1945
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ARTHUR HENRY OATWAY (PLAINTIFF) ..... APPELLANT;

AND

THE CANADIAN WHEAT BOARD (DEFENDANT) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Appeal—Leave to appeal granted by appellate court—Motion to quash maintained by this Court—Appeal "manifestly devoid of merit and substance"—No issue left to be decided between the parties—Court declining to hear appeal—Action by wheat producer against the Canadian Wheat Board for an accounting of operations of the Board—Orders in Council passed under War Measures Act, when matter before appellate court, removing substratum of plaintiff's claim.

The appellant, a producer of wheat in Manitoba, who had delivered and sold wheat to the Canadian Wheat Board, brought an action against the Board, on behalf of himself and other producers, before the Court of King's Bench, asking among other relief for an accounting of the operations of the Board during the crop years of 1938 to 1942 both inclusive. The Board, besides submitting a statement of defence on different points of law and facts, launched a motion for an order dismissing appellant's action on the ground that, the Board being a servant or agent of the Crown, the Court of King's Bench had no jurisdiction, and, in the alternative, that the action was frivolous and vexatious. The motion was dismissed and the appellant appealed to the Court of Appeal. While the matter was still before that court, an Order in Council was passed under the *War Measures Act*, reciting that there was no surplus in either of the first two years and providing for the distribution of the surplus in each of the other three years. The majority of the Court of Appeal, later, held that the Board was an agent of the Crown and that the appellant's action could not be brought in the provincial court (1). The appellant appealed to this Court upon special leave granted by the Court of Appeal. The respondent Board moved to quash the appeal on the grounds that the appellant's claim and appeal were without substance and merit and that the appeal was wholly academic and futile, because, among other reasons, by the terms of the *Canadian Wheat Board Act* and the Order in Council, the appellant had and has no right to sue.

Held that the motion of the respondent Board should be allowed and the appeal dismissed.

The Supreme Court of Canada will entertain favourably a motion to quash an appeal to this Court, if such appeal, though within the jurisdiction of the Court, is manifestly entirely devoid of merit and substance. *National Life Assurance Co. of Canada* v. *McCoubrey* ([1926] S.C.R. 277), and judgments therein referred to; *De Bortoli* v. *The King* ([1927] S.C.R. 454, at foot of 457 and at 458); *Bowman* v. *Panyard Machine & Mfg. Co.* ([1928] S.C.R. 63); *Cameron* v.

*PRESENT:—Rinfret C.J. and Kerwin, Hudson, Kellock and Estey JJ.

(1) [1944] 3 W.W.R. 337.

Excelsior Life Ins. Co. ([1937] 3 D.L.R. 224); *Laing* v. *The Toronto General Trusts Corporation* ([1941] S.C.R. 32) and *Temple v. Bulmer* ([1943] S.C.R. 265). More particularly, the recent decision of this Court in *Coca-Cola Co. of Canada* v. *Mathews* ([1944] S.C.R. 385) is conclusive, where this Court held that it should decline to hear an appeal when there was no issue before it to be decided between the parties.

In this case, the Order in Council has removed the substratum of the appellant's claim, even if the matter could be brought before the ordinary courts at all and should not have been initiated in the Exchequer Court of Canada.

No opinion was expressed by this Court upon the judgment of the majority of the Court of Appeal.

APPEAL from a judgment of the Court of Appeal for Manitoba (1), reversing the judgment of Donovan J. and maintaining a motion by the respondent Board for an order dismissing the appellant's action on the ground that the Board was an agent of the Crown, was not suable in a provincial court and the action should have been taken before the Exchequer Court of Canada, after a *fiat* had been granted.

J. B. Coyne K.C. for the motion.

C. E. Finkelstein contra.

The judgment of the Court was delivered by

THE CHIEF JUSTICE.—This is a motion on behalf of the Canadian Wheat Board to quash and dismiss an appeal from a judgment of the Court of Appeal of Manitoba. Counsel for the Wheat Board was also authorized to appear on behalf of the Attorney General of Canada so that we are at liberty to deal with the appellant's contention that certain Orders in Council hereafter referred to are invalid.

