1, 1948

No. 99 of 1947.

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 - - *Respondents*

AND

THE ATTORNEY GENERAL OF ALBERTA and THE ATTORNEY GENERAL OF QUEBEC - - - - *Pro forma Respondents.*

RECORD OF PROCEEDINGS

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Attorney General of Saskatchewan.

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WL1772-22782

In the Privy Council.

No. 99 of 1947.

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

14257

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.*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No. 99 of 1947.

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 - - - - - - - - *Respondents*

AND

THE ATTORNEY GENERAL OF ALBERTA and THE ATTORNEY GENERAL OF QUEBEC *Pro forma Respondents.*

RECORD OF PROCEEDINGS

No. 1.

ORDER OF REFERENCE by His Excellency the Governor General in Council.

No. 1. Order of Reference by His Excellency the Governor General in Council, 14th May 1946.

P.C. 1921

AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 14th day of MAY, 1946.

PRESENT :

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL :

WHEREAS the Legislative Assembly of Saskatchewan at its second session in the calendar year 1944 enacted a statute entitled " An Act for the Protection of certain Mortgagors, Purchasers and Lessees of Farm Land " being Chapter 30 of the aforesaid second session and bearing the short title " The Farm Security Act, 1944 " ;

AND WHEREAS section 6 of the said statute provides, amongst other things, for the automatic reduction, in the year of a crop failure, as defined, in the principal indebtedness of a mortgagor or purchaser by 4% or by the same percentage as that at which interest accrues on the principal debt whichever is the greater ;

No. 1. Order of Reference by His Excellency the Governor General in Council, 14th May 1946, *continued.*

AND WHEREAS section 6 aforesaid was amended by the Legislative Assembly at its session in the calendar year 1945 by Chapter 28 of the statutes of that session;

AND WHEREAS questions have been raised as to whether the Legislative Assembly has legislative jurisdiction to enact the provisions of section 6 aforesaid as amended;

AND WHEREAS questions have also been raised as to the operative effect of section 6 aforesaid 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;

(*c*) assigned to the Central Mortgage and Housing Corporation.

AND WHEREAS the Minister of Justice is of opinion that the same are important questions of law touching the constitutionality and interpretation of this provincial legislation;

THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, pursuant to the provisions of section 55 of the Supreme Court Act, is pleased to refer and doth hereby refer the following questions to the Supreme Court of Canada for hearing and consideration:

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."

(Sgd.) A. D. P. HEENEY,
Clerk of the Privy Council.

No. 2.

ORDER of the Honourable the Chief Justice of Canada for Inscription of Reference.

No. 2. Order of the Honourable the Chief Justice of Canada for Inscription of Reference, 3rd June 1946.

IN THE SUPREME COURT OF CANADA

BEFORE

THE HONOURABLE THE CHIEF JUSTICE OF CANADA

MONDAY, the 3rd day of JUNE, 1946.

IN THE MATTER of a reference as to the validity of section 6 of The Farm Security Act, 1944, of the Province of Saskatchewan.

Upon the application of the Attorney General of Canada for the inscription for hearing of the reference relating to the validity of section 6 of The Farm Security Act, 1944, of the Province of Saskatchewan referred by His Excellency the Governor General in Council for hearing and consideration by the Supreme Court of Canada under the provisions of section 55 of the Supreme Court Act, and upon the further application of the Attorney General of Saskatchewan with respect thereto, and upon hearing read the Order of His Excellency the Governor General in Council of the 14th day of May, 1946, (being P.C. 1921) setting forth the questions on the said reference and upon hearing what was alleged by counsel for the Attorney General of Canada, the Attorney General of Saskatchewan and the Attorney General of Quebec and by counsel for The Dominion Mortgage and Investments Association;

It is hereby ordered that the said reference be inscribed for hearing at the commencement of the Sittings of this Honourable Court commencing on the 1st day of October, 1946 and that the Case and Factums in respect thereof be filed at the times prescribed by the rules in respect of the said Sittings.

And it is further ordered that leave be granted to The Dominion Mortgage and Investments Association to file a Factum and to be heard by counsel at the hearing of the said reference.

(Sgd.) PAUL LEDUC,
Registrar.

No. 3.

NOTICE OF HEARING.

No. 3. Notice of Hearing.

[*Not printed.*]

No. 4. Factum of the Attorney General of Canada.

No. 4.

FACTUM of the Attorney General of Canada.

PART I

1. By Order in Council P.C. 1921 of May 14, 1946, two questions are referred to this Court for hearing and consideration, namely :

" 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 ? "

2. Section 6, as 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 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 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 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.

(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.

(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 subsection 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.

(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.

(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

No. 4. Factum of the Attorney General of Canada, *continued.*

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.

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

3. Section 8 of The Farm Security Act, 1944, is as follows:

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

4. (*a*) Section 4 of The National Housing Act, 1944, (C. 46, Statutes of Canada, 1944–45, as amended by C. 26 Statutes of Canada, 1945, and by C. 61, Statutes of Canada, 1946) provides that the Central Mortgage and Housing Corporation may, on behalf of His Majesty 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 said institution in the making of loans to assist in the construction of houses (ss. 1).

(*b*) The terms of a contract entered into under that section shall provide, 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 it is situate in favour of His Majesty and the lending institution jointly (ss. 2 (*h*)).

(*c*) Similar provisions are contained in Section 8.

(*d*) Provision is also made for the making of loans by the Central Mortgage and Housing Corporation on behalf of His Majesty directly to limited-dividend housing corporations for certain purposes, such loans to be secured by first mortgage or hypothec in favour of His Majesty (ss. 9 (1) & (2)).

5. (*a*) The Canadian Farm Loan Act (C. 66, R.S.C. 1927 as amended by C. 46, Statutes of Canada, 1934 and C. 16, Statutes of Canada, 1935) constitutes a Board to be appointed by the Governor in Council, which shall be a body corporate and politic and be 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).

(*b*) The Board is empowered amongst other things to make long term loans to farmers on the security of first mortgages on farm lands and subject to the conditions prescribed in the Act (S. 4 (*b*)).

6. (*a*) 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).

(*b*) Except as provided in Section 14 of the Act, the Corporation is for all purposes an agent of His Majesty in right of Canada and its powers under the Act may be exercised by it only as agent of His Majesty (S. 5 (1)). Section 14 provides merely that the Corporation may employ officers and employees on its own behalf

(*c*) The Corporation is placed in the position of the Minister of Finance under The National Housing Act, 1944, and exercises all the powers of the Minister under that Act on behalf of His Majesty, with certain minor exceptions not relevant hereto.

(*d*) 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 an agreement with a lending institution, it may purchase all right or interest of the lending institution in mortgages and take assignments of the mortgages, or it may lend money to the lending institution on the security of assignments of mortgages (S. 29 (1) (*a*) and (*b*)).

PART II

POINTS AT ISSUE

7. The Attorney General of Canada submits that the answer to question 1 should be that Section 6 of The Farm Security Act, 1944, as amended, is *ultra vires* in whole as legislation :

(*a*) in relation to interest ;

(*b*) in relation to bankruptcy and insolvency ; and

(*c*) inconsistent with Sections 96, 99 and 100 of the British North America Act, 1867, in that it confers powers of a court on a body not competently constituted to exercise such power.

8. The Attorney General further submits that, if the answer to question 1 is that Section 6 is not *ultra vires* in whole, then such answer should state further that Section 6 is *ultra vires* insofar as it purports to apply in respect of mortgages specified in question 2.

9. The Attorney General further submits that, if the answer to question 1 is that section 6 is not *ultra vires* in whole or in part, the answer to question 2 should be in the negative because the section is to be construed as not applicable in respect of the mortgages specified therein.

PART III

ARGUMENT

10. Section 91 of the British North America Act provides :

" 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 Legislature 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

No. 4. Factum of the Attorney General of Canada, *continued.*

within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The Public Debt and Property

.....

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."

11. Section 92 of the said Act provides:

"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,—

.....

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.

....."

12. Sections 96, 99 and 100 of the said Act provide:

"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 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."

13. SECTION 6 IS *ULTRA VIRES* AS LEGISLATION IN RELATION TO INTEREST.

14. The proviso to paragraph 3 of sub-section (2) that, notwithstanding the reduction of principal, "interest shall continue to be chargeable, payable and recoverable as if the principal had not been so reduced" is legislation directly in relation to interest. It imposes a novel and anomalous obligation on the mortgagor in respect of interest, namely, that he is to pay interest on a principal amount which he does not owe and which in law and in fact does not exist. This is legislation which, in a most patent and candid form, relates to interest and to interest alone.

15. Furthermore, this provision imposes an obligation increasing the effective rate of interest above that agreed to under the contract. It is

true that the amount of interest to be paid is the same but that amount is payable in respect of the smaller amount of principal resulting from the statutory reduction.

16. 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. *Independent Order of Foresters*, 1940 *A.C.* 513 *at* 531.

This must be equally true of this legislation which changes the contractual or effective rate and the obligation respecting interest.

17. Furthermore, the " pith and substance " of section 6 as a whole is the abrogation of the obligation to pay interest. The provision that the amount of principal becomes automatically reduced by the same percentage as that at which interest will accrue, taken in conjunction with the proviso that interest shall continue to be payable as if the principal had not been so reduced, makes it quite clear that the real object and purpose is the cancellation of interest and not the reduction of the principal. In the first place, there appears to be no other logical reason for selecting the rate of interest as the rate of reduction. In the second place, the effect of these provisions is, in the first year in the ordinary case, to leave the amount owing after the so-called reduction of principal at the same amount as would be owing if the interest had been cancelled directly. The effect in subsequent years would be substantially the same in respect of the debtor's overall liability.

18. If the intention of the legislature were to distribute the capital loss occasioned by crop failure between the debtor and the creditor there would have been no provision that interest would continue to be payable as if the principal had not been so reduced. The quite obvious intention is merely that the aggregate debt shall not be increased during the period of crop failure by the amount of the interest.

19. The introduction of 4 per centum as an alternative rate of reduction is, in view of actual conditions, clearly colourable. Mortgages and agreements for sale in respect of farm lands in Saskatchewan almost without exception bear interest at rates in excess of 4 per centum. At the time the Farm Security Act, 1944, was passed by the legislature and came into force, the rate of interest charged by the Canadian Farm Loan Board on first mortgages was 5 per centum, with a rate of 5½ per centum on arrears of instalments. These rates were reduced to 4½ and 5 per centum respectively on April 2, 1945. Even under the National Housing Act, 1944, where the Crown furnishes a proportion of the amount lent and guarantees the lending institution against a substantial percentage of loss on its share of joint loans, the rate of interest contemplated may be as high as 4½ per centum and this includes loans on urban properties.

National Housing Act 1944, *C.* 46, *Statutes of* 1944 *as amended by C.* 26, *Statutes of* 1945 *and C.* 61, *Statutes of Canada*, 1946, *S.* 4 (2) (*e*) *and* (*l*) ; *also S.* 8 (2) (*d*) *and* (*k*).

20. It is well established that the Court must look to the " pith and substance " and the " true nature and character " of the legislation and that if these are beyond the powers of the legislature the adoption by the legislature of a device, the form of which is superficially within its powers, will not render the legislation valid.

No. 4. Factum of the Attorney General of Canada, *continued.*

Attorney General of Ontario v. *Reciprocal Insurers*, 1924, *A.C.* 328 *at* 337;

Attorney General for Alberta v. *Attorney General for Canada*, (*Bank Taxation case*) 1939, *A.C.* 117 *at* 130.

Further, in testing the " pith and substance " of legislation regard must be had to the " aspect " from which it is enacted by which is meant the object or purpose of the legislature : the word is used subjectively of the legislator rather than objectively of the matter legislated upon.

Attorney General for Alberta v. *Attorney General of Canada* (*Bank Taxation case*) *supra; Lefroy's " Canada's Federal System " p.* 200; *Lefroy's Legislative Power in Canada p.* 394; *In Re Canada Temperance Act*, 1946 2 *D.L.R.* 3; 1946 *A.C.* 193.

21. It seems reasonably clear that the true object and purpose of the legislature in this case is to nullify, under the conditions stated in the section, the obligation to pay interest owing under contracts. Such legislation is beyond the authority of the provincial legislature.

Board of Trustees of Lethbridge Northern Irrigation District v. *Independent Order of Foresters, supra.*

22. SECTION 6 IS *ULTRA VIRES* AS LEGISLATION IN RELATION TO BANKRUPTCY AND INSOLVENCY.

23. While it is true that the Act, by its terms, is unlimited in its application to all mortgagors and purchasers, at the same time it is a reasonable and almost inescapable inference that its real object and purpose is to benefit those who, by reason of " crop failure," are unable to pay their obligations as they become due. It is in " pith and substance," legislation in relation to " bankruptcy and insolvency."

24. The Act does not take effect automatically but, if the debtor is of opinion that he is or may become entitled to the benefits conferred by the Act, he must give written notice to the creditor on or before the 31st day of December. (S. 5.) Sub-section (3) then contemplates an agreement between the debtor and the creditor and, failing agreement, an application to the Provincial Mediation Board for a hearing.

25. It should be borne in mind that, while the decision of the Board is as to whether there has been a crop failure, the result of the decision is :

(*a*) relief from requirements to make payment during the period of suspension,

(*b*) extension of time for payment, and

(*c*) reduction in the amount to be paid.

These elements are, as was stated by Lord Thankerton speaking for the Judicial Committee, a " familiar feature of compositions."

Attorney General for British Columbia v. *Attorney General for Canada*, (*Farmers' Creditors Arrangement Act Reference*), 1937 *A.C.* 391 *at* 403–404.

See also per Sir Lyman Duff, C.J. in Reference as to the validity of Alberta Debt Adjustment Act, 1942 *S.C.R.* 31 *at* 40.

26. It is not to be forgotten that one of the primary functions of the Provincial Mediation Board under the Act establishing it is to endeavour to effect agreement between the debtor and his creditors to provide for the settlement of debts either in full or by a composition.

The Provincial Mediation Board Act, 1943, *C.* 15, *Statutes of Saskatchewan*, 1943, *S.* 5 (1).

27. The provisions of section 6 of the Farm Security Act giving the Board power in effect to grant an extension and a reduction of the debt introduce an element of compulsion on the creditor in bringing about a compromise. This is particularly so if the argument made hereafter (paragraphs 34 to 39) that the Board exercises only the judicial powers of a court is not accepted and the Board is considered to be an administrative body exercising a discretion. The element of compulsion was one of the decisive factors in the decision which held that the Debt Adjustment Act was *ultra vires.*

Attorney General of Alberta v. *Attorney General of Canada* (*Debt Adjustment Reference*) 1943 *A.C.* 356 *at* 375.

28. Also, the wide powers given to the Provincial Mediation Board under sub-section (8), unrestricted as they are, authorize it in effect to order that the section will operate only in relation to the class of mortgages and agreements for sale, the mortgagors or purchasers under which are unable to meet their obligations as they become due, i.e., are insolvent debtors. The inclusion in section 6 of such a provision renders the whole section *ultra vires* as legislation in relation to insolvency.

29. That section 6 is enacted in relation to bankruptcy and insolvency is evident from the legislative history of Saskatchewan. The Debt Adjustment Act of Saskatchewan (C. 87 R.S.S. 1940) was first enacted in 1929 (C. 53 Statutes of Saskatchewan 1928–29, amended by C. 59 of 1931 and C. 51 of 1932). It assumed substantially its later form, similar to that of the Alberta Act, in 1933 (C. 82 Statutes of Saskatchewan 1933, as amended by C. 59 of 1934, C. 88 of 1934–35, C. 95 of 1937 and C. 91 of 1938). The Act in its later form stayed all actions and proceedings of any kind whatsoever for, amongst other things, any debt, any part of the consideration for which arose prior to April 1, 1933, and provided that the Debt Adjustment Board be empowered to negotiate compromises of such debts between debtors and creditors. The decision of the Privy Council holding the Alberta Debt Adjustment Act to be *ultra vires* (*Attorney General of Alberta* v. *Attorney General of Canada, supra*) was delivered February 1, 1943. On April 12, 1943, the Provincial Mediation Board Act, 1943, (C. 15, Statutes of Saskatchewan, 1943) repealed the Saskatchewan Debt Adjustment Act. On November 12, 1944, the Farm Security Act, 1944, was assented to which, amongst other things adopted this same Provincial Mediation Board as its basic tribunal. It is submitted that it is a reasonable inference that section 6 of the Farm Security Act, taken in conjunction with the powers conferred on the Provincial Mediation Board by the Act establishing that Board, is designed to act as a substitute for the Debt Adjustment Board in achieving the same objects but by different methods.

30. It is permissible to examine the legislative history of the Province for the purpose of ascertaining the object and purpose of legislation enacted by the legislature.

Attorney General for Alberta v. *Attorney General of Canada* (*Bank Taxation case*) 1939 *A.C.* 117 *at* 132.

No. 4. Factum of the Attorney General of Canada, *continued.*

31. Being legislation that is in " pith and substance " in relation to " Bankruptcy and Insolvency," section 6 is beyond the powers of the legislature.

Attorney General for Alberta v. *Attorney General for Canada* (*Debt Adjustment Act*) 1943 *A.C.* 356.

32. Further, it is submitted that section 6 providing for extension and reduction of debt " obstructs and interferes " with Dominion Bankruptcy legislation on these matters.

See S. 7, *The Farmers' Creditors Arrangements Act* (*C.* 26, *Statutes of Canada*, 1943) *applying to farmers and The Bankruptcy Act* (*C.* 11 *R.S.C.* 1927, *as amended*).

Both of these statutes provide codes for compositions, extensions or arrangements for debtors unable to meet their debts as they become due.

33. The invalidity of an Act which operates so to obstruct and interfere with Dominion legislation of this kind was recognized in the case of :

Attorney General of Alberta v. *Attorney General of Canada* (*Debt Adjustment Reference*) *supra, at* 375.

34. SECTION 6 IS *ULTRA VIRES* AS LEGISLATION CONFERRING THE POWERS OF A COURT ON A BODY NOT COMPETENTLY CONSTITUTED TO EXERCISE SUCH POWER.

35. On a proper construction of sub-sections (3) and (4) of section 6, the Provincial Mediation Board is authorized to declare the rights of the parties to a mortgage or agreement for sale under the statutory condition which is imported into the mortgage or agreement of sale by sub-section (2). Although the Board is in terms empowered to " make such order . . . as it deems just " with reference to " the matter in dispute," it follows from the opening words of sub-section (3) that the only matter that can be in dispute is whether or not there has been a crop failure in any year. Moreover, sub-section 4, which provides for the legal consequences to flow from a decision of the Board, contemplates that such a decision will be limited to a determination that there has been or has not been a crop failure in the year in question. Finally, if the Board has a discretion, it would be unnecessary to include in the section the detailed definition of " crop failure," set out in paragraph 2 of sub-section (1) of section 6.

36. The power so conferred to the Board is a judicial power which has long been exercisable by a Superior Court. Actions relating to the application of, and to the rights of the parties under, the terms and conditions of mortgages or agreements of sale have always been within the jurisdiction of a Superior Court.

37. Moreover, it seems clear, on principle, that the power conferred upon the Board is a judicial power. There are two aspects to judicial power, namely,

(*a*) a power to make an authoritative determination of facts for the purposes of application of legal principles thereto, and

(*b*) a power to make a declaration of the rights of the parties or of any other legal effect of the facts, as these already exist under the established legal principles applicable thereto.

The distinction between such judicial power and administrative power is that an administrative tribunal does not merely declare the rights of the parties or the legal position as these exist under established rules of law, but it exercises within the scope of its authority a discretion as to the nature or extent of the rights that the parties are to enjoy or as to the legal result to be given to the facts.

38. The power conferred on the Board is authority to determine the facts and to declare on the state of the facts as so determined whether or not there has been a crop failure as it is defined in the section in the year in question so that the mortgagor or purchaser is or is not entitled to the benefit of the section. The Board, as indicated in paragraph 35, exercises no discretion but has authority only to make a declaration as to whether a crop failure as defined, has occurred. This decision is in substance a declaration of the rights of the parties under the condition imported into the mortgage contract by subsection (2). Subsection (4), in so far as it defines the consequences of a decision of the Board, adds nothing and is in this respect surplusage arising from a confusion of administrative form with judicial substance.

39. The members of the Provincial Mediation Board are to be appointed not by the Governor in Council but by the Lieutenant Governor in Council.

The Provincial Mediation Board Act, 1943, *C.* 15 *Statutes of Saskatchewan*, 1943, *s.* 3.

Although a provincial legislature has authority to constitute courts, it is beyond its power to authorize a body to exercise judicial power previously exercisable only in, or essentially belonging to Superior, District or County Courts if the members of such body are not to be appointed by the Governor in Council. In creating a court, the legislature must conform to sections 96, 99 and 100 of the British North America Act.

Toronto Corporation v. *York Corporation and Attorney General for Ontario*, 1938 *A.C.* 415 *at* 427.

40. EVEN IF THE PITH AND SUBSTANCE OF SECTION 6 AS A WHOLE IS NOT *ULTRA VIRES*, CERTAIN PROVISIONS THEREOF ARE *ULTRA VIRES*, THE INVALID PARTS ARE NOT SEVERABLE AND FOR THIS REASON THE SECTION, AS A WHOLE, IS *ULTRA VIRES*.

41. Whether or not the main objects and purposes of the section are beyond the authority of the Legislature, the following specific provisions are *ultra vires* :

(*a*) the proviso to paragraph 3 of sub-section (2) is in relation to interest ;

(*b*) sub-sections (3) and (4) confer judicial powers on the Provincial Mediation board ; and

(*c*) sub-section (8) permits the restriction of the operation of the section to insolvent persons.

42. The provisions of the section are closely interwoven and it cannot be presumed that, if any one of these provisions is *ultra vires*, the legislation would have enacted the section in its truncated form. Unless this presumption can be made, the whole section is *ultra vires*.

No. 4. Factum of the Attorney General of Canada, *continued.*

Attorney General for Manitoba v. *Attorney General for Canada*, 1925 *A.C.* 561 *at* 567–8.

43. IF SECTION SIX IS NOT *ULTRA VIRES* IN WHOLE, IT IS *ULTRA VIRES* INSOFAR AS IT PURPORTS TO BIND THE CROWN IN RIGHT OF CANADA.

44. The legislature of a province cannot legislate so as to deal with property (including contractual rights) of the Crown in right of Canada. The legislature cannot take away or abridge any right or privilege of the Crown in right of Canada.

Gauthier v. *The King*, 56 *S.C.R.* 176, *The Chief Justice at p.* 182 ; *Anglin J. at p.* 194 ; *In the Matter of Legislative Jurisdiction over Hours of Labour*, 1925, *S.C.R.* 505.

45. Moreover, Parliament is given " exclusive " legislative jurisdiction in relation to " The Public Debt and Property " (section 91, head 1.). Since the jurisdiction of Parliament is exclusive in relation to the matters enumerated in section 91, it follows that the legislative heads of section 92 must be interpreted as not including legislative authority in relation to any matter falling within the heads of section 91, including head 1 above, even though *prima facie* such matter might be deemed to be included therein.

Citizen's Insurance Company v. *Parsons*, 1881, 7 *A.C. at* 109 ; *Attorney General for Canada* v. *Attorneys General for Ontario, Quebec and Nova Scotia*, 1898, *A.C.* 700 *at* 715 ; *John Deere Plow Company Limited* v. *Wharton*, 1915, *A.C.* 330 *at* 340 ; *Great West Saddlery Company* v. *The King*, 1921, 2 *A.C.* 91 *at* 116 ; *Reference re the Debt Adjustment Act*, 1937, 1943 *A.C.* 356 *at* 370.

46. The rights of the Crown in right of Canada as mortgagee or vendor of public property are " Public Property " excluded from the legislative authority of a legislature of a province. This must be so on principle, otherwise it would be open to the legislature of a province wholly to cancel the rights of the Crown in right of Canada.

47. Moreover, the authority conferred on the Provincial Mediation Board by sub-section (8) and also by sub-sections (3) and (4), if the submission previously made that the powers conferred by the latter sub-sections are judicial is not accepted, is *ultra vires* the legislature of the province as being authority by subordinate legislation or administrative discretion to vary or abrogate rights of the Crown in right of Canada.

48. No distinction is to be drawn between any of the classes of mortgages specified in Question 2. The obligation under a joint mortgage made pursuant to the National Housing Act, 1944 is a single obligation which is not severable in relation to the two parties in whose favour the obligation exists.

Anderson v. *Martindale* (1800) 1 *East* 497 ; *Foley* v. *Adderbrooke* (1842) 4 *Q.B.* 197 ; *Hopkinson* v. *Lee* (1845) 6 *Q.B.* 964.

Section 6 cannot apply in respect of this obligation without affecting the rights of the Crown. The mortgages entered into by the Farm Loan Board or assigned to the Central Mortgage and Housing Corporation are entered into or held on behalf of the Crown by these corporations respectively as agent of the Crown and are vested in the Crown.

49. IF SECTION 6 IS NOT *ULTRA VIRES* IN WHOLE OR IN PART IT IS TO BE INTERPRETED AS NOT BINDING THE CROWN IN RIGHT OF CANADA.

No. 4. Factum of the Attorney General of Canada, *continued.*

50. The Court should construe section 8 of the Act as referring only to the Crown in right of the Province.

Gauthier v. *The King*, 56 *S.C.R.* 176 *at* 194.

J. L. RALSTON.

D. W. MUNDELL.

No. 5.

No. 5. Factum of The Dominion Mortgage and Investments Association.

FACTUM of The Dominion Mortgage and Investments Association.

PART I

STATEMENT OF FACTS

1. By an Order-in-Council dated the 14th day of May, 1946 (being P.C. 1921) His Excellency the Governor General in Council referred to the Supreme Court of Canada for hearing and consideration, pursuant to the authority of section 55 of the Supreme Court Act, the following questions :

"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 ? "

2. By an Order of the Honourable the Chief Justice of Canada, dated the 3rd day of June, 1946, it was directed, *inter alia*, that The Dominion Mortgage and Investments Association be notified of the hearing of the argument on the reference, and that it be at liberty to file a factum and to appear and be heard by counsel on the argument.

3. The Dominion Mortgage and Investments Association is an unincorporated Association representing thirteen loan companies, eighteen trust companies and twenty-five insurance companies. Of such companies thirty-one are incorporated by the Dominion of Canada. Thirty-four of the companies, including nineteen of the Dominion-incorporated companies, carry on mortgage business in Saskatchewan. Their investments in mortgages and agreements for sale secured by farm lands in Saskatchewan amount to approximately $46,000,000.00.

No. 5. Factum of The Dominion Mortgage and Investments Association, *continued.*

4. 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 this 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.

The *thirteen* companies above referred to engage in the business of life insurance throughout the whole of Canada. Some of them operate in Great Britain, in the other Dominions and in foreign countries.

5. The thirteen life insurance companies represent approximately 91 per cent. of the life insurance in force in Canada of Dominion-incorporated life insurance companies. According to the last available report of the Superintendent of Insurance for Canada, the total insurance in force of all Dominion-incorporated life insurance companies as of December 31st, 1944 was $5,788,234,295.

6. The mortgages and agreements for sale secured on farm lands in Saskatchewan which are held by Canadian, British and foreign life insurance companies amount to approximately $21,100,913. Throughout the whole of Canada, such companies have investments in mortgages and agreements for sale that aggregate over $340,000,000.

7. 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.

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

9. The Dominion-incorporated loan companies are governed by the provisions of The Loan Companies Act, R.S.C. 1927, Chapter 28. By that Act they are empowered to receive money on deposit upon such terms 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 latest report of the Superintendent of Insurance for the year ended December 31st, 1944, the savings of the public deposited with such loan companies amounted to $37,909,595. The Companies had issued debentures payable in Canada amounting to $51,813,562 and payable elsewhere amounting to $3,732,950. These companies do business in the various parts of Canada, one company operating in every Province of Canada.

10. The Dominion-incorporated trust companies are governed by the provisions of The Trust Companies Act, R.S.C. 1927, Chapter 29. 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 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, $41,594,430 of guaranteed funds, namely those entrusted by the public for investment, the repayment of which has been guaranteed by the company.

11. The mortgages and agreements for sale secured on farm lands in Saskatchewan which are held by Dominion-incorporated loan and trust companies amount to approximately $11,561,384.

12. All Dominion-incorporated life insurance, loan and trust companies are subject to the supervision and control of the Superintendent of Insurance for Canada who reports annually to the Minister of Finance, and this report is submitted to Parliament.

13. 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.

14. Section 3 of The National Housing Act, 1944, Statutes of 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.

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

16. The Farm Security Act, 1944, is entitled " An Act for the protection of Certain Mortgagors, Purchasers and Lessees of Farm Land." It was amended by chapter 28 of the Statutes of 1945. Section 6 of the Act is popularly referred to as the " crop failure clause." It applies to all farm mortgages and agreements of sale, whether made before or after the passing of the Act (section 6 (1) clause 1).

" 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

No. 5. Factum of The Dominion Mortgage and Investments Association, *continued.*

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." (Sec. 6 (1) Clause 2).

" Period of suspension " is defined as—

" 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." (Sec. 6 (1) Clause 6).

Subsection (2) of the said section 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 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."

The Provincial Mediation Board is empowered to determine whether or not there has been a crop failure in any year if the parties fail to agree (ss. (3) and (4)). This Board consists of one or more members appointed by the Lieutenant-Governor in Council under The Provincial Mediation Board Act, 1943 (Chapter 15).

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 (ss. (5)).

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

Under sub-section (8), the Provincial Mediation Board may by order exclude from the operation of Section 6 any mortgage or agreement of sale or class of mortgages or agreements of sale.

The Section is deemed to have been in force on and from first day of August 1944 (ss. (9)).

17. The following is an excerpt from a notice published by " Co-operative Commonwealth Federation, Saskatchewan Section," in the June 8, 1944, issue of The Western Producer, a weekly newspaper published in the City of Saskatoon, Saskatchewan :

" THE CCF 4-POINT PLAN ON LAND AND MORTGAGES

.....

4. A CCF GOVERNMENT WILL PREVENT THE GROWTH OF DEBT BECAUSE OF CROP FAILURE BY PLACING A CROP FAILURE CLAUSE IN ALL MORTGAGES AND AGREEMENTS OF SALE.

The CCF maintains that when a mortgage company loans money to a farmer, the two have entered into a partnership. The farmer puts in his equity in his farm plus his labor and that of his family ; the mortgage company puts in the capital. If there is a loss, due to conditions beyond the farmer's control, we do not think that the farmer should take all the loss and the mortgage company take the farm.

The CCF will insist that in any year when the farmer's crop averages less than $6 per acre, the interest be wiped out and the payment on principal be postponed one year. In this way the farmer will be sure that his debts will not be larger because of crop failure."

18. In a radio address delivered over Radio Station CKCK in Regina on September 13, 1944, the following statement was made by the Honourable Mr. Douglas, Premier of Saskatchewan :

" Legislation is being prepared for the emergency session which is being called on October 19th. This legislation is designed to carry out the Government's platform for farm security. It may not be possible to pass it all during the fall session but sufficient of it will be placed on the statute books to guarantee the farm family adequate security. In the first place every mortgage will be presumed to contain a crop failure clause providing that when the value of the crop per sown acre falls below $6 no payment shall become due during that year and the interest shall be cancelled."

19. The Speech from the Throne delivered by the Administrator at the opening of the Session of the Legislative Assembly at which The Farm Security Act, 1944, was enacted, contained the following statements :

" The Tenth Legislature will be called upon to fulfil certain duties :

6. It must enact legislation that will bring to fulfilment the pledges upon which this Government was elected."

PART II.

ARGUMENT.

20. The first question referred is as follows :

" 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 ? "

No. 5. Factum of The Dominion Mortgage and Investments Association, *continued.*

21. The substantive provisions of Section 6 are found in subsection (2) thereof and become operative in case of crop failure in any year and by reason only of such crop failure. The effect of paragraphs 1 and 2 of this subsection is to relieve mortgagors and purchasers of any liability to make any payment of principal during the period of suspension and to postpone for one year payment of any principal falling due during or after such period.

The effect of paragraph 3 is the outright cancellation of debt. In the event of a crop failure in any year " and by reason only of such crop failure " the principal outstanding on the 15th day of September in the " period of suspension " is " automatically reduced by 4 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." The paragraph further provides that " notwithstanding such reduction, interest shall continue to be chargeable, payable and recoverable as if the principal had not been so reduced."

22. Such legislation is *ultra vires* the provincial legislature in that in pith and substance it relates to the subject of " Interest " which is within the exclusive legislative jurisdiction of the Dominion Parliament under the British North America Act, Section 91, Head 19. Though paragraph 3 purports to relate to the principal amount of the debt, employment of the interest rate as the yardstick for measuring the extent of the reduction indicates that the true nature, character and purpose of the legislation is to achieve cancellation of interest.

In *Attorney-General for Ontario* v. *Reciprocal Insurers* (1924) A.C. 328 Duff J. (as he then was) in delivering the judgment of the Judicial Committee said at p. 337 :

> " It has been formally laid down in judgments of this Board that in such an inquiry the Courts must ascertain the ' true nature and character' of the enactment : *Citizens' Insurance Co.* v. *Parsons* ((1881) 7 *App. Cas.* 96) ; its ' pith and substance ' ; *Union Colliery Co.* v. *Bryden* ((1899) *A.C.* 580) ; and it is the result of this investigation, not the form alone, which the statute may have assumed under the hand of the draughtsman, that will determine within which of the categories of subject matters mentioned in ss. 91 and 92 the legislation falls ; and for this purpose the legislation must be ' scrutinized in its entirety ' ; *Great West Saddlery Co.* v. *The King* ((1921) 2 *A.C.* 91, 117). Of course, where there is an absolute jurisdiction vested in a Legislature, the laws promulgated by it must take effect according to the proper construction of the language in which they are expressed. But where the law-making authority is of a limited or qualified character, obviously it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the Legislature is really doing."

In *Attorney-General of Alberta* v. *Attorney-General of Canada,* 1939 *A.C.* 117, the Lord Chancellor (Lord Maugham) in delivering the judgment of the Judicial Committee said at p. 130 :

> " The next step in a case of difficulty will be to examine the effect of the legislation (*Union Colliery Co. of B.C. Ltd.* v. *Bryden* 1899 *A.C.* 580) . . . A closely similar matter may also call for consideration, namely, the object or purpose of the Act in question."

23. The reference to a 4 per cent. rate of reduction is of no practical consequence 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 life insurance, loan and trust companies in respect of Saskatchewan farm lands stipulate for a rate of interest in excess of 4 per cent. per annum. The approximate range of interest rates in current mortgages and agreements of sale is from 5 per cent. to 6 per cent. per annum. The actual effect of the legislation would be the same if it had merely provided that in every year of crop failure the principal would be reduced by the amount of the annual interest. Paragraph 3 is, therefore, a colourable device for cancelling in a year of crop failure the debt under a farm mortgage or agreement of sale to the extent of the amount of interest provided by the contract. No other explanation for the use of the interest rate as the yardstick is plausible.

The effect of the legislation is to bring about periodic cancellations of parts of the indebtedness under a mortgage or agreement for sale. Though such indebtedness comprises elements of principal and interest, it is nevertheless a single indebtedness. By bringing about a cancellation of part of that indebtedness measured by the rate of interest stipulated for in the contract, the Legislature has in effect legislated in respect of the subject of interest.

If the Legislature had had the *bona fide* purpose of legislating with respect to principal, and principal only, it is strange to find that the interest rate controls the amount by which the debt is reduced. One result is that the relief accorded to debtors is not uniform. For example, a mortgagor whose mortgage for $5,000 bears interest at 5% is relieved in a year of crop failure to the extent of $250, whereas a mortgagor whose mortgage for the same amount bears interest at 6% is relieved in the same year to the extent of $300.

Under the guise of purporting to effect a reduction of principal measured by the rate of interest, the Legislature has attempted to do indirectly what it cannot do directly.

Lethbridge v. *I.O.O.F.* 1940 *A.C.* 513, *at* 534.

Madden v. *Nelson and Fort Sheppard Railway* 1899 *A.C.* 626, *at* 627.

Attorney-General for Alberta v. *Attorney-General for Canada* (*Bank Taxation Case*) 1939 *A.C.* 117, *at* 130.

The legislation was obviously enacted in an attempt to fulfil the Government's pledge to the farmers of Saskatchewan that in years of crop failure interest on farm mortgages and agreements of sale would be cancelled.

24. The legislation has a direct effect upon the interest rate to be prescribed in mortgages or agreements for sale or renewals thereof entered into after its enactment. Lending institutions in entering into such transactions can no longer determine the rate of interest to be stipulated for without taking into consideration the fact that such rate of interest will govern the extent of the automatic reduction in principal to which a farm mortgagor or purchaser would become entitled in a year of crop failure. No longer has a lending institution the freedom of contract with respect to interest assured to it by the Dominion Interest Act (R.S.C.

No. 5. Factum of The Dominion Mortgage and Investments Association, *continued.*

1927 Cap. 102, Sec. 2). Such freedom of contract is distinctly interfered with by the legislation in question. It may well have the result of compelling lending institutions to reject applications for new loans. In the case of renewals of old loans, the lending institutions may be driven to accept a rate of interest that is entirely inappropriate to the contractual rate of interest then current in respect of such transactions. In *Lethbridge* v. *I.O.O.F.* 1940 *A.C.* 513, the Lord Chancellor (Viscount Caldecote), in delivering the judgment of the Judicial Committee, said at page 531 :

> " In so far as the Act in question deals with matters assigned under any of these heads to the Provincial Legislatures, it still remains true to say that the pith and substance of the Act deals directly with ' interest,' and only incidentally or indirectly with any of the classes of subjects enumerated in s. 92. Even if it could be said that the Act relates to classes of subjects in s. 92, as well as to one of the classes in s. 91, this would not avail the appellants to protect the Provincial Act against the Interest Act of 1927, passed by the Dominion Parliament, the validity of which, in the view of their Lordships, is unquestionable. Sect. 2 of the Interest Act is as follows : ' 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.' This provision cannot be reconciled with the Act, c. 12 of Alberta, 1937, and, as Lord Tomlin made clear in the case already cited of *Attorney-General for Canada* v. *Attorney-General for British Columbia* ((1930) A.C. 111), Dominion legislation properly enacted under s. 91 and already in the field must prevail in territory common to the two Parliaments."

The legislation in question has the effect of destroying the right conferred upon a mortgagor or vendor of farm lands by the Interest Act " to stipulate for, allow and exact, on any contract or agreement whatsoever, any rate of interest or discount which is agreed upon."

25. Section 6 is *ultra vires* the Provincial Legislature also because it is in relation to the subject of " Insolvency " which is within the exclusive jurisdiction of the Dominion Parliament under head 21 of section 91.

26. 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. Subsection (8) of the Section, 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, 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 except 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 aid of insolvent debtors. By giving The Provincial Mediation Board such unfettered powers under subsection (8), the Legislature has, in effect, made it possible for the Board

to make the section operate as insolvency legislation. A provincial enactment of such character is *ultra vires.*

27. In the Reference as to the Validity of the Alberta Debt Adjustment Act, 1942 S.C.R. 31, Duff, C.J., in referring to that statute and to the powers of the Provincial Board constituted thereunder, said at p. 40 :

> " Bankruptcy is not mentioned, but normally the powers and duties of the Board under Part III will come into operation when a state of insolvency exists. It is not too much to say that it is for the purpose of dealing with the affairs of debtors who are pressed and unable to pay their debts as they fall due that these powers and duties are created. Indeed the whole statute is conceived as a means of protecting embarrassed debtors who are residents of Alberta. Most people would agree that in this point of view the motives prompting the legislation may be laudable ones. But the legislature, in seeking to attain its object, seems to have entered upon a field not open to it. The statute, if valid, enables the Board (invested with exclusive possession of the key to the Courts) to employ its position and powers coercively in compelling the creditors of an insolvent debtor and the debtor himself to consent to a disposition of the resources of the debtor prescribed by the Board. In this way the statute seeks to empower the Board to impose upon the insolvent debtor and his creditors a settlement of his affairs, which the creditors must accept in satisfaction of their claims. I cannot escape the conclusion that the statute contemplates the use of the powers of the Board in this way. I think this is an attempt to invade the field reserved to the Dominion under Bankruptcy and insolvency."

In comparison with the Alberta statute referred to above, Section 6 of the Saskatchewan Act is an even bolder attempt to legislate in relation to " Insolvency." Under section 6 the creditor is afforded no opportunity for compromise but is compelled to accept an arbitrary reduction of debt prescribed by the provincial legislature.

28. " Insolvency " is wider than bankruptcy and includes schemes, arrangements and compositions designed to prevent people becoming bankrupt or being sued. Such schemes are none the less insolvency matters because they result from emergencies due to natural causes.

