

31, 1950

In the Privy Council.

UNIVERSITY OF LONDON
W.C.1.
No. 30 of 1949. 12 NOV 1950
INSTITUTE OF ADVANCED
LEGAL STUDIES

15261

CASE FOR THE APPELLANT

ON APPEAL FROM 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.

BETWEEN

THE CANADIAN FEDERATION OF AGRICULTURE *Appellant*

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AND

THE ATTORNEY-GENERAL OF QUEBEC. THE
CANADIAN ASSOCIATION OF CONSUMERS,
L'ASSOCIATION CANADIENNE DES ELECTRICES,
THE HONOURABLE W. D. EULER AND THE
ATTORNEY-GENERAL OF CANADA *Respondents.*

CASE FOR THE APPELLANT.

Record.

1. This is an appeal by special leave from the judgment of the
Supreme Court of Canada pronounced on the 14th December, 1948, p. 9.
answering a question referred to the court for hearing and consideration pp. 1-6.
20 pursuant to Section 55 of the Supreme Court Act (R.S.C. 1927, Chapter 35)
touching the constitutional validity of Section 5 (a) of the Dairy Industry
Act being Chapter 45 of the Revised Statutes of Canada, 1927.

2. The question so referred was : p. 5, l. 10.

“ Is Section 5 (a) of the Dairy Industry Act, R.S.C. 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 ? ”

3. The Dairy Industry Act is the short title of “ An Act respecting
the Dairy Industry ” to the full text of which the Appellant will refer.

Record. Section 5 (a) and Section 10 of Part I of the Dairy Industry Act read as follows :

“ 5. No person shall

- (a) Manufacture, import into Canada, or offer, sell or have in his possession for sale, any oleomargarine, margarine, butterine or other substitute for butter, manufactured wholly or in part from any fat other than that of milk or cream.

“ 10. 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

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- (a) in the case of a first offence to a fine not exceeding one thousand dollars and not less than five hundred dollars ;

- (b) in the case of a second offence to a fine not exceeding two thousand dollars and not less than one thousand 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, 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.”

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The Dairy Industry Act is divided into three parts. Part I deals with the manufacture and sale of dairy products and butter substitutes, oleomargarine and margarine being characterized as substitutes for butter. That part beside prohibiting the importation, manufacture of sale of certain substitutes for butter, prohibits the sale or supply to establishments manufacturing or collecting dairy products, of milk drawn from cows known to be suffering from disease or milk not of a specified standard of purity and quality. Part I also gives the Governor-in-Council authority to make regulations for the operation and enforcement of that part.

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Part II of the Act deals with the grading of dairy produce and authorizes the Governor-in-Council to make regulations to provide standards, definitions and grades for dairy produce which include butter, cheese and other food products manufactured from milk.

Part III deals with the testing of glassware used in connection with milk tests and prohibits the marketing of glassware not so tested. This Part also gives the Governor-in-Council authority to make regulations with penal sanctions for its operation and enforcement.

4. The manufacture and sale of oleomargarine or other substitute for butter made from animal substance other than milk was first prohibited by the Parliament of Canada in 1886 (49 Victoria c. 42). The Act then passed recited that the use of certain substitutes for butter theretofore manufactured and exposed for sale in Canada is injurious to health and that it is expedient to prohibit the manufacture and sale thereof. In support of the Act there had been public allegations about the use of diseased animals for the manufacture of oleomargarine (See Canadian Hansard 1886, vol. 1, p. 686 ; vol. 2, pp. 1191 to 1337). In the same year provision was made in the Customs Act, Schedule B (49 Victoria c. 37) prohibiting the importation of oleomargarine or other substitute for butter made from animal fat other than milk and cream. It was not until the passage in 1903 of the Butter Act (3 Edward VII c. 6) in which the oleomargarine Act of 1886 was incorporated, that the prohibitions of importation, manufacture and sale were included in the one Act, although the prohibition of importation remained and remains in the Customs Act. The Butter Act was incorporated in The Revised Statutes of Canada, 1906, as Part VIII of The Inspection and Sale Act (c. 85) and was superseded in 1914 by the Dairy Industry Act (4 & 5 Geo. V c. 7) in which Section 5 (a) first appeared in its present form.

p. 3, ll. 4-13.

p. 3, ll. 17-21.

p. 3, ll. 22-25.

