conditions which have either directly or indirectly affected or are relevant to the present state and conditions of the agricultural, fishing or other natural products industries in the Province, and to report thereon to the Minister. 40

(f) To make recommendations for marketing, distributing and transporting of any natural products.

(g) To collect charges for services rendered in respect of the marketing of natural products.

(h) To utilize the proceeds of such charges to meet the necessary expenditures of the Board and to further the general purposes of this Act.

Recovery of charges of Board.

5. Any charge for services made by the Board under the authority hereby conferred upon it to make such charges shall be a debt due to the Board and shall be recoverable as such by legal action, and a certificate under the hand of the Chairman of the Board shall be *prima facie* evidence that the amount stated therein is due.

*In the Supreme Court of Canada.*

No. 4.

Application of Dominion Act.

6. On the enactment of the Dominion Natural Products Marketing Act by the Parliament of Canada, all the provisions of the said Act as so enacted so far as they or any of them are within the legislative competence of this legislation to enact shall have the force of law in this Province as if enacted by this Legislature and until otherwise enacted by this Legislature shall remain in full force and effect in this Province.

Factum of the Attorney-General of Canada—*continued.*

10

Regulations by Lt.-Gov. in Council.

7. The Lieutenant-Governor in Council may make such regulations as may be necessary for the efficient enforcement and operation of this Act and for carrying out the provisions thereof according to their true intent and meaning.

Amendments by proclamation.

8. The Lieutenant-Governor in Council may by proclamation declare any amendment hereafter made to the Dominion Natural Products Marketing Act and any regulations at any time made under said Act so far as any of them are within the legislative competence of this Legislature to have the force of law in this Province as if enacted by this Legislature, and upon the issuing of such proclamation such amendment or regulation shall have the force of law in this Province.

Construction of Act.

9. This Act shall be construed liberally so as to give the full force and effect to the true intent and purpose of this Act, and the said proposed Dominion Act.

No. 6.

30 THE MANITOBA NATURAL PRODUCTS MARKETING ACT, 24 GEO. V (1934), CHAPTER 90. (ASSENTED TO JUNE 7TH, 1934).

An Act Respecting the Marketing of Natural Products.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

Citation.

1. This Act may be cited as "The Manitoba Natural Products Marketing Act."

40 Dominion Marketing Act to have force in province.

2. In so far as any provision of "The Natural Products Marketing Act, 1934" (Dom.), or of any regulation made thereunder, is within the legislative authority of the province, it shall, subject to the provisions of this Act, have the force of law in the province.

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Supreme  
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of the  
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Provincial  
agencies  
empowered  
to co-  
operate.

3. The Lieutenant-Governor in Council may establish provincial marketing boards or agencies for the purposes of this Act; and any such board or agency and any other board or agency created under the law of the province may, with the approval of the Lieutenant-Governor in Council and subject to the provisions of this Act, act as agent for and co-operate with the Dominion Board under "The Natural Products Marketing Act, 1934" (Dom.), and may perform any function or duty and exercise any power imposed or conferred upon it by or pursuant to that Act with reference to the marketing or regulating the marketing of a natural product. 10

Vote to be  
taken on  
scheme.

4. No local board created under "The Natural Products Marketing Act, 1934" (Dom.), and no marketing board or agency created under the law of the province required to co-operate with the Dominion Board, shall exercise within the province any of the powers of that Act or its regulations within the legislative authority of the province, unless

(a) a poll has been taken under that Act and two-thirds in number of the producers within the territory comprised in the scheme voting thereon have voted in favour of the scheme, and their vote represent at least fifty per cent in volume of the normal production of the product covered by the scheme; or 20

(b) The Lieutenant-Governor in Council be satisfied that no poll is necessary.

Coming into  
force.

5. This Act shall come into force on proclamation.

No. 7.

THE NATURAL PRODUCTS MARKETING (BRITISH COLUMBIA) ACT, 24 GEO. V (1934), c. 38.

An Act to provide for the Marketing of Natural Products. 30  
[Assented to 29th March, 1934.]

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Short title.

1. This Act may be cited as the "Natural Products Marketing (British Columbia) Act."

Interpre-  
tation.

2. In this Act, unless the context otherwise requires:—

"Dominion Act" means "the Natural Products Marketing Act, 1934," passed, or which may be passed, at the present session of the Parliament of the Dominion; 40

"Dominion Board" means the Dominion Marketing Board constituted under the Dominion Act;

“ Dominion jurisdiction ” means the legislative jurisdiction or competence of the Parliament of the Dominion ;

“ Marketing ” includes buying and selling, shipping for sale or storage, and offering for sale ;

“ Natural product ” means any product of agriculture, or of the forest, sea, lake, or river, and any article of food or drink wholly or partly manufactured or derived from any such product ;

“ Provincial board ” includes the British Columbia Marketing Board constituted under this Act, and any marketing board or agency constituted under the regulations ;

“ Provincial jurisdiction ” means the legislative jurisdiction or competence of the Legislature of the Province.

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Court of  
Canada.*

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Factum  
of the  
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General of  
Canada—  
*continued.*

10

Constitu-  
tion of  
Board.

3. (1) For the purposes of this Act the Lieutenant-Governor in Council may constitute a Board to be known as the “ British Columbia Marketing Board,” which shall consist of not more than three members, who shall be appointed by the Lieutenant-Governor in Council, and shall receive such remuneration as the Lieutenant-Governor in Council may determine.

20

(2) The Lieutenant-Governor in Council may also appoint such officers, clerks, and servants as are necessary for the carrying out of the provisions of this Act, and may fix their salaries.

Powers of  
Provincial  
board.

4. (1) Subject to subsection (2), so far as the powers can be applied, any Provincial board shall have and may exercise the like powers in relation to the marketing of natural products within Provincial jurisdiction as under the Dominion Act are had and exercisable by the Dominion Board in relation to the marketing of natural products within Dominion jurisdiction.

30

(2) For the purpose of adapting to the uses of any Provincial board of the powers of the Dominion Board and of vesting in any Provincial board ample powers for the control of natural products in co-operation with the Dominion Board, the Lieutenant-Governor in Council may by regulation define the powers exercisable by the Provincial board and the method of their exercise and application within Provincial jurisdiction.

Co-opera-  
tion with  
Dominion  
Board.

40

5. Every Provincial board may co-operate with the Dominion Board to regulate the marketing of any natural product of the Province and may act conjointly with the Dominion Board, and may perform such functions and duties and exercise such powers as are prescribed by this Act or the regulations.

Exercise of  
powers  
under  
Dominion  
Act.

6. Every Provincial board may, with the approval of the Lieutenant-Governor in Council, perform any function or duty and exercise any power imposed or conferred upon it by or

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of the  
Attorney-  
General of  
Canada—  
*continued.*

pursuant to the Dominion Act, with reference to the marketing of a natural product.

Exercise of  
powers by  
Dominion  
Board.

7. The Dominion Board may, with the approval of the Lieutenant-Governor in Council, exercise any of its powers with reference to the marketing of a natural product in any manner and under any circumstances within Provincial jurisdiction, to the like extent and with the like effect as those powers are exercisable by it pursuant to the Dominion Act with reference to the marketing of that natural product.

Regulations.

8.—(1) The Lieutenant-Governor in Council may make 10  
such regulations as are considered necessary or advisable for carrying out the purpose and intent of this Act, and may vest in any Provincial board such authorities and powers as are considered necessary or advisable with reference to the marketing of any natural product so far as the same is within Provincial jurisdiction, and to enable any Provincial board in co-operation with the Dominion Board to exercise effective control of the marketing of natural products to the full extent intended by this Act and the Dominion Act.

(2) Without thereby limiting the generality of the provisions 20  
hereinbefore contained, it is declared that the power of the Lieutenant-Governor in Council to make regulations shall extend to :—

(a) The appointment of marketing boards or agencies within the Province to co-operate with and act as agents of the Dominion Board ;

(b) The appointment of marketing boards or agencies to exercise within the Province any authority or function which may be conferred on a local board under the Dominion Act, and otherwise to co-operate and act in 30  
the administration and carrying out of any scheme for the regulation of the marketing of any natural product authorized under the Dominion Act or this Act ;

(c) The approval of any scheme for the regulation of the marketing of any natural product in respect of which the approval of the Lieutenant-Governor in Council is necessary for any purpose of the Dominion Act ;

(d) The authorizing and giving effect to any scheme for the regulation of the marketing within the Province of any natural product ; 40

(e) The providing for the submission of any scheme for the regulation of the marketing of any natural product to a plebiscite within the area of the Province covered by the scheme ;

(f) The termination and annulment of any approval given or scheme authorized by the Lieutenant-Governor in Council under this Act;

(g) The imposition of penalties for enforcing any provision of the regulations.

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*continued.*

Granting of  
approval by  
Lt.-Gov. in  
Council.

9. Any approval which the Lieutenant-Governor in Council is authorized or required to give for any purpose of this Act may be given by general regulations applicable to all cases or any class or classes of cases, or by special order in any particular case.

10

Appropriation.

10. All moneys necessary to pay the salaries of the members of any Provincial board and its staff and to meet the expenses necessarily incurred in the carrying out of this Act shall, in the absence of a special vote of the Legislature for that purpose, be paid from the Consolidated Revenue Fund.

Commencement.

11. This Act shall come into operation on a day to be fixed by the Lieutenant-Governor by his Proclamation.

No. 8.

20 THE NATURAL PRODUCTS MARKETING ACT, 1934 (SASKATCHEWAN),  
24 GEO. V, C. 62 (ASSENTED TO APRIL 7TH, 1934), AS AMENDED BY  
C. 90 OF THE STATUTES OF SASKATCHEWAN, 1934-1935 (ASSENTED  
TO FEBRUARY 21, 1935) (OFFICE CONSOLIDATION).

An Act respecting the Marketing of Natural Products.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows :—

Short title.

1. This Act may be cited as The Natural Products Marketing Act, 1934.

30 Dominion  
Act in force  
in Saskat-  
chewan.

2. In so far as any provision of The Natural Products Marketing Act, 1934 (Dominion) and of any regulations which may be made thereunder is within the legislative authority of the province, and outside that of the Dominion of Canada, such provision shall have the force of law in Saskatchewan, and, unless otherwise enacted by the Legislature of Saskatchewan, shall be and remain in full force and effect therein to all intents and purposes whatsoever, until the same is repealed by the Dominion Parliament or revoked by the Governor in Council, as the case may be.

40 Amend-  
ments to  
Act and reg-  
ulations ;  
(cap. 90,  
1934-35).

2a. The Lieutenant-Governor in Council may by proclamation put into force in the province any amendment to the said Act, any regulation under any such amendment so put into

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Supreme  
Court of  
Canada.*

No. 4.  
Factum  
of the  
Attorney-  
General of  
Canada—  
*continued.*

force and any amendment to the regulations under the said Act heretofore or hereafter enacted by the Parliament of Canada or made by the Governor-General in Council and which is within the legislative authority of the province and outside that of the Dominion, whereupon such amendment or regulation shall have the force of law in Saskatchewan, and, unless otherwise enacted by the Legislature of Saskatchewan or ordered by the Lieutenant-Governor in Council, shall be and remain in full force and effect therein to all intents and purposes whatsoever, until the same is repealed by the Dominion Parliament or revoked by the Governor-General in Council, as the case may be. (1934-35, c. 90, s. 1.)

Appoint-  
ment of  
marketing  
boards.

3. The Lieutenant-Governor in Council may appoint one or more boards for the purpose of marketing any commodity produced in the province to which the said Act applies. A notice of every such appointment shall be published in *The Saskatchewan Gazette*.

Powers of  
boards.

4. Every board so appointed shall have and may exercise any power or authority which may by the said Act be conferred upon a marketing board appointed under the law of the province, and may act as agent for and co-operate with any board established by the Governor in Council under the authority of the said Act.

