

G.C.I. 9.1.

§ 7, 1948

UNIVERSITY OF LONDON

- 4 OCT 1956

In the Privy Council.

INSTITUTIONAL RECORD

No. 99 of 1947.

11259

**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 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 FOR THE RESPONDENT

THE DOMINION MORTGAGE AND INVESTMENTS ASSOCIATION.

1.—This is an Appeal by Special Leave from a Judgment of the Supreme Court of Canada dated 13th May, 1947, which answered certain questions concerning the constitutional validity and operative effect of Section 6 of The Farm Security Act, 1944, of the Province of Saskatchewan as amended in 1945. The questions had been referred to the Supreme Court for hearing and consideration pursuant to Section 55 of the Supreme Court Act (Revised Statutes of Canada 1937, Chapter 35) by the Governor-General in Council by an Order made on 14th May, 1946.

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2.—The Farm Security Act, 1944, is Chapter 30 of the Statutes of Saskatchewan 1944 (2nd session). The amendment of 1945 is in Section 2 of Chapter 28 of the Statutes of Saskatchewan, 1945.

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3.—Section 6 of the Act applies to all agreements for sale and mortgages of farm lands, whether made before or after the passing of the Act (subsection (1) Clause 1).

Subsection (2) reads as follows :

“ (2) Notwithstanding anything to the contrary, every mortgage and every agreement of sale shall be deemed to contain a condition that, in 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 10
“ 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 out- 20
“ standing, whichever percentage is the greater ; provided that, notwithstanding such reduction, interest shall continue to be chargeable, payable and recoverable as if the principal had not been so reduced.”

4.—“ Crop failure ” is defined to mean “ failure of grain crops grown in any year on mortgaged land or on land sold under agreement of sale, due to causes beyond the control of the mortgagor or purchaser, 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 (1) Clause 2.) 30

5.—“ Period of suspension ” is defined to mean “ the period commencing on the first day of August in the year in which the crop failure occurs and ending on the thirty-first day of July in the next succeeding year.”
(Subsection (1) Clause 6.)

6.—Section 6 does not apply to a mortgagor or purchaser whose affairs have been or are being dealt with under The Farmers' Creditors Arrangement Act (subsection (7)).

To obtain the benefits conferred by the section a mortgagor or purchaser must give a written notice to the vendor or mortgagee on or before the 31st day of December in the year of crop failure (subsection (5)). 40

The Provincial Mediation Board is empowered to exclude from the operation of Section 6 any mortgage or agreement of sale or class of

mortgages or agreements of sale (subsection (8)). This Board consists of one or more members appointed by the Lieutenant-Governor in Council under The Provincial Mediation Board Act, 1943 (Statutes of Saskatchewan 1943, Chapter 15). If the parties fail to agree as to whether or not there has been a crop failure in any year, the Board is empowered to determine such question upon the application of either party (subsections (3) and (4)).

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7.—The questions referred to the Supreme Court are as follows :

- 10 “ 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 ?” p. 2, l. 22
- 20 “ 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 Loan Board ; or
 “ (c) assigned to the Central Mortgage and Housing Corporation.”

8.—The answers as certified to His Excellency the Governor General in Council are as follows :

- 30 “ The Chief Justice, Kerwin, Rand and Kellock, JJ. 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, l. 20
- “ Taschereau, J., is of opinion that Section 6 is *intra vires*, but would answer ‘ no ’ to the second question.”

9.—The Dominion Mortgage and Investments Association is an unincorporated Association representing twelve loan companies, sixteen trust companies and twenty-five insurance companies. Of such companies thirty are incorporated by the Dominion. Thirty-four of such companies, including eighteen Dominion incorporated companies, carry on a mortgage business in the Province of Saskatchewan.

40 The thirty-four companies mentioned above had investments in mortgages and agreements for sale secured by farm lands in the Province amounting to approximately \$46,000,000 at the end of 1945.

