

70, 1932

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA.

BETWEEN:

LOWER MAINLAND DAIRY PRODUCTS
SALES ADJUSTMENT COMMITTEE,
Plaintiff (Appellant)

—AND—

CRYSTAL DAIRY LIMITED,
Defendant (Respondent)

RECORD OF PROCEEDINGS

Messrs. McQuarrie & Whiteside,
New Westminster, B. C.,
Solicitors for Appellant.

R. L. Maitland, Esq., K.C.,
Counsel.

Messrs. Farris, Farris, Stultz & Sloan,
Vancouver, B. C.,
Solicitors for Respondent.

J. W. deB. Farris, Esq., K.C.
Counsel.

Approved
"Farris & Co."
per R. S. Stultz
for Respondent

I.

INDEX

No.	DESCRIPTION OF DOCUMENT	DATE	Page
PART I.			
1	Endorsement on Writ	Apr. 23, 1931....	1
2	Statement of Claim	May 15, 1931....	2
3	Statement of Defence	May 19, 1931....	5
4	Defendant's Demand for Particulars....	May 19, 1931....	6
5	Reply	May 27, 1931....	7
6	Reply to Defendant's Demand for Particulars	May 27, 1931....	8
7	Plaintiff's Demand for Particulars.....	June 6, 1931....	9
8	Reply to Plaintiff's Demand for Particulars	June 20, 1931....	10
	Proceedings at Trial	Sept. 3, 1931....	11
PLAINTIFF'S CASE			
	Fraser, Managing-Director of Defendant: Examination for Discovery		12
	William Lyle Macken (Rebuttal): Direct Examination	Sept. 3, 1931....	30
	Cross-Examination	Sept. 3, 1931....	35
	Re-Direct Examination	Sept. 3, 1931....	45
	Re-Cross Examination	Sept. 3, 1931....	46

II.

INDEX—*Continued*

No.	DESCRIPTION OF DOCUMENT	DATE	Page
DEFENDANT'S CASE			
	Mercer, Member of Plaintiff Committee:		
	Examination for Discovery		18
IN THE SUPREME COURT OF BRITISH COLUMBIA			
9	Reasons for Judgment of The Honourable Mr. Justice Murphy	Sept. 26, 1931....	49
10	Formal Judgment of The Honourable Mr. Justice Murphy	Sept. 26, 1931....	54
11	Notice of Appeal	Oct. 2, 1931....	55
COURT OF APPEAL FOR BRITISH COLUMBIA			
12	Reasons for Judgment of The Honourable the Chief Justice	Jan. 5, 1932....	57
13	Reasons for Judgment of The Honourable Mr. Justice McPhillips	Jan. 5, 1932....	60
14	Reasons for Judgment of The Honourable Mr. Justice M. A. Macdonald.....	Jan. 5, 1932....	72
15	Formal Judgment	Jan. 5, 1932....	82
16	Order for Conditional Leave to Appeal	Jan. 25, 1932....	84
17	Certificate of Registrar as to Delivery of Reasons for Judgment	Feb. 18, 1932....	86

III.

INDEX—*Continued*

No.	DESCRIPTION OF DOCUMENT	DATE	Page
18	Registrar's Certificate of Compliance with Order	Mar. 7, 1932....	86a
19	Order Granting Final Leave to Appeal	Mar. 10, 1932	86b
PART II.			
EXHIBITS			
1	Canada Order-in-Council	Feb. 15, 1926....	87
2	British Columbia Order-in-Council	Oct. 25, 1929....	90
3	British Columbia Order-in-Council	Dec. 21, 1929....	92
4	British Columbia Order-in-Council	Nov. 7, 1930....	94
5	British Columbia Order-in-Council	Dec. 17, 1930....	96
6	Letter, Plaintiff to Defendant	Apr. 7, 1931....	98
7	Letter, Plaintiff to Defendant.....	Apr. 16, 1931....	99
DOCUMENTS			
	Letter, Plaintiff's Solicitors to Attorney-General for Canada	Oct. 6, 1931....	100
	Letter, Plaintiff's Solicitors to Attorney-General for British Columbia	Oct. 6, 1931....	101
	Letter, Attorney-General for British Columbia to Plaintiff's Solicitors.....	Oct. 7, 1931....	102
	Telegram, Deputy Minister of Justice for Canada to Plaintiff's Solicitor	Oct. 17, 1931....	103

IV.

INDEX—*Continued*

No.	DESCRIPTION OF DOCUMENT	DATE	Page
	Letter, Plaintiff's Solicitors to Attorney-General for Canada	Jan. 30, 1932....	104
	Letter, Plaintiff's Solicitors to Attorney-General for British Columbia.....	Jan. 30, 1932....	105
	Letter, Attorney-General for British Columbia to Plaintiff's Solicitors	Feb. 2, 1932....	106
	Telegram, Deputy Minister of Justice for Canada to Plaintiff's Solicitors	Mar. 1, 1932....	107

In the Supreme Court of British Columbia

BETWEEN:

LOWER MAINLAND DAIRY PRODUCTS
SALES ADJUSTMENT COMMITTEE,
Plaintiff (Appellant)

—AND—

CRYSTAL DAIRY LIMITED,
Defendant (Respondent)

No. 1

10

ENDORSEMENT ON WRIT

The plaintiff's claim is for a mandamus commanding the defendant as a distributor as defined by section 2 of the "Dairy Products Sales Adjustment Act" being Chapter 20 of the Statutes of British Columbia 1929, as amended by section 4 of the "Dairy Products Sales Adjustment Act Amendment Act, 1931" within the district in which the plaintiff operates, to make to the plaintiff forthwith returns of all milk or manufactured products purchased or received by the defendant from dairy-farmers as defined by said section 2 of the said "Dairy Products Sales Adjustment Act" as amended as aforesaid, during the month of March 1931 as required by subsection (c) of section 9 of said "Dairy Products Sales Adjustment Act" as amended by section 7 of said "Dairy Products Sales Adjustment Act Amendment Act, 1931": AND for damages.

RECORD

Writ issued the 23rd day of April, A.D. 1931.

In the
Supreme Court
of British
Columbia

No. 2

STATEMENT OF CLAIM.

No. 2
Statement of
Claim.
15th May, 1931

1. The plaintiff is a corporation duly constituted by the Lieutenant-Governor in Council of the Province of British Columbia, pursuant to the provisions of the "Dairy Products Sales Adjustment Act," being Chapter 20 of the Statutes of the Province of British Columbia, 1929 and amendments thereto for that portion of the Province of British Columbia described in Dominion Order in Council P.C. 1504 as set forth in Canada Gazette of the 27th day of February 1926, page 2377. 10

2. The defendant is a body corporate having its registered office at 1803 Commercial Drive in the City of Vancouver and Province of British Columbia and is a distributor as defined by section 2 of the said "Dairy Products Sales Adjustment Act" as amended by section 4 of the "Dairy Products Sales Adjustment Act Amendment Act, 1931," carrying on business within the district in which the plaintiff operates.

3. By sub-section (c) of section 9 of the said "Dairy Products Sales Adjustment Act" as enacted by section 7 of said "Dairy Products Sales Adjustment Act Amendment Act, 1931," it is provided as follows: 20

"(c.) Every distributor shall make to the committee, not later than the fifteenth day of each month, returns of all milk or manufactured products purchased or received by such distributor from dairy farmers during the preceding month, and shall, if required by the committee, file with it copies of invoices, bills of lading, account sales, statements or returns, and other documents, with respect to milk or manufactured products purchased or received by such distributor from dairy-farmers during the preceding month." 30

4. During the month of March 1931 at the said City of Vancouver and within the said district in which the plaintiff operates the defendant purchased and received milk and manufactured products of milk from dairy-farmers as defined in the said Act of 1931 for resale, particulars of which the plaintiff has been unable to obtain.

5. The defendant has neglected and refused to make to the plaintiff returns of all milk or manufactured products purchased or received by the defendant from dairy-farmers during the month of March 1931 as aforesaid although requested in writing by the plaintiff so to do. 40

6. By reason of the refusal of the defendant to make returns to the plaintiff, as alleged in the preceding paragraph hereof, the plaintiff has been unable to carry out its duties and

functions and exercise the rights, powers and privileges conferred on the plaintiff by the Dairy Products Sales Adjustment Act and amendments in respect to the milk and manufactured products of milk mentioned in paragraph 4 hereof and will be unable to carry out such duties and functions and exercise such rights, powers and privileges until the defendant performs the duty of making the returns imposed upon it by the said Act as aforesaid.

10 7. By reason of the refusal of the defendant as aforesaid to make the said returns, the plaintiff has been unable to ascertain and apportion the difference in total value between the dairy-farmers, as provided in the said Act and amendments and has been unable to collect from such of the said dairy-farmers by whom the same would be payable the proportions of the difference in total value ascertained and apportioned, pursuant to the said Act and amendments, in respect of the milk and/or manufactured products referred to in paragraph 4 hereof.

20 8. By reason of the refusal of the defendant as aforesaid to make the said returns, the plaintiff has been unable to and has been prevented from imposing and collecting the levies on milk and/or manufactured products pursuant to the said Act and amendments, in respect of the milk and/or manufactured products referred to in paragraph 4 hereof.

THE PLAINTIFF THEREFORE CLAIMS:

- 30 (a) A mandamus commanding the defendant to make to the plaintiff forthwith returns of all milk or manufactured products purchased or received by the defendant from dairy-farmers as defined by said section 2 of the said "Dairy Products Sales Adjustment Act" as amended as aforesaid, during the said month of March 1931 as required by sub-section (c) of section 9 of said "Dairy Products Sales Adjustment Act" as amended by section 7 of said "Dairy Products Sales Adjustment Act Amendment Act, 1931."
- (b) Damages.
- (c) The costs of this action.

PLACE OF TRIAL: NEW WESTMINSTER, British Columbia.

40 DATED at New Westminster, British Columbia, this 15th day of May, 1931.

"McQuarrie, Whiteside & Duncan,"
Solicitors for the plaintiff.

RECORD
—
*In the
Supreme Court
of British
Columbia*
—
No. 2
Statement of
Claim.
15th May, 1931
(Contd.)

RECORD

*In the
Supreme Court
of British
Columbia*

No. 2

Statement of
Claim.
15th May, 1931
(Contd.)

THIS STATEMENT OF CLAIM is filed and delivered by McQuarrie, Whiteside & Duncan whose place of business and address for service is 605-608 Westminster Trust Building, New Westminster, B. C., solicitors for the plaintiff.

STATEMENT OF DEFENCE

RECORD

*In the
Supreme Court
of British
Columbia*No. 3
Statement of
Defence.
19th May, 1931.

1. The defendant specifically denies each and every allegation of fact contained in paragraph 1 of the statement of claim herein.

2. The defendant admits that it is a body corporate having its registered office at 1803 Commercial Drive in the City of Vancouver, Province of British Columbia, but specifically denies each and every other allegation of fact contained in paragraph 2 of the statement of claim herein.

3. The defendant specifically denies each and every allegation of fact contained in paragraph 4 of the statement of claim herein.

4. The defendant specifically denies each and every allegation of fact contained in paragraph 5 of the statement of claim herein.

5. The defendant specifically denies each and every allegation of fact contained in paragraph 6 of the statement of claim herein.

20 6. The defendant specifically denies each and every allegation of fact contained in paragraph 7 of the statement of claim herein.

7. The defendant specifically denies each and every allegation of fact contained in paragraph 8 of the statement of claim herein.

8. In the alternative and in answer to the whole of the statement of claim herein the defendant says that the "Dairy Products Sales Adjustment Act" referred to in the statement of claim herein is ultra vires and beyond the competence of the Legislature of the Province of British Columbia to enact.

30 9. The statement of claim herein discloses no cause of action.

DATED at Vancouver, B. C., this 19th day of May A.D. 1931.

"Farris, Farris, Stultz & Sloan,"

Solicitors for the defendant.

40 FILED AND DELIVERED by Messrs. Farris, Farris, Stultz & Sloan, solicitors for the defendant, whose place of business is at Suite 1508 Standard Bank Building, 510 West Hastings Street, Vancouver, B. C., and whose address for service is at the office of their agent, H. Norman Lidster, Esq., Room 5, Hart Block, New Westminster, B. C.

To the plaintiff,
And to its solocitors,
Messrs. McQuarrie, Whiteside and Duncan.

RECORD

No. 4

*In the
Supreme Court
of British
Columbia*

DEFENDANT'S DEMAND FOR PARTICULARS

No. 4
Defendant's
Demand for
Particulars.
19th May, 1931.

1. The defendant demands particulars of paragraph 5 of the Statement of Claim herein and specifically the dates when it is alleged that the plaintiff requested the defendant to make returns.

2. The defendant demands particulars of the amount of the damage it is alleged the plaintiff has suffered as claimed in paragraph "B" of the statement of claim herein with full particulars of any such alleged loss.

10

DATED at Vancouver, B. C., this 19th day of May A.D. 1931.

"Farris, Farris, Stultz & Sloan,"
Solicitors for the Defendant.

FILED AND DELIVERED by Messrs. Farris, Farris, Stultz & Sloan, solicitors for the defendant, whose place of business is at Suite 1508 Standard Bank Building, 510 West Hastings Street, Vancouver, B. C., and whose address for service is at the office of their agent, H. Norman Lidster, Esq., Room 5, Hart Block, New Westminster, B. C.

20

To the Plaintiff,
And to its Solicitors,
Messrs. McQuarrie, Whiteside & Duncan.

No. 5

REPLY

The plaintiff says that,

1. As to the defence herein, it joins issue.

DATED at New Westminster, British Columbia, this 27th day of May, 1931.

“McQUARRIE, WHITESIDE & DUNCAN.”
Plaintiff’s solicitors.

FILED AND DELIVERED by McQuarrie, Whiteside &
10 Duncan, Plaintiff’s solicitors, whose place of business and address for service is 605-608 Westminster Trust Building, 713 Columbia Street, New Westminster, B. C.

TO THE DEFENDANT,
AND TO MESSRS. FARRIS, FARRIS, STULTZ & SLOAN,
ITS SOLICITORS.

RECORD

*In the
Supreme Court
of British
Columbia*

No. 5

Reply.
27th May, 1931.

RECORD

No. 6.

*In the
Supreme Court
of British
Columbia*

REPLY TO DEFENDANT'S DEMAND FOR
PARTICULARS

No. 6
Reply to
Defendant's
Demand for
Particulars.
27th May, 1931.

1. The plaintiff in reply to paragraph 1 of the Demand for Particulars says that a letter was written by the plaintiff to the defendant on the 7th day of April 1931 to which no reply was received; on the 16th day of April 1931 the Chairman of the plaintiff telephoned to Manager Fraser of the defendant requesting him to furnish the said returns required by the Act and the said Manager refused to do so; on the same day the plaintiff wrote to the defendant demanding the said returns. The letter was sent by registered post but no reply has been received to same. 10

2. In reply to paragraph 2 of the said Demand for Particulars the plaintiff says that it is unable to give the particulars of the damage suffered until the defendant makes the return pursuant to the Statute referred to in the Statement of Claim herein.

DELIVERED this 27th day of May, 1931.

"McQuarrie, Whiteside & Duncan,"

Solicitors for the Plaintiff. 20

To the Defendant,
And to Messrs. Farris, Farris, Stultz & Sloan,
its solicitors.

PLAINTIFF'S DEMAND FOR PARTICULARS

*In the
Supreme Court
of British
Columbia*

TAKE NOTICE that the plaintiff demands particulars of paragraph 8 of the statement of defence herein showing in what respect the "Dairy Products Sales Adjustment Act" is ultra vires and beyond the competence of the Legislature of the Province of British Columbia to enact.

No. 7
Plaintiff's
Demand for
Particulars.
6th June, 1931.

DATED at New Westminster, B. C., this 6th day of June 1931.

10

"McQuarrie, Whiteside & Duncan,"
Solicitors for the Plaintiff.

FILED AND DELIVERED by McQuarrie, Whiteside & Duncan, whose place of business and address for service is 605-608 Westminster Trust Building, New Westminster, B. C., solicitors for the plaintiff.

TO THE DEFENDANT
AND TO MESSRS. FARRIS, FARRIS, STULTZ & SLOAN,
ITS SOLICITORS.

RECORD

No. 8

*In the
Supreme Court
of British
Columbia.*

REPLY TO PLAINTIFF'S DEMAND FOR
PARTICULARS

No. 8
Reply to
Plaintiff's
Demand for
Particulars.
20th June, 1931.

In answer to the Plaintiff's demand for particulars herein, the Defendant says:

That the Dairy Products Sales Adjustment Act is ultra vires and beyond the competence of the Legislature of the Province of British Columbia to enact for the following among other reasons:

- (a) The said Act invades the field of "trade and commerce" 10
exclusively assigned to the Parliament of Canada by sub-section 2 of section 91 of the British North America Act, 1867, because products manufactured from milk find extra-provincial termini and the dairy farmer selling his milk in fluid form is assessed to pay a bonus to the exporter of the manufactured products aforesaid.
- (b) The assessments under the said Act are by their incidence a form of indirect taxation as, by reason of the said Act, the ultimate consumer pays a higher price for 20
his milk. This added price passes through the hands of the distributor to the dairy farmer, who sells his milk in fluid form, and from such farmer is paid to the dairy farmer who sells his milk in manufactured form. The assessment is a tax and is passed on to and borne by the ultimate consumer.
- (c) The operating levy is an indirect tax.
- (d) The said Act prohibits a Dominion Company from the free exercise of its powers.

DATED at Vancouver, B. C., this 20th day of June, A.D. 30
1931.

"Farris, Farris, Stultz & Sloan,"

Solicitors for the Defendant.

To the Plaintiff
And to its Solicitors,
Messrs. McQuarrie, Whiteside & Duncan.

PROCEEDINGS AT TRIAL.

IN THE SUPREME COURT OF BRITISH COLUMBIA.
L 48/1931.

(Before The Honourable Mr. Justice Murphy)

New Westminster, B. C.,
Thursday, September 3rd, 1931 (11 a.m.)

BETWEEN:

LOWER MAINLAND DAIRY PRODUCTS
SALES ADJUSTMENT COMMITTEE,

10

and

CRYSTAL DAIRY LIMITED,

Plaintiff,

Defendant.

Hon. R. L. Maitland, K.C., with
W. G. McQuarrie, Esq., K.C.,

appears for the Plaintiff.

J. W. DeB. Farris, Esq., K. C.,

appears for the Defendant.

PROCEEDINGS AT TRIAL.

20 Mr. Maitland: Would your lordship find a copy of the Act, convenient?

The Court: Yes.

Mr. Maitland: This is an action, my lord, in which we are claiming—no doubt your lordship has read the pleadings?—

The Court: Yes.

Mr. Maitland: —a mandamus, to compel the defendant to make certain returns under the Act as amended in 1931. The amendment is set out in paragraph 3 of the Statement of Claim. (Read).

30 In this case, the defendant, who is a distributor, has refused to comply with the statutory obligation, and we are bringing this action. I might point out in the opening, that we must admit that the real object of this, is directly connected with the question of levies; therefore, the question of levies will be before your lordship, as well as the question of ultra vires, which will be raised. I now refer to section 3, sub-section 5 of this Act. (Read). I am producing the Orders-in-Council covering the

RECORD

In the
Supreme Court
of British
Columbia.

Proceedings
at Trial.

Plaintiff's Case.

Opening
Statement.
of Counsel.
3rd September,
1931.

RECORD
 In the
 Supreme Court
 of British
 Columbia
 Proceedings
 at Trial.
 Plaintiff's Case.
 3rd September,
 1931.
 Exhibits
 1, 2, 3, 4, 5.

constitution of this Committee. The first Order-in-Council is Canada Gazette, 27th of February, 1926, page 2377.

The Court: What is the date?

Mr. Maitland: Canada Gazette, February 27th, 1926, at page 2377.

The Court: 277?

Mr. Maitland: 2377, my lord. That sets out the area. I don't have to read it to your lordship, unless my learned friend wants me to.

The Court: Exhibit 1.

10

(Exhibit 1).

The Court: That is Canada Gazette?

Mr. Maitland: Yes. The area, here, is a Canadian agricultural area. It just shews the area where we are functioning. The next is British Columbia Gazette, October 31st, 1929, page 3403. That sets out the appointment of the Committee, or constitution of the Committee of Adjustment, under the name of Lower Mainland Dairy Products Sales Adjustment Committee.

(Exhibit 2).

Mr. Maitland: British Columbia Gazette, June 12th, 1930, 20 at page 1269. That sets out the appointment of the Committee: Mr. Mercer, and Mr. Shannon, and Mr. Welsh.

(Exhibit 3).

Mr. Maitland: Then December 18th.—No: before I give that,—November 13th, 1930, B. C. Gazette, page 2711. That extends the period of the Committee for one year under the Act.

(Exhibit 4).

Mr. Maitland: And then, December 18th, 1930, at page 3035. That appoints Mr. Mercer, as representing farmers under the co-operative section, for a further term, I presume it is; Mr. 30 Welsh being continued as Chairman.

(Exhibit 5).

Plaintiff's Case.
 3rd September,
 1931.
 Fraser,
 Managing-
 Director of
 Defendant.
 Examination
 for Discovery.

Mr. Maitland: I am putting that in as the constitution of our Committee, for the purpose of bringing this action under this Act.—Now, I am going to read the examination for discovery of the defendant, Fraser; he is an Officer of the defendant company. I will read the whole discovery, from 1 to 92; I think that is nearly all of it. (Reads).

"Q. 1. You have been duly sworn? A. Yes, sir.

"Q. 2. And you are the Managing Director of the Com- 40
 "pany? Is that right? A. Yes.

- "Q. 3. (Mr. Sloan): The defendant company?
 "Q. 4. (Mr. McQuarrie): Yes; of the defendant company,
 10 —That is your official position? A. Yes.
 "Q. 5. You admit, I presume, that the defendant is a dis-
 tributer, as defined by section 2 of the Dairy Products Sales
 Adjustment Act, as amended by section 4 of the Dairy Products
 Sales Adjustment Amendment Act, 1931? A. Yes.
 "Q. 6. Carrying on business within the district in which
 the plaintiff operates? You admit that? A. Yes.
 10 "Q. 7. And were so carrying on business during the whole
 of the month of March, 1931? A. Yes.
 "Q. 8. And you are still carrying on business? A. Yes.
 "Q. 9. In that way? A. Yes.
 "Q. 10. Yes. And during the month of March, 1931, the
 defendant purchased and received milk from dairy farmers as
 defined in the said Act of 1931, for re-sale? A. Yes.
 "Q. 11. That is right.—And what about manufactured
 products? Do you deal in manufactured products at all? A. We
 20 "make some ice cream mix, and a little cottage cheese.
 "Q. 12. Well, but you—or did you not purchase or receive
 manufactured products? A. Nothing, only just from the retail
 store: butter and eggs and the like of that.
 "Q. 13. Well, products of milk? A. Yes. Butter would be
 a product of milk.
 "Q. 14. So you did.—Now, would you kindly give us par-
 ticulars of your purchases and receipt of milk, and manufac-
 tured products of milk, from dairy farmers, during the month
 of March, 1931?
 30 "Mr. Sloan: I object to the question, and instruct the wit-
 ness not to answer, on the ground that such discovery is pre-
 mature.
 "Q. 15. (Mr. Maitland): On the ground that what?
 "Q. 16. (Mr. Sloan): That such discovery is premature;
 and that we refuse to give such information until such time as
 the plaintiff has established its right thereto, under the de-
 cision of Herman Singh versus Kapwor Singh. In other words,
 we object to information being sought by way of discovery.
 "Mr. Maitland: The action is to really require you to
 make.
 40 "Mr. Sloan: It is designed for the purpose of requiring us
 to furnish.
 "Q. 17. (Mr. Maitland): Does the witness refuse to
 answer, on advice of Counsel?—Do you refuse to answer, after
 what Mr. Sloan has said? A. Yes.
 "Q. 18. Were you requested to make any returns to the
 Committee? A. Yes.

