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CARNATION COMPANY LIMITED .....APPELLANT;

AND

THE QUEBEC AGRICULTURAL MARKETING BOARD and THE QUEBEC CARNATION COMPANY MILK PRODUCERS BOARD ..... RESPONDENTS;

AND

ROLAND CAMIRAND, ès-qualité, THE ATTORNEY GENERAL OF THE PROVINCE OF QUEBEC ..... MIS-EN-CAUSE;

AND

THE ATTORNEY GENERAL OF CANADA and THE ATTORNEY GENERAL FOR ALBERTA .... INTERVENANTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Constitutional law—Quebec Agricultural Marketing Board—Validity of decisions made by Board—Decision approving joint marketing plan with respect to an evaporated milk manufacturing company—Decision fixing purchase price of milk to be paid by company to producers—Major portion of product exported—Whether decisions ultra vires as regulating trade and commerce—Quebec Agricultural Marketing Act, 1955-56 (Que.), c. 37, as replaced by 1963 (Que.), c. 34—B.N.A. Act, 1867, s. 91(2).

*PRESENT: Fauteux, Abbott, Martland, Judson, Ritchie, Hall and Spence JJ.

The Quebec Agricultural Marketing Board was created as a corporation by the *Quebec Agricultural Marketing Act,* 1955-56 (Que.), c. 37, and was empowered, *inter alia,* to approve joint marketing plans. In 1957, it approved a joint marketing plan with respect to Carnation Company Limited and its suppliers of milk. The administration of the plan was entrusted to a Producers' Board which had power to negotiate with the buyer—the appellant company—for the marketing and sale to it of milk and dairy products from the farms of producers bound by the plan. The parties to the plan were unsuccessful in their attempts to reach agreement as to the purchase price of milk to be purchased by the appellant from the producers. The Quebec Agricultural Marketing Board, as it was authorized by law to do, intervened as arbitrator and determined the price that the appellant had to pay its producers for the milk it bought from them. The milk purchased by the appellant was processed by it and, as to a major portion of its product, exported from the province. The appellant company took the position that the orders of the Marketing Board—approving the plan and determining the price to be paid by the appellant—were invalid because they constituted the regulation of trade and commerce within the meaning of s. 91(2) of the *B.N.A. Act,* a field reserved to the Parliament of Canada. The validity of the orders in question was upheld by the Superior Court and by the Court of Appeal. The company was granted leave to appeal to this Court. The Attorney General of Canada and the Attorney General for Alberta were granted leave to intervene in the proceedings.

Held: The appeal should be dismissed.

In making these orders, the Quebec Agricultural Marketing Board did not infringe on the exclusive legislative powers of Parliament under s. 91(2) of the *B.N.A. Act* to regulate trade and commerce. The purpose of these orders was to regulate, on behalf of a particular group of Quebec producers, their trade with the appellant for the sale to it, in Quebec, of their milk. The orders were not directed at the regulation of interprovincial trade. They did not purport directly to control or to restrict such trade. There was no evidence that, in fact, they did control or restrict it. The most that can be said of them is that they had some effect upon the cost of doing business in Quebec of a company engaged in interprovincial trade, and that, by itself, is not sufficient to make them invalid.

Droit constitutionnel—Régie des marchés agricoles du Québec—Validité de décisions prises par la Régie—Décision approuvant un plan conjoint de mise en marché relativement à une compagnie de lait évaporé—Décision établissant le prix d'achat du lait devant être payé par la compagnie aux producteurs—La majeure partie des produits exportée—Les décisions sont-elles ultra vires comme étant la réglementation du trafic et du commerce—Loi des marchés agricoles du Québec, 1955-56 (Qué.), c. 37, telle que remplacée par 1963 (Qué.), c. 34—Acte de l'Amérique du Nord britannique, 1867, art. 91(2).