Attorney-General for Ontario v. *Attorney-General for Canada* 1894 *A.C.* 189, *at* 200.

Reference re Companies' Creditors Arrangement Act 1934 *S.C.R.* 659, *at* 660.

Attorney-General for British Columbia v. *Attorney-General for Canada,* 1937 *A.C.* 391, *at* 397 *and* 402.

Attorney-General of Alberta v. *Attorney-General of Canada* 1943 *A.C.* 356 *at* 371.

29. Moreover, section 6 has the effect of obstructing and interfering with valid legislation of the Parliament of Canada in relation to the subject of " Insolvency." In that connection attention is invited to " The Farmers' Creditors Arrangement Act, 1943," 7 George VI. Chapter 26 and to the preamble reading as follows :

> " WHEREAS in view of the depressed state of agriculture in the provinces of Manitoba, Saskatchewan and Alberta during the

No. 5. Factum of The Dominion Mortgage and Investments Association, *continued.*

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 rearrangements 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, 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 farmer's debts were incurred before May 1, 1935. While subsection (7) of Section 6 of The Farm Security Act, 1944, provides that the Section shall not apply to a mortgagor or purchaser who has had the benefit of The Farmers' Creditors Arrangement Act, 1943, nevertheless, the effect of Section 6 will be that many farmers who would otherwise apply for relief under the Dominion legislation by making a voluntary assignment for the benefit of their creditors, or by submitting a proposal for a compromise or arrangement, will take advantage of the arbitrary, automatic benefits under Section 6 of the provincial Act. Under the Dominion legislation farmers in financial difficulties obtain such relief as they are, in the view of the Dominion Parliament, entitled to in fairness and justice, having regard to their assets and liabilities and to the exercise of good faith by them in relation to their creditors in the management of their farms or the disbursement of their incomes. The Saskatchewan legislation goes much farther in that it effects arbitrary compromises and arrangements dictated in amount by provincial legislation regardless of the assets or liabilities of the debtor, or of his efficiency in managing his farm, or of his exercise of good faith towards his creditors. Even though such benefits may be extended in some instances to solvent debtors, the legislation will undoubtedly operate as an arbitrary arrangement for the benefit of insolvent debtors whose farms are subject to mortgages or agreements of sale.

Such legislation constitutes an unauthorized attempt to destroy entirely the creditor's right to part of his claim. By making it unnecessary for farmer-debtors to apply under the Bankruptcy Act or The Farmers' Creditors Arrangement Act, 1943, their creditors are deprived of the protection assured to them by such Dominion legislation.

30. Even if the subject matter of section 6 were to be regarded as merely ancillary to legislation relating to " Bankruptcy and Insolvency," the Provincial Legislature is precluded from entering that field because it has now been occupied by the Dominion.

Attorney-General of Ontario v. *Attorney-General for Canada* 1894 *A.C.* 189 *at* 200.

Attorney-General for Canada v. *Attorney-General for Ontario and others* 1898 *A.C.* 700 *at* 715.

Grand Trunk Railway Company v. *Attorney-General of Canada* 1907 *A.C.* 65 *at* 68.

Attorney-General for Canada v. *Attorney-General for British Columbia* 1930 *A.C.* 111 *at* 118.

Attorney-General for Alberta v. *Attorney-General for Canada* 1943 *A.C.* 356 *at* 370.

31. In pursuance of its exclusive power to legislate with reference to the incorporation of companies with other than provincial objects, the Dominion has incorporated companies under general statutes, such as its Companies Act, Loan Companies Act, Trust Companies Act, Canadian and British Insurance Companies Act, and under private Acts. Under these statutes and under The National Housing Act, 1944, such companies are authorized to invest their funds in mortgages on real estate in Canada. The lending of money at interest is a function of primary importance to the existence and successful operation of such companies and to the economic structure of Canada.

Moreover, such companies are entitled to, and indeed depend upon, the right conferred by The Interest Act (R.S.C. Cap. 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."

Section 6 provides for the arbitrary reduction of mortgage debts and thereby deprives the companies of revenues necessary to the continued solvent operation of their business and the fulfilment of their own obligations to their policyholders, debenture holders, and other creditors.

The effect of section 6 is to impair the status and essential capacities of companies incorporated by the Dominion. Such legislation is *ultra vires* a provincial legislature.

John Deere Plow Co. v. *Wharton* 1915 *A.C.* 330 *at* 340 ; 342.

Great West Saddlery Company v. *The King* (1921) 2 *A.C.* 91 *at* 114 ; 120 ; 121 ; 123.

Attorney-General for Manitoba v. *Attorney-General for Canada* 1929 *A.C.* 260, *at* 267.

In the *Reference as to Validity of The Debt Adjustment Act, Alberta,* 1942 S.C.R. 31, at 38, Duff C.J. said :

> " A company, for example, incorporated by the Dominion with authority to carry on the business of lending money upon various kinds of security in the province, may find itself in a position, under the operation of subsections . . ., in which it and other Dominion companies are precluded from enforcing their securities in the usual way. In my view, such legislation is not competent . . ."

32. The extent of debt cancellation proposed by section 6 is of serious consequence to the members of this Association. As pointed out in paragraph 3 hereof, thirty-three companies have investments in mortgages and agreements for sale secured by Saskatchewan farm lands to the amount of approximately $46,000,000. 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%, section 6 might have the effect of cancelling indebtedness secured by Saskatchewan farm lands to the amount of approximately $2,300,000. 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

No. 5. Factum of The Dominion Mortgage and Investments Association, *continued.*

institutions are concerned, be disastrous. In that connection the following observations of Lord Maugham in *Attorney-General of Alberta* v. *Attorney-General of Canada*, 1939 A.C. 117 at 131 are appropriate :

" Next, if the effect of the Bill is examined on the footing that it becomes operative in the Province, some remarkable facts emerge. As Kerwin J. (in a judgment concurred in by Crocket J.) observed :—

' Our attention has been called to the increase in the taxation of banks that would be effected by the provisions of this Bill. As Provincial legislation stood prior to the First Session of the Alberta Legislature in 1937, the tax on all banks doing business in the Province amounted to $72,200 per annum. By chapter 57 of that session a tax was imposed which would increase the sum realised by $140,000 per annum. The additional tax proposed by Bill 1 amounts to $2,081,925 in each year.'

" It does not seem to be necessary to set out the undisputed tables of figures showing the particulars of this gigantic increase in the taxation of banks within the Province. Their Lordships do not disagree with the Chief Justice and Davis J. that the facts are sufficient ' to show that such a rate of taxation must be prohibitive in fact and must be known to the Alberta Legislature to be prohibitive.' In coming to this conclusion it seems to their Lordships that the learned judges were justified in considering that the magnitude of the tax proposed for Alberta was such that if it were applied by each of the other provinces, it would have the effect of preventing banks from carrying on their businesses. It would be strange if each of the provinces were successively to tax banks and the result on the question of *ultra vires* were to be that the Acts of those provinces who were earliest in the field were valid, whilst the Acts of those who came a little later, were to be held *ultra vires*. It must be remembered in this connection that the tax proposed is based on the paid-up capitals and on the reserve funds of the banks wherever situate.

" It was rightly contended on behalf of the appellant that the Supreme Court and the Board have no concern with the wisdom of the legislature whose Bill is attacked ; and it was urged that it would be a dangerous precedent to allow the views of members of the Court as to the serious consequences of excessive taxation on banks to lead to a conclusion that the bill is *ultra vires*. Their Lordships do not agree that this argument should prevail in a case where the taxation in a practical business sense is prohibitive."

33. Under subsection (8) of Section 6 The Provincial Mediation Board is empowered to declare in its absolute discretion that any mortgage or agreement of sale or class of mortgages or agreements of sale is a mortgage, agreement, or class to which the section shall not apply. The effect of the whole section is thus made dependent upon the arbitrary decisions of an administrative tribunal. 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 power of disallowance reserved to the Governor-General under Sections 56 and 90 of that Act. As the other parts of the section are dependent for their operation on the

manner in which the Board carries out its powers under subsection (8), the whole Section is, therefore, invalid.

Credit-Foncier v. *Ross* (1937) 3 *D.L.R.* 365, *at* 368–369.

In Re The Initiative and Referendum Act 1919 *A.C.* 935, *at* 945.

34. It is respectfully submitted that Section 6 of The Farm Security Act, 1944, is wholly *ultra vires* the Legislative Assembly of Saskatchewan.

No. 5. Factum of The Dominion Mortgage and Investments Association, *continued.*

C. F. H. CARSON

L. G. GOODENOUGH

Of Counsel for The Dominion Mortgage and Investments Association.

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No. 6.

FACTUM of the Attorney General of Saskatchewan.

No. 6. Factum of the Attorney General of Saskatchewan.

PART I

STATEMENT OF FACTS

I. By an Order-in-Council dated the 14th day of May, 1946, being P.C. 1921, His Excellency the Governor-General in Council referred to the Supreme Court of Canada for hearing and consideration pursuant to the authority of section 55 of *The Supreme Court Act*, the following questions :

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 ? "

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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 ;

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(*b*) securing loans made by the Canadian Farm Loan Board ; or

(*c*) assigned to the Central Mortgage and Housing Corporation."

II. The said section 6 of *The Farm Security Act*, 1944, as amended by 1945 Saskatchewan, Chapter 28, reads 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 made renewing or extending such agreement of sale or mortgage ;

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

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 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 next succeeding year.

(2) Notwithstanding anything to the contrary, 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.

(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.

(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 subsection may be given 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.

(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.

(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 of 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.

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

III. Section 8 of the said Act reads as follows:

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

IV. Copies of the said Act have been filed for the use of this Honourable Court.

PART II

IT IS SUBMITTED—

FIRST, that Section 6 of *The Farm Security Act*, 1944 (second session) Saskatchewan, Chapter 30 as amended by 1945 Saskatchewan, Chapter 28, is, in pith and substance, legislation in relation to farm security in the Province, as it affects farmers and the farming industry, a subject within the legislative jurisdiction of the Provincial Legislature in virtue of the following provisions of *The British North America Act*, 1867, and each of them:

A. Section 95: "Agriculture in the Province";

B. Section 92, head 13: "Property and Civil Rights in the Province";

C. Section 92, head 16: "Generally all matters of a merely local or private nature in the Province."

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

SECONDLY, that section 6 of *The Farm Security Act*, 1944, is legislation which is not in relation to the classes of subject within the exclusive legislative jurisdiction of the Parliament of Canada in virtue of *The British North America Act*, 1867, or any of them, and particularly :

A. Section 95 : " Laws of the Parliament of Canada in relation to agriculture " ;

B. Section 91, head 19 : " Interest " ;

C. Section 91, head 21 : " Bankruptcy and Insolvency " ;

THIRDLY, that section 6 of *The Farm Security Act*, 1944, is 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 ;

C. assigned to the Central Mortgage and Housing Corporation.

FOURTHLY, in the alternative, that if section 6 of *The Farm Security Act*, 1944, is not operative in the case of the aforesaid mortgages, it is not thereby rendered *ultra vires.*

PART III

ARGUMENT

FIRST, SECTION 6 OF THE FARM SECURITY ACT, 1944, IS WITHIN PROVINCIAL JURISDICTION WITHIN THE MEANING OF SECTIONS 95 AND 92 (13) AND (16) OF THE BRITISH NORTH AMERICA ACT, 1867.

OBJECT OF THE LEGISLATION

In interpreting section 6 of *The Farm Security Act*, 1944, it is necessary to discover the true nature and character, or the pith and substance of its provisions :

In *Russell* v. *The Queen* (1882), 7 A.C. 829, Sir Montague E. Smith said (at pp. 840–841) :

> " The true nature and character of the legislation in the particular instance under discussion must always be determined, in order to ascertain the class of subject to which it really belongs."

Therefore, it is desirable that the objects and purposes of the legislation be first understood.

The objects of section 6 of *The Farm Security Act*, 1944, are twofold. They are :

First, to stabilize Saskatchewan's primary industry—agriculture—by mitigating against the local and general risks and uncertainties of farming operations ; and

Secondly, to establish a basis for personal farm security in Saskatchewan by limiting a farmer's liabilities and indebtedness in years in which he has suffered crop failure.

I. STABILIZATION OF THE AGRICULTURAL INDUSTRY

The pith and substance of section 6, " the crop failure section " of the Act may be determined upon an examination of its provisions alone. Every

subsection relates directly to farm lands, to farming and to agricultural undertakings, and all are designed to mitigate against the consequences of unavoidable crop failure.

The section has reference to agreements for sale and mortgages of "farm land" only, and the criterion adopted for the application of the principles of the section, is "crop failure." This 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 section provides that every mortgage and agreement of sale of farm lands shall be deemed to contain the following conditions in case of 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.

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, the Provincial Mediation Board, established by the Legislature by *The Provincial Mediation Board Act*, 1943, Sask., cap. 15, 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 to apply by subsection (4). 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 (5), notice of crop failure must be given by a mortgagor or purchaser of farm lands to his creditor before the thirty-first day of December in any year in which he desires to become entitled to the benefits of the Act, such service to be effected either personally or by registered mail.

Subsection (7) specifically excludes from the application of the section, mortgagors and purchasers whose affairs are or have been under authority of the administration of either of *The Farmers' Creditors Arrangement Acts*, 1934 or 1943.

In determining the pith and substance of this legislation, it is necessary first, to consider the economic question of crop failure in Saskatchewan,

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

to determine its significance in the field of provincial government and its effect upon agriculture in the province. Secondly, it is desirable to examine the effect of section 6 upon the problem of crop failure, and to determine the natural and reasonable result of its provisions. Thirdly, from an examination of the effect of the legislation upon the problem of crop failure, it will be possible to determine its " pith and substance," or its " true nature and character."

1. *Crop Failure in Saskatchewan*

Agriculture is the principal industry of Saskatchewan and cereal crops are its principal wealth. The place of agriculture in relation to the other primary industries of forestry, fisheries, trapping and mining is pre-eminent ; during the period 1925 to 1939, the total net production of the province was $2,590,000,000.00 of which $2,474,000,000.00 or 95.5 per cent. was from agriculture. The net value of production from all industries, both primary and secondary (electric power, construction, and manufacturing) during this same period was $3,044,000,000.00 of which 81.27 per cent. was from agriculture.

Anything that adversely affects income from agriculture is reflected in the total income of the people of the province, and has an important over-all effect upon the province. The following table provides a comprehensive picture of the place of agriculture in relation to primary and secondary industries in the province :

TABLE I

Net value of production in Saskatchewan by primary and secondary industries 1925 *to* 1939

(Thousands Dollars)

Year	Agriculture	Forestry	Fisheries	Trapping	Mining	Total Primary Industries	Electric Power	Construction	Custom and Repair	Manufactures	Total Secondary Industries	Total all Industries
1925 ..	334,635	2,390	495	1,797	1,076	340,393	2,849	3,200	3,849	10,143	20,041	360,434
1926 ..	316,886	2,477	444	1,610	1,193	322,610	3,071	9,260	4,296	12,508	29,135	351,745
1927 ..	364,722	2,750	503	1,610	1,455	371,040	3,372	14,390	4,635	13,969	36,366	407,406
1928 ..	364,992	3,086	564	1,821	1,719	372,182	3,756	14,383	5,154	18,350	41,643	413,825
1929 ..	173,110	5,291	573	2,149	2,253	183,376	4,170	22,220	7,266	21,750	55,406	238,782
1930 ..	77,595	5,686	234	1,260	2,369	87,144	4,711	17,785	6,090	18,404	46,990	134,134
1931 ..	44,267	4,787	318	1,033	1,932	52,337	4,455	5,980	4,958	14,961	30,354	82,691
1932 ..	91,668	1,959	186	916	1,682	96,411	4,478	1,758	3,998	11,214	21,448	117,859
1933 ..	77,841	1,972	187	1,089	2,477	83,566	4,237	504	4,144	10,134	19,019	102,585
1934 ..	78,547	2,218	220	1,281	2,340	84,606	3,461	4,328	4,409	10,157	22,355	106,961
1935 ..	107,633	1,996	252	1,081	2,869	113,831	3,616	2,773	3,251	10,530	20,170	134,001
1936 ..	122,370	1,938	367	931	5,721	131,327	3,903	5,093	3,440	11,174	23,610	154,937
1937 ..	38,282	2,199	527	1,031	8,226	50,265	3,904	4,974	4,777	11,916	25,571	75,836
1938 ..	98,165	2,161	469	537	7,030	108,362	4,020	7,208	4,806	12,585	28,619	136,981
1939 ..	183,046	2,269	478	589	6,391	192,773	4,331	7,773	4,688	16,011	32,803	225,576
Total .. (15 years)	2,473,759	43,179	5,817	18,735	48,733	2,590,223	58,334	121,629	69,761	203,806	453,530	3,043,753
% of all Industries	81.27	1.42	.19	.62	1.60	85.10	1.92	4.00	2.29	6.69	14.90	100.00
% of Primary Industries	95.50	1.67	.23	.72	1.88	100.00						

Data from : Report of The Saskatchewan Reconstruction Council, 1944, p. 52.

The importance of Saskatchewan agriculture in the Dominion economy can be cursorily observed by reference to the following table, which indicates the capital investment, acreage and value of agricultural production including field crops by provinces. With a smaller investment than Ontario, Saskatchewan's production of field crops and other agricultural products stands highest among the provinces of Canada.

TABLE II

Agricultural Production–Canada Year Book (1945), *p.* 201

Province	Capital Investment	Acreage		Value of Field Crops		Value of Agricultural Production	
		1943	1944	1943	1944	1943	1944
Saskatchewan	1,047,169,000	22,450,200	23,535,200	343,811,000	444,281,000	490,730,000	624,608,000
Nova Scotia	109,228,000	536,200	555,100	18,622,000	20,313,000	45,308,000	47,912,000
New Brunswick.. ..	114,463,000	984,700	992,700	43,795,000	38,849,000	65,683,000	61,508,000
Quebec	946,689,000	6,750,700	6,802,900	140,317,000	150,753,000	348,340,000	371,275,000
Ontario	1,569,792,000	7,958,100	8,535,700	181,434,000	214,769,000	586,467,000	620,333,000
Manitoba	430,538,000	6,804,100	7,284,300	140,975,000	147,764,000	230,605,000	241,560,000
Alberta	868,068,000	13,214,800	13,991,250	210,802,000	233,622,000	375,820,000	420,111,000
British Columbia ..	146,221,000	534,900	568,400	22,822,000	22,287,000	73,853,000	85,588,000

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

Another indication of the importance of an industry in an area is the proportion of the population employed in such industry. Upon this basis, agriculture exceeds in importance all other industries combined. The following comparisons for 1931 and 1941 are taken from the Dominion census records. Even allowing for the abandonment of farms during the thirties and the manpower shortage in 1941, due to wartime activity, over 60 per cent. of all gainfully occupied persons in Saskatchewan were employed in agriculture in 1931, and slightly over 57 per cent. in 1941.

TABLE III.

Saskatchewan—Gainfully Occupied

	(14 years and over)			(10 years and over)		
	Male	Female	Total	Male	Female	Total
Agriculture ..	192,255	3,172	195,427	200,881	3,591	204,472
Other Occupations ..	104,864	39,608	144,472	100,554	33,885	134,439
Total ..	*297,119	42,780	339,899	301,435	37,476	338,911

*Total Males in Active Service, June 2nd, 1941—23,997, included in above (Saskatchewan Reconstruction Council Report, 1944, p. 53).

The economic well-being of Saskatchewan is closely linked to the prosperity of the farmer; the success of the farmer largely depends upon wheat. From 1920 to 1943 the total estimated gross cash income to farmers of the province was $4,303,000,000.00 of which $3,006,000,000.00 or 68.95 per cent. was from wheat.

The income from the production of wheat is subject to wide fluctuations, and the size of the crop varies with the amount of precipitation. In Table IV is shown the average annual yield per acre. It can be seen that the yield varied in the period 1923 to 1944 between 2.7 bushels per acre in 1937 to 24.7 in 1942.

Precipitation is not the sole variable factor in agricultural production. It has been estimated that the annual loss from pests, such as sawfly, cutworms, wireworms and grasshoppers is $18,058,000.00. The average yearly loss from hail is estimated at $3,000,000.00. Rust and weeds are another source of continual loss of crop production. In 1927 the loss sustained as a result of insects and rust amounted to 24 per cent. of gross income from wheat. In 1928 a loss of 30 per cent. from these causes was sustained.

TABLE IV.

Comparison of Yields and Prices of Wheat in Saskatchewan (1923–1944).

Year	Yield (bu. per acre)	Price (am't per bu.)	Cash Income (thousands of $)	Index of Yield (1929–100)	Index of Price (1929–100)	Index of Cash Income (1929–100)
1944	18.9	1.06	268,780	170.2	102.9	145.8
1943	15.2	1.02	121,513	136.9	99.	65.9
1942	24.7	.69	75,041	222.5	66.9	40.7
1941	12.0	.53	88,661	108.1	51.4	48.1
1940	17.1	.53	101,460	154.0	51.4	55.0
1939	19.1	.54	119,986	172.0	52.4	65.1
1938	10.0	.58	64,256	90.	56.3	34.9
1937	2.7	1.05	34,825	24.3	101.9	18.9
1936	7.5	.92	75,650	67.5	89.3	41.0
1935	10.8	.60	74,640	9.7	58.3	40.5
1934	8.6	.61	61,330	77.4	59.2	33.3
1933	8.7	.47	52,860	78.3	45.6	28.7
1932	13.6	.35	55,100	12.2	33.9	29.9
1931	8.8	.38	44,210	79.2	36.8	24.0
1930	14.4	.42	86,790	129.7	40.7	47.1
1929	11.1	1.03	184,380	100.	100.	100.
1928	23.3	.77	256,380	209.9	74.7	139.1
1927	19.5	.97	216,300	175.6	94.1	117.3
1926	16.2	1.08	.....	145.9	104.8	....
1925	18.5	1.22	.....	166.6	118.4	....
1924	10.2	1.21	.....	91.8	117.5	....
1923	21.2	.65	.....	190.8	63.1	....

Report of the Secretary of Statistics, Department of Agriculture, Regina, 1938, p. 53 ; 1945, p. 151.

In addition to the hazards of production, there has existed a great fluctuation in prices of wheat, and a distressing variation in its yield and quality which vitally affect the economy of farming areas in Canada. Though it might seem logical that when *yields are low, prices are high,* and when yields are high prices are low, thus making for stabilization in the farm economy, such has not been the experience of the Saskatchewan farmer as indicated by a comparison of the index of yield with that of price in Table IV. This is due to the fact that the wheat economy is based neither upon a provincial nor a Dominion economy, but rather upon a world economy.

The variability in the gross value per acre from wheat was considerably greater between 1910 and 1936 than the variation in yield, and therefore fluctuations in the price of wheat between these years were an even greater cause of uncertain, fluctuating income than variation in yield. The income from production per acre of Saskatchewan agricultural products is less subject to the control of farmers individually because of the high and relatively rigid transportation and handling charges which must be deducted from the fluctuating price obtainable on the world market. These charges remain more or less fixed whatever the state of the general economy, and since waterways are not available to Saskatchewan farmers, an inordinately large percentage of their costs must be paid for transportation. The results of varying yields and prices are summarized in the index of gross cash income in Table IV with 1929 as the base year. The index for 1937 was 18.9 and in 1944, 145.8. There are other costs of wheat production which bear little relation to the yield and value of the resulting crop. Taxes and interest charges accrue at a constant rate whether crops and prices be good or bad. The farmer himself is a consumer, and must meet his needs with goods and services which often bear no relationship to the variability of his own income.

The Farm Security Act is an attempt to deal with the problem of widely fluctuating incomes. It shall be shown that the Act cannot turn a farmer's losses into profits, nor will it, necessarily, save him from insolvency. Its effect is to reduce the possibilities for loss in crop failure years to an extent which will enable him to carry on with his operations.

The Act becomes applicable when the return is less than $6.00 per acre. That this is rather a conservative allowance may be seen from the data on cash returns per acre of wheat provided in Table V, and on the various estimates of cash operating expenses made by the University of Saskatchewan shown in Table VI. Another estimate of cash costs is that of Dr. W. A. Mackintosh in "*Economic Problems of the Prairie Provinces,*" at p. 30, who states :

> "For the period 1921–1930 the cash cost of wheat growing in Saskatchewan for average yield at 16.7 bushels was not far from $9.81 per acre."

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

TABLE V

Cash Returns per Acre of Wheat in Crop-reporting Districts of Saskatchewan, 1930–1945

Crop District	1930	1931	1932	1933	1934	1935	1936	1937
No. 1 South Eastern ..	$5.83	$1.25	$3.64	$3.29	$2.01	$1.34	$3.86	$2.52
No. 2 Regina-Weyburn ..	4.56	.11	3.32	5.12	2.01	3.77	6.99	Nil
No. 3 South Central ..	3.24	.60	2.38	1.18	1.28	6.57	2.67	Nil
No. 4 South Western ..	5.73	1.60	4.97	1.32	1.71	3.98	Nil	Nil
No. 5 East Central ..	6.82	3.46	5.50	10.29	10.13	4.18	13.80	6.30
No. 6 Central	4.42	2.62	3.54	1.93	4.09	7.75	7.64	Nil
No. 7 West Central ..	8.65	4.37	5.39	1.22	4.33	5.55	3.22	Nil
No. 8 North Eastern ..	10.62	7.79	7.18	7.10	9.27	8.14	10.95	9.14
No. 9 North Western ..	13.07	8.32	6.72	6.06	10.13	7.94	5.70	4.20
Crop District	1938	1939	1940	1941	1942	1943	1944	1945
No. 1 South Eastern ..	$3.95	$3.78	$7.63	$10.92	$13.73	$22.24	$25.02	$19,40
No. 2 Regina-Weyburn ..	5.25	5.40	6.20	8,64	15,32	16.63	21.41	14.31
No. 3 South Central ..	3.14	8,96	7.79	3.45	16.63	13.16	15.48	4.66
No. 4 South Western ..	5.04	8.86	9.49	5.19	13.66	4.28	2.97	2.44
No. 5 East Central ..	7.54	11.77	7.69	7.53	15.94	23.05	22.05	21.52
No. 6 Central	4.52	10.42	7.16	3.39	16.49	11.63	20.56	10.39
No. 7 West Central ..	6.12	10.37	10.76	4.93	16.49	7.34	10.92	6.89
No. 8 North Eastern ..	7.13	15.07	11.50	8.37	16.84	19.38	25.12	24.27
No. 9 North Western ..	4.13	10.80	8.32	5.19	17.04	16.73	24.59	11.55

Department of Agriculture, Regina.
August 26, 1946

Compared with the returns in a majority of crop districts between 1930 and 1938, the $6.00 allowance may seem high. However, when it is viewed with reference to the crop returns from 1939 to 1945, and compared with the cost figures shown in Table VI, its incidence is seen in its proper perspective.

TABLE VI

Cash Operating Expenses per Acre of Wheat in Three Saskatchewan Districts

	Belbeck	Melfort	Swift Current
Expense	1925–26	1925–26	1927–28
Variable	$ 4.90	$ 4.97	$ 4.62
Constant	6.85	7.06	6.85
Total	11.75	12.03	11.47

(W. A. Mackintosh, "*Economic Problems of the Prairie Provinces*," p. 29; University of Saskatchewan College of Agriculture Bulletins, Nos. 37, 43 and 52.)

> "For the period 1921–1930 the cash cost of wheat growing in Saskatchewan for average yield of 16.7 bushels was not far from $9.81 per acre."
>
> (*Ibid.*, p. 30).

In addition, the low returns during the bad years led to deterioration of farm equipment which affected production adversely. According to Dr. W. Allen, of the University of Saskatchewan, writing in 1937 *Scientific Agriculture*, Ottawa, p. 465, published by the Canadian Society of Technical Agriculturists (at p. 480):

"Farmers of Western Canada have scarcely been able to undertake anything constructive in their adjustments during recent years. For the most part, they have been waging a war with the forces of nature to try to carry on, and to salvage something of their farms. In extreme cases the only course available has been the abandonment of the farms and removal to another settlement. Since 1929, on the basis of studies made by the University of Saskatchewan, it is estimated that the farm equipment of this province has suffered a cumulative deterioration of at least 50 per cent. Buildings, fences, and in many cases even the lands used for cultivation have also deteriorated heavily. Reserves of feeds and supplies have been exhausted, and much is needed to make up for the drains of the years of poor crops. In the farm homes, household equipment, furnishings, and clothing, and even the people of the farm, bear pathetic testimony to the depleted revenues."

The significance of the debt problem in western agriculture is indicated by the statements of a number of agrarian authorities. Dr. W. Allen and Prof. Allen Hope of the Farm Management Department of the University of Saskatchewan in "*The Farm Outlook for Saskatchewan*, 1933," state (at p. 1):

"To pay the interest on the present farm debt of the province would have required about two-thirds of all the wheat available for sale from the 1932 crop."

The variability of farm income is indicated by a statement of the same writers in "*The Farm Outlook for Saskatchewan*, 1933" (at p. 3):

"At many prairie points coal has rather greater value per pound than wheat, and it now takes over two acres of the 1932 wheat crop to buy a ton of coal, whereas half an acre of wheat would usually have done so before the War. To pay current taxes on a quarter-section of prairie farm land about 175 bushels of wheat are now needed—some 5 or 6 times as much as for the years 1910 to 1914. . . .

"The 1929 wheat crop had about two-thirds of the value of that of 1928; the 1930 crop, two-fifths; the small crop of 1931, one-fifth; and the 1932 crop, one-quarter . . .

"To pay the interest on the present farm debt of the province would have required about two-thirds of all the wheat available for sale from the 1932 crop. Our 1932 surveys of five municipalities included 408 farm owners who operated 181 thousand acres of cropland, and had debt amounting to some 3 million dollars. A small amount of the land they operated was rented. The average size of these 408 farms was 445 acres of cropland—(this term 'cropland' includes summerfallow in all cases). Eighteen owners claimed to be free from debt. The average debt of the remaining 390 owners was $7,588 per farm, or $16.88 per acre of cropland. On one-third of these farms the debt exceeded $20 per acre of cropland."

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

The report for 1935 from the Farm Management Department stated (at p. 2) that in view of low yields,

> " To pay interest on the present farm debt of Saskatchewan would have required about two-thirds of the wheat available for sale from 1934 crop."

In 1936, Dr. Allen and Hadley Van Vliet of the University of Saskatchewan reported (in " *The Farm Outlook for Saskatchewan*, 1936," (at p. 2) :

> " Despite the improvement reported, it would require more than one-half of all the wheat available for sale from the 1935 crop of the province to pay the interest on the present farm debt, and to meet the current tax levies, at least one-sixth of this revenue would be demanded."

Summarizing the situation, Prof. G. E. Britnell in " *The Wheat Economy*," 1939, stated (at p. 80) :

> " To have paid interest alone on the farm debt of the province would have taken nearly two-thirds of the wheat available for sale in every year since 1930 and taxes would have absorbed most of the remainder."

A measure of the farmer's ability to make payments upon capital loaned is what is known as " farm surplus." Farm surplus is a surplus obtained by the farmer and his family after meeting all farm operating and farm living expenses and maintaining the farm capital. This surplus at the end of the year is available for savings or for reduction of indebtedness. If there is a negative farm surplus, it indicates that the farmer increased his indebtedness during the year, or failed to maintain his farm capital.

In the years 1929, 1930 and 1931, it may be noted that practically every farm suffering crop failure, having yields under 16 bushels per acre, showed negative farm surpluses :

TABLE VII

1929–31 *Period*

Cultivated acres	Net cash income	Net farm income	Cash family living	Farm surplus
		0—4 bushels of wheat per acre		
0—249	$ 200	$ 0	$ 558	— $ 558
250—399	125	— 380	705	— 1,085
400—549	45	— 635	855	— 1,490
550—699	— 60	— 900	1,030	— 1,930
700—849	— 185	—1,175	1,210	— 2,385

Cultivated acres	Net cash income	Net farm income	Cash family living	Farm surplus
	5—8 bushels of wheat per acre			
0—249	$ 310	$ 140	$ 615	— $ 475
250—399	485	20	800	— 780
400—549	610	— 60	980	— 1,040
550—699	740	— 140	1,160	— 1,300
700—849	875	— 200	1,345	— 1,545
	9—12 bushels of wheat per acre			
0—249	$ 425	$ 270	$ 612	— $ 342
250—399	820	380	885	— 505
400—549	1,120	460	1,080	— 620
550—699	1,420	540	1,255	— 715
700—849	1,730	650	1,375	— 725
	13—16 bushels of wheat per acre			
0—249	$ 550	$ 390	$ 650	— $ 260
250—399	1,200	720	947	— 227
400—549	1,660	980	1,155	— 175
550—699	2,120	1,220	1,330	— 110
700—849	2,600	1,500	1,410	90
	17—20 bushels of wheat per acre			
0—249	$ 720	$ 520	$ 640	— $ 120
250—399	1,590	1,080	1,030	50
400—549	2,240	1,500	1,285	215
550—699	2,900	1,910	1,490	420
700—849	3,540	2,375	1,495	880
	21—24 bushels of wheat per acre			
0—249	$ 820	$ 640	$ 670	— $ 30
250—399	1,940	1,440	1,115	325
400—549	2,800	2,020	1,380	640
550—699	3,630	2,600	1,560	1,040
700—849	4,460	3,250	1,520	1,730

"*Changes in Farm Income and Indebtedness in Saskatchewan,*" University of Saskatchewan, 1941, Table 5, p. 15.

Relation of Size of Farm and Yield Per Acre of Wheat to Net Cash Income, Net Farm Income, Cash Family Living Expenses and Farm Surplus. Saskatchewan Farm Management Surveys.

Since the average yields in the years 1929, 1930 and 1931 were 11.1, 14.4 and 8.8 bushels respectively, a majority of the farms suffered crop failure. In the period 1932, 1933 and 1934, negative farm surpluses resulted on all farms with yields less than 20 bushels per acre:

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

TABLE VIII

1932–34 *Period*

Cultivated acres	Net cash income	Net farm income	Cash family living	Farm surplus
	0—4 bushels of wheat per acre			
0—249	$ 28	—$ 102	$ 270	—$ 372
250—399	— 150	— 552	360	— 912
400—549	— 280	— 862	450	— 1,312
550—699	— 430	— 1,220	552	— 1,772
700—849	— 530	— 1,705	690	— 2,395
	5—8 bushels of wheat per acre			
0—249	$ 138	—$ 42	$ 283	—$ 325
250—399	138	— 255	415	— 670
400—549	138	— 405	522	— 927
550—699	123	— 577	660	— 1,237
700—849	149	— 825	837	— 1,662
	9—12 bushels of wheat per acre			
0—249	$ 216	$ 35	$ 307	—$ 272
250—399	365	— 27	457	— 484
400—549	480	— 77	577	— 654
550—699	568	— 130	722	— 852
700—849	725	— 207	905	— 1,112
	13—16 bushels of wheat per acre			
0—249	$ 245	$ 80	$ 315	—$ 235
250—399	615	180	497	— 317
400—549	860	260	642	— 382
550—699	1,082	355	817	— 462
700—849	1,370	470	1,025	— 555
	17—20 bushels of wheat per acre			
0—249	$ 408	$ 200	$ 330	—$ 130
250—399	858	410	565	— 155
400—549	1,202	590	715	— 125
550—699	1,532	785	917	— 132
700—849	1,928	1,020	1,170	— 150
	21—24 bushels of wheat per acre			
0—249	$ 470	$ 280	$ 347	—$ 67
250—399	1,090	680	597	83
400—549	1,570	940	767	173
550—699	2,020	1,330	980	350
700—849	2,570	1,780	1,240	540

Relation of Size of Farm and Yield Per Acre of Wheat to Net Cash Income, Net Farm Income, Cash Family Living Expenses and Farm Surplus. Saskatchewan Farm Management Surveys.

The average yields in these years were 13.6, 8.7 and 8.6 bushels respectively. By the period 1938, 1939 and 1940 the situation had improved, negative farm surpluses being characteristic of yields of less than 12 bushels, with average yields of 10.0, 19.1 and 17.1 bushels per acre, respectively :

TABLE IX

Relation of Size of Farm and Yield Per Acre of Wheat to Net Cash Income, Net Farm Income, Cash Family Living Expenses and Farm Surplus. Saskatchewan Farm Management Surveys.

1938–40 *Period*

Cultivated acres	Net cash income	Net farm income	Cash family living	Farm surplus
		0—4 bushels of wheat per acre		
0—249	$ 137	—$ 65	$ 406	—$ 471
250—399	180	— 335	460	— 795
400—549	268	— 455	512	— 967
550—699	354	— 610	539	— 1,149
700—849	417	— 682	552	— 1,234
		5—8 bushels of wheat per acre		
0—249	$ 209	$ 77	$ 396	—$ 319
250—399	389	20	495	— 475
400—549	565	45	578	— 533
550—699	822	60	650	— 590
700—849	1,073	215	700	— 485
		9—12 bushels of wheat per acre		
0—249	$ 294	$ 160	$ 405	—$ 245
250—399	598	320	538	— 218
400—549	858	515	641	— 126
550—699	1,216	675	748	— 73
700—849	1,618	1,165	852	313
		13—16 bushels of wheat per acre		
0—249	$ 394	$ 280	$ 392	—$ 112
250—399	839	600	574	26
400—549	1,194	945	710	235
550—699	1,690	1,370	856	514
700—849	2,315	2,095	1,006	1,089

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

Cultivated acres	Net cash income	Net farm income	Cash family living	Farm surplus
	17—20 bushels of wheat per acre			
0—249	$ 453	$ 430	$ 371	$ 59
250—399	1,020	930	608	328
400—549	1,452	1,390	781	609
550—699	2,095	1,980	975	1,005
700—849	2,854	3,020	1,175	1,845
	21—24 bushels of wheat per acre			
0—249	$ 581	$ 580	$ 370	$ 210
250—399	1,315	1,210	669	541
400—549	1,857	1,890	878	1,012
550—699	2,638	2,775	1,116	1,657
700—849	3,574	4,125	1,374	2,751

In the 1932–34 period, although the annual decreases of Saskatchewan farmers in net-worth gradually became smaller as wheat yields increased, the only group of farms to show an actual increase, were the farms of 700 to 849 acres with yields of 21 to 24 bushels per acre. This means that during this period, the net earnings of practically all sizes of farm with yields of wheat up to 24 bushels per acre were not sufficient to meet the fixed capital charges on the average farm debt. *Vide* "*Changes in Farm Income in Saskatchewan*," *supra* (p. 26):

TABLE X

Average Changes in Net Worth Per Farm Per Year for the Periods 1929–31, 1932–34, and 1938–40. Saskatchewan Farm Management Surveys.

Cultivated acres	Changes in Net Worth 1929–31	1932–34	1938–40
	0—4 bushels of wheat per acre		
0—249	—$ 640	—$ 600	—$ 330
250—399	— 1,180	— 1,110	— 675
400—549	— 1,610	— 1,715	— 895
550—699	— 2,030	— 2,310	— 1,095
700—849	— 2,505	— 3,270	— 1,275
	5—8 bushels of wheat per acre		
0—249	—$ 500	—$ 300	—$ 190
250—399	— 910	— 735	— 455
400—549	— 1,225	— 1,150	— 565
550—699	— 1,540	— 1,585	— 630
700—849	— 1,850	— 2,385	— 660

Cultivated acres	Changes in Net Worth 1929–31	1932–34	1938–40
9—12 bushels of wheat per acre			
0—249	—$ 350	—$ 215	—$ 110
250—399	— 675	— 585	— 255
400—549	— 890	— 890	— 260
550—699	— 1,060	— 1,195	— 200
700—849	— 1,140	— 1,580	— 85
13—16 bushels of wheat per acre			
0—249	—$ 240	—$ 245	—$ 20
250—399	— 425	— 475	— 55
400—549	— 525	— 640	100
550—699	— 585	— 785	315
700—849	— 480	— 850	635
17—20 bushels of wheat per acre			
0—249	—$ 90	—$ 240	$ 90
250—399	— 170	— 370	260
400—549	— 170	— 430	540
550—699	— 120	— 415	885
700—849	190	— 150	1,530
21—24 bushels of wheat per acre			
0—249	$ 35	—$ 315	$ 175
250—399	35	— 335	705
400—549	125	— 270	1,275
550—699	290	— 90	1,925
700—849	775	650	2,840

TABLE XI

Changes in Assets, Liabilities and Net Worth Per Farm by Soil Categories. Saskatchewan Farm Management Surveys.