RECORD

In the
 Supreme Court
 of British
 Columbia

Proceedings
 at Trial.

Plaintiff's Case.

3rd September,
 1931.

Fraser,
 Managing-
 Director of
 Defendant.
 Examination
 for Discovery.
 (Contd.)

RECORD

*In the
Supreme Court
of British
Columbia*

Proceedings
at Trial.

Plaintiff's Case.

3rd September,
1931.

Fraser,
Managing-
Director of
Defendant.
Examination
for Discovery.
(Contd.)

"Q. 19. That request was in writing, was it? A. Yes.

"Q. 20. Have you got a copy of it, Mr. Sloan?—You produce a letter dated the 7th of April, 1931, from the Lower Mainland Dairy Products Sales Adjustment Committee, to the Crystal Dairy? A. Yes.

"Q. 21. That letter was received by the Crystal Dairy, Limited, was it? A. Yes.

"Q. 22. Yourselves? A. Yes.

"Q. 23. Requesting that you make a return as required in the Act? A. Yes.

"Q. 24. When did you receive that? On the following day, the 8th of April? A. Yes, I imagine it would be. I don't know the date, now.

"Q. 25. It also enclosed a return form in order that you may make a return to the committee? A. I don't remember that.

"Q. 26. In any event, whether it enclosed the form or not, it did require this information from you? A. Yes.

"Q. 27. And you refused to give that information? A. Yes.

"Q. 28. And, I understand, you still refuse to give it? A. "Yes. (Letter marked 'A' for identification)." 20

(Letter dated April 7th, 1931, from the Lower Mainland Dairy Products Sales Adjustment Committee, to the Crystal Dairy,—Exhibit 6.)

Mr. Maitland: I will read this letter, my lord.

The Court: Very well. (Letter read).

(Mr. Maitland continues reading from discovery).

"Q. 29. After you got that letter, you had a communication,—telephonic communication,—with the chairman of this Committee? A. Yes.

"Q. 30. That is Mr. C. A. Welsh? A. Yes.

"Q. 31. And I understand that was on the 16th of April? A. I don't remember.

"Q. 32. It was a short time after the letter marked 'A'? A. Yes.

"Q. 33. In any event you remember a telephonic communication from Mr. Welsh, shortly after you received a demand for these particulars? A. Yes.

"Q. 34. And what was your reply to him at that time? A. "I don't just remember exactly how I answered him.

"Q. 35. It was, I suppose, a polite refusal to acquiesce in the request? A. Yes.

"Q. 36. And you still adhere to that? A. Yes.

"Q. 37. Then, on the 16th of April, you got another letter, "did you? A. Yes."

Mr. Maitland: I will read this letter now, my lord.

10

30

40

(Letter dated April 16th, 1931, from Lower Mainland Dairy Products Sales Adjustment Committee, to Crystal Dairy, read, and marked Exhibit 7.)

(Mr. Maitland continues reading from discovery.)

“Q. 38. And in that letter, they set out the requirements of sub-section ‘C’ of section 9 of the Dairy Products Sales Adjustment Act? A. Yes.

“Q. 39. You were already familiar with the sub-section, passed in 1931? A. I had read it over.

10 “Q. 40. I beg your pardon? A. I had read it over.

“Q. 41. And you knew it required certain information to be given as to the transactions in milk and manufactured products, by firms such as yours? A. Yes.

“Q. 42. You knew that it required distributors should make these returns to the Committee? A. Yes.

“Q. 43. And then you received this further letter on the 16th of April? A. Yes.

“Q. 44. Again requesting this information, and setting out the 1931 amendment for your information? A. Yes.

20 “Q. 45. And also giving you notice that, in accordance with the provisions of sub-section ‘C,’ the Committee constituted pursuant to the terms of the Dairy Products Sales Adjustment Act, required you to file with them the returns of all milk or manufactured products purchased or received from dairy farmers during the month of March? A. Yes.

“Q. 46. Did you make that return. A. No.

“Q. 47. Why not? A. I refuse to answer that, under the advice of my lawyer.

30 “Mr. Sloan: I will answer it.—He refused to make returns, on advice of Counsel.

“Q. 48. (Mr. Maitland): And then the position, I take it, is the position you set up in the statement of defence: That your refusal is based on the fact, or on the allegation of your dairy, or contention, that this Act is ultra vires? A. Yes.

“Q. 49. And that is the only reason you have for refusing to give us the information? A. Yes.

“Q. 50. You have no other reason, have you?

“Mr. Sloan: That may be a matter of law. What rights he may have is a question of law.

40 “Q. 51. (Mr. Maitland): Have you any other reason?

“Mr. Sloan: Perhaps he may be shy in saying.

“Witness: Yes, I am not in a position to say.

“Q. 52. (Mr. Maitland): What? A. I am not in a position to say whether I have a right or not.

“Q. 53. You think one reason is sufficient at a time, I suppose? A. Yes.

RECORD

In the
Supreme Court
of British
Columbia

Proceedings
at Trial.

Plaintiff's Case.

3rd September,
1931.

Fraser,
Managing-
Director of
Defendant.
Examination
for Discovery.
(Cont'd)

RECORD

*In the
Supreme Court
of British
Columbia*

Proceedings
at Trial.

Plaintiff's Case.

3rd September,
1931.

Fraser,
Managing-
Director of
Defendant.
Examination
for Discovery.
(Contd.)

"Q. 54. But if you didn't have objections to answering this question, I have no doubt you have the information—if you wanted to give it us, haven't you?

"Q. 55. (Mr. Sloan): Any information about the returns?

"Q. 56. (Mr. Maitland): Yes.

"Mr. Sloan: Yes.

"Witness: I would have it available.

"Q. 57. (Mr. Maitland): What? A. I would have it available, if it was necessary for me to give it.

"Q. 58. You could have it available if it is necessary, and 10
"you are ordered by the Court to do so? A. Yes.

"Q. 59. There is no doubt about that, is there? A. No.

"Q. 60. Did you make any reply at all to these letters sent
"you by the Committee—to these requests? A. No.

"Q. 61. None whatever? A. No.

"Q. 62. Just a verbal refusal to Mr. Welsh? A. Yes.

"Q. 63. Is that it? A. Yes.

"Q. 64. Now, our allegation in paragraph 4,—you may
"have answered it but I put it to you again,—in which we allege 20
"that at the City of Vancouver, within the district covered by the
"Lower Mainland Dairy Products Sales Adjustment Committee,
"where the defendant,—that is, your company,—operates,—you
"have purchased and received milk and manufactured products
"of milk from dairy farmers. That is correct, isn't it? A. Yes.

"Q. 65. And by 'dairy farmers', I mean dairy farmers as
"defined in this Act? A. Yes.

"Q. 66. Yes. And you received it, as I understand it, for
"resale? A. Yes.

"Q. 67. That was your business? A. Yes.

"Q. 68. You do not produce any milk, yourself? A. No. 30

"Q. 69. You buy it from the farmer and sell it to the con-
"sumer? A. Yes.

"Q. 70. Or, do you sell it to another distributor? A. We
"may sell part of it at certain times.

"Q. 71. Surplus? A. Yes.

"Q. 72. But your general business is to sell to the public,
"who consume it? A. Yes.

"Q. 73. And you also sell a lot of butter, cheese and things
"to these people? A. Yes.

"Q. 74. Have you route deliveries in Vancouver, or some- 40
"thing like that? A. Yes.

"Q. 75. Whom do you buy the manufactured products
"from; the butter, cheese, and so on? A. From the Central
"Creameries,—the butter.

"Q. 76. You do not get them from the farmers, then? A.
"No.

“Q. 77. Only the Central Creameries? A. Yes, — the
 “butter.
 “Q. 78. Are they distributors? A. They have creameries
 “on the prairie and they have a distributing point in the City.
 “Q. 79. And the ice cream? A. We make the ice cream
 “mix, and we have it froze at a freezing plant in the City.
 “Q. 80. And then,— A. —take it back and sell it over our
 “counter,—or wholesale it, or anything.
 “Q. 81. You have retail stores of your own, in Vancouver?
 10 “A. Just one in connection with the dairy.
 “Q. 82. Oh. What is the other one? A. We haven’t got
 “another.
 “Q. 83. You have just the one? A. Yes, the one store.
 “Q. 84. And where is that? A. 1803 Commercial Drive.
 “Q. 85. That is something the same as the Sherwood Dairy?
 “A. Yes.
 “Q. 86. And some others? A. Yes.
 “Q. 87. A counter there, and people buy milk; and you sell
 “ice cream, eggs, butter and cheese? A. Yes.
 20 “Q. 88. That is in Vancouver,—Commercial Drive? A. Yes.
 “Q. 89. How many farmers do you buy from,—roughly?
 “Mr. Sloan: I refuse to give any definite specific informa-
 “tion along those lines.
 “Q. 90. How much milk do you receive, a day?
 “Mr. Sloan: The same objection applies.
 “Q. 91. (Mr. Maitland): You are acquiescing in all your
 “Counsel says?
 “You are taking the responsibility of that, Mr. Fraser? A.
 “Yes.
 30 “Q. 92. And you refuse to answer those last two questions?
 “A. Yes.”
 Mr. Maitland: 93 I will also put in, if I may, my lord.
 (Read).
 “Q. 93. Now, this Committee have never imposed any
 “levies on you, under the Act? A. No.”
 Now, my lord, on the pleadings that is my case. Your lord-
 ship will have noticed that defence has been set up by my learned
 friend, as to the Act being ultra vires, I have discussed it with
 my learned friend, and I think the arrangement is that he will
 40 bring any facts bearing on the question; and that being his case,
 I will call on him. I have made out a prima facie case under the
 Statutes.
 Mr. Farris: My lord, I am a little embarrassed in tender-
 ing evidence, because I find myself in this position: Since the
 decision in the Fuel Oil case, it is questionable how far, in cer-
 tain branches of the law that has to be considered, evidence is

RECORD
 —
*In the
 Supreme Court
 of British
 Columbia*
 —
 Proceedings
 at Trial.
 —
 Plaintiff’s Case,
 —
 3rd September,
 1931.
 Fraser,
 Managing-
 Director of
 Defendant.
 Examination
 for Discovery.
 (Cont’d)

Defendant’s
 Case.
 —
 Opening
 Statement.
 of Counsel.
 3rd September,
 1931.

RECORD

*In the
Supreme Court
of British
Columbia.*

Proceedings
at Trial.

Defendant's
Case.

Opening
Statement of
Counsel.

(Cont'd)

3rd September,
1931.

Defendant's
Case.

3rd September,
1931.

Mercer,
Member of
Plaintiff
Committee.
Examination
for Discovery.

admissible at all. Your lordship will recall in that case I attempted, by extraneous evidence, to prove that, in fact, the fuel oil tax was not an indirect tax; there was no middleman. The Privy Council brushed that aside, and said it was the inherent nature of the tax itself.

There are some facts I think I have a right to put in, and there are other facts that I do not think I will put in; and yet, if I do not put them in, my learned friend may do later, and I want to reserve any objection. So I will take this position: notwithstanding my submission that the evidence may not be admissible, in order to be safe I intend to put it in. 10

Mr. Maitland: Are you in favor of putting in evidence that you submit?

Mr. Farris: Well, some I want in, so that if the Court rules it is admissible, I want it in.—Now, I will read from Mr. Mercer's discovery; Mr. Mercer being a member of the Committee.—1 to 6 inclusive.

"Q. 1. Mr. Mercer, what is your connection with the Lower Mainland Sales Adjustment Committee? A. Member of the Committee." 20

"Q. 2. You have been a member for how long? A. Since the beginning of 1930.

"Q. 3. Where do you live? A. I live at 4468 Fourteenth West, Vancouver, at present.

"Q. 4. You have been carrying on—you have been in the dairy business, have you? A. I have been a dairy farmer.

"Q. 5. At Chilliwack? A. At Chilliwack.

"Q. 6. Up until when? You still are? A. I still am, I presume."

Questions 12 to 96 inclusive. 30

"Q. 12. Has your committee for the present year ascertained the standard price of milk and the standard price of manufactured products, and the quantity or weight of each sold or disposed of, as provided for in sub-section 'E' of section 9? A. Yes.

"Q. 13. What have you ascertained the standard price of milk to be? A. It has varied during the year.

"Q. 14. Yes? A. The first part of the year it was 9 quarts for \$1.00.

"Q. 15. Yes, I see. A. That was to the consumer. 40

"Mr. Maitland: That is what the Act covers is not the retail price.

"Mr. Farris: Yes. Q. 16. That has to be translated into butterfat, does it? A. Yes.

"Q. 17. And transferring that into butterfat what does it come to? A. That is for standard milk. Standard milk, Do-

- “minion Government standard is 3.25. That is \$1.00 for 9 quarts
“of 3.25 per cent. butterfat milk. It is a matter of calculation.
- “Q. 18. Haven’t you got that all at your finger ends, your
“calculation? A. No, I have not.
- “Q. 19. You have ascertained the standard price of the
“manufactured product? A. Yes.
- “Q. 20. What was that? A. That varies from time to
“time.
- 10 “Q. 21. Take the corresponding time as against 9 quarts
“for \$1.00. A. At the present time—
- “Q. 22. Don’t mix me up. You gave me 9 quarts for \$1.00
“early in the year? A. Yes.
- “Q. 23. Take your manufactured product, the butter, for
“the same period of the year? A. I would not like to trust to my
“memory on that. I think that I can get you the information.
- “Q. 24. Give it to me approximately. You can check up and
“confirm it later? A. We are considering 1931, are we not?
- “Q. 25. Yes. A. Approximately 33½c.
- 20 “Q. 26. That is 33½c, what? A. A pound for butter.
- “Q. 27. Per pound for butter. What does that come to in
“butterfat? A. Again it is a matter of calculation, the value
“according to the—
- “Q. 28. In order to get the spread between the two you have
“to reduce both to butterfat? A. Yes, but in order to get the
“value, the Act says that the price of butter in Vancouver shall
“be the value of the manufactured product.
- “Q. 29. Yes. A. That is the way we ascertain the value
“of the manufactured product.
- 30 “Q. 30. Give me those two figures. At that time what was
“the spread that you fixed? A. I would have to consult our
“records to get that figure, probably the Secretary—
- “Mr. Maitland: You don’t care if he gets them from the
“Secretary.
- “Mr. Farris: No. A. For six months of the year the aver-
“age spread would be 35.5c. That is the difference in value be-
“tween the manufactured product and the wholesale price of
“milk.
- “Mr. Maitland: Q. 31. That is per pound butterfat? A.
“Yes.
- 40 “Mr. Farris: Q. 32. That spread of 35.5 was arrived at
“by what process? A. By ascertaining the difference in the
“value of the fluid milk market and the manufactured market.
- “Q. 33. In terms of butterfat? A. That is in terms of but-
“terfat. The first figure I gave you was for the first part of the
“year. This average spread I have given is for the first six
“months. The price of milk changed in May.

RECORD

In the
Supreme Court
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Columbia.Proceedings
at Trial.Defendant's
Case.3rd September
1931Mercer,
Member of
Plaintiff
Committee.
Examination
for Discovery.
(Cont'd)

RECORD

*In the
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of British
Columbia*

Proceedings
at Trial.

Defendant's
Case.

3rd September,
1931.

Mercer,
Member of
Plaintiff
Committee.
Examination
for Discovery.
(Cont'd)

"Q. 34. Yes. All right. Just coming back to those figures
"you gave me first—I do not understand them at all. You get 9
"quarts for \$1.00? A. In terms of butterfat that is approxi-
"mately \$1.34.

"Q. 35. You say the difference you figured out that the man
"who was selling his milk during the first six months got 35.5c
"a pound for butterfat, more for his product than did the farmer
"who was selling his milk for manufacturing purposes? A. No,
"I do not say that. I say that when the consumer pays \$1.00 for 9
"quarts of milk, after allowing a price sufficient to cover the cost 10
"of distribution and a reasonable profit is left, it provides a value
"of 73c per pound butterfat for that milk to the dealer trade, that
"is in the months of January, February, March and April. In the
"month of May the price changed.

"Mr. Maitland: Q. 36. How? A. Downward, until that
"had a value of—it went down from 9 quarts for \$1.00 to 11
"quarts, to 12 quarts for \$1.00.

"Mr. Farris: Q. 37. So that 73c went down to how much?
"A. Went down to 46c in June. That was the value.

"Q. 38. When the price was 73c the spread was 35, was it? 20
"A. When the price was 73, it was 39.5.

"Mr. Maitland: What he gave you before was an average.

"Mr. Farris: Q. 39. When the corresponding price was
"down to 46, what was the spread then? A. 22.

"Q. 40. What did you say the first was? A. 39.5 average
"for the six months.

"Q. 41. If I take 39.5 from 73, do I get the price of butter-
"fat in the manufactured article as you reckoned it. A. Not in
"the price of the manufactured article, on the price of the manu-
"factured article. It is 33.5, the price of butter. 30

"Q. 42. But my understanding is the spread is the differ-
"ence between the two? A. You get the spread.

"Q. 43. If I get on and take the difference from the two, I
"get the price of the other? A. What do you get, what is your
"figure?

"Q. 44. 33.5? A. That is what I gave before. It is just a
"matter of working it out a different way.

"Q. 45. On this lower figure that would leave the butter-
"fat in the manufactured article at 24c? A. 24c.

"Q. 46. Now under this Act I see by sub-section "I" of sec- 40
"tion 9, you have power to defray expenses and operations by
"imposing a levy on the milk and manufactured products. I
"suppose that you would not overlook that opportunity?

"Mr. Maitland: If he did, we would not be here.

"A. You say "I" of 9?

- "Mr. Farris: Q. 47. Yes. For the purpose of defraying ex-
 "penses of operation, to impose a levy? A. Yes.
- "Q. 48. Do you take your levy out of this spread or do you
 "have an independent levy for that? A. The levy is on the
 "amount of production.
- "Q. 49. Yes, I know that, but when you make the levy do
 "you make a separate levy, or collect the levy from the spread?
 "A. A separate levy.
- 10 "Mr. Maitland: Q. 50. Is there any connection between the
 "levy and the spread?
- "Mr. Farris: Q. 51. How do you make the levy? A. We an-
 "ticipate the requirements of the committee to defray the ex-
 "penses of operation, and we levy sufficient to take care of it.
- "Q. 52. How is that levied on the farmer? A. On the basis
 "of his butterfat production.
- "Q. 53. There are certain farmers you take money from
 "on this basis of the spread? A. No, it has nothing to do with
 "the spread.
- 20 "Q. 54. No. I say apart from the levy. You do two things,
 "you impose a levy for expenses? A. Yes.
- "Q. 55. In addition, the farmers getting the highest price
 "for butterfat, you make an adjustment and take money from
 "them to pay the other farmers? A. Yes.
- "Q. 56. But those you say are separate items? A. Yes.
- "Q. 57. This Act could not function without this levy under
 "sub-section "I," could it? A. Yes, providing the officers and
 "help worked for nothing.
- "Q. 58. That is not practical? A. No.
- 30 "Q. 59. What is the scope of the expenses? Who are the
 "paid officials? A. The members of the committee and the staff.
- "Q. 60. A committee of how many? A. Two.
- "Q. 61. Who are they? A. Mr. Welsh is chairman and I
 "am the member.
- "Q. 62. Only the two members? A. That is all.
- "Q. 63. What are they paid? A. They are paid \$180.00 a
 "month.
- "Q. 64. Eh? \$180. that is for the Chairman? A. That is
 "for myself. The Chairman gets a salary, at least a remunera-
 "tion of \$5000.
- 40 "Q. 65. \$5000 a year? A. Yes.
- "Q. 66. You get \$180 a month? A. Yes.
- "Q. 67. In addition to you two, how many are there? A.
 "The staff.
- "Q. 68. What do the wages of the staff amount to? A. The
 "secretary gets—probably I will have to consult him.
- "Q. 69. Approximately? A. Approximately \$150.00 a
 "month.

RECORD

In the
 Supreme Court
 of British
 Columbia

Proceedings
 at Trial.

Defendant's
 Case.

3rd September,
 1931.

Mercer,
 Member of
 Plaintiff
 Committee.
 Examination
 for Discovery.
 (Contd.)

RECORD

*In the
Supreme Court
of British
Columbia*

Proceedings
at Trial.

Defendant's
Case.

3rd September,
1931.

Mercer,
Member of
Plaintiff
Committee.
Examination
for Discovery.
(Contd.)

"Q. 70. All these officials who are being paid are necessary
"in order for the Act to function? A. Yes.

"Q. 71. You are not suggesting any extravagance in con-
"nection with it? A. In addition to the secretary there are a
"couple of stenographers.

"Q. 72. I want to know the details of how this levy works,
"Mr. Mercer. First you get an estimate—or do you collect it
"monthly from the farmer, or is it a rate for the year? A. No,
"it is collected monthly.

"Q. 73. As you get the information as to how much butter- 10
"fat each farmer has sold, you put a levy of so much on that but-
"terfat? A. Yes, so much a pound.

"Q. 74. How much is the levy a pound? A. $\frac{1}{2}$ c a pound.

"Q. 75. That goes for the whole year, that rate? A. Not
"necessarily. It is not fixed.

"Q. 76. How long has it been $\frac{1}{2}$ c? A. Since we started.

"Q. 77. It has not been changed? A. No.

"Q. 78. Every farmer who sells a pound of butterfat
"knows that under present conditions he has to pay $\frac{1}{2}$ c from his
"returns as a levy under this Act, unless he gets out of it some 20
"way? A. Unless he gets out of it some way. In fact, I do not
"know whether he knows it or not.

"Q. 79. He will before we get through with this. He pays
"it regardless of which end of the spread he is on? A. Yes—well
"now, just what do you mean by 'which end of the spread he is
"on'? That is a term I am not familiar with.

