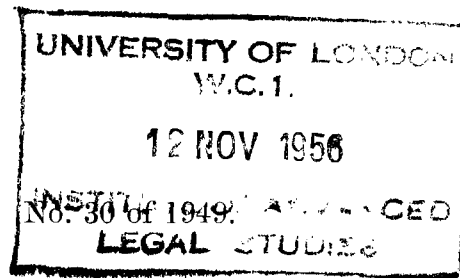


31, 1950



In the Privy Council.

ON APPEAL FROM THE SUPREME COURT
OF CANADA

30699

IN THE MATTER of a Reference as to the validity of Section 5 (A) of
the Dairy Industry Act, R.S.C. 1927, chapter 45.

BETWEEN

THE CANADIAN FEDERATION OF AGRICULTURE. APPELLANT

AND

THE ATTORNEY-GENERAL FOR QUEBEC, THE
CANADIAN ASSOCIATION OF CONSUMERS,
L'ASSOCIATION CANADIENNE DES ELEC-
TRICES, THE HONOURABLE W. D. EULER
and THE ATTORNEY-GENERAL OF CANADA ... RESPONDENTS.

CASE FOR THE ATTORNEY-GENERAL OF QUEBEC

CASE OF THE RESPONDENT

THE ATTORNEY GENERAL FOR QUEBEC

1.—This is an Appeal by Special Leave from the Judgment of the
Supreme Court of Canada (Rinfret C.J., Kerwin, Taschereau, Rand,
Kellock, Estey and Locke JJ.), on a reference by order of His Excellency
the Governor-General in Council dated July 27, 1948 (P.C. 3365).

RECORD

2.—The question so referred is :

“ 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 ? ”

p. 3, ll. 10,
11, 12

10 3.—The Court (Rinfret C. J. and Kerwin J. dissenting) held the section
to be *ultra vires*.

RECORD

4.—In 1886, the Parliament of Canada enacted the Act 49 Victoria, Chapter 42, entitled “An Act to prohibit the manufacture and sale of certain substitutes for butter.” The preamble to this Act read as follows :—

“WHEREAS the use of certain substitutes for butter, heretofore manufactured and exposed for sale in Canada, is injurious to health; and it is expedient to prohibit the manufacture and sale thereof: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—”

10

And Section 1 being the only section of the Act provided :—

“1. No oleomargarine, butterine or other substitute for butter, manufactured from any animal substance other than milk, shall be manufactured in Canada, or sold therein, and every person who contravenes the provisions of this Act in any manner whatsoever shall incur a penalty not exceeding four hundred dollars, and not less than two hundred dollars, and in default of payment shall be liable to imprisonment for a term not exceeding twelve months and not less than three months.”

20

This Act became Chapter 100 of the Revised Statutes of Canada, 1886, the preamble thereto being omitted.

In 1903 the Butter Act (3 Edward VII, Chapter 6) was enacted. It was entitled “An Act to prohibit the importation, manufacture or sale of adulterated, process of renovated butter, oleomargarine, butterine or other substitute for butter, and to prevent the improper marking of butter.”

Section 5 of the said Act provided :—

“5. No person shall manufacture, import into Canada, or offer, sell or have in his possession for sale, any oleomargarine, butterine, or other substitute for butter, manufactured wholly or in part from any fat other than that of milk or cream.”

30

This Act was incorporated into the Inspection and Sale Act, Chapter 85, Revised Statutes of 1906, as Part VIII thereof, entitled “Dairy Products.” And Section 5 above quoted became Section 298 of the Inspection and Sale Act.

In 1914, Part VIII of the Inspection and Sale Act was repealed and the Dairy Industry Act was enacted as Chapter 7 of 4-5 George V. The prohibition concerning oleomargarine and other substitutes for butter was contained in Section 5 of this last mentioned Act. The Dairy Industry Act now appears in the Revised Statutes of Canada, 1927, as Chapter 45 thereof and Section 5, Paragraph (a) of the Dairy Industry Act is reproduced verbatim therein again as Section 5, paragraph (a). The provision reads as follows :—

40

“ 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 : ”

RECORD

—

By an order bearing No. 3365, dated July 27th, 1948, His Excellency the Governor-General in Council was pleased to refer the above quoted question to the Supreme Court of Canada for hearing and consideration pursuant to the authority of Section 55 of the Supreme Court Act :