Boards are  
bodies cor-  
porate.

5. Every board appointed by the Lieutenant-Governor in Council under the authority of this Act shall be a body politic and corporate and shall have power, for the purposes of this Act, to require, hold and dispose of real and personal property.

Powers of  
Dominion  
Marketing  
Board.

6. The Lieutenant-Governor in Council may confer upon any board established by the Governor in Council under the authority of The Natural Products Marketing Act, 1934 (Dominion), such powers and functions with reference to the marketing in Saskatchewan of commodities to which the said Act applies as the Lieutenant-Governor in Council may deem necessary or expedient, provided that the board is first authorized by or under the authority of the said Act to exercise such powers and functions.

Incidental  
authority.

7. The Lieutenant-Governor in Council may authorize all such acts, matters and things as he may deem to be necessary or expedient for the purpose of carrying out the objects of this Act.

Coming into  
force.

8. This Act shall come into force upon a date to be determined by proclamation of the Lieutenant-Governor.

10

20

30

40



No. 9.

1934.

CHAPTER 34.

*In the  
Supreme  
Court of  
Canada.*

AN ACT TO SUPPLEMENT LEGISLATION OF CANADA RELATING TO THE  
MARKETING OF NATURAL PRODUCTS AND PROVIDING FOR THE APPOINT-  
MENT OF A MARKETING BOARD.

No. 4.  
Factum  
of the  
Attorney-  
General of  
Canada—  
*continued.*

(Assented to April 16, 1934.)

HIS MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of Alberta, enacts  
as follows :—

10

Short title.

1. This Act may be cited as "The Alberta Natural Products  
Marketing Act."

Adoption of  
Dominion  
Legislation  
by Procla-  
mation.

2. Upon the enactment by the Parliament of Canada of  
any statute the object of which is to improve the methods and  
practices involved in the marketing of natural products in Canada  
and in export trade, and to make further provision in connection  
therewith, the Lieutenant-Governor in Council may from time  
to time

20

(a) proclaim that the statute so enacted or any  
specified part or parts thereof or all or any regulations  
made pursuant to that statute or any specified parts  
of those regulations are in force in the Province so far  
as the same relate to or affect any commodity produced  
in the Province and in so far as the same relate to  
any other commodity to the extent that the same are  
not within the legislative competence of the Parliament  
of Canada and are within the legislative competence of  
the Legislative Assembly of the Province ;

30  
Appoint-  
ment of  
marketing  
boards.

(b) appoint one or more marketing boards or agencies  
for the purpose of marketing any commodity produced  
in the Province to which the statute of Canada relates,  
and provide for the constitution thereof, the remuneration  
of the members thereof, and the terms of their appoint-  
ment and their duties.

Force of  
Proclaimed  
legislation.

40

3. Upon the publication in *The Alberta Gazette* of any  
Proclamation made pursuant to this Act, the Statute or part  
or parts thereof which are thereby declared to be in force in  
the Province shall be and continue in force in the Province to  
the extent that the same is or are not within the Legislative  
competence of the Parliament of Canada and is or are within  
the Legislative competence of the Legislative Assembly of the  
Province, as if the same had been enacted by this Act.

*In the  
Supreme  
Court of  
Canada.*

No. 4.  
Factum  
of the  
Attorney-  
General of  
Canada—  
*continued.*

Powers of  
marketing  
board or  
agency.

Marketing  
board and  
agency a  
body cor-  
porate.

Coming into  
force of Act.

4. Every marketing board or agency appointed pursuant to this Act may accept, have and exercise any power or authority which may by the statute of Canada be conferred upon a marketing board or agency appointed under the law of the Province, and may act as the agent for and co-operate with any board or boards appointed pursuant to the statute of Canada.

5. Every marketing board and agency appointed pursuant to this Act shall be a body corporate and shall have all such powers and capacities as may be necessary for the purpose of performing any power or authority conferred upon it by the statute of Canada, and such other powers as may be conferred thereon from time to time by the Lieutenant-Governor in Council. 10

6. This Act shall come into force on the day upon which it is assented to.

No. 10.

1935.

CHAPTER 39.

AN ACT TO AMEND THE ALBERTA NATURAL PRODUCTS MARKETING ACT.

*(Assented to April 23, 1935.)*

20

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:—

Short title.

1. This Act may be cited as "The Alberta Natural Products Marketing Act Amendment Act, 1935."

Section 2  
repealed and  
substituted.

2. The Alberta Natural Products Marketing Act, being chapter 34 of the Statutes of Alberta, 1934, is hereby amended by striking out section 2 thereof and by substituting therefor the following:—

Adoption  
of certain  
Dominion  
Legislation  
by Procla-  
mation.

"2. The Lieutenant-Governor in Council may from time to time by proclamation declare that all or any of the statutes of the Parliament of Canada more particularly described in the schedule to this Act or any specified part or parts thereof and any regulations made thereunder or any specified part or parts thereof are in force in the Province so far as the same relate to or affect any commodity produced in the Province and in so far as the same relate to any other commodity to the extent that the same are not within the legislative competence of the Parliament of Canada and are within the legislative competence of the Legislative Assembly of the Province, 30 40

and upon such proclamation being made the statute and regulations made thereunder or such parts thereof as may be specified therein shall have force in the Province accordingly."

*In the Supreme Court of Canada.*

New section 5a.  
Power of certain boards and agencies to borrow money.

3. The said Act is further amended by inserting therein, immediately after section 5 thereof, the following new section :

No. 4.  
Factum of the Attorney-General of Canada—*continued.*

" 5a. Every board or agency appointed or constituted pursuant to the provisions of The Natural Products Marketing Act, 1935, or of this Act shall, in addition to all other powers, have the power to borrow money on the security of and to pledge or hypothecate any product delivered to it within the Province which it is authorized to receive and market."

Schedule added.

4. The said Act is further amended by adding thereto the following schedule :—

" THE SCHEDULE

" 1. An Act intituled ' The Natural Products Marketing Act,' being 24-25 Geo. V, chapter 57.

20

" 2. An Act intituled ' The Dairy Industry Act,' being chapter 45 of the Revised Statutes of Canada, 1927.

" 3. Any Act passed by the Parliament of Canada for the purpose of amending any of the said Acts."

Coming into force of Act.

5. This Act shall come into force on the day upon which it is assented to, and upon so coming into force shall be deemed to have been in force at all times from and after the first day of June, 1934.

No. 5.

**Factum of the Attorney-General of the Province of Ontario.**

No. 5.  
Factum of the Attorney-General of Ontario.

The question referred is :

30 Is the Natural Products Marketing Act, 1934, as amended by The Natural Products Marketing 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 ?

The British North America Act, 1867, distributes the legislative powers of the Parliament of Canada and the Provincial Legislatures mainly by Sections 91 and 92.

DOMINION POWERS.

1. Sec. 91 provides :

40 " It shall be lawful for the Queen, by and with the 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

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Ontario—  
*continued.*

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 the classes of subjects next hereinafter enumerated: that is to say:

2. Head 2—The Regulation of Trade and Commerce—
3. “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.” 10

#### EXCLUSIVE PROVINCIAL POWERS.

1. Sec. 92. Head 13—

“Property and Civil Rights in the Province.”

- Sec. 92. Head 16—

Generally all matters of a merely local or private nature in the Province.

If, therefore, the Natural Products Marketing Act falls within 20

The exclusive power of the Dominion to make laws

(1) For the peace, order and good government of Canada,

(2) The regulation of trade and commerce,—

can such legislation be supported under the concluding paragraph of Sec. 91, as set out under paragraph 3 above, under the heading “Dominion Powers”?

This factum will deal with the matter in order.

(1) Does the legislation fall within the power to make laws for the peace, order and good government of Canada?

Judicial interpretation of this clause appears to have somewhat altered in the last few years, as the following cases show: 30

(i) *Russel v. The Queen*, [1882] 7 A.C., p. 829.

Their Lordships in that case did not doubt that some matters, in their origin local and provincial, may attain such dimensions as to effect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for regulation or abolition in the interests of the Dominion.

But great caution must be observed in distinguishing between that which is local and provincial, and that which has ceased to be local and provincial, and has become a matter of national concern—

This opinion seems to support the view that if a Federal Act were requisite for the “peace, order and good government” of the Dominion, 40 it was *intra vires* of the Federal Parliament, even though it might affect incidentally, property and civil rights within the Provinces.

This position did not long survive, as appears by the decisions in a series of cases beginning with

*Hodge v. The Queen.* 9 A.C. 117.

*Attorney-General for Dominion v. Attorney-General for Alberta,* [1916] A.C. 588.

*In re Board of Commerce Act,* [1922] 1 A.C. 191.

*Toronto Electric Commissioners v. Snyder,* [1925] A.C., p. 396.

This last case whittled down the meaning of the words "peace, order and good government" to the position of a reserve power to be used only  
10 in cases of war or similar national emergency.

The law being so interpreted, therefore, there can be no power in the Parliament of Canada to pass the Natural Products Marketing Act under this heading, as there is no such national peril or calamity as contemplated in the *Board of Commerce* case.

This interpretation, however, appears to be modified in two recent cases :

(i) *In re The Regulation and Control of Aeronautics in Canada,* [1932] A.C., p. 54,

and (ii) *In re Regulation and Control of Radio Communication in Canada,* [1932] A.C., p. 304.

20 In the *Aeronautics* case, Lord Sankey, in discussing the relation between Sections 91 and 92, said, at p. 70 :—

"But while the Court should be zealous in upholding the charter of the Provinces as enacted in Section 92, it must no less be borne in mind that the real object of the Act was to give the central government those high functions and almost sovereign powers by which uniformity of legislation might be secured on all matters which were of common concern to all the Provinces, as members of a constituent whole."

The above quotation, commencing "it must be borne in mind, etc.,"  
30 is almost word for word from Lord Carnarvon's speech on the second reading of the British North America Act on February 19th, 1867, in the House of Lords.

(2) Does this legislation fall within the exclusive powers of the Dominion Parliament "The Regulation of Trade and Commerce"?

There appears to be a different view now taken by the Judicial Committee of the Privy Council in reference to the power of the Parliament of Canada to invoke this general power by itself.

The views expressed

*In re Board of Commerce,* [1922] A.C. 191,

40 *Toronto Electric Commissioners v. Snyder,* [1925] A.C. 396,

and as crystallized in the remarks of Lord Haldane in the *Snyder* case are as follows :

"It is, in their Lordships' opinion, now clear that excepting so far as the power can be invoked in aid of capacity conferred independently under other words in section 91, the power to regulate trade and commerce cannot be relied on as enabling the Dominion Parliament to regulate civil rights in the Provinces."

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Ontario—  
*continued.*

The result being that “The Regulation of Trade and Commerce” conferred no separate and independent jurisdiction upon Parliament, but could be invoked only as ancillary to legislation passed either for the peace, order and good government of Canada in special circumstances, or in pursuance of one of the other enumerated heads of jurisdiction set out in Section 91.

The late Chief Justice Anglin in *King v. Eastern Terminal Elevator Co.*, [1925] *S.C.R.* 434 at pp. 439, 441, expressed his doubt as to the soundness of the above reasoning, but found those cases conclusive in regulating the power of Parliament under 91 (2), “The Regulation of Trade and Commerce” to a subordinate place. 10

Then came

*In Proprietary Articles Trade Association et al. v. Attorney-General of Canada* [1931] *A.C.* 310.

The judgment in this case gave a different complexion to the question. Lord Atkin, at p. 32, said :

“Their Lordships merely propose to disassociate themselves from the construction suggested in argument of a passage in the *Board of Commerce* case, under which it was contended that the power to regulate trade and commerce could be invoked only in furtherance 20 of a general power which Parliament possessed independently of it.”

“No such restriction is properly to be inferred from that judgment.”