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10.—The Dominion-incorporated companies carrying on business in Saskatchewan and having mortgages and agreements for sale secured by Saskatchewan farm lands include thirteen life insurance companies whose powers and capacities are set forth in The Canadian and British Insurance Companies Act, 1932, Chapter 46, as amended. By Section 60 of that Act, such companies are empowered to invest their funds on mortgages on improved real estate and to lend their funds on the security of such real estate, up to 60 per cent. of the value thereof.

11.—The thirteen life insurance companies above mentioned are engaged in business throughout the whole of Canada, and some of them 10 operate in Great Britain, in the other Dominions and in foreign countries. They represent approximately 90 per cent. of the life insurance in force in Canada with Dominion-incorporated life insurance companies. According to the report of the Superintendent of Insurance for Canada, the total insurance in force of all Dominion-incorporated life insurance companies as of December 31st, 1945, was \$6,205,522,849.

12.—The mortgages and agreements for sale secured on farm lands in Saskatchewan which are held by Canadian, British and foreign life insurance companies amounted to approximately \$21,000,000 at the end of 1945. Throughout the whole of Canada, such companies have 20 investments in mortgages and agreements for sale that amounted in the aggregate to over \$340,000,000 at end of 1945.

13.—Every Canadian life insurance company, with one small exception, does business in two or more provinces ; over half of the business in Canada is written by companies doing business in every province.

14.—There are also loan companies and trust companies doing business in Saskatchewan which have been incorporated by the Dominion of Canada.

15.—The Dominion-incorporated loan companies are governed by The Loan Companies Act, R.S.C. 1927, Chapter 28, as amended. By that Act they are empowered to receive money on deposit upon such terms 30 as to interest, security, time and mode of repayment and otherwise as may be agreed upon (Section 65) and they may borrow money and may issue their bonds, debentures or other securities for moneys borrowed (Section 64). They may invest their funds in mortgages on improved real estate and may lend money on the security of such real estate, up to sixty per cent. of the value thereof (Section 61).

According to the report of the Superintendent of Insurance for the year ended December 31, 1945, the savings of the public deposited with such loan companies amounted to \$42,866,000.00. The companies had issued debentures payable in Canada amounting to \$52,652,000.00 and 40 payable elsewhere amounting to \$2,491,000.00. These companies do

business in the various parts of Canada, one company operating in every Province of Canada.

16.—The Dominion-incorporated trust companies are governed by the provisions of The Trust Companies Act, R.S.C. 1927, Chapter 29, as amended. By that Act the company may receive moneys in trust and invest and accumulate it at such lawful rates of interest as may be obtained therefor, and may guarantee repayment of principal or interest or both of any moneys entrusted to the company for investment, on such terms and conditions as may be agreed upon (Section 62). Such companies may
 10 invest trust money or their own funds in first mortgages upon improved real estate in Canada and may lend trust money or their own funds upon the security of such real estate, up to sixty per cent. of the value thereof (Sections 63 and 67).

These companies held, as shown by the above-mentioned report of the Superintendent of Insurance, \$46,338,000.00 of guaranteed funds, namely those entrusted by the public for investment, the repayment of which has been guaranteed by the company.

17.—The mortgages and agreements for sale secured on farm lands in Saskatchewan which are held by Dominion-incorporated loan and trust
 20 companies amounted to approximately \$11,561,000.00 at the end of 1945.

18.—All Dominion-incorporated life insurance, loan and trust companies are subject to the supervision and control of the Superintendent of Insurance for Canada who makes a report annually to the Minister of Finance, and he in turn submits the report to Parliament.

19.—Mortgages and agreements for sale secured on Saskatchewan farm lands are also held by other companies incorporated under the laws of the Dominion of Canada and by companies incorporated under various provincial statutes such as the Companies Acts of the various provinces and The Loan and Trust Corporations Act of Ontario.