10 The report submitted to the Governor-General in Council, by the Acting Minister of Justice explains the process of manufacturing margarine and oleomargarine and the differences between the two products ; it further declares that the original unpalatable taste has been overcome and the lack of vitamin “ A ” in the vegetable oils used in the manufacture of margarine has been remedied so that “ As a source of energy, margarine
 “ and butter are exactly equal.” The report further indicates that, during
 the period of December 1st, 1917, to September 30th, 1923, when the
 operation of Section 5 (a) of the Dairy Industry Act was suspended under
 the War Measures Act, large quantities of oleomargarine were manufactured
 20 and imported in Canada, and that the consumption of oleomargarine
 reaches huge figures in many countries including the United States of
 America and Great Britain.

p. 2,
ll. 38-39

pp. 3-4

p. 5

5.—Chief Justice Rinfret (dissenting) was of the opinion that the Dairy Industry Act was legislation dealing with agriculture under Section 95 of the British North America Act, 1867 ; that it also fell within the ambit of Head 27 of Section 91 of the said Act relating to Criminal Law ; that moreover it could be supported in favor of the Dominion’s contentions on the ground that it was legislation relating to the regulation of trade and commerce within the meaning of Head 2 of Section 91 of the British North
 30 America Act.

p. 19 to
p. 26

6.—Kerwin, J. (dissenting) found that the impugned legislation related to Criminal Law and fell under Head 27 of Section 99 of the British North America Act, 1867.

p. 28, l. 35
to p. 29,
l. 20

7.—On the other hand, Taschereau, J. said :

p. 31,
ll. 27 to 36

“ Il me semble indiscutable que la manufacture, la possession
 “ ou la vente de la margarine et de l’oléo-margarine, sont l’exercice
 “ de droits civils bien définis, et dont la réglementation a été
 “ laissée aux provinces par les Pères de la Confédération. Il ne
 “ fait pas de doute non plus que les mots ‘ propriété et droits
 40 “ civils ’ doivent être employés dans leur sens le plus large, et
 “ comprennent dans leur sens ordinaire certainement le mot
 “ ‘ contrat, ’ qui est un acte d’une nature essentiellement civile.”

RECORD

“ (*Citizens Insurance v. Parsons* (1) ; *Natural Products Marketing Act* (2).” (C.L.R., Supreme Court 1949, p. 1 at 36.)

(1) (1881-82) 7 A.C. 96 at 109.

(2) (1936) S.C.R. 398 at 416.

p. 31, l. 37
to p. 39,
l. 12

He further held that there existed no such exceptional conditions as could justify the invasion by the Dominion Parliament of the Provincial field of property and civil rights ; that the legislation fell neither under Head 27 nor under Head 2 of Section 91 of the British North America Act and that Section 95 of the said Act had no application whatsoever.

p. 41, l. 22
to p. 43, l. 7

8.—Rand, J. considered that although the provision which is the subject matter of the present appeal was of the nature of a prohibition entailing sanctions, it was not, according to its true nature and character and having in view the distribution of legislative power in Canada, criminal law within the meaning of Head 27 of Section 91 of the British North America Act, 1867 ; that moreover the legislation was not within the regulation of Trade and Commerce and did not fall under Section 95 of the above mentioned Act. He finally said :

p. 43, ll. 19
to 28

“ There is nothing before us from which it can be inferred that the industry has attained a national interest, as distinguished from the aggregate of local interests, of such character as gives it a new and pre-eminent aspect within the rule of the *Russell* case, (2) as interpreted in *Attorney-General of Ontario v. Canada Temperance Federation*, (3). Until that state of things appears, the constitutional structure of powers leaves the regulation of the civil rights affected to the legislative judgment of the province.”

(2) (1899) A.C. 829.

(3) (1946) A.C. 193.

p. 45, l. 27
to p. 55

9.—Kellock, J. said that in view of the statements contained in the Order of Reference, the existing legislation could no longer be considered as legislation in the interest of public health and, as such, criminal legislation ; that the Dominion Parliament could not claim jurisdiction on the ground that a single province or all the provinces acting together could not effect that which is effected by Section 5 (a) ; that the legislation was not regulation of trade and commerce within the meaning of Head 2 of Section 91 of the British North America Act ; nor was it in pith and substance criminal law under Head 27 of the said Act ; that moreover the Dominion Parliament could not under the circumstances of the case claim jurisdiction by virtue of the residuary power given by Section 91 of the said Act and finally that Section 95 of the said Act had no application.

p. 56, l. 33
to l. 39

10.—Estey, J. said :

“ The prohibition of the manufacture and sale in sec. 5 (a) directly interferes with the freedom of individuals and corporate

“ bodies to engage in the business of manufacturing or selling the specified food products, including oleomargarine and margarine. As such it is legislation in relation to property and civil rights within the meaning of sec. 92 (13), with respect to which the provinces have the exclusive right to legislate, unless the legislation in question may be held to be competent Dominion legislation within the other provisions of the B.N.A. Act.”