“The words of the Statute must receive their proper construction where they stand as giving an independent authority to Parliament over the particular subject matter.”

As a result it therefore appears that power can be invoked by Parliament under this head 2, “The Regulation of Trade and Commerce” standing alone.

It is only, therefore, if the Natural Products Marketing Act can be supported under the “peace, order and good government” clause as being 30 of common importance to all the Provinces, and that the marketing of such products and the questions arising in connection therewith, has grown to such dimensions in the modern business of today, that they have become matters of national concern.

And further, if such Natural Products Marketing Act can be supported as “The regulation of trade and commerce,”

That it can therefore fall within the exclusive power of the Parliament of Canada, and come under the concluding paragraph of Section 91.

Therefore, unless the Act “in its pith and substance” and “in its essence” falls within these two heads—(a) Peace, Order and Good Govern- 40 ment, and (b) the Regulation of Trade and Commerce—it comes within the exclusive powers of the Provincial Legislatures, since it affects “property and civil rights in the Province” and “generally matters of a merely local or private nature in the Province.”

(2) What is the pith and substance of the Act?

It may be contended that the pith and substance of the Act is contained in subsection 4 of Section 5 and Section 9.

(a) That the whole scheme of the Act contemplates the approval of a scheme for the regulation of a natural product, and the marketing of natural products, the principal market for which is outside the province of production, or relate to the regulation of the marketing of products, part of which are exported;

(b) That therefore it is no longer a matter of property and civil rights, or a matter of a purely local or private nature within the Provinces;

(c) That legislation dealing with interprovincial and export trade is a matter of common import to the Provinces, and national in its scope;

10 (d) That such matters concern all the Provinces as members of a constituent whole;

(e) That it is not the regulation of a particular trade, nor an attempt to regulate the occupations of those engaged in any trade;

(f) That its central purpose is to assume direct control of such interprovincial and export trade as a trade;

(g) That even though it may incidentally affect a particular trade, the Act is a true regulation of trade and commerce coming under the powers of the Parliament of Canada to make laws for the peace, order and good government of Canada as well as under head 2 of 91;

20 (h) That the regulation of interprovincial and export trade is a matter for the Dominion and not the Provinces.

Following the decision in *A. C. Lawson and Interior Tree Fruit and Vegetable Committee of Direction v. Attorney-General of Canada* [1931] S.C.R. 357, in which case a statute of British Columbia regulated marketing of fruits and vegetables not only within British Columbia but with other Provinces,

It was said in the judgment of Mr. Justice Duff at p. 365 :

30 “Contract is no doubt involved, as the control of property is involved, but the central purpose of the legislation is to assume direct control of the trade as trade.”

“Such matters seem to constitute ‘matters of interprovincial concern’ that is to say of direct substantial and immediate concern to the receiving Province as well as to the shipping Province. . . .”

“No doubt the committee also regulate the local trade in British Columbia, but the regulation of the trade with other Provinces is no mere instance of a scheme for controlling local trade; it is of the essence of the Statute and of the object of the character of the committee’s activities.”

40 The pith and substance of the legislation in the Lawson case was held to be the regulation of trade and commerce as such and not the regulation of a particular trade.

If, however, this Act is not such an attempt to regulate trade in its true sense and as outlined in the cases referred to, but is an attempt to regulate a particular trade, or the occupations of a particular trade, even although it may extend interprovincially, or for export, it is contended that such legislation is *ultra vires* of the Dominion.

*Citizens Insurance Co. v. Parsons*, 7 A.C. 96.

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*continued.*

Sir Montague Smith's words are as follows :—

“Construing therefore the words ‘regulation of trade and commerce’ by the various aids to their interpretation above suggested, they would include political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of interprovincial concern, and it may be that they would include general regulation of trade affecting the whole Dominion.”

“It is enough for a decision of the present case to say that, in their view its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation 10 the contracts of a particular business or trade such as the business of fire insurance in a single Province.”

*In Attorney-General for Canada and Attorney-General of Alberta, [1916] A.C. 588.*

The trade and commerce power did not extend to the regulation by a licensing system of a particular trade in which parties would otherwise be free to engage in the Provinces.

*In The King v. Eastern Terminal Elevator Co., [1925] S.C.R., p. 434.*

A Grain Act was passed in 1912 by the Dominion to control and regulate, through the Board of Grain Commissioners, the trade in grain. 20

It provided for licensing all owners and operators of elevators, warehouses and mills and certain traders in grain; for supervision of the handling and storage of grain in and out of elevators, and prohibited persons operating or interested in a terminal elevator from buying or selling grain. Provisions are also in the Act for inspection and grading.

It was held, Anglin, Chief Justice, dissenting, that this was a scheme to control and regulate the business, local and otherwise, of terminal elevators, which is not within the competence of Parliament to enact. And through Grain Commissioners an attempt to regulate directly the occupation mentioned. 30

The argument based upon the importing and exporting trade is dealt with by Duff, J., at p. 447 :—

“There are two lurking fallacies in the argument advanced on behalf of the Crown: first, that because in large part the grain trade is an export trade, you can regulate it locally in order to give effect to your policy in relation to the regulation of that part of it which is export.

Obviously that is not a principle the application of which can be ruled by percentages.

If it is operative when the export trade is seventy per cent. of 40 the whole, it must be equally operative when that percentage is only thirty; and such a principle in truth must postulate authority in the Dominion to assume the regulation of almost any trade in the country, provided it does so by setting up a scheme embracing the local as well as the external and inter-provincial trade; and regulation of trade, according to the conception of it which governs



this legislation, includes the regulation in the Provinces of the occupations of those engaged in the trade, and of the local establishments in which it is carried on. Precisely the same thing was attempted in the Insurance Act of 1910, unsuccessfully. . . .”

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The obvious meaning of his Lordship's remarks is that the Dominion Parliament cannot pass legislation for the control of particular trades within the Province, under the guise of regulating export trade.

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of the  
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General of  
Ontario—  
*continued.*

This is precisely what the Natural Products Marketing Act attempts to do. (See Section 5 (4) and Section 9.)

10 Is the Natural Products Marketing Act an attempt to regulate and control particular trades and occupations, local and otherwise, in the Province?

It is submitted that it is, and that it is not true regulation of trade and commerce within the meaning of Head 2 of Section 91.

Scrutinizing the Act as a whole, it is submitted that it is the regulation of particular trades and occupations and that is the pith and substance of the Act.

(1) The definition “Natural Product” embraces anyone engaged in trade that has to do with animals, meats, eggs, wool, dairy products, grains,  
20 etc. This would include any grain merchant, butcher, egg dealer, fruit merchant, fish merchant, and many others. [Sec. 2 (e).]

(2) It also includes anyone dealing in articles of food or drink wholly or partly manufactured or derived from any named products, e.g., fruit, vegetable, etc., and would embrace manufacturers of preserves, canned goods, etc. [Sec. 2 (e).]

(3) It also includes anyone producing any article wholly or partly manufactured or derived from a product of the forest, as may be designated by the Governor in Council. And embraces in this category, paper and pulp manufacturers, furniture makers, manufacturers of farm implements  
30 and many others. [Sec. 2 (e).]

(4) All trade and commerce, and trade and commerce generally in natural products of all kinds, is not covered, but there is particular commerce and trade limited to the definition of “natural products” and the Act is limited to those particular branches of trade and commerce specified in the definition.

(5) “Marketing” as defined includes buying and selling, shipping for sale or storage and offering for sale. [Sec. 2 (e).]

This has the effect, when applied to a manufacturer of paper, to regulate such business—as to how such manufacturer is to buy and sell, the way  
40 he should ship his product, the place it is to be stored, and the manner in which he may offer it for sale.

(6) The powers of the Board by Section 4 are all attempts to regulate the business of anyone who happens to be a trader or engage in any business as set out in the definition of “marketing”.

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continued.

For example, the Board can regulate the business of a paper manufacturer, a furniture manufacturer, a dealer in grain, etc.,—

(a) by saying to the trade—at what time and in what place he shall market his product;—

(b) by designating the agency who shall market the product;—

(c) by requiring that a license be obtained before engaging in business;—

(d) by imposing charges and tolls.

(7) The above named provisions, as well as many others, and in fact the whole scheme of the Act is an attempt, through the Dominion Marketing Board and Local Boards, 10

(a) to regulate the operations of everyone engaged in any of the particular trades or businesses specified in the definition of “natural product”;

(b) to interfere with, and restrict the liberty and status of any person or corporation occupied in any of the trades specified within the limits of a Province;

(c) to regulate the occupations of those engaged in trade, whether dealing in grain, animals, eggs, vegetables, the manufacture of furniture, farm implements, paper, etc.; 20

(d) to regulate and control the local establishments within the Province where the goods may be stored or kept.

It is contended that the regulation attempted in the Grain Act case,—*The King v. Eastern Terminal Elevator Co.* [1925] *S.C.R.* 434—is similar to the regulation attempted in the Natural Products Marketing Act. In the Grain Act an attempt was made to regulate generally storehouses where the specified articles of commerce are to be kept. This Act also attempts to regulate the business of operating storehouses through a Dominion Marketing Board.

In the Grain Act case two outstanding objects were dealt with, namely, 30

(1) the inspection of the grain, and

(2) its proper grading;

and the Grain Act was an elaborate scheme for the regulation of the Canadian grain trade.

The Natural Products Marketing Act is also an elaborate scheme to regulate the Canadian grain trade.

If the Natural Products Marketing Act only mentioned “grain,” then it would be *ultra vires* in view of the grain case decision.

Because it, however, not only mentions grain, but many other particular types of trade specified, does not affect the application of the Grain case 40 decision.

This Act is like the Grain Act, and it controls not only the business of the grain trade but the meat, eggs, wool, tobacco, lumber and many other specified particular trades.

It is a scheme to regulate and control these particular trades and interferes with the free rights that individuals and corporations have within the

Province to exercise their civil rights and any interference by the Dominion with these rights is *ultra vires*.

Even although it may be said that the Act only deals with a "natural product" when it became a regulated product by reason of the formation of a scheme, and that no scheme can be approved unless

(a) the principal market for the natural product is outside the Province of production, or

(b) that some part of the product produced may be exported (Sec. 5, sub sec. 4), or

10 (c) when a scheme is proposed by the Minister for the marketing of a natural product in interprovincial or export trade (Sec. 9), makes no difference because if the Act is in its pith and substance the regulation of particular trades and occupations, the Dominion Parliament has no authority to regulate such trades in any respect.

The Attorney-General of Ontario submits for these reasons and those which will be advanced at the argument of the reference that the answer to the question referred should be that the Natural Products Marketing Act, 1935, in all its provisions is *ultra vires* of the Parliament of Canada.

I. A. HUMPHRIES.

20 Toronto.

December, 1935.

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No. 6.

**Factum of the Attorney-General of the Province of Quebec.**

No. 6.  
Factum  
of the  
Attorney-  
General of  
Quebec.

The question referred as to these Acts is as follows:—

“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?”

30 Sec. 2 (e), of the Act of 1934, as amended by the Act of 1935, is as follows:—

“(e) ‘natural product’ includes animals, meats, eggs, wool, dairy products, grains, seeds, fruit and fruit products, vegetables and vegetable products, maple products, honey, tobacco, lumber and such other natural product of agriculture and of the forest, sea, lake or river and such article of food or drink wholly or partly manufactured or derived from any such product, and such article wholly or partly manufactured or derived from a product of the forest as may be designated by the Governor in Council.”

Sec. 2 (g) reads as follows:—

40 “(g) ‘regulated product’ means a natural product to which a scheme approved under this Act relates, but does not include:

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(i) in case the said scheme relates only to the product of a part of Canada, such product in so far as it is produced outside that part of Canada;

(ii) in case the said scheme relates only to the product marketed outside the province of production, such product in so far as it is marketed within the province of production;

(iii) in case the said scheme relates only to the product exported, such product in so far as it is not exported”.

