

87, 1948

No. 99 of 1947.

In the Privy Council.

UNIVERSITY OF LONDON
W.C.1

-4 OCT 1956

ON APPEAL
FROM THE SUPREME COURT OF CANADA.

INSTITUTION OF CHARTERED
LEGAL STUDIES

11280

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.

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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

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FOR ATTORNEY GENERAL OF CANADA.

RECORD.

1. This is an appeal from a judgment of the Supreme Court of Canada, dated May 13, 1947, which answered certain questions concerning the constitutional validity and operation of section six of The Farm Security Act, 1944, enacted by the Legislature of the Province of Saskatchewan, that were referred for hearing and consideration by the court by order of the Governor General in Council of May 14, 1946, made under section 55 of the Supreme Court Act (Revised Statutes of Canada, 1927, c. 35). p. 132. p. 1.

2. The questions referred for hearing and consideration were :— p. 2.

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“ 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 Loan Board, or
- (c) assigned to the Central Mortgage and Housing Corporation ? ”

p. 133, l. 20.

3. The Chief Justice of Canada, Kerwin, Rand and Kellock, JJ., 10 held section 6 to be wholly *ultra vires* and therefore found it unnecessary to answer the second question. Taschereau, J., was of opinion that section 6 was *intra vires* but that the second question should be answered in the negative.

p. 133, l. 27.

4. Section 6 of The Farm Security Act, 1944, as so amended is as follows :—

“ 6.—(1) In this section the expression :—

- 1. ‘ agreement of sale ’ or ‘ mortgage ’ means an agreement for sale or mortgage of farm land heretofore or hereafter made or given, and includes an agreement heretofore or hereafter 20 made renewing or extending such agreement of sale or mortgage ;
- 2. ‘ crop failure ’ means 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 ;
- 3. ‘ mortgagee ’ includes a successor and an assignee of the mortgagee, and ‘ vendor ’ includes a successor and an 30 assignee of the vendor ;
- 4. ‘ mortgagor ’ includes a successor and an assignee of the mortgagor, and ‘ purchaser ’ includes a successor and an assignee of the purchaser ;
- 5. ‘ payment ’ includes payment by delivery of a share of crops ;
- 6. ‘ period of suspension ’ means 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 40 next succeeding year.

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

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(Sub-section (2) shall be deemed to have been in force on and from the thirtieth day of December, 1944. See amending Act, Chap. 28, Acts of 1945, Section 2 (3)).

(3) If the mortgagee and mortgagor or the vendor and purchaser do not agree as to whether or not there has been a crop failure in any year, either party may apply to the Provincial Mediation Board for a hearing and upon such application the board, after such notice to the other party as it deems just, may hear the matter in dispute and make such order with respect thereto as it deems just.

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(4) If the board finds that there has been a crop failure in the year in question, the provisions of this section shall apply and, if the board finds that there has not been a crop failure in the year in question, the provisions of this section shall not apply.

(5) Where in any year a mortgagor or purchaser is of opinion that he is or may become entitled to the benefits conferred by this section, he shall give written notice of that fact to the mortgagee or vendor on or before the thirty-first day of December in such year and failure to give such notice shall constitute a waiver of such benefits ; provided that with respect to crops grown in the year 1944 the notice required by this sub-section may be given on or before the thirty-first day of July, 1945, and failure to give such notice on or before the thirtieth day of December, 1944, shall be deemed not to have constituted a waiver of the benefits conferred by this section.

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(6) Such notice shall be given by personal service or by registered mail and if given by registered mail the notice shall be deemed to have been given on the date on which the envelope containing the notice is handed to the postmaster.

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- (7) This section shall not apply to a mortgagor or purchaser :
- (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 or arrangement has been annulled pursuant to either of the said Acts.

(8) The Provincial Mediation Board may by order exclude from the operation of this section any mortgage or agreement of sale or class of mortgages or agreements of sale and in case of such exclusion this section shall not apply to the excluded mortgage or agreement of sale or class of mortgages or agreements of sale. 10

(9) This section shall be deemed to have been in force on and from the first day of August, 1944."