RECORD
—

He then proceeded to express the view that the legislation fell neither under Section 91 (2) “ the Regulation of Trade and Commerce ” ; nor under Section 91 (27) the Criminal Law . . . ; nor under the power to make laws relating to the peace, order and good government within the meaning of the opening paragraph of Section 91 nor under Section 95 of the British North America Act, in relation to agriculture.

p. 56, l. 40
to p. 64,
l. 25

11.—Locke, J. said :

“ The fact that Parliament has declared that the manufacture, importation and sale of a healthful, nutritious food is a crime, does not relieve us of the necessity of inquiring into the real nature of this legislation. The determination of that question does not turn on the language used by Parliament but on the provisions of the *Imperial Statute of 1867 (Union Colliery Company v. Bryden)* (4) : *Attorney-General for Manitoba v. Attorney-General for Canada*, (5). It may be observed that if it is within the power of the Dominion to prohibit the manufacture and sale of this valuable and harmless article of food in the provinces of Canada by the simple expedient of declaring these acts to be criminal offences, Parliament might with equal force prohibit the production and sale of milk or the keeping of cattle or the growing of wheat or the manufacture of flour. In my opinion, this is not in pith and substance criminal legislation and if it cannot be supported on other grounds, to sustain it as such would be to permit the Dominion to invoke heading 27 of section 91 in aid of a clear encroachment upon the Provincial field.”

p. 66, ll. 32
to 45

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30

(4) (1899) A.C. 580 at 587.

(5) (1925) A.C. 561.

He further held that Section 5 (a) was not legislation coming within the purview of Head 2 of Section 91 of the British North America Act and that Section 95 of the said Act had no bearing on the question.

p. 66, l. 46
to p. 68,
l. 20

12.—The sections of the British North America Act, 1867, which are most directly relevant are as follows :

“ 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

40

“ 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 10
 “ of Criminal Jurisdiction, but including the Procedure in
 “ Criminal Matters.”

“ 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.”

“ 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 20
 “ 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.”

13.—The competency of the Provinces to legislate in relation to property and civil rights, embraces all rights arising from every kind of contracts, civil and commercial.

“ The words are sufficiently large to embrace, in their fair
 “ and ordinary meaning, rights arising from contract, and such 30
 “ rights are not included in express terms in any of the enumerated
 “ classes of subjects in Section 91.”

“ And further :

“ It is to be observed 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 40
 “ 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.” (Citizens Insurance Company of Canada and Parsons Cameron P.C. decisions, Volume I, p. 267 at 278, 279 and 280.)

In the case of *Liquidators of the Maritime Bank of Canada v. Receiver-General of New Brunswick*, Lord Watson made the following remarks:—

10 “But in so far as regards those matters which, by Section 92, “are specially reserved for provincial legislation, the legislation “of each province continues to be free from the control of the “Dominion, and as supreme as it was before the passing of the “Act. In *Hodge v. The Queen* (9 App. Cas. 117, *ante*, p. 346), “Lord Fitzgerald, delivering the opinion of this Board, said: ““When the British North America Act enacted that there ““should be a legislature for Ontario, and that its legislative ““assembly should have exclusive authority to make laws for ““the province and for provincial purposes in relation to the ““matters enumerated in sect. 92, it conferred powers not in ““any sense to be exercised by delegation from or as agents ““of the Imperial Parliament, but authority as plenary and as 20 ““ample within the limits prescribed by sect. 92 as the Imperial ““Parliament in the plenitude of its power possessed and could ““bestow. Within these limits of subject and area, the local ““legislature is supreme, and has the same authority as the ““Imperial Parliament, or the Parliament of the Dominion.” “The Act places the constitutions of all provinces within the “Dominion on the same level; and what is true with respect “to the legislature of Ontario has equal application to the “legislature of New Brunswick.” (Cameron P.C. Decisions, Volume I, p. 414 at 418; also (1892) A. C. p. 442.)

30 14.—It is true that, under Head 2 of Section 91 of the B.N.A. Act, the Dominion Parliament is competent to make laws in relation to “the regulation of trade and commerce.” But it is now well settled that this provision “does not comprise, in the sense in which it is used in “Section 91, the regulation of particular trades or occupations or of a par- “ticular 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 40 “be necessarily incidental to the exercise of such powers.” (Reference re : The Natural Products Marketing Act, 1934, and its Amending Act, 1935, C.L.R. 1936, Supreme Court, p. 398 at 410.)