Sec. 3, subs. 1, establishes a Board to regulate the marketing of natural products. 10

Sec. 4 gives to this Board the widest power to regulate the marketing of regulated products.

Sec. 5 provides for the approval by the Governor in Council of any scheme for marketing natural products to which a representative number of persons engaged in the production and/or the marketing of such products have agreed.

Sec. 5, subs. 4 and 5 read as follows :

“ (4) Before any scheme is approved the Governor in Council shall be satisfied,

(a) that the principal market for the natural product is outside 20 the province of production; or

(b) that some part of the product produced may be exported.

“ (5) Every scheme shall state,

(a) the natural product to be the subject of the scheme of regulation;

(b) the proposed scheme in sufficient detail, including arrangements for a poll, if one is proposed, and for organization and administration under the supervision of the Board to enable consideration of the expediency thereof;

(c) the powers hereinbefore mentioned which it is proposed shall 30 be exercised by the local board under the Board;

(d) if the scheme is to relate only to the product of a part of Canada, the geographical limits of such territory;

(e) full information respecting the quantity of the said product produced and the markets therefor;

(f) whether the scheme is to relate to the whole of the regulated product or to such part as is marketable outside the province of production or to such part as is exported from Canada;

(g) the number of persons who shall comprise the local board 40 and the basis of their selection;

(h) the name and number of the local board; the place and address of the head office; the chief executive officers; the quorum required to approve any order or resolution; and how vacancies are to be filled;

(i) any other information required by regulation or by the Minister”.

Under s. 6 the scheme once approved has force of law.

Dealing first with this part of the Act down to section 11 inclusively, the submission of the Attorney-General of Quebec is that this is an attempt to fully regulate particular trades in the provinces.

That this is unconstitutional is now well settled.

The decisions on the point are the following ones :

*Citizens Insurance Co. v. Parsons* (1881) 7 App. Cas., 96.

*Attorney-General for Ontario v. Attorney-General for the Dominion & Distillers and Brewers Association of Ontario* (1896) A.C. 348.

10 *Attorney-General for Canada v. Attorney-General for Alberta (Insurance Reference)* (1916) 1 A.C., 589.

*The Board of Commerce Act, 1919 and The Combines and Fair Prices Act, 1919* (1922) 1 A.C., 191.

*Attorney-General for Ontario v. Reciprocal Insurers* (1924) A.C., 328.

*Toronto Electric Commissioners v. Snider* (1925) A.C., 396.

The answer that the Attorney-General of Quebec anticipates will be based on subs. 4 of sec. 5.

20 There is no power to regulate until the scheme is approved, and the scheme cannot be approved unless the principal market for the natural product is outside the province of production or that some part of the product produced may be exported.

The judgment of this Court in *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction v. Attorney-General for Canada* (1931) S.C.R. p. 357, will be quoted in support of that view.

In that case the decisive factor was that the Act was intended primarily and almost exclusively to regulate export trade from the province. *Sir Lyman P. Duff, J.* at pp. 364, 365, and particularly at p. 371.

30 As pointed out by *Cannon, J.*, at p. 372, the evidence showed that the home market was less than 10% and the export market out of the province of about 90%.

The Court was careful not to decide if such a statute even under those conditions could in its entirety have been passed by the Dominion (p. 371).

In this case the Dominion Parliament assumes full regulatory jurisdiction provided either the principal market is out of the province or some part of the product may be exported.

40 It is suggested that the latter alternative, a mere possibility of some of the products being exported out of the provinces, is not sufficient to make the control of the entire trade a matter of interprovincial or extra-provincial concern, and that the circumstances in that alternative at least are in no way comparable to those in the *Lawson* case, as, there, 90% was exported and the chief object of the law was to regulate an export trade.

Whether the other alternative that the principal market be out of the province is sufficient to give jurisdiction is another question.

It is suggested that the decision on the point is unnecessary as the Act is not severable notwithstanding the proviso of s. 26.

It is by no means a certainty that Parliament would have passed this Act with one alternative of subs. 4 of s. 5 left out.

*In the  
Supreme  
Court of  
Canada.*

No. 6.  
Factum  
of the  
Attorney-  
General of  
Quebec—  
*continued.*

*In the  
Supreme  
Court of  
Canada.*

No. 6.

Factum  
of the  
Attorney-  
General of  
Quebec—  
*continued.*

However the Attorney-General of Quebec suggests that the mere fact that 51% of the market being, in the opinion of the Governor in Council, out of the province is far from sufficient to bring this case within the rule laid down in the *Lawson* judgment, still less to give the Dominion jurisdiction on the whole trade.

As previously pointed out the *Lawson* judgment leaves open the question of the power of the Dominion Parliament to pass such an Act even under the circumstances under consideration in that case.

Under this legislation, to take an example, say butter, if it is possible that some butter be exported then every sale of butter, even to be consumed in the very village where it is made, can be regulated and will be regulated if a scheme is approved, unless the scheme contains the restrictions provided for in sec. 5, subs. 5, para. (f), which need not be necessarily included. 10

Sections 12 and following of the Act, as they deal with restrictions of imports and exports in connection with regulated products, should follow the fate of the previous sections.

Part II purports to provide investigating by compulsory methods in matters which, for the reasons previously given, are not considered to be in themselves within the jurisdiction of the Dominion, and therefore it is submitted that these sections should be declared unconstitutional. 20

FOR THE ABOVE REASONS and the arguments which may be advanced at the hearing of the Reference, the Attorney-General of Quebec submits that the Acts in question must be declared *ultra vires* of the Parliament of Canada.

CHARLES LANCTOT,  
AIMÉ GEOFFRION.

No. 7.

Factum  
of the  
Attorney-  
General of  
New  
Brunswick.

No. 7.

Factum of the Attorney-General of New Brunswick.

PART ONE.

STATEMENT OF FACTS.

30

This matter comes before the Supreme Court of Canada as a result of a reference made by the Committee of the Privy Council on the recommendation of the Minister of Justice as set out in the Record herein on Page Three, inscribed for hearing before the said Court on the Fifteenth day of January, A.D. 1936, by order of the Rt. Hon. The Chief Justice of Canada, bearing date the Fourteenth day of November, A.D. 1935, as appears in the Record on Page Four, pursuant to Section 55 of the Supreme Court Act, R.S.C. 1927, Chapter 35.

## PART TWO.

## GROUNDS OF OBJECTION.

The Province of New Brunswick associates itself with the grounds of objection set out in the Factum of the Province of Quebec and endorses and adopts the stand taken by that Province in opposing the validity of the said referred legislation.

## PART THREE.

## ARGUMENT.

The Province of New Brunswick associates itself with the argument  
10 contained in the Factum of the Province of Quebec and endorses, adopts  
and relies upon such argument and authorities as are contained in said  
Factum, with respect to the legislation involved in this reference.

DONALD V. WHITE,

Counsel for the Attorney-General of New Brunswick.

*In the  
Supreme  
Court of  
Canada.*

No. 7.  
Factum  
of the  
Attorney-  
General of  
New  
Brunswick  
—*continued.*

## No. 8.

## Factum of the Attorney-General of Manitoba.

The Attorney-General of Manitoba at present expresses no opinion  
on this question referred to the Supreme Court of Canada as follows :

20 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?  
but reserves the right to appeal from any judgment which is rendered.

W. J. MAJOR,

Attorney-General of Manitoba.

Winnipeg, January 6th, 1936.

No. 8.  
Factum  
of the  
Attorney-  
General of  
Manitoba.

*In the  
Supreme  
Court of  
Canada.*

**No. 9.**

**Factum of the Attorney-General of Saskatchewan.**

The Attorney-General of Saskatchewan at present expresses no opinion on this question referred to the Supreme Court of Canada as follows,—

No. 9.  
Factum  
of the  
Attorney-  
General of  
Saskat-  
chewan.

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?

but reserves the right to appeal from any judgment which is rendered.

SAMUEL QUIGG,

10

of Counsel for the

Attorney-General of Saskatchewan.

Regina, January 6th, 1936.

No. 10.  
Formal  
Judgment,  
17th June  
1936.

**No. 10.**

**Formal Judgment.**

**IN THE SUPREME COURT OF CANADA.**

Wednesday, the seventeenth day of June, A.D. 1936.

PRESENT

THE RIGHT HONOURABLE SIR LYMAN P. DUFF, P.C., G.C.M.G., C.J.C.

THE HONOURABLE MR. JUSTICE RINFRET.

20

THE HONOURABLE MR. JUSTICE CANNON.

THE HONOURABLE MR. JUSTICE CROCKET.

THE HONOURABLE MR. JUSTICE DAVIS.

THE HONOURABLE MR. JUSTICE KERWIN.

IN THE MATTER of a Reference as to whether The Natural Products Marketing Act, 1934, being Chapter 57 of the Statutes of Canada, 1934, as amended by The Natural Products Marketing Act Amendment Act, 1935, being Chapter 64 of the Statutes of Canada, 1935, or any of the provisions thereof and in what particular or particulars or to what extent, is *ultra vires* of the Parliament of Canada.

30

WHEREAS by Order in Council of His Majesty's Privy Council for Canada, bearing date the fifth day of November, in the year of our Lord, one thousand nine hundred and thirty-five (P.C. 3460), the important question of law hereinafter set out was referred to the Supreme Court of



Canada, for hearing and consideration, pursuant to section 55 of the Supreme Court Act, Revised Statutes of Canada, 1927, chapter 35 :—

“ 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.”

AND WHEREAS the said question came before this Court for hearing and consideration on the third and fourth days of February, in the year of our Lord, one thousand nine hundred and thirty-six, in the presence of  
 10 Hon. N. W. Rowell, K.C., Mr. Louis St-Laurent, K.C., Mr. C. P. Plaxton, K.C., and Mr. R. St-Laurent, of counsel for the Attorney-General of Canada; Hon. A. W. Roebuck, K.C., and Mr. I. A. Humphries, K.C., of counsel for the Attorney-General for the Province of Ontario; Mr. Charles Lanctot, K.C., and Mr. Aimé Geoffrion, K.C., of counsel for the Attorney-General of the Province of Quebec; Mr. D. V. White, of counsel for the Attorney-General for the Province of New Brunswick; Mr. J. Allen, K.C., of counsel for the Attorney-General for the Province of Manitoba; and Mr. S. Quigg,  
 20 of counsel for the Attorney-General for the Province of Saskatchewan; and after due notice to the Attorneys-General for the Provinces of British Columbia, Alberta, Nova Scotia and Prince Edward Island :

WHEREUPON and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said Reference should stand over for consideration, and the same having come on this day for determination; the Court hereby certifies to His Excellency the Governor-General in Council, for his information pursuant to subsection 2 of section 55 of the Supreme Court Act, that the opinion of the Court is as follows :—

“ The statute, in the unanimous opinion of the Court, is *ultra vires* ”

and that the reasons for such answer are to be found in the reasons for the  
 30 answer written by the Chief Justice and concurred in by Mr. Justice Rinfret, Mr. Justice Cannon, Mr. Justice Crocket, Mr. Justice Davis, and Mr. Justice Kerwin, a copy of which reasons is hereunto annexed.

(Sgd.) J. F. SMELLIE,  
 Registrar.

#### No. 11.

#### Reasons for Judgment of Duff, C.J.

THE CHIEF JUSTICE—(Concurred in by Rinfret, Cannon, Crocket, Davis and Kerwin, JJ.)—Counsel on behalf of the Dominion based his argument in support of the validity of this statute upon two grounds. It is argued,  
 40 first, that it is competent legislation under the general authority “ to make laws for the peace, order and good government of Canada ”; and, second, it is competent legislation in relation to matters coming within the second of the enumerated heads of section 91—“ The regulation of trade and commerce.” It will be convenient to discuss first the last mentioned ground.