"Mr. Maitland: Q. 80. Whether it is manufactured, or raw
"milk.

"Mr. Farris: Q. 81. Yes, which side of the adjustment he
"is on, whether it is taken from, or added to. A. All dairymen 30
"are liable for it that come under the jurisdiction of the Act.
"Certain dairymen are exempt from the operation of the Act.
"They do not pay.

"Q. 82. What is the process of collecting that levy? A. The
"process is defined in the Act.

"Mr. Maitland: Q. 83. Well, what do you do? That is what
"he wants.

"Mr. Farris: Q. 84. Yes, how do you get it? Do you get it
"the same way as you get the spread? I suppose you do, do you?

"That is, the share of the adjustment of the spread. What 40
"is the term?

"Mr. Maitland: One is an adjustment and the other a levy.

"Mr. Farris: Q. 85. You collect an adjustment? A. Yes.

"Q. 86. From one man, and pay an adjustment to another?
"A. Yes.

- "Q. 87. That is the correct expression? A. Yes.
- "Mr. Maitland: A very fair word, that.
- "Mr. Farris: Q. 88. I think the secretary told me, Mr. Mercer, that generally speaking the farmers who sell milk, fluid milk, and who sell milk for manufacturing purposes, are about fifty-fifty—the butterfat? A. The secretary told you that?
- "Q. 89. I think that is what he told me. A. I did not know the term in farmers, but in terms of butterfat.
- 10 "Q. 90. Yes, that is right. Has that run about the same this year? A. No, it will be higher this year.
- "Q. 91. Which will be higher? A. The manufactured portion.
- "Q. 92. The manufactured portion will be higher. What is the explanation of that? A. An increase in total production and the absence in a corresponding increase in fluid consumption.
- "Q. 93. Now, the market for the fluid milk is almost entirely a local market? A. Yes.
- 20 "Q. 94. The City of New Westminster, Vancouver, and their immediate environs? A. Yes.
- "Q. 95. The market for the manufactured article is more or less world wide? A. Well, as a member of that committee, I really do not know.
- "Q. 96. Oh, yes, you do. Surely you are in touch with that, aren't you? A. That information does not reach our committee."
- 107 to 121 inclusive.
- "Q. 107. In addition to that there is no outside competition in the lower mainland market for the sale of fluid milk? A. What is the question?
- 30 "Q. 108. There is no outside competition for the sale of fluid milk? A. Well—
- "Q. 109. Can fluid milk come into this market from anywhere else except your constituents? A. Yes.
- "Q. 110. Where from? A. Vancouver Island, Okanagan, Pemberton Meadows, State of Washington.
- "Q. 111. Is it practical? A. Yes.
- "Q. 112. Does it come? A. At times.
- "Q. 113. From the State of Washington? A. Yes.
- 40 "Q. 114. What is the duty? A. From memory, 17½%.
- "Q. 115. There would not be very much coming into this market from Vancouver Island, would there? A. Well I could not say.
- "Q. 116. Is there any coming now? A. I have no knowledge.
- "Q. 117. From Pemberton Meadows it would be negligible?

RECORD

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Proceedings
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Defendant's
Case.

3rd September,
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Mercer,
Member of
Plaintiff

Committee.
Examination
for Discovery.

(Cont'd)

RECORD
 In the
 Supreme Court
 of British
 Columbia
 Proceedings
 at Trial.
 Defendant's
 Case.
 3rd September,
 1931.
 Mercer,
 Member of
 Plaintiff
 Committee.
 Examination
 for Discovery.
 (Contd.)

"A. Pemberton Meadows is within a range of 70 miles of Vancouver. Chilliwack is about the same distance. Washington State is closer by 30 miles than Chilliwack.

"Q. 118. On the other hand, the Vancouver market for the manufactured article, subject to the question of tariff—I will put it this way: The local producer of the manufactured article, subject to the local tariff, is subject to world competition?

"Mr. Maitland: Which includes tariff.

"Mr. Farris: No doubt about that. Q. 119. The man selling cheese is subject to competition from other parts of the world? A. Yes. 10

"Q. 120. And the man selling fresh milk is only subject to the conditions in the immediate neighborhood, who can get it in as fresh milk? A. Yes.

"Q. 121. Just within a limited area, within 100 miles? A. "Limited as compared——"

Mr. Maitland: Just one moment, please.

Mr. Farris: No, I will start at 106.

"Q. 106. In other words you are trying to block these answers. If that is what you are trying to do we will have a lot of trouble getting over this case. I do not see any point in it. "These are not matters that are so subtle I cannot get them. If I cannot get them here, I will get them another way." 20

"Mr. Maitland: I will let him answer subject to my objection. I will reserve the right on the trial of this discovery being used.

"Mr. Farris: All right. Do you want the question read over again? (Reporter reads: And the market for those articles, or markets, are not confined to the lower mainland, the same as the fluid milk is?) A. The answer is no. It is not confined to the local market the same as the fluid market." 30

Mr. Maitland: Your Lordship will notice a little argument arose at this point in the discovery. The witness was examined as a member of the Milk Committee: only as a member of the Milk Committee, and that is the only right my learned friend had to examine him at all. This Committee has nothing whatever to do with milk, cheese or butter; but simply to make an adjustment on the sales: nothing to do with the product in any way under the Act, or any other Act. Your Lordship will note that objection was taken. Mr. Farris says,—going back to 98 (98 to 105 read.) "A. 98. What are the manufactured articles that are manufactured from milk in British Columbia, in the lower mainland? A. They are described here in the Act. Any product manufactured wholly from, or derived by any form of treatment, from milk. 40

"Q. 99. What are they? Butter is the most obvious? A. "Yes.

"Q. 100. Cheese? A. Cheese.

"Q. 101. Condensed milk? A. Yes.

"Q. 102. And dried milk? A. Yes.

"Q. 103. And the market for those articles, or markets, are
"not confined to the lower mainland, the same as the fluid milk
"is? A. As a member of the committee—

"Q. 104. If you are going to take that position, all right.
"We will have to settle that pretty quickly.

"Mr. Maitland: If he has not any information on it, all
10 "right.

"Mr. Farris: Q. 105. You cannot take a position like that
"and get away with it. A. In order to answer that question I
"would probably have to give information concerning a company
"or companies who are not plaintiffs in this case, and I have not
"got their permission."

Now, clearly, he is asking this man questions, and this man
frankly says 'I cannot give you this information as a member of
the Committee. I am in a certain business and I have that in-
formation, but not as a member of the Committee.' I submit that
20 my learned friend cannot take advantage of that, in order to
get evidence that you are going to throw in at the trial.

The Court: You had better wait until the question is put.
What you have read, Mr. Farris has not attempted to put in so
far.

Mr. Maitland: It comes to that now.

The Court: He is going to put in discovery?

Mr. Maitland: 106.

The Court: Yes; it was answered, subject to the position
30 you took?

Mr. Maitland: Yes.

Mr. Farris: That is right. It is open to my learned friend
to object, here.

The Court: What is your position, Mr. Maitland?

Mr. Maitland: My position is this: Under the Statute we
have certain functions to perform. They are very, very simple.
A committee is set up, and that committee is permitted to write to
dairy farmers and the makers of manufactured products of milk,
and get from them the quantity that they sold during a certain
month; and on those figures they have a right to make an adjust-
40 ment between the man who sells the manufactured product and
the man who sells the raw milk. That is all that that committee
has to do, under that Act.

The Court: Those both being farmers?

Mr. Maitland: Yes. We are not concerned with export or
import, or concerned with the details of manufacturing at all.
So Mr. Farris asked Mr. Mercer, on discovery, details of the ex-

RECORD

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Plaintiff
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Examination
for Discovery.
(Cont'd)

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Supreme Court
of British
Columbia.*

Proceedings
at Trial.

Defendant's
Case.

3rd September,
1931.

Mercer,
Member of
Plaintiff
Committee.
Examination
for Discovery.
(Cont'd)

port trade and all that sort of thing, and Mr. Mercer said: "As a member of the Committee, I know nothing; we have no reports, and if I give an answer, it will be because I am a member of another company, and it has nothing to do with this Act." Now, this was only on Friday, and I put my position on the notes and reserved that objection to Your Lordship.

The Court: And what do you say?

Mr. Farris: My submission is, that that is an Act by which, presumably, men who are qualified to fulfill their functions, are appointed: men who have experience in the farming business. It is news to me that when you are examining a man about a company,—the business of that company,—he can shut you off by saying 'I really didn't find that out while I was in the office.' 10

The Court: You are examining him here, as a member of the Committee?

Mr. Farris: Yes, I am; but, surely, I can examine him on the things that are relative to the subject—matter of the operations of that company—this company—that committee.

The Court: How are they relevant? 20

Mr. Farris: Because they have a direct effect upon the operation of the Act.

The Court: In what way?

Mr. Farris: This levy.

The Court: For adjustment?

Mr. Farris: Yes. Take the preamble to the Act itself. (Read).

Now, he is selected as an experienced farmer in the community, to be on the Committee to work out the scheme pursuant to this preamble: and I am asking about his operation. 30

The Court: How he does it?

Mr. Farris: Yes, and the effect, as far as he knows, as a farmer in the community.

Mr. Maitland: Yes, 'as a farmer in the community'. That is my objection.

Mr. Farris: It is because he is a farmer in the community, that he is on the Committee.

The Court: Well, Mr. Maitland, this case, of course, is a very important one, and will go very much farther. I think I will admit this, and subject to your objection; and I will take your argument at the end of the trial. 40

Mr. Farris: My learned friend might find himself in this position: That if I cannot get the facts out about it that will enable me to go further with the case, I may upset the case here. We can have a trial every day if you like.

The Court: Well, subject to your objection now I will take the evidence. I may not act on it, personally, and I may be wrong: but you will have a full record of it, and that is the object. You don't want to come back here, owing to a mistaken ruling of mine. I will adopt that principle on both sides; you are protecting yourself by taking the objection, and then, when you come with your argument before me, I will hear the argument and state whether I accept the evidence or not; but it will be there, then.

10 Mr. Farris: I will read from the top of page 12, question 106. (Read).

" I will reserve the right on the trial to this discovery "being used.

"Mr. Farris: All right. Do you want the question read "over again? (Reporter reads: And the market for those articles, "or markets, are not confined to the lower mainland, the same "as the fluid milk is?) A. The answer is no. It is not confined "to the local market the same as the fluid market."

Questions 143 and 144.

20 "Q. 143. Don't you think from your experience and knowl- "edge of the whole situation, that the remainder of that spread "is accounted for by the nature of the market, one being a re- "stricted market and the other more or less a world wide, com- "petitive market? A. I could not say. The fact is that general- "ly in every centre in the world, there is a difference in fat for "manufacturing and fluid purposes. It is not limited to Vancou- "ver. The same thing applies to Victoria, Seattle, and—

30 "Q. 144. The same thing applies everywhere, in every one "of the cases, as to fluid milk the local farmer has more or less "of a monopoly, and in the manufactured product he has not a "monopoly? Isn't that true? A. To a limited extent that is "true."

"153 to 167.

"Q. 153. When you come to consider the question of spread, "you make no distinction at that time between A, B and C "farmers, do you? A. No.

40 "Q. 154. That is, it is not the spread in the margin of "profit; it is a spread in the difference in the price, you see? A. "You are referring now to the difference in value between the "manufactured product and the fluid product?

"Q. 155. Yes. A. The difference in value between the "two products.

"Q. 156. If the grade A farmer were to receive 73c for his "butterfat, and the grade C farmer were to receive 33.5 for his "butterfat, and there were just the two farmers to adjust that

RECORD

In the
Supreme Court
of British
Columbia.

Proceedings
at Trial.

Defendant's
Case.

3rd September
1931

Mercer,
Member of
Plaintiff
Committee.
Examination
for Discovery.
(Cont'd)

RECORD

*In the
Supreme Court
of British
Columbia*

Proceedings
at Trial.

Defendant's
Case.

3rd September,
1931.

Mercer,
Member of
Plaintiff
Committee.
Examination
for Discovery.
(Cont'd)

"39.5c, half of that would be taken off the 73c fellow and added
"to the 33, isn't that right? A. If the Milk Act of 1927 was ad-
"ministered properly, the C man would not find a market at all.
"He has not permission to sell.

"Q. 157. Not for the manufactured product? A. He may
"have for the manufactured product.

"Q. 158. If he does, wouldn't he be considered in this
"spread? A. He would have to. I am not just familiar with the
"operation of the Act, whether you have to ship it in the form of
"cream or milk.

"Q. 159. Let us suppose that there are only two farmers in
"your milk district and one has a grade A farm and the other has
"a grade C farm, and they are selling equal quantities of butter-
"fat, the grade A farmer selling simply on the fluid milk market
"in Vancouver, and the grade C farmer is selling his butterfat
"in the form of butter and cheese entirely. I take it he can do
"that. One fellow gets 73c and the other 33.5. I am saying if
"there were only those two fellows, in working out the amount
"you would take the 39.5 and divide it by two and you would
"add the 18.7 something onto the 33.5 and take the same amount
"off the 73? A. Of course we have no information on that at
"all. We have not a record of any grade A or grade C farms in
"our office, and know nothing about that.

"Q. 160. So you are administering the Act without any re-
"gard for those divisions. I will wipe out those divisions. I will
"wipe out the A farmer and the C farmer and I will give you
"the same illustration. I say here is one farmer who has a first
"class dairy, the highest type of equipment and stables and every-
"thing for a dairy, and he is getting 73c; here is another fellow
"who has none of these up to date things, but just the old fashion-
"ed go as you please type of place. They both come within the
"operation of your activities in your field? A. Yes.

"Q. 161. I say with those two farmers, if those were the
"only two that what would happen would be this: you would take
"half off one and give half to the other? A. Yes. We have no
"authority in the Act to consider the grades at all.

"Q. 162. Yes, I know that. I want to lead to the conse-
"quences of this Act. That is what we have got to come to. Then,
"as a result of that, this man with all the superior equipment and
"overhead—it might be costing him 70c to produce and sell his
"article theoretically. Supposing it did, I will put it that way,
"and supposing it only cost this other fellow 33.5 just what he is
"getting, the result would be in the end that the man who has
"the first class farm and expensive methods of production, would
"lose money and the other man with sloppy arrangements would

- “make money? A. Providing the sloppy fellow was permitted
“to sell. RECORD
- “Q. 163. Have you any information that grade C men are
“not permitted to sell? A. The Milk Act of 1927 says that he
“is not. *In the
Supreme Court
of British
Columbia*
- “Mr. Maitland: If you do not know, say so. *Proceedings
at Trial.*
- “Mr. Farris: Q. 164. I take it this way, between A and B
“which undoubtedly are fit, the requirements for the A farm are
“undoubtedly higher than those for the B? A. Yes. *Defendant's
Case.*
- 10 “Q. 165. Which mean an added overhead. In your adjust-
“ment there is nothing in the Act, there is nothing permitting you
“to take that into consideration in making the adjustment be-
“tween the two? A. There is nothing in the Act. *3rd September,
1931.
Mercer,
Member of
Plaintiff
Committee.
Examination
for Discovery.
(Contd.)*
- “Q. 166. And of course, following the Act, you make no
“allowance for that? A. No.
- “Q. 167. In other words the A farm gets no credit for the
“extra cost of producing superior milk? A. So far as our Com-
“mittee is concerned, no.”
- Those refer to farms under the Milk Act of 1927.
- 20 The Court: What about ‘A’, ‘B’, ‘C’?
- Mr. Farris: Under the Milk Act of 1927, farms and dairies
are graded according to their equipment and efficiency, under
‘A’, ‘B’, ‘C’; ‘A’ producing a milk of very high quality,—‘B’, an
excellent milk,—and ‘C’ is a milk not supposed to be for human
consumption.
- (Continues reading from Discovery)—176 to 182 inclusive.
- “Q. 176. Have you ever read that preamble in your Act,
“Mr. Mercer? A. Yes.
- 30 “Q. 177. Just look at it now will you. Do you agree with
“the recitals there? Do you agree with the allegation claimed in
“that recital? A. What is the question?
- “Q. 178. Do you agree with the allegations that are made
“there? In the first place, do you agree that the demand for
“milk in the fluid form was not equal to the supply? A. Yes, I
“admit that there is more milk produced in the area than the
“public can consume in fluid form.
- “Q. 179. Under normal conditions, without having that
“affected by legislation, is there any reason why the usual econo-
“mic laws would not apply when the supply exceeded the de-
40 “mand, that the price would go down? A. In my experience
“over a number of years this supply has exceeded the demand
“for a number of years. The price has been in 1926, ’27, ’28 and
“’29, so far as my memory serves me, 9 quarts for \$1.00 and the
“production was increasing during each of those years.
- “Q. 180. So is the consumption. But are you suggesting
“that there is anything inherent in the milk business to prevent

RECORD

In the
Supreme Court
of British
Columbia

Proceedings
at Trial.

Defendant's
Case.

3rd September,
1931.

Mercer,
Member of
Plaintiff
Committee.
Examination
for Discovery.
(Contd.)

"the ordinary economic laws applying, that the tendency when
"the milk exceeds the demand is for the price to go down? A.

"Repeat the question.

"Q. 181. I say, doesn't the same rule apply for milk as for
"any other commodity, that the tendency of over production is
"to reduce the price? A. Yes.

"Q. 182. And vice versa. A demand in excess of produc-
"tion tends to increase the price? A. That has been our ex-
"perience in the past."

200 to 203.

"Mr. Farris: Yes. Q. 200. Have you any records at all
"to show what percentage of the manufactured articles in this
"area goes outside the province? A. No.

"Q. 201. Have you any knowledge at all on that question?
"A. No, not percentages.

"Q. 202. Is there any substantial market do you know, out-
"side of this province, for our local manufactured milk product?

"A. There is a market outside the province for dairy products,
"that are manufactured here.

"Q. 203. Chiefly what products are they, Mr. Mercer? A. 20
"Evaporated milk, cheese."

Mr. Farris: I am not calling any further evidence at this
stage, My Lord.

Mr. Maitland: I am going to call Mr. Macken.

Plaintiff's Case,

William Lyle
Macken.
(Rebuttal)
Direct Exam.
3rd September,
1931.

WILLIAM LYLE MACKEN, Sworn, examined by
Mr. Maitland.

Q. Where do you live, Mr. Macken? A. Chilliwack.

Q. How long have you lived there? A. Thirty-one years.

Q. And are you interested in the dairy business in this
Province? A. Yes.

Q. In what way? A. I have a farm, and cattle.

Q. Have you familiarized yourself with dairying condi-
tions in the Lower Mainland,—that is the area covered by this
Committee,—both in operation and point of distribution? A.
Yes.

Q. Have you made any study of that at all? A. Yes;
rather an extensive study.

Q. Yes, and you, I understand, took considerable interest
in this legislation, when it was before the House in British Co-
lumbia? A. Yes.

Q. Now, are you familiar with the workings of this Dairy
Products Sales Adjustment Act. A. Yes.

Q. I want to get from you, first, if I can, as to the number
of dairy farmers who receive from this assessment,—what we
will call from the adjustment,—as compared with those who have

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to pay into the adjustment fund that is taken in by the Committee? Can you say the number of farmers who are on the receiving end as opposed to those who are on the paying end? A. I could not say the numbers; but seventy-five per cent. receiving, and twenty-five per cent. paying. That would be subject to correction.

Q. Will you explain that, to be a little clearer, exactly what you mean by that? A. Well, to make it as simple as possible, the twenty-five per cent. are marketing all of their milk on the fluid market, while the seventy-five per cent. market a portion of their milk as manufactured products.

Q. Yes? A. And the adjustment is made as between these two groups. Those who market their milk on the fluid market, receive more than those who market a part of their milk in manufactured form; and because those who market a part of their milk in manufactured form receive considerably lower returns, there is an adjustment due to them from the other group, under this Act, and it is made by the Committee.

Q. Now, is there anybody, to your knowledge, dealing exclusively in the supply of milk for manufacturing purposes,—any of these dairy farmers? A. I don't know of anyone.

Q. Well, having regard to that answer, would you say generally what the position is, as to whether there are any—I mean any considerable number—of them supplying milk exclusively for manufacturing purposes or not? A. I would say if there are any, the percentage is very small.

Q. Yes? A. The desire of all dairy farmers is to get as much as possible of their milk on the fluid market; and so no one would sell his milk exclusively for manufacturing purposes if he had the slightest chance or reason for getting his milk on the fluid market.

Q. Well, I want the actual facts: Do any of the dairy farmers sell for manufacturing purposes exclusively? A. A very small number it would be.

Q. (The Court): Does it make any difference whether they sell on the fluid market or the manufactured products?—Because they all get the same price, in the end? A. Not exactly. The man who sells for manufacturing, exclusively, does not get quite the same returns as the man who sells part of his in the fluid market.

The Court: Well, that may have no relevancy at all. Go on.

Q. (Mr. Maitland): Where is the market that this Act was particularly designed to meet? What market? A. The local market.

Q. Yes. And the local market is, largely, where? A. Here, in British Columbia.

RECORD

*In the
Supreme Court
of British
Columbia*

Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken,
(Rebuttal)
Direct Exam.
3rd September,
1931.

(Cont'd)

RECORD

*In the
Supreme Court
of British
Columbia*

Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken,
(Rebuttal)
Direct Exam.
3rd September,
1931.

(Contd.)

The Court: Suggest to him.—Vancouver.

Q. (Mr. Maitland): The City of Vancouver? A. The City of Vancouver and New Westminster and the Lower Mainland.

Q. That is the distributing point? A. Yes.

Q. Are you familiar with the conditions of the dairying business in the Lower Mainland during the last fifteen years? A. Yes.

Mr. Farris: I think I should object at this stage. I would infer that the materiality of this evidence is the suggestion that he is showing particular facts as to the operation of an Act in regard to its tendencies, and if that is so, I want to take the formal objection that it is not admissible: the same as any evidence I might put in. 10

The Court: Yes. I will have a full record of it; your objection is noted.

Mr. Maitland: I thought the position was that the Court would consider, later, how much weight the Court would give to the evidence.

The Court: Well, I will hear from you on that, later. 20

Q. (Mr. Maitland): Has there been any greater variation in prices since this Act came into force, than there has been in this same market during the last fifteen years? A. Any great variation?

Q. Any change,—that you have not experienced in the last fifteen years, since this Act came in? A. No. We are subject to market fluctuations now, as formerly.

Q. And as to the price: Has the price of milk under this Act, gone up or down? A. Down, unfortunately.

Q. Since the Act came into force? A. Yes,—down. 30

Q. How much was being paid a pound, butterfat, when this Act first started to operate in 1931—1930? A. The wholesale price of milk for the fluid market was seventy-three cents.

Q. In 1929? A. 1930; when this Act came into effect.

Q. Yes? A. The wholesale price of milk at the present time, with the Act still in effect, is forty cents a pound, butterfat.