5. Section 8 of The Farm Security Act, 1944, is relevant to the appeal and is as follows:—

8. This Act shall affect the rights of the Crown as mortgagee, vendor or lessor.

6. The legislation of the Parliament of Canada referred to in the 20 second question may, so far as relevant, be summarised as follows:—

(a) The National Housing Act, 1944 (c. 46, Statutes of Canada, 1944-45, as amended by c. 26, 1945, and by c. 61, 1946), provides, in section four, that the Central Mortgage and Housing Corporation may, on behalf of His Majesty in Right of Canada and with the approval of the Governor in Council, enter into a contract with an approved lending institution on the terms set out in that section to join with the institution in making loans to assist in the construction of housing. (S. 4 (1).) The terms of a contract entered into under that section are required to provide 30 amongst other things, that repayment of a joint loan shall be secured by a first mortgage or hypothec on the house and land upon which the house is erected in favour of His Majesty and the lending institution jointly. (S. 4 (2).) Similar provisions are contained in section eight of the Act providing for joint loans on behalf of His Majesty and lending institutions which also are to be secured by mortgages in favour of His Majesty and the lending institutions jointly. Provision is also made for the making of loans by the Central Mortgage and Housing Corporation on behalf of His Majesty to Limited Dividend Housing Corporations, such loans 40 to be secured by first mortgages or hypothecs in favour of His Majesty. (S. 9 (1) (2)).

(b) The Canadian Farm Loan Act (c. 66, R.S.C. 1927 as amended by c. 46, 1934, and c. 16, 1935) constitutes a Board to be appointed by the Governor in Council which shall be a body corporate and politic and be deemed to be for all purposes of the Act, except contractual dealings between the Government of Canada and the

Board, the agent of His Majesty the King in right of the Dominion of Canada, and amongst other things, to take security as such agent and not otherwise. (S. 3, as amended.) The Board is empowered amongst other things to make long-term loans to farmers on the security of first mortgages on farm lands. (S. 4 (b)).

10 (c) The Central Mortgage and Housing Corporation Act (c.15, Statutes of Canada, 1945) constitutes a corporation called the Central Mortgage and Housing Corporation (S. 3). Except as provided in section fourteen of that Act, the corporation is for all purposes an agent of His Majesty in right of Canada and its power under the Act may be exercised by it only as agent of His Majesty. (S. 5 (1)). Section fourteen provides merely that the Corporation may employ officers and employees on its own behalf. Prior to the enactment of this Act the Minister of Finance had acted on behalf of His Majesty in the making of loans under the National Housing Act, 1944. By the Central Mortgage and Housing Corporation Act the Corporation is placed in the position of the Minister of Finance under the National Housing Act, 1944, and is empowered to exercise all the powers of the Minister under that Act on behalf of His Majesty with certain minor exceptions not relevant here. (Ss. 18 and 19). In addition the Corporation is empowered to enter into agreements with lending institutions for the collection and furnishing of information relating to mortgages (S. 28), and when the Corporation has entered into such agreement with a lending institution it may purchase all right or interest of the lending institution in mortgages and take assignments of mortgages or it may lend money to the lending institution on the security of the assignments of mortgages. (S. 29).

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7. The relevant provisions of the British North America Act, 1867 to 1946, read as follows :—

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“ VI. DISTRIBUTION OF LEGISLATIVE POWERS.

“ Powers of the Parliament.

40 “ 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,—

1. The Public Debt and Property.

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19. Interest.

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21. Bankruptcy and Insolvency.

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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.”

“ Exclusive Powers of Provincial Legislatures.

“ 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,—

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* * * * *

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 . . .”

* * * * *

“ Agriculture and Immigration.

“ 95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province ; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to 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.”

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“ VII. JUDICATURE.

“ 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.

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99. The Judges of the Superior Courts shall hold office during 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.”

