

In the Privy Council

ON APPEAL
FROM THE SUPREME COURT OF CANADA

IN THE MATTER of a reference as to the Validity of Section 6 of the Farm Security Act, 1944, being Chapter 30 of the Statutes of Saskatchewan, 1944 (2nd Session) as amended by 1945 Saskatchewan, Chapter 28, and as to the operation thereof.

BETWEEN

THE ATTORNEY GENERAL OF SASKATCHEWAN - - - *Appellant*

AND

THE ATTORNEY GENERAL OF CANADA AND THE
DOMINION MORTGAGE AND INVESTMENTS
ASSOCIATION - - - - - *Respondents*

AND

THE ATTORNEY GENERAL OF ALBERTA AND THE
ATTORNEY GENERAL OF QUEBEC - - - - - *Pro forma
Respondents*

CASE OF THE APPELLANT
THE ATTORNEY GENERAL OF SASKATCHEWAN

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1. This is an appeal by special leave from the judgment of the Supreme Court of Canada pronounced on the 13th day of May, 1947, answering questions referred to the said court for hearing and consideration by Order of His Excellency the Governor General in Council dated the 14th day of May, 1946 (P.C. 1921) pursuant to the provisions of section 55 of the *Supreme Court Act*, R.S.C. 1927, Chapter 35, touching the constitutional validity of section 6 of *The Farm Security Act, 1944*, being Chapter 30 of the Statutes of Saskatchewan, 1944 (Second Session) as amended by section 2 of Chapter 28 of the Statutes of Saskatchewan, 1945, and the operation of the said section 6 in the case of certain mortgages.

RECORD.
pp. 150-151
pp. 132-133
pp. 1-2
p. 27, l. 34
pp. 28-29

RECORD.

- p. 2, ll. 22-26
2. The questions so referred were:
1. "Is section 6 of the Farm Security Act, 1944, being Chapter 30 of the Statutes of Saskatchewan 1944 (second session) as amended by section 2 of Chapter 28 of the Statutes of Saskatchewan, 1945, or any of the provisions thereof *ultra vires* of the Legislative Assembly of Saskatchewan either in whole or in part and if so in what particular or particulars and to what extent?"
 2. "If the said section 6 is not *ultra vires*, is it operative according to its terms in the case of mortgages
 - (a) securing loans made by His Majesty in right of Canada either alone or jointly with any other person under the National Housing Act, 1944, or otherwise;
 - (b) securing loans made by the Canadian Farm Board; or
 - (c) assigned to the Central Mortgage and Housing Corporation."
- 10
3. The full text of *The Farm Security Act, 1944*, and the amending Act of 1945 will be found in the official prints thereof which are separate documents on this appeal and are attached hereto. The Act is stated to be "An Act for the Protection of Certain Mortgagors, Purchasers and Lessees of Farm Land," and the short title of the Act is *The Farm Security Act, 1944*.
- 20
- p. 27, l. 34
- p. 28, ll. 1-6
- p. 28, ll. 19-36
- Section 6 has reference to agreements for sale and mortgages of farm land only and the section becomes applicable with respect to farm lands where there is a crop failure, which is defined by clause 2 of subsection (1) of the section as a "failure of grain crops" grown on mortgaged farm land or on farm land sold under an agreement for sale due to causes beyond the control of a farmer, "to the extent that the sum realizable from the said crops is less than a sum equal to six dollars per acre sown to grain in such year on such land". Subsection (2) of the said section 6 provides that every mortgage and agreement of sale of farm lands shall be deemed to contain the following conditions applicable in the case of crop failure in any year and by reason only of such crop failure:
1. the mortgagor or purchaser shall not be required to make any payment of principal to the mortgagee or vendor during the period of suspension;
 2. payment of any principal which falls due during the period of suspension and of any principal which thereafter falls due under the mortgage or agreement of sale shall become automatically postponed for one year;
 3. the principal outstanding on the fifteenth day of September in the period of suspension shall on that date become automatically reduced by four per cent. thereof or by the same percentage thereof as that at which interest will accrue immediately after the said date on the principal then outstanding, whichever percentage is the greater; provided that, notwithstanding such reduction, interest shall continue
- 30
- 40

to be chargeable, payable and recoverable as if the principal had not been so reduced.