La Régie des marchés agricoles du Québec a été créée comme corporation par la *Loi des marchés agricoles du Québec,* 1955-56 (Qué.), c. 37, et a reçu les pouvoirs, *inter alia,* d'approuver des plans conjoints de mise en marché. En 1957, la Régie a approuvé un plan conjoint de mise en marché relativement à la Carnation Company Limited et à ses four-

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nisseurs de lait. L'administration du plan a été confiée à un office de producteurs qui avait le pouvoir de négocier avec l'acheteur—la compagnie appelante—relativement à la mise sur le marché et à la vente du lait et des produits laitiers provenant des fermes appartenant aux producteurs liés par le plan. Les producteurs et la compagnie n'ont pas réussi à s'entendre sur le prix d'achat du lait devant être acheté des producteurs par la compagnie appelante. La Régie des marchés agricoles du Québec, ainsi qu'elle était autorisée de le faire, est intervenue comme arbitre et a établi le prix que l'appelante devait payer aux producteurs pour le lait qu'elle achetait d'eux. Le lait acheté par l'appelante est transformé par elle et, quant à la majeure partie de ses produits, elle l'exportait en dehors de la province. La compagnie appelante prétend que les décisions de la Régie—approuvant le plan et établissant le prix devant être payé par l'appelante—étaient invalides parce qu'elles constituaient la réglementation du trafic et du commerce dans le sens de l'art. 91(2) de l'*Acte de l'Amérique du Nord britannique,* domaine qui est de la compétence du Parlement du Canada. La validité des décisions en question a été maintenue par la Cour supérieure et par la Cour d'Appel. La compagnie a obtenu la permission d'appeler devant cette Cour. Le procureur général du Canada et le procureur général de l'Alberta ont obtenu la permission d'intervenir dans l'appel.

Arrêt: L'appel doit être rejeté.

En rendant ces décisions, la Régie des marchés agricoles du Québec n'a pas empiété sur les pouvoirs législatifs exclusifs du Parlement en vertu de l'art. 91(2) de l'*Acte de l'Amérique du Nord britannique* de réglementer le trafic et le commerce. Le but de ces décisions était de réglementer, au profit d'un groupe particulier de producteurs québecois, leur commerce avec l'appelante pour la vente à cette dernière de leur lait dans le Québec. Les décisions ne visaient pas la réglementation du commerce interprovincial. Elles n'étaient pas censées contrôler ou restreindre directement un tel commerce. Il n'y avait aucune preuve que, en fait, elles contrôlaient ou restreignaient ce commerce. Le plus qu'on puisse dire est qu'elles affectaient en partie le coût de l'entreprise exercée dans Québec par une compagnie faisant le commerce interprovincial et que ceci n'était pas, *per se,* suffisant pour les rendre invalides.

APPEL d'un jugement de la Cour du banc de la reine, province de Québec[1], modifiant un jugement du Juge Tellier. Appel rejeté.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, province of Quebec[1], modifying a judgment of Tellier J. Appeal dismissed.

Guy Desjardins, Q.C., for the appellant.

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[1] [1967] Que. Q.B. 122.

Yves Pratte, Q.C., and *Alphonse Barbeau, Q.C.*, for the Marketing Board.

Louis Lamontagne, for the Producers Board.

Rodrigue Bédard, Q.C., for the Attorney General of Canada.

B. A. Crane, for the Attorney General for Alberta.

The judgment of the Court was delivered by

MARTLAND J.:—This is an appeal from the Court of Queen's Bench for the Province of Quebec (Appeal Side)[1], which confirmed the judgment given in the Superior Court, upholding the validity of three decisions of the Quebec Agricultural Marketing Board, hereinafter referred to as "the Marketing Board". The question in issue before this Court is as to whether, in making these orders, the Marketing Board had infringed on the exclusive legislative powers of Parliament under s. 91(2) of the *British North America Act* to regulate trade and commerce. Submissions on this issue were made on behalf of the Attorney-General of Canada and the Attorney-General of Alberta, in addition to those presented by the parties to the litigation.

The Marketing Board was created as a corporation by the provisions of the *Quebec Agricultural Marketing Act*, 4-5 Eliz. II, 1955-56 (Que.), c. 37. It was empowered, inter alia, to approve joint marketing plans, and to arbitrate any dispute arising in the course of carrying out a joint marketing plan. The Act provided that ten or more producers of agricultural products in any territory in Quebec could apply to the Marketing Board for approval of a joint plan for the marketing of one or more classes of farm products in such territory, if such plan was supported by a vote of at least 75 per cent in number and value of all producers concerned.