The motion is

to quash and dismiss the appeal herein on the ground that, without reference to the basis of decision in the Court of Appeal, the plaintiff's claim and appeal are plainly unfounded and without substance or merit, and the appeal is wholly academic and futile, because, among other reasons: since the action began, Orders in Council have provided for the distribution of the surplus monies resulting from operations of the Board including the sale of all wheat delivered to the Board, in respect of the crop years in question herein, being the

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relief claimed in this action, and have disposed of any issue which may have existed between the parties; and, by the terms of The Canadian Wheat Board Act and the Order in Council, the plaintiff had and has no right to sue.

Copies of the record in the courts below, including the pleadings and the reasons for judgment of the Court of Appeal, were placed before the Court in what was designated "Appeal Book".

The Canadian Wheat Board was established in 1935 under *The Canadian Wheat Board Act,* chapter 53 of the Dominion statutes of that year. Its purpose, among others, was

to undertake the marketing of wheat in interprovincial and export trade,

the Board buying from producers only and having

to sell and dispose of all wheat which the Board may acquire, for such price as it may consider reasonable, with the object of promoting the sale and use of Canadian wheat in world markets.

The plaintiff is a producer of wheat, residing in the province of Manitoba, who delivered and sold wheat to the Board. He bases his claim upon *The Canadian Wheat Board Act.*

The Board is a body corporate. The action was brought against the Board as if it were "an ordinary trading corporation", in the language of Richards J.A.

The plaintiff issued a statement of claim against the defendant

on behalf of himself and all other producers who are holders of producers certificates issued by the defendant for the crop years of 1938, 1939, 1940, 1941 and 1942.

He asked, among other things, for an accounting of the operations of the Board and of the wheat received by it during the said crop years, of all receipts and expenditures in connection therewith; for an order that the Board pay and distribute to the producers what shall be found due to them on the taking of accounts; and for a reference and for other relief.

The Board submitted in its statement of defence that the action was bad in law, in that it did not allege a reasonable or any cause of action against the Board; and, moreover, that if any cause of action against the Board was stated in the statement of claim, which was denied, then it was not a cause of action in which under the law and practice an action could be commenced and continued

without a *fiat* from the Crown, which had not been granted, and that, even if a *fiat* had been granted, there was no cause of action stated against the Board. Under the reserve of these and all other objections to the sufficiency in law of the statement of claim, the Board then pleaded on the merits.

On the 27th of November, 1943, the Board launched a motion for an order dismissing plaintiff's action, on the ground that the Court of King's Bench had no jurisdiction to hear a trial or determine the matters at issue in the action. The Board alleged in support of its motion that it is an instrument of the Government of Canada, or, alternately, an emanation of the Crown, or, in the further alternative, a servant or agent of the Crown, and that it had acted solely in the capacity aforesaid for His Majesty in the right of the Dominion. In the alternative, the Board asked that the action be dismissed as frivolous and vexatious. In support of this motion an affidavit of William Aitken, accountant of the Canadian Wheat Board, of the city of Winnipeg, Manitoba was filed.

The motion was heard by Donovan J., of the Court of King's Bench, who dismissed it with costs. The Board thereupon appealed to the Court of Appeal and the appeal was allowed and the statement of claim in the action was struck out. The judgment is grounded upon a holding by a majority of the Court that the Canadian Wheat Board is an agent of the Crown in the matters in question and that this precludes the plaintiff's suit in the provincial court.

On the 21st of November, 1944, the Court of Appeal granted to the appellant (plaintiff) special leave to appeal to this Court from the last mentioned judgment.

As already stated, the Board now moves for an order to quash and dismiss the appeal herein, on the ground that the plaintiff's claim and appeal are plainly unfounded and without substance and merit, and the appeal is wholly academic and futile, because, since the action began, Orders in Council have given to the appellant, and all those whom he claims to represent, the relief prayed for in this action, and have disposed of any issue which may have existed between the parties.

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The Board's motion is supported by affidavits by Thomas William Grindley, secretary of the Canadian Wheat Board, and Henry B. Monk, barrister, of the city of Winnipeg.

The Canadian Wheat Board Act was amended in 1939, chapter 39; in 1940, chapter 25; and in 1942, chapter 4. Part II of the Act, added in 1940, was repealed by Order in Council P.C. 5844 of 1941, under the *War Measures Act*. It is apparent that this Act is part of the effort to solve economic and political problems, particularly of Western agriculture, and financial problems which deeply involved the Dominion government, all of which were then acute by reason of the depression, low prices, drought, a small international market, and other factors. These efforts culminated at that time in the adoption of *The Canadian Wheat Board Act*.