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 Supreme  
 Court of  
 Canada.*

—  
 No. 10.

Formal  
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 17th June  
 1936—  
*continued.*

No. 11.  
 Reasons for  
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 (concurrent  
 in by  
 Rinfret,  
 Cannon,  
 Crocket,  
 Davis and  
 Kerwin  
 JJ.).

*In the  
Supreme  
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Reasons for  
Judgment of  
Duff C.J.  
(concurrent  
in by  
Rinfret,  
Cannon,  
Crocket,  
Davis and  
Kerwin  
JJ.)—  
*continued.*

In substance, we are concerned with sections, 3, 4 and 5 of the statute. By section 3, the Governor-General is empowered to establish a Board to be known as the Dominion Marketing Board to regulate the marketing of natural products as hereinafter provided.

By section 4 (1) the Board is invested with power (a) to regulate the time and place at which, and to designate the agency through which the regulated product shall be marketed, to determine the manner of distribution, the quantity and quality, grade or class of the regulated product that shall be marketed by any person at any time, and to prohibit the marketing of any of the regulated product of any grade, quality or class;

“Marketed” is used in an extended sense as embracing “buying and selling, shipping for sale or storage and offering for sale.”

The Board is also empowered,

(c) to conduct a pool for the equalization of returns received from the sale of the regulated product; \* \* \*

(f) to require any or all persons engaged in the production or marketing of the regulated product to register their names, addresses and occupations with the Board, or to obtain a licence from the Board, and such licence shall be subject to cancellation by the Board for violation of any provision of this Act or regulation made thereunder;

Section 5 contains provisions for marketing schemes under which the marketing of a natural product, to which the scheme applies, is regulated by a local board under the supervision of the Dominion Board.

For the purposes of the discussion, it will not be necessary further to particularize the enactments of the statute. These enactments, in our opinion, are not enactments within the contemplation of the second head of section 91, “The regulation of trade and commerce” in the sense which has been ascribed to those words by decisions which are binding upon us and which it is our duty to follow.

It was argued by Mr. Rowell that two recent decisions, *Proprietary Articles Trade Association v. A.G. for Canada* (1) and the *Aeronautics Reference* (2) manifest a departure by the Judicial Committee of the Privy Council from the principles governing the application of the residuary clause, as well as of this particular enactment which is also couched in very sweeping terms. In view of the argument addressed to us, and, in view of the character of the enactments under consideration, passed as recently as July, 1934, it would appear to be desirable, if not, indeed necessary, to review afresh the decisions and the grounds of the decisions by which this Court has hitherto supposed itself to be governed in the interpretation and application of head No. 2.

The judgment of the Board in *Parsons* case (3) contains the well-known elucidation of the words “regulation of trade and commerce” which received the express approval of the Judicial Committee in *Wharton’s* case (4). The later cases, in which the Board had to consider the scope of the sphere of jurisdiction designated by head No. 2 are the *Montreal Street Railway* case (5); *A.G. for Canada v. A.G. for Alberta* (6); *the Board of*

(1) (1931) A.C. 310.

(3) (1881) 7 A.C. 96 at p. 112 *et seq.*

(5) (1912) A.C. 333.

(2) (1932) A.C. 54.

(4) (1915) A.C. 340.

(6) (1916) 1 A.C. 588.

*Commerce* case <sup>(1)</sup>; *A.G. for B.C. v. A.G. for Canada* <sup>(2)</sup>; *Toronto Electric Commissioners v. Snider* <sup>(3)</sup>.

The discussion in *Parsons* case has been many times considered and sometimes criticized. It is, we think, worth while to quote it in full (p. 112) :

The words "regulation of trade and commerce," in their unlimited sense are sufficiently wide if uncontrolled by the context and other parts of the Act, to include every regulation of trade ranging from political arrangements in regard to trade with foreign governments, requiring the sanction of parliament, down to minute rules for regulating particular trades. But a consideration of the Act shows that the words were not used in this unlimited sense.

10 In the first place, the collocation of No. 2 with classes of subjects of national and general concern affords an indication that regulations relating to general trade and commerce were in the mind of the legislature, when conferring this power on the Dominion parliament. If the words had been intended to have the full scope of which in their literal meaning they are susceptible, the specific mention of several of the other classes of subjects enumerated in section 91 would have been unnecessary; as 15, banking; 17, weights and measures; 18, bills of exchange and promissory notes; 19, interest; and even 21, bankruptcy and insolvency.

"Regulation of trade and commerce" may have been used in some such sense as the words "regulations of trade" in the Act of Union between England and Scotland (6 Anne, c. 11), and as these words have been used in Acts of State relating to trade and commerce.

20 Article V of the Act of Union enacted that all the subjects of the United Kingdom should have "full freedom and intercourse of trade and navigation" to and from all places in the United Kingdom and the Colonies; and Article VI enacted that all parts of the United Kingdom from and after the union should be under the *same* "prohibitions, restrictions, and regulations of trade." Parliament has at various times since the Union passed laws affecting and regulating specific trades in one part of the United Kingdom only, without its being supposed that it thereby infringed the Articles of Union. Thus the Acts for regulating the sale of intoxicating liquors notoriously vary in the two kingdoms. So with regard to Acts relating to bankruptcy, and various other matters.

30 Construing, therefore, the words "regulation of trade and commerce" by the various aids to their interpretation above suggested, they would include political arrangements in regard to trade requiring the sanction of parliament, regulation of trade in matters of inter-provincial concern; and it may be that they would include general regulations of trade affecting the whole Dominion. Their Lordships abstain on the present occasion from any attempt to define the limits of the authority of the Dominion parliament in this direction. It is enough for the decision of the present case to say that, in their view, its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance in a single province, and therefore that its legislative authority does not in the present case conflict or compete with the power over property and civil rights assigned to the legislature of Ontario

40 by No. 13 of section 92.

Having taken this view of the present case, it becomes unnecessary to consider the question how far the general power to make regulations of trade and commerce, when competently exercised by the Dominion parliament, might legally modify or affect property and civil rights in the provinces, or the legislative power of the provincial legislatures in relation to those subjects;

The actual decision, it will be observed was that the authority to legislate for the regulation of trade and commerce does not contemplate the power to regulate by legislation the contracts of a particular business or trade in a single province. But the judgment suggests, although it does

50 not decide, that this power of regulation does not extend to the unlimited regulation of particular trades and occupations. On the other hand, there

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<sup>(1)</sup> (1922) 1 A.C. 191.

<sup>(2)</sup> (1924) A.C. 222.

<sup>(3)</sup> (1925) A.C. 396.

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is nothing in the judgment to indicate that the regulation of external trade is excluded from the scope of the authority, nor is there anything to suggest, whatever the precise scope of the power may be, that, when Parliament is legislating with reference to matters strictly within the regulation of trade and commerce, it is disabled from legislating in regard to matters otherwise exclusively within the provincial authority if such legislation is necessarily incidental to the exercise of its exclusive powers in relation to that subject.

The subject was further elucidated by the judgment of the Judicial Committee in *A.G. for Canada v. A.G. for Alberta* <sup>(1)</sup>. There it was held that this authority does not extend to regulation by a licensing system of “a particular trade in which Canadians would otherwise be free to engage in the provinces.” Here again there is no suggestion that trade in a particular commodity, in so far as it is external trade or interprovincial trade, is not within the exclusive regulative authority of the Dominion. 10

It is convenient at this point to revert to the discussion of the subject which occurred in the *Montreal Street Railway* case <sup>(2)</sup>. The judgment of the Board was written by Lord Atkinson, and the Board included Lord Loreburn and Lord Macnaghten. The controversy concerned the validity of an order made by the Board of Railway Commissioners under the authority of a provision of the Dominion Railways Act which required the owners of the Montreal Street Railway, a local work within the meaning of the 10th heading of section 92, and normally subject, exclusively to the control of the provincial legislature, to enter into an agreement with the owners of the Montreal Park and Island Railway which was a railway subject to the exclusive jurisdiction of the Parliament of Canada, and which connected with the street railway, in relation to the rates to be charged by the proprietors of the street railway in respect of through traffic passing over the street railway and the Park and Island Railway. 20

Admittedly, the legislature of Quebec had no authority to legislate in relation to such a matter as regards the Dominion undertaking, and on various grounds it was contended that the Dominion Parliament necessarily possessed authority to legislate in relation to through traffic and for the provincial railway in respect of such traffic. This authority was said to be bestowed by, *inter alia*, the residuary clause and by head No. 2 of section 91, “The regulation of trade and commerce.” It was necessary for the determination of the appeal that their Lordships should pronounce upon both these contentions. They were examined in a single passage which we now quote. From the judgment in *A.G. for Ontario v. A.G. for Canada* <sup>(3)</sup> their Lordships adduced the following principles as applicable to the case before them : 30

(1) that the exception contained in s. 91, near its end, was not meant to derogate from the legislative authority given to provincial legislatures by the 16th subsection of s. 92, 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 power conferred upon that Parliament under the heads enumerated in s. 91 ; (2) that to those matters 40

<sup>(1)</sup> (1916) 1 A.C. 588.

<sup>(2)</sup> (1912) A.C. 333.

<sup>(3)</sup> (1896) A.C. 491.

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which are not specified amongst the enumerated subjects of legislation in s. 91 the exception at its end has no application, and that in legislating with respect to matters not so enumerated the Dominion Parliament has no authority to encroach upon any class of subjects which is exclusively assigned to the provincial Legislature by s. 92; (3) that these enactments, ss. 91 and 92, indicate that the exercise of legislative power by the Parliament of Canada in regard to all matters not enumerated in s. 91 ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any classes of subjects enumerated in s. 92; (4) that to attach any other construction to the general powers which, in supplement of its enumerated powers, are conferred upon the Parliament of Canada by s. 91 would not only be contrary to the intentment of the Act, but would practically destroy the autonomy of the provinces; and, lastly, that if the Parliament of Canada had authority to make laws applicable to the whole Dominion in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order and good government of the Dominion, there is hardly a subject upon which it might not legislate to the exclusion of provincial legislation. (1912, A.C. at p. 343).

Their Lordships then proceeded,

The same considerations appear to their Lordships to apply to two of the matters enumerated in s. 91, namely, the regulation of trade and commerce. Taken in their widest sense these words would authorize legislation by the Parliament of Canada in respect of several of the matters specifically enumerated in s. 92, and would seriously encroach upon the local autonomy of the province. In their Lordships' opinion these pronouncements have an important bearing on the question for decision in the present case, though the case itself in which they were made was wholly different from the present case, and the decision given in it has little if any application to the present case. They apparently established this, that the invasion of the rights of the province which the Railway Act and the Order of the Commissioners necessarily involve in respect of one of the matters enumerated in s. 92, namely, legislation touching local railways, cannot be justified on the ground that this Act and Order concern the peace, order and good government of Canada nor upon the ground that they deal with the regulation of trade and commerce.

The general expressions in this passage must, of course, be read in the light of the controversy with which their Lordships were dealing. They were, as we have seen, discussing the question raised as to the authority of the Dominion in exercise of its powers in regard to regulation of trade and commerce to legislate for a local work or undertaking of the character assigned, *prima facie*, exclusively to the jurisdiction of the province by section 92 (10). But the passage, as was pointed out in this court in *Lawson v. Interior Tree Fruit & Vegetable Committee* (1), signalizes the distinction between that which is national in its scope and concern and that which in each of the provinces is of private or local, that is to say, of provincial interest, which must be observed in deciding whether a particular enactment falls within the Dominion authority respecting the regulation of trade and commerce.

In *A.G. for B.C. v. A.G. for Canada* (2), the Board dealt with the subject of the regulation of external trade. The question before the Board in that case concerned the authority of the Dominion of Canada to impose customs duties upon alcoholic liquors imported into Canada by the Government of British Columbia for the purpose of sale by that government. It was pointed out in the judgment delivered by Lord Buckmaster, that the imposition of

(1) (1931) S.C.R. 367.