On July 25, 1957, the Marketing Board approved The Quebec Carnation Company Milk Producers' Plan. The administration of the Plan was entrusted to The Quebec Carnation Company Milk Producers' Board. The Plan bound all bona fide milk producers shipping milk and dairy

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products to any of the plants of the appellant in Quebec. The Producers' Board had power to negotiate with the buyer (the appellant) for the marketing and sale to it of milk and dairy products from the farms of producers bound by the Plan. The Plan provided for a board of arbitration, which might be the Marketing Board, to decide conflicts in the event of a failure to agree with the appellant in the negotiation or execution of a convention.

Agreement was not reached as to the purchase price of milk to be purchased by the appellant from the producers, pursuant to the Plan. The matter was arbitrated by the Marketing Board which, after hearing evidence for both sides, wrote extensive reasons, and determined a price of $3.07 per hundred pounds, on December 18, 1958. Subsequently, on June 11, 1962, after a further arbitration, the Marketing Board decided on a price of $2.78 per hundred pounds.

It is these three orders of the Marketing Board, which approved the Plan, and which determined the price to be paid by the appellant for milk purchased from producers subject to the Plan, which are the subject of the appellant's attack.

The appellant was incorporated under the Canadian *Companies Act*, and has its head office in Toronto. It operates, in Quebec, an evaporated milk plant at Sherbrooke and a receiving station at Waterloo.

During the period concerned, it purchased raw milk from approximately 2,000 farmers, situated mostly in the Eastern Townships. At the Sherbrooke plant it processes raw milk into evaporated milk. The major part of such production is shipped and sold outside Quebec. Milk received at the Waterloo receiving station, during the relevant period, was either sent to the Sherbrooke plant, for processing, or else, skimmed, the butterfat being sold to other manufacturers, and the skim milk being sent to appellant's plant at Alexandria, Ontario, to be processed into skim milk powder.

The appellant, during the relevant period, was the only evaporated milk manufacturer in Quebec, with the exception of the Granby Co-operative, which, as a co-operative, was not subject to the provisions of the *Quebec Agricultural Marketing Act*.

The evidence showed that, since December 18, 1958, the date of the first arbitration award, prices paid by the appellant were about 10 to 25 cents per hundred pounds higher than those paid by other purchasers of raw milk in the same area.

The *Quebec Agricultural Marketing Act* was repealed in 1963 and replaced by a new Act, with the same title, 11-12 Eliz. II, 1963 (Que.), c. 34. Section 54 of the new Act provides that:

> 54. The joint plans approved under the act 4-5 Elizabeth II, chapter 37, and in existence on the day of the coming into force of this act, as well as the agreements and decisions relating thereto, shall remain in force and shall be subject to the provisions of this act.
>
> Such plans and the agreements and decisions relating thereto shall not be invalid by reason of the fact that they contemplate the marketing of a farm product in a territory other than that of the origin of such product, or the marketing of a farm product intended for a specified purpose or purchaser. This provision shall apply to pending cases except as to costs.

This provision met the objection which had originally been made by the appellant that the Marketing Plan was invalid because it did not fix a minimum price for milk to be paid by all buyers in a given territory and because it applied only to the appellant as a buyer.

Section 18 of the first Act had provided:

> 18. Ten or more producers in any territory of the Province may apply to the Provincial Board for the approval of a joint plan for the marketing of one or more classes of farm products within such territory.

Section 19 of the new Act provides:

> 19. Ten or more interested producers may apply to the Board for the approval of a joint plan for the marketing in the Province of a farm product derived from a designated territory or intended for a specified purpose or a particular purchaser.

It is clear that both these provisions relate to the marketing of milk only in the Province of Quebec.

The position taken by the appellant is that the three orders of the Marketing Board are invalid because they enable it to set a price to be paid by the appellant for a product the major portion of which, after processing, will be used by it for export out of Quebec. This, it is contended, constitutes the regulation of trade and commerce within the meaning of s. 91(2) of the *British North America Act*, a field reserved to the Parliament of Canada.