8. The Attorney General of Canada respectfully submits that, by the authorities cited below amongst others, the following general principles

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for determining the validity of Provincial legislation under the foregoing provisions of the British North America Act relevant to this appeal, are established :—

1. If a Provincial Statute is not legislation “ in relation to ” any matter within a legislative head of Section 92 or Education, Agriculture or Immigration under Section 93 or Section 95, then it is *ultra vires*. *Citizens Insurance Company vs. Parsons* (1881) 7 App. Cas. 96 at 109.

10 2. If a Provincial Statute is *prima facie* “ in relation to ” one of these matters, a further question arises whether the subject of the Act does not also fall within one of the enumerated classes of subjects in Section 91, in which case the power of the Provincial legislature is overborne, for Section 91 expressly provides that the legislative authority of Parliament thereunder in relation to the enumerated subject matters is “ notwithstanding anything in this Act ” an “ exclusive ” authority. *Citizens Insurance Company v. Parsons* (1881) 7 App. Cas. 96 ; *Attorney General of Alberta vs. Attorney General of Canada (Bank Taxation case)* (1939) A.C. 117 ; *Attorney General of Alberta vs. Attorney General of Canada (Debt Adjustment case)* (1943) A.C. 356.

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3. The subject matters enumerated in Section 92, and in Section 95 in so far as the provincial legislature is concerned, must therefore be interpreted as not including any matter within the enumeration in Section 91, e.g., “ Property and Civil Rights ” in Section 92 and “ Agriculture ” in Section 95 mean “ Property and Civil Rights ” and “ Agriculture ” after subtracting the subject matters enumerated in Section 91 including “ Interest ” and “ Bankruptcy and Insolvency.” *John Deere Plow Company Limited vs. Wharton* (1915) A.C. 330 at 340 ; *Great West Saddlery Company vs. The King* (1921) 2 A.C. 91 at 116 ; *Attorney General of Alberta vs. Attorney General of Canada (Debt Adjustment case)* (1943) A.C. 356 ; *Attorney General of Canada vs. Attorney General of Quebec (Bank Deposits case)* (1947) A.C. 33 at 43.

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4. Again, legislation enacted by a Provincial legislature in relation to a subject matter within its authority in accordance with the foregoing principles, is *ultra vires* if it is inconsistent with or repugnant to any provisions of the British North America Act dealing with that subject matter, e.g., provincial legislation for the establishment of Courts cannot establish Courts inconsistently with Sections 96, 99 and 100 of the British North America Act. *Toronto Corporation vs. York Corporation and Attorney General for Ontario*. (1938) A.C. 415 at 427.

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5. Finally, if legislation enacted by the legislature of a Province in relation to a subject matter within the authority of the legislature in accordance with the foregoing principles, and not conflicting with any provision of The British North America Act, is inconsistent with valid Dominion legislation in relation to a subject matter within the authority of the Parliament of Canada or invades a field occupied by Parliament, the Provincial legislation is beyond the powers of the Province. *Attorney General of Alberta vs. Attorney General of Canada (Debt adjustment case)* (1943) A.C. 356.

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6. To apply these principles to a particular Provincial enactment, the matter "in relation to" which the enactment is enacted must be ascertained. For this purpose, regard must be had to the "pith and substance," "the true nature and character" of the legislation in question. To determine this in a case of difficulty, regard is to be had to the effect and the object or purpose of the legislation. The question is: at what subject matter is the legislation "aimed"? *Attorney General of Ontario vs. Reciprocal Insurers* (1924) A.C. 328 at 337; *Attorney General for Alberta vs. Attorney General for Canada (Bank Taxation case)* (1939) A.C. 117 10 at 130; *Attorney General of Canada vs. Attorney General of Quebec (Bank Deposits case)* (1947) A.C. 33 at 43.