It is therefore within the exclusive competency of the provinces to regulate within their respective territory the trade or business of manufacturing and selling oleomargarine and margarine, and Parliament cannot

invade a field which is exclusively assigned to the provinces by the simple device of legislating for the entire Dominion. (1925, C.L.R., Supreme Court, p. 434.)

15.—It is further submitted that Section 5 (a) cannot be said to be of the nature of a criminal enactment falling under Head 27 of Section 91 of the British North America Act, 1867.

When inquiring whether an enactment is within the legislative competence of the Federal Parliament, as being in relation to criminal law, the Courts must ascertain “the true nature and character of the enactment ; its pith and substance.” And a colourable use of the Criminal Code cannot 10 serve to disguise the real object of the legislation. (Insurance Act of Canada, A.C. 1932, pp. 49, 51 ; A.-G. for Alberta and A.-G. for Canada, A.C. 1939, p. 117 at 130.)

As said in *Attorney-General for Ontario v. Reciprocal Insurers* :—

“ In accordance with the principle inherent in these decisions, their Lordships think it is no longer open to dispute that the Parliament of Canada cannot, by purporting to create penal sanctions under s. 91, head 27, appropriate to itself exclusively a field of jurisdiction in which, apart from such a procedure, it could exert no legal authority, and that if, when examined 20 as a whole, legislation in form criminal is found, in aspects and for purposes exclusively within the Provincial sphere, to deal with matters committed to the Provinces, it cannot be upheld as valid.” (A.C. 1924, p. 339 at 342.)

And further :—

“ For analogous reasons the words of head 27 of s. 91 do not assist the argument for the Dominion. It is one thing to construe the words ‘ the criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure 30 ‘ in criminal matters,’ as enabling the Dominion Parliament to exercise exclusively legislative power where the subject matter is one which by its very nature belongs to the domain of criminal jurisprudence. A general law, to take an example, making incest a crime, belongs to this class. It is quite another thing, first to attempt to interfere with a class of subject committed exclusively to the Provincial Legislature, and then to justify this by enacting ancillary provisions, designated as new phases of Dominion criminal law which require a title to so interfere as basis of their application. For analogous reasons their Lordships think that s. 101 of the British North America Act, 40 which enables the Parliament of Canada, notwithstanding anything in the Act, to provide for the establishment of any additional Courts for the better administration of the laws of Canada, cannot be read as enabling that Parliament to trench on Provincial rights, such as the powers over property and civil

“rights in the Provinces exclusively conferred on their Legislatures.
 “Full significance can be attached to the words in question
 “without reading them as implying such capacity on the part of
 “the Dominion Parliament. It is essential in such cases that
 “the new judicial establishment should be a means to some end
 “competent to the latter.” The Board of Commerce Act (1922.
 1 A.C. 191, at 198).

16.—It may be that an enactment prohibiting the manufacture and
 10 sale of poisonous or deleterious substances can properly be considered,
 under given circumstances, as criminal legislation. And the preamble to
 the original Act of 1886 (49 Victoria, Chapter 42) is no doubt an attempt to
 justify the legislation on that ground.

But in view of the statements contained in the report submitted by
 the Acting Minister of Justice to the Governor-General in Council, it is no
 longer open to the Federal Government to contend that oleomargarine or
 margarine is injurious to health.

17.—In the matter of a Reference to determine the validity of The
 Wartime Leasehold Regulations, Chief Justice Rinfret said :—

20 “These references, under Section 55 of The Supreme Court
 “Act, merely call for the opinion of the Court on the questions
 “of law or fact submitted by the Governor in Council and the
 “answers given by the Court are only opinions. It has invariably
 “been declared that they are not judgments either binding on
 “the government, on parliament, on individuals, and even on the
 “Court itself, although, of course, this should be qualified by
 “saying that, in a contested Case where the same questions would
 “arise, they would no doubt be followed. But precisely on
 “account of their character the opinions are supposed to be given
 30 “on the material which appears in the Order of Reference and
 “the Court is not expected to look to outside evidence.” (Judg-
 ment of the Supreme Court of Canada delivered on the 1st of
 March, 1950.)

18.—Section 95 of the British North America Act relating to Agriculture
 has no bearing on the point now at issue. In *The King v. Eastern Terminal*
Elevator (Canada Law Reports, Supreme Court, 1925, p. 434) Mr. Justice
 Mignault said, at page 457 :—

40 “I have not overlooked the appellant’s contention that the
 “statute can be supported under Section 95 of the British North
 “America Act as being legislation concerning agriculture. It
 “suffices to answer that the subject matter of the Act is not
 “agriculture but a product of agriculture considered as an article

of trade. The regulation of a particular trade, and that is what
 “ this statute is in substance, cannot be attempted by the Dominion
 “ on the ground that it is a trade in natural products. What we
 “ have here is trade legislation and not a law for the encouragement
 “ or support of agriculture, however wide a meaning may be
 “ given to the latter term.”