Q. What was it, during the whole of the year 1930? A. Seventy-three.

Q. What was it in 1929? A. Seventy-three.

Q. No change at all? A. No. 40

Q. What about the retail,—to the consumer? A. Nine quarts for the dollar; no change in 1930. There is a change this year.—Twelve quarts for the dollar now.

Q. It went to eleven, first? A. No; from nine to ten. Then ten to eleven, and then eleven to twelve.

Q. And it went to eleven, when? A. On the 24th day of May, this year.

- Q. Now, Mr. Macken, what has caused this drop in price, now?
- Q. (Mr. Farris): What?
- Q. (Mr. Maitland): What has caused the drop in price,—to eleven and then to twelve, quarts, for a dollar? A. The inability of the market to buy at the old price; and competition.
- Q. And are you in a position to say whether or not the consuming market of this area covered by this Act, during the last fifteen years has ever been able to absorb the whole fluid milk production? A. It never has, or anywhere near.
- Q. There has always been a surplus? A. Yes.
- Q. And that surplus has been used,—how? A. Manufactured into butter, cheese, evaporated milk,—chiefly butter.
- Q. Do you know the percentage of milk—take the total production of milk in British Columbia; do you know what percentage of that is sent out, in the export trade?
- Q. (The Court): Now, or when?
- Q. (Mr. Maitland): Well, has it changed at all from last year to now? A. In British Columbia, or this area?
- Q. I say in the whole of the Province.—I mean the Mainland: I do not mean Vancouver Island: Your Act does not cover that.—I understand, My Lord,—I was reading over the trial in the market case. I think Your Lordship tried that. As to actual facts, I am down to the date of the issue of the writ.
- The Court: Well, I suppose so. However, if you desire to put in anything previous to that do it.
- Mr. Maitland: Well, previous—or subsequent? I don't know whether I could, subsequent?
- The Court: Well, I will allow you to do it, whether right or not. The main thing is, to get all your facts.
- Q. (Mr. Maitland): Take the year 1930, Mr. Macken. A. Yes?
- Q. Your total—in your total production of dairy products in this area, how much of that was export? A. About three per cent.
- Q. About three per cent? A. Yes.
- Q. And in what form was it export? A. Chief in the form of evaporated milk.
- Q. And anything else? A. A very little butter.
- Q. Anything else? A. Possibly a bit of cheese.
- Q. Do we import butter and cheese, here? A. Yes.
- Q. Do we export it? A. Very little.
- Q. Now I want to know—the levy fixed by the Milk Committee has been fixed at half a cent a pound butterfat hasn't it?
- A. Yes.

RECORD

*In the
Supreme Court
of British
Columbia*Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken,
(Rebuttal)
Direct Exam.
3rd September,
1931.

(Cont'd)

RECORD

*In the
Supreme Court
of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken,
(Rebuttal)
Direct Exam.
3rd September,
1931.

(Cont'd)

Q. Can you tell me how much that would work out at on a quart of milk? A. A very small figure. About—a twelfth of a cent a quart at the present price.—Less than that.

Mr. Farris: I am sorry; I didn't hear that.

(Last question and answer read.)

Witness: From just figuring that out, mentally.

Q. (Mr. Maitland): Have you seen the figures on that? I think you are a little high? The figure I had was a twenty-fifth. A. A twenty-fifth?

Q. You have not worked that out? A. No, I haven't 10
worked it out.

The Court: Well, get it during the adjournment, if necessary. It seems to me that a twelfth of a cent is a little higher than it ought to be.

Witness: I have not stopped to figure it out; I am sorry.

Q. (Mr. Maitland): Now, there is another point I want. I presume that somebody always had to carry the surplus? Something always had to be done with the surplus in the Province, that was not used on the surplus market? A. On the fluid market, 20
you mean?

Q. Yes; I mean if it was not used on the fluid market? A. Yes.

Q. And under this Act, what do you do with the waste or surplus? A. The milk that is surplus to the fluid market, is manufactured and sold in the form of butter and evaporated milk; the great bulk of it is sold on this British Columbia market; none of it is wasted: it is all dealt with. But the price received from that sale is materially lower than the price if it was sold in the form of fluid milk on the local market.

Q. Any milk coming from Washington to British Columbia 30
here? A. There was.

Q. Was there last year? A. Not that I know of.—Except a case where on the line a man might ship a can across; but it is not a general thing.

Q. Well, what I mean by that is, is there any appreciable quantity coming in? A. No, Oh, no.—Hasn't been for years.

Q. During the last fifteen years, on the Vancouver market,—when I say 'Vancouver market', I mean the big retail market.—Vancouver and New Westminster, and maybe Burnaby. 40
A. Yes?

Q. Speaking of the consumer, for fifteen years,—and I don't mean the wholesaler, but the householder,—has milk always been sold to him during the last fifteen years on the basis of so many quarts for a dollar? A. Yes.

Q. And that price has varied from time to time? A. Yes.

Q. It is now down to nine? A. Twelve. That is the lowest it has gone in that period of years.

Q. (The Court): What is that? A. That is the lowest it has gone in that period of years.

CROSS-EXAMINED BY MR. FARRIS

Q. It ought to be in the interest of the farmer to repeal your Act, don't you think, and get the price up again, Mr. Macken? A. The Act has no effect on the price.

Q. (Mr. Maitland): I wonder if my learned friend will wait—

Mr. Farris: Yes, I am sorry.

10 Q. (Mr. Maitland): It is my own fault. I thought I had some more notes, and if I have I should like to cover them.—I just want to ask one more question. Can you tell me whether or not there has been any increase in production of dairy products in the last two years? A. Yes, there is the usual natural increase in 1930 over 1929, and thus far in 1931 over 1930.

Q. (The Court): By 'dairy products,' you mean milk?

Q. (Mr. Maitland): Yes,—milk. I should not have said 'dairy products'; that is confusing,—I mean the farmer milking the cow? A. Yes, a greater production.

20 Q. By what percentage has there been? A. 1930 over 1929, fifteen per cent. 1931 over 1930, the present indication, twenty-five per cent.

Q. And does that add to your surplus? A. Yes.

Q. (Mr. Farris): You are not suggesting that your Act has reduced the price of milk? A. Our Act has nothing to do with the price of milk.

Q. I didn't ask that. Just answer the question, please. Are you suggesting that your Act has reduced the price of milk. A. No.

30 Q. The cause for the reduction in the price of milk is, first, that conditions are such in British Columbia, now, that all prices for farmers' products are going down, isn't it? A. Yes.

Q. And in addition to that, there are some organizations in milk on the Lower Mainland? A. Yes.

Q. There is the Associated Dairies. What is that? A. A retail distributing concern in Vancouver.

Q. (The Court): A little louder, please? A. A retail distributing concern in Vancouver.

The Court: Very bad acoustics.

40 Q. (Mr. Farris): And in addition to that there is the Fraser Valley Milk Producers' Association? A. Yes.

Q. And what is that organization? A. A co-operative organization, composed of dairy farmers throughout the Fraser Valley.

RECORD

*In the
Supreme Court
of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken,
(Rebuttal)
Cross-Exam.
3rd September
1931

(Cont'd)

RECORD

In the
Supreme Court
of British
Columbia

Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken.

(Rebuttal)

Cross-Exam.
3rd September,
1931.

(Cont'd)

Q. Yes. What percentage—and who is—who are the officials in that organization? A. There is a board of seven directors.

Q. Is Mr. Mercer one of them? A. Yes.

Q. Mr. Mercer being on this Milk Adjustment Board? A. Yes.

Q. He takes an active part in that organization? A. Yes.

Q. I mean, in the Fraser Valley Milk Producers' Association? A. Yes.

Q. And one of the moving spirits? A. He is Secretary of the Board.

Q. What percentage of the farmers—dairy farmers—are in that association? A. My estimate is seventy-five per cent.

Q. You are in it? A. Yes.

Q. The aim is to be a hundred per cent? A. That is our natural desire.

Q. Yes. And the organization has been working to that end, hasn't it? A. We should like to achieve that.

Q. (The Court): The Associated Dairies are distributing agents for Fraser Valley Milk Producers' Association? A. For the Fraser Valley Milk Producers' Association and other farmers.

Q. (Mr. Farris): What other farmers? A. A number of farmers in the Valley, who are not members of the Fraser Valley.

Q. Have any of them—they have continued right along to deal with the Associated Dairies? A. Oh, a lot of them have.

Q. Any pressure brought to bear on them to go into the Fraser Valley Milk Producers' Association? A. No.

Q. No? A. No. They are always welcome to come, but we have not exerted any pressure on them of any description.

Q. (The Court): Is the Associated Dairies a distributing agency connected in any way, officially or unofficially, with the co-operative? A. The Fraser Valley Milk Producers' Association owns a block of stock—a minority holding—in the Associated Dairies; but it is a joint stock company, organized under the "Companies' Act."

Q. (Mr. Farris): Who are the other shareholders in the Associated Dairies? A. I will give them from memory,— Steves' Dairy, The Royal Dairy, The City Dairy, The United Dairy, The Maple Leaf Dairy—quite a number of smaller ones; I don't just remember their names.

Q. (The Court): Do all members of the co-operative association utilize the Associated Dairy, exclusively, as its distributing agent? A. Yes.

- Q. Is that the only function of the co-operative society,—
that they shall market exclusively through this Associated Dairy?
A. Would you like me to explain?
Q. Yes. A. The co-operative receives all the milk which
its members produce; markets as much as it can through the
Associated Dairies on the fluid market and, what cannot be mar-
keted like that, it manufactures, in a couple of plants which it
owns, into butter, cheese and so on; and markets that on what-
ever market there is.
- 10 Q. (Mr. Farris): What percentage of the dairies are in
the Associated? A. What percentage,—in number?
Q. Yes. Well, I will put it the other way: in the volume
of business? A. That is better. I should say seventy-five per
cent. of the volume of business.
Q. (The Court): Dairies?—You mean farmers?
Q. (Mr. Farris): This is the Associated Dairies. This is
the distributing organization. They are not necessarily farmers,
are they? A. No.
Q. (The Court): What do you mean by 'dairies'?
- 20 Q. (Mr. Farris): The Fraser Valley Milk Producers' As-
sociation, the farmers' organization? A. Yes.
Q. And the other is the Associated? A. The Associated
Dairies, Limited, is a distributing organization.
Q. And that is composed of—are farmers members of that?
A. No.
Q. Who are members? A. Farmer distributors.
Q. (The Court): How many are in this?
Mr. Farris: In volume of business, he says seventy-five
per cent.
- 30 Q. (Mr. Farris): Are the farmers making money, in the
sale of milk to-day? A. No.
Q. They are losing money, are they? A. Yes.
Q. Is the distributing organization,—this Associated or-
ganization,—making money? A. No, they are not.
Q. Isn't the result going to be, if this Act continues, and
if the organizations continue, that they will all have to come in
to—the farmers in to the Fraser Valley and the others into the
Associated? A. Not necessarily.
Q. You expect that to happen, don't you? A. No.
- 40 Q. How many do you think can survive, out of it? A.
Every one; no reason why they should not.
Q. Although they are all losing money? A. That is a
peculiarity of the farmer's business; you carry on even though
you are losing money.
Q. Where is the market for condensed milk, outside of
British Columbia, for the British Columbian product? A. The
bit that goes out,—chiefly Great Britain.

RECORD

*In the
Supreme Court
of British
Columbia*Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken.
(Rebuttal)
Cross-Exam.
3rd September,
1931.

(Contd.)

RECORD

*In the
Supreme Court
of British
Columbia*

Proceedings
at Trial.

Plaintiff's Case,

William Lyle
Macken.
(Rebuttal)
Cross-Exam.
3rd September,
1931.

(Contd.)

Q. What about Canadian markets, outside of British Columbia? A. Oh, there is very little British Columbian milk goes on Canadian markets.

Q. Where do the Prairies get their condensed milk? A. Chiefly from Ontario.

Q. How do you account for that? A. The freight rate that is against us.

Q. Do you say you can ship it from Ontario into Alberta cheaper— A. Yes.

Q. —cheaper than you can ship it from here? A. Yes. 10
You can ship milk from Ontario into British Columbia, and compete here; condensed milk.

Q. Is the actual freight rate from Ontario, to say, Edmonton, less than from Vancouver to Edmonton? A. No; but cost of production in Ontario enable them to come into that market.

Q. And an adjustment of freight rates would probably give you that market? A. It would help us.

Q. Of course, you hope that to come, sooner or later? A. We hope so.

Q. How much of a market would that be,—what percentage of your manufactured product on this market? 20

Q. (The Court): The percentage as to what? The total product, or total export?

Q. (Mr. Farris): The total product. A. That will not be ever much of a market. They are rapidly developing their own dairy business. It is only a question of time when they will be looking for export markets for their stuff.

Q. What other markets have you in sight,—export? A. The Orient.

Q. That will be a large market, if it comes? A. We 30
hope so.

Q. Is there no cheese exported from British Columbia? A. Oh, very little.

Q. Is that due to the fact that they don't make cheese? A. Not to any extent.

Q. Is that business, so far, growing any? A. This year, 1931, we have manufactured more cheese than we did formerly.

Q. How much of an increase, in percentage? A. I am sorry I cannot give you that.—Quite an increase over last year. That does not signify much, because we did not manufacture 40
much last year. Cheese is the lowest selling commodity that we have.

Q. My learned friend asked this question: What was the cause for the drop in the price of milk and milk products? And your answer was this, I think, Mr. Macken: I took it down hurriedly.—First, inability of the market to consume? A. To absorb.

- Q. And, secondly, competition? A. Yes.
- Q. Were you in Victoria, promoting this Act when it went through? A. Yes.
- Q. And I suppose you were consulted and conferred with, on the preparation of the Act? A. Yes.
- Q. Yes. And saw it, before it was introduced? A. Yes.
- Q. And acquiesced in it?—Gave it your approval? A. Yes.
- Mr. Maitland: And blessed it.
- Mr. Farris? What?
- 10 Mr. Maitland: And blessed it.
- Mr. Farris: Well, a lot of people have done that:
- Q. (Mr. Farris): This is a question that His Lordship asked, and finally left it to me. The answer you gave was this, to His Lordship: That the desire of all dairy farmers was to get as much as possible on the fluid market.—Why is that, Mr. Macken? A. Because it runs a better price.
- Q. Because it runs a better price.—And farmers are like everyone else: they like to get the best price possible? A. Surely.
- Q. (The Court): Yes, but under the Act, you tell me
- 20 there is only a slight difference?
- Q. (Mr. Farris): His Lordship followed that up with this question: That if the adjustment was complete in its effect, in operation, that the farmer who is selling for manufactured product, in the end will get as much as the man selling on the fluid milk market? A. Not quite.
- Q. Why? A. Because of the effect upon his pool price of the sale of a certain amount of his Stuff at a lower price than the Committee adjusts on. I do not want to enlarge upon it, but I think I can explain it a little further by making a comparison
- 30 with the returns of last year. The return to the co-operative farmers, which is a pooled return, last year, were slightly less than the return from the fluid milk sale: the average adjustment for the year. And that, I think I can account for, by the fact that the Committee adjusts on the basis of butter and milk; whereas there are sales made by the co-operative, of manufactured products, that realize less than the low adjusting base; and which is the pool price that the farmer receives who manufactures.
- Q. Well, we can start in with this assumption: that enough
- 40 fluid milk is necessary for Vancouver? A. Yes.
- Q. There is enough milk available at any time for the requirements of the Lower Mainland? A. Yes.
- Q. If the price—I mean by that, assuming that the price is not lowered, there would be no more milk sold to the community of the Lower Mainland if the farmers were exclusively selling fluid milk? I want you to understand that question, be-

RECORD

*In the
Supreme Court
of British
Columbia*Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken,
(Rebuttal)
Cross-Exam.
3rd September,
1931.

(Cont'd)

RECORD

*In the
Supreme Court
of British
Columbia*

Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken,
(Rebuttal)
Cross-Exam.
3rd September,
1931.

(Contd.)

fore you answer it. I say, assuming that the price is not lowered, you see—say ten quarts for a dollar: say it was still that, and was not lowered: There would be no more milk sold in the lower mainland if the farmers were exclusively selling the fluid article? A. Just to interpret your question: If there was just enough milk?

Q. No; I am taking the quantity as it is? A. The market could not absorb any more at that price?

Q. Yes. A. No, it would not.

Q. Then, if the farmers insisted on getting that price, no matter how much milk they had, and sold it for nothing less, no more would be taken? A. Apparently not. 10

Q. If there was no other market for milk in the Lower Mainland, except a fluid milk market, and at ten quarts for a dollar, the market would not absorb, say, more than seventy-five per cent. of the product, and it was all available, what would be the effect on the price? A. It would depend entirely upon the competitive effort to those striving to put their milk on the market.

Q. I ask you this, as an experienced man: I say, if there was no other market for milk except the fluid market, if the price was ten quarts for a dollar, and if there was twenty-five per cent. of over production on the basis of that price, what would happen to the price? A. Well, there is a possibility that it would go down. 20

Q. Yes; a certainty? A. No, I will not admit that.

Q. Either that or they would combine and throw the rest of the milk away? A. No; they would do as we have been doing for twenty years.

Q. But, I say, if there was no other market: If you could not manufacture it? A. They might do that thing; they might destroy it. 30

Q. Now, then, you say that the reason, in this adjusted price, the average price is not as favourable to the one farmer as to the other, is—what, again? A. No, I didn't say that.

Q. May be I put it badly. I understood you to say that under this system of adjustment, the farmer selling to the manufactured trade, does not get as much as if he sold to the fluid market? A. Yes.

Q. And the reason being—what? A. The lower price that he gets for the manufactured products. 40

Q. But that is equalized by taking it off the others? A. No, not entirely. They use a fixed base.

Q. But at the price that the fluid milk farmer gets, the total supply is met, isn't it?

Q. (Mr. Maitland): Is what?

- Q. (Mr. Farris): Is met.—The total demand is met?
 A. Yes.
- Q. Now, if one of the men selling to the fluid market—or, rather, selling in the manufactured market, comes in to the fluid market, there will not be any more milk sold, at that price, than there was before, will there? A. I don't get your question.
- Q. Well, I know,—I think I have got it clear in my mind, but I am not putting it clearly to you. I say, that, under present conditions there is a hundred per cent. milk supply to meet the
 10 demand at a given price? A. Yes.
- Q. Say nine quarts for a dollar—at a given price? A. Yes?
- Q. Now, say 'A' farmers—not using 'A' the same as in the Milk Act—say 'X' farmers supply that hundred per cent?
 A. Yes?
- Q. 'Y' being the farmers supplying milk for manufacturing purposes? A. Yes?
- Q. If these 'Y' farmers take their milk and sell it into this area of fluid milk, at nine quarts for a dollar, there will not be any more than the hundred per cent. which is already—
 20 is right.
- Q. —sold? So, there is no more milk sold at the fluid price? A. No.
- Q. How, then, has the adjustment price affected it? A. How has the adjustment price affected it?
- Q. I understood you to say that these men, 'Y,' are not as well off as if they had been selling in this fluid market? A. Yes?
- Q. But they are getting as much as 'X', in fact, aren't they? A. No.
- Q. They are not. A. No.
- 30 Q. Not when the adjustment is made? A. No; not quite. That is the point I wanted noting.
- The Court: The reason is, Mr. Farris, that the adjustment is made on an average price, where these people may get less than the average price; and this money is all pooled and divided up. So there is a slight difference.
- Q. (Mr. Farris): So, one might get more?
 The Court: Yes.
- Q. (Mr. Farris): So that the average comes to the same again? A. I gave the average for 1930.
- 40 Q. The 'X' group, in the result, after the adjustment is made, do not get any more than 'Y,' as a group? A. Yes; very little; about the same; we will admit that.
- Q. Well, that is what it comes to; all right.—Mr. Sloan has worked out these figures for me,—I am coming back to the three per cent. for export, again.—Are these figures right: that the total production of butterfat for 1930 was 4,777,640 pounds?

RECORD

*In the
Supreme Court
of British
Columbia*Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken,
(Rebuttal)
Cross-Exam.
3rd September,
1931.

(Cont'd)

RECORD

*In the
Supreme Court
of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken,
(Rebuttal)
Cross-Exam.
3rd September,
1931.

(Cont'd)

A. I have not those figures, but I believe they are here. I could get them.

Q. How did you get them, Mr. Sloan?—Will you get them for me? A. Yes.

Q. (Mr. Maitland): Will you take my word for it, if I give him the figures, Mr. Farris?

Mr. Farris: Yes; all right.

Mr. Maitland: The Committee has supplied those.

Q. (Mr. Farris): I am asking, now, for the total production of butterfat for 1930? A. Within the area?—6,146,- 10
327.—6,146,327.94.

Q. Six million, one hundred and fifty thousand (6,150,-
000), I will take it.—So that three per cent. of that has been
exported? A. We also have the definite figures on that, if you
—the export is not on this sheet.

Q. I have taken it from your own statement—three per
cent. A. I say that is subject to correction. I have not the
actual figures, but they are here, and could be got.

Q. I think that is pretty nearly all.—You gave my learned
friend that seventy-five per cent. of the farmers are on the re- 20
ceiving end, and twenty-five per cent. on the paying end? A.
Those are approximate figures.

Q. Those are in farmers: not in quantities? A. Yes—
farmers.

Q. We have it from your Secretary of the Board, and also
from Mr. Mercer, that, as far as quantity is concerned, the
amount supplied to the fluid market, and the amount sold for
manufacturing purposes, is about fifty-fifty? A. Yes, about
fifty-fifty.

Q. What you say is, there are a number of farmers who 30
cater to both markets? A. Yes.

Q. (Mr. Maitland): I think he said—I may be wrong—
but I thought he said that no farmers catered exclusively to the
manufacturing market.

Mr. Farris: He said very few.

Mr. Maitland: Practically none.

Q. (Mr. Farris): Well, now, the farmer who is identi-
fied with the Fraser Valley Milk Producers' Association —
seventy-five per cent. in quantity of business—who decides which
market it goes to? The farmer, or the association? A. The 40
management of the association.

Q. They allocate—they do the allocating to which it shall
go? A. Yes, they do the marketing.

Q. The farmer is not consulted? A. Well, his directors
are men who are producers and members; and he meets in local
meetings and instructs his directors from time to time. It is a
pure co-operative.

Mr. Farris: My Lord, my argument will not be very long. I wonder if we shall adjourn now? I should like to consult with my clients.

The Court: Yes.—Adjourned until a quarter past two. (12.45 p.m.).

RECORD

*In the
Supreme Court
of British
Columbia.*

2.15 p.m.

Proceedings
at Trial.

Plaintiff's Case.

- Q. Is it a fact that the grade 'C' milk is being sold?
Mr. Maitland: I am awfully sorry, but I cannot hear.
Witness: There is none.
- 10 Q. (Mr. Farris): Milk, coming from a grade 'C' farm, is called grade 'C' milk? A. No; there is none.
- Q. Well, I will put it strictly, because I think it is an evasive answer: There are grade 'C' barns? A. Yes,—grade 'C' barns.