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The appellant, in support of this submission, relies upon the reasons of four of the judges of this Court in the *Reference Respecting The Farm Products Marketing Act, R.S.O. 1950, Chapter 131, As Amended*[2], which case is hereinafter referred to as "the Ontario Reference".

This was a reference made to the Court by the Governor General in Council concerning: (i) the validity of s. 3(1)(*l*) of *The Farm Products Marketing Act,* (ii) of a regulation made by the Lieutenant-Governor in Council and three regulations made by the Farm Products Marketing Board, pursuant to the Act, (iii) of an order made by that Board, and (iv) of a proposed amendment to the Act, including the scope of authority of the Board under that amendment.

Fauteux J., at p. 248, summarized the provisions of the Act as follows:

> The scheme of the Act may be summarily described as follows: Ten per cent. of the producers engaged, within a given area, in the production of a farm product, may propose the adoption of a compulsory scheme for marketing or regulating the farm product. If the scheme is approved by a certain majority of producers, the Farm Products Marketing Board, whose members are appointed by the Lieutenant-Governor in council, may recommend its adoption to the latter who may approve it with such variations as deemed proper and declare it in force. Marketing operations under the scheme are conducted by a local board in accordance with the terms of the scheme but the Board may also designate marketing agencies. The scheme may include a system of licensing of persons engaged in producing, marketing or processing the regulated product. This licensing is done under the regulations made by the Board which may prohibit persons from engaging in such operations, except under the authority of a licence. Licence fees, to be used by the local board for the purpose of carrying out and enforcing the Act, the regulations and the scheme, may be authorized by the Board. The actual direction of the marketing is done by either the Board, a local board or a marketing agency which, appointed by and acting pursuant to the regulations of the Board, directs and controls the marketing of the product. The marketing agency may be authorized to conduct a pool for the distribution of all moneys received from sales of the product and having deducted its necessary and proper disbursements and expenses, to distribute the proceeds of sales in such a manner that each person receives a share in relation to the amount, variety, size, grade and class of the regulated product delivered by him. Violators of any provisions of the Act, of the regulations, of the schemes declared to be in force, or of any order or direction of the Board, local board or marketing agency, shall be guilty of an offence and liable to monetary penalties.

Section 3(1)(*l*) of the Act authorized the provincial Farm Products Marketing Board to:

> authorize any marketing agency appointed under a scheme to conduct a pool or pools for the distribution of all moneys received from the sale of

[2] [1957] S.C.R. 198, 7 D.L.R. (2d) 257.

the regulated product and requiring any such marketing agency, after deducting all necessary and proper disbursements and expenses, to distribute the proceeds of sale in such manner that each person receives a share of the total proceeds in relation to the amount, variety, size, grade and class of the regulated product delivered by him and to make an initial payment on delivery of the product and subsequent payments until the total net proceeds are distributed.

The first question on the Reference was:

Assuming that the said Act applies only in the case of intra-provincial transactions, is clause (*l*) of subsection 1 of section 3 of *The Farm Products Marketing Act,* R.S.O. 1950 chapter 131 as amended by Ontario Statutes 1951, chapter 25, 1953, chapter 36, 1954, chapter 29, 1955, chapter 21 ultra vires the Ontario Legislature?

Four of the members of the Court, Kerwin C.J., Rand J., Locke J. and Nolan J., were of the view that a transaction might take place within a province and yet not constitute an "intra-provincial" transaction which would be subject to provincial control. They sought to define transactions of this kind. Thus, Kerwin C.J., at p. 204, had this to say:

It seems plain that the Province may regulate a transaction of sale and purchase in Ontario between a resident of the Province and one who resides outside its limits; that is, if an individual in Quebec comes to Ontario and there buys a hog, or vegetables, or peaches, the mere fact that he has the intention to take them from Ontario to Quebec does not deprive the Legislature of its power to regulate the transaction, as is evidenced by such enactments as *The Sale of Goods Act,* R.S.O. 1950, c. 345. That is a matter of the regulation of contracts and not of trade as trade and in that respect the intention of the purchaser is immaterial. However, if the hog be sold to a packing plant or the vegetables or peaches to a cannery, the products of those establishments in the course of trade may be dealt with by the Legislature or by Parliament depending, on the one hand, upon whether all the products are sold or intended for sale within the Province or, on the other, whether some of them are sold or intended for sale beyond Provincial limits. It is, I think, impossible to fix any minimum proportion of such last-mentioned sales or intended sales as determining the jurisdiction of Parliament. This applies to the sale by the original owner. Once a statute aims at "regulation of trade in matters of inter-provincial concern" (*The Citizens Insurance Company of Canada v. Parsons; The Queen Insurance Company v. Parsons,* (1881) 7 App. Cas. 96 at 113), it is beyond the competence of a Provincial Legislature.

Rand J., at p. 209, says:

The definitive statement of the scope of Dominion and Provincial jurisdiction was made by Duff C.J. in *Re The Natural Products Marketing Act, 1934,* (1936) S.C.R. 398 at 414 et seq., (1936) 3 D.L.R. 622, 66 C.C.C. 180, affirmed sub nom. *Attorney-General for British Columbia v. Attorney-General for Canada et al.,* (1937) A.C. 377, (1937) 1 D.L.R. 691, (1937) 1 W.W.R. 328, 67 C.C.C. 337. The regulation of particular trades confined to the Province lies exclusively with the Legislature subject, it

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may be, to Dominion general regulation affecting all trade, and to such incidental intrusion by the Dominion as may be necessary to prevent the defeat of Dominion regulation; interprovincial and foreign trade are correspondingly the exclusive concern of Parliament. That statement is to be read with the judgment of this Court in *The King v. Eastern Terminal Elevator Company*, (1925) S.C.R. 434, (1925) 3 D.L.R. 1, approved by the Judicial Committee in *Attorney-General for British Columbia v. Attorney-General for Canada*, supra, at p. 387, to the effect that Dominion regulation cannot embrace local trade merely because in undifferentiated subject-matter the external interest is dominant. But neither the original statement nor its approval furnishes a clear guide to the demarcation of the two classes when we approach as here the origination, the first stages of trade, including certain aspects of manufacture and production.

That demarcation must observe this rule, that if in a trade activity, including manufacture or production, there is involved a matter of extra-provincial interest or concern its regulation thereafter in the aspect of trade is by that fact put beyond Provincial power. This is exemplified in *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction*, (1931) S.C.R. 357, (1931) 2 D.L.R. 193, where the Province purported to regulate the time and quantity of shipment, the shippers, the price and the transportation of fruit and vegetables in both unsegregated and segregated local and interprovincial trade movements.

Locke J., with whom Nolan J. concurred, said, at p. 231, in dealing with the constitutional validity of s. 3(1)(*l*):

In answering this question I exclude sales of produce where the producer himself ships his product to other Provinces or countries for sale by any means of transport, or sells his product to a person who purchases the same for export. To illustrate, I exclude a shipment by a hog producer of his hogs, alive or dead, to the Province of Quebec and transactions between such producer and a buyer for a packing plant carrying on business in Hull who purchases the hog intending to ship it to Hull, either alive or dead, and transactions between a hog producer and a packing plant operating in Ontario purchasing the hog for the purpose of producing pork products from it and exporting them from the Province to the extent that the carcass is so used.

The passage from the judgment in *Lawson's Case* which is above quoted makes it clear that to attempt to control the manner in which traders in other Provinces will carry out their transactions with the Province, or to prohibit them from purchasing natural products for export, is not a matter of merely Provincial concern but also directly and substantially the concern of the other Provinces. I cannot think that from a constitutional standpoint the fact that the buyer for the packing house elects to have the hog killed before it is exported or cut up and, after treatment, exported as hams, bacon or other pork products, can affect the matter.

Fauteux J. was of the opinion that the regulation of the marketing of farm products within a province was within the legislative competence of the Provincial Legislature and not of Parliament. For this proposition he relied upon

Attorney-General of British Columbia v. Attorney-General of Canada et al.[3] and *Shannon et al. v. Lower Mainland Products Board*[4].