Subsection (3) of the section provides that if the parties concerned cannot agree as to whether there has been a crop failure in any year, upon the application of either party, the Provincial Mediation Board established by the Legislature by *The Provincial Mediation Board Act, 1943*, being Chapter 15, Statutes of Saskatchewan, 1943, is empowered to determine that fact. If the Board finds that there has been a crop failure in the year in question the provisions of section 6 are made applicable by subsection (4). By subsection (5) notice of crop failure must be given by a mortgagor or purchaser of farm lands to his creditor before the 31st day of December in any year in which he deems himself entitled to the benefits of the section. Subsection (6) provides for such service being effected either personally or by registered mail. Subsection (7) specifically excludes from the application of the section mortgagors and purchasers:

- (a) whose property is deemed to be under the authority of the court pursuant to subsection (1) of section 10 of *The Farmers' Creditors Arrangement Act, 1943 (Canada)*;
- (b) whose affairs have been arranged by and are subject to a composition, extension of time or scheme of arrangement approved by the court or confirmed by the Board of Review under *The Farmers' Creditors Arrangement Act, 1934 (Canada)* or approved or confirmed by the court under *The Farmers' Creditors Arrangement Act, 1943, (Canada)*; or
- (c) whose affairs have been so arranged and where the composition, extension of time or scheme of arrangement has been annulled pursuant to either of the said Acts.

By subsection (8) the Board is empowered to exclude from the operation of the section any mortgage or agreement of sale or class thereof. By subsection (9) the section is to be deemed to have been in force on and from the 1st day of August, 1944. Section 8 of the said Act states that it shall affect the rights of the Crown as mortgagee, vendor or lessor.

4. *The British North America Act, 1867*, provides by sections 91, 92, 95, 96, 99 and 100 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 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,—

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- * * *
19. Interest.
* * *
21. Bankruptcy and Insolvency.
* * *

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.”

“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,—

10

- * * *
13. Property and Civil Rights in the Province.
14. The administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
* * *
16. Generally all Matters of a merely local or private Nature in the Province.”

“95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province, and it is hereby declared that the Parliament of Canada may from 20 Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.”

“96. The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.”

“99. The Judges of the Superior Courts shall hold office during 30 good Behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.”

“100. The Salaries, Allowances, and Pensions of the Judges of the Superior, District and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in Cases where the Judges thereof are for the Time being paid by Salary, shall be fixed and provided by the Parliament of Canada.”

p. 132, l. 36

5. On the hearing of Argument on October 15th, 16th, 17th, 18th, and 21st, 1946, before Rinfret, C.J., Kerwin, Hudson, Taschereau, Rand and Kellock, J.J. counsel were heard on behalf of the Attorney General of 40

Canada and the Dominion Mortgage and Investments Association, as well as on behalf of the Attorneys General of Saskatchewan, Alberta and Quebec. On May 13th, 1947, the court delivered judgment answering the questions referred to the court as follows:

10 “The Chief Justice, Kerwin, Rand and Kellock, J.J. are of opinion that section 6 of The Farm Security Act, 1944, being Chapter 30 of the Statutes of Saskatchewan, 1944 (second session) as amended by section 2 of Chapter 28 of the Statutes of Saskatchewan, 1945, is wholly *ultra vires* of the Legislative Assembly of Saskatchewan, and that it is therefore unnecessary to answer the second question. p. 133, ll. 20-28

Taschereau, J., is of opinion that section 6 is *intra vires*, but would answer “no” to the second question.”

Mr. Justice Hudson died before the delivery of judgment and did not take part therein.

6. The reasons for judgment delivered by Mr. Justice Kerwin were also those of the Chief Justice. Mr. Justice Taschereau, Mr. Justice Rand and Mr. Justice Kellock delivered separate reasons for judgment. The reasons for judgment of the several members of the court are reported in (1947) S.C.R. 394-420. pp. 134-135
pp. 135-142
pp. 142-146
pp. 146-149

20 7. The contention of the Attorney General of Canada was that section 6 was wholly *ultra vires* as legislation:

- (a) in relation to interest; p. 8, l. 36
et seq.
- (b) in relation to bankruptcy and insolvency; and p. 10, l. 19
et seq.
- (c) inconsistent with sections 96, 99 and 100 of *The British North America Act, 1867*, in that it conferred powers of a court on a body not competently constituted to exercise such powers. p. 12, l. 19
et seq.