After 1941, due to the war, a large number of Orders in Council have been enacted, under the *War Measures Act*, directing operations of the Board and conferring upon the Board additional powers, generally subject in their exercise to approval by the Governor in Council.

The purposes of *The Canadian Wheat Board Act* were many, but two of them were:—

(1) To create a corporation for the purpose of liquidating an obligation of the Dominion of Canada amounting to more than one hundred million dollars which arose from a guarantee by the Government to the banks of the huge indebtedness of the Wheat Pools to the banks which had been a problem of the Government since 1931, and, for that purpose, to dispose of approximately two hundred million bushels of wheat which were held by the banks as security for the indebtedness. Sections 7 (*f*) and 8 (*c*) of the original Act providing for this were repealed in 1940 when this obligation had been liquidated.

(2) To put a floor under wheat prices.

In the original Act, and in the amendments thereto, other wide powers were conferred, as for instance, the regulation of delivery of grain of all kinds by producers, whether the producers were delivering and selling wheat to the Board or not, investigation of operations of grain exchanges, regulation of storage and transport generally

of grain from barn to exportation, collection of a Processing Levy on all wheat products and prohibition and regulation of imports.

The Board may accept delivery of wheat from producers and may purchase, sell, store and transport such wheat.

During the five year period involved in this action every producer had the option to deliver and sell to the Board, or to sell on the open market. As was natural, comparison of the prices paid by the Board on delivery and the price on the open market determined his course. In one year the Board handled practically no wheat, and in another year practically the whole marketed crop. If the producer delivered to the Board, he was, of course, governed by the terms of the Act, and more particularly the provisions above referred to.

When a producer delivers wheat to the Board, the Board is authorized to make a cash payment to the producer of a fixed amount, according to grade and quality, less freight and other charges to shipping port terminal. At the time of purchase and down payment, the Board, under subsection (*f*), is to issue to producers "certificates", indicating the number of bushels purchased, the grade and quality, which certificates

> entitle the producers named therein to share in the equitable distribution of the surplus, if any, of the operations of the Board with regard to wheat delivered in any crop year, it being the true intent and meaning of this Act that each producer shall receive for the same grade and quality of wheat the same price on the Fort William-Port Arthur or Vancouver basis.

The Act gives the Board power generally to do all such acts and things as may be necessary for the purpose of giving effect to its intent and meaning.

Section 12 (1) of the Act provides that

> the Board shall, with the approval of the Governor in Council, provide for the form and contents of certificates * * *

Section 8, (subsections (*d*) to (*g*)), provide that the Board shall set up a proper system of accounting, appoint responsible outside auditors, make weekly audited reports of its operations to the Minister and any other reports he may require, all of which has been done, according to the affidavit of William Aitken.

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Section 13 (1) provides that

> as soon as the Board has received payment in full for all wheat delivered during any crop year, there shall be deducted from the receipts all monies, disbursed by or on behalf of the Board;

and then, by subsection (2),

> the balance shall be distributed *pro rata* among the producers holding certificates * * * in accordance with regulations of the Board approved by the Governor in Council.

In short, a system of pooling wheat was set up by the Act. A farmer delivering wheat to the Board received the sum which the Board was authorized to pay and a certificate showing grade, quality and quantity, and the Board marketed all the wheat received. If as a result of its operations there was a surplus, the statute entitled the certificate holder to share in it *pro rata* with other producers delivering grain of the same grade and quantity. If there was a loss, as happened in 1938 and 1939, it was met by the Government.

At the time the appellant commenced his action (October 18th, 1943), no regulations had been made for distribution under subsection (2) of section 13, or otherwise (affidavit of W. T. Grindley).

The plaintiff's claim in this action is set out in paragraph 23 of the statement of claim:—

(*a*) That an account may be taken of the operations of the defendant and of the wheat received by it during the crop years of 1938, 1939, 1940, 1941 and 1942, and of all sums of money received by, or come to the hands, of the defendant and of the application thereof and of the expenses disbursed by the defendant and all dealings and transactions of the defendant.

(*b*) That a determination be made by this Honourable Court of what should be the proper expenses and disbursements chargeable against the receipts, within the meaning of the said Act and the respective crop years to which such expenses and disbursements are properly chargeable.