5. The British North America Act, 1867 in Sections 91, 92 and 95 contains the following relevant provisions :

“ 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.

“ 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.

Record.

“ 92. In each Province the Legislature may exclusively make 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, 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.” 10

p. 9, ll. 25-35.

6. On the hearing of argument on the 5th, 6th, 7th and 8th October, 1948, before Rinfret, C.J., Kerwin, Taschereau, Rand, Kellock, Estey and Locke, J.J., counsel was heard on behalf of the Attorney-General of Canada, Canadian Federation of Agriculture, Attorney-General of Quebec, Canadian Association of Consumers, The Honourable W. D. Euler and others and l'Association Canadienne des Electricies and others. 20

7. The contention of the Attorney-General of Canada was that Section 5 (a) was wholly *intra vires* as legislation :

(a) in relation to criminal law ;

(b) in relation to the regulation of trade and commerce ; and

(c) in relation to agriculture.

The Canadian Federation of Agriculture also supported the validity of the Section. The Attorney-General of Quebec contended the Section was, in pith and substance, legislation in relation to property and civil rights within the meaning of Head 13 of Section 92 of The British North America Act. This contention was supported by the Canadian Association of Consumers, The Honourable W. D. Euler and others and l'Association Canadienne des Electricies and others. 30

p. 10, ll. 5-12.

8. On the 14th December, 1948, the Court delivered judgment answering the question referred to the Court as follows :

(1) The prohibition of importation of the goods mentioned in the section is *intra vires* of Parliament. Locke J. finds Section 5 (2)

of the Dairy Industry Act to be *ultra vires* while expressing no opinion as to the power of Parliament to ban importation by appropriate legislation.

Record.

(2) The prohibition of manufacture, offer, sale or possession for sale of the goods mentioned is *ultra vires* of Parliament, the Chief Justice and Kerwin J. dissenting.

9. The opinion of the majority of the Judges of the Supreme Court of Canada rejected the arguments of the Attorney-General of Canada and the Appellant and held that Section 5 (a) was *ultra vires* in the prohibition of manufacture, possession and sale as being legislation in relation to civil rights, a matter within the exclusive jurisdiction of the Provinces but *intra vires* in the prohibition of importation. Locke J. was of the opinion that the Section was wholly *ultra vires* the Parliament of Canada because the prohibition of importation was not severable from invalid provisions.

p. 29, l. 21-p. 39, l. 11; p. 39, l. 13-p. 44, l. 27; p. 39, l. 29-p. 54, l. 52; p. 55, l. 1-p. 64, l. 24.

p. 64, l. 26-p. 69, l. 23.

10. The Chief Justice was of the opinion the Section was wholly *intra vires* as being legislation in relation to Agriculture within the meaning of Section 95 of The British North America Act, 1867, and also as being legislation in relation to Trade and Commerce within Head (2) of Section 91. He also agreed with Kerwin J. who held that the Section was legislation in relation to Criminal Law and not a cloak to cover a foray into the regulation of a particular trade. Kerwin J. found it unnecessary to deal with other grounds upon which it was sought to uphold the validity of the section.

p. 10, l. 21-p. 26, l. 22.

p. 19, ll. 20-24.

p. 26, l. 24-p. 29, l. 20.

11. The Appellant respectfully submits that the majority judgment of the Supreme Court of Canada was wrong and should be reversed for the following amongst other

REASONS.

1. Because Section 5 (a) of the Dairy Industry Act in its pith and substance is not legislation in relation to property and civil rights so as to come within the legislative authority of a provincial legislature but rather falls within the power of Parliament 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 the British North America Act assigned exclusively to the Legislatures of the Provinces.
2. Because the Section was validly enacted by the Parliament of Canada as legislation in relation to Agriculture.

3. Because the Section was also validly enacted as legislation in relation to Criminal Law.
4. Because it was also validly enacted as being legislation in relation to the Regulation of Trade and Commerce.
5. Because legislation in relation to any of these matters is within the legislative jurisdiction of the Parliament of Canada under Section 95 and Section 91 of The British North America Act, 1867.
6. Because of the reasons given in the opinions of the Chief Justice of Canada and Kerwin J. 10

R. H. MILLIKEN.

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