(2) (1924) A.C. 222.

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customs duties may have for its object regulation of trade and commerce, or it may have the twofold purpose of regulating trade and commerce and raising money; and it was held that section 125 of the B.N.A. Act, which prohibits the taxation of the property of the Crown, ought not to be so construed and applied as to interfere with the authority of the Parliament of Canada to regulate trade and commerce and to impose customs duties for that purpose.

This decision seems very plainly to involve the proposition that, by an enactment of the Parliament of Canada, trade in a particular commodity or class of commodities may be subjected to regulation through the instrumentality of customs duties. 10

There is another decision the mention of which ought not to be omitted, viz., the decision of 1885 of the Judicial Committee on the reference concerning the validity of the Dominion Liquor Licence Acts where their Lordships held that a system for the local licensing of the liquor trade was beyond the competence of the Dominion Parliament to establish.

It would appear to result from these decisions that the regulation of trade and commerce does not comprise, in the sense in which it is used in section 91, the regulation of particular trades or occupations or of a particular kind of business such as the insurance business in the provinces, or the regulation of trade in particular commodities or classes of commodities in so far as it is local in the provincial sense; while, on the other hand, it does embrace the regulation of external trade and the regulation of interprovincial trade and such ancillary legislation as may be necessarily incidental to the exercise of such powers. 20

There is another class of regulation which has been held to fall within the purview of head No. 2 (*John Deere Plow Co. v. Wharton*)<sup>(1)</sup>: regulation which is auxiliary to some Dominion measure dealing with matters not falling within section 92, such, for example, as the incorporation of Dominion companies. 30

Obviously, these propositions do not furnish a complete definition of the authority given by the second subdivision of section 91. Logically, they leave scope for a possible jurisdiction in relation to "general trade and commerce" or in relation to "general regulations of trade applicable to the whole Dominion"—phrases employed in the judgment in *Parsons* case. Broadly speaking, they have their basis in the consideration mentioned in *Parsons* case arising from the specification of particular subjects in section 91 and from the necessity to limit the natural scope of the words, in order to preserve from serious curtailment, if not from virtual extinction, the degree of autonomy, which as appears from the scheme of the Act as a whole, the provinces were intended to enjoy. (*Lawson's case*)<sup>(2)</sup>. 40

Restrictions upon the natural meaning of the words, in so far as they are dictated by force of such considerations, may properly be accepted as the necessary result of the application of settled principles of construction pursuant to which, from the beginning, it has been recognized that, in

<sup>(1)</sup> (1915) A.C. 330.

<sup>(2)</sup> (1931) S.C.R. at p. 366.

considering sections 91 and 92, the language of each must be read in light of the other and in some cases even modified for the purpose of giving effect to the two sections.

The necessity for some such restriction seems to be demonstrable by reference to the concluding clause of s. 91 which is in these words :

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.

10 In *A.G. for Ontario v. A.G. for Canada* <sup>(1)</sup> it was held that the language of this exception was meant to include all matters enumerated within the sixteen heads of s. 92; and in *A.G. for Canada v. A.G. for Ontario* <sup>(2)</sup> it was laid down and decided that section 91 contains a legislative declaration that legislation upon any matter falling strictly within any of the classes of subjects specially enumerated in s. 91 is not within the competence, as matter of legislation, of a provincial legislature under s. 92.

Whenever \* \* \* a matter is within one of these specified classes, their Lordships said, legislation in relation to it by a Provincial Legislature is in their Lordships' opinion incompetent.

20 The decision in *Hodge v. The Queen* <sup>(3)</sup> that it is competent to a province to regulate by a local licensing system the trade in liquor seems incompatible with the contention that such local regulation of the trade in particular commodities is strictly within any of the classes of matters comprehended under the general words "The regulation of trade and commerce"; and this was the view taken by the Board in the case of *A.G. for Alberta v. A.G. for Canada* <sup>(4)</sup>. Such was also, it would appear, the necessary effect of the judgment of the Board on the Reference in 1885 in relation to the Dominion Licensing Acts which has already been mentioned.

30 It does not seem to admit of serious dispute that, if regards natural products, as defined by the Act, the provinces are destitute of the powers to regulate the dealing with natural products in respect of the matters designated in section 4 (1), a, the powers of the provinces are much more limited than they have generally been supposed to be. If this defect of power exists in relation to natural products it exists in relation to anything that may be the subject of trade. Furthermore, if the Dominion has power to enact section 4 (1) f, as a provision falling strictly within "the regulation of trade and commerce," then the provinces are destitute of the power to regulate, by licensing persons engaged in the production, the buying and selling, the shipping for sale or storage and the offering for sale, in an exclusively local  
40 and provincial way of business of any commodity or commodities. The acceptance of this view of the powers of the provinces would seem to be inconsistent, not only with *Hodge v. The Queen* <sup>(3)</sup>, but with the judgment in the *Montreal Street Railway* case <sup>(5)</sup> as well as with the judgment in the *Board of Commerce* <sup>(6)</sup> case. The judgment in this latter case seems very plainly to

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<sup>(1)</sup> (1896) A.C. 359.

<sup>(4)</sup> (1928) A.C. 475.

<sup>(2)</sup> (1898) A.C. 700, at 715.

<sup>(5)</sup> (1912) A.C. 333.

<sup>(3)</sup> (1883) 9 A.C. 117.

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declare that in the absence of very special circumstances such as those indicated in the judgment of the Board, such matters as subjects of legislation fall within the jurisdiction of the provinces under section 92.

The enactments in question, therefore, in so far as they relate to matters which are in substance local and provincial are beyond the jurisdiction of Parliament. Parliament cannot acquire jurisdiction to deal in the sweeping way in which these enactments operate with such local and provincial matters by legislating at the same time respecting external and interprovincial trade and committing the regulation of external and interprovincial trade and the regulation of trade which is exclusively local and of traders and producers engaged in trade which is exclusively local to the same authority (*King v. Eastern Terminal Elevators* (1)).

It should also be observed that these enactments operate by way of the regulation of dealings in particular commodities and classes of commodities. The regulations contemplated are not general regulations of trade as a whole or regulations of general trade and commerce within the sense of the judgment in *Parsons* case.

We now come to the judgments in the *Board of Commerce* case and *Snider's* case (*supra*).

In *Snider's* case, the view of the Board is stated in the following passage :

Nor does the invocation of the specific power in s. 91 to regulate trade and commerce assist the Dominion contention. In *Citizens Insurance Co. v. Parsons* (2), it was laid down that the collocation of this head (No. 2 of s. 91), with classes of subjects enumerated of national and general concern, indicates that what was in the mind of the Imperial Legislature when this power was conferred in 1867 was regulation relating to general trade and commerce. Any other construction would, it was pointed out, have rendered unnecessary the specific mention of certain other heads dealing with banking, bills of exchange and promissory notes, as to which it had been significantly deemed necessary to insert a specific mention. The contracts of a particular trade or business could not, therefore, be dealt with by Dominion legislation so as to conflict with the powers assigned to the Provinces over property and civil rights relating to the regulation of trade and commerce. The Dominion power has a really definite effect when applied in aid of what the Dominion Government are specifically enabled to do independently of the general regulation of trade and commerce, for instance, in the creation of Dominion companies with power to trade throughout the whole of Canada. This was shown in the decision in *John Deere Plow Co. v. Wharton* (3). The same thing is true of the exercise of an emergency power required, as on the occasion of war, in the interest of Canada as a whole, a power which may operate outside the specific enumerations in both ss. 91 and 92. And it was observed in *A.G. for Canada v. A.G. for Alberta* (4), in reference to attempted Dominion legislation about insurance, that it must now be taken that the authority to legislate for the regulation of trade and commerce does not extend to the regulation, for instance, by a licensing system, of a particular trade in which Canadians would otherwise be free to engage in the provinces. It is, in their Lordships' opinion, now clear that, excepting so far as the power can be invoked in aid of capacity conferred independently under other words in s. 91, the power to regulate trade and commerce cannot be relied on as enabling the Dominion Parliament to regulate civil rights in the provinces.

It is quite obvious that their Lordships are here not dealing with the regulation of external trade or the regulation of trade in matters of inter-

(1) (1925) S.C.R. 434.

(3) (1915) A.C. 330, 340.

(2) (1881) 7 A.C. 96, 112.

(4) (1916) 1 A.C. 588, 596.



provincial concern. For our present purpose, it seems sufficient to say that their Lordships deemed it necessary or expedient for the purpose of dealing with an argument addressed to them to discuss the scope of the power conferred by head no. 2 of section 91; and that, on any conceivable construction of the words, it would appear to be impossible consistently with them to support the authority of the statute under consideration.

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As to the decision on the *Aeronautics Reference* (supra) and the *Radio Reference* (supra), it does not seem necessary to enter upon a minute analysis of the judgments in those cases. The decision on the *Radio Reference* proceeded on two grounds: first, for the reasons fully explained in the judgment, the legislation in question (being legislation for giving effect to an international obligation binding upon Canada) was within the ambit of the powers conferred by the residuary clause; and, second, that instruments employed in radio transmission fall within the class of undertakings which, by the combined operation of head no. 10 of section 92 and head no. 29 of section 91, are within the exclusive jurisdiction of Canada. In the last-mentioned judgment it was pointed out that the decision in the *Aeronautics Reference* proceeded mainly upon the application of section 132. The subject matters of the enactments and regulations actually or hypothetically considered in those two cases have no sort of resemblance to the subject matter of this legislation.

There is nothing in either of these judgments to justify an inference that their Lordships intended to overrule the long series of their own decisions hereinbefore mentioned; or the reasons upon which those decisions were founded.

There is one further observation which, perhaps, ought not to be omitted although it may be a mere corollary of what has already been said. Legislation necessarily incidental to the exercise of the undoubted powers of the Dominion in respect of the regulations of trade and commerce is competent although such legislation may trench upon subjects reserved to the provinces by section 92, but it cannot, we think, be seriously contended that sweeping regulation in respect of local trade, such as we find in this enactment is, in the proper sense, necessarily incidental to the regulation of external trade or interprovincial trade or both combined.

The scheme of this statute in respect of its essential enactments would not appear to be practicable as a legislative scheme.

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 Re the Board of Commerce Act* <sup>(1)</sup>.

Turning now to the contention that this statute is a valid exercise of the power of Parliament under the introductory clause of section 91, there is a preliminary observation to be made. This argument has been pressed upon us in support of six of the statutes which have been referred to us for consideration. These are the statutes relating to the Minimum Wages,

(1) (1922) 1 A.C. at p. 201.

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to Limitation of Hours of Work, to a Weekly Rest Day; to Employment and Social Insurance; to Farmers' Creditors Arrangements and to the statute immediately under consideration, the Natural Products Marketing Act. The discussion which follows was written with special reference to the first three of these statutes; the argument upon the reference relating to them being that, apart altogether from the circumstance that the subject matters of the enactments are subjects of international agreements in respect of which international obligations have been assumed, they are dealt with in aspects which do not fall under section 92 and can only be the subject matter of legislation under the initial clause of section 91. 10

What follows, however, in substance pertains to the argument as presented in support of all the statutes mentioned and it has been thought convenient to produce it in this place.

It is important not to lose sight of the language of the statute itself. The initial words of section 91 empower the Queen by and with the advice and consent of the Senate and the 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.

By section 92,

20

in each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects

enumerated. These classes of subjects include (No. 13) Property and Civil Rights in the Province.

By section 94,

Notwithstanding anything in this Act the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick, and of the procedure of all or any of the courts in those three provinces, and from and after the passing of any Act in that behalf the power of the Parliament of Canada to make laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of Parliament of Canada making provision for such uniformity shall not have effect in any province unless and until it is adopted and enacted as law by the legislature thereof. 30

Section 94, it will be observed, has no application to Quebec.