Period	Average size of farm—cultivated acres	End of year: Assets	Liabilities	Net Worth	Debt per cultivated acre	Percentage debts of assets
Heavy Soils						
1929–31	430	$18,066	$4,715	$13,351	$ 11	26
1932–34	561	31,428	11,843	19,585	21	38
1938–40	487	17,872	5,731	12,141	12	32
Medium Soils						
1929–31	384	$16,105	$3,689	$12,416	$10	22
1932–34	328	13,335	5,460	7,875	17	41
1938–40	253	8,361	2,955	5,406	12	35
Inferior Soils						
1929–31	451	$10,942	$1,683	$9,259	$ 4	15
1932–34	308	9,679	4,250	5,429	14	44
1938–40	437	8,913	4,407	4,506	10	49

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

It is further to be noted that over a long period of time, the average farmer on the average sized farm and with a farm of average productivity cannot earn a return on his total capital investment equal to the obligations imposed by the usual mortgage or agreement for sale. The average rate of return in Western Canada possibly about 3 per cent., which is a little less than one-half the rate of interest charged on the real estate transactions prior to 1929. (*Ibid.*, p. 29.)

The hazards inherent in land productivity, price and marketing are matters pertinent to the agricultural industry in Saskatchewan. They are aspects of agriculture with which it is necessary to deal, not only because agriculture is a responsibility of the provincial government, but because it features so prominently in the economy of the province and of the Dominion.

Of the 47,509 cases dealt with under *The Farmers' Creditors Arrangement Act*, 1934, in which Official Receivers effected voluntary settlements or Boards of Review formulated and confirmed proposals, 12,685 or 26.7 per cent. were in Saskatchewan. Under the Act of 1943, from its inception to March 31st, 1946, there were 2,062 cases disposed of, 1,637, or 79 per cent. of which arose in Saskatchewan. The necessity for legislation is clearly apparent.

The object of section 6 of the Act is to reduce the risks and improve the economic basis of the industry by deferring the payment of moneys to meet capital expenditures due in crop failure years in which a farmer has produced less than the average yield per acre, for the province. In addition to deferring such capital expenditures for a period of one year, the section cancels a portion of the farmer's capital obligation. The extent of this cancellation is determined largely by the loss of productivity due to natural causes which adversely affect agriculture. The result is a stabilization of the industry through a reduction of the fixed costs of producers, enabling them to continue their operations.

It is to be noted that this policy is not designed to preserve sub-marginal farming lands in production. Since its creation in 1938, the Land Utilization Board of Saskatchewan has acquired title to 837,400 acres of sub-marginal land, and has leased 69,200 acres of such lands which have been converted to common pasture. Under the Dominion *Prairie Farm Rehabilitation Act*, 1935, a like policy has been adopted whereby 1,218,040 acres of sub-marginal land in the province has been acquired for conversion into pasturage or for rehabilitative purposes. The movement of farmers from non-productive lands has been marked and during the debt-ridden "thirties," the Land Utilization Board rendered assistance to approximately 6,000 farmers who abandoned lands in the south and moved to areas in northern Saskatchewan.

As Fitzpatrick, C.J., said in referring to *The Saskatchewan Act* in *Regina Public School District Trustees* v. *Gratton Separate School District Trustees*, [1915] 50 S.C.R. 589, at pp. 595–596 :

> "In construing this constitutional enactment we are not only entitled, but bound, to consider the history of the subject-matter dealt with, and by the light derived from such source, to put ourselves as far as possible in the position of the legislature whose language we have to expound: *In re Branch Lines, Canadian*

Pacific Railway, [1905] 36 S.C.R. 42, at pp. 89–90 ; *In re Representation in the House of Commons*, [1902] 33 S.C.R. 475, at p. 567 ; *Halsbury*, vol. 27, p. 141, para. 260."

A keen awareness of these economic problems of farmers in Saskatchewan has existed for some time. *The Royal Commission to Inquire Into and make Recommendations Concerning the Advisability of Providing Standard Forms of Mortgage, Crop Payment Leases, Agreements for Sale, Chattel Mortgages, Lien Notes and Conditional Sales Agreements for use in the Province appointed by the Province of Saskatchewan* reported in 1938 as follows (at p. 6) :

> " Complaint was made in some of the letters as to the share of crop which is taken by vendors and lessors under crop agreements. The subject was also dealt with by Mr. W. M. Heenan, a farmer of Grand Coulee, who appeared personally. Mr. Heenan stated that if the crop yield is less than twenty bushels to the acre the farmer could not pay the vendor or lessor one-third and successfully carry on his farming operations ; that if the crop is less than ten bushels to the acre the farmer can pay very little to the vendor and that if it is less than seven bushels he can pay nothing. He advocated legislation providing for the vendor's share to be graded having regard to the yield of the land per acre."

II. PERSONAL FARM SECURITY IN THE PROVINCE

The second object of section 6 of *The Farm Security Act*, 1944, is to secure to farmers in the province, the right to own and cultivate land which they have purchased, by limiting the right of creditors to seize their lands and dispossess them. The granting of such rights to farm-debtors is not unknown or new to the law. In the past, the law bristled with swords to compel a man to pay his debts, and these included imprisonment, attachment, seizure, replevin, foreclosure, garnishment and sale. The shields to protect a man of small means in the interests of the community at large are becoming of increasing importance ; there are exemptions, assignments, compositions and *moratoria*, and their effectiveness has increased as the public consciousness has grown more sensitive to their necessity.

The history of debt-enforcement is of interest : *Vide The Encyclopædia of the Social Sciences*, vol. 5, pp. 32 *et seq.*, tit. " *Debt* " ;

Encyclopædia " *Americana*," vol. 8, pp. 546 *et seq.*

Thus, it is recorded (*Encyclopædia of Social Sciences, op. cit.*, at p. 37) that

> " In ancient society all the risks of the credit relation were borne by the debtor. His need was urgent ; he could rarely stipulate for favourable terms ; he regularly pledged his freedom or his livelihood ; and a single untoward accident was certain to result in default and forfeiture. If government aid was desirable, it was the debtor who could claim it. Measures of various sorts were devised for his relief—the abolition or limitation of interest, the Biblical sabbatical year, compulsory remission of debts or accrued interest. A system of exemptions withdrew from seizure

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

for debts certain goods which the debtor required for the sustenance of himself and his family—his plow, his cow, his harness. In Roman law an exemption, which came to be called the *beneficium competentiæ* and whose extent was left to the magistrate's discretion, appeared fairly early. These systems of exemption greatly multiplied in the United States. Nearly every state has a list of such exemptions, some of which indicate clearly enough the date at which they were introduced and imply an obsolete social background. The most extensive is the homestead exemption, which protects the property actually used as a home, although its value may be relatively high.

" In the eighteenth century the spectacle of small tradesmen ruined by improvident extension of credit must have been frequent enough to suggest that not all the burden rested on the debtor. But it was reserved to the nineteenth century to increase many fold the insecurity of the creditor by removing imprisonment and other penalties for debt and by facilitating discharge in bankruptcy."

The Encyclopædia "Americana" summarizes the question thus (vol. 8, pp. 546 *et seq.*):

" Among the Jews, under the Mosaic law debt was treated with great stringency, but there were regulations adapted to discourage the incurring of it, and also some humane restrictions on the power of the creditor after it had been incurred. Lending on usury was forbidden, and the taking of pledges put under severe restriction. The alienation of the estate of an Israelite was also forbidden. The creditor, on the other hand, had power over the person of his debtor, and even over those of his wife and family, and could cause them to be sold in satisfaction of his claim. If the debtor was an alien he might be sold to perpetual bondage, but on the occasion of a jubilee, which was appointed to be proclaimed every 50th year, every Israelite debtor was set free and his property, if pledged or sold, returned to him.

" Nothing is more common in rude states of society, and under arbitrary and despotic governments, than the liability of the person of the debtor for his debt. This is one of the original sources of slavery. Even in the comparatively enlightened states of Greece and Rome the power of the creditor over the person of his debtor was recognised by law. This power was abolished in Athens by Solon, who is said to have taken his reform from Egypt, where the same unjust law had already run its course. The early Roman law was even more excessive in its undiscriminating severity. By the law of the Twelve Tables the creditors might cut the body of the debtor in pieces and share it among them, they might also sell him and his wife and family to perpetual slavery. In the Middle Ages, notwithstanding the influence of Christianity, the debtor was treated with hardly less severity. Even the Church took the side of the creditor, and the debtor who died without discharge was excommunicated and deprived of Christian burial. As society became more refined the laws against debtors were again gradually

ameliorated, but the process was a slow one. Imprisonment for debt in England, except as an instrument for compelling the surrender of the debtors' effects, was only put an end to in the reign of Victoria."

The problem of private debt has traditionally lain at the root of agrarian movements of protest against oppressive economic and social conditions. The agrarian debt accumulated during the advanced periods in the history of Greece, Rome and the United States of America indicates that legislation is necessary to mitigate against the hardships of agricultural indebtedness, and further, that failure to find a solution to the problem of agricultural indebtedness results in a disintegration not only of the agricultural industry of the community, but in a decay of the community itself, and of the country or nation of which it is a part.

Vide The Encyclopædia of Social Sciences, vol. 1, pp. 489 *et seq.*, tit. "*Agrarian Movements.*"

Thus, the general tendency is stated (*Ibid.*, at pp. 490 *et seq.*):

> "Especially in pre-capitalistic societies the loan contract has run in terms disadvantageous to the cultivator of the soil. He has been prone to borrow at usurious rates, being untrained to calculate properly the actual burden of the interest or his ability to repay.
>
> Whole communities have thus come to be saddled with debt, and have developed a common hatred of the money lender and the town society which he represents. This hatred becomes all the more violent when racial, national or sectional differences add weight to the social-cultural differences of country and town. Agrarian rage against usury provided a sinister background upon which religious and political fanaticism inscribed the vengeance of Kurdish shepherd and Turkish peasant against the Armenians. Antagonism to the alien British money lender was abundantly in evidence in the inchoate agrarianism of the American South in the early decades of independence. 'Eastern Capital' was a bugaboo of mid-western agrarianism of the greenback and Farmers Alliance period."

In treating with American agrarian movements, *The Encyclopædia of the Social Sciences* (*Ibid.*, at pp. 508 *et seq.*), refers to the period of the Revolution:

> "In contrast to the South, where agriculture was carried on 'as a business,' in the North the farmer usually farmed 'for a living.' He was frequently a debtor to the city merchant or shopkeeper. During and immediately after the revolution his debts tended to increase, this condition becoming particularly intense in Massachusetts and Rhode Island. In both these states the farmers attempted to obtain control of the state governments, pass stay laws against the execution of mortgage foreclosures and provide for the emission of large quantities of paper money with which they might liquidate their indebtedness. They obtained control of the government in Rhode Island, issued paper money in abundance and almost literally thrust it down the throats of their

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protesting creditors. In Massachusetts, however, the efforts of the farmers met with no such success. In the western part of the state many of them united under the leadership of Daniel Shays, marched boldly into the courts and prevented the transaction of legal business. But troops were called out and Shays' mob was dispersed."

Historically, it is of no less importance to protect the human and economic needs of persons, than to enforce minutely the terms of personal covenants. Economically, there exists as great a need to preserve the basic industry which supports a large portion of a nation's population as to compel the performance of agreements. Socially, it is of greater concern to the community to maintain the continued existence and stability of a whole occupational class, than to insist upon the sanctity of contracts which can be carried out only at the cost of that existence.

Section 6 of *The Farm Security Act*, 1944, is designed to postpone the date upon which farmers must discharge the indebtedness secured upon their lands, and in crop failure years, to reduce that indebtedness sufficiently to enable them to continue to operate as farmers. No sweeping reductions are effected in the indebtedness of farmers by this section, and those contemplated constitute the minimum relief which farmers require for their continued operations.

It is to be noted further, that the benefits contemplated by this section are not confined to any group or class of farmers, and that the criterion of inability to meet obligations as they fall due is completely absent. The benefits of the Act extend equally to all farmers who are mortgagors or purchasers of farm lands under an agreement of sale, regardless of their ability to pay.

The effect of the section is to vary the terms of mortgages and agreements of sale of farm lands, by infusing the principle of shared risks, and by placing a portion of the risks of agriculture upon the mortgagee and vendor of farm lands, but preserving, however, such persons' former right to stipulate for and exact interest.

In the result, the object of section 6 is to supplement other legislative efforts of both the Dominion and the province, to stabilize agriculture in Saskatchewan. The statistical material which appears above proves beyond question that the wheat economy of Saskatchewan is particularly hazardous, faced as it is with the risks of drought, hail, insect pests and variable markets and prices. The fact that the economy of the province is a one-crop economy increases the hazard to its economic life and makes legislative direction and control inevitable.

Legislative action has been taken with the object of reducing the hazards due to weed and insect infestation. Loss through hail may be mitigated against by insurance. The Dominion Parliament has recognized the problem of markets and prices and has taken steps to stabilize both. The Land Utilization Board of the province is withdrawing sub-marginal land from cultivation and converting it to pasturage. The Dominion government, through *The Prairie Farm Rehabilitation Act*, 1935, is reducing the drought hazard through irrigation projects and water conservation. Section 6 of *The Farm Security Act*, 1944, supplements these activities which, while excellent in themselves, do not stabilize agriculture sufficiently.

It should be noted that the risks in the province are not uniform from area to area or from year to year, and the risk of successive crop failures is a very serious menace to a stabilized agricultural industry. The object of the section is to encourage continued production, and to prevent the abandonment of good lands during the periods of stress. This is accomplished by shifting a part of the risk to lending institutions which may, under economic laws, in turn, shift some portion to other borrowers in the province. The result will be to stabilize agricultural production, and hence to improve the economic life of Saskatchewan.

A. SECTION 95 OF THE B.N.A. ACT—" AGRICULTURE IN THE PROVINCE "

Section 6 of *The Farm Security Act*, 1944, is designed to mitigate against the hazards of farming in Saskatchewan. Its effect is to reduce the risks of the grain producer, and to assure him the continued use and enjoyment of his capital investment. Viewed according to its pith and substance, it is legislation which relates to agriculture in the province. It is legislation of the same general nature as the numerous statutes directed to the end of noxious weed control, water conservation, irrigation, soil drifting control, and a large number of other matters which provincial legislatures have traditionally enacted and administered with the object of reducing the risks and hazards of farming.

Among such statutes of similar import are :

(a) *The Agricultural Aids Act*, R.S.S. 1940, cap. 181, which enables the Lieutenant-Governor in Council to authorize the raising of money by loan for the purpose of carrying out the provisions of *The Live Stock Purchase and Sale Act*, R.S.S. 1940, cap. 186, and to assist in furthering agricultural enterprises.

(b) *The Brand and Brand Inspection Act*, 1943 Sask., cap. 45, which provides for the allotment of brands, brand inspection and the shipping of stock by farmers.

(c) *The Horse Breeders Act*, R.S.S. 1940, cap. 183, which creates a Stallion Board, establishes an examination service and organizes districts for the improvement of horse breeding.

(d) *The Stray Animals Act*, R.S.S. 1940, cap. 185, which provides for the impoundment and the return of stray animals.

(e) *The Live Stock Purchase and Sale Act*, R.S.S. 1940, cap. 186, enacted for the purpose of " aiding the development of the livestock industry in the province," and allotting money for the purchase of suitable animals to be sold to persons and organizations.

(f) *The Live Stock and Live Stock Products Act*, R.S.S. 1940, cap. 187, which provides for the regulation of all matters pertaining to the production and sale of live stock.

(g) *The Pure Bred Sire Areas Act*, R.S.S. 1940, cap. 188, which establishes a Live Stock Sire Licensing Board to improve the breed of livestock in the province.

(h) *The Agricultural Representatives Act*, 1945 Sask., cap. 76, which establishes Agricultural Representative Districts in which boards are elected to provide for the services of skilled agricultural advice and assistance.

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

(i) *The Agricultural Research Foundation Act*, R.S.S. 1940, cap. 190, which establishes a corporation for the purpose of expending money for purposes of agricultural research.

(j) *The Horticultural Societies Act*, R.S.S. 1940, cap. 191, which provides for the organization of societies to improve the standards of agriculture in the province.

(k) *The Land Utilization Act*, R.S.S. 1940, cap. 192, which establishes The Land Utilization Board endowed with a wide range of powers to deal with land in the province for the purpose of improving and enlarging grazing lands, pasture, and of otherwise regulating farming practices in areas designated under the Act.

(l) *The Seed Grain Advances Act*, R.S.S. 1940, cap. 194, which provides that a mortgagee may make an advance to the owner of mortgaged lands to enable him to purchase seed grain, which sum becomes part of the mortgage debt without registration and also gives the mortgagee a lien on the crops grown on the mortgaged land.

(m) *The Crop Payments Act*, R.S.S. 1940, cap. 195, which regulates the relations between landlord and tenant and vendor and purchaser of farm lands where the basis of payment is a share of the crop grown, securing the creditor's interest in such share.

(n) *The Saskatchewan Farm Loans Act*, R.S.S. 1940, cap. 196 ; *The Farm Loan Enabling Act*, R.S.S. 1940, cap. 197 ; and *The Canadian Farm Loan Priority Act*, R.S.S. 1940, cap. 198, which establish the Saskatchewan Farm Loan Board, enable it to advance money to farmers for the purposes of their undertaking, and to determine the priority in which such loans rank upon recovery.

(o) *The Farm Implement Act*, R.S.S. 1940, cap. 199, which regulates the sale of farm implements.

(p) *The Dairy Products Act*, R.S.S. 1940, cap. 200, which regulates the production of dairy products.

(q) *The Milk Control Act*, R.S.S. 1940, cap. 201, which establishes the Milk Control Board for the purpose of regulating the production and marketing of milk.

(r) *The Noxious Weeds Act*, R.S.S. 1940, cap. 202, which imposes certain duties upon farmers with respect to weeds, appoints a Field Crop Commissioner to provide farmers with information with respect to weeds and to take steps necessary to control them, and empowers inspectors to order occupiers of lands to control weeds.

(s) *The Soil Drifting Control Act*, R.S.S. 1940, cap. 203, which empowers rural municipal councils to pass by-laws for the control of tillage practices which are liable to cause rapid soil deterioration by wind erosion.

(t) *The Forage Crop Seed Protection Act*, R.S.S. 1940, cap. 204, which empowers the Lieutenant-Governor in Council to make orders designating areas in which specified varieties and kinds of seed and forage crops may be sown, and in which seed of other varieties and kinds shall not be sown.

(u) *The Grain Charges Limitation Act*, R.S.S. 1940, cap. 205, which limits the charges which may be placed upon grain when it has been delivered to a licensed elevator.

(v) *The Horned Cattle Purchases Act*, R.S.S. 1940, cap. 206, which regulates the sale and disposition of cattle with horns.

(w) *The Apiaries Act*, R.S.S. 1940, cap. 207, which regulates the use and sale of bees.

(x) *The Municipalities Seed Grain and Supply Act*, R.S.S. 1940, cap. 143, which empowers a municipality to raise and advance money to farmers who have suffered crop failure for seed grain and other necessary supplies.

(y) *The Municipalities Relief and Agricultural Aid Act*, R.S.S. 1940, cap. 159, which provides for assistance in a " relief year," by way of feed, fodder, the movement of stock, etc.

(z) *The Local Improvement Districts Relief Act*, R.S.S. 1940, cap. 160, which provides advances of food, fuel, clothing, feed and fodder to farmers and residents in local improvement districts which may be necessary as a result of crop failure or other adverse conditions.

(aa) *The Law Amendment (Temporary Provisions) Act*, 1943 Sask., cap. 67, which extended the power of a tenant whose lease expired, to recover his 1942 crop and extended the liens held by persons in respect to such crop.

These statutes have, as their purpose, and achieve in their effect, the object of reducing the hazards of agriculture and of preserving and extending Saskatchewan's principal industry. Several are directed to the protection of the capital assets of farmers including their lands, livestock, machinery and other material resources. This exercise of legislative power, has, from time to time, been held to be valid and, in a majority of cases, has never been doubted. The exercise of legislative power to protect the human resources of the agricultural industry is equally valid, for equally upon such resources, depend the existence and prosperity of the agricultural industry.

Section 95 of *The British North America Act*, 1867, which gives concurrent legislative jurisdiction over " agriculture " provides as follows :

> 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."

It has always been broadly construed in determining the validity of provincial legislation. In application, it extends to the subject-matter of section 6 of *The Farm Security Act*, 1944, provided that the field which it covers has not been occupied by Dominion legislation.

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

Attorney-General for Canada v. *Attorney-General for British Columbia* (*The Fisheries Case*), [1930] A.C. 111, per Lord Tomlin, (at p. 118):

"There can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be *ultra vires* if the field is clear, but if the field is not clear and the two legislations meet the Dominion must prevail: see *Grand Trunk Railway of Canada* v. *Attorney-General for Canada*, [1906] A.C. 65."

Clement's Canadian Constitution, 3rd ed., 1916, at p. 776:

"'Agriculture' has been given a very wide interpretation, covering all matters connected with the farm, such as the care and improvement of stock, horse-breeding, dairying, and kindred matters."

The judicial decisions support this broad interpretation.

In *Rex* v. *Horning* (1904), 8 O.L.R. 215, the Ontario Divisional Court held that the Ontario *Act to Prevent the Fraudulent Entry of Horses at Exhibitions*, R.S.O. 1897, cap. 254, which forbade, under penalties, entering for competition for any prize offered by an agricultural or other society, any horse under a false or assumed name or pedigree, or in a class different to that to which such horse properly belonged by the rules of the society, was *intra vires*, as one in relation to agriculture. Boyd, C., delivering the judgment of the Court stated (at p. 219):

"(The Act's) place and collocation is as to legislation touching matters of an agricultural character in which the raising and encouraging the breeding of good horses is an important element."

In *Brooks* v. *Moore* (1906), 4 W.L.R. 110 (B.C.), Morrison, J., in determining *The Animals Contagious Diseases Act*, 1903, to be *intra vires* the Dominion Parliament in virtue of section 95 of *The British North America Act*, 1867, stated (at p. 113):

"Nowhere or at any time am I aware that 'agriculture' has been held or known to refer only to those things that grow and derive their substance from the soil."

In re Companies Winding-up Act; In re Saskatchewan Co-operative Elevator Company, Ltd., [1927] 3 W.W.R. 269, was a case in Saskatchewan King's Bench Chambers in which Bigelow, J., defined the terms "agriculture" and "Agriculturalist" (at p. 271):

"In *Murray's New English Dictionary* I find agriculturist defined as: (at first) A student of the science of agriculture, (but soon extended to) A professed cultivator of the land, a farmer. An agriculturist is one engaged in agriculture. Agriculture is defined in the same dictionary as: The science and art of cultivating the soil; including the allied pursuits of gathering in the crop and rearing live stock, tillage, husbandry, farming (in the widest sense).

Corpus Juris, vol. 2, p. 988, defines the term "agriculture":

"The art or science of cultivating the ground, especially in fields or large quantities, including the preparation of the soil, the

planting of seeds, the raising and harvesting of crops, and the rearing, feeding, and management of live stock; tillage, husbandry and farming."

The Shorter Oxford English Dictionary, 2nd ed., vol. I, defines '*Agriculture*' as follows:

> "The Science and art of cultivating the soil; including the gathering in of the crops and the rearing of live stock; farming (in the widest sense)."

Roland Burrows, "*Words and Phrases Judicially Defined*", vol. I, p. 140, refers to the following statement of Roche, J., in *Re Prior* (1927), 43 T.L.R. 784, at pp. 785–786:

> "Persons are employed in agriculture and horticulture when employed upon any operations done about the production, preparation or transfer of the products of the farm or garden or orchard in the best saleable condition to a first buyer or to a salesman or agent for sale, if one be employed, or to a distinct business under one proprietorship."

The following excerpts from the case of *Lowe* v. *North Dakota Workmen's Compensation Bureau*, 107 A.L.R. 973, are of interest:

> "The term 'agriculture' is defined by *Webster* as, 'The art or science of cultivating the ground and raising and harvesting crops, . . . tillage; husbandry; farming; in a broader sense the science and art of the production of plants and animals useful to man including to a variable extent the preparation of these products for man's use and their disposal by marketing or otherwise.' See, also, similar definitions in Century and Standard Dictionaries.
>
> "In *Dillard* v. *Webb*, 55 Alta. 468, 474, the court said the term 'agriculture' included the 'raising and harvesting of crops,' and 'refers to the field, or farm, with all its wants, appointments, and products.'"

Rex v. *Davenport*, [1928] 1 W.W.R. 876, was a case in the Alberta Court of Appeal, in which the constitutionality of *The Live Stock Pedigree Act*, R.S.C. 1927, cap. 121, was discussed. Harvey, C.J.A., stated for the Court (at p. 878):

> "The applicant however contends that this is not legislation in relation to agriculture as it has nothing to do with the cultivation of the fields, which is what agriculture is. This seems to be taking much too narrow a view of what is comprehended in the term agriculture. The dictionaries define it as including the 'raising of live stock.'"

In *Lower Mainland Dairy Products Sales Adjustment Committee* v. *Crystal Dairy, Ltd.*, [1932] A.C. 168, the Judicial Committee dealt with *The Dairy Products Sales Adjustment Act*, 1929, of British Columbia which authorized the appointment of Adjustment Committees to which farmers made returns and paid a levy assessed according to the quantity of milk they sold. The proceeds from this levy were used to equalize the payments to farmers according to the proportion of their milk which was sold in fluid

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form and the proportion which was sold in the form of manufactured products. This scheme was held to be one imposing indirect taxation and hence, was *ultra vires* the provincial legislature. In the course of his judgment, however, Lord Thankerton, speaking for the Board stated (at pp. 174–175):

> " In the first place, the contention of the appellants that the Act of 1929 is a law relating to agriculture under section 95 of the Act of 1867 may be disposed of as untenable, for the Act of 1929 does not appear in any way to interfere with the agricultural operations of the farmers, and section 21 of the Act expressly prohibits the Committee from fixing prices at which milk or manufactured products may be sold or disposed of by a dairy farmer."

The implication of these words is that if the Act did " interfere with the Agricultural operations of the farmers, ' it would be regarded as a statute in relation to " agriculture " within the meaning of section 95 of *The British North America Act*, 1867, and, if it did not conflict with or was not repugnant to any statute of the Dominion Parliament, it would be regarded as a valid exercise of provincial legislative power.

Rex v. *Manitoba Grain Company* (1922), 66 D.L.R. 406, may be interpreted in like fashion. This was a case in which the Manitoba Court of Appeal reviewed section 215 of *The Canada Grain Act*, 1912, Canada, cap. 27, which prohibited any person from engaging in the business of selling grain on commission or soliciting assignments of grain for sale on commission in the " western inspection division " without a license from the Board of Grain Commissioners for Canada. In discussing section 95 of *The British North America Act*, 1867, Dennistoun, J.A., said (at pp. 425–426):

> " This section greatly enlarges the powers of Parliament in respect to farm products beyond the scope of its powers in respect to the business of insurance.
>
> " The question then arises—Is the business of selling grain on commission, or the receiving or soliciting consignments of grain for sale on commission covered by the word " agriculture " in the statute? I do not think it is. " Agriculture ", according to the Century Dictionary, is:
>
> ' The cultivation of the ground; especially, cultivation with the plow and in large areas in order to raise food for man and beast; husbandry; tillage; farming.
>
> ' Theoretical agriculture, is a science comprehending in its scope and nature the properties of soils, the different sorts of plants and seeds fitted for them, the composition and qualities of manures, and the rotation of crops, and involving a knowledge of chemistry, geology and kindred sciences.
>
> ' Practical agriculture is an art comprehending all the labours of the field and of the farm yard, such as preparing the land for the reception of the seed or plants, sowing and planting, rearing and gathering the crops, care of fruit trees and domestic animals, disposition of products, etc. ' "

In holding section 215 of *The Canada Grain Act*, *supra*, *ultra vires*, the learned judge pointed out that the regulation of " the operations of persons whose business is the earning of commissions on the sale of grain which has become a commodity of trade " was *ultra vires*, the Dominion Parliament, the section actually being " a general restriction of civil rights in the province without regard to agriculture or the agriculturalist in the slightest degree." (*Ibid.*, at p. 426.)

To the same effect was the judgment of Duff, J., several years later in *The King* v. *Eastern Terminal Elevator Company* (*Manitoba Grain Company Case*), [1925] S.C.R. 434, at p. 447.

It is noteworthy that Dennistoun, J.A., further said in the *Manitoba Grain Company Case* (*Ibid.*):

> " Section 215 does not attempt to confine its application to transactions in which farmers are concerned nor does it attempt to restrict its application to grain produced on Canadian farms."

The irresistible implication of these words is that if a statute did " confine its application to transactions in which farmers are concerned," it would amount to a valid exercise by the Parliament of Canada of the legislative power it enjoys under section 95. Since the power of provincial legislatures is of precisely the same quality and nature as the Dominion power, though confined within the boundaries of the province, the same principle is applicable to provincial legislation. The test for the constitutionality of provincial legislation under section 95 of *The British North America Act*, 1867, must therefore be: " Is it confined in its scope and application to matters in the province with which farmers as a class, are concerned ? "

Since " agricultural operations of farmers," and " transactions in which farmers are concerned " are the terms used by the Judicial Committee and the Manitoba Court of Appeal respectively, to describe the legislative jurisdiction to which section 95 has reference, they are concepts of wide import, serving to indicate that this section must be interpreted broadly, having regard to farmers' general operations and transactions. The tilling of the soil, and the sowing and harvesting of crops form only a small part of a farmer's operations, and relate to only a fraction of his transactions. Omitting entirely production of other farm produce, including live stock, milk and kindred products, the operations and transactions of farmers necessarily include the purchase or lease of farm lands, the financing of capital investment, the realization of working capital, the sale of farm produce, and the general business of financing and operating a complex business organization. The execution of an agreement for sale or a mortgage, is as much a part of a farmer's operations and transactions, as the breaking of land, the sowing of crop, the harvesting of grain, the breeding of pigs, or the milking of cows. The agricultural industry has grown to such national stature, and its operations have become so involved, that it can no longer be regarded as confined solely to the mere physical operations in which man applies his strength directly to the soil, thereby producing wealth. The legal obligations attendant upon farming are an integral part of a farmer's agricultural operations and transactions. It would be highly unrealistic to seek to separate a farmer's obligations in respect to his land, from the land itself, or to create an artificial distinction between a farmer's

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title in, or his liability for stock and equipment, from the physical stock and equipment itself. All ownership is comprised of a multitude of legal rights and liabilities. All are therefore a part of a farmer's agricultural undertaking, secured, dealt with and disposed of in the course of agricultural operations and transactions, and inseparable therefrom. All must be classified as "agriculture," and therefore, a provincial legislature is competent to enact legislation in respect thereto, within the confines of the province.

Uneconomic lands have been removed from cultivation; steps have been taken to mitigate against the ravages of drought, pests and hail; markets and prices for agricultural products are being controlled. The step now taken by *The Farm Security Act*, 1944, is to protect those farmers on productive lands against the hazards to which the Saskatchewan economy is subject, in order that maximum production can be achieved according to good farming practices, thus assuring security in a stabilized economy.

B. SECTION 92, HEAD 13 OF THE B.N.A. ACT—"PROPERTY AND CIVIL RIGHTS"

I. "*Property and Civil Rights . . .*"—*Definition of.*

Section 6 of *The Farm Security Act*, 1944, deals with Property and Civil Rights in the Province.

Head 13 of section 92 of *The British North America Act*, 1867, empowers the provincial legislature to make laws in relation to this subject of legislative jurisdiction, and it is a power which must be interpreted in a wide, liberal sense, subject to the limitations imposed by the heads of section 91:

In *Citizens Insurance Company* v. *Parsons* (1881), 7 A.C. 96, per Sir Montague Smith said (at p. 110):

> "The words are sufficiently large to embrace in their fair and ordinary meaning, rights arising from contract, and such rights are not included in express terms in any of the enumerated classes of subjects in section 91."

Referring to section 92 of *The British North America Act*, 1867, and the argument that head 13 should be narrowly construed, Sir Montague Smith pointed out that were that view to prevail,

> "the Dominion Parliament could, under its general power, legislate in regard to contracts in all and each of the provinces and as a consequence of this the province of Quebec, though now governed by its own Civil Code, founded on the French law, as it regards contracts and their incidents, would be altered by the Dominion legislature, and brought into uniformity with the English law prevailing in the other three provinces, notwithstanding that Quebec has been carefully left out of the uniformity section (94) of the Act." (7 A.C. at p. 111.)

Referring to *The Quebec Act*, 14 Geo. III, cap. 83, he stated:

> "In this statute the words 'property' and 'civil rights' are plainly used in their largest sense; and there is no reason for holding that in the statute under discussion (*The British North America Act*, 1867) they are used in a different and narrower one." (*Ibid.*)

Referring to section 91 of *The British North America Act*, 1867, he said :

> " In looking at section 91, it will be found not only that there is no class including, generally, contracts and the rights arising from them, but that one class of contracts is mentioned and enumerated, viz., ' 18. Bills of Exchange and Promissory Notes ' which it would have been unnecessary to specify if authority over all contracts and the rights arising from them had belonged to the Dominion Parliament."

There exists no general definition of the phrase " property and civil rights in the province," and it may not be important that there should be such definition. (*Vide Citizens Insurance Co.* v. *Parsons* (1881), 7 A.C. 96, at p. 109 ; *John Deere Plow Co., Ltd.* v. *Wharton*, [1915] A.C. 330, at p. 339.) But it is necessary to determine whether the statute here in question, is a law in relation to property or a civil right in the province. Sir Montague Smith stated in *Russell* v. *The Queen* (1882), 7 A.C. 829, at pp. 839–840 :

> " The true nature and character of the legislation in the particular instance under discussion must always be determined, in order to ascertain the class of subject to which it really belongs."

This principle was more precisely stated by Lord FitzGerald in the case of *Hodge* v. *The Queen* (1883), 9 A.C. 117, at p. 130, to the effect that

> " . . . subjects which in one aspect and for one purpose fall within section 92, may in another aspect and for another purpose fall within section 91."

In every case, the Court is required to determine what, in pith and substance, the legislature dealt with by the law which it claims to have made, and what is the class and character of the legislation.

In pith and substance, section 6 of *The Farm Security Act*, 1944, is legislation in relation to " property and civil rights in the province " and, relating as it does to matters of private concern solely within Saskatchewan, it is also legislation in relation to " matters of a merely local and private nature."

The section is complete in itself, containing in subsection (1) definitions of the agreements of sale and mortgages of farm lands referred to, " crop failure," " mortgagee " and " mortgagor," " payment " and " period of suspension." By subsection (2) it provides a statutory condition or clause which is to be inserted in all agreements of sale and mortgages which is a matter relating to property and civil rights in the province. Subsections (5) and (6) further amplify the statutory clause to be inserted in mortgages and agreements of sale by stating the condition of notice by the debtor to his creditor, upon which its application depends. Subsections (3) and (4) constitute the Provincial Mediation Board the arbiter between debtor and creditor when the question of the existence of a crop failure is in dispute and subsection (8) endows it with power to exclude agreements and mortgages from the application of the section. Subsection (7) removes certain farm-debtors from the scope and application of the section, and subsection (9) relates to the date upon which the section becomes effective. The subject-matter of the section is contracts in the form of agreements of sale and mortgages of farm lands.

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The statutory conditions inserted in such contracts by subsection (2) of the section are three, to the effect that in case of crop failure—

(1) the debtor shall not be required to make any payment in the period between August first and July thirty-first of the following year;

(2) payment of any principal falling due shall be postponed for the same period of one year; and

(3) the principal outstanding on September fifteenth shall be automatically reduced by four per cent. or by the same percentage as that at which interest will accrue during the period, whichever sum may be greatest, provided that interest shall continue to be chargeable as if there had been no reduction in principal.

In dealing with contracts of the nature described, the Legislature was careful to stipulate that it was not legislating in respect to the subject-matter of " interest " and, further, that it was not even incidently affecting " interest " by the provisions of this section. The saving clause of the section, which is dealt with more specifically in the portion of Argument devoted to section 91 of *The British North America Act*, 1867, is expressly designed to prevent a usurpation of Dominion jurisdiction by the province.

The section deals with property and civil rights in a specific manner. All legislation in relation to property and civil rights must necessarily have some object other than merely affecting or altering rights. By this provision, two rights appear to be adversely affected from the standpoint of the mortgagee or vendor of lands, the object being the better distribution of the risks of all persons throughout the province. The method adopted is a direct one, designed to improve the welfare of the people of Saskatchewan and to stabilize agriculture.

The jurisdiction of the provincial legislatures over contracts, the subject-matter of which is not referred to in section 91 of *The British North America Act*, 1867, is well-established. In *Citizens Insurance Company* v. *Parsons* (1881), 7 A.C. 96, Sir Montague Smith stated (at pp. 109–110):

> " The main contention on the part of the respondent was that the Ontario Act in question had relation to matters coming within the class of subjects described in No. 13 of section 92, viz., ' Property and civil rights in the province.' The Act deals with policies of insurance entered into or in force in the province of Ontario for insuring property situate therein against fire, and prescribes certain conditions which are to form part of such contracts. These contracts and the rights arising from them, it was argued, came legitimately within the class of subject, ' Property and civil rights.' The appellants, on the other hand, contended that civil rights meant only such rights as flowed from the law, and gave as an instance the status of persons. Their Lordships cannot think that the latter construction is the correct one. They find no sufficient reason in the language itself nor in the other parts of the Act, for giving so narrow an interpretation to the words ' civil rights.' The words are sufficiently large to embrace, in their fair and ordinary meaning, rights arising from contract, and such rights are not included in express terms in any of the enumerated classes of subjects in section 91."

The " Insurance Cases " indicate the interpretation which has been given to head 13 of section 92. In *Attorney-General for Canada* v. *Attorney-General for Alberta*, [1916] 1 A.C. 488 ; *Attorney-General for Ontario* v. *Reciprocal Insurers*, [1924] A.C. 328, and *In re Insurance Act of Canada*, [1932] A.C. 41, the Judicial Committee dealt with the power of the Dominion Parliament to license and control the activities of insurance companies. It was held that this type of legislation could not be supported under the Dominion power to legislate over the " Regulation of Trade and Commerce," " Criminal Law," nor under any other of the enumerated or residuary provision of section 91, because the legislation remained directly related to civil contracts, and trenched upon the provincial power to legislate over " Property and Civil Rights in the Province."

In re The Board of Commerce Act, 1919, and *The Combines and Fair Prices Act*, 1919, [1922] 1 A.C. 191, was a case in which two Dominion statutes which purported to restrain and prohibit the formation and operation of trade combinations, and which established a Board for the purpose of restricting the accumulation of necessary commodities, was held *ultra vires* as seriously interfering with " Property and Civil Rights in the Province." Lord Haldane, speaking for the Judicial Committee compared this case with *Russell* v. *The Queen* (1882), 7 A.C. 829, stating [1922] 1 A.C. at pp. 197–198) :

> " It may well be that the subjects of undue combination and hoarding are matters in which the Dominion has a great practical interest. In special circumstances, such as those of a great war, such an interest might conceivably become of such paramount and overriding importance as to amount to what lies outside the heads in section 92, and is not covered by them. The decision in *Russell* v. *The Queen* (1882), 7 A.C. 829, appears to recognize this as constitutionally possible, even in time of peace ; but it is quite another matter to say that under normal circumstances general Canadian policy can justify interference, on such a scale as the statutes in controversy involve, with the property and civil rights of the inhabitants of the Provinces. It is to the Legislatures of the Provinces that the regulation and restriction of their civil rights have in general been exclusively confided, and as to these the Provincial Legislature possess *quasi*-sovereign authority. It can, therefore, be only under necessity in highly exceptional circumstances, such as cannot be assumed to exist in the present case, that the liberty of the inhabitants of the Provinces may be restricted by the Parliament of Canada, and that the Dominion can intervene in the interests of Canada as a whole in questions such as the present one. For, normally, the subject-matter to be dealt with in the case would be one falling within section 92."

Toronto Electric Commissioners v. *Snider*, [1925] A.C. 363, was a case in which the Judicial Committee held *The Industrial Disputes Investigation Act*, 1907, of the Dominion Parliament *ultra vires* as being legislation in pith and substance, in relation to " Property and Civil Rights " which could not be supported by head 2 (Trade and Commerce) or head 27 (Criminal Law) of section 91. Said Lord Haldane (at pp. 403–404) :

> " Whatever else may be the effect of this enactment, it is clear that it is one which could have been passed, so far as any Province

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

was concerned, by the Provincial Legislature under the powers conferred by section 92 of *The British North America Act*, for its provisions were concerned directly with the civil rights of both employers and employed in the Provinces. It set up a Board of Inquiry which could summon them before it, administer to them oaths, call for their papers and enter their premises. It did no more than what a Provincial Legislature could have done under head 15 of section 92, when it imposed punishment by way of penalty in order to enforce the new restrictions on civil rights. It interfered further with civil rights when, by section 56, it suspended liberty to lock-out or strike during a reference to a Board. It does not appear that there is anything in the Dominion Act which could not have been enacted by the Legislature of Ontario, excepting one provision. The field for the operation of the Act was made the whole of Canada."