The Attorney General of Canada further contended that if the section was not *ultra vires* in whole it was *ultra vires* insofar as it purported to apply in respect to mortgages specified in question 2. And that if the section was not *ultra vires* in whole or in part the answer to question 2 should be in the negative because the section should be construed as not applicable in respect of the mortgages specified therein. p. 14, ll. 3-48
p. 15, ll. 1-6

8. The contention of The Dominion Mortgage and Investments Association was in substance the same as that of The Attorney General of Canada. It was further contended that the effect of section 6 is to impair the status and essential capacities of companies incorporated by the Dominion and that such legislation is *ultra vires* a provincial legislature. pp. 15-27
p. 25, ll. 5-49
p. 26, ll. 1-40

40 9. The Attorney General of Saskatchewan contended that the section was, in pith and substance, legislation in relation to farm security in the province, a subject within the legislative jurisdiction of Saskatchewan by virtue of the following provisions of *The British North America Act, 1867*: pp. 29-105

- (a) Section 95—Agriculture; pp. 51-58

RECORD.

pp. 58-69

(b) Section 92, head 13—Property and Civil Rights in the Province;

pp. 69-77

(c) Section 92, head 16—Generally all matters of a merely local or private nature in the Province.

pp. 107-118

pp. 121-131

10. The Attorneys General of Alberta and Quebec supported the validity of the section.

p. 135,

ll. 16-19

p. 146,

ll. 44-46

p. 149,

ll. 38-39

11. The opinion of the majority of the Judges of the Supreme Court of Canada was that section 6 was *ultra vires* in whole as being legislation in relation to interest a matter within the exclusive jurisdiction of the Parliament of Canada.

p. 139,

ll. 21-29

p. 138, l. 23

p. 139, l. 2

p. 141,

ll. 11-49

12. The minority opinion of Mr. Justice Taschereau held that the section was *intra vires* as being legislation in relation to agriculture within the meaning of section 95 of *The British North America Act, 1867*, and also in relation to Property and Civil Rights in the province, a matter within the exclusive legislative jurisdiction of the provinces. The minority opinion answered question 2 in the negative, holding that the section must be read as not affecting the Crown in right of the Dominion, or any of its agencies holding mortgages in the province.

13. The Appellant respectfully submits that the majority judgment of the Supreme Court of Canada was wrong. That the said section is not legislation in relation to interest. That the said section does not deal with interest either in fact or in law.

p. 30, l. 43
et seq.

14. It is further submitted that the said section was validly enacted by the Legislature of Saskatchewan as legislation in relation to agriculture, a matter of compelling importance in the economy of the province as appears from the material in the printed record and in the appendix annexed hereto. That the section was also enacted in relation to Property and Civil Rights in the province and also in relation to a matter of a merely local or private nature in the province, matters within the exclusive legislative jurisdiction of the provinces under section 92 of *The British North America Act, 1867*.

15. It is further submitted that the section does not relate to bankruptcy and insolvency nor to any other matter within the exclusive legislative jurisdiction of the Dominion. That the section is not in conflict with any legislation competently enacted by the Parliament of Canada.

16. It is further submitted that question 2 should be answered in the affirmative and that if the said question 2 is answered in the negative the section should be construed as not intended to apply to the transactions enumerated in the said question.

pp. 27-105

17. The Appellant therefore respectfully submits that the majority judgment of the Supreme Court was wrong and should be reversed for the reasons set out in the factum filed on behalf of the Attorney General of

Saskatchewan in the Supreme Court of Canada and for the following amongst other

REASONS

- (1) Because the said section and the Act of which it is a part constitutes legislation in relation to agriculture within the province and in relation to Property and Civil Rights within the province and in relation to matters of a merely local and private nature in the province;
- (2) Because the section is not in relation to any matter assigned to the exclusive legislative jurisdiction of the Parliament of Canada;
- 10 (3) Because the section is not invalid as being in conflict with any legislation validly enacted by the Parliament of Canada;
- (4) Because the section is not such as could have been validly enacted by the Parliament of Canada in relation to any matter assigned to the exclusive legislative jurisdiction of the Parliament of Canada;
- (5) Because, if contrary to the contention of the Appellant, any parts of the section are beyond the powers of the province, such parts are merely inoperative and the section is not *ultra vires*.

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F. C. CRONKITE.