7. If the legislation is aimed at a subject matter outside the authority of the legislature of the Province, although in form it appears superficially to be concerned only with a subject matter within the authority of the legislature, the legislation is *ultra vires*, since neither the Dominion nor a Province may, under the guise or pretence or in the form of an exercise of its own powers, carry out an object which is beyond its powers and trespass on the exclusive powers of the other. The legislation must be valid in 20 "substance" and not merely formally by a "colourable" device. *Attorney General of Ontario vs. Reciprocal Insurers* (1924) A.C. 328; *Attorney General for Alberta vs. Attorney General for Canada (Bank Taxation Case)* (1939) A.C. 117.

p. 27.
p. 105.
p. 118.
p. 4.
p. 15.

9. Before the Supreme Court of Canada factums were filed and arguments presented in support of the validity of section 6 of The Farm Security Act, 1944, by the Appellant, the Attorney General of Alberta and, with certain reservations, the Attorney General of Quebec. The Respondents filed factums and presented arguments contending that the section is *ultra vires* of the legislature of Saskatchewan. 30

p. 133.

10. The opinions of the Judges of the Supreme Court of Canada on the questions referred to the Court were certified to His Excellency the Governor General to be as follows:—

"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. 40

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

pp. 134-135.

11. The reasons for judgment of the Chief Justice and Kerwin, J., were delivered by Kerwin, J. The only point that he found it necessary to consider was whether section 6 was legislation in relation to interest. All mortgages or agreements of sale of land in Saskatchewan, practically without exception, bear interest at a rate greater than four per centum per annum. In his view two things are clear. The first is that the interest

p. 135, l. 1.

for the period of suspension is cancelled. The second is that thereafter the same amount of interest is payable, thereby effecting in substance a payment of interest in the future at a rate higher than that agreed upon. As legislation reducing the rate of interest payable under a contract is legislation in relation to interest (*Board of Trustees of Lethbridge Northern Irrigation District v. The Independent Order of Foresters* (1940) A.C. 513) Kerwin, J., concludes that the legislation here in question is definitely in relation to interest. Once that conclusion is reached the decisions of *Ladore v. Bennett* (1939) A.C. 468, and *Day v. Victoria* (1938) 3 W.W.R. 161, can in his opinion have no application, since the legislation in question in those cases was legislation in relation to a matter within section 92 of the British North America Act and any provisions with regard to interest were incidental whereas in the present reference the provisions as to interest "are the very warp and woof" of the enactment. Kerwin, J., found it impossible to sever these provisions from the remainder of the section and therefore, in his opinion the answer to Question 1 is that section 6 is wholly *ultra vires* of the Legislature of Saskatchewan. This rendered it unnecessary for His Lordship to answer Question 2.

12. In effect the Chief Justice and Kerwin, J., held that the legislation is "in relation to" interest in that by the colourable device of reducing principal it is directed towards nullifying the obligation to pay interest and in that, having cancelled the interest payment for the period of suspension, it then increases the rate of interest payable thereafter. They hold that these are the main purposes and objects of section 6—its pith and substance—and that the legislation is therefore "in relation to" interest, and not directed at another subject matter so as to operate only incidentally to "affect" interest as was the case in *Ladore v. Bennett* and *Day v. Victoria*. The Attorney General of Canada submits that they were right so to hold.

13. Taschereau, J., was of opinion that section 6 is *intra vires* of the Legislature of Saskatchewan. Farm security in the Province as it affects farmers and the farming industry is a subject which is in his view well within the powers of the provincial legislature. Agriculture is the main industry in Saskatchewan and Taschereau, J., agrees with the submission that the spreading of risks affecting farm revenues between the mortgagor and mortgagee and the vendor and purchaser is a matter pertinent to the agricultural industry in Saskatchewan, since the word "agriculture" must be interpreted in its widest meaning and ought not to be confined to such a narrow definition that would allow the province to enact legislation pertaining only as Morrison, J., said in *Brooks vs. Moore* ((1906) 4 W.L.R. 110) "to those things that grow and derive their substance from the soil." In his opinion legislation to relieve the farmers of financial difficulties, to lighten the burdens resulting from the uncertainties of farming operations, is legislation which in pith and substance is in relation to agriculture. His Lordship reaches the conclusion that there being, in his opinion, no repugnant federal legislation in relation to agriculture section 6 is competently enacted by Saskatchewan under section 95 of the British North America Act.