20.—Section 3 of The National Housing Act, 1944, Statutes of
 30 Canada 1944, c. 46, provides that notwithstanding any restrictions on its power to lend money contained in any other statute or law, any approved lending institution subject to the jurisdiction of Parliament may lend on the security of a first mortgage in favour of His Majesty in right of Canada and the lending institution jointly pursuant to and in accordance with the provisions of such Act. By definition contained in the Act, "approved lending institution" includes a loan, insurance, trust or other company or corporation approved by the Governor in Council for the purpose of making loans under the Act.

21.—Insurance, loan and trust companies are an important source of
 40 long-term farm land credit in Canada. Such institutions comprise an important part of the central structure of the established economic system

RECORD of Canada. A basic component of this system has been the recognition of interest as a proper allowance for the use of borrowed money. The business of life insurance companies has been built upon this allowance of interest and all liabilities to policyholders are calculated on the basis of an assured interest return. Likewise, companies, such as loan companies, operate on the fundamental principle of borrowing money and paying interest thereon and re-lending that money at interest. Their success depends upon the receipt of interest at a higher rate than they pay on their obligations.

p. 29, l. 38 22.—The Attorney-General of Saskatchewan in his Factum in the Supreme Court of Canada sought to justify the legislation as being in pith and substance “in relation to farm security in the Province, as it affects farmers and the farming industry.” He contended that this was a subject within the legislative jurisdiction of the provincial legislature by virtue of the following provisions of the British North America Act, and each of them, namely: Section 95 “Agriculture in the Province”; Section 92, head 13 “Property and Civil Rights in the Province”; Section 92 head 16 “Generally all Matters of a merely local or private Nature in the Province.” It is submitted that the legislation in pith and substance is not in relation to any such matters but is in relation to the subjects of “Interest” and “Bankruptcy and Insolvency” which are within the exclusive legislative jurisdiction of the Dominion Parliament under heads 19 and 21 of Section 91 of the British North America Act. 10 20

23.—Though Clause 3 of subsection (2) purports to relate to the principal amount of the debt, employment of the percentage relationship of interest to principal as the yardstick for measuring the extent of the reduction indicates that the true nature, character and purpose of the legislation is to effect cancellation of interest. The reference to a 4 per cent. rate of reduction is of no practical significance but merely serves to disguise the true purpose and effect of the legislation. The fact is that all outstanding mortgages and agreements of sale held by the lending institutions in respect of Saskatchewan farm lands stipulate for a rate of interest in excess of 4 per cent. per annum. The approximate range of rates is from 5 per cent. to 6 per cent. per annum. 30

p. 89, l. 10 The Appellant Attorney-General stated in his Factum in the Supreme Court that “the net result is practically the same as legislation providing for a reduction of interest in a crop failure year” but he contended this does not affect the validity of the legislation.

24.—Mortgagees and vendors have the rights with respect to interest rates conferred by Section 2 of the Interest Act, Revised Statutes of Canada, 1927, Chapter 102. That section reads as follows: 40

“2. Except as otherwise provided by this or by any other Act of the Parliament of Canada, any person may stipulate for, allow and exact, on any contract or agreement whatsoever, any rate of interest or discount which is agreed upon.”

25.—The legislation purports, *inter alia*, to reduce the amount of principal but to maintain the quantum of interest. The effect is that as the amount of principal is “automatically reduced,” interest is actually payable at a higher rate than that prescribed by the contract. RECORD
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26.—The submission of the Attorney-General of Saskatchewan in the Supreme Court was that the amount required to pay off a mortgage after the statutory reduction has taken place is the amount of the *reduced* principal together with an amount for interest equal to the amount which would have been earned had there been no reduction in principal. p. 81, l. 2

10 The standard form of mortgage in Canada provides that interest shall be payable on the principal (that is, on the contract principal) at the stipulated rate as well after as before maturity. The effect of the Attorney-General’s submission is that upon the mortgage being paid off on the above basis, the mortgagee is thereafter deprived of interest on the amount by which the principal was “automatically reduced” pursuant to the statute and to which he was entitled under his mortgage contract. The legislation thus has the effect of cancelling interest.