Re Natural Products Marketing Act, [1937] A.C. 377 and *Re Employment and Social Insurance Act*, [1937] A.C. 355, were cases in which Dominion legislation was reviewed and found *ultra vires* as trenching upon head 13 of section 92, " Property and Civil Rights in the Province." In the first case, this was found to include provincial marketing, and in the second, it was held to encompass the civil rights of employers and employees. Specific reference was here made by Lord Atkin who, after reviewing the Act in *Re Employment and Social Insurance Act Reference*, said (*supra*, at p. 365) :

> " There can be no doubt that, *prima facie*, provisions as to insurance of this kind, especially where they affect the contract of employment, fall within the class of property and civil rights in the Province, and would be within the exclusive competence of the Provincial Legislature."

Workmen's Compensation Board v. *Canadian Pacific Railway*, [1920] A.C. 184, was a case in which the Judicial Committee held that the provisions of The British Columbia *Workmen's Compensation Act*, 1916, applied to the resident employees of a Dominion company whose ships plied between ports in British Columbia and the United States. The basis of contributions to the workmen's compensation scheme and of payments out for injuries was what Lord Haldane termed a " statutory contract," it being

> " a legitimate provincial object to secure that every workman resident within the Province who so contracts should possess it as a benefit conferred on himself as a subject of the Province." ([1920] A.C. at p. 191.)

The contract of employment of persons resident in the province was here held to be a matter of property and civil rights ; the position of section 6 of *The Farm Security Act*, 1944, is exacly parallel, since it, likewise, imposes a statutory contract upon the parties, which relates directly to their civil rights.

The effect of *Workmen's Compensation Acts* is to destroy a right of action in the province arising as a result of the operation of the Common Law, and to substitute therefor, a new and different type of remedy enforceable outside the courts, and according to principles contained solely within the four corners of such statutes. The abolition of a right of action in such cases has been held to be within the legislative competence of the provincial legislatures.

The Exemption Acts of the provinces are a type of statute which has been in effect for many years. Such an Act has been effective in Saskatchewan since the province was created, and to-day appears as Chapter 80 of the Revised Statutes for the year 1940. The Act applies to all writs of execution, however obtained. Its validity in Saskatchewan and in other provinces of Canada has never been questioned. The effect of *The Exemption Act*, R.S.S. 1940, cap. 80, is to reduce the rights of a judgment creditor to realize upon his judgment to the extent of the exemptions contained in section 2, being the exemption provision of the Act. These statutes are similar in their operation and effect to section 6 of *The Farm Security Act*, 1944, in that they directly affect the rights of parties to agreements by extraneously modifying the terms thereof. In the case of *Exemption Acts*, this modification in the contract-rights of the parties occurs after action is brought upon the contract; in the case of *The Farm Security Act*, 1944, the contract is modified before action is brought upon it. The result, however, is the same.

Of the same effect are the *Limitation of Actions Acts* which are a part of the statute law of every jurisdiction based upon Anglo-Saxon law. In Saskatchewan, the Act appears as Chapter 70 of the Revised Statutes for the year 1940, and also has been on the statute books since the inception of the Province. It likewise restricts the rights and remedies of parties to a contract by limiting the period during which an action for recovery may be brought. To this extent, the original terms of a contract are varied by a statutory condition. Neither the *Exemptions Act* nor *The Limitation of Actions Act* can be supported as *intra vires* the provincial Legislature if section 6 of *The Farm Security Act*, 1944, which likewise inserts certain statutory conditions, is held *ultra vires*.

The power to re-write contracts is one which has been exercised by legislatures from time to time. *The Farmers' Creditors Arrangement Act*, 1934 Canada, cap. 53, provided for the confirmation of proposals amounting to a renegotiation of a contract, and by section 10, the Board of Review was empowered to order a farmer " to execute any mortgage, conveyance or other instrument necessary to give effect to the proposal." The same effect is achieved under *The Farmers' Creditors Arrangement Act*, 1943 Canada, cap. 26, by the power of the court under section 21. *An Act respecting Certain Agreements for the Sale of Land in the village of Goldfields*, 1940 Saskatchewan, cap. 72, inserted a retrospective clause in agreements for the sale of lands in the townsite of Goldfields. *The Limitation of Civil Rights Act*, R.S.S. 1940, cap. 88, enacted in 1939, some of the provisions of which were first given effect to in 1933, modifies mortgages and agreements for sale of land by prohibiting the inclusion therein of a personal covenant (section 2) by removing chattels from the scope and application of mortgages and agreements for sale of land (section 9); by deleting from mortgages and agreements for sale, covenants relating to the exaction of a bonus in the event of nonpayment (section 10); by prohibiting the inclusion of taxes paid by the mortgagor or vendor of land and the adding to the secured debt of the premiums of any life insurance policy upon his debtor (section 12) or premiums of insurance upon his debtor's buildings (section 13) or against hail upon his debtor's crops (section 14).

Leases of farm lands are varied by section 17a; the rights of a lessee with an option are extended by section 18; and the application of moneys

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

realized by a mortgagee when there is more than one secured creditor is governed by section 19. All of these provisions insert into contracts, terms and conditions to which the parties did not expressly agree; they are statutory clauses which, by law, are infused into the contract governing the rights of parties. Similarly, *The Law Amendment (Temporary Provisions) Act*, 1943 Sask., cap. 67, creates rights and imposes obligations upon parties to contracts, including leases (section 2) and upon creditors holding liens upon threshed grain (section 3). *The Law Amendment (Temporary Provisions) Act*, 1944 Sask., cap. 99, likewise modifies the landlord-tenant relationship as created by contract. The modification of particular contracts, contracts of a specific classification, or contracts generally is a right enjoyed by the provincial legislatures provided only that the contracts are situate within the province and are not of a type specifically placed within the jurisdiction of the Dominion Parliament by section 91 of *The British North America Act*, 1867.

II. " . . . *In the Province.*"

Head 13 of section 92 of *The British North America Act*, 1867— " Property and Civil Rights in the Province " has assumed important dimensions in securing ample provincial legislative jurisdiction. The principal limitation imposed upon the capacity of provincial legislatures to deal with the subject has been that contained in the head itself, namely, that the property or rights affected must physically be situate in the province. Section 6 of *The Farm Security Act*, 1944, deals with only two rights directly, both being in the nature of property interests:

(1) The promise of the debtor to pay, which is a movable property interest, and a property interest of the creditor, who may be either a vendor or a mortgagee of farm lands; and

(2) An interest in Saskatchewan land taking the form either of a charge held by the mortgagee or a security title held by the vendor.

Both property rights and interest have a situs in Saskatchewan.

The rights created and affected by section 6 of *The Farm Security Act*, 1944, are rights which arise and exist solely within the Province of Saskatchewan. The agreements of sale and mortgages affected by the Act are agreements and mortgages of farm lands situate in the Province which may be enforced only in provincial courts according to the law of the province in that behalf.

Section 92 (13) of *The British North America Act*, 1867, endows the Provincial Legislatures with power to legislate in relation to rights only within the respective areas of such provinces, the effect of all such statutes having a territorial limitation. The territorial limits upon the application of the enactment is dealt with more fully in the next following section, relating to head 16 of section 92. The general application within the Province of head 13, however, should first be considered.

The King v. *Lovitt*, [1912] A.C. 212, is a decision of the Judicial Committee indicating the necessity of confining provincial legislation in relation to " property and civil rights," to the area of the province concerned. In that case, the New Brunswick *Succession Duty Act*, 1896, provided that

all property situate in the province is liable to taxation, whether the deceased was domiciled there or not. The testator, a resident of Nova Scotia, died possessed of assets in New Brunswick which the province proceeded to tax. On reference and appeal to the Courts, it was held that the property, consisting of simple contract debts, was situate in New Brunswick and hence was subject to the law of New Brunswick, including that relating to succession duties. Lord Robson, speaking for the Board, recognized the province's right to tax, stating (at pp. 220–221):

> " In construing the statutes relating to those duties, our Courts have laid it down that the very general terms in which they are expressed must receive some limitation. Their language is wide enough to include all property and every person everywhere, whether subjects of this kingdom or not, and no matter where they are domiciled. It has accordingly been held, through a long series of cases, that the duties are intended to be imposed only on those who become entitled by virtue of our law. The effect of this principle is to exempt from the payment of legacy or succession duties movable property situate here which belonged to a testator domiciled abroad, for in dealing with the distribution of such property our Courts act not on our own law, but on the law of the domicil of the testator or intestate on which the legatee or successor founds his title. Similarly, in the case of movables situate abroad which belonged to a person domiciled here our Courts will direct their distribution according to our law and not that of the locality where they are found. In *Blackwood* v. *Regina*, 8 App. Cas. 93, Sir Arthur Hobhouse, in delivering the judgment of their Lordships' Board, says: ' For the purpose of succession and enjoyment, the law of the domicile governs the foreign personal assets. For the purpose of legal representation of collection and of administration as distinguished from distribution among the successors they are not by the law of the owner's domicile but by the law of their own locality '."

Royal Bank v. *The King*, [1913] A.C. 283, was a case, the facts of which, as contained in the headnote, were as follows:

> " The appellant bank received on deposit at its branch in New York the proceeds in London of a mortgage bond issue by the Alberta Railway Company guaranteed by the Government of Alberta. Under instructions from its head office in Montreal a special railway account in respect thereof in the name of the Treasurer of the province was opened at its Alberta branch (no money being sent there in specie and the account remaining under the control of the said head office) for purposes connected with railway construction wholly within the province as provided by Alberta Acts 16 and 49 of 1909 and subsequent Orders in Council and contracts.
>
> " Alberta Act, 1 Geo. 5, c. 9, recited that the railway had defaulted in payment of the interest on the bonds and in construction of the line, ratified the guarantee of the bonds, and enacted that the whole of the proceeds of the bonds, including the amount deposited with the appellant bank, should form part of the general revenue fund of the province, free from all claim of the railway company or their assigns, and should be paid over to the Treasurer of the province."

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

In the action brought by the Crown to recover the amount of the deposit, it was held that the bondholders, having subscribed their money for a purpose which had failed, were entitled to recover it from the bank at its head office, and that this was a civil right existing and enforceable outside the province which could not be validly derogated from by the Legislature of Alberta.

The Royal Bank Case, supra, was followed in two cases by the Ontario Court of Appeal, viz., in *Ottawa Valley Power Company* v. *The Hydro-Electric Power Commission*, [1937] O.R. 265, and *Beauharnois Light, Heat and Power Co., Ltd.* v. *The Hydro-Electric Power Commission of Ontario*, [1937] O.R. 797. Both cases arose from an interpretation of *The Power Commission Act*, R.S.O. 1927, cap. 57 and amendments thereto, the first being effected by 1935, 25 Geo. V, cap. 53, and the second by 1937, 1 Geo. VI, cap. 58. The effect of the relevant sections was to deny access to the courts for the purpose of enforcing payment of certain obligations. Since the contracts which the Acts sought to abrogate created rights outside the Province of Ontario, it was held that, to the extent that they affected such rights, they were *ultra vires*.

In *North American Life Assurance Company* v. *McLean*, [1941] 3 D.L.R. 271, O'Connor, J., in the Supreme Court of Alberta held *The Legal Proceedings Suspension Act*, 1937, *ultra vires*, upon considering its effect upon property and civil rights outside the province.

The present Saskatchewan enactment clearly does not fall within the principle on the *Royal Bank Case, supra*, or the two Alberta cases, above referred to. The rule enunciated in *Workmen's Compensation Board* v. *Canadian Pacific Railway, supra*, following the *Lovitt Case, supra*, gives validity to section 6 of *The Farm Security Act*, 1944, and the statement of Lord Haldane in *Workmen's Compensation Board* v. *Canadian Pacific Railway*, [1920] A.C. 184 (at pp. 191–192), is applicable here :

> " The scheme of the Act is not one for interfering with rights outside the Province. It is in substance a scheme for securing a civil right within the Province. The case is wholly different from that from Alberta which was before the judicial committee in *Royal Bank of Canada* v. *The King, supra*, where it was held that the Provincial statute was inoperative in so far as it sought to derogate from the rights of persons outside the Province of Alberta who had subscribed money outside it to recover that money from depositaries outside the Province with whom they had placed it for the purposes of a definite scheme to be carried out within the Province, on the ground that by the action of the Legislature of Alberta the scheme for which alone they had subscribed had been altered. The rights affected were in that case rights wholly outside the Province. Here the rights in question are the rights of workmen within British Columbia. It makes no difference that the accident insured against might happen in foreign waters. For the question is not whether there should be damages for a tort, but whether a contract of employment made with persons within the Province has given a title to a civil right within the Province to compensation. The compensation, moreover, is to be paid by the Board and not by the individual employer concerned.

No doubt for some purposes the law sought to be enforced affects the liberty to carry on its business of a Dominion railway company to which various provisions of s. 91 of the *British North America Act* of 1867 apply. But for other purposes, with which the Legislature of British Columbia had jurisdiction to deal under s. 92, it was competent to that Legislature to pass laws regulating the civil duties of a Dominion railway company which carried on business within the Province, and in the course of that business was engaging workmen whose civil rights under their contracts of employment had been placed by the Act of 1867 within the jurisdiction of the province."

In *Shannon* v. *Lower Mainland Dairy Products Board*, [1938] A.C. 708, the Judicial Committee considered *The Natural Products Marketing (British Columbia) Act*, 1936, which provided for the establishment of Boards for the purpose of controlling and regulating the marketing, etc., of natural products in the Province. Upon reviewing the main provisions of the Act, Lord Atkin stated (at pp. 718–719):

" It is sufficient to say upon the first ground that it is apparent that the legislation in question is confined to regulating transactions that take place wholly within the Province, and are therefore within the sovereign powers granted to the Legislature in that respect by s. 92 of the *British North America Act.* Their Lordships do not accept the view that natural products as defined in the Act are confined to natural products produced in British Columbia. There is no such restriction in the Act, and the limited construction would probably cause difficulty if it were sought at some future time to co-operate with a valid Dominion scheme. But the Act is clearly confined to dealings with such products as are situate within the Province. It was suggested that ' transportation ' would cover the carriage of goods in transit from one Province to another, or overseas. The answer is that on the construction of the Act as a whole it is plain that ' transportation ' is confined to the passage of goods whose transport begins within the Province to a destination also within the Province. It is now well settled that the enumeration in s. 91 of ' the regulation of trade and commerce ' as a class of subject over which the Dominion has exclusive legislative powers does not give the power to regulate for legitimate Provincial purposes particular trades or businesses so far as the trade or business is confined to the Province: *Citizens Insurance Co. of Canada* v. *Parsons* (1881), 7 A.C. 96; *Reference re The Natural Products Marketing Act*, 1934, and its *Amending Act*, 1935, [1937] A.C. 377. And it follows that to the extent that the Dominion is forbidden to regulate within the Province, the Province itself has the right under its legislative powers over property and civil rights within the Province. The appellants did not dispute that there was a *bona fide* intention by the Province to confine itself to its own sphere, but they contended that, whatever the intention, the Province had in fact encroached upon the Dominion sphere. If they could have established that contention, they would have been in a stronger position."

To the same effect was the case of *Home Oil Distributors, Ltd.* v. *Attorney-General for British Columbia*, [1940] S.C.R. 444.

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

Reference re Sheep and Swine Marketing Act, [1941] 3 D.L.R. 567, was a case in which a Prince Edward Island marketing scheme was held to be *intra vires* even though incidently, it affected trading outside the province. A like principle was enunciated in *Cowen* v. *Attorney-General for British Columbia*, [1941] S.C.R. 321. Here, *The British Columbia Dentistry Act*, R.S.B.C. 1936, cap. 72, which was considered, provided, *inter alia*, that no persons not registered in accordance with the Act in the province, might practise dentistry, hold himself out as a dentist or circulate or make public anything designed or tending to induce the public to engage or employ him as a dentist. Because *prima facie*, the legislation was found to be within the provincial sphere, even though it incidently prohibited persons outside the province from advertising their services as dentists outside British Columbia, the statute was held to be *intra vires*. Since it did not profess to prevent people from going beyond the limits of the province for the purpose of benefiting from the services of a dentist, and since it could not be construed to prevent the sending into the province from abroad, of newspapers or journals containing advertising materials, it was held to be legislation confined to the province, not interfering with matters beyond provincial jurisdiction.

Other cases may be referred to in which legislation was held to be enacted in relation to property and civil rights in the province which incidentally affected rights outside the province but which was nevertheless held to be *intra vires* the provincial legislature. Thus, in *Ladore* v. *Bennett*, [1939] A.C. 468, Lord Atkin stated of *The City of Windsor (Amalgamation) Act*, 1935, and of *The Ontario Municipal Act*, (at pp. 482–483) :

> "The statutes are not directed to insolvency legislation, they pick out insolvency as one reason for dealing in a particular way with unsuccessful institutions ; and though they affect rights outside the Province, they only so affect them collaterally, as a necessary incident to their lawful powers of good government within the Province."

In *Day* v. *Victoria*, [1938] 4 D.L.R. 345, an Act for the refunding of municipal securities (which affected those securities held outside the Province as well as those held within the Province) was held to be *intra vires* the Provincial Legislature by the British Columbia Court of Appeal, it being pointed out that the interference with extra-provincial rights was merely incidental to the achievement of a legitimate provincial object. MacDonald, J.A., stated (at p. 349) :

> " It is not the intendment of the Act to interfere with the civil rights of persons or corporations beyond the Province although as often occurs with Provincial Acts, parties residing elsewhere may be affected by it. If, when the Act was enacted, all debenture holders resided within the Province it would not become *ultra vires* if all, or some of them, moved to another Province. It would be immaterial whether or not a debenture holder left the Province after the Act was passed or resided in another Province at that time. The obligation was created within this Province and in the last resort it is enforceable here."

In this same connection, Sloan, J.A., stated (*Ibid.*, at p. 351) :

> " While it is true that the debentures are payable, at the option of the holders, not only within but without the Province nevertheless

the right to enforce the ' substance of the obligation,' evidenced by the debentures, is a civil right exercisable solely within the Province : *Mount Albert Borough Council* v. *Australian Temperance & Gen'l Mutual Life Ass'ce Co.*, [1938] A.C. 224. In this connection it is to be noted that the outstanding debentures ' are by statutory direction charged upon and payable by rates levied upon rateable land or upon rateable lands and improvements within the municipality of the defendant corporation.'

" It follows, in my view, that this Act does not derogate from any extra-territorial civil right ; that is to say there is no right of action in the foreign bondholders by which the substantive obligations of the contract could be effectively enforced in a foreign jurisdiction."

This case was approved by the Judicial Committee in *I.O.F.* v. *Lethbridge Northern Irrigation District*, [1940] A.C. 513.

Section 6 of *The Farm Security Act*, 1944, is a section parallel to the *Victoria City Debt Refunding Act*, 1937, in that the rights affected in each case, are rights which were created as a result of provincial law, are situate in the province, and are enforceable only in the province. Although it may incidently affect persons residing outside the province, the legislation relates only to property and civil rights enforceable in the province in respect thereto, only in the province.

C. Section 92, Head 16 : " Generally All Matters of a Merely Local or Private Nature in the Province "

I. *Situs of Res.*

Section 6 of *The Farm Security Act*, 1944, relates to agreements for sale and mortgages of farm lands in the Province of Saskatchewan and to " crop failure " on land situate in the Province of Saskatchewan. The natural situs of the land is Saskatchewan ; the situs of a mortgage debt and the indebtedness of a purchaser of land under an agreement for sale registered under *The Land Titles Act*, R.S.S. 1940, cap. 98, is Saskatchewan. " Land " or " lands " is defined in paragraph 10 of section 2 of *The Land Titles Act*, *supra*, as follows :

" ' Land ' or ' lands ' means lands, messuages, tenements and hereditaments, corporeal and incorporeal, of every nature and description, and every estate or interest therein, whether such estate or interest is legal or equitable, together with paths, passages, ways, watercourses, liberties, privileges and easements appertaining thereto, and trees and timber thereon, and mines, minerals and quarries thereon or thereunder lying or being, unless any such are specially excepted ; "

A mortgage, for the purposes of the Act is defined by paragraph 14 of section 2 as follows :

" a charge on land created for securing payment of money, and includes an hypothecation of such charge and a charge created for securing payment of an annuity, rent charge or sum of money other than a debt or loan."

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

A mortgage registered under *The Land Titles Act, supra,* is therefore an interest in land.

In *Yorkney* v. *Thompson,* [1914] 50 S.C.R. 1, this Honourable Court held that for purposes of the *Manitoba Real Property Act,* a mortgagee of registered land enjoyed an interest in such land. (*Vide In re Hayes, Row* v. *Jagg,* [1911] Ch. 173.) Similarly, an agreement for sale of land constitutes an interest in such land.

In *Setter* v. *The Registrar of Land Titles,* [1914] 7 W.W.R. 901, it was held by the Alberta Court of Appeal that an agreement of sale, although not capable of registration under *The Land Titles Act,* 1906 Alta., cap. 24, was an interest in "land" within the meaning of section 2 (a). *Vide Vaughan* v. *Attorney-General for Alberta,* [1924] 2 W.W.R. 821 (Alta. C.A.), and *In re Burke Estate,* [1927] 3 W.W.R. 718 (Sask.).

By section 2 of *The Limitations of Civil Rights Act,* R.S.S. 1940, cap. 88, action upon the personal covenant in mortgages and agreements for sale is prohibited. Subsection (1) provides as follows:

> "Where land is hereafter sold under an agreement for sale in writing, or mortgaged whether by legal or equitable mortgage for the purpose of securing the purchase price or part of the purchase price of the land affected, or where a mortgage is hereafter given as collateral security for the purchase price or part of the purchase price of land, the vendor's or mortgagee's right to recover the unpaid balance due shall be restricted to the land sold or mortgaged and to cancellation of the agreement for sale or foreclosure of the mortgage or sale of the property, and no action shall lie on the covenant for payment contained in the agreement for sale or mortgage."

The effect of this section from the date of its enactment has been to confine the rights and remedies of mortgagees and vendors of land to the land itself, situate within the province. No question of the existence of rights apart from the land, or of rights outside the territorial limits of the province therefore can exist; the *res* and the right attaching thereto both exist wholly within Saskatchewan. Section 6 of *The Farm Security Act,* 1944, affects only farm lands and rights in respect thereto, within the province, and neither directly nor indirectly affects rights without the province.

The law governing tangible property is not fixed according to the domicil of the owner of such property, but by the law of the place in which it is situate, according to the maxim *lex rei situs.* (*Vide* John D. Falconbridge, *Situs and Transfer of Intangibles in the Conflict of Laws* (1935), 13 Can. Bar Rev. 265, at p. 266 and n. 6.)

Mortgages and agreements of sale, in addition to constituting interests in land, are contracts giving rise to rights and obligations, the principal among them being a debt owing by the debtor or obligor to his creditor or obligee. Such contract is deemed to be situated within the area of the local jurisdiction within which the debtor resides, where the assets to satisfy the debt are generally situate. (*Vide* John D. Falconbridge, *op. cit.,* at p. 267).

The general rule relating to a specialty debt, of which a mortgage is one type, is that its situs is determined by the *lex situs* of the instrument at the relevant time. (*Vide Royal Trust Company* v. *Provincial Secretary-Treasurer of New Brunswick*, [1925] S.C.R. 94.) However, in the case of mortgages made in duplicate (in accordance with present practice) a copy of which is filed in a Land Registration office under the provisions of *The Land Titles Act*, *supra*, the rules relating to immovables apply, and the *lex situs* governs. *Toronto General Trusts Corporation* v. *The King*, [1919] A.C. 679, was a case in which the Judicial Committee held that a mortgage of lands in Alberta registered under *The Land Titles Act* was property situate in Alberta.

A mortgage debt and a debt arising out of an agreement of sale cannot effectively be dealt with outside the province in which said land is situate. The mortgagee or vendor must discharge the mortgage or convey the land when the debt is paid and since the debt cannot be effectively transferred or discharged apart from the transfer of the land, the transfer of the debt is governed by the *lex situs* of the land.

The presumption that it is the intention of a legislature to confine the operation of its legislation to persons, acts and things within the territorial limits of the province has always been applicable in constitutional questions. In *Attorney-General for Ontario* v. *Reciprocal Insurers*, [1924] A.C. 328, the Judicial Committee dealt, *inter alia*, with the Ontario *Reciprocal Insurance Act*, 1922, 7 & 8 Geo. V, cap. 29. This Act prohibited companies from carrying on the business of insurance in the province without a license and by otherwise regulating reciprocal contracts of indemnity. Duff, J., who spoke on behalf of the Judicial Committee, dealt with the objection that the legislation was extra-territorial in its operation and hence *ultra vires*, stating (at p. 346) :

> " Their Lordships find nothing in the language of the statute which necessarily gives to its enactments an extra-territorial effect. The enabling provisions of ss. 3 and 4 appear to be designed to exempt the transactions to which they relate from the above-mentioned prohibitions of the *Ontario Insurance Act*, and the terms of the statute as a whole are, in their Lordships' judgment, capable of receiving a meaning according to which its provisions, whether enabling or prohibitive, apply only to persons and acts within the territorial jurisdiction of the Province. In their opinion it ought to be interpreted in consonance with the presumption which imputes to the Legislature an intention of limiting the direct operation of its enactments to such persons and acts."

Dealing with head 16 of section 92 of *The British North America Act*, 1867, in *Attorney-General for Ontario* v. *Attorney-General for the Dominion* (*Ontario Liquor License Act*), [1896] A.C. 348, at p. 365, Lord Watson stated :

> " In s. 92, No. 16, appears to them to have the same office which the general enactment with respect to matters concerning the peace, order, and good government of Canada, so far as supplementary of the enumerated subjects, fulfils in s. 91. It assigns to the provincial legislature all matters in a provincial sense local or private which have been omitted from the preceding enumeration,

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and, although its terms are wide enough to cover, they were obviously not meant to include, provincial legislation in relation to the classes of subjects already enumerated."

This case held that the local prohibitions authorized by *The Ontario Liquor License Act*, 53 Vict., cap. 56, were within the competence of the provincial legislature to enact, but that they became inoperative in areas which adopted the overriding provisions of *The Canada Temperance Act*, 49 Vict., cap. 106. Lord Watson based his judgment upon heads 13 and 16 of section 92, stating that it was not necesary to determine whether the legislation was authorized by one or other of those heads.

This decision was followed by the Judicial Committee in *Attorney-General of Manitoba* v. *Manitoba License Holders' Association*, [1902] A.C. 73. Here, it was held that *The Manitoba Liquor Act*, 63 & 64 Vict., cap. 22, was *intra vires* the provincial legislature as dealing with matters of a merely local nature, in the province within the meaning of head 16 of section 92 of *The British North America Act*, 1867, notwithstanding the fact that it necessarily interfered with Dominion revenues, and incidently affected business operations outside the province. In the course of his speech, Lord Macnaghten, referring to *Attorney-General for Ontario* v. *Attorney-General for the Dominion* stated (at p. 78) that

> " a careful perusal of the judgment leads to the conclusion that, in the opinion of the Board, the case fell under No. 16 rather than under No. 13. And that seems to their Lordships to be the better opinion."

Dealing with the particular problem before the Board, Lord Macnaghten stated (*Ibid.*):

> " In legislating for the suppression of the liquor traffic the object in view is the abatement or prevention of a local evil, rather than the regulation of property and civil rights—though, of course, no such legislation can be carried into effect without interfering more or less with ' property and civil rights in the province '."

This statement of Lord Macnaghten might for analogy, be paraphrased for purposes of *The Farm Security Act*, 1944, to state that:

> " In legislating for the security of farms the object in view is the abatement or prevention of a local evil, rather than the regulation of property and civil rights—though, of course, no such legislation can be carried into effect without interfering more or less with ' property and civil rights in the province '."

It is clear that legislation which otherwise falls under head 16 of section 92 is not rendered *ultra vires* even if it incidentally affects rights outside the province. As Lord Macnaghten stated (*Ibid.*, at p. 79):

> " The judgment, therefore, as it stands, and the Report to Her late Majesty consequent thereon, shew that in the opinion of this tribunal matters which are ' substantially of local or of private interest ' in a province—matters which are of a local or private nature ' from a provincial point of view,' to use expressions to be found in the judgment—are not excluded from the category of ' matters of a merely local or private nature,' because legislation dealing with them, however carefully it may be framed, may or

must have an effect outside the limits of the province, and may or must interfere with the sources of Dominion revenue and the industrial pursuits of persons licensed under Dominion statutes to carry on particular trades."

In *Reference re The Natural Products Marketing Act*, 1934, [1936] S.C.R. 398, affirmed [1937] A.C. 377, it was sought by Dominion legislation to establish machinery for the marketing of natural products, which were defined to include animals, meats, eggs, wool, dairy products, grains, seeds, fruit and fruit products, vegetables and vegetable products, maple products, honey, tobacco, lumber and such other natural products of agriculture and of the forest, sea, lake or river and such articles of food or drink wholly or partly manufactured or derived from any such product, and such articles wholly or partly manufactured or derived from any such product of the forest as may be designated by the Governor in Council. Duff, C.J., in speaking for this Honourable Court, which held the legislation *ultra vires*, said (at p. 412):

> " The enactments in question, therefore, in so far as they relate to matters which are in substance local and provincial are beyond the jurisdiction of Parliament. Parliament cannot acquire jurisdiction to deal in the sweeping way in which these enactments operate with such local and provincial matters by legislating at the same time respecting external and interprovincial trade and committing the regulation of external and interprovincial trade and the regulation of trade which is exclusively local and of traders and producers engaged in trade which is exclusively local to the same authority (*King* v. *Eastern Terminal Elevators*, [1925] S.C.R. 434.) "

This statement was quoted with approval by Lord Atkin in the Judicial Committee in upholding the decision of the Supreme Court of Canada, [1937] A.C. 377, at p. 387.

In *Shannon* v. *Lower Mainland Dairy Products Board*, [1939] A.C. 708, on the other hand, the Judicial Committee held the British Columbia *Natural Products Marketing Act*, 1936, R.S.B.C., cap. 165, which established marketing boards for the control and regulation within the province of the transportation, packing, storage and marketing of natural products to be *intra vires* the provincial legislature. Speaking for the Board, Lord Atkin stated (at pp. 718–720) as follows:

> " It is sufficient to say upon the first ground that it is apparent that the legislation in question is confined to regulating transactions that take place wholly within the Province, and are therefore within the sovereign powers granted to the Legislature in that respect by s. 92 of the *British North America Act*. Their Lordships do not accept the view that natural products as defined in the Act are confined to natural products produced in British Columbia. There is no such restriction in the Act, and the limited construction would probably cause difficulty if it were sought at some future time to co-operate with a valid Dominion scheme. But the Act is clearly confined to dealings with such products as are situate within the Province. It was suggested that ' transportation would cover the carriage of goods in transit from one Province to another, or

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overseas. The answer is that on the construction of the Act as a whole it is plain that 'transportation' is confined to the passage of goods whose transport begins within the Province to a destination also within the Province. It is now well settled that the enumeration in section 91 of 'the regulation of trade and commerce' as a class of subject over which the Dominion has exclusive legislative powers does not give the power to regulate for legitimate Provincial purposes particular trades or businesses so far as the trade or business is confined to the Province: *Citizens Insurance Co. of Canada* v. *Parsons*, 7 App. Cas. 96; *Reference re The Natural Products Marketing Act*, 1934, and its *Amending Act*, 1935, [1936] Can. S.C.R. 398; [1937] A.C. 377. And it follows that to the extent that the Dominion is forbidden to regulate within the Province, the Province itself has the right under its legislative powers over property and civil rights within the Province. The appellants did not dispute that there was a *bona fide* intention by the Province to confine itself to its own sphere, but they contended that, whatever the intention, the Province had in fact encroached upon the Dominion sphere. If they could have established that contention, they would have been in a stronger position. In this respect their Lordships desire to quote a passage from the opinion of Lord Atkin in the House of Lords in *Gallagher* v. *Lynn*, [1937] A.C. 863, at p. 869, which was cited by Martin, C.J., and which it will be convenient to bring into the line of authority on constitutional cases arising in the Dominions:

'My Lords the short answer to this is that this Milk Act is not a law "in respect of" trade; but is a law for the peace, order and good government of Northern Ireland "in respect of" precautions taken to secure the health of the inhabitants of Northern Ireland by protecting them from the dangers of an unregulated supply of milk. These questions affecting limitation on the legislative powers of subordinate parliaments or the distribution of powers between parliaments in a federal system are now familiar, and I do not propose to cite the whole range of authority which has largely arisen in discussion of the powers of Canadian Parliaments. It is well established that you are to look at the "true nature and character of the legislation": *Russell* v. *The Queen*, 7 App. Cas. 829, at p. 839: "the pith and substance of the legislation." If, on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorized field. Nor are you to look only at the object of the legislator. An Act may have a perfectly lawful object, e.g., to promote the health of the inhabitants, but may seek to achieve that object by invalid methods, e.g., a direct prohibition of any trade with a foreign country. In other words, you may certainly consider the clauses of an Act to see whether they are passed "in respect of" the forbidden subject. In the present case any suggestion of an indirect attack upon trade is disclaimed by the appellant. There could be no foundation for it. The true nature and character of the Act, its pith and substance, is that it is an Act to protect the health of the inhabitants of Northern Ireland; and in those

circumstances, though it may incidentally affect trade with County Donegal, it is not passed " in respect of " trade, and is therefore not subject to attack on that ground.' "

Even if *The Farm Security Act*, 1944, may incidently affect rights outside the province, it is in pith and substance legislation in relation to matters of a local nature, and hence *intra vires*. It is difficult to imagine this Act affecting persons or rights outside Saskatchewan since, as already indicated, the *res* and the rights dealt with have a situs solely in the province. However, if such rights are incidentally affected, it has been stated on many occasions, that such effect is not fatal to provincial legislation.

Thus, in *Workmen's Compensation Board* v. *C.P.R.* [1920] A.C. 184, the Judicial Committee determined the constitutional validity of the British Columbia *Workmen's Compensation Act*. In reply to the contention that the Act affected rights outside the province when it sought to impose liability for an accident sustained outside the territorial limits of the province, by a workman resident and employed in the province, Lord Haldane stated (at pp. 191–192):

" The scheme of the Act is not one for interfering with rights outside the Province. It is in substance a scheme for securing a civil right within the Province. The case is wholly different from that from Alberta which was before the Judicial Committee in *Royal Bank of Canada* v. *The King, supra*, where it was held that the Provincial statute was inoperative in so far as it sought to derogate from the rights of persons outside the Province of Alberta who had subscribed money outside it to recover that from depositories outside the Province with whom they had placed it for the purposes of a definite scheme to be carried out within the Province, on the ground that by the action of the Legislature of Alberta the scheme for which alone they had subscribed, had been altered. The rights affected were in that case rights wholly outside the Province. Here the rights in question are the rights of workmen within British Columbia. It makes no difference that the accident insured against might happen in foreign waters. For the question is not whether there should be damages for a tort, but whether a contract of employment made with persons within the Province has given a title to a civil right within the Province to compensation. The compensation, moreover, is to be paid by the Board and not by the individual employer concerned. No doubt for some purposes the law sought to be enforced affects the liberty to carry on its business of a Dominion railway company to which various provisions of s. 91 of the *British North America Act* of 1867 apply. But for other purposes, with which the Legislature of British Columbia had jurisdiction to deal under s. 92, it was competent to that Legislature to pass laws regulating the civil duties of a Dominion railway company which carried on business within the Province, and in the course of that business was engaging workmen whose civil rights under their contracts of employment had been placed by the Act of 1867 within the jurisdiction of the Province."

In re Ogal Estate, [1940] 1 W.W.R. 665, was a case in which an amendment to the Alberta *Intestate Succession Act* effected by 1939 Alta., cap. 76,

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was claimed to be *ultra vires* because providing that thereafter, and in respect to undistributed assets, the illegitimate children of an intestate dying after January first, 1936, should inherit as if he were legitimate. It was stated to interfere with civil rights of persons outside the province to sue and recover claims which they would otherwise have. Ford, J.A., holding the amendment *intra vires*, stated (at p. 668):

> " There is nothing ' colourable ' about this legislation, and any interference with any civil right which may be said to exist abroad is merely incidental to something which in my view is clearly within the ambit of the legislative jurisdiction of the province, namely, its right to deal with the succession to property within the province, and the ownership of property within the province, under its jurisdiction over property and civil rights within the province."

(*Vide Attorney-General for Alberta* v. *Attorney-General for Canada*, [1928] A.C. 475, at p. 493.)

Even if incidentally affecting rights outside the province, therefore, *The Farm Security Act*, 1944, cannot be held *ultra vires* on such grounds.

II. *Forum of Remedy*

Similarly, actions with respect to mortgages and agreements for sale of land in Saskatchewan must be brought within the province. It is well-established that the *lex situs* determines the remedies available in respect of property of such situs. Pursuant to this principle, provincial jurisdictions have enacted legislation of the nature of section 36, subsection (3), of *The King's Bench Act*, R.S.S. 1940, cap. 61, which provides that:

> " Notwithstanding any agreement to the contrary or any provisions in a mortgage of land or in an agreement for the sale of land, all actions for foreclosure or sale under a mortgage, or for enforcement of the vendor's lien, specific performance, determination, cancellation or rescission of a contract, shall be entered and, unless otherwise ordered by the local master under subsection (4) (which gives him power to transfer an action to any other judicial district) continued and tried in the judicial district in which the land or any part thereof lies."

Thus, both the situs of the *res* and the *locus* of its enforcement are geographically within the Province.

Since agreements for the sale of land and mortgages of land made in Saskatchewan are interests in land or *choses in action*, the situs of which is in the province, the law of the province must govern the enforcement of all rights and obligations to which such instruments give rise. In *Day* v. *City of Victoria*, [1938] 3 W.W.R. 161, in holding *The Victoria City Debt Refunding Act intra vires* the British Columbia legislature, Sloan, J.A., stated (at pp. 183–184):

> " Counsel for the respondent was frank to concede that if all the outstanding debentures were held by the citizens of and in this province the only question that could arise as to the constitutional validity of this enactment would be his submission that it was an Act in relation to interest. If this submission is, for the moment,

put to one side and effect given to his first contention, i.e., interference with extra-territorial civil rights of foreign bondholders, the Act might be *intra vires* in relation to those debentures held in the province and *ultra vires* with respect to those held by persons outside the province. This anomalous result can only be arrived at, in my opinion, because of a basic misconception concerning the enforceable rights of the foreign bondholders. While it is true that the debentures are payable, at the option of the holders, not only within but without the province, nevertheless the right to enforce the 10 ' substance of the obligation,' evidenced by the debentures, is a civil right exercisable solely within the province: *Australasian Temperance and Gen. Mutual Life Assur. Soc.* v. *Mount Albert Borough Council*, [1938] 1 W.W.R. 589, [1938] A.C. 224, 107 L.J.P.C. 5. In this connection it is to be noted that the outstanding debentures are by statutory direction charged upon and payable by rates levied upon rateable land or upon rateable lands and improvements within the municipality of the Defendant Corporation.

" It follows, in my view, that this Act does not derogate from any extra-territorial civil right; that is to say, there is no right of 20 action in the foreign bondholders by which the substantive obligations of the contract could be effectively enforced in a foreign jurisdiction.

* * * * *

" The refunding scheme does affect the obligations enforceable in the province by a bondholder's action but the Legislature of the province has authority to make laws, providing they relate exclusively to those subjects of legislation within the limits prescribed by sec. 92, ' as plenary and as ample ' ' as the Imperial Parliament in the plenitude of its power possessed and could bestow ': *Hodge* v. 30 *Reg.* (1883), 9 App. Cas. 117, at 132, 53 L.J.P.C.1, and see *Jones* v. *Canada Central Ry. Co.* (1881), 46 U.C.Q.B. 250, at 261."

In *Ladore* v. *Bennett*, [1939] A.C. 488, Lord Atkin, speaking for the Judicial Committee, stated (at pp. 482–483):

" The statutes are not directed to insolvency legislation: they pick out insolvency as one reason for dealing in a particular way with unsuccessful institutions: and though they affect rights outside the Province they only so affect them collaterally, as a necessary incident to their lawful powers of good government within the Province."

40 SECONDLY, SECTION 6 OF THE FARM SECURITY ACT, 1944, IS NOT WITHIN THE SOLE LEGISLATIVE JURISDICTION OF THE PARLIAMENT OF CANADA WITHIN THE MEANING OF SECTION 95 OR SECTION 91 (19) OR (21) OF THE BRITISH NORTH AMERICA ACT, 1867.

