

In the Supreme Court of Canada

IN THE MATTER OF A REFERENCE AS TO THE VALIDITY
OF SECTION 5(a) OF THE DAIRY INDUSTRY ACT,
REVISED STATUTES OF CANADA, 1927, CHAPTER 45

Factum

OF THE CANADIAN ASSOCIATION OF CONSUMERS

WEGENAST AND HYNDMAN

Solicitors for The Canadian Association of Consumers

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Ottawa Agents

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(Directed to be heard upon the Reference)

By an Order of His Excellency the Governor-General in Council, dated July 27, 1948 (P.C. 3365) the following question was referred to The
10 Supreme Court of Canada for hearing and consideration pursuant to Section 55 of the Supreme Court Act, R.S.C., Chapter 35:

“Is Section 5(a) of the Dairy Industry Act, Revised Statutes of Canada, 1927, Chapter 45, *ultra vires* of the Parliament of Canada either in whole or in part and if so in what particular or particulars and to what extent?”

Section 5(a) of an Act respecting the dairy industry by Section 1 of the said Act designated as The Dairy Industry Act is set out in the Order-in-Council above referred to and in a Case prepared on behalf of the Attorney-General of Canada.

20 Section 10 of the said Act provides as follows:

“Any person who violates any provision of sections five or seven of this Act shall be guilty of an offence and upon summary conviction shall be liable

(a) in the case of a first offence to a fine not exceeding four hundred dollars and not less than two hundred dollars;

(b) in the case of a second offence to a fine not exceeding one thousand dollars and not less than five hundred dollars; in each case together with the costs of prosecution, and in default of payment of such penalty and costs, to imprisonment for a term not exceeding six months with or without hard labour,
30 unless the said penalty and costs, with costs of enforcing the same, are sooner paid;

- (c) in the case of a third or subsequent offence to imprisonment for a term not exceeding six months with or without hard labour. 1925, c. 40, s. 7.”

SUBMISSIONS AND ARGUMENT

The Canadian Association of Consumers submits and it will be argued on its behalf that the said Section 5(a) is wholly *ultra vires* the Parliament of Canada and that the question should be answered accordingly, for the following or other reasons:

- (1) That the said section does not fall within any of the classes of subjects enumerated in Section 91 of the British North America Act nor is it legislation with respect to agriculture.

See: *The King v. Eastern Terminal Elevator Company*, [1925] S.C.R. 434, at p. 457;

Lower Mainland Dairy Products Sales Adjustment Committee v. Crystal Dairy, Limited, [1933] A.C. 168.

- (2) That Section 5(a) constitutes a legislative attempt to prohibit a particular trade or industry and is not a regulation of trade and commerce within the meaning of item 2 of Section 91 of the British North America Act.

- 20 See: *John Deere Plow Co. v. Wharton*, [1915] A.C. 330;
Great West Saddlery Co. v. The King, [1921] 2 A.C. 91, at p. 117;
Attorney-General for Canada v. Attorney-General for Alberta and others, [1916] A.C. 588;
Attorney-General for Canada v. Reciprocal Insurers, [1924] A.C. 328.

- (3) That the true subject matter of the said section is the manufacture and sale of oleomargarine and like products which is a matter of Provincial jurisdiction falling under the head of Property and Civil Rights Item 13, Section 92 of the British North America Act.

- 30 See: *Attorney-General for Canada v. Attorney-General for British Columbia*, [1930] A.C. 111;
Attorney-General for Canada v. Attorney-General for British Columbia, [1936] S.C.R. 412, [1937] A.C. 377, at pp. 386 and 387;
Shannon v. Lower Mainland Dairy Products Board, [1938] A.C. 708, at p. 719;
The King v. Eastern Terminal Elevator Company, [1925] S.C.R. 434;
Lower Mainland Dairy Products Sales Adjustment Committee v. Crystal Dairy Limited, [1933] A.C. 168.

- 40 And the purpose and effect of the said section is to deprive private individuals of their liberty to carry on the manufacture or sale of oleomargarine or the

other products mentioned in the said section even if that business were carried on within the limits of a Province.

See: *Attorney-General for Canada v. Attorney-General for Alberta*, [1916] A.C. 588, at p. 595.

(4) The section is not therefore a matter in relation to which the Parliament of Canada can make laws for the peace order and good government of Canada by reason of its not coming within the classes of subjects assigned exclusively by the British North America Act to the Legislatures of the Provinces.

10 See: *In re The Board of Commerce Act, 1919 and The Combines and Fair Prices Act 1919*, [1922] 1 A.C. 191.

(5) And it was not passed under special circumstances such as those of a great war which might make the subject matter of such paramount and over-riding importance as to amount to what lies outside the heads in Section 92 and is not covered by them and as to justify interference with property and civil rights of the inhabitants of the Provinces. *À l'inverse* in such special circumstances the section was suspended by Order in Council made under the War Measures Act as appears from the case of the Attorney-General of Canada.

20 See: *In re The Board of Commerce Act, 1919 and The Combines and Fair Prices Act, 1919*, [1922] 1 A.C. 191;
In re The National Products Marketing Act, [1936] S.C.R. 398.

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