27.—It was the submission of the Attorney-General of Saskatchewan in his factum in the Supreme Court that the amount of the deduction is p. 81, l. 6
20 determined by the following formula :

“ A deduction is made from the principal with respect to
“ each crop failure year occurring in the year 1944 and in every
“ subsequent year, consisting of a percentage of the principal
“ outstanding on September 15th of each crop failure year (after
“ taking into account previous deductions), which is either four
“ per cent. or the same percentages as the rate of interest
“ stipulated in the mortgage or agreement, whichever is greater.”

The above submission did not find favour with Mr. Justice Kellock.
He said :

30 “ In my opinion the above submission does not pay sufficient p. 148, l. 22
“ regard to the language of the statute. The statute does not
“ say that the reduction of principal is to be at the contract rate.
“ It provides that the reduction is to be by the *same* percentage
“ ‘ as that at which interest will accrue immediately after the
“ ‘ said date on the principal *then* outstanding.’ In other words,
“ as the rate of interest which the principal outstanding must
“ earn is increased that increased rate is the rate by which the
“ reduction is governed and not the contract rate. This
“ necessitates a somewhat difficult and cumbersome calculation
40 “ but the statute so provides.

“ The effect of the statute will be found to be that it wipes
“ out an amount of debt somewhat larger than the annual interest,
“ while professing not to interfere with the amount of the interest.

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“ Whether or not this is to do indirectly what may not be done directly need not be considered. The statute in fact effects an increase in the *rate* of interest which, in my opinion, is beyond the power of the legislature of the province to do.”

28.—Interest is the dominating factor in the application of the legislation. The extent of the reduction of principal is governed by the interest provided for by the mortgage or agreement for sale, without regard to any other considerations.

29.—The legislation has the effect of destroying the right conferred by the Parliament of Canada upon a mortgagee or vendor of farm lands to stipulate for, allow and exact on any contract or agreement whatsoever, any rate of interest or discount which is agreed upon (see paragraph 24, supra). It is thus in conflict with the provisions of valid Dominion legislation. 10

Subsection 2 of Section 6 makes vital changes in the terms for repayment of loans already made and secured by mortgages. In the place of terms that provided for repayment of the loan in full, the Legislature purports to substitute terms involving broad speculation as to what proportion of the loan will be repaid. The parties are denied the right to agree upon and stipulate for the rate of interest to be payable under the new contract. The Legislature has assumed to prescribe the rate of interest. 20

30.—Section 6 is *ultra vires* the Provincial Legislature also because it is in relation to the subject of “ Bankruptcy and Insolvency ” which is within the exclusive jurisdiction of Parliament under head 21 of Section 91.

31.—It may fairly be assumed that Section 6 was enacted for the purpose of assisting farmers who, because of “ crop failure,” are unable to meet their obligations as they become due. Section 6 has the effect of imposing upon one class of creditors a compulsory compromise of debts and postponement of payment according to a scheme formulated by the Legislature. The Legislature achieves by direct statutory operation a result similar to that which can only be achieved with the approval of creditors under the provisions of the usual insolvency legislation. While it does not provide for the general reduction of all debts, it is none the less legislation in relation to “ Insolvency ” since it is aimed to a considerable extent in relief of those who, as a result of crop failure, would be in a condition of insolvency. 30

32.—Subsection (8) of Section 6 as amended in 1945 empowers the Provincial Mediation Board to exclude from the operation of the section any mortgage or agreement of sale or class of mortgages or agreements of sale. The legislation prescribes no rule or principle by which the Board is to be guided but clothes the Board with absolute discretion. Nevertheless, 40

it is scarcely to be expected that the Board, if motivated by any sense of fairness, would exclude from the operation of the section mortgages or agreements of sale other than those of mortgagors or purchasers who are solvent and able to pay their debts. That being so, the actual operation of the Act would be mainly, if not entirely, for the benefit of insolvent debtors. The Provincial Legislature cannot directly or indirectly enact legislation in relation to insolvent debtors. By conferring upon the Provincial Mediation Board such unfettered powers under subsection (8), the Legislature has in effect made it possible for the Board to make the
10 section operate as insolvency legislation. A provincial enactment of that character is *ultra vires*.