Taschereau, J., then states that, in its efforts to equalize the risks between vendor and purchaser and the mortgagor and mortgagee in a

period of crop failure, the legislature has enacted that during such a period the purchaser or mortgagor shall not be required to make any payment of the principal and the capital shall become automatically reduced by four per cent. These clauses which are deemed to be incorporated in every agreement of sale, in his opinion unquestionably deal with the civil rights of the vendor or of the mortgagor. In granting a period of suspension or reduction of the principal of a civil debt founded on contract, express or implied, Taschereau, J., thought that the legislature was obviously dealing with a civil and a local and provincial matter upon which the sovereignty of the Provincial Legislature cannot be challenged. He 10 knows of no authority which prevents the Legislature from inserting in a private contract a statutory clause which affects the civil rights of one or both parties to the contract even if the rights of the parties are modified or totally destroyed.

p. 138, ll. 11-49.

p. 138, l. 50-
p. 139, l. 2.

p. 139, ll. 3-20.

p. 139, l. 21-
p. 140, l. 10.

Taschereau, J., then refers to the argument that section 6 is *ultra vires* because of the provision that during the suspension period or after the reduction in capital, the interest will continue to run as if no suspension or reduction in capital had been made. His Lordship agreed that "interest" is a matter on which the Parliament of Canada only may properly legislate and that with the clause as it stands there is an increased 20 rate on the amount of the principal actually outstanding. In the opinion of Taschereau, J., the answer to this objection is that the Act in pith and substance relates to agriculture and civil rights and if interest is affected, it is only incidentally, as the main purpose is to assist farmers in times of distress by redrafting a civil contract. His Lordship relies on the decisions in *Ladore v. Bennett* and *Day v. Victoria* where, he points out the enactments were in pith and substance in relation to municipal institutions in the Province and interest was affected only incidentally. His Lordship states that in the *Lethbridge* case the sole object of the legislation was to reduce the rate of interest while the Farm Security Act merely incidentally 30 affects interest.

p. 140, ll. 11-25.

Taschereau, J., then rejects the submission that section 6 is invalid because it invades the Dominion field of "bankruptcy or insolvency," since the purpose of the legislation is not, where there is a crop failure, to make a final distribution of the assets of the mortgagor or of the purchaser in the general interest of the creditors or to make a compromise of any kind which would have the characteristics of bankruptcy or insolvency. Independently of solvency or insolvency the Act, in his opinion, merely purports to deal with a civil debt and to provide for the participation between two individuals in a loss which would otherwise be the sole burden 40 of one.

p. 140, ll. 26-43.

His Lordship also rejected the contention that section 6 confers the powers of a court on a body not competently constituted to exercise such powers. The only function of the Board, in his view, is merely to decide whether there has been a crop failure and if there has been the rights and obligations of the parties then arise from the statute itself. As no declaration of the rights of the parties is made by the Board (although the Board must, of course, act judicially) its officers are in the opinion of Taschereau, J., merely administrative officers.

p. 140, l. 44-
p. 142, l. 2.

Taschereau, J., having held that section 6 was *intra vires* of the province 50 found it necessary to deal with the Question 2. On the principles enunciated

in cases cited by him, he concludes that the Act in question must be read as not affecting the Crown in right of Canada or any of its agents holding mortgages in the Province.

14. The Attorney General of Canada submits that Taschereau, J., is in error in holding Section 6 to be *intra vires* as legislation in relation to "Agriculture" and "Property and Civil Rights" for the following reasons :—

10 (a) Section 6 is, in pith and substance, legislation directly in relation to "Interest" because it directly changes the interest obligation on the contracts affected ;

(b) The purported reduction of principal under paragraph 3 of sub-section (2) of Section 6 constitutes merely a colourable device designed to carry out the true object of cancelling, reducing and changing the interest obligation and thus of legislating in relation to "Interest" ;

20 (c) The change in the rate of interest and the purpose of cancelling interest are the main effect and object of Section 6 and these distinguish Section 6 from the legislation under consideration in *Ladore vs. Bennett* and *Day vs. Victoria* where the main effect and purpose related to municipal institutions and interest was affected only incidentally.