William Lyle
Macken,
(Rebuttal)
Cross-Exam.
3rd September
1931

(Cont'd)

- Q. And milk that comes from grade 'C' barns, is being sold in Vancouver? A. Yes, I believe so.
- Q. To what percentage, would you say? A. I cannot answer that.
- Q. A substantial amount, I suggest? A. I am sorry that
- 20 I cannot answer that question.
- Q. These figures have been given me during the lunch hour, and I want you to check them. That last year, butterfat—I think we have it in—six million pounds? A. Yes.
- Q. And the levy was half a cent? A. The maintenance levy, yes.
- Q. That would produce about thirty thousand dollars?
A. Yes.
- Q. The cost of the Committee's operation for the year: Do you know what it is for 1931? A. No.
- 30 Q. I understand it is about at the rate of twenty-two thousand five hundred dollars a year? A. I am not a member of the Committee, and I don't know.
- Q. Haven't you sought, and obtained, that information?
A. No.
- Q. Coming back to the question of the directors of these two organizations—Fraser Valley Milk Producers' Association and the Associated Dairies: you are an officer of both those? A. I am a Director of each.
- Q. Any other position? A. I am vice-president of the
- 40 Fraser Valley Milk Producers' Association.
- Q. And Mr. Mercer is a director of each? A. No.
- Q. Has he nothing to do with the Associated Dairies?
A. Not as an officer or director, no.
- Q. You mentioned that the Fraser Valley organization was a co-operative one. It is a joint stock company? A. No, it is not.

RECORD

*In the
Supreme Court
of British
Columbia*

Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken.
(Rebuttal)
Cross-Exam.
3rd September,
1931.

(Cont'd)

Q. Isn't it? A. No.

Q. Isn't it an incorporated company? A. It is incorporated under the Agricultural Societies' Act, as a co-operative.

Q. The Associated Dairies, when it came into existence, was there an agreement between them and the Fraser Valley, about spread? A. There is an agreement in effect, now.

Q. By which the Fraser Valley guarantees a spread of twenty cents? A. No, not exactly that. It is based on the retail price of milk. When the retail price is nine quarts for the dollar, the wholesale price for milk will be seventy-three cents a pound 10
butterfat. When it is ten quarts, eleven or twelve quarts, it goes down so that the relative spread is maintained between the wholesale price and the retail price of milk.

Q. The popular idea is, that the spread is twenty cents. That is right, isn't it? A. No; it fluctuates from 19.7 down to about eighteen.

Q. What that means, in effect, is this: That the price that the farmer gets for his milk, is determined by the price that the Associated Dairies get for it from the consumer, with a guarantee that they will get the spread of between eighteen and twenty? 20

A. For that portion of their milk sold in the fluid market,—yes.

Q. And every independent outside, who is not in the organization but sells to the Associated Dairies, has to sell on the Fraser Valley Milk Producers' Association's settling price?

A. Pool price, yes.

Q. So, under those circumstances, the Associated Dairies is not losing very much money, Mr. —? A. No distributor ever does.

Q. What? A. No distributor ever does.

Q. I understood you to say this morning, it was? A. You 30
asked me if they were making money; and there is a difference between "making money," "breaking even," and "losing money."

Q. So the result of that is, that any independent dairy that is competing with the Associated, has got to compete under conditions in which the farmers that are behind the Associated, have this contract about spread? A. They have to compete in the same market, exactly.

Q. How long ago was it that some of the independent dairies came into the Associated Dairies? A. The Associated 40
was organized in the latter part of 1930.

Q. Did these independents come into, at that time? A. The distributors in Vancouver?

Q. Yes. A. Yes.

Q. Who promoted the organization of that? Wasn't it the active spirits in the Fraser Valley Milk Producers' Associa-

tion? A. No, it was not. They have been accused of a good many things, but we did not start it.

Q. Shares were issued to these independents on the basis of the gallonage of milk they were supplying at the time?—Common shares in the Associated? A. Class "A," no par value shares, for the gallonage.

Q. 125 shares to the gallon of milk? A. On some such basis as that; I would not say positively.

10 Q. In this association—this co-operative—Fraser Valley Milk Producers' Association—I understand—I assume—I don't know—that a man, to be a shareholder of that, has to be a farmer in the district? A. Yes.

Q. If he ceases to be a farmer, does he lose his shares? A. No; his shares are redeemed; he gets his money.

Q. Would they be redeemed, or he gets his money? A. If he withdraws from the business of production, he is entitled to redemption.

Q. "Entitled"; but he does not necessarily have to? A. Not necessarily.

20 Q. Were you in Court all morning? A. Yes.

Q. You heard me read Mr. Mercer's evidence—discovery? A. I could not hear you very well.

Q. You have read it over, before? A. Yes.

Q. Do you agree with his evidence? A. Not entirely.

Q. That is all.

RE DIRECT EXAMINATION BY MR. MAITLAND.

30 Q. What has the Committee,—that is, the Plaintiff Committee in this action,—to do either with the Fraser Valley Milk Producers' Association, or the Associated Dairies, that my learned friend has been mentioning in his cross-examination?

A. Absolutely nothing.

Q. And what application has this Act, as far as you are aware, to either of these organizations? A. It does not apply to the organizations, but to the individual producers.

Mr. Farris: This is not for re-examination; it is a matter of law.

Q. (Mr. Maitland): I am trying to clear up that there is no actual physical connection.—You say the Act has nothing to do with them? A. No; it functions amongst the producers.

40 Q. This morning, I asked you about the levy: what the amount would work out at, per bottle, on the Vancouver market, where you say milk is sold at so many quarts for a dollar. And you said the rate per quart was a twelfth of a cent? A. Well,

RECORD

*In the
Supreme Court
of British
Columbia*

Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken.
(Rebuttal)
Cross-Exam.
3rd September,
1931.

(Contd.)

RECORD

*In the
Supreme Court
of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case

William Lyle
Macken.
(Rebuttal)
Re-Direct
Exam.
3rd September
1931

RECORD

*In the
Supreme Court
of British
Columbia*

Proceedings
at Trial.

Plaintiff's Case,

William Lyle
Macken.
(Rebuttal)
Re-Direct
Exam.
3rd September,
1931.

(Contd.)

my mental capacity did not function properly; it is a twenty-fifth a quart.

Q. Now, on the question of the levy that is assessed, can you tell me any possible way that that twenty-fifth of a cent could be passed on to the Vancouver consumer in purchasing his milk at so many quarts for a dollar? A. Oh, no; that is not possible; it is not practical; it could not be done; you just could not.

Q. Assuming that it could be done, is there any other reason that it would not be done? A. Yes. Assuming,—there is a very potent reason, I would say. Assuming that those who pay,—I think in my evidence formerly I said about twenty-five per cent. were paying and seventy-five per cent. were receiving,—the twenty-five per cent. paying, are the only group interested in trying to recover; and if they added a twenty-fifth of a cent. to a quart of milk, well, it is not practical, and it would be met by competition from the other group, because they are on the receiving end of the adjustment. 10

Q. On the question of competition, is this correct: that after this adjustment is made,—the adjustment that takes from the raw milk man and pays a proportion to the manufactured product man,—what is the effect of the market going up and down as to the amount that these people receive?—What I am getting at, is this: You gave evidence that your milk—your butterfat, was seventy-three cents a pound in 1930? A. Yes? 20

Q. Now, if that went down, does it work out in this way: that both of these people would get less money for their milk? A. Yes.

Q. And if the market price went up? A. They would get more. 30

Q. So that, to that extent, they are both interested in whether the milk is up or down? A. Oh, absolutely,—yes.

Q. Yes. One other feature. You were telling my learned friend this morning the reason for the price of milk going down. You mentioned the ordinary condition of marketing that would arise in these things.—Has the general depression any effect on that, at all?—Conditions of depression that exist at the present moment? A. Why, undoubtedly they have.

Q. Why? A. The people are not able to buy milk,—or any other commodity as far as that is concerned,—as they were in former prosperous conditions. 40

Q. Yes.—All right.

RE CROSS-EXAMINATION BY MR. FARRIS.

Q. Just one question, if I may, my Lord. I don't understand what you told my learned friend. One thing you said was,

RECORD

*In the
Supreme Court
of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken.
(Rebuttal)
Re Cross-
Exam.
3rd September
1931

if the price of the tax was added on to the man who sells fluid milk, he would be met by the competition of the other group?

A. Yes.

Q. What do you mean by that? A. I understand that the suggestion was that the maintenance levy might be passed on to the consumer.

Q. The adjustment levy? A. Well, either one. I gave a figure on the maintenance levy.

Q. I see. A. You can include the other, if you like.

10 Q. Well, take the maintenance levy. A. That would be a twenty-fifth of a cent a quart. If that were attempted to be passed on, it would be attempted by the ones marketing from the smaller group, and they would be met by the competition of those marketing in the larger group. They would not be interested in passing it on. They are receiving. And there are individuals today who recognize when it is unwise to set up a sales resistance; and it has been demonstrated that the price is a dominating factor in the sale of a product, and therefore they are not going to attempt to raise the price because some other person has done it. And the twenty-five per cent. group would be met by competition from the seventy-five per cent., and therefore they could not get away with the increase. The seventy-five per cent. sell a lot of milk on that market.

Q. Isn't it true that every farmer who sells milk, has to pay the maintenance levy, whether selling for— A. Yes.

Q. Isn't it true that the fluid market is a restricted, or monopoly market; that only those who sell in that market are those who are near enough to that market to sell fresh milk?

A. So far as this area is concerned.

30 Q. The area you can supply fresh milk to the Lower Mainland market is limited to those who can get the milk in as fresh milk. A. Well, we will admit that. That means everybody in the Fraser Valley.

Q. So that, the people in the Fraser Valley have the monopoly of the Lower Mainland market, for fresh milk? A. Yes, if you want to call it that. I would not call it a monopoly.

40 Q. Now, if they should raise the price of milk one cent. a quart, what inducement would there be for the man who is selling in the manufactured field, to come in to it, too? A. There is always an inducement for the man in the manufactured field to come into the fluid market, because he can get a better price.

Q. How would he? He would have to turn round and share it with the other fellows? A. Yes.

Q. Or, if there were too many in, it would mean competition, and they would have to get out again, and the price would go down. What object would there be to come in? If he comes

RECORD

In the
Supreme Court
of British
Columbia

Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken,
(Rebuttal)
Re-Cross-
Exam.
3rd September,
1931.

(Cont'd)

RECORD

*In the
Supreme Court
of British
Columbia*

Proceedings
at Trial.

Plaintiff's Case.

William Lyle
Macken,
(Rebuttal)
Re-Cross-
Exam.
3rd September,
1931.

(Contd.)

in, he cuts the price. If he manufactures, he gets the adjustment, and if the spread was—take the centre line of the average—if the spread were equal on each side, he would get half?

A. Yes.

Q. What inducement would there be for him to come in and spoil the market and get nothing by it, when, by keeping out, he would get half? A. All I can say is, they do try to get into the fluid market. Nobody seems to be anxious to manufacture.

Q. Although fifty per cent. of it goes there? A. Forced to.

Q. That is all.

(Witness aside).

10

The Court: Is that all?

Mr. Farris: That is all, my Lord. I am prepared to argue now.

The Court: All right.

Mr. Farris addresses the Court.

Mr. Maitland addresses the Court.

(CONCLUDED).

I hereby certify the foregoing to be a true and accurate report of said proceedings.

VINCENT D. WEBB.

Official Stenographer.

20

IN THE SUPREME COURT OF BRITISH COLUMBIA

RECORD

No. 9.

In the
Supreme Court
of British
ColumbiaREASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE MURPHY.No. 9.
Reasons for
Judgment of
The Honourable
Mr. Justice
Murphy,
26th September,
1931.

In my opinion the imposts levied by plaintiffs under the authority of Sub-sec. (g) of Section 9 of the Dairy Products Sales Adjustment Act fall within the exposition of what constitutes a tax contained in the judgment of Duff, J. in *Lawson v. Interior Tree Fruit and Vegetable Committee* (1931) S.C.R. 357 at 362 et seq. These imposts are enforceable by law—See Section 11, 13, 18A and 19 of the Act. They are imposed under the authority of the Legislature. They are imposed by a public body. As in the *Lawson case* the Chairman of the plaintiff Committee is appointed by the Lieutenant-Governor-in-Council. The Committee is invested with wide powers of regulation and control over the milk industry within the area over which it has jurisdiction. No one unless excused by the Committee can do any act within the meaning of selling or disposing of milk or manufactured products, as these terms are defined by the Act, without first obtaining a license to do so from the Committee. Section 14: The Committee exercises jurisdiction over a great extent of territory. It exercises compulsory powers as well as inquisitorial powers of a most exceptional character. Section 9 and the subsections thereof. Sections 14, 17, 18, 18A, 19. The levy is made for a public purpose for, if I may be permitted, with deference, to quote the language of Duff J. in the *Lawson case, supra* “when such compulsory, not to say dictatorial, powers are vested in such a body by the Legislature the purposes for which they are given are conclusively presumed to be public purposes.” I conclude therefore on the authority of the *Lawson case* that these imposts are a tax.

Are they an indirect tax? Unless they are to be regarded as being a kind of sales tax on commodity or on trade in a commodity, in which case they would be of the nature of those taxes which have I think always been regarded as indirect taxes, these imposts are not an old and well defined species of taxation such as was the tax under consideration in *Halifax v. Fairbanks* (1928) 97 L.J.P.C. 11. They are, I consider, a new and unfamiliar tax which cannot be said to fall obviously under the classifications well established at Confederation of direct and indirect taxation.

In my opinion these imposts, imposed as they are imposed under the Act, have a tendency to enter into and to affect the price of milk and cream in the fluid milk market. If so they are

RECORD

In the
Supreme Court
of British
Columbia.

No. 9.
Reasons for
Judgment of
The Honourable
Mr. Justice
Murphy,
26th September,
1931.

(Cont'd)

indirect taxes.—*The Lawson case. supra.* That they are imposed after the milk and cream have been disposed of by the persons who pay them does not *per se* prevent them from being indirect taxes. *Rex v. Caledonian Collieries* (1928) A.C. 358. The preamble of the Act and the evidence show that there are but two markets for milk, viz., the fluid milk market wherein milk and cream are disposed of in fluid form and what may be termed the manufactured products market in which butter, cheese, condensed milk, etc. are sold. As the preamble states this latter is a world market. Being such a market the dairy farmers coming under the plaintiffs' jurisdiction—or for that matter all the dairy farmers in British Columbia are powerless to affect the prices ruling therein. But, as the evidence shows, they have what may be termed a monopoly in the fluid milk market. The reason is obvious. Since milk in its natural state rapidly deteriorates in quality it follows that if it is to be sold in the fluid milk market it must be sold soon after production. True such deterioration may be delayed within well defined limits by the use of ice or in other ways but such methods are costly. Hence dairy farmers who carry on operations sufficiently close to any given fluid milk market, such as Greater Vancouver and New Westminster, to enable them to ship their milk in the raw state without deterioration to such market, enjoy a pronounced economic advantage therein. They can by united action raise the price to consumers to the extent of such economic advantage. The evidence shows that the area over which plaintiffs exercise authority embraces practically all the dairy farmers who have this economic advantage in the Greater Vancouver and New Westminster fluid milk market.

The imposts under consideration have to be paid in the first instance by some of these dairy farmers. They are a new and constantly recurring item in the cost account of every dairy farmer who sells in the fluid milk market. The Act authorizing them has I think created conditions which automatically result in a tendency on the part of those who pay them to pass on these imposts to the consumer. The more successfully its administration accomplishes the object of the Act, as set out in the preamble thereof, of distributing the results of the sale of milk equally over the whole body of dairy farmers in any given district, the more completely will competition between such farmers in the fluid milk market, which they supply, be eliminated because if the Act works successfully it makes no difference financially to the individual farmer whether he sells in the manufactured products market or in the fluid milk market. The scheme of the Act is that his gains will be the same in either case. This scheme however gives an incentive to the dairy farmers as a body to raise the price in the fluid milk market for the more money ob-

tained the greater the fund to be divided amongst them. Prices in the manufactured products market being, as the Act itself sets out, world market prices and therefore beyond the control of the dairy farmers under the jurisdiction of the Committee, whilst the fluid milk market is within limits highly susceptible to such control because of the economic advantage which said farmers possess therein arising from the nature of milk, and such control being made much more complete by the working of the Act, since all incentive to compete in the fluid milk market is thereby re-
 10 moved from those who are economically so placed as to do so successfully, and since the more money there is obtained the more funds there will be to be shared by the whole body of dairy farmers, it seems clear there will be a tendency to pass on these imposts to the consumer in the monopoly market.

It will I think not be disputed that where a royalty is paid for the use of a patent giving a monopoly of the sale of some article in any particular market there will be a tendency that such royalty will enter into and effect the price. The imposts under this Act, in my opinion, are in essence the price which
 20 Vendors in the fluid milk market pay to secure a monopoly in that market. Consequently there will be a tendency on the part of those who pay them to pass them on—to make them enter and affect the price. It may be that in fact this tendency has not become an actuality in the case at bar but to constitute indirect taxation in the case of such taxes as these under consideration it suffices that there is a tendency to pass the impost on to the consumer. The *Lawson case supra*—Attorney-General of B. C. vs. Canadian Pacific Ry. 96 L.J.P.C. 149.

For the same reasons I hold the levies made to defray the
 30 expenses of the Act to be indirect taxation. With regard to them however it might be argued that granted that they constitute indirect taxation the whole Act is not invalidated since conceivably it might be operated without them. But as it would be entirely unworkable without the imposts first discussed I would hold the Act to be *ultra vires* in its entirety for I do not think the Legislature would have passed it in such truncated form.

If the matter be viewed from the standpoint of what was in the contemplation of the Legislature in passing this Act—the test applied in *Attorney-General for Manitoba v. Attorney-General for Canada* (1925) A.C. 561 at p. 568 and other cases—I
 40 think the same conclusion will be arrived at.

It is a fact of such common knowledge that I think judicial notice may be taken of it that every person with an article to sell will in the ordinary course of business endeavour to sell it in the market which gives him the highest net returns. The dairy farmers under the jurisdiction of plaintiffs therefore previous to the passing of this Act all endeavoured to sell milk in the

RECORD

In the
 Supreme Court
 of British
 Columbia.

No. 9.
 Reasons for
 Judgment of
 The Honourable
 Mr. Justice
 Murphy,
 26th September,
 1931.

(Cont'd)

RECORD

In the
Supreme Court
of British
Columbia

No. 9.
Reasons for
Judgment of
The Honourable
Mr. Justice
Murphy,
26th September,
1931.

(Cont'd)

Greater Vancouver and New Westminster fluid milk market. This would be true of all dairy farmers in the Province in reference to their particular fluid milk market. Hence arose the conditions set out in the first paragraph of the preamble to the Act. The dairy farmers did not fall into two mutually exclusive classes, the one selling in the fluid milk market and the other in the manufactured products market. They all sought the fluid milk market because the price there was higher. The result was competition and an over supply of milk in the fluid milk market from the standpoint of the dairy farmers with a consequent probability of a lowering of price through the operation of the economic law that price is regulated by supply and demand. This was the situation which the Act proposed to remedy. The true pith and substance of this legislation is, in my opinion, to prevent the operation of this economic law by eliminating competition thus lessening supply and thereby creating a monopoly market to keep up price for the benefit not of a particular body of dairy farmers who supply the manufactured products market, for apart from the Act no such body existed, but for the benefit of all dairy farmers in any given area where the Act was brought into force. Strength is given to this view I think by the provision in the Act that it only comes into operation in any area on a favorable vote of 66 per cent. of the dairy farmers therein present at a meeting convened as provided for by Section 4. To secure this elimination of competition an incentive is given through the provisions of the Act in the form of so-called adjustment payments as already explained. Funds to make these payments must be secured from somewhere. Under the scheme of the Act the taxes under consideration supply these funds. They must come either from the dairy farmers or from the consumers. No individual with an article to sell will by his own act bring into force a law compelling him to pay a tax for selling that product in the most favorable market. If he does so it must be because he expects to pass such tax on to the consumer. The Legislature then I think by making the operation of the Act dependent on compliance with the provisions of Section 4 sheds some light on its real intention in passing the legislation. Further the original Act B. C. Stat. 1929. Cap. 20, which, as amended, is the Act under consideration, is intituled "An Act for the Relief of Dairy Farmers." The title of a Statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction. This rule seems to apply alike to the "long" and "short" title. *Maxwell on Interpretation of Statutes* 7th Ed. P. 36 and authorities there cited.

If my view of what is the true pith and substance of the Act

is correct then it is clear that farmers as a body cannot be benefited by enacting special taxes payable only by them, or some of them, for the privilege of selling their produce in the most favourable market. The Act, read as a whole, in my opinion, is not an Act to impose additional burdens on particular dairy farmers for the benefit of other dairy farmers but is one to improve the economic condition of all dairy farmers who come under its provisions. Its title sets out its true purpose. If the dairy farmers as a body are to be benefited these taxes must be passed
 10 on to the consumer and, as already shown, in my opinion the Act supplies the means of doing so. On the authorities cited it would appear that whether or not they have actually been passed on in any particular instance is irrelevant.

The action is dismissed with costs.

D. Murphy J.

26th September, 1931.
 Vancouver
 Sep 26 1931
 Registry
 20 Westminster
 Sep 28 1931
 Registry

RECORD

*In the
 Supreme Court
 of British
 Columbia*

No. 9.

Reasons for
 Judgment of
 The Honourable
 Mr. Justice
 Murphy,
 26th September,
 1931.

(Contd.)

RECORD

In the
Supreme Court
of British
Columbia

IN THE SUPREME COURT OF BRITISH COLUMBIA

No. 10.
Formal
Judgment.
26th September,
1931.

No. 10.

JUDGMENT.

BEFORE THE HONOURABLE } SATURDAY THE 26TH
MR. JUSTICE MURPHY } DAY OF SEPTEMBER,
A.D. 1931.

This trial having come on for hearing at the City of New Westminster on the 3rd and 4th days of September A.D. 1931 in the presence of W. G. McQuarrie Esq. K.C. and R. L. Maitland, Esq. K.C. of Counsel on behalf of the Plaintiff and J. W. deB. Farris, Esq. K.C. of Counsel on behalf of the Defendant AND UPON hearing the evidence adduced and what was alleged by Counsel aforesaid and judgment having been reserved and coming on this day for judgment, 10

THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is hereby dismissed.

AND THIS COURT DOTH FURTHER ORDER that the Plaintiff pay to the Defendant its costs of this action forthwith after taxation thereof.

BY THE COURT. 20

Westminster
Oct. 8-1931
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to form
R.L.M.
checked
LAM. DR.

L. A. Menendez
District Registrar.

D.M.J.
Entered this 8th October 1931
L. A. Menendez
District Registrar.