(*c*) That a determination by and a declaration of this Honourable Court be made of the amounts of the proper surpluses to which the plaintiff and the other producers are entitled to for each of the crop years 1938, 1939, 1940, 1941 and 1942 respectively.

(*d*) That the defendant may be ordered to pay and distribute to the plaintiff, and to all other producers on whose behalf this action is brought, what, on taking such accounts, shall be found due from the defendant to the plaintiff and such other producers.

One of the grounds of the motion to dismiss the action made by the Board was that it was an agent of the Crown and was not suable in the provincial courts and that if

any action could be taken it must be in the Exchequer Court of Canada. It was on this ground that the Court of Appeal struck out the statement of claim, and it is against that judgment that this appeal has been taken to this Court.

While the matter was before the Court of Appeal, that is, before argument was concluded, an Order in Council was passed under the *War Measures Act*, P.C. 3541 of 1944. This Order recites that there was no surplus in either of the first two years in question in this action, but that there was a surplus in each of the other three years and it provides for the distribution of the surplus in each case.

The *War Measures Act* provides in section 3 (2):—

> All orders and regulations made under this section shall have the force of law, and shall be enforced in such manner and by such courts, officers and authorities as the Governor in Council may prescribe.

There is also section 8 (*h*) of *The Canadian Wheat Board Act*, already mentioned, which provides that

> it shall be the duty of the Board to give effect to any Order in Council that may be passed with respect to its operations.

By paragraph two of the Order in Council,

> The Canadian Wheat Board shall distribute the surpluses (after deducting expenses as provided by section 13 of *The Canadian Wheat Board Act*, 1935), resulting from its operations during the three years commencing in 1940 by paying to each certificate holder for each bushel of wheat of the grade and quality stated in his certificate the specific sum of money set out in the Order (subsection (*a*));

and it provides that

> the Board and Governor in Council should similarly distribute the surpluses of the succeeding two years by determining the appropriate sum for each grade and quality of each year (subsection (*b*) and section 3).

By section 4,

> the Canadian Wheat Board shall not make any distribution or payment under the *Canadian Wheat Board Act* or otherwise in respect of certificates issued with regard to the wheat delivered to it in the five crop years commencing in 1938 and ending in 1943, except the distribution and payments provided for in section 2 of this Order;

and it further provides that

> there shall be no liability in respect of such certificates except as provided in this Order.

In September, 1944, Order in Council P.C. 6898 was made in accordance with paragraphs 2 (*b*) and 3 of P.C. 3541 fixing the amount payable in respect of grades and qualities in the remaining two years.

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It was urged by the Board (respondent), on the authority of the *Gray* case (1), and the *Reference re Chemicals* (2) that Orders in Council adopted under the *War Measures Act* are equivalent to statutes; that the Orders in Council referred to completely cover the field of distribution of the surplus in respect of the years in question in the action, and any right that the plaintiff has to receive any sums of money from any surplus in the years in question is such sum as he may be entitled to under these Orders in Council.

It was, therefore, argued that any issue between the parties in this case has disappeared and that accordingly the appeal should be quashed and dismissed. For authorities the respondent referred to *Cameron* v. *Excelsior Life Ins. Co.* (S.C.C.) (3); *Attorney General of Alberta* v. *Attorney General of Canada,* (4); *Coca-Cola Company of Canada* v. *Matthews* (5).

In the *Alberta* case (4) a reference had been made to this court in respect of an Alberta statute and that statute was repealed after judgment was rendered by this Court. The Privy Council declined to hear the appeal on the ground, as stated in the W.W.R., at p. 341:—

> It is contrary to the long established practice of this Board to entertain appeals which have no relation to existing rights.

The Court was informed at bar that there are more than two hundred thousand holders of certificates interested in the distribution about which this action was brought, and that over one million certificates have been issued by the Board in connection with crop years mentioned in the action. This shows the great importance of the matter and the undoubted urgency for an early decision by this Court.

As the appellant argued that a matter of this kind should not be summarily disposed of on a motion, the Court offered to extend the motion so that it might be heard, at the same time as the merits of the case, during the present sittings; but, as the appellant insisted that the matter should go over until the April sittings, which would have meant a delay of at least three months, the

(1) In re George Edwin Gray (1918) 57 Can. S.C.R. 150.
(2) [1943] S.C.R. 1.
(3) [1937] 3 D.L.R. 224.
(4) [1939] A.C. 117; [1938] 3 W.W.R. 337.
(5) [1944] S.C.R. 385.