Abbott J. was of the opinion that it was impracticable to attempt an abstract logical definition of what constitutes interprovincial or export trade. At p. 265 he says:

> What is regulated under these schemes is not the farm product itself but certain transactions involving that product, and the transaction which is regulated is completed before the product is consumed either in its original or in some processed form. Processing may take many forms and the original product may be changed out of all recognition. The place where the resulting product may be consumed, therefore, is not in my opinion conclusive, as a test to determine by what legislative authority a particular transaction involving such farm product may validly be regulated.
>
> As I have stated, the fact that some, or all, of the resulting product, after processing, may subsequently enter into extraprovincial or export trade does not, in my view, alter the fact that the three schemes submitted in this reference, regulate particular businesses carried on entirely within Provincial legislative jurisdiction, and are therefore intra vires.

Taschereau J. (as he then was) agreed with Fauteux J. and with Abbott J.

Only eight members of the Court sat on this reference, and the reasons of Cartwright J. (as he then was) do not deal with this particular issue.

Counsel for the respondent points out that, as a result of the reference, there was no majority opinion as to what transactions, completed within a province, constituted interprovincial trade, and contends that the views expressed by the four judges were not in harmony with earlier decisions of this Court and of the Privy Council.

The meaning of the words "regulation of trade and commerce" was considered by the Privy Council in *Citizens Insurance Company of Canada v. Parsons*[5]. At p. 113, Sir Montague Smith says:

> 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 regulation 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

[3] [1937] A.C. 377, 1 W.W.R. 328, 67 C.C.C. 337, 1 D.L.R. 691.
[4] [1938] A.C. 708, 2 W.W.R. 604, 4 D.L.R. 81.
[5] (1881), 7 App. Cas. 96.

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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 by No. 13 of sect. 92.

The validity of provincial legislation governing the marketing of agricultural products was before this Court in *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction*[6] which concerned the *Produce Marketing Act of British Columbia,* 1926-27 (B.C.), c. 54. In holding that Act to be *ultra vires* of the Legislature of British Columbia, Duff J. (as he then was) said, at p. 364:

> Coming now to the first ground of attack, namely, that the statute constitutes an attempt to regulate trade within the meaning of head no. 2 of s. 91. To repeat the general language of s. 10(1), the functions of the Committee are
>
> > for the purpose of controlling and regulating the marketing of any product within its authority,
>
> and for that purpose the Committee is empowered
>
> > to determine whether or not and at what time, and in what quantity and from and to what places and at what price and on what terms the product may be marketed and delivered.
>
> As I have said, the respondent Committee has attempted (in professed exercise of this authority) and in this litigation asserts its right to do so—to regulate the marketing of products into parts of Canada outside British Columbia. It claims the right under the statute to control (as in fact it does), the sale of such products for shipment into the prairie provinces as well as the shipment of them into those provinces for sale or storage. The moment his product reaches a state in which it becomes a possible article of commerce, the shipper is (under the Committee's interpretation of its powers), subject to the Committee's dictation as to the quantity of it which he may dispose of, as to the places from which, and the places to which he may ship, as to the route of transport, as to the price, as to all the terms of sale. I ought to refer also to the provision of the statute which prohibits anybody becoming a licensed shipper who has not, for six months immediately preceding his application for a licence, been a resident of the province, unless he is the registered owner of the land on which he carries on business as shipper. In a statute which deals with trade that is largely interprovincial, this is a significant feature. It is an attempt to control the manner in which traders in other provinces, who send their agents into British Columbia to make arrangements for the shipment of goods to their principals, shall carry out their interprovincial transactions. I am unable to convince myself that these matters are all, or chiefly, matters of merely British Columbia concern, in the sense that they are not also directly and substantially the concern of the other provinces,

[6] [1931] S.C.R. 357, 2 D.L.R. 193.

which constitute in fact the most extensive market for these products. In dictating the routes of shipment, the places to which shipment is to be made, the quantities allotted to each terminus ad quem, the Committee does, altogether apart from dictating the terms of contracts, exercise a large measure of direct and immediate control over the movement of trade in these commodities between British Columbia and the other provinces.