30

No. 11.

*In the
Supreme Court
of British
Columbia*

NOTICE OF APPEAL.

TAKE NOTICE that the plaintiff intends to appeal and does hereby appeal from the whole of the judgment pronounced herein by the Honourable Mr. Justice Murphy on the 26th day of September 1931.

No. 11.
Notice of
Appeal.
2nd October,
1931.

AND FURTHER TAKE NOTICE that a motion will be made to the Court of Appeal at the Court House in the City of Vancouver in the Province of British Columbia on Tuesday the
10 6th day of October 1931 at the hour of eleven o'clock in the forenoon or so soon thereafter as Counsel may be heard on behalf of the said plaintiff that the said judgment be reversed and that judgment be entered for the plaintiff upon the following grounds:

- (1) That the said judgment is against law;
- (2) That the said judgment is against the evidence;
- (3) That the said judgment is against law and the evidence;
- (4) That the learned trial Judge erred in holding that the
20 imposts levied by the plaintiff under the provisions of section 9 of the "Dairy Products Sales Adjustment Act" are a tax;
- (5) That the learned trial Judge erred in holding that the imposts levied by the plaintiff under the provisions of said section 9 of the said Act are an indirect tax;
- (6) That the learned Judge erred in holding that the levies imposed by the plaintiff for the purpose of defraying the expenses of operation under the provisions of the said Act are a tax;
- (7) That the learned trial Judge erred in holding that the
30 levies imposed by the plaintiff for the purpose of defraying the expenses of operation under the provisions of the said Act are an indirect tax;
- (8) That the learned trial Judge erred in holding the said Act to be ultra vires of the legislature of the Province of British Columbia;
- (9) That the learned trial Judge erred in dismissing the plaintiff's action;
- (10) And upon other grounds;

RECORD

In the
Supreme Court
of British
Columbia

No. 11.
Notice of
Appeal.
2nd October,
1931.

DATED at New Westminster, British Columbia, this 2nd day of October 1931.

“McQuarrie and Whiteside”

Solicitors for the plaintiff,
(Appellant)

To the defendant (respondent)
and to Messrs. Farris, Farris, Stultz & Sloan,
its solicitors.

COURT OF APPEAL

RECORD

*In the
Court of Appeal
for British
Columbia.*

LOWER MAINLAND DAIRY PRODUCTS v. CRYSTAL DAIRY.	}	JUDGMENT OF THE HONOURABLE THE CHIEF JUSTICE
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No. 12.
Reasons for
Judgment of
The Honour-
able the Chief
Justice.
5th January,
1932.

The "Dairy Production Sales Adjustment Act," cap. 20, of the Statutes of British Columbia, 1929, was, I think, as the preamble shows passed for a provincial purpose, namely to relieve or prevent congestion of the fluid milk market and to eliminate loss to dairymen by reason of other disposal of the surplus. With the object of remedying this condition the Act was passed and the Sales Adjustment Committee appointed. Under the authority of its provisions, the Committee was empowered to make adjustments in this way. Speaking generally they were empowered to compel those dairymen who enjoyed the fluid milk market to make returns of their sales and to levy upon the gross product of these sales a sum sufficient to compensate the dairymen who otherwise disposed of their milk at lower prices so as to bring their respective gross earnings up to the level of those of the first class after the levies thereon. In other words the Adjustment Committee was to tax one class and give to another so as to equalise their earnings and thus prevent the congestion of the fluid milk market or in other words thus relieve or prevent competition. To take a simple illustration: A, a seller of fluid milk, earns \$10,000.00 on his sales; B, who disposes a like quantity of his milk otherwise than by sales on the fluid milk market earns \$5,000.00. The Committee is authorized to make a levy on A of a sum which when paid to B will bring B's earnings up to an equality with A's; thus making the receipts of these several dairymen for the year equal. It was argued that the Committee's powers were merely to adjust between these two parties their earnings and that the compulsory levy upon A is not a tax although made under the authority of the Provincial Legislature and that that levy will not tend to increase the price of milk to the consumer because B would have no incentive to compete in the fluid milk market with A. I think the effect would be the opposite. B, having no incentive to enter the fluid milk market and A having had taken from him a large percentage of his earnings, by reason of the levy which is made without his consent, would naturally desire to increase the price of milk to the consumer to make up or I think try to make up for his loss. B, would

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 12.
Reasons for
Judgment of
The Honour-
able the Chief
Justice.
5th January,
1932.

(Cont'd)

necessarily not object to this by coming into the market since there would be an increased production to the fund by A of which B would receive his share. I see no real distinction between the effects of this Act and that of the "Workmen's Compensation Act." In the latter there is a Committee authorized to take from the employer money with which to compensate workmen for their injuries. It is argued that the employer gets the benefit because he is relieved from actions for damages for injuries to his workmen, but the vendor of fluid milk gets this benefit unless legislation is to be looked upon as confiscatory. He is relieved from the pressure of competition and the class of dairymen who do not enter the fluid milk market get a sum to compensate them for refraining to compete with the others. The incentive to pass the levy on to the consumer does not depend upon the amount of the levy which is to cover the committee's expenses. The levy however is a very substantial one and when a substantial tax is taken from any class of businessmen the tendency doubtlessly is to induce them to add to the price of their product for the purpose of making up their loss. I think the levy made by the Committee is just as much a tax as the levies made by Municipal Corporations for the purpose of carrying on their business. 10 20

Now are these levies, which are taxes (*Lawson v. Interior Committee* (1931 S.C.R. 347/direct or indirect taxes. Levies of the Committee in that case were held to be indirect and the test applied was stated by Lord Haldane at page 938 of his judgment in the *Attorney-General of British Columbia v. Canadian Pacific Railway Co.* (1927) A.C. 934. He said:—

"Validity in accordance with such tendencies, and not according to result in isolated or merely particular instances, must be the test." 30

And *In Bank of Toronto v. Lambe* (1887) 12 A.C. 575, Lord Hobhouse at page 582 said:—

"The Legislature cannot possibly have meant to give a power of taxation valid or invalid according to its actual results in particular cases. It must have contemplated some tangible dividing line referable to and ascertainable by the general tendencies of the tax and the common understanding of men as to those tendencies."

That language is very applicable here. The Legislature by the preamble has made it apparent that the tendency of the levy would be to reduce congestion in the fluid milk market and I am satisfied that the tendency of that purpose would be to increase the price to the consumer no matter what the present fact in that respect should be ascertained to be. The fact that milk is selling 40

at present at a lower price than that paid in past years is no test of the tendency of the Legislation. Other factors such as economic depression which exists at present probably account for the low price of milk at present. As Viscount Haldane said in *Attorney-General of British Columbia v. Canadian Pacific Railway*, supra,

10 "The question of validity could not be made to impose on the Courts the duty of separating out individual instances in which the tax might operate directly from those to which the general purview of the taxation applies. An exhaustive partition would be an impracticable task."

I do not think that even if the case depended upon the trifling amount of the levy which is applicable to the costs of the committee that the smallness of that amount would not affect the defendant's claim of ultra vires. That is one of the facts which is not within the test. Whatever the fact is at present the tendency to take money from dairymen supplying the fluid milk market, however small, would be to induce them to pass that expense on to the consumer. A substantial increase in that tax might very well take place in the future. That point is perhaps not im-
20 portant in this case in my view of the substantial tax upon the dairymen who supply the fluid milk market.

I would, therefore, dismiss the appeal.

"J. A. Macdonald"
C.J.B.C.

VICTORIA, B.C.
5th January, 1932.

RECORD

In the
Court of Appeal
for British
Columbia.

No. 12.
Reasons for
Judgment of
The Honourable the Chief
Justice.
5th January,
1932.

(Cont'd)

RECORD

No. 13.

*In the
Court of Appeal
for British
Columbia.*

COURT OF APPEAL.

No. 13.
Reasons for
Judgment of
The Honour-
able Mr. Justice
McPhillips, J.A.
5th January,
1932.

LOWER MAINLAND DAIRY PRODUCTS SALES ADJUST- MENT COMMITTEE	}	JUDGMENT OF THE HONOURABLE MR. JUSTICE McPHILLIPS.
V.		
CRYSTAL DAIRY LIMITED		

The appeal in this case is from a judgment of Mr. Justice Murphy—the learned Judge with great care and with considerable elaboration has canvassed the pertinent decision bearing upon the construction which should be put upon the “Dairy Products Sales Adjustment Act” which has the general title “An Act for the Relief of Dairy Farmers” (1929 c.20; 1930 c.13; 1931 c.14 B. C.)—and the result of his very able analytical examination was that the Act was in its nature—the imposition of an indirect tax. I confess that I would have been more satisfied to have come to a contrary conclusion but feel constrained and bound by controlling decisions—decisions which are binding upon this Court—the learned trial Judge has dealt with some of them. In *Cotton v. Regem* (1913) 83 L.J., P.C. 105 at p. 114 we find Lord Moulton saying:—

‘Their Lordships pointed out that the question was not what was direct or indirect taxation according to the classification of political economists, but in what sense the words were employed by the Legislature in the British North America Act. At the same time they took the definition of John Stuart Mill as seeming to them to embody with sufficient accuracy the common understanding of the most obvious indicia of direct and indirect taxation which were likely to have been present to the minds of those who passed the Federation Act. The definition referred to is in the following terms: “A direct tax is one which is demanded from the very person who it is intended or desired should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another such as the excise or customs.” In the present case, as in *Lambe’s case*, their Lordships think the tax is demanded from the very person whom the Legislature intended or desired should pay it. They do not think there was either an expectation or intention that he should indemnify

himself at the expense of some other person.' Their Lordships are of opinion that these decisions have established that the meaning to be attributed to the phrase 'direct taxation' in section 92 of the British North America Act, 1867, is substantially the definition quoted above from the treatise of John Stuart Mill, and that this question is no longer open to discussion."

I had occasion in *Attorney-General of British Columbia v. Canadian Pacific Railway Co.* (1926) 37 B.C.R. 481 at pages 500 to 10 507, to give very careful attention to the question here arising and upon the particular facts of that case was of opinion that the tax was not indirect but direct—and therefore within the powers of the Legislature of British Columbia—the case went on appeal to the Privy Council, after an appeal to the Supreme Court of Canada, and the view of their Lordships was that it was indirect—although the fact was that undoubtedly the Railway Company was the entity that would pay the tax and so intended and desired to pay it by the Legislature—with no intention upon the part of the Company to dispose of the fuel oil but to consume it 20 in the operation of its undertakings. Upon the appeal their Lordships of the Privy Council held that the tax so provided for was not a direct tax and was invalid applying the test laid down as to what was a direct and what an indirect tax in *Attorney-General for Manitoba v. Attorney General for Canada* (1925) 94 L.J. P.C. 146; (1925) A.C. 561; affirming the decision of the Supreme Court of Canada (1927) S.C.R. 185 Lord Haldane said in the appeal in *Attorney-General of British Columbia v. Canadian Pacific Railway* (1927) 96 L.J. P.C. 149 at pages 151, 152:—

30 It was laid down by the Board that while a direct tax is one that is demanded from the very person who it is intended or desired should pay it, an indirect tax is that which is demanded from one person in the expectation and with the intention that he should indemnify himself at the expense of another, as may be the case with excise and customs. A tax levied, as in that case the tax was, on brokers and agents and factors, as well as on sellers, obviously fell within the definition of indirect taxation. The meaning of the distinction had been settled by the exposition given of it by the political economists, whose broadly phrased definition had 40 been adopted in earlier decisions, such as *Att.-Gen. for Quebec v. Reed* (Lord Selborne); *Bank of Toronto v. Lambe* (Lord Hobhouse); and *Brewers and Maltsters Association of Ontario v. Att.-Gen for Ontario* (Lord Hershell). It was true that the question of the meaning of the words used in sections 91 and 92 was one, not of political economy but of

RECORD

In the
Court of Appeal
for British
Columbia.

No. 13.
Reasons for
Judgment of
The Honour-
able Mr. Justice
McPhillips, J.A.
5th January,
1932.

(Cont'd)

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 13.
Reasons for
Judgment of
The Honour-
able Mr. Justice
McPhillips, J.A.
5th January,
1932.

(Contd.)

law. Still, as Lord Hobhouse pointed out the legislation must have contemplated some tangible dividing line referable to and ascertainable by the general tendencies of the tax and the common understanding of men as to these tendencies. The definition given by John Stuart Mill was accordingly taken as a fair basis for testing the character of the tax in question, not as a legal definition, but as embodying with sufficient accuracy an understanding of the most obvious *indicia* of direct and indirect taxation, such as might be presumed to have been in the minds of those who passed the Act of 1867. Validity in accordance with such tendencies, and not according to results in isolated or merely particular instances, must be the test. The question of validity could not be made to impose on the Courts the duty of separating out individual instances in which the tax might operate directly from those to which the general purview of the taxation applies. An exhaustive partition would be an impracticable task. 10

Taking the principle so laid down as the guide to the solution of the present question, the result does not seem doubtful. There are two fuel Oil companies which are associated in business in a close fashion. The Union Oil Company of California sells its oil to the Union company of Canada, which has large storage tanks at Vancouver which the former company keeps replenished according to directions from the Canadian company. The respondents purchase oil in British Columbia from the latter company. It is sought to tax them as first purchasers under section 3, and as holders of the oil for consumption under section 6, which has to be read with reference to section 3. It may be true that, having regard to the practice of the respondents, the oil they purchase is used by themselves alone and is not at present resold. But the respondents might develop their business so as to include resale of the oil they have bought. The principle of construction as established is satisfied if this is practicable, and does not for its application depend on the special circumstances of individual cases. Fuel oil is a marketable commodity, and those who purchase it, even for their own use, acquire the right to take it into the market. It therefore comes within the general principle which determines that the tax is an indirect one. 20 30 40

Therefore, as pointed out the principle of construction of the statute law "does not for its application depend on the special "circumstances of individual cases". Here we have the statute declared a relief measure for the Dairy farmers—engaged in the

Dairy industry and selling milk—a commodity vital to the life and well being of the people and to preserve and foster the industry might well be said to be proper legislation upon the part of the Legislature of the Province of British Columbia and within its legislative powers conferred by the British North America Act (Imperial) and not within the powers of the Legislature of the Dominion of Canada—notably—Section 92 of the Act, sub-sections 13 and 16:—

10 “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
.

(13) Property and civil rights in the Province:

(16) Generally all matters of a merely local or private nature in the Province.”

It might perhaps be reasonably said that the impugned legislation here under consideration—is within the language of the two sub-sections above quoted and that unless it contravenes the controlling decisions and has a compelling incidence in the
20 light of the decisions that it partakes of indirect taxation—it should be deemed to be *intra vires* legislation. It cannot be said that the question is too clear for argument—that the legislation may not be *ultra vires*—and as all cases must be decided upon their peculiar facts it is by no means an easy task to determine the exact line of demarcation between the legislative powers of the National and Provincial Legislature, *i.e.*, between the Parliament of Canada and the Parliament of the Province—as conferred by the British North America Act. Under Section 91 dealing with the Legislative authority of the Parliament of Canada we
30 have this:—

Section 91—sub-section (3) “The raising of money by any mode or system of taxation.”

The provincial powers as to taxation are:—

Section 92—sub-section (2) “Direct taxation within the Province in order to the raising of a revenue for Provincial purposes.”

Then it is well to note that at the end of section 91 where the legislative authority of the Parliament of Canada is set forth—we find this significant language:—

40 “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 com-

RECORD

In the
Court of Appeal
for British
Columbia.

No. 13.
Reasons for
Judgment of
The Honour-
able Mr. Justice
McPhillips, J.A.
5th January,
1932.

(Cont'd)

RECORD

In the
Court of Appeal
for British
Columbia.

No. 13.
Reasons for
Judgment of
The Honour-
able Mr. Justice
McPhillips, J.A.
5th January,
1932.

(Cont'd)

prised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Province.”

This language gives one cause to pause and not be too confident of one's view—even where we have the great benefit and advantage of the most erudite decisions of the Privy Council and the Supreme Court of Canada. It is always the duty of the Courts—where possible to make the constitutional ambit of authority conferred upon each Parliament workable and capable of operation—so that all proper and necessary authority may be exercised.

In a country as large as Canada—with the varying conditions existent—many matters are of a local and private nature—and vital to the community and it is conceivable that we have here legislation which is peculiarly necessary and that there should be legislation such as this challenged Act—the preamble of the Act reads as follows:—

“Whereas the demand for milk and cream in fluid form is not always equal to the supply, and consequently some dairy-farmers, in order to avoid a congestion of the fluid-milk market, are obliged to market a portion of their milk in the form of manufactured products at world market prices, which prices are much lower than the price obtained for milk in fluid form: 20

And whereas the whole body of dairy-farmers benefits from the consequent relief of the fluid-milk market:

And whereas it is just and equitable that the result of such sale of milk products be equally distributed over the whole body of dairy-farmers in the district:

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:” 30

Now of course it is not the province of Courts to deal with the policy that actuates the passage of legislation—that is wholly a matter for the Parliaments—yet it is I conceive within the Province of the Courts to give the closest and most minute scrutiny to all challenged legislation—and only after this is done—should legislation solemnly enacted—which Courts must assume is in the way of forwarding public policy—be declared to be *ultra vires* legislation—especially where as in Canada the whole ambit of authority is distributed between the Parliament of Canada and nine Provincial Parliaments each Parliament endeavouring to carry out its conferred powers in furtherance of the well being of the people. We have here legislation which comes home peculiarly to the people of each community and it 40

is a matter of vital importance that there should not be a failure in an industry absolutely necessary for their well being. It, therefore, might be that the legislation could be supported as being "within the class of matters of a local or private nature" comprised in the enumeration of the classes of subjects "assigned exclusively to the legislatures of the Provinces" (Section 91 B.N.A. Act—30 and 31 Vict., C. 3, Imperial). In the *Attorney-General for British Columbia v. Canadian Pacific Railway* (1926) 37 B.C.R. 481 at pages 505, I made use of the following language which I thought then and think now permissible and germane to the subject although perhaps somewhat extra-judicial:—

In considering questions of direct and indirect taxation it is not well nor does it make the permanency of the Dominion that either the Dominion or the Provinces should be held to a too rigid construction of the terms of the Confederation Act (the British North America Act). There should be elasticity of construction, not of course, doing any violence to the language used, but construing that language to fit the changing conditions of the Dominion and Provinces in the course of the development of Canada as a whole. In calling up this consideration, I would refer to the language of an eminent member of the Canadian judiciary, Mr. Justice Middleton, of the Appellate Division (Second Divisional Court) of the Supreme Court of Ontario in *Treasurer of Ontario v. Canada Life Assurance Co.* (1915) 33 O.L.R. 433 at p. 439:—

"Much has been said concerning the clause in question looking only at the words 'direct taxation' torn apart from their context and without regard to their historical setting.

"The framers of the Act sought to mould a stable Dominion out of separate Provinces and to end the jealousy and friction which had resulted from the antagonisms and conflicting interests incident to their separate existence. 'Trade and Commerce' was assigned to the Dominion, and with it had to go the power of imposing customs and excise duties. Manifestly no Province could be permitted to interfere with the general fiscal policy of the Dominion by any such direct tax; but the Province had to be given some source of income; and so direct taxation, and this alone, was permitted.

"These considerations seem to indicate that it was not so much the intention to limit the Provincial powers to taxation which would be direct in the strictest sense in which

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 13.
Reasons for
Judgment of
The Honour-
able Mr. Justice
McPhillips, J.A.
5th January,
1932.

(Cont'd)

RECORD

In the
Court of Appeal
for British
Columbia.

No. 13.
Reasons for
Judgment of
The Honour-
able Mr. Justice
McPhillips, J.A.
5th January,
1932.

(Cont'd)

that term is used by Political writers, as to prevent the imposition of indirect taxes which would tend to interfere with the general policy of the Confederation. The ultimate incidence of the tax was not so much the concern of the draftsmen as the securing of freedom for the Dominion from any interference by the Provinces in matters assigned to it. The term 'direct taxation' ought therefore to be liberally and not narrowly construed, and all taxation which can fairly be regarded as direct should be permitted so long as it is confined 'within the Province'."

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I would particularly refer to the judgment of the Lord

Chancellor (Viscount Cave) in *Halifax City v. James P. Fairbanks' Estate* (1928) L.J.P.C. 11; it was there held that the business tax was a "direct Tax" falling within the authority of section 92, head 2 of the British North America Act 1867 as it was a tax on property and though the taxpayer might seek to pass it on to others the nature and general tendency of the tax and not its incidence in particular or special cases must determine its classification and validity—I would refer to what the Lord Chancellor said at pages 14, 15 and 16, and although the quotation is somewhat long I think it is instructive in this case and well indicates the necessary limitation that must be put on Mill's formula—which had been theretofore ennobled into a legal classic—the views of an economist cannot be accepted as a definition of the law that can only authoritatively be a pronouncement of the Court applying its mind to the particular facts of the case.

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In considering the question so raised it is, Their Lordships think important to bear in mind that the problem to be solved is one of law, the answer to which depends upon a true understanding of the meaning of the expression "direct taxation within the Province" as used in the British North America Act. In this connection some observations made by Lord Hobhouse in delivering the judgment of this Board in *Bank of Toronto v. Lambe* (56 L.J.P.C., at p. 89; 12 App. Cas. at p. 581) are of value. The tax there in question was a tax imposed upon banks and insurance companies carrying on business within the Province of Quebec, and Lord Hobhouse dealt with the point as follows:

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"First, is the tax a direct tax? For the argument of this question the opinions of a great many writers on political economy have been cited, and it is quite proper, or rather necessary, to have careful regard to such opinions, as has been said in previous cases before this Board. But it must not be forgotten that the question is a legal one, namely,

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what the words mean, as used in this statute; whereas the economists are always seeking to trace the effect of taxation throughout the community, and are apt to use the words 'direct,' and 'indirect,' according as they find that the burden of a tax abides more or less with the person who first pays it. This distinction is illustrated very clearly by the quotations from a very able and clear thinker, the late Mr. Fawcett, who, after giving his tests of direct and indirect taxation, makes remarks to the effect that a tax may be made direct or indirect by the position of the taxpayers or by private bargains about its payment. Doubtless, such remarks have their value in an economical discussion. Probably it is true of every indirect tax that some persons are both the first and the final payers of it: and of every direct tax that it affects persons other than the first payers: and the excellence of an economist's definition will be measured by the accuracy with which it contemplates and embraces every incident of the thing defined. But that very excellence impairs its value for the purposes of the lawyer. The legislature cannot possibly have meant to give a power of taxation valid or invalid according to its actual results in particular cases. It must have contemplated some tangible dividing line referable to and ascertainable by the general tendencies of the tax and the common understanding of men as to those tendencies."