Language could not be more plain or, indeed, more explicit to declare that the subjects, Property and Civil Rights, are not subjects assigned to the Parliament of Canada under the initial words of section 91.

We are not concerned with the enumerated subjects assigned to Parliament under the second limb of that section; or with the concluding paragraph of the section which, as the Courts have recognized, has obviously 40 no application to the first limb of the section, which alone is now pertinent.

It is settled by the decisions of the Judicial Committee that the phrase "Property and Civil Rights" is used in the "largest sense," subject, of course, to the limitations arising expressly from the exception of the enumerated heads of section 91, and impliedly from the specification of subjects in section 92.

It is to be observed, said the Board in *Citizens Insurance Co. v. Parsons* <sup>(1)</sup>, that the same words, "civil rights," are employed in the Act of 14 Geo. 3, c. 83, which made provision for the Government of the Province of Quebec. Section 8 of that Act enacted that His Majesty's Canadian subjects within the province of Quebec should enjoy their property, usages, and other civil rights, as they had before done, and that in all matters of controversy relative to property and civil rights resort should be had to the laws of Canada, and be determined agreeably to the said laws. In this statute the words "property" and "civil rights" are plainly used in their largest sense; and there is no reason for holding that in the statute under discussion they are used in a different and narrower one.

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10 The legislation admittedly affects civil rights and interferes with and controls, and regulates the exercise in every one of the provinces of the civil rights of the people in those provinces; but it is said that the real subject matter of the legislation is not these civil rights, which are controlled and regulated, but something else.

The initial clause of section 91 has been many times considered. There is no dispute now that the exception which excludes 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 has been laid down that matters normally comprised within the subjects enumerated in  
20 section 92 may, in extraordinary circumstances, acquire aspects of such paramount significance as to take them outside the sphere of that section.

The argument is mainly supported by two sentences in the judgment of the Board in *A.G. for Ontario v. A.G. for Canada* <sup>(2)</sup>. The judgment of the Board in that case was directed to the answers to be given to certain questions submitted by the Governor-General in Council to this Court, all of which questions immediately concerned the jurisdiction of a provincial legislature in respect of the prohibition of certain phases of the liquor traffic. The two sentences occur in the discussion of the seventh question which relate to the jurisdiction of the Ontario Legislature to enact a section of a  
30 statute of that Province entitled "An Act respecting local option in the matter of liquor selling." In the course of that discussion, their Lordships dealt with the general authority given to the Parliament of Canada under the first of the introductory enactments of section 91 which is quoted above, and their Lordships observed,

\* \* \* to those matters which are not specified among the enumerated subjects of legislation, the exception from s. 92, which is enacted by the concluding words of s. 91, has no application; and, in legislating with regard to such matters, the Dominion Parliament has no authority to encroach upon any class of subjects which is exclusively assigned to provincial legislatures by s. 92. These enactments appear to their Lordships to indicate that the exercise of legis-  
40 lative power by the Parliament of Canada, in regard to all matters not enumerated in s. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92. To attach any other construction to the general power which, in supplement of its enumerated powers, is conferred upon the Parliament of Canada by s. 91, would, in their Lordships' opinion, not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the provinces. If it were once conceded that the Parliament of Canada has authority to make laws applicable to the whole Dominion, in relation to matters which in each province are substantially of local or private

(1) (1881) 7 A.C. 96 at p. 111.

(2) (1896) A.C. 348.

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interest, upon the assumption that these matters also concern the peace, order and good government of the Dominion, there is hardly a subject enumerated in s. 92 upon which it might not legislate, to the exclusion of the provincial legislatures.

Their Lordships proceeded, in the two sentences which are now mainly relied upon,

Their Lordships do not doubt that some matters, in their origin local and provincial, might attain such dimensions as to affect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for their regulation or abolition in the interest of the Dominion. But great caution must be observed in distinguishing between that which is local and provincial, and therefore within the jurisdiction of the provincial legislatures, and that which has ceased to be merely local or provincial, and has become matter of national concern, in such sense as to bring it within the jurisdiction of the Parliament of Canada. 10

It seems to us right, if these two sentences are to be properly understood, that they should be read with the preceding sentences; and experience seems to show that there has been a disposition not to attend to the limits implied in the carefully guarded language in which the Board expressed itself. It has been assumed, apparently, that they lay down a rule of construction the effect of which is that all matters comprised in any one of the enumerated subdivisions of section 92 may attain "such dimensions as to . . . cease to be merely local or provincial" and become in some other aspect of them matters relating to the "peace, order and good government of Canada" and subject to the legislative jurisdiction of the Parliament of Canada. 20

The difficulty of applying such a rule to matters falling within the first subdivision, for example, of section 92, which relates to the amendment of the provincial constitutions "notwithstanding anything in this Act," must be very great. On the face of the language of the statute, the authority seems to be intended to be absolute. In other words, it seems to be very clearly stated that matters comprised within the subject matter of the constitution of the province "except as regards the office of Lieutenant-Governor" are matters local and provincial, and that they are not matters which can be comprised in any of the classes of subjects of section 91. 30

Then the decision in the *Montreal Park & Island Railway v. City of Montreal* (1) seems to be final upon the point that local works and undertakings, subject to the exceptions contained in subdivision No. 10 of section 92 and matters comprised within that description, are matters local and provincial within the meaning of section 92 and excepted from the general authority given by the introductory enactment of section 91.

The same might be said of the solemnization of marriage in the province. Marriage and divorce are given without qualification to the Dominion under subdivision 26 of section 91, but the effect of section 92 (12), it has been held, is to exclude from the Dominion jurisdiction in relation to marriage and divorce the subject of solemnization of marriage in the province. It is very difficult to conceive the possibility of solemnization of marriage, in the face of this plain declaration by the Legislature, assuming aspects which would bring it within the general authority of the Dominion in 40

(1) (1912) A.C. 333.

relation to peace, order and good government, in such fashion, for example, as to enable the Dominion to prohibit or to deprive of legal effect a religious ceremony of marriage. The like might be said of No. 2, Taxation within the Province; the Borrowing of Monies on the Sole Credit of the Province; Municipal Institutions in the Province; and the Administration of Justice, including the constitution of the Courts and Procedure in Civil Matters in the Courts.

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10 In the *Manitoba Licenceholders* case<sup>(1)</sup>, Lord Macnaghten, speaking for a Board which included Lord Hobhouse, Lord Davey, Lord Robertson and Lord Lindley, said that, in their Lordship's view, it was doubtful if the Canada Temperance Act could be sustained as valid legislation by the Dominion on the assumption that the matter of statute was comprised within section 13.

\* \* \* a careful perusal of the judgment (in *A.G. for Ontario v. A.G. for the Dominion* <sup>(2)</sup>), leads to the conclusion that, in the opinion of the Board, the case fell under No. 16 rather than under No. 13. And that seems to their Lordships to be the better opinion <sup>(3)</sup>.

The judgment proceeds:—

Indeed, if the case is to be regarded as dealing with matters within the class of subjects  
20 enumerate in No. 13, it might be questionable whether the Dominion Legislature could have authority to interfere with the exclusive jurisdiction of the province in the matter.

Lord Davey, who took part in this judgment was a member of the Board which pronounced the judgment containing the two sentences under discussion.

As we have said, Lord Watson's language is carefully guarded. He does not say that every matter which attains such dimensions as to effect the body politic of the Dominion falls thereby within the introductory matter of section 91. But he said that "some matters" may attain such dimensions as to affect the body politic of the Dominion and, as we think the sentence ought to be read having regard to the context, in such manner  
30 and degree as may "justify the Canadian Parliament in passing laws for their regulation or abolition . . ." So, in the second sentence, he is not dealing with all matters of "national concern" in the broadest sense of those words, but only those which are matter of national concern "in such sense" as to bring them within the jurisdiction of the Parliament of Canada.

40 The application of the principle implicit in this passage must always be a delicate and difficult task. That is shown by reference to the history of the Canada Temperance Act. The prohibitory clauses of the legislation undoubtedly do affect civil rights directly but, in *Russell v. The Queen* <sup>(4)</sup>, the Board took the view that the real subject matter of the legislation was not property and civil rights, but matter connected with public order and having a close relation to the criminal law. It was likened to "laws which place restrictions on the sale or custody of poisonous drugs, or of dangerously explosive substances . . . on the ground that the free sale or use of

<sup>(1)</sup> (1902) A.C. 73.  
<sup>(2)</sup> (1902) A.C. 78.

<sup>(3)</sup> (1896) A.C. 348.  
<sup>(4)</sup> (1881) 7 A.C. 829.

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them is dangerous to public safety, and making it a criminal offence . . . .  
to violate these restrictions. . . .” It was described as “legislation . . .  
relating to public order and safety,” and belonging to the class of  
“Laws . . . for the promotion of public order, safety or morals,  
and which subject those who contravene them to criminal procedure and  
punishment. . . .”

Unfortunately, on this point, the case was unargued, Mr. Benjamin  
conceding that the enactments would have fallen within the general authority  
of the Dominion if it had been brought into force immediately throughout  
every part of the Dominion. The difficulty has been pointed out more than 10  
once of reconciling this decision with the subsequent decision of a very  
powerful Board in the *Dominion Liquor Licence* case, in which an Act  
of the Dominion Parliament regulating by licence the sale of liquor through-  
out the Dominion was held to be *ultra vires* notwithstanding the following  
preamble :

Whereas it is desirable to regulate the traffic in the sale of intoxicating liquor, and it  
is expedient that the law respecting the same should be uniform throughout the Dominion,  
and that provision should be made in regard thereto for the better preservation of peace  
and order;

And, in the judgment of Lord Watson in *A.G. for Ontario v. A.G. for* 20  
*Canada* <sup>(1)</sup> it is observed (p. 362) :

The judgment of this Board in *Russell v. Regina* <sup>(2)</sup> has relieved their Lordships from the  
difficult duty of considering whether the Canada Temperance Act of 1886 relates to the peace,  
order and good government of Canada, in such sense as to bring its provisions within the  
competency of the Canadian Parliament.

*Russell v. The Queen* has been explained in a more recent decision  
and we shall come to that in a moment. The point we are now concerned  
with is this : The question whether the prohibition and the regulation of  
the right to manufacture or deal in intoxicating liquors throughout the  
Dominion could, by reason of its analogy to legislation regulating or suppress- 30  
ing the sale of poisonous drugs or explosives, the manufacture and sale of  
poisonous drugs and explosives, and the connection between the matters  
dealt with and public order and the criminal law, be justified as legislation  
within the initial clause of section 91 is a question in respect of which the  
great judges who had to consider the cases we have mentioned found them-  
selves in doubt and difficulty. Lord Watson’s admonition to the courts  
to observe “great caution” in considering such matters is one that will  
not be lightly disregarded by prudent judges. The words of the passage  
in Lord Watson’s judgment in themselves are not intended, obviously, 40  
to provide a test for determining in any given case whether a matter falling  
within “Property and Civil Rights” in the province has acquired such  
aspects as to take it out of the classes of subjects dealt with in section 92.  
The interpretation of Lord Watson’s language in this sense by the judgment  
of the Board in *Montreal v. Montreal Street Railway* <sup>(3)</sup> is, if we may say so,  
fully justified by that judgment when read as a whole. We may add that Lord

<sup>(1)</sup> (1896) A.C. 348.

<sup>(2)</sup> (1881) 7 A.C. 829.

<sup>(3)</sup> (1912) A.C. 333.

Macnaghten, who wrote the judgment of the *Manitoba Licenceholders* case (supra), was also a member of the Board who decided the *Montreal* case. In performing the very difficult task of deciding upon such questions, the courts must have regard to the provisions of the B.N.A. Act as a whole and to the practical application of the introductory enactment of section 91 in the decisions of the courts. In considering these decisions, it is important to read what is said in the light of the thing that was decided; and it is fundamental that the interpretation and application of sections 91 and 92 of the B.N.A. Act cannot be controlled by particular expressions used in a judgment torn from their context and given the broadest meaning of which the words are capable without any reference to that context or to the particular controversy to which the language was directed.