Court decided to hear the respondent's motion immediately, and counsel on both sides were given full opportunity to be heard on all the points raised, and they availed themselves of the opportunity.

It is far from being the first time that this Court has been called upon to decide in such a way appeals which, on their face, appear either to be devoid of any substance or merit, or to require a speedy decision. It is not necessary to advert beyond the year 1926 when this Court, in *National Life Assurance Co. of Canada* v. *McCoubrey* (1), held that if an appeal, though within the jurisdiction of the Court, be manifestly entirely devoid of merit or substance, the Court will entertain favourably a motion to quash it.

In that case, the plaintiff sued to recover the amount of a policy of insurance and interest thereon, and, having begun action by a specially endorsed writ, moved before a judge in chambers for speedy judgment under Order XIV, r. 1 of the Rules of the Supreme Court of British Columbia, and it was ordered that judgment be entered for the plaintiff for the sum mentioned in the policy and that the action should proceed as to the demand for interest. The order was affirmed by the Court of Appeal for British Columbia. It was held that the order did not amount merely to an exercise of judicial discretion within the purview of section 38 of the *Supreme Court Act;* and that grounds urged against the defendant's right of appeal to the Supreme Court of Canada were not maintainable; but the Court, applying the principles above stated, quashed the appeal on the ground that it was manifestly devoid of merit. In the course of delivering the judgment of the Court, Anglin C.J.C. said, at p. 283:—

> After full consideration we are satisfied that the appeal lacks merit and that interference with the order for judgment, unanimously affirmed by the provincial appellate court, would be clearly unjustifiable.

It was said that

> every Court of justice has an inherent jurisdiction to prevent such abuse of its own procedure;

and an appeal

> having such manifest lack of substance as would bring it within the character of vexatious proceedings designed merely to delay

(1) [1926] S.C.R. 277.

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should not be entertained. The following judgments were referred to: *Fontaine* v. *Payette*, (1); *Reichel* v. *McGrath*, (2); *Schlomann* v. *Dowker*, (3); *Angers* v. *Duggan*, 19 Feb., 1907, Cameron, 3rd Ed., p. 92; *Moir* v. *Huntingdon*, (4); *Assn. Pharmaceutique* v. *Fauteux*, 20 Feb., 1923.

The Chief Justice added:—

This court will entertain favourably a motion to squash * * * as a convenient way of disposing of the appeal before further costs have been incurred.

The same principle was again affirmed and applied in this Court in *De Bortoli* v. *The King* (5); *Bowman* v. *Panyard Machine & Mfg. Co.* (6); *Cameron* v. *Excelsior Life Ins. Co.* (7), where Sir Lyman P. Duff C.J.C. said:—

We have come to the conclusion that this appeal ought not to be permitted to proceed further. We have before us all the material necessary to enable us to decide whether, if the appeal were allowed to continue in the usual course, there is any reasonable probability that the appellant could succeed. After a full examination of all the pertinent considerations, we are satisfied that to interfere with the judgment of the Court of Appeal would be clearly unjustifiable; and that in this case we ought to exercise the well-established jurisdiction to quash summarily an appeal where, to quote the expression employed in the judgment of this Court in *National Life Ins. Co.* v. *McCoubrey* (8), it is "manifestly entirely devoid of merit or substance".

Again, in *Laing v. The Toronto General Trusts Corporation* (9), Sir Lyman P. Duff C.J.C. said:—

We have come to the conclusion that this is one of those cases in which it is plain that if the appeal came on for hearing in the ordinary way it could not be entertained by the Court, conformably to the course of the Court with regard to such matters * * *

It is the settled course of this Court that when on a motion to quash it plainly appears to the Court that the appeal is one which, if it came on in the regular and ordinary way, must be dismissed, the Court will on that ground quash the appeal.