The result of these observations, which are closely applicable to the present case, is that their Lordships have primarily to consider, not whether in the view of an economist the business tax imposed on an owner under section 394 of the Halifax City Charter would ultimately be borne by the owner or by someone else, but whether it is in its nature a direct tax within the meaning of section 92, head 2 of the Act of Union. The framers of that Act evidently regarded taxes as divisible into two separate and distinct categories, namely, those that are direct and those which cannot be so described, and it is to taxation of the former character only that the powers of a Provincial government are made to extend. From this it is to be inferred that the distinction between direct and indirect taxes was well known before the passing of the Act; and it is undoubtedly the fact that before that date the classification was familiar to statesmen as well as to economists, and that certain taxes were then universally recognised as falling within one or the other category. Thus, taxes on property or income were everywhere treated as direct taxes; and John Stuart Mill himself, following Adam Smith, Ricardo and James Mill, said that

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 13.
Reasons for
Judgment of
The Honour-
able Mr. Justice
McPhillips, J.A.
5th January,
1932.

(Cont'd)

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 13.
Reasons for
Judgment of
The Honour-
able Mr. Justice
McPhillips, J.A.
5th January,
1932.

a tax on rents falls wholly on the landlord and cannot be transferred to anyone else. "It merely takes so much from the landlord and transfers it to the State" Political Economy, vol. 2, p. 416. On the other hand, duties of customs and excise were regarded by everyone as typical instances of indirect taxation. When therefore the Act of Union allocated the power of direct taxation to the Province, it must surely have intended that the taxation of property and income should belong exclusively to the Provincial Legislatures, and that without regard to any theory as to the ultimate incidence of such taxation. To hold otherwise would be to suppose that the framers of the Act intended to impose on a Provincial Legislature the task of speculating as to the probable ultimate incidence of each particular tax which it might desire to impose, at the risk of having such tax held invalid if the conclusion reached should afterwards be held to be wrong. 10

What then is the effect to be given to Mill's formula above quoted? No doubt it is valuable as providing a logical basis for the distinction already established between direct and indirect taxes, and perhaps also as a guide for determining as to any new or unfamiliar tax which may be imposed in which of the two categories it is to be placed; but it cannot have the effect of disturbing the established classification of the old and well-known species of taxation, and making it necessary to apply a new test to every particular member of those species. The imposition of taxes on property and income, of death duties and of municipal and local rates is, according to the common understanding of the term, direct taxation, just as the exaction of a customs or excise duty on commodities or of a percentage duty on services would ordinarily be regarded as indirect taxation: and although new forms of taxation may from time to time be added to one category or the other in accordance with Mill's formula, it would be wrong to use that formula as a ground for transferring a tax universally recognised as belonging to one class to a different class of taxation. 20 30

If this be the true view, then the reasoning of the majority of the Supreme Court of Canada requires reconsideration. It may be true to say of a particular tax on property, such as that imposed on owners by section 394 of the Halifax Charter, that the taxpayer would very probably seek to pass it on to others; but it may none the less be a tax on property and remain within the category of direct taxes. Probably no one would say that the income tax levied in this 40

country under Schedule A of the Income Tax Act, although levied upon the occupier of property who is authorised to recover it from the owner, is not a direct tax. So, although a customs duty paid by a person importing commodities for his own use is not passed on to anyone else, it would hardly be contended that such a duty is a direct tax within the meaning of the British North America Act. It is the nature and general tendency of the tax and not its incidence in particular or special cases which must determine its classification and validity; and, judged by that test, the business tax imposed on an owner under section 304 is a direct tax.

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The authorities cited by Newcombe, J., show the use made by this Board of Mill's definition in determining whether a new or special tax, such as a stamp duty, a licence duty or a percentage on turnover, should be classed as direct or indirect: but, with the possible exception of *Cotton v. Regem*, which seems to have turned on its own facts, they do not afford any instance in which a tax otherwise recognised a direct has been held to be indirect for the purposes of the British North America Act by reason of any theory as to its ultimate incidence. On the other hand, the case of *Montreal City v. Att.-Gen. for Canada*, where land in Montreal belonging to the Crown in right of the Dominion and let to a tenant was held to have been validly assessed under a section of the City Charter which enacted that persons occupying for commercial purposes land belonging to the Federal Government should be taxed as if they were the owners, appears to be directly in point and to support the contention of the appellant in this case.

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30 Upon the whole their Lordships have come to the conclusion that the tax here in dispute is direct taxation within the meaning of the statute, and accordingly that this appeal should be allowed”

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The latest pronouncement upon this subject, *i.e.*, direct and indirect taxation under the provisions of the British North America Act by the Supreme Court of Canada was given in *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction and Attorney-General of Canada*. (1931) S.C.R. (Canada) 357—the legislation there considered has some analogous features to that of the legislation here under consideration and it was there held that the legislation was *ultra vires* of the provincial legislature—in that case at page 372 Mr. Justice Newcombe concluded his judgment by saying:—

Now I wish to exclude, for the purposes of this judgment, any conclusion as to what the result would be if the

RECORD

In the
Court of Appeal
for British
Columbia.

No. 13.
Reasons for
Judgment of
The Honour-
able Mr. Justice
McPhillips, J.A.
5th January,
1932.

(Cont'd)

RECORD

In the
Court of Appeal
for British
Columbia.

No. 13.
Reasons for
Judgment of
The Honour-
able Mr. Justice
McPhillips, J.A.
5th January,
1932.

(Contd.)

Produce Marketing Act of British Columbia were not within any of the Dominion enumerated powers; there it appears that differences might emerge, and these are subjects of debate in which it is not necessary that we should now engage, because I am in complete agreement with the majority of my learned brothers that the legislation is referable to the exclusive Dominion power to regulate trade and commerce.

I thought there were two ways, either of which would serve to demonstrate the invalidity of the Act, and I had proposed to shew, independently of s. 91, that the legislation was neither property and civil rights nor private and local matters in the province; and, consequently, not within any of the provincial enumerations—a *ratio decidendi* which I thought free from difficulty. But, seeing that the majority of the Court has reached practically the same result by the other route, holding that the subject matter is embraced in the regulation of trade and commerce, where I think it strictly belongs, I am content, for the present purposes, to leave the extent of the provincial field, as defined by s. 92 unexplored. 10 20

It is to be observed that Mr. Justice Newcombe indicates that unless the legislation is clearly within one of the Dominion enumerated powers “differences might emerge” “and those are “subjects to debate in which it is not necessary that we should “now engage.” I certainly am not of the view that in the present case—there is not room for debate nor am I of the view that the case reaching the ultimate Court of Appeal—it could be at all as definitely stated as in the Lawson case that the legislation is ultra vires of the Provincial legislature. The question to here determine is difficult of decision as each new piece of legislation calls up for consideration many points that remain untouched by the precedents up to the present time. 30

In the present case it cannot possibly be so clearly stated or possibly not at all—that the legislation falls within the *ratio decidendi* of the Lawson case—supra, i.e., *Trade and Commerce*—was in that case the turning point of the case—and the majority of the Court—Duff, Newcombe, Rinfret, and Lamont, JJ. deciding that the legislation—there under consideration—was referable to the exclusive Dominion power to regulate trade and commerce—and upon the facts of that case had relation to products in the main being marketed outside the Province and contracts made in relation thereto—outside the Province. Here we have nothing of that nature—the legislation is referable only it 40

may be well argued to property and civil rights and relative only to private and local matters in the Province.

In view of the decisions I have referred to the matter here under consideration cannot but be said to have complex features and whilst I feel that there is much doubt as to whether the legislation under review is *ultra vires* yet in view of the controlling decisions which would seem to be pertinent and which are binding upon this Court, I do not find myself at liberty to go the length of saying that the judgment of the Court below is wholly wrong
 10 —trusting that in due course the matters in question will have the consideration of the ultimate Court of Appeal.

(Sgd.) A. E. McPhillips,
 J.

VICTORIA, B. C.
 5th Jany. 1932.

RECORD

*In the
 Court of Appeal
 for British
 Columbia.*

No. 13.
 Reasons for
 Judgment of
 The Honour-
 able Mr. Justice
 McPhillips, J.A.
 5th January,
 1932.

(Cont'd)

RECORD

In the
Court of Appeal
for British
Columbia.

No. 14.

COURT OF APPEAL.

No. 14.

Reasons for
Judgment of
The Honour-
able Mr. Justice
M. A. Macdon-
ald, J.A.
5th January,
1932.

LOWER MAINLAND DAIRY
PRODUCTS SALES ADJUST-
MENT COMMITTEE

vs

CRYSTAL DAIRY LIMITED

JUDGMENT OF
THE HONOURABLE
MR. JUSTICE
M. A. MACDONALD

Appeal from the judgment of Mr. Justice Murphy holding that it was beyond the competency of the Provincial Legislature to enact the "Dairy Products Sales Adjustment Act (Stats. B.C. 1929, chapter 20 and amending Acts). Evidence was admitted showing conditions in the dairy industry in the past fifteen years. It is, I think, permissible to show the state of facts upon which legislation is based; the condition the Act was designed to remedy in order to ascertain the true import of the legislation. In *Attorney-General of Manitoba vs Attorney-General of Canada* (1925) A.C. 561 it is recited in the judgment of Viscount Haldane, at p. 565, that

"an agreed statement of facts put in by the Attorneys-General concerned shows the course of the business in the sale and disposal of grain to which the Act may apply."

The facts should be ascertained to determine whether the levies imposed and adjustments made is a tax in the sense the word is used in the Act of 1867 and, if a tax, whether direct or indirect.

Local conditions over a number of years revealed that at all times there was an over-supply of milk and cream in fluid form because of a restricted local market. The unsaleable surplus was converted into manufactured by-products (butter, condensed milk, cheese etc.) and sold at world market prices for less than that obtained for milk and cream in fluid form. Increased sales in the manufactured form would lessen congestion in the local fluid market to the advantage of all engaged in the dairying industry. Because of more profitable returns the tendency of all before the Act was passed was to sell milk and cream in fluid form. To promote therefore the common interest this legislation was passed to permit adjustments to be made so that the producers of fluid milk and of manufactured products would share equally in returns. That in brief is the scheme of the Act.

True over-production of milk and cream would have a tendency to lessen the price to the consumer. Voluntary or compulsory curtailment would however avert that tendency and if by an Act of the provincial legislature dairy farmers were compelled to limit production it would not be *ultra vires*. We are concerned therefore only with the details of the legislation, creating machinery for its operation, involving the imposition and collection of levies through a committee and the adjustment of returns received.

- 10 A corporation known as a Committee of Adjustment was created by the Act consisting of three members, one appointed by the Lieutenant-Governor-in-Council and the other two by Dairy Co-operative Associations. The Committee might ascertain monthly (section 9) the standard price of milk and manufactured products sold in the local area over which it had jurisdiction, and spread the difference in total value between the two sums realized over the whole body of dairy farmers within the district. It had power to compel any dairy farmer to pay to it his proportion of the difference in total value and to apportion and pay
20 to other farmers a share of the contribution so obtained in order that returns received by all would be practically equalized.

The Committee is authorized to employ officers, servants and agents to perform the clerical duties involved and to rent or purchase premises and equipment necessary in carrying out the duties assigned. This involved an outlay and to obtain the necessary funds it was enacted (9 i) that "for the purpose of defraying expenses of operation" it might—

- 30 "impose levies on milk and (or) manufactured products sold or disposed of which shall be payable at such rates and in such manner and at such times as may be fixed by the Committee."

Section 11 provides that

"Where the amount levied on a dairy farmer by a Committee under section 9 is not paid by him within any time fixed for payment the Committee may sue and recover the amount as a debt due to it by the dairy farmer."

- 40 By section 14 (1) no dairy farmer, unless exemption is obtained, may sell or dispose of his milk or manufactured product without obtaining a licence from the committee. All necessary control is exercised to enable the Committee to carry out the basic purpose of the Act. Failure to comply with orders and regulations is an offence against the Act for which penalties are imposed.

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 14.
Reasons for
Judgment of
The Honour-
able Mr. Justice
M. A. Macdon-
ald, J.A.
5th January,
1932.

(Cont'd)

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 14.
Reasons for
Judgment of
The Honour-
able Mr. Justice
M. A. Macdon-
ald, J.A.
5th January,
1932.

(Cont'd)

It is submitted that both the "levy" and the "adjustment" constitute (1) a tax and (2) an indirect tax. Whatever may be said of the "levies" it is, in my opinion, going far afield to describe as a "tax" a sum of money taken from the larger returns received by A for his product to compensate B for the smaller returns obtained for his product to the end that by pooling joint receipts each may share alike in revenue from an industry in which both are engaged, although in different branches. A is really sharing the losses of B for the joint benefit of both. Better to do so than to allow a situation to continue where surplus milk and cream, for want of a market, would go to waste, or where (by all attempting to share in that market) prices would be depressed. If A sells milk at 70c a pound and B sells butter at 30c, 20c per pound is taken from A's return and given to B. The resemblance of this "adjustment" to a tax is too faint to be visible to the mental eye. Twenty cents is not taken from A, or, if the term is preferred, imposed upon A (as taxes are) for public purposes, nor yet given to B for public purposes. It is for the benefit of A and B, particularly B and others in the industry (i.e. private owners); not for the benefit of the public. It was suggested that A was taxed and a bonus paid to B. That is not, to my mind, the true interpretation although it bears some resemblance to confiscation on the one hand and a grant on the other. I am assuming for the moment, that this scheme is carried out by a public body. One should not resort to a strained interpretation of the true nature of a transaction to compel it to take the form of a tax. Substantially it is in the nature of an agreement with legislative sanction to pool receipts—an arrangement between previously competing vendors, carried out through a committee, by which returns are adjusted and receipts divided, either to do away with injurious competition or, to relieve over-production in the highest market by making it equally profitable to sell in a lower market. To say that this is "the raising of money by any mode or system of taxation" (sec. 91 (3) of Act of 1867) or some kind of "direct taxation within the province in order to the raising of a revenue for provincial purposes" (sec. 92 (2) is unwarranted. In my opinion the amount taken from A's return is not a tax at all.

I deal now with the question of "levies". First, is it a tax? The taxation sections of the Act of 1867 should be interpreted and applied in the light of changing conditions in industry. Acts designed to divert trade from its ordinary channels and to control the marketing and distribution of commodities is a feature of modern legislation. It is in some aspects contemplated, if not resorted to, in matters affecting international trade. Whether

wise or otherwise such legislation may be enacted by provincial legislatures if civil rights within the province only are affected, no indirect taxation imposed or trade and commerce in the general sense interfered with. All such legislation however limited its scope as to area or as to the products affected, involves the procuring of revenue, usually infinitesimal in amount when distributed, to defray administrative costs unless defrayed by the government. In my view the word "tax" should not be applied to the collection of incidental expenses for the payment of salaries, etc., even although obtained from the sale of products controlled by the Act. A tax from the earliest times has been regarded as a compulsory levy on persons, property, commodities, etc., for the support of governments, or of corporate creations of governments, *exercising public rights*.

The essence of taxation is that it is imposed by superior authority without the taxpayer's consent, except insofar as representative government operates by the consent of the government (*City of Halifax vs. Nova Scotia Car Works Ltd.* (1914) A.C. 992 at 998).

It includes levies for the payment of work carried on by county, township or municipal authorities. It is also applied to levies by small local bodies but, as if in harmony with the view that the word "tax" and "taxation" is more appropriate for the wider domain of government, the word "rates" is often applied to the levies of local bodies. I am not suggesting of course that such rates are not a tax. I merely refer to it to indicate that the word "tax" gradually disappears as we leave the wider domain of government and enter less exalted spheres. Taxation appertains to the levies of public bodies *for public purposes*. I do not think, strictly speaking, that the Committee should be regarded as a public body although it may not be necessary to go that far; in any event it is difficult to say that these funds are obtained for public purposes. True the word "levy" as used suggests a "tax" but we should regard the substance rather than the form. The word "dues" or "membership fees" might, with equal propriety, describe the moneys obtained, none the less so because imposed by a body clothed with legislative authority to collect and to enforce payment. The legislature can give authority to collect sums of money other than taxes.

It is true that in *Workmen's Compensation Board v. Canadian Pacific Railway Company* (1920) A.C. 184 the "accident fund" under the Act in question secured by assessments on the pay-rolls of industrial concerns, to pay for injuries to dependent

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 14.
Reasons for
Judgment of
The Honour-
able Mr. Justice
M. A. Macdon-
ald, J.A.
5th January,
1932.

(Cont'd)

RECORD

In the
Court of Appeal
for British
Columbia.

No. 14.
Reasons for
Judgment of
The Honour-
able Mr. Justice
M. A. Macdon-
ald, J.A.
5th January,
1932.

(Contd.)

workmen and to create a reserve fund etc. was regarded as direct taxation and of course necessarily as a tax. It was not treated as an indirect tax doubtless because it did not attach to the selling price of the product although the inherent tendency would be to enhance the price even although controlled by world markets. World prices must be appreciably affected by costs of production everywhere and one of the items of cost would be assessments of this nature. It would appear that the question as to whether or not it was an indirect tax was not raised in this case. If the Workmen's Compensation Board (assuming it was constituted an independent body) had only power to collect from the industries affected, a comparatively small amount for administrative expenses the government itself by levy collecting the large assessments to accumulate an "accident fund" the latter would be a tax but the former should not be so regarded. The levy for expenses would not be made for a public purpose. The assessments to create and maintain the "accident fund" were, I assume, treated, as in effect, a tax imposed by the government, acting through a Board. Viscount Haldane, at p.190, said:—

"Nor can it be successfully contended that *the province* had not a general power to impose direct taxation in this form on the respondents for provincial purposes."

That is the only reference to the point. The levy, in effect, is imposed by the province—therefore it is a tax. By a section of that Act (sec. 34) the Lieutenant-Governor-in-Council might direct payment annually out of consolidated revenue to form part of the "accident fund" a sum not exceeding \$50,000. The Minister of Finance too is the custodian (sec. 53) of all moneys and securities; moneys received are accounted for as part of the consolidated revenue and payments out, drawn from the Provincial Treasury. Further reference to the relation of the Board to the government may be found in the judgment of Macdonald, J., in *In re Smith Lumber Company* (1917) 3 W.W.R. 844 at 848 wherein he finds (rightly I think), after outlining many sections of the Act that it

"is simply an adjunct or administrative body exercising its powers and acting for the provincial government on behalf of the province:"

and

"moneys payable to the accident fund are due to the province."

In *Roseberry Surprise Mining Company vs. Workmen's Compensation Board* (1920) 2 W.W.R. 676 it was held that the

Board is the servant or agent of the Crown. In this view the levies imposed by the Board are made by a public body and, if for public purpose, constitute a tax. The Committee in the case at bar has, in reality, none of the characteristics referred to. The funds obtained by it for incidental administrative expenses (I refer to the levy) cannot be compared to the levies made, practically by the government itself, to accumulate an accident fund.

10 However, while I venture to express the opinion that the levy under consideration in this appeal is not a tax I am bound by the decision of the Supreme Court of Canada in *Lawson v. Interior Tree Fruit and Vegetable Committee* (1931) S.C.R. 357 to so regard it unless that decision might have been different if the levy was not associated with an Act regulating trade and commerce. I think, however, I must assume that the Act considered in the *Lawson case*, while wider in its ramifications and raising questions not involved in this appeal, was regarded insofar as the question of levies is concerned as of similar import. This Act is found in the Statutes of British Columbia of 1926-27, Chapter 54, Section 10 (k) thereof provided that—

20 “For the purpose of defraying the expenses of operation, to impose levies on any product marketed which shall be payable at such rates and in such manner and at such times as may in the case of the Interior Committee be fixed by the Federation, and in the case of any other committee, by the committee; and to borrow or raise money and to secure the repayment of the same by charging any such levies or otherwise.”

At p. 363 Mr. Justice Duff said:—

30 “That they are taxes, I have no doubt. In the first place they are enforceable by law. Under s. 13 they can be sued for, and a certificate under the hand of the chairman of the Committee is *prima facie* evidence that the amount stated is due; and the failure of a shipper to comply with an order to pay such a levy would appear to be an offence under the Act by s. 15. Then they are imposed under the authority of the legislature. They are imposed by a public body. This Committee, of which the chairman is appointed by the Lieutenant-Governor-in-Council, and which is invested with wide powers of regulation and control over the fruit and vegetable industry within a great extent of territory, constituted by, and acting in every way under, the authority of the statute, exercising compulsory powers as well as inquisitorial powers of a most exceptional character, is assuredly a public author-

40

RECORD

In the
Court of Appeal
for British
Columbia.

No. 14.

Reasons for
Judgment of
The Honour-
able Mr. Justice
M. A. Macdon-
ald, J.A.
5th January,
1932.

(Cont'd)

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 14.
Reasons for
Judgment of
The Honour-
able Mr. Justice
M. A. Macdon-
ald, J.A.
5th January,
1932.
(Contd.)

ity. The levy is also made for a public purpose. When such compulsory, not to say dictatorial, powers are vested in such a body by the legislature, the purposes for which they are given are conclusively presumed to be public purposes. Indeed, when one considers the number of people affected by the orders of this Committee, and the extent of the territory over which it executes its orders and directions, it becomes evident that, in point of their potential effect upon the population of the territory and of the interest of the population of the territory in the Committee's activities, the operations of the Committee, as contemplated by the statute, greatly surpass in public importance many municipal schemes, the levies for the support of which nobody could dispute, would come under the head of taxation." 10

While, as I think we are bound by that judgment, I trust I may, without presumption and with the greatest respect for the views of so eminent a judge, express my personal dissent. The analogy to municipal levies and the impositions of public bodies is drawn because it is recognized that it is in that field the word "tax" receives its ordinary and appropriate designation. To support that analogy the "wide powers" of the Committee are referred to. I do not think the question of dimensions is a conclusive factor. I think, without discussing it in detail, that the inherent characteristics of a "public body" are not found in a Committee, clothed though it may be with legislative authority, dealing with a single marketable product even though of general use and utility. One may conceive of a single commodity, so regulated, produced only by a small number in a given area, and consumed by a limited number. Yet the administrative committee would have to be regarded as a public body and the purpose in collecting revenue from the sale of the product, perhaps to pay a single secretary, a public purpose. But whether a public body or not no public purpose is served, I would suggest, with deference, in obtaining funds, no matter from what source, to pay salaries of officials and to meet running expenses. Judgments are only decisive in relation to the facts under review but, unless the word "tax" is restricted to apply only to levies made by "*public bodies for public purposes*" in the true sense in which the words ought to be employed, we may by analogy be carried far afield in legislation affecting industrial and other activities. If a safe anchorage is neglected in defining the word "tax" we may drift into unsafe currents. If, as suggested, "wide powers of regulation and control" and "great extent of territory" is to be the criterion, where is the line to be drawn? At what point will such functions reach the stage of public activities? The characteristic features 20 30 40

associated with the words "public purposes" should be found before the fund in a treasury for administrative purposes should be classified as the proceeds of a tax.