The necessity for Lord Watson's admonition becomes more clear when we recall that there is only one case in which the Judicial Committee has 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 is *Fort Frances Pulp & Power Co. v. Manitoba Press*<sup>(1)</sup>.

20 Before dealing with the *Fort Frances* case, it will be necessary to refer to two other decisions, in the *Board of Commerce Act* case <sup>(2)</sup> and in *Toronto Electric Commissioners v. Snider* <sup>(3)</sup>.

In the *Board of Commerce* case the Judicial Committee had to consider legislation by which a Dominion Board was constituted and empowered, broadly speaking, to inquire into, and prohibit, profiteering and practices in connection therewith in dealings in the necessaries of life. In particular, the Board had authority to regulate the prices of such necessaries of life.

30 The question arose upon a case stated as to the validity of an order made by the Board regulating the prices of ready made clothing in certain establishments in Ottawa. The validity of the order was attacked by the associations of manufacturers concerned and was supported by counsel on behalf of the Board and of the Dominion. The litigation raised the concrete question *inter partes* as to the legality of the particular order; and the answer to that question turned upon the answer to the question concerning the validity of the legislation, which it was, therefore, essential to determine. The statute was supported on various grounds and, among others, on the ground that in the year 1919, when it was enacted, the evils of hoarding and high prices in respect of the necessaries of life had attained such dimensions "as to affect the body politic of Canada." Nobody 40 denied the existence of the evil. Nobody denied that it was general throughout Canada. Nobody denied the importance of suppressing it. Nobody denied that it prejudiced and seriously prejudiced the well being of the people of Canada as a whole, or that in a loose, popular sense of the words it "affected the body politic of Canada." Nevertheless, it was held that these facts did not constitute a sufficient basis for the exercise of jurisdiction

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(1) (1922) A.C. 695. (2) (1922) 1 A.C. 191.  
(3) (1925) A.C. 396.

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by the Dominion Parliament under the introductory clause in the manner attempted. The Board said that in special circumstances, such as those of a great war, the interest of the Dominion in the matters might conceivably become of such paramount and overriding importance as to lie outside the heads of section 92 and not be covered by them. But it is, they held, quite another matter to say that under normal circumstances, general Canadian policy can justify interference, on the scale of the statutes than in controversy, with the property and civil rights of the inhabitants of the Provinces.

It has already been observed that circumstances are conceivable, such as those of war or famine, when the peace, order and good government of the Dominion might be imperilled under conditions so exceptional that they require legislation of a character in reality beyond anything provided for by the enumerated heads in either s. 92 or s. 91 itself. Such a case, if it were to arise, would have to be considered closely before the conclusion would properly, be reached that it was one which could not be treated as falling under any of the heads enumerated. Still, it is a conceivable case, and although great caution is required in referring to it, even in general terms, it ought not, in the view their Lordships take of the British North America Act, read as a whole, to be excluded from what is possible. For throughout the provisions of that Act there is apparent the recognition that subjects which would normally belong exclusively to a specifically assigned class of subject may, under different circumstances and in another aspect, assume a further significance. Such an aspect may conceivably become of paramount importance, and of dimensions that give rise to other aspects. This is a principle which, although recognized in earlier decisions, such as that of *Russell v. The Queen*, both here and in the Courts of Canada, has always been applied with reluctance, and its recognition as relevant can be justified only after scrutiny sufficient to render it clear that the circumstances are abnormal. In the case before them, however important it may seem to the Parliament of Canada that some such policy as that adopted in the two Acts in question should be made general throughout Canada, their Lordships do not find any evidence that the standard of necessity referred to has been reached, or that the attainment of the end sought is practicable, in view of the distribution of legislative powers enacted by the Constitution Act, without the co-operation of the Provincial Legislatures. (1922, 1 A.C. 200).

The reluctance of the Courts to give effect to such arguments as that now under consideration is illustrated also in *Snider's Case* (1). The legislation in question there was framed for the purpose of dealing with industrial disputes and authorized the Minister of Labour to take steps to convene, in the case of such a dispute, a Board composed of a representative of the workmen, a representative of the employer, and a third person to be nominated by the Minister of Labour himself. The Act prohibited a strike or lock-out pending the consideration of a dispute by the Board. The importance of the matters dealt with by the statute, the fact that the statute was making a provision for meeting a condition which prevailed throughout the whole of Canada and for dealing with industrial disputes which, in many and, indeed, most cases, would affect people in more than one province, the fact that the machinery provided had proved to be a valuable instrument in the interests of industrial peace, were not disputed. Nevertheless, the Board negatived the existence of

the general principle that the mere fact that Dominion legislation is for the general advantage of Canada, or is such that it will meet a mere want which is felt throughout the Dominion, renders it competent if it cannot be brought within the heads enumerated specifically in section 91.

(1) (1925) A.C. 396.



The judgment of the Board proceeds :—

No doubt there may be cases arising out of some extraordinary peril to the national life of Canada, as a whole, such as the cases arising out of a war, where legislation is required of an order that passes beyond the heads of exclusive Provincial competency. Such cases may be dealt with under the words at the commencement of s. 91, conferring general powers in relation to peace, order and good government simply because such cases are not otherwise provided for. But instances of this, as was pointed out in the judgment in *Fort Frances Pulp & Power Co. v. Manitoba Free Press* <sup>(1)</sup> are highly exceptional. Their Lordships think that the decision in *Russell v. The Queen* can only be supported to-day, not on the footing of having laid down an interpretation, such as has sometimes been invoked in the general words at the beginning of s. 91, but on the assumption of the Board, apparently made at the time of deciding the case of *Russell v. The Queen*, that the evil of intemperance at that time amounted in Canada to one so great and so general that at least for the period it was a menace to the national life of Canada so serious and pressing that the National Parliament was called on to intervene to protect the nation from disaster. An epidemic of pestilence might conceivably have been regarded as analogous. It is plain from the decision in the *Board of Commerce* case <sup>(2)</sup> that the evil of profiteering could not have been so invoked, for Provincial Powers, if exercised, were adequate to it. Their Lordships find it difficult to explain the decision in *Russell v. The Queen* as more than a decision of this order upon facts, considered to have been established at its date rather than upon general law.

The principle enunciated in this last paragraph had been applied in the *Fort Frances* case, the authority of which seems to be recognized in the judgment in the *Aeronautics Reference* <sup>(3)</sup>.

On behalf of the Dominion it is argued that the judgment in the *Aeronautics* case constitutes a new point of departure. The effect of that judgment, it seems to be argued, is that if, in the broadest sense of the words, the matters dealt with are matters of "national concern" matters which "affect the body politic of the Dominion," jurisdiction arises under the introductory clause. One sentence is quoted from the judgment in the *Aeronautics* case which we will not reproduce because we do not think their Lordships can have intended in that sentence to promulgate a canon of construction for sections 91 and 92. We see 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 *Combines* case and *Snider's* case.

In the *Aeronautics* case, it is true, their Lordships called attention to the circumstance that, by section 132, the Dominion possesses powers to legislate in relation to matters which, in the domestic sense, would fall within section 92 when these matters have become affected by an international obligation by which Canada is bound; and in the subsequent case, reported in the same volume of the Appeal Cases, the *Radio Reference*, it was held that matters affected by an obligation arising under an international arrangement, not falling within section 132, but constituted in virtue of powers acquired in course of the recent constitutional developments, would fall within the general authority of section 91 because such international obligations were not comprehended within any of the specific subjects enumerated within section 91 or section 92; and in the *Aeronautics* case, as already observed, the authority of the decision in the

*In the  
Supreme  
Court of  
Canada.*

No. 11.  
Reasons for  
Judgment of  
Duff C.J.  
(concurring  
in by  
Rinfret,  
Cannon,  
Crockett,  
Davis and  
Kerwin  
J.J.)—  
*continued.*

<sup>(1)</sup> (1923) A.C. 695.

<sup>(2)</sup> (1922) 1 A.C. 191.

<sup>(3)</sup> (1932) A.C. 71.

*In the  
Supreme  
Court of  
Canada.*

Reasons for  
Judgment of  
Duff C.J.  
(concurring  
in by  
Rinfret,  
Cannon,  
Crocket,  
Davis and  
Kerwin  
JJ.)—  
*continued.*

*Fort Frances* case is expressly recognized. The judgments in the *Combines* case, the *Fort Frances* case, *Snider's* case, obviously have no reference to legislation dealing with matters of civil right from the international point of view. We are bound, in our view, by the decisions in the *Combines* case and in *Snider's* case as well as by the decision in the *Fort Frances* case, and, consistently with those decisions, we do not see how it is possible that the argument now under discussion can receive effect.

To summarize : in effect, this statute attempts and, indeed, professes, 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 commodities. The powers of regulation vested in the commissions extend to external trade and matters connected therewith and to trade in matters of interprovincial concern; but also to trade which is entirely local and of purely local concern. 10

Regulation of individual trades, or trades in individual commodities in this sweeping fashion, is not competent to the Parliament of Canada and such a scheme of regulation is 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 <sup>(1)</sup>.

The legislation, for the reasons given, is not valid as an exercise of the general authority of the Parliament of Canada under the introductory words of section 91 to make laws "for the peace, order and good government of Canada."

The statute being *ultra vires*, the interrogatory addressed to us is answered in the affirmative.

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No. 12.

Order in Council granting special leave to appeal to His Majesty in Council.

AT THE COURT AT BALMORAL

30

The 26th day of September 1936.

PRESENT

THE KING'S MOST EXCELLENT MAJESTY.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 29th day of July 1935 in the words following viz. :—

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there

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<sup>(1)</sup> (1922) 1 A.C. at p. 201.

*In the Privy  
Council.*

No. 12.  
Order in  
Council  
granting  
special  
leave to  
appeal to  
His Majesty  
in Council,  
26th Sept.  
1936.

was referred unto this Committee a humble Petition of the Attorney-General of the Province of British Columbia in the matter of an 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 and its amending Act the Natural Products Marketing Act Amendment Act 1935: And humbly praying Your Majesty in Council to order that the Petitioner shall have special leave to appeal from the Judgment of the Supreme Court dated the 17th June 1936 and for such further or other Order as to Your Majesty in Council may appear fit:

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and on behalf of the Attorney-General of Canada and the Attorneys-General of the Provinces of Ontario, Quebec, New Brunswick, Manitoba, Alberta and Saskatchewan Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute an Appeal against the Judgment of the Supreme Court of Canada dated the 17th day of June 1936:

“And their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed and carried into execution Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

A. H. L. HARDINGE.

*In the Privy Council.*

No. 12.  
Order in Council granting special leave to appeal to His Majesty in Council, 26th September 1936  
—continued.

*Statutes  
and other  
Documents.*

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**STATUTES AND OTHER DOCUMENTS**

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No. 13.

**No. 13.**

**The Natural Products Marketing Act (1934), Statutes of Canada (1934)  
24 & 25 Geo. V. Chapter 57.**

*(Separate document.)*

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No. 14.

**No. 14.**

**The Natural Products Marketing Act Amendment Act, Statutes of  
Canada (1935) 25 & 26 Geo. V. Chapter 64.**

*(Separate document.)*

In the Privy Council.

No. 103 of 1936.

ON APPEAL FROM THE SUPREME COURT  
OF CANADA.

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IN THE MATTER of a Reference as to whether  
the Parliament of Canada had legislative juris-  
diction to enact The Natural Products Mar-  
keting Act being Chapter 57 of the Statutes of  
Canada 1934, and its amending Act, The  
Natural Products Marketing Act Amendment  
Act 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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RECORD OF PROCEEDINGS.

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