R. S. MELDRUM.

M. C. SHUMIATCHER.

APPENDIX

The statistical material appearing in the factum of the Attorney General of Saskatchewan and which is printed as a part of the record in this appeal indicates that agriculture is the predominant industry of the province. It also indicates wide fluctuations from year to year in the volume of agricultural production and in the prices received from the marketing of this production. It is obvious that agriculture is a highly unstable enterprise and that rigid credit arrangements may be extremely oppressive in large areas of the province during periods in which the cash return to the farmer is low. 10

By comparison the instability of agriculture is much greater than in the case of other industries in the Province of Saskatchewan. The following table is submitted as indicating the greater relative variation in the value of agricultural production:

Relative Dispersion of Net Value of Production of Various Saskatchewan Industries, 1929-1945

Industry	V %	
Agriculture.....	93.2	
Forestry.....	33.1	20
Fisheries.....	67.1	
Trapping.....	50.8	
Mining.....	85.8	
Electric Power.....	18.8	
Construction.....	66.2	
Service and Repair.....	20.3	
Manufacturing.....	45.0	

In the above table V stands for the Coefficient of Variation. This measure indicates the relative dispersion of data in a series from the mean of the series. Thus, the greater the coefficient of variation, the greater the variation from year to year in a series. This material was based on the net value of production of each of the listed industries during the period 1929-1945. An index was constructed from this material using 1929 as a hundred. The result of the analysis reveals that agricultural production was subject to greater variation than any of the other industries and was subject to a very marked degree of instability. 30

Government measures looking to the improvement of agriculture have been referred to in the factum of the Attorney General. These measures have related to the encouragement of better farming methods resulting in an improved production, both in quantity and quality, to more effective 40

marketing facilities and to a minimum protection against the arbitrary enforcement of the claims of creditors. The great problem of stabilization, however, has been recognized in recent years to be the coping with unusual hazards such as drought, hail and the ravages of insect pests, especially when these hazards accompany a period of low prices. This problem has received the attention of the Parliament of Canada as well as the Legislative Assembly of Saskatchewan. In addition to land utilization and reclamation one specific attempt of Parliament to cope with the situation took the form of *The Prairie Farm Assistance Act*, Chapter 50, Statutes of Canada, 10 1939, amended by Chapter 38, Statutes of Canada, 1940, Chapter 24, Statutes of Canada, 1940-41, Chapter 5, Statutes of Canada, 1942-43 and Chapter 43, Statutes of Canada, 1947.

The Prairie Farm Assistance Act, as amended provides for cash payments, according to specified scales, to farmers in respect of low yield acreages in the prairie area. An analysis of farms in Saskatchewan qualifying for payment under this Act is shown in the following table:

(See next page)

*Number and Percentage of Farms in Saskatchewan Receiving Benefits under The Prairie Farm Assistance Act, 1941, 1943, 1944 and 1945.**

Crop District	1941			1943			1944			1945		
	Total Number of Farms (1)	Number of Farms Receiving P.F. Assistance (3)	Percentage Receiving P.F. Assistance	Total Number of Farms (2)	Number of Farms Receiving P.F. Assistance (3)	Percentage Receiving P.F. Assistance	Total Number of Farms (2)	Number of Farms Receiving P.F. Assistance (3)	Percentage Receiving P.F. Assistance	Total Number of Farms (2)	Number of Farms Receiving P.F. Assistance (3)	Percentage Receiving P.F. Assistance
1A.....	4,782	3	1.1	4,648	118	2.5	4,581	21	.5	4,514	.....	.....
1B.....	5,094	48	.9	4,932	.....	.....	4,851	.....	.....	4,770	.....	.....
2A.....	3,648	1,032	28.3	3,579	139	3.9	3,545	92	2.6	3,510	1,081	30.8
2B.....	5,940	1,774	29.9	5,747	668	11.6	5,651	.....	.....	5,554	717	12.9
3AS.....	6,650	3,625	54.5	6,468	36	.6	6,377	804	12.6	6,286	5,092	81.0
3AN.....	3,933	3,095	78.7	3,751	901	24.0	3,660	281	7.7	3,569	2,930	82.1
3BS.....	4,515	3,479	77.1	4,457	1,626	36.5	4,428	1,376	31.1	4,399	3,669	83.4
3BN.....	6,349	5,175	81.5	6,131	2,670	43.5	6,022	21	.3	5,913	4,614	78.0
4A.....	3,048	1,075	35.3	2,946	1,293	43.9	2,895	1,660	57.3	2,844	2,232	78.5
4B.....	3,766	2,592	68.8	3,658	3,112	85.1	3,604	2,774	77.0	3,550	3,009	84.8
5A.....	10,362	3,863	37.3	10,250	97	.9	10,194	.....	.....	10,138	221	2.2
5B.....	14,444	3,070	21.3	13,876	144	1.0	13,592	127	.9	13,308	.....	.....
6A.....	9,097	7,525	82.7	8,719	857	9.8	8,530	.....	.....	8,341	1,102	13.2
6B.....	7,685	6,410	83.4	7,509	1,813	24.1	7,421	.....	.....	7,333	4,570	62.3
7A.....	4,904	2,454	50.0	4,768	2,607	54.7	4,700	2,359	50.2	4,632	3,011	65.0
7B.....	5,795	4,902	84.6	5,553	4,316	77.7	5,432	466	8.6	5,311	3,970	74.8
8A.....	8,146	512	6.3	7,752	.....	.....	7,555	76	1.0	7,358	123	1.7
8B.....	7,832	1,821	23.3	7,626	498	6.5	7,523	.....	.....	7,420	567	7.6
9A.....	13,740	5,642	41.1	12,762	404	3.2	12,273	516	4.2	11,784	3,813	32.4
9B.....	8,226	4,374	53.2	7,650	701	9.2	7,362	.....	.....	7,074	2,660	37.6
Province...	137,956	62,471	45.3	132,782	22,000	16.6	130,196	10,573	8.1	127,608	43,381	34.0