19.—The competency of the Dominion Parliament to make laws for the peace, order and good government of Canada is restricted “ to matters
 “ not coming within the classes of subject by this Act assigned exclusively
 “ to the Legislatures of the Provinces ” and the Dominion Parliament, 10
 under the guise of exercising this general legislative power, cannot interfere with any of the classes of subjects enumerated in Section 92, more particularly with property and civil rights : (*A.-G. of Ontario v. A.-G. for the Dominion*, A.C. 1896, p. 348 at 359–60 ; *John Deere Plow and Wharton*, A.C. 1915, p. 330 at 339–340 ; *Insurance Act of Canada*, 1916, A.C. 588 at 595).

20.—Nor does the competency of the Dominion arise
 “ under the residuary clause because of the necessary limits of
 “ the provincial authority. This is precisely the view which
 “ was advanced in the *Board of Commerce Case*, 1922, 1 A.C., 191,
 “ and, indeed, is the view which was unsuccessfully put forward 20
 “ in the *Montreal Street Railway Case*, 1912, A.C. 333, where it was
 “ pointed out that in a system involving a division of powers
 “ such as that set up by the British North America Act, it may
 “ often be that subsidiary legislation by the provinces or by the
 “ Dominion is required to give full effect to some beneficial and
 “ necessary scheme of legislation not entirely within the powers
 “ of either.” (1925 S.C.R. 434 at 447.)

21.—In the *Board of Commerce Case* (1922, 1 A.C. 191 at 197), Viscount Haldane said :—

“ It is to the Legislatures of the Provinces that the regulation 30
 “ and restriction of their civil rights have in general been exclusively
 “ confided, and as to these the Provincial Legislatures possess
 “ quasi-sovereign authority. It can, therefore, be only under
 “ necessity in highly exceptional circumstances, such as cannot
 “ be assumed to exist in the present case, that the liberty of the
 “ inhabitants of the Provinces may be restricted by the Parliament
 “ of Canada, and that the Dominion can intervene in the interests
 “ of Canada as a whole in questions such as the present one. For
 “ normally, the subject-matter to be dealt with in the case would 40
 “ be one falling within s. 92.”

22.—The Attorney General of the Province of Quebec therefore humbly submits that the judgment of the Supreme Court of Canada is well founded and should be affirmed for the following, amongst other

REASONS

- (1) BECAUSE Section 5 (a) of the Dairy Act falls within the exclusive powers committed to the provincial legislatures under Section 92 of the British North America Act and particularly under head 13.
- (2) BECAUSE the legislative authority of the Provinces in relation to matters coming within the classes of subjects enumerated in Section 92 of the British North America Act, is free from the control of the Dominion and as supreme as it was before the passing of the said Act.
- 10 (3) BECAUSE the competency of the Dominion Parliament to make laws for the peace order and good government of Canada is restricted to matters not coming within the classes of subjects assigned exclusively to the legislatures of the provinces and does not justify an invasion of the provincial field, more particularly in matters of property and civil rights.
- (4) BECAUSE the competency of the Dominion Parliament to enact Section 5 (a) of the Dairy Act cannot be supported by reason of the dimensions attained by the matter therein involved or by reason of any conditions or circumstances whatsoever.
- 20 (5) BECAUSE Section 5 (a) of the Dairy Act is not in relation to the regulation of trade and commerce under head 2 of Section 91 of the British North America Act.
- (6) BECAUSE the said Section 5 (a) is not in relation to the criminal law under head 27 of Section 91 of the British North America Act.
- (7) BECAUSE the said Section 5 (a) is no legislation in relation to agriculture under Section 95 of the British North America Act.
- 30 (8) BECAUSE of the Reasons of Taschereau, Rand, Kellock Estey and Locke JJ.

L. EMERY BEAULIEU.

In the Privy Council.

No. 30 of 1949.

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, R.S.C. 1927,
chapter 45.

BETWEEN

THE CANADIAN FEDERATION OF
AGRICULTURE APPELLANT

AND

THE ATTORNEY-GENERAL FOR
QUEBEC,
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L'ASSOCIATION CANADIENNE DES
ELECTRICES,
THE HONOURABLE W. D. EULER and
THE ATTORNEY-GENERAL OF
CANADA RESPONDENTS

CASE FOR THE RESPONDENT
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