In 1936 this Court, in the *Reference as to the Validity of The Natural Products Marketing Act, 1934, As Amended*[7], considered the validity of the federal *Natural Products Marketing Act, 1934*. The following passages, at pp. 404 and 411, from the judgment of this Court, delivered by Duff C.J., define the issues involved and the reasons for its conclusion that the Act was *ultra vires* of the Parliament of Canada:

> 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.
>
> * * *
>
> 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 any-

[7] [1936] S.C.R. 398, 66 C.C.C. 180, 3 D.L.R. 622.

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thing 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 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,* (1883) 9 A.C. 117, but with the judgment in the *Montreal Street Railway* case, (1912) A.C. 33, as well as with the judgment in the *Board of Commerce* case, (1922) 1 A.C. 191. The judgment in this latter case seems very plainly to 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,* (1925) S.C.R. 434).

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.

The penultimate paragraph, above quoted, was adopted by the Privy Council[8]. Lord Atkin, at p. 396, before quoting this paragraph, said:

There can be no doubt that the provisions of the Act cover transactions in any natural product which are completed within the Province, and have no connection with inter-Provincial or export trade. It is therefore plain that the Act purports to affect property and civil rights in the Province, and if not brought within one of the enumerated classes of subjects in s. 91 must be beyond the competence of the Dominion Legislature. It was sought to bring the Act within the class (2) of s. 91—namely, The Regulation of Trade and Commerce. Emphasis was laid upon those parts of the Act which deal with inter-Provincial and export trade. But the regulation of trade and commerce does not permit the regulation of individual forms of trade or commerce confined to the Province.

In 1938, the Privy Council dealt with the validity of a British Columbia statute, *The Natural Products Marketing*

[8] [1937] A.C. 377 at 387, 1 W.W.R. 328, 67 C.C.C. 337, 1 D.L.R. 691.

(British Columbia) Act, 1936, in *Shannon v. Lower Mainland Dairy Products Board*[9]. This Act enabled the Lieutenant-Governor in Council to set up a central British Columbia Marketing Board, to establish or approve schemes for the control and regulation within the Province of the transportation, packing, storage and marketing of any natural products, to constitute Marketing Boards to administer such schemes, and to vest in those Boards any powers considered necessary or advisable to exercise those functions.

It was held that this statute was, in pith and substance, an Act to regulate particular businesses, entirely within the Province, and was *intra vires* of the Provincial Legislature under s. 92(13) of the *British North America Act.* In dealing with the contention that this Act encroached upon s. 91(2) of the *British North America Act,* Lord Atkin said, at p. 718:

> It is sufficient to say upon the first ground that it is apparent that the legislation in question is confined to regulating transactions that take place wholly within the Province, and are therefore within the sovereign powers granted to the Legislature in that respect by s. 92 of the *British North America Act.* Their Lordships do not accept the view that natural products as defined in the Act are confined to natural products produced in British Columbia. There is no such restriction in the Act, and the limited construction would probably cause difficulty if it were sought at some future time to co-operate with a valid Dominion scheme. But the Act is clearly confined to dealings with such products as are situate within the Province. It was suggested that "transportation" would cover the carriage of goods in transit from one Province to another, or overseas. The answer is that on the construction of the Act as a whole it is plain that "transportation" is confined to the passage of goods whose transport begins within the Province to a destination also within the Province. It is now well settled that the enumeration in s. 91 of "the regulation of trade and commerce" as a class of subject over which the Dominion has exclusive legislative powers does not give the power to regulate for legitimate Provincial purposes particular trades or businesses so far as the trade or business is confined to the Province: *Citizens Insurance Co. of Canada v. Parsons,* 7 App. Cas. 96; *Reference re The Natural Products Marketing Act, 1934, and Its Amending Act, 1935,* (1936) Can. S.C.R. 398; (1937) A.C. 377. And it follows that to the extent that the Dominion is forbidden to regulate within the Province, the Province itself has the right under its legislative powers over property and civil rights within the Province.

It is now necessary to consider, in the light of these decisions, the validity of the three orders which are under attack in the present case. The first order, which created

[9] [1938] A.C. 708, 2 W.W.R. 604, 4 D.L.R. 81.