*Crop yields in 1942 were such that it was not declared to be an emergency year or a crop failure year so as to make the Act applicable.

(1) Dominion Bureau of Statistics Census Reports 1941, King's Printer, Ottawa.

(2) Number of farms 1943, 1944 and 1945 estimated by comparison of census data of 1941 with 1946.

(3) Data on number of farms receiving benefits under The Prairie Farm Assistance Act obtained from the Prairie Farm Assistance Branch, Dominion Department of Agriculture.

NOTE.—Re number of farms. Due to technical difficulties in census enumeration there is some duplication in the data shown above in columns headed "Total number of farms." Farms on Indian Reserves are not eligible for benefits under The Prairie Farm Assistance Act and consequently, have been deducted from the column "Total number of farms".

The material appearing in the above table is of considerable interest in two respects. In the first place it illustrates the wide variation from year to year in the number of farms in the province from which only low yields are procured. Secondly, the figures show that over the whole period a high percentage of farms in the province obtained yields so dangerously low that in the opinion of the Parliament of Canada some financial assistance was essential. During the four years for which official figures are available the total of the payments made to farmers of this province was considerable. The totals were as follows:

10	1941.....	\$12,009,872.42
	1942—Not declared in force.	
	1943.....	5,037,598.87
	1944.....	2,980,357.68
	1945.....	12,531,766.69

The legislation of the Dominion of Canada, discussed above, has no doubt been effective. It is submitted, however, that the intent of the Legislative Assembly of Saskatchewan in enacting *The Farm Security Act* was to give further stability to agriculture in the province. It is submitted that both Acts are in relation to agriculture under Section 95 of *The British*
 20 *North America Act, 1867*. In actual fact fewer farms are likely to be affected by the provincial legislation than by the Dominion Act. In the case of *The Farm Security Act* it has been impossible to make an exact computation of the number of crop failures during the years under review. Careful studies, however, indicate that in these years the maximum percentages would have been as follows:

30	1941.....	39 per cent.
	1943.....	5 per cent.
	1944.....	3.5 per cent.
	1945.....	15 per cent.
	1946.....	6 per cent.

Of course this does not mean that the provisions of *The Farm Security Act* would have been applied to any such percentages since the Act becomes operative only in the case of mortgaged land or land sold under an agreement for sale with a principal sum outstanding.

It is submitted that the two Acts being discussed may be usefully compared and contrasted. In the case of *The Prairie Farm Assistance Act*, by virtue of Section 6, a compulsory levy of one per centum of the value of grain marketed is taken from all farmers and it is interesting to note that
 40 \$1,536,146.00 was taken from Saskatchewan farmers. In the case of *The Farm Security Act* a compulsory deduction is made from the outstanding principal indebtedness in certain instances. Property and civil rights are affected in both cases. Under the former Act the rights of the majority of the farmers in the province are affected adversely while under the latter Act the adverse effect is confined to mortgagees and unpaid vendors. In each case the object is the stabilization of agriculture.

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