A. SECTION 95 OF THE B.N.A. ACT—" AGRICULTURE "

Section 95 of *The British North America Act*, 1867, endows the Dominion Parliament and the provincial legislatures with concurrent jurisdiction to enact laws in relation to agriculture, the provincial jurisdiction being confined to " agriculture in the province." There is therefore no doubt that the Dominion Parliament possesses the necessary authority 50 to enact legislation of the nature and purport of section 6 of *The Farm Security Act*, 1944.

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However, no such Dominion legislation, in fact, exists. *The Farmers' Creditors Arrangement Act*, 1943 Can., cap. 26, does not relate to the same subject-matter as *The Farm Security Act*, 1944. Whereas the latter benefits all farmers suffering crop failure in any year, regardless of their ability to pay, the former is designed to assist only farmers whose indebtedness is " beyond their capacity to pay," its object being to secure compromises or rearrangements of the debts of such farmers by a method of simple procedure. (*Vide The Farmers' Creditors Arrangement Act, supra*, Preamble.) The object of *The Farmers' Creditors Arrangement Act*, 1943, is the same as that of the Act of 1934 which was reviewed by this Honourable Court in *Reference re Farmers' Creditors Arrangement Act*, 1934, [1936] S.C.R. 384. Duff, C.J., there stated (at pp. 393–394):

> " The power to enact this statute is derived from subdivision 21 of section 91 of the B.N.A. Act in virtue of which the exclusive legislative authority of the Parliament of Canada extends to the subject of Bankruptcy and Insolvency. The broad purpose of the statute is, in the words of the title, ' to facilitate compromises and arrangements between farmers and their creditors.' The provisions of the statute affect farmers who are in such a situation that they are unable to pay their debts as they fall due. It is competent to Parliament, possessing plenary authority in respect of bankruptcy and insolvency, to treat this condition of affairs as a state of insolvency. The provisions of the statute only come into operation where such a state of insolvency exists. *Prima facie*, therefore, it is, within the ordinary meaning of the words, a statute dealing with insolvency. The statute is, by its express terms, incorporated into the general system of bankruptcy legislation in force in Canada and it is not open to dispute that legislation in respect of ' compositions and arrangements is a natural and ordinary component of a system of bankruptcy and insolvency law '."

There exists no legislation of the Dominion Parliament which even remotely relates to the subject-matter in relation to which section 6 of *The Farm Security Act*, 1944, was enacted.

In this case, therefore, although the Dominion Parliament might occupy the field in question, it has not done so. The field being clear, the provincial legislation is valid. In *Grand Trunk Railway Company* v. *Attorney-General of Canada*, [1906] A.C. 65, Lord Dunedin stated for the Judicial Committee (at p. 68):

> " A comparison of two cases decided in the year 1894, viz., *Attorney-General of Ontario* v. *Attorney-General of Canada*, [1894] A.C. 189, and *Tenant* v. *Union Bank of Canada*, [1894] A.C. 31, seems to establish these two propositions: First, that there can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be *ultra vires*, if the field is clear; and, secondly, that if the field is not clear, and in such a domain the two legislations meet, then the Dominion legislation must prevail."

Lord Tomlin reiterated these principles in *Attorney-General for Canada* v. *Attorney-General for British Columbia: Regulation of Fish Canneries Case*, [1930] A.C. 111, at p. 118, which were approved in *Reference re*

Regulation and Control of Aeronautics, [1932] A.C. 54, and *Attorney-General for Quebec* v. *Attorney-General for Canada : In re Silver Brothers*, [1932] A.C. 514.

The provincial legislation, therefore, is neither invalid in itself nor overborne by Dominion legislation. In any event, section 6 of *The Farm Security Act*, 1944, by subsection (7) specifically and effectively excludes from its application mortgagors and purchasers whose property is deemed to be under authority of the court pursuant to *The Farmers' Creditors Arrangement Act*, 1943, or whose affairs were arranged by a confirmed proposal under the provisions of *The Farmers' Creditors Arrangement Act*, 1934.

B. SECTION 91, HEAD (19) OF THE B.N.A. ACT—" INTEREST "

Section 6 of *The Farm Security Act*, 1944, does not deal with interest either directly or indirectly, nor is it in conflict with any legislation of the Parliament of Canada in relation to interest.

I. *The Pith and Substance of Section 6 is Not Interest*

The pith and substance of the legislation is agricultural security and the reduction of unavoidable risks to individual farmers by a spreading of such risks as exist among both farmers and their creditors, and eventually perhaps, among the provincial population as a whole. This object has been positively established, having regard to the general economic problems of the province and to the words of the enactment. Interest is specifically excluded from the application of the section ; the legislation neither directly nor indirectly relates to or affects it.

The section provides by subsection (2) that during the period of suspension stipulated, payments upon indebtedness secured by mortgage or arising out of an agreement for sale are suspended, and the principal outstanding on September fifteenth is reduced by four per cent. or by the same percentage as interest will accrue, whichever sum is greater, provided that notwithstanding such reduction, interest shall continue to be chargeable, payable and recoverable as if the principal had not been so reduced. The application of this section in particular cases, is as follows :

Case No. 1 :

An agreement of sale for $1,000.00 payable by delivery of one-third of the crop each year without interest. In event of a crop failure the principal will be reduced by 4 per cent. or $40.00 and will stand at $960.00. Land is often sold in Saskatchewan under agreements not bearing interest.

Case No. 2 :

An agreement of sale known as a bushelage agreement, fairly common in Saskatchewan, under which farm lands have been sold for 2,000 bushels of wheat payable by delivery of 200 bushels of wheat each year with no interest mentioned.

In event of a crop failure the principal of the agreement will be reduced by 4 per cent. or 80 bushels of wheat and will stand at 1,920 bushels owing.

Case No. 3 :

A mortgage for $1,000.00 bearing 8 per cent. interest repayable $80.00 per year ; interest and principal payable on the 15th day of September in

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each year. In the event of a crop failure, the $80.00 of interest falling due on September 15th is still due, payable and recoverable. The $80.00 of principal is cancelled and the mortgage reduced by $80.00 to $920.00. Interest is still chargeable and payable at 8 per cent. on $1,000.00.

Case No. 4:

A mortgage for $1,000.00 bearing interest at 4 per cent. per annum compounded payable on September 15th, on lands suffering crop failure in two successive years:

Interest calculation account:		*Mortgage account:*	
1944			
Sept. 15—Principal.....	$1,000.00	Principal	$1,000.00
Interest.....	40.00	Less Reduction..	40.00
			960.00
		Plus Interest....	40.00
	$1,040.00	Balance owing...	$1,000.00
1945			
Sept. 15— Principal.....	$1,040.00	Less Reduction..	$ 40.00
Interest 4% on $1,040.00	41.60		960.00
		Plus Interest	41.60
	$1,081.60	Balance owing...	$1,001.60
1946			
Sept. 15—Principal.....	$1,081.60		
Interest 4% on $1,081.60	43.26	Interest.....	43.26
	$1,124.86		$1,044.86

In successive years after the two crop failure years, the interest will continue to be calculated without regard to the reductions of principal as indicated for the year 1946. The amount required to pay off the mortgage in full on September 15th, 1946, will be $1,044.88, being $80.00 less than the amount which would have been payable if there had been no crop failure in the years 1944 and 1945.

It is clear from each of the above cases, that no change is effected in the amount of interest payable by application of section 6. A reduction of principal is made, preserving, however, to the creditor, all rights to stipulate for, exact and collect interest as though no reduction in the principal had been made.

The authorities which follow, emphasize the fact that it is not the form of the statute, but its effect and operation which are important to a determination of its constitutional validity. When the whole of section 6 of *The Farm Security Act*, 1944, is considered, it will be seen that the only occasion on which the cancellation of principal has any real bearing, is when the debtor desires to pay sufficient to discharge a mortgage or obtain a transfer under an agreement for sale, or, at any particular time, to determine the sum due and owing by the debtor to his secured creditor.

This follows from the provision that interest is to continue to be chargeable as if the principal had not been reduced. The amount required to pay a mortgage or indebtedness under an agreement for sale is the full amount of the interest owing to the date of payment, having no regard to the provisions of paragraph 3 of section 6 (2), together with the full amount of the principal, less the deduction provided for in that paragraph. The amount of the deduction is 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 fifteenth of each crop failure year (after taking into account previous deductions), which is either four per cent. or the same percentage as the rate of interest stipulated in the mortgage or agreement, whichever is greater. Thus, it is clear that interest is not dealt with in any way, since the reductions are made exclusively from principal after all the interest contemplated by the parties to the agreement has accrued and fallen due. Even in cases in which no interest is payable under the terms of a mortgage or agreement for sale, or where payments are made upon a share-crop basis or by bushelage, the provisions of the section apply, and reductions in principal are accordingly made. It is difficult to contemplate a statute which more specifically excludes the subject of interest from its scope and application.

II. *There Is No Attempt To Do Indirectly What May Not Be Done Directly, Nor Is The Section Colourable*

The object of section 6 of *The Farm Security Act*, 1944, as indicated earlier, is to reduce certain of the risks of agriculture to persons engaged in that industry, and to spread these unavoidable risks more equitably. To achieve this object, there exists no need to legislate with respect to interest. The object can be attained by other means, namely, by reducing principal outstanding upon secured indebtedness in crop failure years. The vice against which the legislation is designed to mitigate is not interest, but rather those risks which result in crop failure.

There exists no basis upon which it can be said that in enacting section 6, the Legislature sought indirectly, or by a colourable device to accomplish that which it was unable to do directly. First, the words of the section are clear and precise, and to the effect that principal and not interest is being reduced in crop failure years. Secondly, the object of mitigating against the unavoidable risks of the agricultural industry by spreading them more equitably can be achieved as readily and effectively by dealing with principal as by dealing with interest.

The principle of colourability, or of attempting indirectly what may not be done directly, proceeds upon the premise that no legislature in a federation may enact legislation, the object and application of which are beyond its powers to secure, and are hence illegal. If the object in view is within the powers of the legislature to achieve, the legislation in question must then be examined for the purpose of determining whether the method employed to achieve that object is lawful. Both the object, and the method of achieving that object are relevant.

There can be no question that the object of section 6 of *The Farm Security Act*, 1944, is within the competence of the Legislature to achieve.

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It is possible to achieve this object by means which may be either lawful or unlawful. It should not, however, be presumed that because unlawful means might be used for the purpose of securing the object, that such means have, in fact, been used. On the contrary, the presumption is well established in favour of the constitutional validity of the Acts of any legislature. (*Vide Severn* v. *The Queen* (1878), 2 S.C.R. 70; *Hewson* v. *Ontario Power Company*, [1905] 36 S.C.R. 596; *Scott* v. *Scott* (1891), 4 B.C.R. 516 (C.A.).

There are cases in which it has been held that a legislature may not, by indirect means, secure objects which it could not achieve directly. Such decisions as those in the "*Insurance Cases*," however indicate only that the objects of the statutes as well as the means employed, were *ultra vires*. The matter of the means employed was secondary in those cases. Had the object of the legislation been valid, no question would have arisen regarding "direct" or "indirect" means. Because the Acts were designed, in fact, to regulate insurance contracts, the Courts were vigilant to prohibit legislation designed to achieve that end, however disguised. Thus, in *Attorney-General for Canada* v. *Attorney-General for Alberta*, [1916] 1 A.C. 588, the Judicial Committee held section 4 of the Dominion *Insurance Act*, 1910, which purported to license all insurance companies operating in the provinces, *ultra vires*. In *Attorney-General for Ontario* v. *Reciprocal Insurers*, [1924] A.C. 328, the Judicial Committee held an amendment to the Criminal Code which purported to render illegal contracts of non-registered insurance companies also *ultra vires*. Duff, J., speaking for the Judicial Committee stated (at p. 346):

> "The enactment in question being in substance, notwithstanding its form, an enactment in regulation of contracts of insurance and the business of insurance, subjects not within the legislative sphere of the Dominion, and, subject to the proviso which is not here material, being general in its terms, is in their Lordships' opinion invalid in its entirety."

Next the Judicial Committee dealt with an amendment to sections 11 and 12 of the Canada *Insurance Act* which required British and foreign companies to be licensed before doing business in a province, and found them *ultra vires*. Indicating that the pith and substance of the amendment was the same as the earlier enactments, Lord Dunedin said (at pp. 52–53):

> "Now as to the power of the Dominion Parliament to impose taxation there is no doubt. But if the tax as imposed is linked up with an object which is illegal the tax for that purpose must fall. Section 16 clearly assumes that a Dominion licence to prosecute insurance business is a valid licence all over Canada and carries with it the right to transact insurance business. But it has been already decided that this is not so; that a Dominion licence, so far as authorizing transactions of insurance business in a Province is concerned, is an idle piece of paper conferring no rights which the party transacting in accordance with Provincial legislation has not already got, if he has complied with Provincial requirements. It is really the same old attempt in another way."

Finally, a similar result was reached in the reference to this Honourable Court *Re Section 16 of The Special War Revenue Act*, [1942] S.C.R. 429.

In the insurance cases, the Dominion Parliament was still attempting to do what it had been held it could not do, namely, regulate the business of insurance generally. It was there not a case of Parliament doing something different in kind, which would have the same practical result, but rather of actually doing what the Courts held, it could not do, namely, of controlling the contracts of insurance companies. The fact that the reduction in principal may, in some cases, approximate in amount, the sum of interest accruing, and may, in effect offset to a large extent, the contractual provisions for interest in a crop failure year, does not amount to a dealing with interest.

Ladore v. *Bennett*, [1939] A.C. 468, was a case in which the Judicial Committee determined the pith and substance of an Act which reduced the interest of municipal debentures. Lord Atkin, speaking for the Board said (at pp. 482–483):

> " It was suggested in argument that the impugned provisions should be declared invalid because they sought to do indirectly what could not be done directly, viz., to facilitate repudiation by provincial municipalities of obligations incurred outside the province. It is unnecessary to repeat what has been said many times by the Courts in Canada and by the Board that the Courts will be careful to detect and invalidate any actual violation of constitutional restrictions under pretence of keeping within the statutory field. A colourable device will not avail. But in the present case nothing has emerged even to suggest that the Legislature of Ontario at the respective dates had any purpose in view other than to legislate in times of difficulty in relation to the class of subject which was its special care, viz., municipal institutions. For the reasons given the attack upon the Acts and scheme on the ground either that they infringe the Dominion's exclusive power relating to bankruptcy and insolvency or that they deal with civil rights outside the province breaks down. The statutes are not directed to insolvency legislation; they pick out insolvency as one reason for dealing in a particular way with unsuccessful institutions; and though they affect them collaterally, as a necessary incident to their lawful powers of good government within the province.
>
> " The question of interest does not present difficulties. The above reasoning sufficiently disposes of the objection. If the provincial Legislature can dissolve a municipal corporation and create a new one to take its place it can invest the new corporation with such powers of incurring obligations as it pleases, and incidentally may define the amount of interest which such obligations may bear. Such legislation if directed *bona fide* to the effective creation and control of municipal institutions is in no way an encroachment upon the general exclusive power of the Dominion Legislature over interest."

In *Day* v. *Victoria* (*City*), [1938] 3 W.W.R. 161, Sloan, J.A., stated (at p. 183):

> " It is sufficient for my purpose to say that in my opinion the ' pith and substance ' of this enactment (*Union Colliery Co. of B.C.* v. *Bryden*, [1899] A.C. 580, 68 L.J.P.C. 118), its ' true nature and

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character' (*Citizens Insurance Company* v. *Parsons*, (1881), 7 A.C. 96), may be described as an effort to 'recast the City's debt structure with the object of alleviating the burden of debt charges' now borne by the city consequent upon the issue of debentures. This is to be effectuated by a scheme whereby the present outstanding debentures are to be exchanged for so-called 'refunding debentures.' The maturity date of the refunding debentures is fixed at a period some years later than the maturity dates of the outstanding debentures (generally speaking) and in addition the refunding issue will bear a lower interest rate (generally speaking) than did the old.

The real purpose and effect of the enactment is to give the city a breathing spell, so to speak, in which to rehabilitate its finances and so meet its obligations at the expiration of the amended time of payment."

And at p. 185, Sloan, J.A., stated:

"Is this Act, then, one not relating exclusively to subject-matters within section 92, but one also in relation to interest? In my opinion, with respect, it is an Act in relation to subject-matters assigned exclusively under section 92 (8) (13) and is not one in relation to any subject-matter within the exclusive legislative competence of the Dominion.

"It does not purport to be an Act relating generally to interest, and while some of the provisions contained therein *affect* interest as an incident in the effectuation of the general scheme of the enactment, nevertheless it cannot, in my opinion, be said to be an Act *in relation to* interest: *Attorney-General for Manitoba* v. *Manitoba Licence-holders' Association*, [1902] A.C. 73.

"To hold otherwise would be to imperil, without reason, many provincial statutes which contain references affecting interest incidental to the exercise of legislative powers assigned to the province under the appropriate heads of section 92."

Independent Order of Foresters v. *Lethbridge Northern Irrigation District*, [1940] A.C. 513, was a case in which the Judicial Committee held that the pith and substance of three Alberta statutes was a dealing with interest, and that all were therefore *ultra vires*. The Acts, being 1936 (second session) Alberta, caps. 11, 12 and 13, were described by Lord Caldecote, L.C., (at p. 528) as follows:

"The Act, cap. 12 of 1937, effects its object in simple and straightforward language. After defining guaranteed securities so as to include (*inter alia*) the debentures concerned in this appeal, the Act proceeds by section 3 to reduce the rate of interest payable upon any guaranteed security from and after June 1, 1936, 'notwithstanding any stipulation or agreement as to the rate of interest payable' in respect of the security. In order to bolt the door more firmly against a holder of any guaranteed security who might wish to test his rights in the Courts of the Province, it is provided by section 3, subsection 2, that 'no person shall be entitled to recover in respect of any guaranteed security any interest at a higher rate than the rate' prescribed by the Act, and the rights of

the holder of a guaranteed security are stated to be such as are set out in the Act. The Act, cap. 11 of 1937, carries the alteration of the rights of the debenture holder a little further. Section 2 defines 'guaranteed securities' as in the Act, cap. 12. Section 3, which is the only operative section of the Act, prohibits any action or proceeding of any kind for the recovery of any money payable 'in respect of any guaranteed security, or for the purpose of enforcing any right or remedy whatsoever for the recovery of any such money, or for the purpose of enforcing any judgment or order at any time heretofore or hereafter given or made with respect to any guaranteed security, or for the purpose of enforcing any foreign judgment founded on a guaranteed security, without the consent of the Lieutenant-Governor in Council."

The Lord Chancellor reviewed the relevant decisions for the purpose of ascertaining the true pith and substance of the legislation (*Ibid.*, at pp. 528–529):

"The validity of these two Acts depends upon the interpretation and application of ss. 91 and 92 of the *British North America Act of* 1867. These sections have been the subject of repeated examination in the Judicial Committee, and there can no longer be any doubt as to the proper principles to their interpretation, difficult though they may be in application. Lord Haldane, in delivering the judgment of the Judicial Committee in *Great West Saddlery Co.* v. *The King*, [1921] 2 A.C. 91, at p. 116, said: 'The rule of construction is that general language in the heads of section 92 yields to particular expressions in section 91, where the latter are unambiguous.' In a later decision of the Judicial Committee, *Attorney-General for Canada* v. *Attorney-General for British Columbia*, [1930] A.C. 111, Lord Tomlin summarized in four propositions the result of the earlier decisions of the Board on questions of conflict between the Dominion and the Provincial Legislatures. The first proposition is to the effect that the legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in section 91, is of paramount authority, even though it trenches upon matters assigned to the Provincial Legislatures by section 92. Lord Tomlin referred to *Tennant* v. *Union Bank of Canada*, [1894] A.C. 31, as the authority for this statement. In applying these principles, as their Lordships propose to do, to the present case, an inquiry must first be made as to the 'true nature and character of the enactments in question' (*Citizens Insurance Co. of Canada* v. *Parsons*) (1881), 7 A.C. 96, or, to use Lord Watson's words in delivering the judgment of the Judicial Committee in *Union Colliery Company of British Columbia* v. *Bryden*, [1899] A.C. 580, as to their 'pith and substance.' Their Lordships now address themselves to that inquiry.

"The long title to the Act, cap. 12 of 1937, is 'An Act respecting the interest payable on debentures or other securities guaranteed by the Provinces.' The sole purpose and effect of the Act are to reduce the rate of interest on a number of securities. The holders of the securities affected by the Act were entitled,

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before the Act was passed, to receive interest at a rate according to the terms on which their securities were issued. The Act substituted a different rate of interest for the agreed rate. The Act clearly deals with interest, and 'interest' is one of the classes of subject which by section 91 are reserved exclusively for the Dominion Legislature. Unless, therefore, a restricted interpretation is to be given to 'interest' in section 91 (19) instead of its ordinary meaning, it would appear on a first examination that the Act, cap. 12, is not within the competence of the Province."

After dealing with and rejecting the suggestion that the word "Interest" as used in section 91 was confined to statutes dealing with usury, Viscount Caldecote stated (*Ibid.*, at p. 531):

"Their Lordships do not find it necessary to attempt to lay down any exhaustive definition of 'interest.' The word itself is in common use, and is well understood. It is sufficient to say that in its ordinary connotation it covers contractual interest, and contractual interest is the subject of the Act now in question.

"For these reasons their Lordships have come to the conclusion that the Act, cap. 12 of Alberta, 1937, is in pith and substance an Act dealing with 'interest' within the meaning of section 91 (19) of *The British North America Act.* Having regard to this conclusion, it becomes unnecessary to discuss at length the classes of subjects enumerated in section 92 as being within the powers of Provincial Legislatures."

After rejecting the applicability of section 92 of *The British North America Act*, 1867, to the legislation, Lord Caldecote said (*Ibid., at pp.* 532–533):

"Their Lordships were pressed with the decision of the Board in *Ladore* v. *Bennett*, [1939] A.C. 468. In that case a Provincial Legislature passed Acts amalgamating and incorporating in one city four municipalities which were in financial difficulties. As part of the consequent adjustment of the finances of the municipalities, debentures of the new city of equal nominal amount to those of the old municipalities were issued to the creditors, but with the rate of interest reduced. It was held by the Judicial Committee that a Provincial Legislature, which could dissolve a municipal corporation and create a new one to take its place, could legislate concerning the financial powers of the new corporation, and incidentally might define the amount of interest which the obligations incurred by the new city should bear. On this ground it was decided that legislation directed *bona fide* to the creation and control of municipal institutions is in no way an encroachment upon the general exclusive power of the Dominion Legislation over interest. Having come to the conclusion that the pith and substance of the legislation in question related to one or more of the classes of subjects under section 92, the Board had no difficulty in holding that the regulation of the interest payable on the debentures of the new city was not an invasion of Dominion powers under head 19 of section 91.

"The decision of the Court of Appeal of British Columbia in *Day* v. *Victoria* (*City*), [1938] 3 W.W.R. 161, holding *The Victoria*

City Debt Refunding Act, 1937, *intra vires* of the Provincial Legislature, was also cited as a case in which it was held permissible for a Provincial Legislature to pass an Act relating to interest. On examination, the decision is found to give no support to the appellants' argument. The Act there in question did not purport to be an Act relating generally to ' interest,' and while some of its provisions dealt with interest as an incident effecting the general object of the enactment, it was held, rightly as their Lordships think, not to be an Act in relation to ' interest,' or to conflict with the Dominion *Interest Act*. In *Attorney-General for British Columbia* v. *Attorney-General for Canada*, [1937] A.C. 391, which was also cited, the question was whether Acts of the Dominion Parliament dealing with the liabilities of farmers and with creditors' arrangements came under head 21 of section 91 of *The British North America Act* —' Bankruptcy and insolvency,' or head 13 of section 92, ' Property and civil rights in the province.' The Judicial Committee held that the Acts in question related to ' bankruptcy and insolvency.' The case is one more illustration of the rule that, in resolving the questions that are bound to arise between these two famous sections of *The British North America Act*, it is essential first to examine the ' true nature and character ' of the legislation in question."

Dealing with the Act, 1937 Alberta (second session), cap. 11, which prohibited actions or proceedings to enforce rights with respect to guaranteed securities without the consent of the Lieutenant-Governor in Council, this being the procedural device employed to bar the door to the recovery of interest and to reinforce chapters 12 and 13, Lord Caldecote stated (at pp. 533–534) :

" By this method, reductions in the rate of interest on the guaranteed securities would be enforceable, regardless of the fate of the Act, cap. 12. In other words, the Act, cap. 11, is an attempt to do by indirect means something which their Lordships are satisfied the provincial Parliament cannot do. This Board has never allowed such colourable devices to defeat the provisions of sections 91 and 92. Reference may be made to Lord Halsbury's statement in delivering the decision of the Judicial Committee in *Madden* v. *Nelson and Fort Sheppard Ry.*, [1899] A.C. 626, at p. 627 :

> ' It is a very familiar principle that you cannot do that indirectly which you are prohibited from doing directly.'

" The substance and not the form of the enactment in question must be regarded. Their Lordships cannot come to any other conclusion than that under colour of an Act relating to the class of subject described in head 14 of section 92, the provincial Parliament has passed legislation which is beyond their powers."

Section 6 of *The Farm Security Act*, 1944, is clearly distinguishable from chapter 11 of 1937 Alberta (second session) for whereas the latter was devised for the express purpose of doing indirectly what the Courts held could not be done directly, the former accomplishes a constitutionally valid object by a direct and *intra vires* method. The pith and substance of section 6 of *The Farm Security Act*, 1944, is not interest ; its true nature and character is a dealing with the situation which arises from crop failures

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in the province, and, even assuming that interest is dealt with incidentally to that problem it does not amount to a dealing generally with interest as referred to in the above statements of Lord Caldecote (pp. 531–533) where reference is made to the cases of *Ladore* v. *Bennett* and *Day* v. *Victoria* (*City*). Those two cases are distinguished by Viscount Caldecote on the ground that the statutes in question did not deal generally with interest but dealt with it incidentally to the problem of rearranging the finances of municipal institutions. The objective was to enable municipal institutions to function efficiently, and, incidentally, to that problem, it was necessary to deal with interest. In the Alberta Acts on the other hand the only purpose in view was to deal with the amount of interest payable.

In the present case, not only is interest not dealt with, but it is excluded from the operation of the section by express words. It is as though the provincial legislature removed this subject from the province itself, enacting legislation which, under no circumstances, would affect it, even indirectly.

In *City of Montreal* v. *Attorney-General for Canada*, [1923] A.C. 136, it was held that provincial legislation which empowered the City of Montreal to tax persons occupying, for commercial or industrial purposes, Crown buildings or lands, as if they were the actual owners, and making them liable to pay the actual and special assessments including taxes and other municipal dues, was *intra vires*. It was argued that the tax was *ultra vires* as being, in effect, a tax on Crown lands, contrary to section 125 of the *British North America Act*, 1867, but the Judicial Committee held the tax to be *intra vires*, Lord Parmoor stating as follows (at pp. 140–141):

> "It is alleged, however, by the respondent, the Attorney-General for Canada, that although the appellant is making no claim to tax property of the Crown, occupied by the Crown, or by persons occupying as holders of an official position under the Crown, yet in effect the city is seeking indirectly to tax such property and that such taxation is *ultra vires* of the Provincial Legislature. Their Lordships agree in the proposition that it would be *ultra vires* to attempt to impose indirectly, taxation which cannot be imposed directly.
>
> "On the other hand, the respondent does not allege that persons occupying Crown property for commercial or industrial purposes are not liable to Provincial taxation in respect of their tenancy or occupation, provided that the taxation is imposed in such a form that it is in reality a taxation on the interest of the tenant or occupant, and not on the property of the Crown. It would not be possible after the decision of their Lordships in *Smith* v. *Vermillion Hills Rural Council*, [1916] 2 A.C. 569, to contend that tenants who occupy Crown property, not as officials of the Crown, but for commercial or business purposes, are not liable to provincial taxation so long as the assessment is based on their interest as occupants."

The Judicial Committee in effect stated that the provincial legislature may not do indirectly what it cannot do directly but that even though the net result here was that the Crown would be required to reimburse the tenant to the extent of the tax paid, it was immaterial, and the tax was

valid as long as it was not a tax on the Crown. The *ratio decidendi* of this case appears to be that while a legislature may not do indirectly what it cannot do directly, it may constitutionally effect by one approach, an object which it is prohibited from achieving from a different approach. This is simply a variation of the " aspect doctrine " of constitutional interpretation whereby subjects which in one aspect may come under section 91 of *The British North America Act*, 1867, may, in another aspect and for another purpose be brought within section 92. (*Vide Paquet* v. *Quebec Pilots*, [1920] A.C. 1029.)

In the present case, paragraph 3 of subsection (2) of section 6 does not deal with interest, and the fact that the net result is practically the same as legislation providing for a reduction of interest in a crop failure year, does not affect the validity of the section, just as the fact that the Crown would have to pay the tax in the case of the *City of Montreal* v. *Attorney-General for Canada*, *supra*, was held to be immaterial in considering the validity of the tax there in question.

A similar result was reached by the Judicial Committee in *City of Halifax* v. *Fairbanks Estate*, [1928] A.C. 117. The headnote which sets out the facts reads as follows :

> " A city charter, enacted by the Legislature of the Province of Nova Scotia, imposed a tax called a ' business tax,' to be paid by every occupier of real property for the purposes of any trade, profession, or other calling carried on for the purposes of gain ; the tax was assessable according to the capital value of the premises. Section 394 of the charter provided that any property let to the Crown, or to any person, corporation, or association exempt from taxation, was to be deemed for business purposes to be in the occupation of the owner, and was to be assessed for business tax according to the purposes for which it was occupied.
>
> " The respondent estate owned premises which it let to the Crown, represented by the Minister of Railways, for use as a ticket office of the Canadian Northern Railway, the lessee agreeing to pay the business tax. The premises were used exclusively for the purpose above stated. The city assessed the respondent estate to the business tax under section 394 of the charter."

It was held that the tax was valid even though it was again argued that it was, in effect a tax on property belonging to the Crown, contrary to section 125 of the *British North America Act*, 1867. In this case in order to rent the property in question the Crown was required to agree to pay " the business tax, if any " ; therefore, by the net result, whatever tax was payable, was payable only by the Crown. The Judicial Committee held that the tax was not imposed upon the Crown, and even though the result was the same as if the tax had been upon the Crown, it still did not amount to a taxing of Crown property, and was *intra vires*.

A comparison of the *City of Montreal and the City of Halifax Cases*, *supra*, with the " Insurance Cases " indicates the difference between attempting to do indirectly what may not be done directly (as in the latter), and effecting a direct approach by means within the power of the provincial legislature and avoiding any subject matter beyond its powers (as in the

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former). In the one case, the legislation is clearly *ultra vires ;* into the classification of the other falls the great bulk of the enactments of the component legislatures of a federation, which is *intra vires.*

In the present case, the interest payable under a mortgage or agreement for sale of farm lands remains interest, and is not changed in character or in result in virtue of the provisions of section 6 of *The Farm Security Act,* 1944. Income tax imposed by *The Income War Tax Act,* R.S.S. 1927, cap. 97, will continue to be collectable with respect to interest payable under a mortgage or agreement for sale, without regard to the fact that in a crop failure year there was a loss of principal, approximating in amount to the interest (although not being the interest due and payable) accruing during that year.

If a testator provides in his will that a mortgage or his equity in an agreement for the sale of farm lands is to be held by his executors, and that the interest accruing therefrom be paid to a named beneficiary for a period of ten years, and that the mortgage or equity in the agreement then be transferred to a second beneficiary, it could not be claimed that the interest payable in a crop failure year would be lost to the first named beneficiary, entitled to interest. In such case, it would clearly appear that the principal of the mortgage was reduced, but that the interest accruing and payable remained intact and unaltered.

Viewed from this aspect, it is clear that interest has not been dealt with by section 6 ; on the contrary, it has been specifically excluded from the scope and application of the section. In the *City of Montreal and City of Halifax Cases, supra,* provision was made for taxing the tenant in the first, and the owner in the second case, with the net result that the Crown would have to pay the tax in each case. It was nevertheless held in each case that the tax was *intra vires* since it was not actually a tax upon the Crown, although it resulted in a tax being paid by the Crown. The Judicial Committee only concerned itself with the question as to whether the statutes in question actually taxed the Crown, and not whether the result was the same as if the Crown had been taxed. It held that it was not an attempt to impose indirectly taxation which could not be imposed directly.

III. *Section 6 Does Not Interfere With The Interest Act*

Section 2 of *The Interest Act,* R.S.C. 1927, cap. 102, states as follows :

> " 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."

Section 6 of *The Farm Security Act,* 1944, in no way interferes with the application of the above provision. Paragraph 3 of subsection (2) of this section after providing for the reduction of principal, expressly states that

> " notwithstanding such reduction, interest shall continue to be chargeable, payable and recoverable as if the principal had not been so reduced."

It has already been indicated how this clause operates for the preservation of interest.

The distinction between principal and interest is not difficult to draw. In *Singer* v. *Goldhar* (1924), 55 O.L.R. 267 (C.A.), Masten, J.A., distinguished between them as follows (at p. 270) :

> " Now the ordinary meaning of ' principal ' is the capital sum of money placed out at interest, in other words, the sum actually lent or advanced (see *Wharton's Law Lexicon*, 11th ed., pp. 460 and 481). 'Interest', when considered in relation to money denotes the return or consideration, or compensation for the use or retention by one party of a sum of money or other property belonging to another : *Halsbury*, vol. 21, p. 37, para. 72. The definition in *Wharton's* and other Law Lexicons is to the like effect. This definition applies as accurately to a lump sum agreed by way of compensation as to periodical payments at a rate per cent."

Wharton's Law Lexicon, 14th ed., at p. 528, defines interest as follows :

> " Money paid at a fixed rate per cent. for the loan or use of some other sum, called principal. It is distinguished into simple and compound. (a) Simple interest is that which is paid for the principal sum lent, at a certain rate or allowance made by law, or agreement of parties. (b) Compound interest is when the arrears of interest of one year are added to the principal and the interest for the following year is calculated on that accumulation."

(*Vide Byrne's Dictionary of English Law*, p. 485 ; *Cummings* v. *Silverwood*, [1918] 3 W.W.R. 629, at p. 631 (Sask. K.B.).

The relationship between principal and interest depends in each case upon the contractual relationship between the parties. As Duff, J., stated in *Union Investment Company* v. *Wells*, [1908] 39 S.C.R. 625, at p. 645) :

> " What the relation is between the obligation for the payment of principal and that for the payment of interest is always in the last resort a question of the construction of the particular document out of which the obligations arose : *Economic Life Assurance Society* v. *Osborne*, [1902] A.C. 147, at p. 149 ; and upon the terms of the document it is to be determined whether, for a given purpose, the two obligations are to be regarded as wholly independent or as integral parts of a single obligation or as bearing to one another the relation of principal and accessory."

It is a relationship, therefore, which may be altered and varied, not only by the parties, but by the legislature. A provincial legislature may alter the relationship between principal and interest provided that the interest itself remains unaffected and intact. Conversely, the Dominion Parliament may alter and vary interest, but without directly dealing with principal for the legal capacity to exact interest does not carry with it a capacity to maintain the principal obligation. If the Dominion power to legislate in relation to interest were wider, it would entirely destroy the capacity of the provincial legislatures to deal with the principal obligation as a civil right. But such provincial powers are well-established, and provided they do not alter or vary interest, they may be validly exercised, as in the case of section 6 of *The Farm Security Act*, 1944.

The rights of parties to stipulate for, allow and exact any rate of interest or discount that may be agreed upon, as provided by section 2 of

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The Interest Act, supra, is therefore preserved intact, nor is it even indirectly affected by section 6 of *The Farm Security Act,* 1944. There is here no clash between provincial and Dominion legislation. Both may co-exist and be enforced without conflict. (*Vide Forbes* v. *Attorney-General for Manitoba* (*Provincial Taxation of Dominion Employees Case*), [1937] A.C. 260, at p. 271.)

IV. *In The Alternative, If Interest Is Affected, It Is Affected Only Incidentally*

It has been indicated above, that in enacting section 6 of *The Farm Security Act,* 1944, the legislature scrupulously avoided the adoption of provisions in relation to or even affecting interest. If, however, this Honourable Court is of opinion that interest is thereby affected, then it is so affected only incidentally to the operation of legislation in relation to agriculture, property and civil rights in the province, and to matters of a merely local and private nature.

Reference may be made to two decisions already discussed, viz., *Ladore* v. *Bennett,* [1939] A.C. 468, and *Day* v. *Victoria* (*City*), [1938] 3 W.W.R. 161. In both cases, interest upon municipal indebtedness was specifically reduced by provincial statutes which were held *intra vires* since they were found to be enactments in relation to municipal institutions, only incidentally affecting interest. Lord Atkin, speaking for the Judicial Committee in *Ladore* v. *Bennett, supra,* said (at p. 483):

> " Such legislation, if directed *bona fide* to the effective creation and control of municipal institutions, is in no way an encroachment upon the general exclusive power of the Dominion Legislature over interest."

Similarly, if section 6 of the present Act is directed to the stabilization of the agricultural industry, and to property and civil rights within Saskatchewan, it is in no way an encroachment upon the general exclusive power of the Dominion Parliament over interest. This principle is clearly established in other legislative fields by the following decisions:

Tennant v. *Union Bank of Canada,* [1894] A.C. 31, at p. 45;

Citizens Insurance Company v. *Parsons* (1881), 7 A.C. 96, at p. 108;

John Deere Plow Company v. *Wharton,* [1915] A.C. 330, at p. 338.

C. Section 91, Head (21) of The B.N.A. Act—" Bankruptcy "

The provisions of section 6 of *The Farm Security Act,* 1944, in no way relate, nor are they even indirectly referable to bankruptcy or insolvency within the meaning of head (21) of section 91 of *The British North America Act,* 1867. The criterion of " crop failure " of grain crops grown on land, as defined in paragraph 2 of subsection (1) of the section is the sole factor determining the applicability of the provisions of the section in any case, regardless of the economic or financial position of the mortgagor or purchaser thereof, and without regard to his solvency.

The definition of " bankruptcy and insolvency " is here of relevance. *L'Union St. Jacques de Montreal* v. *Belisle* (1874), L.R. 6 P.C. 31, was a case in which the Judicial Committee considered a Quebec *Act to Relieve L'Union St. Jacques de Montreal,* a benevolent society, of certain payments

to widows, which it was obliged to make, because of the embarrassed state of its treasury. Lord Selborne, in stating for the Committee that this was not bankruptcy or insolvency legislation within the meaning of head (21) of section 91, but rather legislation in relation to matters of a merely local and private nature, pointed out (at p. 35) that its subject matter

> " relates to a benevolent or benefit society incorporated in the City of Montreal within the Province, which appears to consist exclusively of members who would be subject *prima facie* to the control of the provincial legislature. The Act deals solely with the affairs of that particular society, and in this manner :—taking notice of a certain state of embarrassment resulting from what it describes in substance as improvident regulations of the society, it imposes a forced commutation of their existing rights upon the widows, who at the time when the Act was passed were annuitants of the society under its rules . . . Clearly this matter is private ; clearly it is local, so far as locality is to be considered, because it is in the province and in the City of Montreal ; and unless, therefore, the general effect of that head of section 92 is for this purpose qualified by something in section 91, it is a matter not only within the competency, but within the exclusive competency of the provincial legislature."

Speaking of the scope of the term " bankruptcy and insolvency," Lord Selborne said (*Ibid.*, at p. 37) :

> " The fact that this particular society appears upon the face of the Provincial Act to have been in a state of embarrassment, and in such a financial condition that, unless relieved by legislation, it might have been likely to come to ruin, does not prove that it was in any legal sense within the category of insolvency. And in point of fact the whole tendency of the Act is to keep it out of that category, and not to bring it into it. The Act does not terminate the company ; it does not propose a final distribution of its assets on the footing of insolvency or bankruptcy ; it does not wind it up. On the contrary, it contemplates its going on, and possibly at some future time recovering its prosperity, and then these creditors, who seem on the face of the Act to be somewhat summarily interfered with, are to be reinstated."

Attorney-General of Ontario v. *Attorney-General for the Dominion* (*Voluntary Assignments Case*), [1894] A.C. 189, contains a statement of Lord Herschell, speaking for the Judicial Committee, relating to the nature of bankruptcy and insolvency (at p. 200) :

> " It will be seen that it is a feature common to all the systems of bankruptcy and insolvency to which reference has been made, that the enactments are designed to secure that in the case of an insolvent person his assets shall be rateably distributed amongst his creditors whether he is willing that they shall be so distributed or not. Although provision may be made for a voluntary assignment as an alternative, it is only as an alternative."