33.—The effect and operation of Section 6 is thus made dependent upon the arbitrary decision of a tribunal appointed by the Province. Such a delegation of legislative powers and functions is unauthorized under the scheme of the British North America Act and is capable of nullifying the powers of disallowance reserved to the Governor General under Sections 56 and 90 of that Act.

34.—Parliament had already occupied the legislative field in relation to the subject of "Bankruptcy and Insolvency," particularly in the case
20 of farmers in Saskatchewan. Section 6 is an invasion of that field and is thus invalid.

35.—Reference is made to "The Farmers' Creditors Arrangement Act, 1943," 7 George VI., Chapter 26, and to the preamble reading as follows :

30 " WHEREAS in view of the depressed state of agriculture in
" the provinces of Manitoba, Saskatchewan and Alberta during
" the period immediately following 1929 the present indebtedness
" of certain farmers in that area is beyond their capacity to pay ;
" AND WHEREAS it is in the national interest to retain such farmers
" on the land as efficient producers and for such purpose it is
" necessary to provide means whereby compromises or rearrange-
" ments may be effected of debts of such farmers, and also to
" simplify the operation of the BANKRUPTCY ACT with respect to
" farmers generally."

The Farmers' Creditors Arrangement Act, 1943, was enacted to simplify and to lessen the expense of bankruptcy and insolvency proceedings in relation to farmers generally, and, in respect of farmers in Saskatchewan and the other two prairie provinces, to provide a special procedure for proposals by farmers in relation to their debts, provided two-thirds of the farmers'
40 debts were incurred before May 1, 1935 (Section 7 and Section 2 (1) (i)).

36.—The Farmers' Creditors Arrangement Act, 1943, affords protection to and confers benefits upon the creditors of the farmer. Under Section 10 once a proposal is filed the farmer's property is under the authority of the

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Court and cannot be disposed of without the leave of the Court, except crops of livestock or other personal property sold in the ordinary course of farm operations. Even then, the farmer is required to account for the proceeds of such sales. The farmer's proposal for a compromise is brought before a meeting of creditors (Sections 6 and 12). The creditors thus have a voice with respect to the proposal.

Not only is the farmer's proposal considered by his creditors but the proposal or any amended proposal approved by the farmer and by his creditors must be submitted by the Official Receiver to the Court and only becomes binding upon the approval of the Court. The Court is to refuse approval if it is of the opinion that the terms are not reasonable or are not fair and just in relation to the creditors or any of them or the farmer (Section 14). 10

If the creditors do not approve a proposal or where the Court has refused its approval, the Court is to endeavour to formulate an acceptable proposal to be submitted to the creditors and the farmer (Section 15). The Court may, however, decline to formulate a proposal in any case where it does not consider that it could do so "in fairness and justice to the creditors or the farmer or where it finds that the farmer has not acted in good faith in his conduct in relation to the creditors in the management of his farm or the disbursement of his income" (Section 19). 20

It will thus be seen that Parliament has by The Farmers' Creditors Arrangement Act, 1943, provided a means whereby a farmer qualifying under that Act who is unable to pay his debts as therein defined, whether by reason of crop failure or any other reason, may obtain a compromise, extension of time or scheme of arrangement in respect of his debts.