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The Quebec Carnation Company Milk Producers' Board and empowered it to negotiate, on behalf of the milk producers, for the sale of their products to the appellant, is somewhat analogous to the creation of a collective bargaining agency in the field of labour relations. The purpose of the order was to regulate, on behalf of a particular group of Quebec producers, their trade with the appellant for the sale to it, in Quebec, of their milk. Its object was to improve their bargaining position.

The Producers' Board then undertook, with the appellant, negotiations for the sale to it of that milk. The order provided a machinery whereby the price of milk could be determined by arbitration if agreement could not be reached. In this respect it differs from most provincial legislation governing labour disputes, but there would seem to be no doubt that provincial labour legislation incorporating compulsory arbitration of disputes would be constitutional, unless objectionable on some other ground.

The two subsequent orders of the Marketing Board, under attack, contained the decisions which it reached in determining the proper price to be paid to the producers for milk purchased by the appellant.

Are these orders invalid because the milk purchased by the appellant was processed by it and, as to a major portion of its product, exported from the province? Because of that fact, do they constitute an attempt to regulate trade in matters of interprovincial concern?

That the price determined by the orders may have a bearing upon the appellant's export trade is unquestionable. It affects the cost of doing business. But so, also, do labour costs affect the cost of doing business of any company which may be engaged in export trade and yet there would seem to be little doubt as to the power of a province to regulate wage rates payable within a province, save as to an undertaking falling within the exceptions listed in s. 92(10) of the *British North America Act*. It is not the possibility that these orders might "affect" the appellant's interprovincial trade which should determine their validity, but, rather, whether they were made "in relation to" the regulation of trade and commerce. This was a test applied, in

another connection, by Duff J. (as he then was) in *Gold Seal Limited v. Attorney-General for Alberta*[10].

Thus, as Kerwin C.J. said in the *Ontario Reference,* in the passage previously quoted: "Once a statute *aims* at 'regulation of trade in matters of inter-provincial concern' it is beyond the competence of a Provincial Legislature."

I am not prepared to agree that, in determining that aim, the fact that these orders may have some impact upon the appellant's interprovincial trade necessarily means that they constitute a regulation of trade and commerce within s. 91(2) and thus renders them invalid. The fact of such impact is a matter which may be relevant in determining their true aim and purpose, but it is not conclusive.

In the *Lawson* case, where the provincial legislation was found to be unconstitutional, the Committee created by the statute was enabled and purported to exercise a large measure of direct and immediate control over the movement of trade in commodities between a province and other provinces. That is not this case.

On the other hand, in the *Shannon* case the regulatory statute was upheld, as it was confined to the regulation of transactions taking place wholly within the province. It was held that s. 91(2) was not applicable to the regulation for legitimate provincial purposes of particular trades or businesses confined to the province.

The view of the four judges in the *Ontario Reference* was that the fact that a transaction took place wholly within a province did not necessarily mean that it was thereby subject solely to provincial control. The regulation of some such transactions relating to products destined for interprovincial trade could constitute a regulation of interprovincial trade and be beyond provincial control.

While I agree with the view of the four judges in the *Ontario Reference* that a trade transaction, completed in a province, is not necessarily, by that fact alone, subject only to provincial control, I also hold the view that the fact that such a transaction incidentally has some effect upon a company engaged in interprovincial trade does not necessarily prevent its being subject to such control.

[10] (1921), 62 S.C.R. 424 at 460, 3 W.W.R. 710, 62 D.L.R. 62.

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I agree with the view of Abbott J., in the *Ontario Reference*, that each transaction and each regulation must be examined in relation to its own facts. In the present case, the orders under question were not, in my opinion, directed at the regulation of interprovincial trade. They did not purport directly to control or to restrict such trade. There was no evidence that, in fact, they did control or restrict it. The most that can be said of them is that they had some effect upon the cost of doing business in Quebec of a company engaged in interprovincial trade, and that, by itself, is not sufficient to make them invalid.

For these reasons, I would dismiss this appeal with costs. There should be no costs payable by or to the intervenants.

Appeal dismissed with costs.

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