Further it is submitted that the learned judge is in error in not holding Section 6 to be in relation to "bankruptcy and insolvency" because the underlying assumption of the legislation is the inability of the debtor to meet his obligations as they become due, and it confers authority which would permit the Board to limit its operation solely to such cases, which is the logical scheme for its operation. It is further submitted that his Lordship is in error in not holding that the powers of the Board are judicial. The powers of the Board to find the facts which give rise to the rights of
30 the parties under the statute and which the Board may "by order" declare, are judicial and of the same character as the power of a Superior or District Court.

15. Rand, J., after pointing out difficulties raised by the wording of paragraph 3 of section 6 (2), discusses the nature of interest, and finds that the indisputable effect of section 6 must be taken to be a reduction of the principal and the maintenance of the quantum of interest as if the reduction had not been made. The statute thus works a change of interest rate as the principal is diminished which, in the contention of the Attorney General of Canada, is legislation in relation to interest, a field of civil rights
40 committed exclusively to the Dominion. In his view this contention is not met by the argument that the enactment is designed to promote the stability of agriculture. Examining this argument in detail, Rand, J., comes to the conclusion that section 6 does not deal with interest merely incidentally in legislation in relation to agriculture, but modifies civil rights with legislation in relation to interest as an inseverable part of its substance. The legislation was therefore in his opinion wholly *ultra vires* whether or not the purported dealing with principal is a colourable device to nullify the accrual of interest. This conclusion made it unnecessary for Rand, J., to consider other points.

p. 143, l. 36-
p. 144, l. 28.
p. 144, ll. 28-50.

p. 144, l. 50-
p. 145, l. 7.

p. 145, l. 8-
p. 146, l. 16.

p. 146, ll. 27-46.

pp. 146-149.

16. Kellock, J., recalls the necessity of ascertaining the pith and substance and true nature and character of the enactment and for that purpose examining its effect and its object or purpose. He leaves out of consideration the four per cent. specifically mentioned in the statute as no such rate is currently operative and has not been for some time. Examining the language of paragraph 3 of section 6 (2), Kellock, J., points out that if the *principal outstanding* is automatically *reduced* it follows that interest ceases to accrue thereafter on the amount of the reduction, since there can be no such thing as interest on principal which is non-existent. The proviso that interest shall continue "to be chargeable, payable and recoverable" (language to be found in the Interest Act, R.S.C., 1927, C. 102) can, in his opinion, operate in no other way than as an increased rate on the amount of principal actually outstanding, so that the same amount of money in respect of interest will be produced before as after the reduction. 10

p. 147, l. 47-
p. 148, l. 43.

After examining submissions made by the Appellant, Kellock, J., holds that 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 interest. Whether or not this is to do indirectly what may not be done directly need not be considered, for the statute in fact effects an increase in the rate of interest, which is beyond the power of the legislature of the Province to do. 20

p. 148, l. 43-
p. 149, l. 26

In the opinion of Kellock, J., section 6 is not in pith and substance legislation within section 95 of the British North America Act as being in relation to agriculture nor within any of the heads of section 92. It is, he finds, legislation in relation to interest and governed by the principle of the *Lethbridge* case, that contractual interest is the subject matter of exclusive Dominion legislative power. This, he says, distinguishes the cases of *Ladore v. Bennett* and *Day v. Victoria* as the legislation in question in each of those cases was legislation in relation to a matter within section 92 and any provisions with regard to interest were incidental. His Lordship states that he cannot think that because the particular contracts here in question are limited to those affecting farm lands this renders the legislation in its true nature and character any the less legislation with relation to interest. 30

p. 149, ll. 27-36,

On the question of severability, his Lordship did not think it can be presumed that the legislature intended to enact the provisions of paragraphs 1 and 2 of sub-section (2) without that included in paragraph 3.

p. 149, l. 38.

