

9, 1937

No. 103 of 1936.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

10 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, MANITOBA, ALBERTA and SASKATCHEWAN - - - *Respondents.*

CASE FOR THE RESPONDENT

RECORD

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THE ATTORNEY-GENERAL OF THE PROVINCE OF QUEBEC.

1. This is an appeal by special leave from the unanimous judgment of the Supreme Court of Canada (Sir Lyman P. Duff, P.C., J.C.M.J., C.J.C., Rinfret, Cannon, Crocket, Davis and Kirwin, JJ.), delivered on the 17th day of June, 1936, declaring *ultra vires* of the Parliament of Canada 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. p. 56.

Case for the Respondent The Attorney-General of Quebec.

2. The matter came before the Supreme Court of Canada on an order of reference by the Governor General in Council for Canada, dated November 15th, 1935, referring to the Supreme Court of Canada, for hearing and consideration, pursuant to Section 55 of the Supreme Court Act, the following question :—

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

p. 3.

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3. The Natural Products Marketing Act, as amended, regulates the marketing of natural products.

To that effect, it creates a Board called “The Dominion Marketing Board” (Section 3, Sub-section 1 of the Act of 1934).

It gives the Board the power to regulate the time and place at which, and the agency through which the product shall be marketed, the manner of distribution, the quality, grade or class, and the quantity of the regulated product (Section 4, Sub-section 1a).

The Board is also empowered to conduct a pool for the equalization of returns received from the sale of the regulated product and to require the registration of all persons engaged in the production, or marketing of the regulated product, and the licensing of the same persons (Section 4, Sub-section 1 c-f).

The Board is also empowered to arrange 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 (Section 5).

The Board has also the power to prohibit the marketing of any regulated product (Section 4, Sub-section 1a).

The word “marketed” is used in an extended sense as embracing “buying and selling, shipping for sale or storage, and offering for sale”; (Section 2, Sub-section c).

“Natural Products” include 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 products of agriculture and 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. (Section 2e of the Act of 1934, as amended by the Act of 1935).

No marketing scheme could be approved, and have force of law (Section 6) unless the Governor in Council be satisfied that the principal market for the natural product is outside the province of production, or that some part of the product produced may be exported. (Section 5, Sub-section 4).

A scheme may relate only to the product of a part of Canada, or regulate only the marketing of a product outside the province of production or such part of the product as is exported from Canada. (Section 5, Sub-section 5).

10 **4.** In his factum before the Supreme Court of Canada, the Attorney-General of Canada submitted that these Acts are within the legislative jurisdiction of the Parliament of Canada as being :—

(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;

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

20 (c) Legislation (as to provisions authorising 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

(e) Legislation as to some of the provisions of the principal Acts (notably Section 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. p. 11.

30 But it appears that those grounds were reduced to two at the verbal argument, by counsel for the Dominion, as reported in the notes of judgment :

40 “The Chief Justice—(Concurred in by Rinfret, Cannon, “Crocket, Davis and Kerwin, J.J.)—Counsel on behalf of the “Dominion based his argument in support of the validity of this “statute upon two grounds. It is argued, 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.” p. 57.

5. Summarily, the Attorney-General for the Province of Quebec has submitted before the Supreme Court of Canada that this legislation is coming properly within the classes of subjects exclusively attributed to the legislatures of the provinces, under Section 92 of the British North America Act, and specially under heads 13, 15 and 16.

The provinces of Ontario and New Brunswick had summarily the same contentions.

The provinces of Manitoba and Saskatchewan expressed no opinion. 10

pp. 56 to 74. 6. The Supreme Court of Canada, by a unanimous judgment, has decided that the said legislation is *ultra vires* of the Parliament of Canada, as dealing with matters exclusively assigned to the legislative jurisdiction of the provinces under the British North America Act.

p. 74. 7. Special leave to appeal to His Majesty in Council appears to have been asked for by the province of British Columbia, and by order in council, the special leave asked for was granted.

8. The Attorney-General for the province of Quebec will urge the contention that the legislation now under appeal before this 20 tribunal and as enacted by both the Natural Products Marketing Act and its Amending Act, being Chapter 57 of the Statutes of Canada, 1934, and Chapter 54 of the Statutes of Canada, 1935, is in toto *ultra vires* of the Parliament of Canada: and therefore, that the unanimous judgment of the Supreme Court of Canada, delivered on the 17th day of June 1936, from which the present appeal is taken, should be confirmed and maintained: and that the present appeal should be dismissed: for the following, among other

REASONS.

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1. Considered in its pith and substance, in its true nature and character, the said legislation has for primary, principal and general object the regulation (a) of particular trades and occupations in the Province, (b) of trade and dealings in particular commodities and classes of commodities, (c) of contracts of an individual and local character, and summarily, (d) of property and civil rights in the Province, and of matters of a merely local and private nature in the Province;

2. The object, or subject-matter, of the said legislation does not come within the classes of subjects expressly enumerated in Section 91 of the British North America Act, in the proper sense in which these subjects are there enumerated; and more especially :
- 2a. it does not come under head 2 of the said Section 91 : "The regulation of trade and commerce";
- 2b. it does not come under head 3 : "The raising of money by any mode or system of taxation";
- 10 2c. it does not come under head 12 : "Sea coast and inland fisheries";
- 2d. it does not come under head 27 : "The Criminal Law".
3. The subject-matter of the said legislation does come within the classes of subjects enumerated in Section 92 of the British North America Act, and there assigned to the exclusive jurisdiction of the provincial legislatures; and namely :
- 20 3a. It comes under head 13 of the said Section 92 : "Property and Civil Rights in the Province";
- 3b. It comes under head 16 : "Generally, all matters of a merely local or private nature in the Province";
- 30 3c. The enforcing, penal or punitive dispositions of the said legislation are ancillary only and they do come properly under head 15 of the said Section 92 : "The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of these classes of subjects enumerated in this section".
4. The subject-matter of the said legislation is not primarily or principally in relation to Agriculture, though the legislation may affect agriculture accidentally or in an indirect way; and therefore, the said legislation does not come within the jurisdiction of the Parliament of Canada under Section 95 of the British North America Act.

5. The subject-matter of the said legislation, not coming within the classes of subjects expressly enumerated in Section 91, but coming within the classes of subjects assigned to the exclusive jurisdiction of the provinces under Section 92, cannot be invaded by federal legislation under the introductory clause of Section 91, which gives jurisdiction to the Parliament of Canada to make laws for "The peace, order and good government of Canada", simply because, by its very terms, this general power is given only "in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces".¹⁰

GUSTAVE MONETTE.

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BRUNSWICK, MANITOBA, ALBERTA
and SASKATCHEWAN - Respondents.

CASE FOR THE RESPONDENT
The Attorney General of The Province of
Quebec.

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