In *Beiswanger* v. *Swift Current*, [1931] 1 D.L.R. 407, the Saskatchewan Court of Appeal held that provincial legislation which provided that in view of its financial difficulties, no creditor might commence a suit, action

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or other proceeding against the City of Swift Current without the consent in writing of all the " supervisors " named in Schedule A to the Act, was not *ultra vires* as being bankruptcy or insolvency legislation but that it was rather legislation in relation to property and civil rights in the province, reference being made by Haultain, C.J.S., to the nature of bankruptcy as defined in *Attorney-General of Ontario* v. *Attorney-General for the Dominion, supra.*

In *Attorney-General for British Columbia* v. *Attorney-General for Canada* (*Farmers' Creditors Arrangement Act Case*), [1937] A.C. 391, Lord Thankerton, speaking for the Judicial Committee, defined " insolvency " as follows (at pp. 402–403):

> " In a general sense, insolvency means inability to meet one's debts or obligations; in a technical sense, it means the condition or standard of inability to meet debts or obligations, upon the occurrence of which the statutory law enables a creditor to intervene, with the assistance of a Court, to stop individual action by creditors and to secure administration of the debtor's assets in the general interest of creditors; the law also generally allows the debtor to apply for the same administration. The justification for such proceeding by a creditor generally consists in an act of bankruptcy by the debtor, the conditions of which are defined and prescribed by the statute law. In a normal community it is certain that these conditions will require revision from time to time by the Legislature; as also the classes in the community to which the bankruptcy laws are to apply may require reconsideration from time to time. Their Lordships are unable to hold that the statutory conditions of insolvency which enabled a creditor or the debtor to invoke the aid of the bankruptcy laws, or the classes to which these laws applied, were intended to be stereotyped under head 21 of section 91 of *The British North America Act* so as to confine the jurisdiction of the Parliament of Canada to the legislative provisions then existing as regards these matters.
>
> " Further, it cannot be maintained that legislative provisions as to compositions, by which bankruptcy is avoided, but which assumes insolvency, is not properly within the sphere of bankruptcy legislation. (*In re Companies' Creditors Arrangement Act*, [1934] S.C.R. 659.) "

The effect of *The City of Windsor* (*Amalgamation Act*), 1935 Ont., cap. 74, dealt with by the Judicial Committee in *Ladore* v. *Bennett*, [1939] A.C. 468, was not unlike the effect of *The Farm Security Act*, 1944, for in both cases, the financial arrangements between the parties are revised. In the former case, it was held that legislation altering the liabilities of a municipal institution in the province which was financially embarrassed was not bankruptcy or insolvency legislation, but legislation in relation to municipal institutions. Thus, Lord Atkin stated (at pp. 480–482):

> " It appears to their Lordships that the Provincial legislation cannot be attacked on the ground that it encroaches on the exclusive legislative power of the Dominion in relation to (bankruptcy and insolvency). Their Lordships cannot agree with the opinion of Henderson, J.A., that there is no evidence that these municipalities

are insolvent. Insolvency is the inability to pay debts in the ordinary course as they become due; and there appears to be no doubt that this was the condition of these corporations. But it does not follow that because a municipality is insolvent that the Provincial Legislature may not legislate to provide remedies for that condition of affairs. The Province has exclusive legislative power in relation to municipal institutions in the Province: Section 92 (8) of *The British North America Act*, 1867. Sovereign within its constitutional powers, the Province is charged with the local government of its inhabitants by means of municipal institutions. If local government in any particular area becomes ineffective or non-existent because of the financial difficulties of one or more municipal institutions, or for any other reason, it is not only the right, but it would appear to be the duty, of the Provincial Legislature to provide the necessary remedy, so that the health of the inhabitants and the necessities of organized life in communities should be preserved. If corporation A or B or C is unable to function satisfactorily it would appear to be elementary that the Legislature must have power to provide that the functions of one or all should be transferred to some other body or corporation. For this purpose, as the corporation could be created by the Province, so it could be dissolved, and a new corporation created as a municipal institution to perform the duties performed by the old. The result of dissolution is that the debts of the dissolved corporation disappear. Amalgamation of municipalities for the purpose of more effective administration, whether for financial or other reasons, is a common incident of local government. It is necessarily accompanied by an adjustment of financial relations. Where the former bodies are dissolved it is inevitable that the old debts disappear, to be replaced by new obligations of the new body. And in creating the new corporation with the powers of assuming new obligations it is implicit in the powers of the Legislature (sovereign in this respect) that it should place restrictions and qualifications on the obligations to be assumed. Efficient local government could not be provided in similar circumstances unless the Province were armed with these very powers, and if for strictly Provincial purposes debts may be destroyed and new debts created, it is inevitable that debtors should be affected whether the original creditors reside within or without the Province. They took for their debtor a corporation which at the will of the Province could lawfully be dissolved, and of its destruction they took the risk. That for the purpose of keeping control over municipal institutions the Legislature provided that a department of the Provincial government should have the means of ascertaining whether a particular municipal body was solvent or insolvent does not make its legislative provision in that regard an encroachment on the general powers of the Dominion over bankruptcy and insolvency."

In like fashion, the provincial legislature may deal with the principal of an obligation, while preserving at the same time, all interest rights.

The Farm Security Act, 1944, differs fundamentally from *The Debt Adjustment Act*, 1937 Alta., cap. 9, which the Judicial Committee held

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ultra vires in the Reference to it *Re Alberta Debt Adjustment Act*, [1943] A.C. 356. This difference appears in the judgment of Lord Maugham, in referring to the Alberta Act (at pp. 374–375):

> " Its plain purpose is to relieve persons resident in the province, and their estates, from an enforceable liability to pay debts incurred before July 1, 1936, and in many cases to compel the creditors to accept compositions approved by the board. This is effected by precluding persons from any access to the courts of Alberta to enforce their rights against any persons resident in the province without the permission of the board, which may never be obtained. It, no doubt, does not for all purposes destroy the rights of the creditors, but it deprives them of the remedies by which alone in the vast majority of cases those rights can be enforced. If judgments in respect of the debts in question have already been obtained it precludes or stays any proceedings by way of execution, attachment, or garnishment unless the permit of the board has been obtained. Proceedings to enforce mortgages, or other similar or analogous legal proceedings in relation to the recovery of land, are subject to the same restriction. The debts or liquidated demands may have been incurred outside the province. It is plain from many sections of the Act (e.g., sections 6, 8, 9, 21, 23, 26 and 28) that its main purpose is to relieve resident debtors where they are unable to pay their debts as they become due. On the other hand, the board has the duty on the application of a resident debtor, or any creditor of such a person, to ' endeavour to bring about an amicable arrangement for the payment of the resident debtor's indebtedness,' and to effect a settlement either in full or by a composition; and the proposed settlement is to be one by which the debts, secured or unsecured, are reduced to an amount which is in accordance with the ability of the debtor to pay presently or in the future. The board clearly has power to refuse any permit to a creditor who does not accept the settlement suggested by the board. Their Lordships agree with the Supreme Court that it is impossible to escape the conclusion that Part III of the Act contemplates the use of the board's powers under section 8 to enable it to secure by a method amounting to compulsion the consent of the parties to the proposed arrangement."

The Saskatchewan statute does not relieve persons of their general liability to pay debts, nor does it compel creditors to accept compositions formulated by an administrative tribunal. It does not deprive persons from enforcing their claims, as affected by the Act, in the Courts in the usual way, nor does it deprive them of any other right of recovery. In no way does it interfere with judgments obtained or with executions. It affects the indebtedness of persons in the manner specifically sanctioned by Lord Maugham in *Reference re Alberta Debt Adjustment Act*, *supra*, where reference is made to the operation of the *Statute of Limitations*. Thus it was said (*Ibid.*, at pp. 390–391):

> " In England it has always been held that, subject to the statutory exceptions as to debts payable at some certain future time, the petitioning creditor's debt and the debts provable must be debts recoverable by legal process. For example a debt barred by the *Statute of Limitations* is not a debt on which a bankruptcy petition

can be presented, nor is it one provable in bankruptcy (see *Halsbury's Laws of England*, 2nd ed., vol. 2, pp. 59 and 268). The Dominion Act is very similar to the English *Bankruptcy Act* so far as those matters are concerned and there appears to be no reason for thinking that a similar principle would not be applied in Canada to the words 'debt due'."

Because its application is general in nature, not singling out the insolvent for special treatment and because no element of compulsion with the object of a composition or discharge from liability exists in section 6 of *The Farm Security Act*, 1944, it cannot be said to be legislation in relation to bankruptcy or insolvency.

THIRDLY, SECTION 6 OF THE FARM SECURITY ACT, 1944, IS OPERATIVE 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;

(b) *Securing Loans Made by The Canadian Farm Loan Board:* and

(c) *Assigned to The Central Mortgage and Housing Corporation.*

A. THE ADMINISTRATIONS UNDER THE NATIONAL HOUSING ACT, 1944, THE CANADIAN FARM LOAN BOARD, AND THE CENTRAL MORTGAGE AND HOUSING CORPORATION ARE NOT THE CROWN, BUT ARE INDEPENDENT ORGANIZATIONS WHICH SHOULD BE TREATED AS ORDINARY PERSONS AT LAW.

B. IN THE ALTERNATIVE, IF THE ADMINISTRATIONS UNDER THE NATIONAL HOUSING ACT, 1944, THE CANADIAN FARM LOAN BOARD AND THE CENTRAL MORTGAGE AND HOUSING CORPORATION ARE NOT INDEPENDENT, BUT ARE THE AGENTS OF THE CROWN, AND ACT IN BEHALF OF THE CROWN, SECTION 6 OF THE FARM SECURITY ACT, 1944, BINDS THE CROWN.

It is well established that the Crown is not bound by a statute unless mentioned therein: *Attorney-General for Ontario* v. *McLean Gold Mines*, [1927] A.C. 185.

In this case, the Crown is specifically mentioned. Section 8 of *The Farm Security Act*, 1944, provides as follows:

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

The Interpretation Act, 1943 Sask., cap. 2, provides by paragraph 11 of section 20 (1) as follows:

> "'His Majesty,' 'Her Majesty,' 'the King,' 'the Queen,' or 'the Crown' means the Sovereign of Great Britain, Northern Ireland and the British Dominions beyond the Seas."

Therefore, it is contemplated that the Crown in right of the Dominion be affected by this legislation.

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

I. *The Crown is One and Indivisible*

In *Liquidators of the Maritime Bank of Canada* v. *Receiver General of New Brunswick*, [1892] A.C. 437, Lord Watson stated (at p. 443) :

> " . . . a Lieutenant-Governor, when appointed, is as much the representative of Her Majesty for all purposes of provincial government as the Governor-General himself is for all purposes of Dominion government."

Regina v. *The Bank of Nova Scotia* (1885), 11 S.C.R. 1, was a case in which Strong, J., said, at pp. 19–20 :

> " That the Crown is at the head of the government of the Dominion, by which I mean that Her Majesty the Queen is, in her own royal person, the head of that Government, and not her Viceroy, the Governor-General, there can be no doubt or question, for it is in so many words declared by the ninth section of *The British North America Act*, which enacts—' The Executive Government and authority in and over Canada is hereby declared to continue and be vested in the Queen.'
>
> " That, for the purpose of entitling itself to the benefit of its prerogative rights, the Crown is to be considered as one and indivisible throughout the Empire, and is not to be considered as a *quasi*-corporate head of several distinct bodies politic (thus distinguishing the rights and privileges of the Crown as the head of the government of the United Kingdom from those of the Crown as head of the government of the Dominion, and, again, distinguishing it in its relations to the Dominion and to the several provinces of the Dominion) is a point so settled by authority as to be beyond controversy."

In re Silver Brothers, [1932] A.C. 514, was a case in which Lord Dunedin, for the Judicial Committee, said (at p. 524), referring to *Attorney-General for Quebec* v. *Nipissing Central Railway Co.* (1889), A.C. 700, that

> " What was decided there was that when a statute, which *ex hypothesi* is *intra vires*, had said that a railway with consent of the Governor General could on paying compensation take Crown lands, that meant Crown lands in the Province as well as in the Dominion. It will be at once observed that the point raised here could not be raised there. There was no doubt as to the mention of the Crown, and the only question was one of interpretation. Did the term ' Crown lands ' mean Crown lands everywhere or only in the Dominion ? There was no reason for limiting the interpretation. Crown lands in the Province were just as much Crown lands as Crown lands in the Dominion."

II. *The Dominion Parliament Has Been Held To Be Capable of Enacting Laws Which Affect and Bind the Crown In Right of the Provinces*

In *Re Cardston U.F.A. Co-op. Association, Ltd., Ex parte The King*, [1925] 4 D.L.R. 897, it was stated that the prerogative right of the Crown to priority in respect of Crown debts is taken away by section 86 of *The Bankruptcy Act*, and that although a Dominion statute, it binds the Crown

in the right of the province. Tweedie, J., in the course of his judgment stated the intention of Parliament to be the determining factor (at p. 899) :

> " It is quite true that the section is not in express words made applicable to the Crown in the right of the Province, but, if the intention of the Act as a whole is to place the Crown in regard to priorities in the same position as private creditors, then the expression ' Crown ' must be construed so as to include both the right of the Dominion and that of the Province."

Holding that the Crown in right of the provinces were bound, Tweedie, J., stated (at p. 900) :

> " The only way in which the Crown, whether in the right of the Dominion or in the right of the Province, can enforce payment of the debt owing to it, is the same as that which is available to ordinary creditors under section 45 of the Act, that is by filing proof of claim with the trustee. The debts which shall be paid *pari passu* are, ' all debts proved in the bankruptcy,' which include debts owing to the Crown in any right whatsoever."

Attorney-General for Quebec v. *Nipissing Central Railway Company*, [1926] A.C. 715, was a case in which the Judicial Committee held that section 189 of *The Railway Act*, 1919 of Canada, empowering any railway company, with the consent of the Governor-General to take Crown lands for the use of the railway, applies to provincial Crown lands as well as to those of the Dominion. Viscount Cave, L.C., referring to Lord Herschell's statement in the *Fisheries Case : Attorney-General for Canada* v. *Attorneys-General for Ontario, Quebec and Nova Scotia* (1889), A.C. 700, at p. 712, said :

> " . . . the power to legislate in respect of any matter must necessarily to a certain extent enable the Legislature so empowered to affect proprietary rights ; and it may be added that where (as in this case) the legislative power cannot be effectually exercised without affecting the proprietary rights both of individuals in a Province and of the Provincial Government, the power so to affect those rights is necessarily involved in the legislative power."

Re Hardy, [1928] 3 D.L.R. 255 (affirmed by the Ontario Court of Appeal, [1929] 1 D.L.R. 300) was a case in which Fisher, J., held that section 188 (formerly section 86) of *The Bankruptcy Act* is binding upon the Crown in right of the Dominion and the provinces, following Tweedie, J., in *Re Cardston U.F.A. Co-op. Association Ltd., Ex parte The King, supra.*

In re Silver Brothers, Limited, [1932] A.C. 514, was a case in which the Judicial Committee held that the Dominion Parliament enjoyed powers, under *The Bankruptcy Act*, 1915, to prejudice the proprietary rights of the provinces, but that this had not, in fact been done as a result of section 16 of *The Interpretation Act*, R.S.C. 1906, cap. 1, which stated that no provision in any Act is to affect the Crown unless it is expressly stated that the Crown is thereby bound.

In Reference re Farmers' Creditors Arrangement Act, 1934, [1936] S.C.R. 384 (affirmed [1937] A.C. 391), Duff, C.J., stated (at p. 393) that :

> " . . . the judgment of the Judicial Committee in *Re Silver Brothers*, [1932] A.C. 514, at pp. 519–521, seems very clearly to lay

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down and decide that it is competent to the Dominion, in legislating in relation to bankruptcy or insolvency, to deal with the privilege attaching to debts owing to the Crown in the right of a province and to take away any priority according to such debts by the law of a province. The legislative authority in bankruptcy matters to deal with debts owing to a province is no less than the authority to deal with debts owing to the Dominion."

Independent Order of Foresters v. *Lethbridge Northern Irrigation District et al.*, [1940] W.W.R. 502, was a case in which Lord Caldecote, speaking for the Judicial Committee said (at pp. 511–512):

> " It was said that the position of the Crown is not touched by section 2 of *The Interest Act* of Canada by reason of the provisions of section 16 of the *Interpretation Act*, R.S.C. 1927, cap. 1, which enshrines the doctrine that the Crown is not bound by any Act unless it is expressly mentioned therein. The argument could only be relevant on the assumption that the Act, cap. 13, would be valid but for the fact that it conflicts with the Dominion *Interest Act.* Their Lordships, however, take the view that the provincial Act is *ultra vires* on the ground that its pith and substance relate to interest. If it was necessary to deal with the appellant's submission that the Crown is not bound by the *Interest Act*, their Lordships would be content to adopt the judgment on this point of Shepherd, J. (to the effect that the Crown in right of the province is bound by *The British North America Act*, 1867)."

There therefore exists no doubt that the Dominion Parliament may affect the rights of the Crown and bind it by competent legislation.

III. *The Crown in Right of the Dominion is Subject to the General Validly Enacted Laws of the Province*

Exchange Bank of Canada v. *The Queen* (1885), 11 A.C. 157, was a case in which the Judicial Committee dealt with the respective claims of the Crown in right of the Dominion, the Crown in right of the Province of Quebec and one Massue, a subject, against the assets of the Exchange Bank of Canada, in liquidation. It was held that the Crown was bound by the Code of Lower Canada and therefore could claim no priority of payment over ordinary creditors. Lord Hobhouse stated (at p. 164):

> " Their Lordships think it clear, not only that the Crown is bound by the Codes, but that the subject of priorities is exhaustively dealt with by them, so that the Crown can claim no priority except what is allowed by them."

In re Reid and Canadian Farm Loan Board, [1937] 4 D.L.R. 248, was a case in the Manitoba Court of King's Bench in which Dysart, J., held that the Canadian Farm Loan Board, acting as agent for the Crown in right of the Dominion in administering farm loans was subject to the provisions of *The Debt Adjustment Act*, 1932 Man., cap. 8, even though the Crown was not expressly mentioned in the Act. Dysart, J., reasoned (at pp. 252–253):

> " If the Board is above provincial mortgage laws, why does it recognize them on any point for any purpose? If it has power to

choose the kind of security it may take for its loans, why does it not use those same powers to enforce those securities without resorting to provincial laws? The answer is obvious. And if the Board has to resort to provincial laws to enforce its securities, what is to justify it in attempting to reject part of those laws while claiming the benefit of other parts? None that I can see.

* * * * *

"In point of actual practice, the Board has always complied with provincial mortgage law. In this case it took as security mortgages which complied with all essential requirements imposed by Manitoba statutes and regulations and practice respecting the form and registration of the mortgages. When it was sought to enforce these mortgages, it complied with all the provincial requirements as to practice and procedure up to a certain point, and then, when pressing for further remedies, it continued to comply with the requirements of the Land Titles Office and of the Court until it was met with this one requirement of a certificate from the Debt Adjustment Commission. Then, while refusing to comply on this single point with our laws, it demanded the benefit of them in all other respects for the enforcement of its securities. In my opinion, the Board was unjustified in such a course. It cannot blow hot and cold in the same breath; it should not be allowed to demand the agreeable and reject the disagreeable portions of our law in its specific dealings, but must take them as they are, as a whole."

Dealing with the second contention that debts secured by mortgages held by the Canadian Farm Loan Board are part of the "Public Debt and Property" over which section 91 (1) of *The British North America Act*, 1867, excludes the provinces from legislative authority, Dysart, J., stated (*Ibid.*, at p. 253):

"... while the Dominion has exclusive right to legislate on its public debt and property, the power may be subject to provincial legislation; for instance, in *Attorney-General Can.* v. *Attorney-General Ontario, Reference re Employment and Social Insurance Act*, 1935, [1937] 1 D.L.R. 684, the Judicial Committee of the Privy Council, dealing with the same argument, used the following language (p. 687):—

'... Dominion legislation, even though it deals with Dominion property, may yet be so framed as to invade civil rights within the Province: or may encroach upon the class of subjects which are reserved to provincial competence. It is not necessary that it should be a colourable device, or a pretence. If on the true view of the legislation it is found that in reality in pith and substance the legislation invades civil rights within the Province or in respect of other classes of subjects otherwise encroaches upon the provincial field, the legislation will be invalid.'

"The case for Dominion control is even weaker in this case than in the Act with which the Judicial Committee was dealing, because here the power contended for is not to be found expressly, and, in my opinion, is not justified in implication."

No. 6. Factum of the Attorney General of Saskatchewan, *continued.*

Re Stone; Attorney-General for Canada v. *Attorney-General for Saskatchewan*, [1924] S.C.R. 682, was a case affirming the decision of the Saskatchewan Court of Appeal (1920), 53 D.L.R. 677, to the effect that the provincial legislature enjoys the right to alter its laws of inheritance although it thereby affects the right of escheat to the Crown in right of the Dominion. Mignault, J., following *Attorney-General for Quebec* v. *Attorney-General of Canada* (1876), 2 Q.L.R. 236, stated (at p. 688) that

> " . . . provincial legislation of the kind in question could not be attacked because in a particular case it may defeat the right of escheat of the Crown, assuming such right to belong to the Crown in the right of the Dominion."

This case was approved by the Judicial Committee in *Attorney-General for Alberta* v. *Attorney-General for Canada*, [1928] A.C. 475, at p. 493.

As indicated by Shirley Denison, K.C., in an Annotation, [1925] 4 D.L.R. 901, at p. 903 :

> " Therefore, carrying the argument a step further we find authority for the proposition that a province can by legislation within its competence deprive the Dominion of a prerogative right which it might otherwise enjoy."

For these reasons, the provincial legislature may pass laws of a general nature which require the aforementioned organizations established by the Parliament of Canada which take advantage of permissive and enabling provincial legislation, to also comply with legislation by which they may not directly benefit. If the Crown takes advantage of provincial institutions for the purpose of advancing moneys, relying upon securities, registering charges, etc., it is also bound by the restrictions placed thereon by a provincial legislature.

C. IN THE FURTHER ALTERNATIVE, IF THE PROVINCIAL LEGISLATURE CANNOT BIND THE CROWN WITH RESPECT TO CONTRACTS EXECUTED BY IT PRIOR TO AUGUST FIRST, 1944, WHEN THE FARM SECURITY ACT CAME INTO FORCE, THE CROWN IN THE RIGHT OF THE DOMINION IS BOUND IN RESPECT TO CONTRACTS EXECUTED ON AND AFTER THAT DATE.

Two decisions may modify the general rule whereby the Crown, in right of the Dominion may be bound by provincial legislation. Their effect, however, is not to destroy the general principle, but in certain cases, to restrict its application to the time at which the Crown accepts liability.

Gauthier v. *The King* (1917), 56 S.C.R. 176, was a case originating in the Exchequer Court to enforce the award of an arbitration tribunal from which the Crown in right of the Dominion withdrew. It was held by this Honourable Court that *The Ontario Arbitration Act*, R.S.O. 1914, cap. 63, which made a submission to arbitration irrevocable, was not applicable to the Crown in right of the Dominion although section 3 thereof provided that it should apply to arbitration in which His Majesty was a party. Fitzpatrick, C.J., referred to many authorities, among them, *Armstrong* v. *The King*, 2 Ex. C.R. 252, where Burbidge, J., stated (at p. 269) :

> " I think, too, that it may be taken to be settled by the general concurrence of judicial opinion in the cases referred to that it was

the intention of Parliament that the liability of the Crown should be determined by the general laws of each province in force at the time when such liability was imposed."

On appeal to this Honourable Court in that case, Davies, J., stated (1908), 40 S.C.R. 229, at p. 249 :

> " I think our previous decisions have settled, as far as we are concerned, the construction of the clause (c) of the 16th section of *The Exchequer Court Act*, and determined that it not only gave jurisdiction to the Exchequer Court, but imposed a liability upon the Crown which did not previously exist and also that such liability was to be determined by the general laws of the several provinces in force at the time such liability was imposed."

Fitzpatrick, C.J., then stated (56 S.C.R. at p. 180) :

> " Although this was a case under section 16 (c) of *The Exchequer Court Act*, by which a particular liability was for the first time imposed upon the Crown, the same principle, as I have said, must apply to all cases and the liability in each be ascertained according to the laws in force in the province at the time when the Crown first became liable in respect of such cause of action as is sued on. In other words, the local Legislature cannot subsequently vary the liability of the Dominion Crown, or at any rate, cannot add to its burden."

The King v. *Verdun*, [1945] Ex. C.R. 1 ; [1945] 2 D.L.R. 429, followed *Gauthier's Case, supra*, from which Angers, J., quotes extensively. Here, an action was brought by the Crown in right of the Dominion against the municipality of Verdun for negligence resulting in injury to a Canadian soldier. It was held that section 622 of *The Cities and Towns Act*, R.S.Q. 1941, cap. 233, requiring the service of notice, did not apply to the Crown.

It is to be noted, however, that in both cases, the action was commenced and proceeded in the Exchequer Court and in no way was based upon or related to provincial law which granted rights or benefits to the Crown. Herein lies the distinction between this group of cases, and the cases in which the Crown has been held bound ; in the one, the Crown's prerogative arises out of the Common Law which is not affected by enabling provincial legislation, in which case the Crown in right of the Dominion has accepted no rights and assumes no obligations. In the other decisions, however, the Crown's rights are based upon provincial legislation, as, for example, *The Land Titles Act*, R.S.S. 1940, cap. 98, under which mortgages, caveats and transfers under agreements for sale are registered, *The King's Bench Act*, R.S.S. 1940, cap. 61, according to the provisions of which actions for recovery will be effected, and *The Distress Act*, R.S.S. 1940, cap. 83, and *The Attachment of Debts Act*, R.S.S. 1940, cap. 85, which assist a creditor in realizing upon his judgment. Taking advantage of provincial legislation of this nature, the Crown in right of the Dominion is bound by legislation such as *The Exemptions Act*, R.S.S. 1940, cap. 80, *The Limitation of Civil Rights Act*, R.S.S. 1940, cap. 88, *The Crop Payments Act*, R.S.S. 1940, cap. 195, if it is specifically set out that the Crown is affected thereby. The Crown may not blow hot and cold ; where rights and benefits are enjoyed in a particular field under provincial statutes, commensurate obligations and limitations must also be assumed.

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FOURTHLY, IF THE PROVINCIAL LEGISLATURE CANNOT, WITH RESPECT TO ANY CONTRACTS, BIND THE CROWN IN RIGHT OF CANADA, SECTION 6 SHOULD BE CONSTRUED WITHOUT REFERENCE TO SECTION 8, AND AS NOT BINDING THE CROWN IN RIGHT OF CANADA.

There is a presumption in favour of the validity of provincial legislation, and section 6 of *The Farm Security Act*, 1944, should be construed and interpreted in a manner extending to the utmost, its constitutional application.

In *Severn* v. *The Queen* (1878), 2 S.C.R. 70, Strong, J., stated (at p. 103) :

> " As this Court is now, for the first time, dealing with a question involving the construction of that provision of *The British North America Act* which prescribes the powers of the Provincial Legislatures, I do not consider it out of place to state a general principle, which, in my opinion, should be applied in determining questions relating to the constitutional validity of Provincial Statutes. It is, I consider, our duty to make every possible presumption in favour of such Legislative Acts, and to endeavour to discover a construction of *The British North America Act* which will enable us to attribute an impeached Statute to a due exercise of constitutional authority, before taking upon ourselves to declare that, in assuming to pass it, the Provincial Legislature usurped powers which did not legally belong to it ; and in doing this, we are to bear in mind ' that it does not belong to Courts of Justice to interpolate constitutional restrictions ; their duty being to apply the law, not to make it '."

Hewson v. *Ontario Power Company* (1905), 36 S.C.R. 596, is to the same effect : *Vide* Taschereau, C.J., at pp. 602–603 ; *Vide Scott* v. *Scott* (1891), 4 B.C.R. 316 (C.A.).

If it is to be determined that section 6 of *The Farm Security Act*, 1944, is *ultra vires* the provincial legislature in so far as it applies to the Crown in right of Canada, it is respectfully submitted that since section 8, being a separate and independent section, its application is severable and, in so far as section 6 affects contracts to which the Crown in right of Canada is not a party, it is valid. The purpose of the Act is to provide for the stability of the agricultural industry and the security of the agrarian population in Saskatchewan. The fact that it may not bind the Crown in right of Canada affords no reason to discard its application to the many farmers and the greater part of the industry in the province affected apart from section 8.

SUMMARY OF SUBMISSIONS

IT IS SUBMITTED that section 6 of *The Farm Security Act*, 1944, is *intra vires* the Legislature of Saskatchewan in its entirety and that the answer to the first question referred to this Honourable Court should be " No."

It is further submitted that the said section is operative in its terms in the case of mortgages securing loans made by each of the following, viz.,—His Majesty in right of Canada under the National Housing Act, 1944, the Canadian Farm Loan Board and the Central Mortgage and

Housing Corporation, and that the answer to the second question referred to this Honourable Court, in the case of (a), (b) and (c) respectively, should be " Yes."

No. 6. Factum of the Attorney General of Saskatchewan, *continued*.

G. W. MASON
M. C. SHUMIATCHER
R. S. MELDRUM
Of Counsel for
The Attorney-General for Saskatchewan.

September 10th, 1946.

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10 **No. 7.**

No. 7. Factum of the Attorney General of Alberta.

FACTUM of the Attorney General of Alberta.

PART I

Statement of Case

1. This case comes before the Court by Order of His Excellency the Governor General in Council dated the 14th day of May, A.D. 1946, whereby the following questions were referred to the Supreme Court of Canada as to the validity and operation of section 6 of The Farm Security Act, 1944, being chapter 30 of the Statutes of Saskatchewan, 1944 (Second Session), and amendments thereto :

20 (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
30 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.

2. The said section 6 was enacted by chapter 30 of the Statutes of Saskatchewan, 1944 (Second Session) being part of The Farm Security Act, 1944, which section was amended by section 2 of chapter 28 of the Statutes of Saskatchewan, 1945. The said section 6 as amended, omitting the provisions as to coming into force of the section and the amendment, reads as follows :

No. 7. Factum of the Attorney General of Alberta, *continued.*

Statement of Case

" 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 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 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 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.

(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.

(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 subsection 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.

(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.

(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 of 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."

Part II

Submission of the Attorney General of Alberta

The Attorney General of Alberta submits that section 6 of The Farm Security Act, 1944, as amended is in its entirety within the powers of the Legislature of the Province of Saskatchewan, and it is submitted :

No. 7. Factum of the Attorney General of Alberta, *continued.*

Submission of the Attorney General of Alberta.

Argument

1. The section in question on this Reference is within the legislative competence of the Provincial Legislature under the provisions of section 92 (13), (14) and (16) of The British North America Act:

(a) 92 (13): property and civil rights in the Province;

(b) 92 (14): the administration of justice in the Province;

(c) 92 (16): generally all matters of a merely local or private nature in the Province.

2. The section in question is not in relation to and does not affect, any of the classes of subjects enumerated in section 91 of The British North America Act, and in particular it is not in relation and does not affect the following:

(a) 91 (19): interest

(b) 91 (21): bankruptcy and insolvency.

3. Alternatively if the section in question does in any respect affect any of the classes of subjects enumerated in section 91 of The British North America Act, it does so only incidentally, and it is not in conflict with any of the said provisions.

4. The section in question is not in relation to property and civil rights outside the Province.

5. If any of the provisions of the section of the Act in question are *ultra vires*, they are severable and the other parts are valid.

PART III

Argument

1. Section 92 of The British North America Act.

It is submitted that the section in question on this Reference is legislation in relation to matters coming within the classes of subjects enumerated in the following subsections of section 92 of The British North America Act, namely:

(a) subsection (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.

(b) subsection (13): property and civil rights.

(c) subsection (16): matters of a purely local or private nature in the Province.

(a) The administration of justice in the Province.

Subsection (2) of section 6 of The Farm Security Act, 1944, is the main operative portion of the enactment, and paragraphs 1 and 2 of the said subsection provide for a limited moratorium on the payment of principal owing

on a mortgage or agreement for sale during the period of suspension which is the period commencing on the 1st day of August in the year in which a crop failure occurs, and ending on the 31st day of July in the next succeeding year.

It is submitted that there is no doubt about the power of the Province to declare a moratorium on debts for a limited period for a specific purpose. This power has been established in a number of cases which have come before the courts for a decision.

In the case of ***Regina*** **v.** ***Bush,*** **15 O.R., 398,** Street, J. at page 403 in commenting on the power of the provincial legislature to exclusively make laws in relation to the administration of justice states :

> " Now these words, standing alone and without any interpretation or context, appear to me to be sufficient, had no other clause in the Act limited them, to confer upon the Provincial Legislatures the right to regulate and provide for the whole machinery connected with the administration of justice in the Provinces, including the appointment of all the Judges and officers requisite for the proper administration of justice in its widest sense, reserving only the procedure in criminal matters."

This statement of the law was approved in the case of the **Reference *re* Authority to perform functions vested by the Adoption Act, 1938, S.C.R. 398,** and judgment of Duff, C.J. at page 406.

See also ***Micas*** v. ***Moose Jaw & Attorney General for Saskatchewan*** **(1929) 1 W.W.R. 725 ; (1929) 3 D.L.R. 89.**

Beiswanger v. ***Swift Current*** **(1930) 3 W.W.R. 519 ; (1931) 1 D.L.R. 407.**

In ***Maley*** v. ***Cadwell*** **(1934) 1 W.W.R. 51,** Haultain, C.J.S. at page 56 states :

> " The Legislature has exclusive jurisdiction to make laws in relation to property and civil rights in the province and in relation to the administration of justice in the province, including the constitution, maintenance and organization of provincial Courts of civil jurisdiction. It creates the Courts, and bestows and prescribes their jurisdiction, and may at any time enlarge or circumscribe, or otherwise alter that jurisdiction. It may, in my opinion, abolish any existing right of action, or postpone it by moratorium, under its power to legislate in relation to property and civil rights. It may also, in my opinion, prescribe upon what terms or under what circumstances, or upon the compliance with what conditions precedent, any action may be taken or continued . . .
>
> The present Act will only remain in force until March 1, 1936. So that it only establishes a moratorium for a fixed period. It does not take away any right of action, or put an end to pending litigation, but only postpones the commencement of any new proceedings or the continuance of proceedings already commenced, until the expiry of the period fixed by the Act, unless a permit is granted."

No. 7. Factum of the Attorney General of Alberta, *continued.*

Argument

See also ***Roy and the Attorney General of Alberta*** **v.** ***Plourde*** **1943 S.C.R. 262.**

Abitibi Power and Paper Co. **v.** ***Montreal Trust Co.*** **1943 A.C. 536.**

Having regard to these decisions, the legislature of the Province undoubtedly has exclusive jurisdiction to postpone for one year the payment of principal due under a mortgage or agreement for sale, and therefore paragraphs 1 and 2 of subsection (2) of section 6 of the Act, are, it is submitted, *intra vires* the legislature of the Province.

(b) **Property and civil rights in the Province, and matters of a local and private nature within the Province.**

Paragraph 3 of subsection (2) of section 6 of the Act reduces the principal outstanding on the 15th day of September in the period of suspension by four per cent 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. There would seem to be no doubt about the power of a Provincial Legislature to reduce non-interest bearing debts and similarly it is submitted the Province has the right to reduce the principal of interest bearing debts providing it does not interfere with the right of the creditor to collect and recover the full amount of the interest owing on such debt.

The section in question is in pith and substance, legislation in relation to property and civil rights and matters of a local and private nature within the Province, and is within the legislative competence of the Province under subheadings (13) and (16) of the British North America Act. The section deals with property in that it reduces the principal outstanding on a debt and it deals with the civil rights of creditors and debtors.

In ***Citizens Insurance Co.*** **v.** ***Parsons*** **7 A.C. 96 ; 1 Cameron 267,** Sir Montague Smith referring to the words " civil rights " said at page 279 :

> " The words are sufficiently large to embrace, in their fair and ordinary meaning, rights arising from contract, and such rights are not included in express terms in any of the enumerated classes of subjects in section 91."

Again at page 280 referring to the Quebec Act, Sir Montague Smith says :

> " . . . In this statute the words ' property ' and ' civil rights ' are plainly used in their largest sense ; and there is no reason for holding that in the statute under discussion they are used in a different or narrower one."

See also ***Attorney General for Manitoba*** **v.** ***Manitoba License Holders Association*** **(1902) A.C. 73 ; 1 Cameron 574.**

Workmen's Compensation Board **v.** ***Canadian Pacific Railway*** **(1920) A.C. 184 ; 2 Cameron 151.**

It has been held in numerous cases that the Provincial Legislature may pass legislation which is confiscatory in character, and may destroy property rights within the Province.

Argument

No. 7. Factum of the Attorney General of Alberta, *continued.*

In the case of ***Florence Mining Co. Ltd.* v. *Cobalt Lake Mining Co. Ltd.* (1909) 18 O.L.R. 275,** the Provincial Legislature passed an enactment destroying any rights the plaintiff may have obtained in certain mining locations, and confirmed a sale of the said rights to the defendant. At page 279, Riddell, J. stated as follows :

" This is a matter of property and civil rights ; by The British North America Act this is wholly within the jurisdiction of the Legislature of the Province ; in matters within their jurisdiction, the Legislature have the same powers as Parliament, and 'the power . . . of parliament is so transcendent and absolute, that it cannot be confined, either for causes or persons within any bounds . . . It has sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws concerning matters of all possible denominations :' Blackstone's Commentaries, Book 1, p. 160. Within the jurisdiction given the Legislature of the Province no power can interfere with the Legislature, except, of course, the Dominion authorities, whose interference may occasion disallowance. There is no need here to speak of the paramount power of the Imperial Parliament.

In short, the Legislature within its jurisdiction can do everything that is not naturally impossible, and is restrained by no rule human or divine. If it be that the plaintiffs acquired any rights, which I am far from finding, the Legislature had the power to take them away. The prohibition, ' Thou shalt not steal,' has no legal force upon the sovereign body. And there would be no necessity for compensation to be given. We have no such restriction upon the power of the Legislature as is found in some States."

and in the Court of Appeal, Moss, C.J.O. stated at page 292 :

" But the subject matter of the enactment falls clearly within the category of property and civil rights. The right claimed by the plaintiffs is, if anything, a right in property within the Province. So the right to bring an action is a civil right. And both have, by sec. 92 of The British North America Act, been made subject to the legislative authority of the Provincial Legislature. And where there is jurisdiction over the subject matter, arguments founded on alleged hardship or injustice can have no weight. As said by Lord Herschell, in the Attorney General of Canada v. the Attorney General of the Provinces, (1898) A.C. 700, when discussing the question of the relative legislative powers and authority of the Parliament of Canada, and the Legislatures of the Provinces under The British North America Act (p. 713) : ' The suggestion that the power might be abused so as to amount to a practical confiscation of property does not warrant the imposition by the Courts of any limits upon the absolute power of legislation conferred. The supreme legislative power in relation to any subject matter is always capable of abuse, but it is not to be assumed that it will be improperly used, if it is, the only remedy is an appeal to those by whom the Legislature is elected.' "

No. 7. Factum of the Attorney General of Alberta, *continued.*

Argument

This case was affirmed on appeal to the Judicial Committee of the Privy Council, see 43 O.L.R. 474.

In the case of ***Township of Sandwich East*** **v.** ***Union Natural Gas Co.*** **(1925) 2 D.L.R. 707 ; 56 O.L.R. 399,** at page 404, Riddell, J stated :

> " The so called ' confiscatory power ' of the Province, or rather the blunt statement of it has alarmed some who hanker after written formulae in formal terminology. But the British ' Constitution ' (at least in that regard) is satisfactory to those who live in a country where it prevails.
>
> How this power is to be exercised rests in the conscience of the Legislature, and the Court has no jurisdiction in the premises.
>
> There being, in my view, no possible doubt that the Legislature can destroy private rights within the Province, contractual or otherwise, if and when it thinks proper, it remains to consider whether it can validly authorize others to do so—and I can have no doubt as to this."

This case was affirmed on appeal (1925) 4 D.L.R. 795 ; 57 O.L.R. 656.

See also ***Smith*** **v.** ***City of London*** **(1909) 20 O.L.R. 133.**

Rex **v.** ***Stanley*** **(1936) 1 D.L.R. 100 ; (1935) 3 W.W.R. 517 ; 64 C.C.C. 385.**

McNair **v.** ***Collins,*** **6 D.L.R. 510 ; 27 O.L.R. 44.**

The provincial Legislature, it is submitted, can reduce the principal of a debt by a specific amount, provided it does not interfere with the right to recover the stipulated interest owing under the debt and if this is so, it does not render the legislation unconstitutional if the yard-stick used to determine the amount of the reduction is the same percentage as the interest which the instrument evidencing the debt bears. In other words, paragraph 3 of subsection (2) of section 6 of the Act cannot be said to be unconstitutional because it provided alternatively for an arbitary reduction of four per cent or the same percentage as that at which interest will accrue on the mortgage or agreement for sale.