The same reasoning was followed in *Temple* v. *Bulmer* (10). And, of course, the respondent was perfectly justified in referring to the recent judgment of this Court in *Coca-Cola Co. of Canada Ltd.* v. *Matthews* (11), where several other judgments of this Court to the same effect are referred to, and more particularly the judgment of the House

(1) (1905) 36 Can. S.C.R. 613, at 615.
(2) (1889) 14 App. Cas. 665.
(3) (1900) 30 Can. S.C.R. 323, at 325.
(4) (1891) 19 Can. S.C.R. 363.
(5) [1927] S.C.R. 454, at foot of 457 and at 458.
(6) [1928] S.C.R. 63 at 64.
(7) [1937] 3 D.L.R. 224.
(8) [1926] S.C.R. 277; [1926] 2 D.L.R. 550, at 554.
(9) [1941] S.C.R. 32, at 33.
(10) [1943] S.C.R. 265.
(11) [1944] S.C.R. 385.

of Lords in *Sun Life Assurance Co. of Canada* v. *Jervis* (1), and the judgment of the Privy Council in *Attorney-General for Ontario* v. *The Hamilton Street Railway Co.* (2).

We express no opinion upon the judgment of the majority of the Court of Appeal which deals with the status of the appellant to invoke the jurisdiction of the courts, if there were such jurisdiction. As was said by the former Chief Justice of this Court in *Temple* v. *Bulmer* (3):—

> That is a question which we shall be free to consider whenever it may be necessary to pass upon it.

The ground upon which we think the motion of the respondent ought to be allowed is the same as that in the *Coca-Cola case* (4). We should decline to hear the appeal because there is no issue left to be decided between the parties. We are bound by our judgment in that case to the effect that this Court will not decide abstract propositions of law, even if to determine the liability as to costs; and such a situation is not affected by the fact that the provincial court of appeal has granted leave to appeal to this Court.

In the premises, the Orders in Council have removed the substratum of the plaintiff's claim, even if the matter could be brought before the ordinary courts at all and not before the Exchequer Court of Canada or if it could be said that this is a matter upon which any court is competent to pronounce.

We have stated, in the course of the present judgment, the conclusions of the plaintiff's action and the relief sought by him. The Orders in Council provide that the Canadian Wheat Board shall not make any distribution or payment under the *Canadian Wheat Board Act* or otherwise in respect of certificates issued with regard to the wheat delivered to it in the five crop years mentioned in the action, except the distribution and payments provided for in section (2) of the Order (that is to say, distribution and payment in connection with the questions raised in the action), and "there shall be no liability in respect of such certificates except as provided in this Order" (P.C. 3541, section 4). It is true that the appellant is not granted

(1) (1944) 113 L.J. K.B. 174.
(2) [1903] A.C. 524.
(3) [1913] 1 S.C.R. 265.
(4) [1944] S.C.R. 385.

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an accounting by the Orders in Council but they unequivocally determine the only bases upon which payments to holders of producers' certificates may be made.

Then the Canadian Wheat Board, having been empowered by Order in Council 3541, with the approval of the Governor General in Council, to determine and fix the amounts to which producers were entitled per bushel according to grade and quality, under Producers' Certificates issued in respect of wheat delivered to the said Board commencing in 1941 and 1942, His Excellency the Governor General in Council, on the recommendation of the Acting Minister of Trade and Commerce and under and by virtue of the powers conferred under the *War Measures Act*, and otherwise, was, by the subsequent Order in Council P.C. 6898, pleased to approve and did approve the said amounts to be paid to producers as aforesaid as determined and fixed by the said Board and set forth in the schedules attached to the two Orders in Council.

While it was competent for this Court to take judicial notice of these Orders in Council, as a matter of fact, they formed part of the material placed before the Court accompanying the motion to quash and dismiss the appeal. It is abundantly evident that these Orders in Council disposed of the whole case and

> that no further *lis* exists between the parties and that they leave nothing for them to fight over. (*Coca-Cola case*, (1)).

Of course, the appellant urged that the Orders in Council were *ultra vires*, but, in order to dispose of that argument, it should be sufficient to refer to the decisions of this Court in the *Gray* case (2), and the unanimous judgment of this Court *In the matter of a Reference as to the validity of the Regulations in relation to Chemicals enacted by the Governor General of Canada on the 10th of July, 1941, P.C. 4996* (3).

Accordingly, the motion of the respondent should be allowed and the appeal dismissed. In the special circumstances, there will be no order as to costs in this Court.

Motion allowed, appeal dismissed, no costs.

(1) [1944] S.C.R. 385, at 386.
(2) (1918) 57 Can. S.C.R. 100.
(3) [1943] S.C.R. 1.