37.—Under The Farm Security Act, 1944, as contrasted with The Farmers' Creditors Arrangement Act, 1943, the farmer obtains (subject to the unfettered power of the Provincial Mediation Board) the reduction in mortgage debt and postponement of payment even though it would be unfair and unjust to his creditors and regardless of whether he has acted in good faith in his conduct in relation to his creditors in the management of his farm or the disbursement of his income. 30

38.—The Dominion had also provided other assistance to farmers in the prairie provinces by The Prairie Farm Assistance Act, 1939 (3 George VI. cap. 50), as amended by 4 George VI. cap. 38 ; 4-5 George VI. cap. 24 ; 6-7 George VI. cap. 5 ; and 11 George VI. cap. 43. Section 2 (1) (c) as amended in 1947 defines a "farmer" as "a person who as owner or tenant operates a farm in the spring wheat area or who as a member of a co-operative farm association is engaged in farming in the spring wheat area." 40

Section 3 (1) as amended in 1947 provides that subject to the Act, the Minister of Agriculture may in any crop year award to each person who was a farmer from 1st May to 1st November in such year a sum by way of assistance according to his cultivated land in a township with respect to

which an application for assistance has been made by the rural municipality in which that township is situated or, in case there is no such rural municipality, by the government of the province in which that township is situated. Subsection (2) prescribes a formula by which the sum to be awarded shall be computed.

39.—It may fairly be assumed that Parliament has by The Prairie Farm Assistance Act, 1939, and by The Farmers' Creditors Arrangement Act, 1943, extended to the farmers of Saskatchewan and the other two prairie provinces relief and assistance to the extent and by the means
10 Parliament thinks proper and advisable. The Provincial Legislature has by Section 6 of The Farm Security Act, 1944, sought to give farmers relief of an entirely different character.

40.—A farmer who is not qualified under The Farmers' Creditors Arrangement Act, 1943, to submit a proposal for compromise may still make a voluntary assignment under Part 2 of The Bankruptcy Act and may obtain a composition of his debts or an extension of time for payment. But under that Act, as under The Farmers' Creditors Arrangement Act, his affairs are put before his creditors and any extension, compromise or arrangement must be approved by the Court (Sections 9, 10, 11, 13 and 18).

20 41.—Even if it could be said that the subject of the present legislation is only incidental or ancillary to the subject of insolvency and would properly come within one of the subjects enumerated in Section 92, the legislation is nevertheless invalid because it invades a field already occupied by Dominion legislation to which reference has been made.

42.—Section 6 is also *ultra vires* on another ground, and that is because its effect is to impair the status, powers and essential capacities of companies incorporated under the laws of the Dominion.

43.—In pursuance of its exclusive power to legislate with reference to the incorporation of companies with other than provincial objects, the
30 Dominion has incorporated companies under general statutes, such as The Companies Act, 1934, 24–25 George V., Chapter 33; The Loan Companies Act, R.S.C. 1927, Chapter 28; The Trust Companies Act, R.S.C. 1927, Chapter 29; Canadian and British Insurance Companies Act, 1932, 22–23 George V., Chapter 46, and under private Acts. Under these Statutes and under the National Housing Act, 1944, such companies are empowered to invest their funds in mortgages on real estate in Canada.

44.—In the case of loan companies, trust companies and insurance companies, Parliament has prescribed the limit of the amount of mortgage loans in relation to the value of the property securing them—the loan in
40 no case to exceed 60 per cent. of the value of the real estate covered by the mortgage. (The Loan Companies Act, Section 61; The Trust Companies

RECORD — Act, Sections 63 and 67 ; The Canadian and British Insurance Companies Act, 1932, Section 60). Parliament has thus taken steps to insure that adequate security is obtained for the repayment of moneys lent by such lending institutions.

45.—The lending of money at interest is a function of vital importance to the existence of such companies and indeed to the economic structure of Canada. Moreover, such companies are dependent upon the right assured to them by the Interest Act, R.S.C. 1927, Chapter 102, Section 2 : “ to stipulate for, allow and exact on any contract or agreement whatsoever “ any rate of interest or discount which is agreed upon.” **10**

46.—So far as existing mortgages are concerned, the effect of Section 6, subsection (2) is to destroy the vital terms agreed to by the parties and to substitute terms imposed compulsorily by the Legislature. So far as the future is concerned, no lending institution would lend money upon a mortgage which had imported into it the conditions prescribed by subsection (2). The effect of the legislation, so far as the Dominion lending institutions are concerned, is to prohibit them from carrying on in Saskatchewan that business, which, by valid Dominion legislation, they have been empowered to carry on in all parts of Canada.