In the case of ***Royal Trust Coy.*** **v.** ***the Minister of Finance, for British Columbia*** **(1921) 3 W.W.R. 749,** it was held that the rate of taxation on property could be based on the net value of the property both within and without the Province, notwithstanding the fact that the Province could only tax property within the Province.

Viscount Cave, after referring to the judgment of Mr. Justice Duff in the Court below, states at page 754 :

> " It is obvious that the effect of so calculating the duty is to accelerate, in the case of a deceased person who leaves property both within and without the province, the process of graduation on the property within the province ; and, if this be the clear meaning of the Statute, there appears to be no reason why it should not have effect. As Mr. Justice Martin says,
>
> ' It is not a matter of indirect taxation at all, but simply the fixing of a basis of domestic assessment in certain varying circumstances, domestic and foreign.' "

Argument

Similarly in the case of ***Kerr* v. *Superintendent of Income Tax and Attorney General for Alberta,* 1942 S.C.R. 435,** Rinfret J. (now C.J.) stated at page 439 :

> " In the exercise of its powers under the constitution of Canada ' in order to the raising of a revenue ' for provincial purposes, a province may no doubt directly tax a person in respect of his income. In that case, the income is used merely as a just standard or a yard-stick (to use the expression of counsel for the Attorney General of Alberta) for computing the amount of the tax. In such a case the person is validly charged because he is a resident within the province ; and it must be conceded that the legislature in such a case may use the foreign property together with the local property as the standard by which the person resident within the province is to be charged.
>
> The legality of the tax, under those circumstances, results from the fact that the person is found within the province."

It will thus be seen that if the Province has the power to reduce the principal of the debt, the fact that the measure or yard-stick of reduction is the percentage of interest borne by the instrument does not affect the constitutionality of the enactment.

2. Section 91 of The British North America Act :

The section in question is not legislation with respect to interest or bankruptcy and insolvency, and is not in conflict with any of the provisions of The Interest Act or of The Bankruptcy Act.

(a) **Interest :**

There are two main questions to be considered :

(i) Is the section in question in its true nature and character in relation to interest ?

For the reasons already stated, it is submitted that the section cannot be construed as legislation dealing with interest. It deals solely with the principal amount of the contract and specifically leaves interest untouched.

(ii) Although not specifically in relation to interest, is it in conflict with or repugnant to section 2 of The Interest Act ?

Section 2 of The Interest Act reads as follows :

> " 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 which is agreed upon."

The proviso to paragraph 3 of subsection (2) of section 6 provides that notwithstanding a reduction in principal, interest shall continue to be chargeable, payable and recoverable as if the principal had not been so reduced. It is apparent that this proviso leaves the right to stipulate for, allow and exact the rate of interest agreed upon in the mortgage or agreement for sale, untouched, and the creditor can recover the full amount of the interest agreed upon in conformity with section 2 of The

No. 7. Factum of the Attorney General of Alberta, *continued.*

Argument

Interest Act. It is obvious that there is no conflict or repugnancy between the two enactments.

It seems clear that if paragraph 3 of subsection (2) of section 6 had omitted the words " or by the same percentage thereof as that at which interest will accrue immediately after the said date on the principal then outstanding whichever is the greater ", it could not be suggested that the legislation was in relation to interest. It is therefore submitted that the alternative provision fixing the reduction of principal by the rate of interest is no more legislation in relation to interest than is the first part of the paragraph in question.

(b) **Bankruptcy :**

It is quite obvious that the legislation in question is not bankruptcy legislation. It only provides for relief for debtors in years in which there is a crop failure, and there appears to be no constitutional difficulty in the way of a Province legislating in this manner.

The legislation applies to rich and poor alike, and is not necessarily related to the inability of a debtor to meet his obligations and it is to be noted that subsection (7) exempts from the application of the section any mortgagor or purchaser whose affairs are being dealt with under the provisions of The Farmers' Creditors Arrangement Act.

See ***Attorney General of Ontario*** v. ***Attorney General of Canada (Voluntary Assignments Case)*** **63 L.J.P.C. 59 ; 1894 A.C. 189 at 193 ; 1 Cameron at p. 454.**

It has been held that the Provincial Legislature has the power to relieve distress in particular cases.

See ***L'Union St. Jacques de Montreal*** v. ***Dame Julie Belisle,*** **L.R. 6 P.C. 31 ; 1 Cameron 206** at pages 210 and 211.

3. Alternatively if the section in question does in any respect affect the subject matter of interest, it does so only incidentally, and is not in conflict with any of the provisions of The Interest Act.

In ***Ladore*** v. ***Bennett,*** **1939 A.C. 468,** the Judicial Committee of the Privy Council approved provincial legislation which constituted a much more drastic and far-reaching interference with the right of Parliament to legislate with respect to interest, than is the case under the above mentioned section of The Saskatchewan Act. The facts of the Ladore v. Bennet case are fully stated in the headnote, and it will be noted that provincial legislation was held to be valid which empowered the Ontario Municipal Board to authorize and approve the funding and refunding of the debts of the amalgamated municipalities under which former creditors of the old municipalities received debentures of the new city of equal amount but with the interest scaled down in various classes of debentures. Arrears of interest were dealt with by paying a composition in cash. The legislation in question which, by an amendment of 1936 was made to apply, will be

found in Part III of The Department of Municipal Affairs Act, chapter 16 of 1935 (Ont.), sections 24 *et seq.* Section 33 reads in part as follows :

> " 33. Where a municipality has become subject to this part the Board, with respect to the debenture debt and debentures of the municipality and interest thereon, and with respect to any other indebtedness thereof, shall have power to authorize and order . . .
>
> (g) postponement of or variation in the terms, times and places for payment of the whole or any portion of the debenture debt and outstanding debentures and other indebtedness and interest thereon and variation in the rates of such interest . . . "

It was argued that inasmuch as this legislation had the effect of reducing the interest on the municipal debentures and thus preventing the bondholders from collecting the interest agreed to be paid, it was in conflict with section 2 of The Interest Act, chapter 102, Revised Statutes of Canada, 1927. This contention was not given effect to. Lord Atkin said at page 482 :

> " . . . The statutes are not directed to insolvency legislation ; they pick out insolvency as one reason for dealing in a particular way with unsuccessful institutions ; and though they affect rights outside the Province they only so affect them collaterally, as a necessary incident to their lawful powers of good government within the Province.
>
> The question of interest does not present difficulties. The above reasoning sufficiently disposes of the objection. If the Provincial Legislature can dissolve a municipal corporation and create a new one to take its place, it can invest the new corporation with such powers of incurring obligations as it pleases and incidentally may define the amount of interest which such obligations may bear. Such legislation if directed bona fide to the effective creation and control of municipal institutions, is in no way an encroachment upon the general exclusive powers of the Dominion legislature over interest . . . "

See also ***Day* v. *City of Victoria* (1938) 3 W.W.R. 161 ; (1938) 4 D.L.R. 345 ; 53 B.C.R. 140,** which received the express approval of the Board in ***Lethbridge Northern Irrigation District* v. *Independent Order of Foresters, and Attorney General* 1940 A.C. 513** at page 532 (foot). This was also a case of a refunding statute which provided for an eventual reduction in the rate of interest on bonds of the City of Victoria. There was no question involved of the dissolution of municipalities and the setting up of a new one as there was in Ladore v. Bennett. The basis of the decision of the court of appeal is contained in the following extracts from the judgment of Macdonald, J.A. and Sloan, J.A. Macdonald, J.A. says at page 147 :

> " . . . I think the Act was validly enacted. It is not the intendment of the Act to interfere with the civil rights of persons or corporations beyond the Province although as often occurs with Provincial Acts, parties residing elsewhere may be affected by it. If, when the Act was enacted, all debenture holders resided within the

No. 7. Factum of the Attorney General of Alberta, *continued.*

Argument

Province it would not become *ultra vires* if all, or some of them, moved to another Province. It would be immaterial whether or not a debenture holder left the Province after the Act was passed or resided in another Province at that time. The obligation was created within this Province and in the last resort it is enforceable here . . . "

Sloan, J.A. says at page 150 :

" In my opinion, with respect, it is an Act in relation to subject-matters assigned exclusively under section 92 (8), (13) and is not one in relation to any subject-matter within the exclusive legislative competence of the Dominion.

It does not purport to be an Act relating generally to interest, and while some of the provisions contained therein ' affect ' interest as an incident in the effectuation of the general scheme of the enactment, nevertheless it cannot, in my opinion, be said to be an Act ' in relation to ' interest."

It is difficult to see how the section in question in any way affects the right of the recovery of the interest owing because as previously stated, it leaves the right to recover the full interest on the debt unimpaired, but even if it is argued that the reduction of the principal which in a succession of years of crop failure might have the effect of wiping out the principal, nevertheless if the creditor can still recover interest as though the principal had not been reduced, it cannot be said to affect or reduce the interest under the authority of the above mentioned cases ; even if it had that effect it would not render the section unconstitutional because in pith and substance it is legislation reducing the principal debt owing under the contract and only incidentally affecting interest, and is not in conflict with any Dominion legislation relating to interest.

4. The section in question is not in relation to property or civil rights outside the Province.

The enactment under review does not in any way deal with or affect civil rights outside the Province. It does not prevent actions being brought in proper cases outside the Province. It deals solely with the rights of the creditor within the Province, and is partially procedural in character.

In ***Allen* v. *Trusts and Guarantee Co.* (1937) 2 W.W.R. 257,** Harvey, C.J.A. says at page 264 :

" The right of action in this case is of course a civil right in the province, and a proper subject of legislation by provincial statute, and since I have come to the conclusion that the right of action exists, it is necessary to see if it is subject to any limitation by the provincial statute."

In ***Day* v. *City of Victoria* (1938) 3 W.W.R. 161 ; (1938) 4 D.L.R. 345 ; 53 B.C.R. 140,** Sloan, J.A. said at page 148 :

" . . . Counsel for the respondent was frank to concede that if all the outstanding debentures were held by the citizens of and in this Province the only question that could arise as to the

constitutional validity of this enactment would be his submission that it was an Act in relation to interest. If this submission is, for the moment, put to one side and effect given to his first contention, i.e., interference with extra-territorial civil rights of foreign bondholders the act might be *intra vires* in relation to those debentures held in the Province and *ultra vires* with respect to those held by persons outside the Province. This anomalous result can only be arrived at, in my opinion, because of a basic misconception concerning the enforceable rights of the foreign bondholders. While it is true that the debentures are payable, at the option of the holders, not only within but without the Province, nevertheless the right to enforce the ' substance of the obligation ' evidenced by the debentures, is a civil right exercisable solely within the Province. Mount Albert Borough Council v. Australasian Temperance and General Mutual Life Assurance Society (1938) A.C. 224."

See also ***Ladore* v. *Bennett, supra.***

***Attorney General for Manitoba* v. *Manitoba License Holders Association* (1902) A.C. 73;** 1 Cameron 574 and judgment of Lord Macnaghten at pages 578 and 579.

In *Workmen's Compensation Board* v. *C.P.R.* 1920 A.C. 184; 2 Cameron 151 at pages 156 and 157, Viscount Haldane states at page 157 :

" The scheme of the Act is not one for interfering with rights outside the Province. It is in substance a scheme for securing a civil right within the Province. The case is wholly different from that from Alberta which was before the judicial committee in Royal Bank of Canada v. the King, where it was held that the Provincial statute was inoperative in so far as it sought to derogate from the rights of persons outside the Province of Alberta who had subscribed money outside it to recover that money from depositaries outside the Province with whom they had placed it for the purposes of a definite scheme to be carried out within the Province, on the ground that by the action of the Legislature of Alberta the scheme for which alone they had subscribed had been altered. The rights affected were in that case rights wholly outside the Province. Here the rights in question are the rights of workmen within British Columbia. It makes no difference that the accident insured against might happen in foreign waters. For the question is not whether there should be damages for a tort, but whether a contract of employment made with persons within the Province has given a title to a civil right within the Province to compensation."

In the light of these authorities, it cannot be argued that the section in question deals with rights outside the Province, and if a debt owing under an agreement for sale or a mortgage is wholly recoverable outside the Province and the creditor does not need to come within the Province to enforce the obligation, then it may be that the section is not applicable to such a debt, but this would not in any way affect the constitutionality of the enactment but it would simply mean that in any action brought within the Province, the provisions of the section would apply and be enforceable.

No. 7. Factum of the Attorney General of Alberta, *continued.*

Argument

5. If it should be held that the provisions of paragraph 3 of subsection (2) of section 6 are *ultra vires*, they are severable from the rest of the section and the remainder of the section should be upheld.

The Province of Alberta does not propose to submit an argument with respect to the second question to be answered by the Court under the Reference.

Respectfully submitted,

H. J. WILSON,

Counsel for the Attorney General of Alberta.

No. 8. Factum of the Attorney General of Quebec.

No. 8.

FACTUM of the Attorney General of Quebec.

En 1944, la Législature de la Saskatchewan a adopté une " Loi pour la Protection de certains débiteurs hypothécaires, acheteurs et locataires de fermes " : c'est le " Farm Security Act ", dont certaines dispositions secondaires ont été amendées à la Session de 1945.

Le 14 mai 1946, le gouverneur-général en conseil, en vertu du pouvoir de référence qui lui est conféré par l'article 55 de la Loi de la Cour Suprême, adopta un arrêté-ministériel par lequel il demandait à la Cour Suprême de se prononcer sur la constitutionalité de l'article 6 du " Farm Security Act ".

Voici le texte de cet article :—

" 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 made " renewing or extending such agreement or 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 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 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 imme- " diately after the said date on the principal then outstanding, " whichever percentage is the greater ; provided that, notwith- " standing such reduction, interest shall continue to be chargeable, " payable and recoverable as if the principal had not been so " reduced.

" (3) If the mortgagee and the 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.

" (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 first day of November in such year " and failure to give such notice shall constitute a waiver of such " benefits ; provided that in the year 1944 this subsection shall be " read and construed as if the words ' thirtieth day of December ' "were substituted for the words ' first day of November '.

" (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 that date on which the envelope " containing the notice is handed to the postmaster.

" (7) This section shall not apply to a mortgagor or purchaser :

No. 8. Factum of the Attorney General of Quebec, *continued.*

" (*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 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.

" (8) The Lieutenant-Governor in Council may, upon the recom- " mendation of the Provincial Mediation Board, exclude from the " operation of this section any mortgage or agreement 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.

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

* * * * *

L'article, qui est accompagné d'une cédule, constitue une section à part dans le " Farm Security Act," de sorte que l'étude de toute la loi ne peut, en aucune façon, nous éclairer sur la nature exacte, la portée véritable de cet article 6.

Il n'y a donc pas lieu d'appliquer le principe maintes fois reconnu par le Conseil Privé :

" It is obvious that the question of construction may sometimes " prove difficult. The only principle than can be laid down for such " cases is that legislation the validity of which has to be tested must " be scrutinized in its entirety in order to determine its true " character. *Madden* v. *Nelson* (1899, A.C. 626), and *Can. Pac.* " *Railway Co.* v. *Notre Dame de Bonsecours* (1899, A.C. 367) are " excellent illustrations of how this has been done." (*Great West Saddlery* v. *The King*, 1921, 2 A.C. 117).

* * * * *

Les questions auxquelles la Cour Suprême devra répondre sont les suivantes :

" 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 what 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."

* * * * *

La première question pose le problème de la constitutionalité de l'article 6 ; la deuxième celui de son application à certains organismes fédéraux.

Quant à la constitutionalité de l'article 6.—L'article 6 contient deux dispositions : la première est édictée par les paragraphes 1 et 2, et la deuxième par le paragraphe 3.

La première disposition décrète que le débiteur hypothécaire ne sera pas tenu d'effectuer un versement de capital l'année de la faillite d'une récolte, l'échéance de ce versement étant, par l'effet de la loi, reportée à l'année suivante.

La deuxième disposition décrète la réduction du capital dû le 15 septembre d'une année de faillite de récolte dans une proportion de 4 %, ou au taux auquel l'intérêt courrera sur le capital, après cette date.

Les deux dispositions de l'article 6 sont bien distinctes. L'intervenant soumet que les dispositions contenues à l'*article* 6, (*2*), *par. 1 et 2*, sont du ressort provincial.

Ces deux paragraphes diffèrent l'échéance d'une dette d'un an lorsque certaines conditions se réalisent. C'est une clause nouvelle que tout acte de vente ou d'hypothèque est présumé contenir.

Il s'agit donc de savoir si la Législature de la Saskatchewan a reçu, par l'Acte de 1867, les pouvoirs suffisants pour édicter cette première partie de l'article 6.

La première question à laquelle nous devons répondre est la suivante : l'objet de la loi tombe-t-il sous un des pouvoirs énumérés qui sont attribués aux provinces par l'article 92 de l'Acte de l'Amérique britannique du Nord.

" It is only when an Act of the provincial legislature *prima facie* " falls within one of these classes of subjects (enumerated in sect. 92) " that the further question arise, viz. whether, notwithstanding " this is so, the subject of the Act does not also fall within one of the " enumerated classes of subjects in sect. 91, and whether the power " of the provincial legislature is or is not thereby overborne." (*Citizens Insurance Co.* v. *Parsons*, 7 A.C. 109).

" The first step to be taken, with a view to test the validity of " an Act of the provincial legislature, is to consider whether the " subject-matter of the Act falls within any of the classes of subjects " enumerated in section 92. If it does not, then the Act is of no " validity. If it does, then these further questions may arise, viz. " ' whether, notwithstanding that it is so, the subject of the Act does " not also fall within one of the enumerated classes of subjects in " section 91, and whether the power of the provincial legislature is " or is not thereby overborne.' " (*Dobie* v. *The Temporalities Board*, 7 A.C. 136).

No. 8. Factum of the Attorney General of Quebec, *continued.*

Le Conseil Privé a déjà jugé que l'expression '*property and civil rights in the province*' (art. 92, énumération 13) comprend tout le droit civil, comme dans l'Acte de Québec :

> " In No. 13 of sect. 92, the words '*property and civil rights* " *in the province*' include rights arising from contract (which are " not in express terms included under sect. 91) and are not limited " to such rights only as flow from the law, *e.g.* the status of persons." (*Citizens Insurance* v. *Parsons*, 7 A.C. 96).
>
> " It is to be observed that the same words, *civil rights*, are " employed in the Act of 14 Geo. 3, ch. 83, which made provision " for the Government of the Province of Quebec. Section 8 of " that Act enacted that His Majesty's Canadian subjects within " the province of Quebec should enjoy their property, usages, and " other civil rights, as they had before done, and that in all matters " of controversy relative to property and civil rights resort should " be had to the laws of Canada, and be determined agreeably to " the said laws. In this statute, the words '*property and civil* " *rights*' are plainly used in their largest sense ; and there is no reason for holding that in the statute under discussion they are used in a different and narrower one." (*Citizens Insurance* v. *Parsons*, 7 A.C. 111).
>
> " An abstract logical definition of their scope (the words " *civil rights*) is not only, having regard to the context of ss. 91 " and 92 of the Act, impracticable, but is certain, if attempted, " to cause embarrassment and possible injustice in future cases. " It must be borne in mind in construing the two sections that " matters which in a special aspect and for a particular purpose " may fall within one of them may in a different aspect and for " a different purpose fall within the other. In such cases the " nature and scope of the legislative attempt of the Dominion or " of the Province, as the case may be, have to be examined with " reference to the actual facts if it is to be possible to determine " under which set of powers it falls in substance and in reality." (*John Deere Plow* v. *Wharton*, 1915 A.C. 339).

Il ne fait donc aucun doute que l'énumération 13 de l'article 92 accorde aux provinces le droit de légiférer sur les ventes et les hypothèques dans la province, qui font l'objet de la disposition sous étude.

Si le fédéral peut légiférer en la matière, ce n'est donc pas en vertu de son pouvoir résiduaire :

> " The distribution of powers under the B. N. A. Act, the " interpretation of which is raised by this appeal, has been often " discussed before the Judicial Committee and the tribunal of " Canada, and certain principles are now well settled. The " general power conferred on the Dominion by s. 91 to make " laws for the peace, order, and good government of Canada extends " in terms only to matters not coming within the classes of subjects " assigned by the Act exclusively to the Legislatures of the " Provinces.
>
> " But if the subject-matter falls within any of the heads of " s. 92, it becomes necessary to see whether it also falls within

" any of the enumerated heads of s. 91, for if so, by the concluding " words of that section, it is excluded from the powers conferred " by s. 92." (*John Deere Plow Co.* v. *Wharton*, 1915 A.C. 337).

* * * * * *

Il faut maintenant se demander si le sujet de l'article 6 ne tombe pas sous une des énumérations de l'article 91. Ceci aurait pour effet de donner au fédéral en l'enlevant aux provinces le pouvoir qui leur était attribué par l'article 92 :

" . . . the general powers of legislation for the peace, order " and good government of Canada are committed to the Dominion
10 " Parliament, though they are subject to the exclusive powers of " legislation committed to the Provincial legislatures and enumer- " ated in s. 92. But the provincial powers are themselves qualified " in respect of the classes of subjects enumerated in s. 91, as particular " instances of the general powers assigned to the Dominion. Any " matter coming within any of those particular classes of subjects " is not to be deemed to come within the classes of matters assigned " to the Provincial legislatures." (*Proprietary Articles Trade Association* v. *Att.-Gen. Canada*, 1931 A.C. 316).

" Their Lordships made reference (in *Plow* v. *Wharton*, 1915
20 " A.C. 330) to the circumstance that the concluding words of " s. 91 of the B. N. A. Act, ' Any matter coming within any of " the classes of subjects enumerated in this section shall 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,' " render it necessary to do more than ascertain whether the subject- " matter in question apparently falls within any of the heads of " s. 92 ; for if it also falls within any of the enumerated heads of " s. 91, then it cannot be treated as covered by any of those in
30 " s. 92." (*Great West Saddlery* v. *The King*, 1921, 2 A.C. 99).

" It follows (from s. 91 and s. 92) that legislation coming " in pith and substance within one of the classes specially enumerated " in s. 91 is beyond the legislative competence of the provincial " legislatures under s. 92. In such a case it is immaterial whether " the Dominion has or has not dealt with the subject by legislation, " or to use other well-known words, whether that legislative field " has or has not been occupied by the legislation of the Dominion " Parliament. The Dominion has been given exclusive legislative " authority as to ' all matters coming within the classes of subjects '
40 " enumerated under 29 heads, and the contention that, unless and " until the Dominion Parliament legislates on any such matter, " the provinces are competent to legislate is, therefore, unsound : " *Att.-Gen. Canada* v. *Att.-Gen. Ontario, Quebec and Nova-Scotia* " (1898 A.C. 700, 715). There were, however, cases in which " matters which were only incidental or ancillary to the main " subject which was within the exclusive legislative powers of the " Dominion Parliament were dealt with by the provincial legislation " in the absence of Dominion legislation. Since 1894, it has been " a settled proposition that, if a subject of legislation by the province

No. 8. Factum of the Attorney General of Quebec, *continued.*

" is only incidental or ancillary to one of the classes of subjects " enumerated in s. 91, and is properly within one of the subjects " enumerated in s. 92, then legislation by the province is competent " unless and until the Dominion Parliament chooses to occupy the " field by legislation : *Att.-Gen. Ontario* v. *Att.-Gen. Canada* (1894 " A.C. 189). It is this proposition which, from the nature of the " case, too often leads to difficulty. Legislation since 1867 has " assumed many forms in dealing with the greater complexity of " modern trade and civilization. It is sometimes difficult to determine " whether a particular matter, the subject of a provincial Act, is in " *pith and substance* within one of the enumerated heads of s. 91, " or whether it is merely ancillary or incidental to one of the " subjects there enumerated. This may raise questions as to the " precise meaning to be attached to one or more of the enumerated " heads of s. 91 and s. 92, and, finally, there may be a doubt whether " the legislative field is or is not clear. It must not be forgotten " that where the subject-matter of any legislation is not within " any of the enumerated heads either of s. 91 or of s. 92, the sole " power rests with the Dominion under the preliminary words of " s. 91, relative to ' laws for the peace, order, and good government " of Canada '." (*Att.-Gen. Alberta* v. *Att.-Gen. Canada*, 1943 A.C. 370).

" The expression ' civil rights in the Province ' is a very wide " one, extending, if interpreted literally, to much of the field of " the other heads of s. 92 and also to much of the field of s. 91. But " the expression cannot be so interpreted, and it must be regarded " as excluding cases expressly dealt with elsewhere in the two " sections, notwithstanding the generality of the words." (*John Deere Plow* v. *Wharton*, 1915 A.C. 340).

" If then the legislation in question is authorized under one " or other of the heads specifically enumerated in s. 91, it is not " to the purpose to say that it affects property and civil rights " in the Provinces. Most of the specific subjects in s. 91 do affect " property and civil rights but so far as the legislation of Parliament " in pith and substance is operating within the enumerated powers, " there is constitutional authority to interfere with property and " civil rights." (*Proprietary Articles Trade Association* v. *Att.-Gen. Canada*, 1931 A.C. 326–327).

" The earlier part of this section (91) read in connection with " the words beginning ' and for the greater certainty ' appears to " amount to a legislative declaration that any legislation falling " strictly within any of the classes specially enumerated in s. 91 " is not within the legislative competence of the Provincial legisla- " tures under s. 92. In any view the enactment is express that laws " in relation to matters falling within any of the classes enumerated " in s. 91 are within the *exclusive* legislative authority of the " Dominion Parliament. Whenever, therefore, a matter is within " one of these specified classes, legislation in relation to it by a " Provincial legislature is in their Lordships' opinion incompetent. " It has been suggested, and this view has been adopted by some " of the judges of the Supreme Court, that although any Dominion

" legislation dealing with the subject would override provincial " legislation, the latter is nevertheless valid, unless and until the " Dominion Parliament so legislates. Their Lordships think that " such a view does not give their due effect to the terms of s. 91, " and in particular to the word *exclusively*. It would authorize, " for example, the enactment of a bankruptcy law or a copyright " law in any of the provinces unless and until the Dominion " Parliament passed enactments dealing with those subjects. Their " Lordships do not think this is consistent with the language and " manifest intention of the B.N.A. Act." (*Fisheries Case*, 1898 A.C. 715).

" It is . . . to be presumed, indeed it is a necessary implication, " that the Imperial statute, in assigning to the Dominion Parlia- " ment the subjects of bankruptcy and insolvency, intended to " confer on it legislative power to interfere with property, civil " rights, and procedure within the Provinces, so far as a general " law relating to those subjects might affect them." (*Cushing* v. *Dupuy*, 5 A.C. 415).

C'est seulement à une énumération de l'article 91, la 21ème, " bankruptcy and insolvency," que pourrait être rattaché l'article 6.

Si la première disposition de l'article 6 tombe directement sous l'énumération 21, c'est-à-dire constitue, en définitive, une loi sur la faillite ou l'insolvabilité, cette disposition est inconstitutionnelle, même en l'absence de loi fédérale, parce que la Législature s'est arrogée un droit qui appartient exclusivement au fédéral :

" The exclusive legislative authority to deal with all matters " within the domain of bankruptcy and insolvency is vested in " Parliament." (*Royal Bank of Canada* v. *Larue*, 1928 A.C. 187).

(Section 92 of the B.N.A.) : " enables that legislature to make " laws in relation to property and civil rights in the province unless " it is withdrawn from their legislative competency by the provisions " of the 91st section of that Act which confers upon the Dominion " Parliament the exclusive power of legislation with reference to " bankruptcy and insolvency." (*Att.-Gen. Ontario* v. *Att.-Gen. Canada*, 1894 A.C. 195).

Il est de l'essence de toute législation sur la faillite et l'insolvabilité de prescrire des modalités qui permettront aux débiteurs insolvables de se libérer de leurs obligations envers leurs créanciers. C'est ce que nous enseignent plusieurs décisions du Conseil Privé :

" The expression ' bankruptcy and insolvency ' in s. 91, head 21, " of the B.N.A. Act, was referred to by Lord Selborne in *L'Union* " *St. Jacques de Montréal* v. *Bélisle* (1894, L.R. 6 P.C. 31, 36) as " ' describing in their known legal sense provisions for the adminis- " tration of the estates of persons who may become bankrupt or " insolvent, according to rules and definitions prescribed by law, " including of course the conditions in which that law is to be " brought into operation, the manner in which it is to be brought " into operation, and the effect of its operation.' (*Royal Bank of Canada* v. *Larue*, 1928 A.C. 196–197).

No. 8. Factum of the Attorney General of Quebec, *continued.*

" In a general sense, insolvency means inability to meet one's " debts or obligations ; in a technical sense, it means the condition " or standard of inability to meet debts or obligations, upon the " occurrence of which the statutory law enables a creditor to inter- " vene, with the assistance of a Court, to stop individual action by " creditors and to secure administration of the debtor's assets in the " general interest of creditors ; the law also generally allows the " debtor to apply for the same administration. The justification " for such proceeding by a creditor generally consists in an act of " bankruptcy by the debtor, the conditions of which are defined " and prescribed by the statute law. In a normal community, it is " certain that these conditions will require revision from time to " time by the Legislature ; as also the classes in the community " to which the bankruptcy laws are to apply may require recon- " sideration from time to time. Their Lordships are unable to hold " that the statutory conditions of insolvency which enabled a " creditor or the debtor to invoke the aid of the bankruptcy laws, " or the classes to which these laws applied, were intended to be " stereotyped under head 21 of s. 91 of the B.N.A. so as to confine " the jurisdiction of the Parliament of Canada to the legislative " provisions then existing as regards these matters. Further it " cannot be maintained that legislative provision as to compositions, " by which bankruptcy is avoided, but which assumes insolvency, " is not properly within the sphere of bankruptcy legislation (1934 S.C.R. 659 : In re, Companies Creditors Arrangement Act." (*Att.-Gen. British Columbia* v. *Att.-Gen. Canada*, 1937 A.C. 402).

" Therefore, if the proceedings under this new Act of 1933 are " not, strictly speaking, ' bankruptcy ' proceedings, because they " had not for object the sale and division of the assets of the debtor, " they may, however, be considered as ' insolvency proceedings' " with the object of preventing a declaration of bankruptcy and " the sale of these assets, if the creditors directly interested for the " time being reach the conclusion that an opportune arrangement " to avoid such sale would better protect their interest, as whole or " in part. Provisions for the settlement of the liabilities of the " insolvent are an essential element of any insolvency legislation " and were incorporated in our Insolvent Act of 1864 ; . . .

" What was considered as being within the scope of the word " *insolvency* when it was used in section 91 of the B.N.A. Act is to " be found in the preamble of the 1864 Insolvency Act, which reads :

" ' Whereas it is expedient that provision be made for the " settlement of the estates of insolvent debtors, for giving effect " to arrangements between them and their creditors, and for the " punishment of fraud.' "

(*Reference, re : Companies' Creditors Arrangement Act*, 1934, S.C.R. 664 and 665.)

" The history of the law seems to show clearly that legislation " in respect of composition and arrangements is a natural and " ordinary component of a system of bankruptcy and insolvency " law." (*Reference, re : Companies' Creditors Arrangement Act*, 1934, S.C.R. 660.)

" It is not necessary in their Lordships' opinion, nor would it " be expedient to attempt to define, what is covered by the words " ' bankruptcy ' and ' insolvency ' in sect. 91 of the B.N.A. Act. " But it will be seen that it is a feature common to all the systems " of bankruptcy and insolvency to which reference has been made, " that the enactments are designed to secure that in the case of an " insolvent person his assets shall be rateably distributed amongst " his creditors whether he is willing that they shall be so distributed " or not.

" . . . In reply to a question put by their Lordships the learned " counsel for the respondent were unable to point to any scheme of " bankruptcy or insolvency legislation which did not involve some " power of compulsion by process of law to secure to the creditors " the distribution amongst them of the insolvent debtor's estate. " In their Lordships' opinion these considerations must be borne in " mind when interpreting the words ' bankruptcy ' and ' insolvency ' " in the B. N. A. Act. It appears to their Lordships that such " provisions as are found in the enactment in question, relating as " they do to assignments purely voluntary, do not infringe on the " exclusive legislative power conferred upon the Dominion " Parliament." (*Att.-Gen. Ontario* v. *Att.-Gen. Canada*, 1894 A.C. 200).

Or, la première disposition de l'article 6 ne pourvoit à aucun moyen de libération du débiteur. Celui-ci doit encore toute sa dette, demeure en possession de tous ses biens ; il jouit seulement d'une année de grâce.

Ce n'est donc pas là une loi sur la faillite et l'insolvabilité.

* * * * *

La première partie de l'article 6 peut encore être inconstitutionnelle si elle voile quelque disposition ancillaire d'une loi fédérale sur l'insolvabilité et la faillite.

On reconnait que le pouvoir pour le fédéral de légiférer sur un sujet donné, à savoir l'insolvabilité et la faillite, comprend le pouvoir de décréter toutes les dispositions accessoires nécessaires pour rendre cette législation complète et efficace, et cela, même si une disposition accessoire tombe dans une catégorie exclusivement attribuée aux provinces.

" They would observe that a system of bankruptcy legislation " may frequently require various ancillary provisions for the " purpose of preventing the scheme of the Act of being defeated. " It may be necessary for this purpose to deal with the effect of " executions and other matters which would otherwise be within " the legislative competence of the provincial legislature. Their " Lordships do not doubt that it would be open to the Dominion " Parliament to deal with such matters as part of a bankruptcy " law, and the provincial legislature would doubtless be then " precluded from interfering with this legislation inasmuch as such " interference would affect the bankruptcy law of the Dominion " Parliament. But it does not follow that such subjects, as might " properly be treated as ancillary to such a law and therefore " within the powers of the Dominion Parliament, are excluded

No. 8. Factum of the Attorney General of Quebec, *continued.*

" from the legislative authority of the provincial legislature when " there is no bankruptcy or insolvency legislation of the Dominion " Parliament in existence." (*Att.-Gen. Ontario* v. *Att.-Gen. Canada*, 1894 A.C. 200).

Cependant, si le fédéral ne peut légiférer sur une question qu'en vertu de son pouvoir ancillaire et qu'il ne le fait pas, les provinces peuvent légiférer sur cette même question en vertu de leurs pouvoirs généraux relatifs au droit civil, à la propriété et aux matières d'intérêt purement local.

C'est dire qu'en vertu de cette théorie une loi provinciale ne sera inconstitutionnelle que s'il existe déjà une loi fédérale au même effet :

" The doctrine of the ' occupied field ' applies only where there " is a clash between Dominion legislation and provincial legislation " within an area common to both." (*Forbes* v. *Att.-Gen. Manitoba*, 1937 A.C. 274).

La première disposition de l'article 6 vient-elle en conflit avec quelque loi fédérale, voilà tout le problème.

Une seule loi fédérale traite de l'insolvabilité des fermiers : c'est la loi d'arrangement entre les cultivateurs et leurs créanciers (7–8 Geo. VI, ch. 26), qui est une loi de faillite simplifiée, pour le bénéfice des cultivateurs incapables de rencontrer leurs obligations.

L'article fondamental de la loi est l'article 7 qui se lit comme suit :

" Lorsqu'un cultivateur, résidant dans la province d'Alberta, " du Manitoba ou de la Saskatchewan,

" (i) qui n'a pas fait de proposition sous le régime de la Loi " d'arrangement entre cultivateurs et créanciers, 1934, ou

" (ii) qui a fait une proposition sous le régime de la Loi " d'arrangement entre cultivateurs et créanciers, 1934, en vertu " de laquelle un concordat, une prorogation de délai ou un projet " de traité a été approuvé par la cour ou confirmé par la com- " mission de revision le ou avant le 31 décembre 1938, est incapable " de payer ses dettes à leur échéance, si les deux tiers de leur montant " total sont dus par lui à l'égard des dettes contractées avant le " 1er jour de mai 1935, il peut faire une proposition aux termes de la " présente loi pour un concordat, une prorogation de délai ou un " projet de traité, soit avant, soit après une cession prévue par la " Loi de faillite. Toutefois, dans le cas d'un cultivateur visé par " l'alinéa (ii) du présent article, les dettes du cultivateur signifient " ses dettes d'après le concordat, la prorogation de délai ou le projet " de traité et autrement."

Pour pouvoir mieux déterminer le champ qu'occupent la loi fédérale et la première disposition de l'article 6 de la loi provinciale, il importe de rechercher l'objet de chacune de ces lois, leur " pith and substance ".

La loi provinciale retarde l'échéance d'une dette ; la loi fédérale fournit au débiteur certains moyens de se libérer de ses obligations qu'il est incapable de rencontrer à leur échéance. Une loi fixe l'échéance de

la dette indépendamment des conditions financières du débiteur ; l'autre loi permet au débiteur insolvable de régler ses dettes, après leur échéance, par un compromis avec ses créanciers.

Les deux lois s'appliquent aux fermiers débiteurs. Mais, tandis que la loi provinciale s'occupe de leurs dettes au point de vue civil, avant l'échéance, en fixant une clause du contract de prêt, la loi fédérale ne s'applique qu'au cas d'insolvabilité, c'est-à-dire pose certaines règles qui permettront à celui qui est incapable de respecter ses obligations à leur échéance de se libérer quand même vis-à-vis de ses créanciers.

" The Dominion may pass an insolvent law, and as incident " thereto—or for the purpose of making it effectual, in the aspect " of dealing with insolvency—may incidentally pass laws affecting " procedure, etc. But the province may, in dealing with property " and civil rights and civil procedure, pass laws respecting them " which do not lose their efficacy because the person affected may " happen to be insolvent. That is to say, for different purposes or " by different approaches each may deal with property and civil " rights of an insolvent." (14 *Canadian Law Times*, 324–325).

" Matters formally constituting part of a bankruptcy scheme, " but not in their essence matters of bankruptcy and insolvency " may, of course, from another point of view and in another aspect " be dealt with by a provincial legislature ; but, when treated as " matters pertaining to bankruptcy and insolvency, they clearly " fall within the legislative authority of the Dominion." (*Reference, re : Companies' Creditors Arrangement Act*, 1934 S.C.R. 661.)

Le Farm Security Act, art. 6, 1ère disposition, et la loi d'Arrangement entre cultivateurs et leurs créanciers occupent donc deux domaines, connexes il est vrai, mais bien distincts. Le cas fortuit ou force majeure entraine un terme de grâce ; ce cas fortuit ou cette force majeure découle du fait de la nature. L'insolvabilité ou l'état de faillite résulte de la situation financière ou pécuniaire du débiteur.

Une loi provinciale n'est pas inconstitutionnelle du seul fait qu'accidentellement elle a une répercussion sur un domaine occupé par une loi fédérale. Ce serait là donner une prédominance trop grande au pouvoir ancillaire du gouvernement central.

" Notwithstanding this endeavour (end of sect. 91) to give " preeminence to the Dominion Parliament in cases of a conflict " of powers, it is obvious that in some cases where this apparent " conflict exists, the legislature could not have intended that the " powers exclusively assigned to the provincial legislature should " be absorbed in those given to the Dominion Parliament." (*Citizen Insurance* v. *Parsons*, 7 A.C. 108).

" In *Tenant* v. *Union Bank of Canada* (1894 A.C. 31) it was " decided that the B.N.A. Act must be so construed that s. 91 con- " ferred powers to legislate which might be fully exercised even " though they modified civil rights in a Province, provided that these " powers are clearly given. The rule of construction is that general " language in the heads of s. 92 yields to particular expressions in " s. 91, where the latter are unambiguous. The rule may also apply

No. 8. Factum of the Attorney General of Quebec, *continued.*

" in favour of the Province in construing merely general words in " the enumerated heads in s. 91." (*Great West Saddlery* v. *King*, 1921, 2 A.C. 116.)

En accord avec ce principe, le Conseil Privé a décidé que les fonctionnaires fédéraux sont soumis aux lois provinciales de taxation comme toute autre personne (1937 A.C. 260). (*Forbes* v. *Attorney Gen. for Manitoba*).

De même on a jugé que les législatures pouvaient taxer les banques de la même façon que les autres corporations :

" It has been earnestly contended that the taxation of banks " would unduly cut down the powers of the parliament in relation " to matters falling within class 2, viz. the regulation of trade and " commerce ; and within class 15, viz., banking, and the incorpora- " tion of banks. Their Lordships think that this contention gives " far too wide an extent to the classes in question. They cannot " see how the power of making banks contribute to the public " objects of the provinces where they carry on business can interfere " at all with the power of making laws on the subject of banking, " or with the power of incorporating banks. The words ' regulation " of trade and commerce ' are indeed very wide, and in Seven's " Case (2 S.C.R. 70), it was the view of the Supreme Court that they " operated to invalidate the licence duty which was there in question. " But since that case was decided, the question has been more " completely sifted before the Committee in Parson's Case (7 A.C. " 96), and it was found absolutely necessary that the literal meaning " of the words should be restricted, in order to afford scope for powers " which are given exclusively to the provincial legislatures." (*Bank of Toronto* v. *Lambe*, 1887 A.C. 595).