Kellock, J., therefore answered Question 1 by saying that section 6 is *ultra vires*, as a whole and that it was not necessary for him to answer Question 2. 40

17. The Attorney General of Canada submits that the opinion of the majority of the judges of the Supreme Court of Canada, holding that section 6 is *ultra vires* is correct and should be affirmed for the following amongst other,

REASONS

- (1) BECAUSE section 6 is legislation in relation to "Interest," a matter within the exclusive legislative authority of the Parliament of Canada, under head 19 of section 91 of the British North America Act ; 50

- (2) BECAUSE the purported reduction of the principal under paragraph 3 subsection (2) of section 6 is merely a colourable device designed to carry out the true object of cancelling, reducing and changing the interest obligation and thus of legislating in relation to interest ;
- (3) BECAUSE section 6 conflicts with the provisions of the Interest Act, which is legislation validly enacted by the Parliament of Canada ;
- 10 (4) BECAUSE section 6 is legislation in relation to " Bankruptcy and Insolvency " a matter within the exclusive legislative authority of the Parliament of Canada under head 21 of section 91 ;
- (5) BECAUSE section 6 invades the field already occupied by legislation validly enacted by the Parliament of Canada, namely, The Bankruptcy Act, The Farmers Creditors Arrangement Act, 1943 and other legislation ;
- (6) BECAUSE section 6 is not legislation in relation to " Agriculture in the Province " so as to come within the authority of section 95 of the British North America Act ;
- 20 (7) BECAUSE section 6 is not legislation in relation to any head of legislation in section 92 or under section 95 of the British North America Act since " Interest " and " Bankruptcy and Insolvency " being within the exclusive authority of the Parliament of Canada are withdrawn from the authority of the Legislature of the Province under those sections.
- (8) BECAUSE section 6 has the effect of stultifying and rendering ineffectual the status, powers and capacities of companies incorporated by or under legislation validly enacted by the Parliament of Canada.
- 30 (9) BECAUSE section 6 purports to confer the judicial powers of superior or district Courts on the Provincial Mediation Board which is a body not competent to exercise such powers under sections 96, 99 and 100 of the British North America Act ;
- (10) BECAUSE section 6 is *ultra vires* in so far as it purports to bind the Crown in right of Canada, since the " Public Debt and Property " of Canada fall within the exclusive legislative authority of the Parliament of Canada and since the legislature of the province has not power of its own force to bind the Crown in right of Canada, or agents thereof ;
- 40 (11) BECAUSE if any of the provisions of section 6 might validly be enacted by the legislature of the province they are not severable from the provisions that are beyond the authority of the legislature, and the whole section is therefore *ultra vires* ;

(12) BECAUSE of the reasons given in the opinions of the majority of the judges of the Supreme Court of Canada.

18. The Attorney General of Canada submits that if Question 2 arises the answer should be in the negative for the following, amongst other,

REASONS

- (1) BECAUSE for Reason (10) aforesaid the legislation is *ultra vires* in so far as it purports to apply in respect of the Crown in right of Canada or any agent thereof;
- (2) BECAUSE section 6 should be interpreted as not applying to the Crown in right of Canada or any agent thereof;
- (3) BECAUSE the corporations mentioned in Question 2 are agents of the Crown in right of Canada and they, and mortgages held by them stand in the same position as the Crown in right of Canada and mortgages held by the Crown in right of Canada; and
- (4) BECAUSE the legislation if it applies to the mortgages mentioned in Question 2 conflicts with the Exchequer Court Act (R.S.C., 1927, c. 34, as amended) a validly enacted Act of the Parliament of Canada.

FRANK GAHAN.

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 operation thereof.

BETWEEN

**THE ATTORNEY GENERAL OF
SASKATCHEWAN - - - - -** *Appellant*

AND

**THE ATTORNEY GENERAL OF CANADA
AND THE DOMINION MORTGAGE AND
INVESTMENTS ASSOCIATION - - -** *Respondent 1*

AND

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

Case

FOR ATTORNEY GENERAL OF CANADA.

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