47.—The extent of debt cancellation proposed by Section 6 would be of serious consequence to the members of this Respondent Association. Dominion incorporated companies in this Association had at the end of 1945 mortgages and agreements for sale secured by Saskatchewan farm lands of the amount of approximately \$31,000,000. In a single year of crop failure and subject to such mortgages and agreements for sale as may be excluded by The Provincial Mediation Board and assuming an average interest rate of 5 per cent., Section 6 might have the effect of cancelling indebtedness to such Dominion companies secured by Saskatchewan farm lands to an amount of over \$1,500,000. If legislation having a similar effect were enacted by each of the other provinces, the result in a practical business sense would, so far as lending institutions are concerned, be disastrous. **20 30**

48.—In the Supreme Court, the Chief Justice of Canada and Kerwin J. were of the opinion that the provisions as to interest “ are the very warp and woof of the enactment.” In their view, it is impossible to sever these provisions from the remainder and the section is, therefore, wholly *ultra vires*. For that reason, they did not find it necessary to answer the second question. **14**

Rand J. was of the opinion that Section 6 was wholly *ultra vires* because it was legislation in relation to interest. Accordingly he did not find it necessary to answer the second question. **4**

Kellock J. was also of opinion that the legislation was invalid as being in relation to interest and therefore did not find it necessary to answer the second question. **48 40**

Taschereau, J., who dissented, was of the opinion that in pith and substance the section was in relation to agriculture and that its constitutionality could not be successfully challenged merely because it may incidentally affect interest. With reference to Question 2, he reached the conclusion that the Act must be read as not affecting the Crown in right of the Dominion or any of its agencies holding mortgages in the Province, and that for that reason he would answer Question 2 in the negative.

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p. 140, l. 7

p. 141, l. 46

The majority of the Supreme Court did not find it necessary to deal with the other grounds of attack made upon the validity of the legislation.

10 49.—This Respondent took no part in the argument in the Supreme Court on Question 2 and has no submissions to make with regard to it.

50.—This Respondent respectfully submits that the majority of the Supreme Court correctly answered Question 1 and that this appeal should be dismissed for the following amongst other

REASONS

1. Because Section 6 is legislation in relation to interest and is, therefore, within the exclusive jurisdiction of the Parliament of Canada under head 19 of Section 91 of the British North America Act.
- 20 2. Because Section 6 is in conflict with the provisions of the Interest Act validly enacted by the Parliament of Canada.
3. Because Section 6 is legislation in relation to bankruptcy and insolvency and is, therefore, within the exclusive jurisdiction of the Parliament of Canada under head 21 of Section 91 of the British North America Act.
4. Because Section 6 invades the field already occupied by valid Dominion legislation, namely, The Farmers' Creditors Arrangement Act, 1943, The Prairie Farm Assistance Act, 1939, and The Bankruptcy Act.
- 30 5. Because the effect of Section 6 is to impair substantially the status, powers and essential capacities of companies incorporated under the laws of the Dominion.
6. Because Section 6 purports to delegate legislative powers and functions to a provincially appointed tribunal contrary to the scheme of the British North America Act.
7. Because Section 6 is not legislation in relation to any matter coming within the classes of subjects enumerated in Section 92 of the British North America Act.

8. Because the legislation is not in relation to “ Agriculture in the Province ” so as to come within the legislative jurisdiction of the Province under Section 95 of the British North America Act.
9. Because no provisions of Section 6 which might be valid if separately enacted are severable from provisions which are *ultra vires* of the Legislature of Saskatchewan.
10. Because the opinions of the majority of the Judges in the Supreme Court of Canada are right.

C. F. H. CARSON.

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L. G. GOODENOUGH.

In the Privy Council.

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CASE FOR THE RESPONDENT
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