Le Conseil Privé a même décidé que le pouvoir du fédéral sur la faillite et l'insolvabilité n'empêchait pas une province d'adopter une loi réduisant les obligations d'une association dans le but d'en empêcher la faillite :

" The fact that this particular society appears upon the face " of the Provincial Act to have been in a state of embarrassement, " and in such a financial condition that, unless relieved by " legislation, it might have been likely to come to ruin, does not " prove that it was in any legal sense within the category of " insolvency. And in point of fact the whole tendency of the Act " is to keep it out of that category, and not to bring it into it. " The Act does not terminate the Company ; it does not propose " a final distribution of its assets on the footing of insolvency or " bankruptcy ; it does not wind it up. On the contrary, it " contemplates its going on, and possibly at some future time " recovering its prosperity, and then these creditors, who seem " on the face of the Act to be somewhat summarily interfered with, " are to be reinstated." (*L'Union Saint-Jacques de Montreal* v. *Belisle*, L.R. 6 P.C. 31, 37).

Ces décisions nous font bien voir que pour être inconstitutionnelle sous ce titre, la loi provinciale doit venir en conflit avec la loi fédérale.

Et la première disposition de l'article 6, nous l'avons vu, ne viole essentiellement aucune loi fédérale. Le champ occupé par les deux lois est bien différent. La loi provinciale ne restreint en aucune manière la sphère d'application de la loi fédérale. La législature détermine les clauses du contrat ; le fédéral pose les règles que le débiteur doit suivre pour se libérer lorsqu'il est incapable d'observer les clauses de ce contrat.

Remarquons enfin qu'au cas de doute, la présomption est en faveur de la validité :

> " It must be assumed that parliament intended to do what
> " they have a right to do, to legislate legally and effectively, rather
> " than they intended to do what they had no right to do, and
> " which, if they did do, must necessarily be void and of no effect."
> (*Valin* v. *Langlois*, 3 S.C.R. 28).

Il faut donc conclure que la première disposition de l'article 6 du Farm Security Act est 'intra vires' de l'autorité législative de la Législature de la Saskatchewan pour les raisons que nous avons développées.

Sous réserve de formuler des conclusions verbales se rapportant au paragraphe 3 (2) de l'article 6 et à l'application de cet article 6 à certains organismes fédéraux, l'Intervenant soumet respectueusement que :

1° cette disposition du Farm Security Act n'aurait pu être édictée par le fédéral en vertu de son pouvoir ancillaire parce que son objet tombe sous l'énumération 13 de l'article 92, " Property and civil rights in the Province " ;

2° à l'encontre de ce pouvoir conféré à la Législature par l'article 92, le fédéral ne peut opposer aucun pouvoir exclusif qui lui serait conféré par l'article 91 ;

3° la première partie de l'article 6 ne viole aucune disposition mise en vigueur par le fédéral en vertu de son pouvoir ancillaire.

OTTAWA, le 10 septembre 1946.

GUY HUDON, C.R.,
avocat de l'Intervenant,
l'Honorable Procureur Général de la province de Québec.

No. 9.
Formal Judgment, 13th May, 1947.

No. 9.

FORMAL JUDGMENT.

THE SUPREME COURT OF CANADA.

(Seal)

Tuesday, the thirteenth day of May, A.D. 1947.

Present :

THE HONOURABLE THE CHIEF JUSTICE OF CANADA
THE HONOURABLE MR. JUSTICE KERWIN
THE HONOURABLE MR. JUSTICE TASCHEREAU
THE HONOURABLE MR. JUSTICE RAND
THE HONOURABLE MR. JUSTICE KELLOCK

IN THE MATTER of a Reference as to the Validity of Section 6 of the Farm Security Act, 1944, of the Province of Saskatchewan.

WHEREAS by Order of His Excellency the Governor General in Council, bearing date the fourteenth day of May, in the year of our Lord, one thousand nine hundred and forty-six (P.C. 1921), the important questions of law hereinafter set out were referred to the Supreme Court of Canada, for hearing and consideration, pursuant to section 55 of the Supreme Court Act, Revised Statutes of Canada, 1927, chapter 35 :—

"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 ?

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."

AND WHEREAS the said questions came before this Court, constituted as above with the addition of Mr. Justice Hudson, since deceased, for hearing and consideration on the fifteenth, sixteenth, seventeenth, eighteenth and twenty-first days of October, in the year of our Lord, one

No. 9. Formal Judgment, 13th May, 1947, *continued.*

thousand nine hundred and forty-six, in the presence of the Honourable J. L. Ralston, K.C., and Mr. D. W. Mundell, of counsel for the Attorney-General of Canada; Mr. Yves Prévost, K.C., of counsel for the Attorney-General of Quebec; Mr. G. W. Mason, K.C., Mr. R. S. Meldrum and Mr. M. C. Shumiatcher, of counsel for the Attorney-General of Saskatchewan; Mr. H. J. Wilson, K.C., of counsel for the Attorney-General of Alberta, and Mr. C. F. Carson, K.C., and Mr. L. G. Goodenough, of counsel for The Dominion Mortgage and Investments Association, and after due notice to the Attorneys-General for the Provinces of Ontario, Nova Scotia, New Brunswick, Manitoba, British Columbia and Prince Edward Island;

WHEREUPON and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said Reference should stand over for consideration, and the same coming on this day for determination;

THIS COURT HEREBY CERTIFIES to His Excellency the Governor General in Council, for his information, pursuant to subsection 2 of section 55 of the Supreme Court Act, that the opinions in respect of the questions referred to the Court are 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.

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

and that the reasons for such answers are to be found in the judgments written and certified by the individual members of the Court, copies of which are hereunto annexed.

(Signed) PAUL LEDUC,

Registrar.

No. 10. Reasons for Judgment, (A) Kerwin, J. (concurred in by Rinfret, C.J.)

No. 10.

REASONS FOR JUDGMENT.

Coram: The Chief Justice, Kerwin, Hudson, Taschereau, Rand and Kellock, JJ.

(*a*) *Kerwin, J.* (concurred in by Rinfret, C.J.).

The judgment of the Chief Justice and Kerwin, J. was delivered by Kerwin, J. :—

The validity of section 6 of the Farm Security Act was attacked on several grounds and, on the other hand, its constitutionality was affirmed under various provisions of the British North America Act. One of the grounds of attack was that section 6 was in relation to interest, which is head 19 of section 91 of the B.N.A. Act, and that is the only point that I find it necessary to consider.

In the factum of counsel for the Attorney General of Saskatchewan it is stated :—" The pith and substance of the legislation is agricultural security and the reduction of unavoidable risks to individual farmers by a spreading of such risks as exists between both farmers and their creditors, and eventually perhaps, among the provincial population as a whole." It may be taken that this is the object of the legislation but when one considers what the legislature is doing by subsection 2 of section 6 of the Act, which is the important provision, it seems plain that the pith and substance of the Act is interest. If, according to the other provisions, a mortgagor or a purchaser under an agreement of sale, of farm land in Saskatchewan, is able to realize, due to causes beyond his control, from the crops on the land a sum less than a sum equal to $6.00 per acre sown to grain in any one year on such land, then there is a crop failure within the meaning of the Act. If this event happens, the mortgage or agreement of sale is deemed to contain the condition that (1) the mortgagor or purchaser shall not be required to make any payment of principal during the period of suspension,—which by definition means the period commencing August 1st in the year of a crop failure and ending on July 31st in the next succeeding year; (2) any principal falling due during the period of suspension and any principal which thereafter falls due 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 centum 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.

As to (3), it was stated and not denied that 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. The effect, therefore, of (3) is that while the mortgage or agreement will be reduced by the amount of interest for the period of suspension, according to the proviso, the same amount of interest shall continue to be paid as if the principal had not been so reduced. It is not important to resolve the dispute between counsel as to exactly how this third limb of the condition would

operate in various cases but two things are clear. One is that the interest for the period of suspension is cancelled, and the other is that 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. 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. *Independent Order of Foresters* (1940) A.C. 513: and the legislation here in question is definitely in relation to interest.

Once that conclusion is reached, the decision in *Ladore* v. *Bennett* (1939) A.C.468, so greatly relied on, can have no application. As was pointed out in the *Lethbridge* case, the legislation in question in *Ladore* v. *Bennett* and also that in *Day* v. *Victoria* (1938) 3 W.W.R. 161, was legislation in relation to a matter within section 92 of the B.N.A. Act, and any provisions with regard to interest were incidental. In the present case the provisions as to interest are the very warp and woof of the enactment. It is impossible to sever these from the remainder of the Act, and in my opinion, therefore, section 6 is wholly *ultra vires* the Legislative Assembly of Saskatchewan. This renders it unnecessary to answer the second question.

We hereby certify to His Excellency the Governor General in Council that the foregoing are our reasons for the answers to the questions referred herein for hearing and consideration.

(*b*) *Taschereau, J.*— (B) Taschereau, J.

By an Order in Council of the 14th of May, 1946, being P.C. 1921, His Excellency the Governor General in Council referred to this Court for hearing and consideration, pursuant to the authority of Section 55 of the Supreme Court Act, the following questions:—

"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."

The Attorney General of Canada, and the Dominion Mortgage and Investment Association submitted that this section, which is not severable from the rest of the Act, is *ultra vires* of the powers of the Province of Saskatchewan, while the Attorney General of Alberta supported the view of the Attorney General of Saskatchewan, that the legislation is within the powers of the Province. The Attorney General of Quebec asked the Court to make certain reservations if the Act were declared *ultra vires*.

This Act is challenged on the ground that it deals with interest, bankruptcy and insolvency which are within the exclusive legislative

No. 10. Reasons for Judgment, (B) Taschereau, J., *continued.*

jurisdiction of the Dominion Parliament. It is also said that if the subject matter of section 6 were to be regarded as merely ancillary to legislation relating to Bankruptcy and Insolvency, the Provincial Legislature of Saskatchewan is nevertheless precluded from entering that field, because it is claimed that it is now occupied by the Dominion. It is further submitted that it is inconsistent with Sections 96, 99 and 100 of the British North America Act, in that it confers the powers of a Court on a body not competently constituted to exercise such powers. As to question two, the contention of the Attorney General of Canada is that the Central Mortgage and Housing Corporation and the Canadian Farm Loan Board, are agents of the Crown, and that the mortgages they hold being vested in the Crown, cannot be affected by Provincial Legislation.

The section of the Act which is challenged, enacts that when there is in the Province a " crop failure ", as defined in the Act, then, the mortgagor or the purchaser of a farm shall not be required to make any payment of principal to the mortgagee or to the vendor, during the period of " suspension ", and any principal outstanding on the 15th day of September, in the period of suspension, shall become automatically reduced by four per cent., but, *interest* shall continue to be chargeable, payable and recoverable, as if the principal had not been reduced. 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* appointed by the provincial authorities which, after hearing both parties, determines whether or not there has been a " crop failure " in the year in question.

It is claimed by the Attorney General of Alberta that the Act is in pith and substance legislation in relation to farm security in the Province, as it affects farmers and the farming industry, a subject well within the powers of the Provincial legislation.

Under the B.N.A. Act, " agriculture in the Province " is a matter on which Provincial Legislation may competently be enacted. The unambiguous terms of Section 95 can leave no doubt. It reads as follows :—

> " 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."

Agriculture is undoubtedly the main industry in Saskatchewan, and it is by far the principal source of revenue of its inhabitants. We have been told that from 1920 to 1943, the total estimated gross cash income to farmers of the Province was $4,303,000,000.00 of which $3,006,000,000.00 was from wheat. This income is, of course, subject to wide fluctuations ; and precipitation, pests, rust and weeds, and various other hazards of production are variable factors which, to a very large extent, affect the revenues of the farmers. It has been submitted that the spreading of the risk more equitably between the mortgagor and mortgagee and between

the vendor and the purchaser, in an effort to mitigate against these hardships, is a matter pertinent to the agricultural industry in Saskatchewan.

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* v. *Moore* (1906, 4 W.L.R. 110) " to those things that grow and derive their substance from the soil." I am strongly of opinion that legislation to relieve the farmers of financial difficulties, to lighten the burdens resulting from the uncertainties of farming operations, is legislation in relation to agriculture.

As it has often been said, it is the true nature and character of the legislation that has to be found in order to ascertain the class of subject to which it belongs. (*Russell* v. *The Queen*, 1882, 7 A.C. 829 ; *Gallagher* v. *Lyon*, 1937, A.C. p. 869.)

The same principle has also been reaffirmed by the Judicial Committee in *Shannon et al* v. *Lower Mainland Dairy Products Board*, and *The Attorney General for British Columbia* (1938, A.C. at pp. 720 and 721). (*Vide* also *Home Oils Distributors Limited and Attorney General of British Columbia*, 1940, S.C.R. 444.)

I have reached the conclusion that this legislation being a legislation enacted for the purpose of dealing with agricultural matters within the Province of Saskatchewan, is legislation *in pith and substance* in relation to agriculture and that it was, therefore, competently enacted by the Province of Saskatchewan.

Section 95 of the B.N.A. Act gives also power to the Parliament of Canada to make laws in relation to agriculture in all or any of the Provinces, and it is only when the laws enacted by the Province are repugnant to any Act of the Parliament of Canada, that they cease to have effect in and for the Province. Here, the subject matter covered by the Farm Security Act is the only one of its kind, and no federal legislation having been enacted, it results that the field is clear and that this law cannot be repugnant to any federal legislation. In order to avoid any possibility of encroachment, it is stated in the law, that Section 6 which is the impeached one, 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 of arrangement has been annulled pursuant to either of the said Acts."

It has been further submitted by the Attorney General of Saskatchewan that this legislation also relates to property and civil rights

No. 10. Reasons for Judgment, (B) Taschereau, J., *continued.*

in the Province a subject within the competency of the Provincial Legislature. In its efforts to equalise the risks between the 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 the mortgagor shall not be required to make any payment of principal to the mortgagee or to the vendor, and that during the period of suspension, the capital shall become automatically reduced by four per cent. These clauses which are deemed to be incorporated in every agreement of sale, notwithstanding anything to the contrary, unquestionably deal with the civil rights of the vendor or of the mortgagor.

The courts are not concerned with the wisdom of the legislation, but must apply the laws as they stand. In granting a period of suspension or a reduction of the principal of a civil debt, the Legislature of Saskatchewan legislates obviously on a civil subject matter which, under Section 92 (13), is of a local and provincial nature. A civil debt is founded on some contract alleged to have taken place between the parties, or on some matter of fact from which the law would imply a contract between them. If the debt is not paid, an action lies to enforce the claim, and as it is within the powers of the Provincial Legislature to authorise the necessary action for the enforcement of the claim, it is also well within the same powers to suspend, reduce or extinguish it entirely. On such matters, the sovereignty of the Provincial Legislature cannot be challenged.

In enacting the Farm Security Act, the Legislature of Saskatchewan was dealing with agreements of sale and mortgages, and therefore was entering the field of contracts. In *Citizens Insurance Co.* v. *Parson* (1881, 7 A.C. p. 96), Sir Montague Smith said at page 110 :—

> " The words ' civil rights and property ' are sufficiently large to embrace in their fair and ordinary meaning, rights arising from contract, and such rights are not included in express terms in any of the enumerated classes of subjects in section 91."

And at page 111, referring to the Quebec Act (14 Geo. III, Chap. 83), he stated :—

> " In this statute, the words ' property and civil rights ' are plainly used in their largest sense ; and there is no reason for holding that in the statute under discussion (The B.N.A. Act) they are used in a different and narrower one."

The well-known " insurance cases " may be referred to in connection with the interpretation which has been given to Section 13 of Section 92. In *Attorney-General for Canada* v. *Attorney-General for Alberta* (1916, 1 A.C. 488) ; *Attorney-General for Ontario* v. *Reciprocal Insurers* (1924, A.C. 328) ; and *In Re Insurance Act of Canada* (1932, A.C. 41), the Judicial Committee dealt with the power of the Dominion Parliament to license and control the activities of the Insurance Companies. It was held that this type of legislation could not be supported under the Dominion law to legislate over " Trade and Commerce," or " Criminal Law," or under any other of the enumerated or residuary provisions of Section 91, because the legislation remained directly related to civil contracts and trenched upon the provincial power to legislate over " property and civil rights in the Province."

I know of no authority which prevents the Legislature to insert 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.

It has been submitted that Section 6 invades the federal field and is, therefore, *ultra vires* of the powers of the Province, because it contains a clause which is to the effect that during the suspension period or after the reduction in capital, as the case may be, the interest will continue to run as if no suspension or reduction in capital had been made.

The clause is as follows :—

> " Notwithstanding such reduction, interest shall continue to be chargeable, payable and recoverable as if the principal had not been so reduced."

There is no doubt, that under Section 91 of the British North America Act, subsection 19, " interest " is a matter on which the Parliament of Canada only may properly legislate, and it is obviously in order to prevent any attack on that ground that the clause was inserted by the Legislature of Saskatchewan. But, with the clause as it stands, it is said that when the principal outstanding is automatically reduced, interest continues to be chargeable, payable and recoverable on a principal which is not existent. It results that there is an increased rate on the amount of principal actually outstanding.

The answer to this objection is, that the Act is in pith and substance a law relating to agriculture and civil rights, and, if interest is affected it is only incidentally. The Act is not directed to interest. Its main purpose and object is to assist farmers in times of distress by redrafting a civil contract, as a result of which their losses, due to a fortuitous event or an act of God, are shared partly with their mortgagees or vendors. If, as a consequence of this legal intervention of the Provincial Legislature in the contractual relations between two individuals, interest is incidentally affected, it remains nevertheless that the law is valid and not impeachable.

I think that this point has been definitely settled since the judgment of the Privy Council in *Ladore* v. *Bennett* (1939, A.C. p. 468). In that case, several municipalities of Ontario had failed to meet their debentures or interests, and were amalgamated together. The Ontario Municipal Board accepted a scheme which had been formulated for funding and refunding the debts of the amalgamated municipalities, under which former creditors of the old independent municipalities received debentures of the new city of equal nominal amount to those formerly held, but with the interest scaled down in various classes of debentures. It was argued that the relevant statutes adopted by the Ontario Legislature were *ultra vires* because they invaded the field of " interest ". It was held by the Judicial Committee that the *pith and substance* of the Ontario Acts were in relation to " municipal institutions in the Province " and that interest was affected only incidentally. The Acts were held valid.

In 1938, the Court of Appeal of British Columbia in *Day* v. *City of Victoria* (3 W.W.R. 161) had reached a similar conclusion, and in the *Lethbridge case* (1940, A.C. 513), the *Day & Victoria case* was approved by the Privy Council.

In the *Lethbridge case* it was held that the legislations adopted by the Provincial Government of Alberta, which purported to reduce by one half the interest on certain securities guaranteed by the Province, and the interest

No. 10. Reasons for Judgment, (B) Taschereau, J., *continued.*

payable on securities issued by the Province, were *ultra vires* of the powers of the Province of Alberta ; it was held that these legislations were in pith and substance in relation to interest. Their sole object was to reduce the rate. But, the principles enunciated in *Ladore* v. *Bennett* were reaffirmed, and it is for the sole reason given above that the Acts were declared to be without the powers of the Provincial Legislature.

Having come to the conclusion that the Act which is now under attack is in pith and substance and that its true character is in relation to agriculture, it naturally follows that its constitutionality cannot be successfully challenged merely because it may incidentally affect interest.

It has also been submitted that the Act is invalid because it invades the fields of " bankruptcy or insolvency " within the meaning of Head 21 of Section 91 of the B.N.A. Act. The short answer to this contention is that the Act does not even deal incidentally with insolvency or bankruptcy, if the meaning of these terms are properly understood. Its purpose is not, when 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 the solvency or insolvency of the mortgagor or purchaser the Act merely purports to deal with a civil debt. It is the participation between two private individuals in a loss, which otherwise would be the sole burden of the mortgagor or purchaser, which lies at the very root of this legislation (*Union St.-Joseph* v. *Belisle*, 1874, L.R. 6 P.C. 31) ; (*Attorney General of Ontario* v. *Attorney General of Canada*, 1894, A.C. 189).

The further contention that the impugned legislation confers the powers of a court not competently constituted to exercise such powers, cannot I think, be accepted. The only function of the Board is merely to decide whether there has been or not a crop failure, and if it is found that such a condition exists, the rights and obligations of the parties then arise from the statute itself. No declaration of the rights of the parties is made by the Board, and I am therefore quite satisfied that it does not fulfil " judicial " or " quasi judicial " functions. (*Shell Co. of Australia* v. *Federal Commissionsers of Taxation*, 1931, A.C. at 295) ; (*Haddart Parker & Co.* v. *Moorehead*, 1909, Vol. 8, Commonwealth Law Reports.)

I may also refer to the case of *The Attorney General of Quebec* v. *Slamac & Grimstead et al.* (1933, 2 Dominion Law Reports, p. 289), in which the constitutionality of the Workmen's Compensation Act of Quebec was attacked. It was alleged that this Act was unconstitutional, *ultra vires* and void because it made the Commission a real tribunal conferring upon it a civil jurisdiction belonging to Superior and County Court judges of each province. The Court of Appeal of the Province of Quebec held that the functions of the Commissioners were administrative and not judicial.

The Board must of course act " judicially " in the sense that it must act fairly and impartially, but this does not mean that its members are anything more than mere administrative officers in the performance of their duties. (*Saint-John* v. *Fraser*, 1935, S.C.R. at p. 452.)

The second question submitted and which has now to be determined is the following :—

> " (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."

The Farm Security Act contains clause 8 which reads as follows:—

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

Having come to the conclusion that the Act itself is *intra vires* of the powers of the Legislature of Saskatchewan, it is now necessary to examine if the Act is operative as to what has been called the Federal Crown holding mortgages in the Province. A negative answer to this question would of course not make the Act *ultra vires*, but it would merely mean that Section 8 should be construed as not affecting the Dominion Crown or its agencies.

"It is true that there is only one Crown," but as Viscount Dunedin added in *Silver Bros. Ltd.*, 1932, A.C. at page 524, "as regards Crown revenues and Crown property, by legislation assented to by the Crown there is a distinction made between the revenues and property in the Province, and the revenues and property in the Dominion. There are two statutory purses."

In *Gauthier* v. *The King* (56 S.C.R. at p. 194) Anglin J. as he then was, dealt with the matter as to whether or not the Crown in right of the Dominion, was bound by a reference to the Crown in a provincial statute, and the then Chief Justice Sir Charles Fitzpatrick said at page 182 of the same case:—

"I agree with Anglin J. that the provincial Act, read as a whole, cannot be interpreted as applicable, for the reasons he gives, to bind the Dominion Crown.

And, in any event, the provinces have, in my opinion, neither executive, legislative nor judicial power to bind the Dominion Government. Provincial statutes which were in existence at the time when the Dominion accepted a liability form part of the law of the province by reference to which the Dominion has consented that such liability shall be ascertained and regulated, but any statutory modification of such law can only be enacted by Parliament in order to bind the Dominion Government. That this may occasionally be productive of inconvenient results is one of the inevitable consequences of a divided authority inherent in every federal system such as provided by the constitution of this country."

On the same matter see also *Burrard Power Company* v. *The King* (1911, A.C. pages 91 *et seq.*).

The principles enunciated in these cases are, I believe, applicable here, and I have to come to 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.

No. 10. Reasons for Judgment, (B) Taschereau, J., *continued.*

For the above reasons, I would answer both interrogatories in the negative.

There should be no costs to either party.

(C) Rand, J.

(*c*) *Rand, J.* :—

The questions submitted to us by His Excellency in Council are these :—

" 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 if 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 ? "

The clauses of section 6, as amended, pertinent to the conclusion at which I have arrived, are 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 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 ;

* * * * *

" 5. ' payment ' includes payment by delivery of a share of crops ;

* * * * *

(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. (Subsection (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).)

* * * * *

(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 of 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 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."

The definition of "crop failure" is embarrassed by the use of the words "to the extent that the sum realisable . . . is less than a sum equal to six dollars per acre"; they have been assumed to provide that any return less than six dollars an acre constitutes a failure and this I take to be the case, although they would, ordinarily signify something relative. I take the section, also, not to apply to a mortgage or contract which does not in some form carry interest.

The clause around which the controversy hinges is (3) and I find some difficulty in its precise interpretation. Apart from the proviso, its effect would be an immediate and actual percentage reduction on September 15th of the principal sum and the accrual of interest on the balance at the rate stipulated to apply in the circumstances of the day next following. But the proviso forces a modification of that simple result. If interest is to be charged "as if the principal had not been

No. 10. Reasons for Judgment, (c) Rand, J. *continued.*

reduced," either the same factors in the computation were intended to continue to be used, or the amount of interest to be maintained. In the latter case, treating the principal as actually reduced, the rate must vary with the deduction, and is to be that " at which interest will accrue immediately after the said date (September 15)." On the present assumption, this, although mathematically possible, would involve calculating a decimal factor from what except to mathematicians would be a complicated equation on each ascertainment. To avoid that practical objection, some other rate would appear to be intended and, as counsel for Saskatchewan assumed, we return to the rate stipulated in the contract applied to the whole, i.e. the constructive principal. But this meets a further obstacle. No time is specified at which the charging of interest on the statutory reduction is to cease and if the interest is charged " as if the principal had not been so reduced," without a limitation implied it must continue payable in perpetuity. The appropriation of the reduction does not appear to be made to any particular part of the principal, and in the case of instalment payments many questions would arise. Conceivably the provision is not to affect the contract of interest up to the date of maturity ; but a very few contracts for interest are limited to that point of time. Difficulties likewise would be encountered by special terms of the interest contract such as, for instance, that it should run until all of the principal money has been repaid and not merely until the obligation as to principal should be discharged. Assuming interest to accrue until the reduced balance has been paid, is the total principal then deemed discharged ? That would in effect suspend the application of the deduction until the final payment of the remaining principal and would terminate the contract of interest on the discharge of the obligation for principal.

Interest is, in general terms, the return or consideration or compensation for the use or retention by one person of a sum of money belonging to, in a colloquial sense, or owed to, another. There may be other essential characteristics but they are not material here. The relation of the obligation to pay interest to that of the principal sum has been dealt with in a number of cases including : *Economic Life Assur. Society* v. *Usborne* (1902) A.C. 147, and of Duff, J., in *Union Investment Co.* v. *Wells*, 39 S.C.R. at p. 645 ; from which it is clear that the former, depending on its terms, may be independent of the latter, or that both may be integral parts of a single obligation or that interest may be merely accessory to principal.

But the definition, as well as the obligation, assumes that interest is referrable to a principal in money or an obligation to pay money. Without that relational structure in fact and whatever the basis of calculating or determining the amount, no obligation to pay money or property can be deemed an obligation to pay interest.

Apart then from the difficulties presented in a plan for the payment of interest and principal to which section 6 of the Interest Act would apply, and to cases where by special stipulation interest becomes more than merely an accessory to principal, and whatever else may be intended, 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 that deduction had not been made. That effect cannot here be overborne by any play with the words of inconsistent conception ; we are bound to

treat the statutory language as language of reality, and as carrying its plain and unequivocal meaning. On this view, and, assuming for practical purposes what seems to be implied by section 2 of the Interest Act, that interest involves a " rate " relationship to the principal, the statute works a change of rate as the principal is diminished, which, in the Crown's contention, is legislation in relation to interest, a field of civil rights committed exclusively to the Dominion.

Mr. Mason argues that the enactment is designed to promote the stability of agriculture and is valid under section 95 of the Confederation Act. The immediate operation of the statute is put on the theory of the prevention of the annual growth of certain debts where crop failure prevents the parallel growth of the wealth out of which economically and generally it is said they are contemplated to be paid, accomplished by extending to the creditor the risk of that failure now borne alone by the debtor; but viewed most favourably to the provincial contention, the statute only in a most limited manner embodies that conception.

It is confined to creditors who have security for debt on land and it assumes that in substance it is only to that land and its fruits they look for payment, and that the fortunes of the debt should be deemed wrapped up in the fortunes of its security. It does not apply to farmers who have availed themselves of the benefits of the Farmers' Arrangement Acts of the Dominion, although why on the theory advanced they should be denied its benefit is difficult to see. Then clause 8, by giving the Mediation Board power to exclude a contract or class of contracts, and having regard to clause 7, enables the benefit of the section to be overborne by economic or even ethical considerations quite incompatible with the notion of a debt contractually conditioned in a genuine risk; and whatever the legislature may have had in mind, the section invests the Board with a power to restrict its application to any condition or to any class of debtors whatever.

The conclusion of the argument is that with such a purpose in view, the effect on the contract of interest is incidental to legislation valid under the principle of the decision of the Judicial Committee in *Ladore* v. *Bennett* (1939) A.C. 468. The *ratio decidendi* of that case rested on the provincial power to create and dissolve municipal organisations for local government, including the delimitation of their capacity to incur liability; and the view that contracts with these bodies stipulating for interest are made subject to that power; legislation dealing in substance with such institutions might therefore incidentally affect contracts of interest.

The general interest of agriculture may be advanced by many legislative means, some within the jurisdiction of the Dominion and some within that of the Province but not all legislation which in its ultimate results may benefit agriculture is for that reason alone legislation within section 95. There is obviously a distinction between legislation " in relation " to agriculture and legislation which may produce a favourable effect upon the strength and stability of that industry; between consequential effects and legislative operation. But beyond any doubt, the field of that section does not include that of interest in a substantive aspect, and in each case the question remains, what is the real nature and character, the pith and substance of the enactment? If it is in the strict sense legislation within section 95, then incidentally it may affect other

No. 10. Reasons for Judgment, (c) Rand, J. *continued.*

areas of jurisdiction, the operation of which may depend on the impact on the underlying matter of legislation in relation to agriculture; but where that is not the case, the means employed to bring about the benefit intended must not be such as are forbidden to the provincial jurisdiction.

What is done by section 6, notwithstanding that it is confined to farm lands, is strictly a modification of civil rights; that is the substance of the section: any benefit to agriculture hoped for or contemplated would be a resulting tendency to hold farmers to the land and its cultivation. But the alteration of the contract involves, as an inseverable part of its substance, legislation in relation to interest, and it is, because of that, *ultra vires: Board of Trustees of Lethbridge* v. *Independent Order of Foresters* (1940) A.C. 513. In this respect lies its distinction in principle from *Ladore* v. *Bennett, supra.* Whether the purported dealing with principal is in these circumstances and in particular the use of the interest rate, a colourable device to nullify the accrual of interest, I do not find it necessary to decide.

It was suggested, though not seriously urged as a material consideration, that there might be contracts providing for crop payments not related to money with "interest" accruing in the same form, to which the section would apply. If there are such contracts, on the material before us they are in number insignificant; and assuming that the "rate" of reduction is not incompatible with their terms, and that "interest" under the Act of 1867 would apply to such an increment of price, the clear intention of the section that the entire group should be dealt with as one does not permit us to say that the one class of contract would have been the subject of legislation without the other, and any question of severability is excluded.

Then it was argued that the untrammelled scope of discretionary action given by section 8 indicates conclusively that the power was furnished as a means for assisting insolvent debtors by a compulsory reduction of debts, and doubtless the power could be used as a sub-legislative control for such an application of the section. It was also contended that the legislation interfered with the status and powers of bodies incorporated under Dominion law; that the Mediation Board in determining the fact of crop failure upon which the specific terms of the statute declared to be annexed to every mortgage and contract became operative was, in so doing, exercising jurisdiction that brought it within section 96 of the Confederation Act and its finding therefore a nullity; and finally, that in any event the statute could not apply to debts arising from loans made by the Dominion Crown either solely or jointly with others under the National Housing Act, 1944, or to loans made by the Canadian Farm Loan Board or assigned to the Central Mortgage & Housing Corporation. To these points, because of the conclusion to which I have come, I do not find it necessary to address myself.

My answer to the first question is therefore that section 6 of the Farm Security Act, 1944 is wholly *ultra vires.* This dispenses with an answer to the second question.

(d) Kellock, J.

(d) *Kellock, J.:—*

Argument against the validity of the legislation was submitted to us by counsel on behalf of the Attorney General of Canada on the following grounds, namely, that it was (*a*) in relation to interest; (*b*) in relation to

bankruptcy and insolvency; and (*c*) inconsistent with Sections 96, 99 and 100 of the British North America Act, in that it confers powers of a court on a body not competently constituted to exercise such power. Counsel on behalf of the Dominion Mortgage and Investments Association supported these contentions and also urged objection on the further grounds that the legislation impairs the status and essential capacities of companies incorporated by the Dominion and that it provides for delegation of legislative powers and functions by the provincial legislature to the Mediation Board which is unauthorized under the British North America Act. Both counsel submit that even if some part, or parts, of the section is valid, such parts are not capable of severance. On behalf of the Attorney-General of Saskatchewan the legislation was supported under (*a*) Section 95, agriculture in the province; (*b*) Section 92, (13) Property and Civil Rights in the province; and (*c*) Section 92, (16) matter of a local or private nature in the province. Counsel for the Attorneys-General of Quebec and Alberta also supported the validity of the legislation, counsel for the last mentioned basing his submissions on the additional ground of Section 92 (14)—administration of justice in the province.

As has been so often said, it is necessary in an inquiry of this sort to ascertain the pith and substance or the true nature and character of the enactment in question; *Attorney-General for Ontario* v. *Reciprocal Insurers* (1924) A.C., 328 at 337. The next step in a case of difficulty is to examine the effect of the legislation. A closely similar matter which calls for attention is the object or purpose of the legislation: *Attorney-General for Alberta* v. *Attorney-General for Canada* (1939) A.C., 117 at 130. See also *Attorney-General for Manitoba* v. *Attorney-General for Canada* (1929) A.C., 260 at 268. I therefore leave out of consideration the 4 per cent. rate specifically mentioned in the statute as it was made perfectly plain before us that as things stand no such rate is currently operative and has not been for some time.

In support of the submission that the section trenches upon the federal jurisdiction with regard to interest, counsel directed argument principally to paragraph 3 of subsection (2). This paragraph enacts (1) that the principal outstanding on September 15th in a period of suspension shall be automatically reduced by the percentage there described; and (2) that notwithstanding such reduction, interest shall continue to be " chargeable, payable and recoverable " as if the principal had not been so reduced.

If, according to the plain language of the subsection, the *principal outstanding* is automatically *reduced*, it follows that interest ceases to accrue thereafter on the amount of the reduction. There can be no such thing as interest on principal which is non-existent. As by the proviso it is enacted that interest shall continue to be " chargeable, payable and recoverable " (language to be found in the Interest Act, R.S.C., Chap. 102), as if the principal had not been so reduced, such a provision therefore can 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 after as before the reduction. This is in fact recognized by the Attorney-General of Saskatchewan in his submission 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. Such a result can be

No. 10. Reasons for Judgment, (D) Kellock, J., *continued.*

reached only on the basis that it is the principal in fact outstanding which bears interest at the higher rate, for otherwise if the proviso could be construed as continuing to attach interest to the amount of the statutory reduction, interest thereon would never cease to accrue and its running could only be put an end to by actual payment in money of the amount of the " reduction ". Such a construction would render the legislation completely nugatory and it is not to be considered that the legislature had in mind any such result.

The submission of the Attorney-General is thus put in his factum: " The amount required to pay a mortgage or indebtedness under an agreement for sale is the full amount of the interest owing to the date of payment, having no regard to the provisions of paragraph 3 of section 6 (2), together with the full amount of the principal, less the deduction provided for in that paragraph. The amount of the deduction is determined by the following formula: A deduction is made from the principal with respect to each crop failure year occuring 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 percentage as the *rate of interest stipulated in the mortgage* or agreement, whichever is greater."

In my opinion the above submission does not pay sufficient 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 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. 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. While the matter of conditions in contracts within the province is no doubt a matter for the provincial legislature: *Citizens Insurance Company* v. *Parsons*, 7 A.C. 96; *Workmen's Compensation Board* v. *Canadian Pacific Railway Company* (1920), A.C., 184; contractual interest is the subject matter of exclusive Dominion legislative power under Section 91 (19) of the British North America Act; the *Lethbridge case* (1940) A.C., 513, at 531. In my opinion the legislation here in question is not in its pith and substance legislation within Section 95 as being with relation to agriculture nor within any of the heads of Section 92 but is legislation with relation to interest and governed by the principle of the above decision. To quote from the judgment of Viscount Caldecote, L.C., at 531: " In so far as the Act in question deals with matters assigned under any of these heads to the Provincial Legislatures, it still remains true to say that the pith and substance of the Act deals directly with 'interest' and only incidentally or indirectly with any of the classes of

subjects enumerated in Section 92. Even if it could be said that the Act relates to classes of subjects in Section 92, as well as to one of the classes in Section 91, this would not avail the appellants to protect the Provincial Act against the Interest Act of 1927, passed by the Dominion Parliament, the validity of which, in the view of their Lordships, is unquestionable. Section 2 of the Interest Act is as follows : ' 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 . . .' Dominion legislation properly enacted under Section 91 and already in the field must prevail in territory common to the two parliaments." This language is in my opinion equally appropriate in the case at bar.

Reliance was placed by counsel supporting the legislation upon the decision of the Privy Council in *Ladore* v. *Bennett* (1939) A.C., 468, and that of the Court of Appeal of British Columbia in *Day* v. *Victoria* (1938) 3 W.W.R., 161, approved of in the *Lethbridge case.* I would distinguish both these decisions. They are dealt with in the *Lethbridge case* at pages 532 and 533, where it is pointed out that the legislation in question in each case was legislation in relation to a matter within Section 92, while any provisions with regard to interest were incidental.

The jurisdiction allocated to Parliament under any of the heads of Section 91 is " notwithstanding anything in this Act." I 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 or not in conflict with the provisions of Section 2 of the Interest Act.

As already mentioned, while the direct attack upon the section upon the ground mentioned was limited to paragraph three, it was contended that if that paragraph were *ultra vires* then the whole section must fall to the ground as it could not be severed, even assuming that the remainder of the section were valid. In my opinion this contention is well taken. The provisions of Section 6, in my opinion, constitutes a code by which upon the happening of the event there described all the provisions of subsection (2) come into play. I do not think it can be presumed that the legislature intended to enact the provisions of paragraphs 1 and 2 of the subsection without that included in paragraph 3. It is not therefore necessary to consider any of the other objections urged against the legislation. I would answer question 1 as follows : " Section 6 is *ultra vires* as a whole." It is therefore not necessary to answer the second question.

I hereby certify to His Excellency, the Governor-General-in-Council, that the foregoing are my reasons for the answers to the questions referred herein for hearing and consideration.

In the Privy Council.

No. 11.

ORDER of His Majesty in Council granting Special Leave to Appeal.

No. 11. Order of His Majesty in Council granting special leave to appeal, 19th December 1947.

L.S.

AT THE COURT AT BUCKINGHAM PALACE

The 19th day of December, 1947.

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT — MAJOR MILNER

LORD AMMON — MR. BEVAN

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 17th day of December 1947 in the words following, viz. :—

" WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Attorney General of Saskatchewan in the matter of a reference as to the validity of section 6 of the Farm Security Act 1944 of the Province of Saskatchewan and in the matter of an Appeal from the Supreme Court of Canada between the Petitioner Appellant and (1) the Attorney General of Canada (2) the Dominion Mortgage and Investments Association Respondents and the Attorney General of Alberta and the Attorney General of Quebec *pro forma* Respondents setting forth (amongst other matters): that this is a Petition for special leave to appeal from the Judgments of the Supreme Court of Canada given on the 13th May 1947 upon certain important questions of law referred to that Court for hearing and consideration by Order of His Excellency the Governor General in Council: that the question of law referred to the Supreme Court were as follows :—

" (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 ?

that the following answers were given to the two questions referred to the Court :—' 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 Statute of Saskatchewan 1944 (second session) as amended by section 2 of Chapter 28 of the Statutes of

In the Privy Council.

No. 11. Order of His Majesty in Council granting special leave to appeal, 19th December 1947, *continued.*

Saskatchewan 1945 is wholly *ultra vires* of the Legislative Assembly of Saskatchewan and that it is therefore unnecessary to answer the second question. Taschereau, J. is of opinion that section 6 is *intra vires* but would answer 'no' to the second question. Mr. Justice Hudson had died before preparing his Judgment.' And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgments of the Supreme Court of Canada given on the 13th May 1947 or for further or other relief :

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgments of the Supreme Court of Canada dated the 13th day of May 1947 :

"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

No. 99 of 1947.

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 - - *Respondents*

AND

THE ATTORNEY GENERAL OF ALBERTA and THE ATTORNEY GENERAL OF QUEBEC - - - - *Pro forma Respondents.*

RECORD OF PROCEEDINGS

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Attorney General of Saskatchewan.

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The Dominion Mortgage and Investments Association.

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