Assuming, however, as we must, that the "levy" (not the "adjustment") is a tax is it indirect? It is infinitesimal in amount. No satisfactory evidence however detailed could, at this stage, prove that it affected the selling price. That however is not the test. Yet the facts may be referred to. There has always been a surplus of milk for the local market and production has
 10 been increasing; also of course the number of consumers. That governs the price. The levy amounts to approximately one-twenty-fifth of a cent on a quart of milk. That might be increased if overhead expenses increased. For fifteen years milk was always sold on the basis of a certain number of quarts for a dollar—eight, nine, or, as at the present time, twelve quarts for that sum. With that method of sale it would be difficult, if not impracticable, to add one-twenty-fifth of a cent to each quart sold. It was testified that the Act had "nothing to do with the price of milk." The following evidence was also given—

20 Q. "Now on the question of the levy that is assessed, can you tell me any possible way that that twenty-fifth of a cent could be passed on to the Vancouver consumer in purchasing his milk at so many quarts for a dollar?"

A. "Oh no, that is not possible; it is not practical; it could not be done; you just could not."

There is another element. About 75 per cent. of the dairy farmers are on the receiving end (in respect to the adjustment) and 25 per cent. on the paying end: in other words 25 per cent. are marketing all their milk on the fluid market while 75 per cent.
 30 market a portion of their milk as manufactured products. Additional returns obtained by adding the small levy to the selling price received by the smaller number would mean a slightly larger payment in adjustments, only however to an infinitesimal extent. It would scarcely be noticeable. But additional returns for milk and cream would induce more competition by the other group. The evidence is that the fluid market is more attractive "nobody seems anxious to manufacture." I mention these features to raise for consideration the question—will the law regard trifles when considering the tendency of a tax? However small
 40 as it is (and it would disappear altogether if dairy farmers themselves undertook to do the work of the committee voluntarily) it must be either part of the cost of production or part of the selling price of the commodity. I have no doubt that at present it disappears in production costs. The manner in which milk is sold makes that evident. Certainly if the evidence is to be accepted

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 14.
Reasons for
Judgment of
The Honour-
able Mr. Justice
M. A. Macdon-
ald, J.A.
1932.

(Cont'd)

RECORD

In the
Court of Appeal
for British
Columbia.

No. 14.
Reasons for
Judgment of
The Honour-
able Mr. Justice
M. A. Macdon-
ald, J.A.
5th January,
1932.
(Contd.)

literally the levies do not enter into (nor yet affect) the price of milk and cream in the fluid milk market. I do not think this small levy would either enable the producers to raise prices, or, on the other hand, prevent them from doing so.

While, however, the foregoing facts may be considered I am compelled to find that the levies (assuming as I do that it is a tax) is an indirect tax I think the *Lawson case, supra* decides this point. Mr. Justice Duff, at p. 362, says—

“I think the contention of the appellant is well founded, that such levies so imposed, have a tendency to enter into and to affect the price of the product. I think, moreover, that levies of that character, assuming for the moment they come under the head of taxation, are of the nature of those taxes on commodities, on trade in commodities, which have always been regarded as indirect taxes.” 10

The first part of the quotation makes it clear that under the Act then considered the “tax” was indirect because of its tendency to affect the price. If the levy was larger in amount, as in nearly all other cases reviewed by the courts, no difficulty would arise. I think, however, any difficulties disappear when we apply the principles stated by Lord Hobhouse (and often quoted) in *Bank of Toronto v. Lambe* (1887) 12 A.C. 575 at 581 and 582. The passage referred to was quoted by Lord Warrington of Clyffe in the *King v. Caledonian Collieries Ltd.* (1928) A.C. 358 at 361 and 362. It must be taken as applicable to the facts under review but principles of general application are enumerated. “It must not” his Lordship states “be forgotten that the question is a legal one, viz., what the words mean as used in this Statute.” To ascertain the meaning of the words one must take its setting and the course of business in the industry affected by the Act. That involves a consideration of the facts and the fact already mentioned relied upon by appellant, viz., the practice for years of selling the product at the basic price of \$1.00 for a certain number of quarts. An extra quart could not very well be withheld because of the levy of one-twenty-fifth of a cent on each quart. 20 30

All the foregoing facts might be regarded as conclusive by writers on political economy. Lord Hobhouse refers to the opinions of writers who are “always seeking to trace the effect of taxation throughout the community and are apt to use the words “direct” and “indirect” according as they find that the burden of a tax abides more or less with the person who first pays it.” It is conceivable that on the facts economists might find in the case at bar that the burden remains with the producer, as part of the cost of production because of the practical inability or futility of any attempt to pass it on. Lord Hobhouse quotes too 40

Mr. Fawcett who "makes remarks to the effect that a tax may be made direct or indirect by the position of the taxpayers or by private bargains about payments." But these references are made only to be criticized as an unreliable guide. They have value doubtless "in an economical discussion" but "that very excellence impairs its value for the purposes of a lawyer." After pointing out the probability that in every indirect tax some persons may be "the first and final payers of it" and that every direct tax "affects persons other than the first person" he says—

- 10 "The legislature cannot possibly have meant to give a power of taxation valid or invalid according to its actual results in particular cases. It must have contemplated some tangible dividing line referable to and ascertainable by the general tendencies of the tax and the common understanding of men as to those tendencies."

- I think this disposes of the view that because in this particular case the tax may be absorbed by the purchaser it is therefore direct. That is not the general tendency of such a tax nor yet "the common understanding of men" in respect thereto. In *Attorney-General for British Columbia v. Canadian Pacific Railway Company* (1927) A.C. 934 at 938 Viscount Haldane said—

"validity in accordance with such tendencies, and not according to results in isolated or merely particular instances, must be the test. The question of validity could not be made to impose on the courts the duty of separating out individual instances in which the tax might operate directly from those to which the general purview of the taxation applies. An exhaustive partition would be an impracticable task."

- 30 In that case, on the facts, as they appeared at the time the action was launched, the commodity taxed was not resold at all and the tax could not be passed on. But conditions might change—so that re-sales might be made because it was a marketable commodity. In the case at bar it is conceivable that overhead outlays might increase bringing about a larger levy but apart from that, perhaps remote possibility, the tendency is there and no matter what the fact may be at present the levy—assuming it to be a tax—is indirect.

- 40 As in my view the "adjustment" is not a tax I do not think it necessarily follows that because the "levy" must be regarded as an indirect tax the whole Act is invalid. Conceivably the legislature might enact it without sub-sec. (i) of section 9. In that event dairy farmers might by personal contribution in another form provide for these outlays.

M. A. Macdonald, J.A."

Vancouver, B. C.
Jan. 5, 1932.

RECORD

In the
Court of Appeal
for British
Columbia.

No. 14.
Reasons for
Judgment of
The Honour-
able Mr. Justice
M. A. Macdon-
ald, J.A.
5th January,
1932.

(Cont'd)

COURT OF APPEAL.

RECORD
In the
Court of Appeal
for British
Columbia.

No. 15.
Formal Judgment of Court
of Appeal,

BETWEEN

LOWER MAINLAND DAIRY PRODUCTS
SALES ADJUSTMENT COMMITTEE,
Plaintiff (Appellant)
and
CRYSTAL DAIRY LIMITED,
Defendant (Respondent)

B.C.L.S. 10
\$1.10
Vancouver
Jan. 22, 1932
Registry

FORMAL JUDGMENT OF COURT OF APPEAL.

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF BRITISH
COLUMBIA
THE HONOURABLE MR. JUSTICE MARTIN
THE HONOURABLE MR. JUSTICE GALLIHER 20
THE HONOURABLE MR. JUSTICE McPHILLIPS
THE HONOURABLE MR. JUSTICE M. A. MACDONALD.

Victoria, B. C., the 5th day of January, A.D. 1932.

THIS APPEAL from the Judgment of the Honourable Mr. Justice Murphy pronounced the 26th day of September, A.D. 1931, coming on for hearing on the 17th, 18th and 19th days of November, A.D. 1931, and UPON HEARING Mr. R. L. Maitland, K.C., and Mr. W. G. McQuarrie, K.C., of Counsel for the Appellant and Mr. J. W. deB. Farris, of Counsel for the Respondent, and UPON READING the appeal book herein, and judgment being reserved thereupon; 30

THIS COURT DOTH ORDER AND ADJUDGE that the

said appeal be and the same is hereby dismissed with costs to be paid by the Appellant to the Respondent after taxation thereof.

BY THE COURT

“J. F. Mather”

REGISTRAR.

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 15.
Formal Judgment of Court
of Appeal,
(Cont'd)

SEAL

10 APPD.
“R.L.M.”
“H.B.”
D.R.
“J.A.M.”
C.J.B.C.

Entered
Jan. 22, 1932
Order Book, Vol. 8, Fol. 273
per “L.J.B.”

COURT OF APPEAL.

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 16.
Order for
Conditional
Leave to
Appeal.
25th January,
1932.

B.C.L.S. \$1.10
Vancouver
Jan. 28, 1932
Registry
Seal of
Court of
Appeal.

BETWEEN:

10

LOWER MAINLAND DAIRY PRODUCTS
SALES ADJUSTMENT COMMITTEE,

Plaintiff (Appellant)

AND:

CRYSTAL DAIRY LIMITED,

Defendant (Respondent)

ORDER FOR CONDITIONAL LEAVE TO APPEAL.

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF BRITISH
COLUMBIA

20

THE HONOURABLE MR. JUSTICE McPHILLIPS
THE HONOURABLE MR. JUSTICE MACDONALD.

MONDAY, the 25th day of January A.D. 1932.

UPON MOTION made this day to this Court sitting at Victoria, British Columbia, on behalf of the above-named Plaintiff (Appellant) for leave to appeal to His Majesty in his Privy Council from the Judgment of this Honourable Court pronounced herein on the 5th day of January A.D. 1932 AND UPON HEARING R. L. Maitland, K.C., of Counsel for the Plaintiff (Appellant) and Mr. H. C. Hall, K.C. of Counsel for the Defendant (Respondent);

30

THIS COURT DOTH ORDER that subject to the performance by the said Plaintiff (Appellant) of the conditions hereinafter mentioned, and subject to the final Order of this Court upon the due performance thereof, leave to appeal to His Majesty in

his Privy Council against the said Judgment of this Honourable Court be granted to the Plaintiff (Appellant).

AND THIS COURT DOTH FURTHER ORDER that the said Plaintiff (Appellant) do within Fifteen (15) days from the date hereof, provide security to the satisfaction of this Honourable Court in the sum of £500/0/0 sterling for the due prosecution of the said Appeal and the payment of all such costs as may become payable to the Defendant (Respondent) in the event of the Plaintiff (Appellant) not obtaining an Order granting it
 10 leave to appeal, or of the Appeal being dismissed for non-prosecution, and for the payment of such costs as may be awarded by His Majesty, His Heirs, and Successors, or by the judicial committee of the Privy Council to the said Defendant (Respondent) on such Appeal.

AND THIS COURT DOTH FURTHER ORDER that the Plaintiff (Appellant) do within Forty-five days from the date of this Order, in due course take out all appointments that may be necessary for settling the transcript record on such Appeal, to enable the Registrar to certify that the transcript record has
 20 been settled, and that the provisions of this Order on the part of the Plaintiff (Appellant) have been complied with.

AND THIS COURT DOTH FURTHER ORDER that the costs of the transcript record of Appeal, and of all necessary certificates and of all costs of and occasioned by the said Appeal shall abide the decision of the Privy Council with respect to the costs of Appeal.

AND THIS COURT DOTH FURTHER ORDER that the Plaintiff (Appellant) be at liberty, within Sixty (60) days from the date of this Order, to apply for an Order for leave to Appeal
 30 as aforesaid on production of a certificate under the hand of the Registrar of due compliance on its part with the terms of this Order.

AND THIS COURT DOTH FURTHER ORDER that all parties may be at liberty to apply to this Court wheresoever the same may be sitting.

BY THE COURT,

“J. F. Mather”
 REGISTRAR.

Approved:
 “H. C. Hall.”

40 “O.B.
 D.R.”
 “J.A.M.
 C.J. B.C.”

Entered January 28th, 1932.
 Order Book, Vol. 8, Fol. 277.
 Per “A.L.R.”

RECORD

In the
 Court of Appeal
 for British
 Columbia.

No. 16.
 Order for
 Conditional
 Leave to
 Appeal.
 25th January,
 1932.

(Cont'd)

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 17

COURT OF APPEAL.

No. 17.
Certificate of
Registrar as to
Delivery of
Reasons for
Judgment,
18th February,
1932.

BETWEEN :

LOWER MAINLAND DAIRY PRODUCTS SALES
ADJUSTMENT COMMITTEE,
PLAINTIFF
(APPELLANT)

AND:

CRYSTAL DAIRY LIMITED,
DEFENDANT 10
(RESPONDENT)

I, the undersigned Registrar of the City of Vancouver, of the Court of Appeal of British Columbia, DO HEREBY CERTIFY that the only Reasons for Judgment that have as yet been handed down by the Judges of this Honourable Court sitting on this Appeal, are those of the Honourable the Chief Justice, Mr. Justice McPhillips and Mr. Justice M. A. Macdonald.

AND I FURTHER CERTIFY that I have applied to the Honourable Mr. Justice Martin and the Honourable Mr. Justice Galliher for their Reasons for Judgment, but up to this date, the 20 same have not been delivered.

DATED at Vancouver, B. C., this 18th day of February, A.D. 1932.

“J. F. MATHER”
REGISTRAR.

“A.L.R.”
VANCOUVER
REGISTRY
FEB 18 1932

B.C.L.S.
\$1.00

SEAL
BRITISH COLUMBIA
COURT OF APPEAL

86a

No. 18

REGISTRAR'S CERTIFICATE OF COMPLIANCE
WITH ORDER.

RECORD

*In the
Court of Appeal
for British
Columbia.*

No. 18
Registrar's
Certificate of
Compliance
with Order,
7th March, 1932

I, the undersigned, Registrar of the Court of Appeal in Vancouver, B. C., HEREBY CERTIFY that pursuant to the order of the Court of Appeal, dated Monday, the 25th day of January, A.D. 1932, the sum of £500/0/0 sterling was on the 2nd day of February 1932 paid into Court to the credit of this cause as security for the due prosecution of the appeal herein to His
10 Majesty in his Privy Council and payment of all such costs as may become payable to the defendant (respondent) in the event of the plaintiff (appellant) not obtaining an order granting it leave to appeal or of the appeal being dismissed for non-prosecution and for the payment of such costs as may be awarded by His Majesty, his heirs and successors, or by the judicial committee of the Privy Council to the said defendant (respondent) on such appeal, and that the said plaintiff (appellant) has taken out all appointments necessary for settling the transcript record on such appeal in compliance with the said order of the 25th day
20 of January A.D. 1932.

DATED at Vancouver, B. C., this 7th day of March A.D. 1932.

J. F. MATHER

Registrar.

(Seal)
(Court of Appeal)
(British Columbia)

Vancouver
30 March 7, 1932
Registry

L.S.
\$1.10

*In the
Court of Appeal
for British
Columbia.*

ORDER GRANTING FINAL LEAVE TO APPEAL.

No. 19
Order Granting
Final Leave to
Appeal,
10th March,
1932.

Vancouver
Mar. 10, 1932
Registry

B.C.L.S. \$1.10

Court of Appeal
(Seal)
British Columbia

10

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF
BRITISH COLUMBIA,
THE HONOURABLE MR. JUSTICE McPHILLIPS
THE HONOURABLE MR. JUSTICE MACDONALD

THURSDAY, the 10th day of March, 1932.

UPON MOTION made to the Court this day for final leave to appeal, UPON READING the Order made by this Court dated the 25th day of January 1932, and the Certificate of the Registrar of this Court at Vancouver, dated the 7th day of March 1932, of due compliance with the said Order; AND UPON HEARING Mr. W. G. McQuarrie, K.C of Counsel for the said plaintiff (appellant), and Mr. J. W. deB. Farris, K.C., of Counsel for the defendant (respondent):

THIS COURT DOTH ORDER that leave to appeal to His Majesty in his Privy Council be and the same is hereby granted to the said plaintiff (appellant).

"J.F.M. R."

BY THE COURT,

30

"J.A.M."

H. BROWN

"C.J.B.C."

DEP. REGISTRAR.

ENTERED
MAR 10 1932

Order Book, Vol. 9 Fol. 1
Per "A.L.R."

40

PART II.

EXHIBITS
AND
DOCUMENTS

EXHIBIT NO. 1

BYNG OF VIMY.
(L.S.)

CANADA

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, KING, Defender of the Faith, Emperor of India.

10 To all to whom these presents shall come, or whom the same may
in anywise concern,

GREETING:

A PROCLAMATION

W. STUART EDWARDS,
Deputy Minister of Justice,
Canada.

20 WHEREAS in and by Section 28 of the Animal Contagious Diseases Act, Chapter 75, Revised Statutes of Canada, 1906, it is provided that the Governor in Council may from time to time make such regulations and orders as to him seem necessary for among other things, the segregating and confining of animals within certain limits, for establishing districts of inspection of quarantine, and for prohibiting or regulating the removal of animals likely to propagate infection to or from such parts or places in Canada as he designates in such regulations.

AND WHEREAS in and by an Order of our Governor General, bearing date the eleventh day of December, in the year of our Lord one thousand nine hundred and twenty-two, P.C. 2491, regulations were made for the eradication of bovine tuberculosis from restricted areas.

30 AND WHEREAS it is provided, among other things, by the said regulations that applications may be made to the Dominion Department of Agriculture by the Minister of Agriculture of a Province stating that such Province is desirous of Dominion aid in the eradication of bovine tuberculosis from a restricted area upon and subject to the provisions of such regulations and setting forth (a) the location and boundaries of the proposed area; (b) the approximate number of cattle within it; (c) that a majority consisting of at least two-thirds of the cattle owners in the proposed area are in favour of having their cattle tested for

RECORD

*In the
Supreme Court
of British
Columbia*

Exhibit No. 1

Plaintiff's Document.

Canada
Order-in-Council,
15th February,
1926.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit No. 1

Plaintiff's
Document.

Canada
Order-in-
Council,
15th February,
1926.

(Cont'd)

the eradication of tuberculosis, and (d) that the Provincial Government whenever requested by the Federal Department of Agriculture will assist in the enforcement of such regulations by conducting prosecutions of persons accused of obstructing or refusing to assist Federal Inspectors engaged in the work of testing cattle and of persons who in any way refuse to obey such regulations.

AND WHEREAS it is further provided that upon the approval of the Minister of Agriculture of such an application a proclamation may be published in the Canada Gazette constituting the proposed area a restricted area within the meaning of such regulations, whereupon all the provisions of such regulations shall apply to such restricted area. 10

AND WHEREAS the Minister of Agriculture for the Province of British Columbia has made an application accordingly for the purposes of eradicating bovine tuberculosis from the portions of the New Westminster and Yale Land Districts of British Columbia, described as follows: COMMENCING at a point on the easterly boundary of the Dominion Government Railway Belt where it is intersected by the northerly boundary of Township 11, Range 23; thence west along the north boundaries of Township 11, Ranges 23 to 30, inclusive, West of 6th Meridian to the west boundary of the Railway Belt; thence southerly and westerly, following the westerly and northerly boundaries of the Railway Belt to the northwest corner of the Railway Belt; thence west to the shore of Howe Sound; thence southerly through Howe Sound and passing to the east of all islands in the said Sound to the Gulf of Georgia; thence through said Gulf of Georgia to the International Boundary; thence easterly along the International Boundary to the point where it is intersected by the easterly boundary of the Dominion Government Railway Belt; thence northerly along said easterly boundary of said Railway Belt to the point of commencement; and has requested that the said portions of the New Westminster and Yale Land Districts be established as a restricted area for such purposes. 20 30

NOW KNOW YE that by and with the advice of Our Privy Council for Canada, We do hereby proclaim and direct that the said portions of the New Westminster and Yale Land Districts in the Province of British Columbia be and the same are hereby constituted a restricted area or quarantine district, within the meaning of the said Act and Regulations, for the eradication of bovine tuberculosis and be subject to such regulations. 40

Of all which Our Loving Subjects and all others whom these Presents may concern are hereby required to take notice and to govern themselves accordingly.

RECORD
In the
Supreme Court
of British
Columbia

10 IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed, WITNESS: Our Right Trusty and Well-Beloved Julian Hedworth George, Baron Byng of Vimy, General of the Retired List and in the Reserve of Officers of Our Army; Knight Cross of Our Most Honourable Order of the Bath; Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George; Member of Our Royal Victorian Order; Governor General and Commander-in-Chief of Our Dominion of Canada.

Exhibit No. 1
Plaintiff's
Document.
Canada
Order-in-
Council,
15th February,
1926.
(Cont'd)

At Our Government House, in Our City of Ottawa, this fifteenth day of February, in the year of Our Lord one thousand nine hundred and twenty-six, and in the sixteenth year of Our Reign.

By Command,

THOMAS MULVEY,

Under-Secretary of State.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit No. 2

Plaintiff's
Document.

British
Columbia
Order-in-
Council,
25th October,
1929.

EXHIBIT NO. 2.

Approved and ordered this 25th day of October, A.D. 1929.

R. RANDOLPH BRUCE,
Lieutenant-Governor.

AT THE EXECUTIVE COUNCIL CHAMBER, VICTORIA.

PRESENT:

THE HONOURABLE MR. TOLMIE.
MR. POOLEY, in the Chair.
MR. HOWE.
MR. LOUGHEED. 10
MR. BURDEN.
MR. ATKINSON.
MR. McKENZIE.

TO HIS HONOUR THE LIEUTENANT-GOVERNOR IN
COUNCIL:

THE undersigned has the honour to report that a petition, in accordance with section 4 of the "Dairy Products Sales Adjustment Act," being chapter 20 of the Statutes of the year 1929, has been submitted to the Minister of Agriculture, praying the constitution of a Committee of Adjustment under the name "Lower Mainland Dairy Products Sales Adjustment Committee," for a period of one year, for that portion of the Province of British Columbia described in Dominion Order in Council P.C. 1504 as set forth in Canada Gazette of the 27th day of February, 1926, page 2377. 20

And to recommend that in exercise of the powers conferred by subsection (1) of section 3 of the said "Dairy Products Sales Adjustment Act" there is hereby constituted for the period of one year a Committee of Adjustment under the name of "Lower Mainland Dairy Products Sales Adjustment Committee," to apportion the difference in value received from the sale or other dispositions of manufactured products, as defined in section 2 of the said "Dairy Products Sales Adjustment Act," in that portion of the Province described in Dominion Order in Council P.C. 1504 as set forth in Canada Gazette of the 27th day of February, 1926, page 2377. 30

DATED this 23rd day of October, A.D. 1929.

WM. ATKINSON.
Minister of Agriculture.

Approved this 23rd day of October, A.D. 1929.

R. H. POOLEY,
Presiding Member of the Executive Council.

7646-oc31

RECORD-

*In the
Supreme Court
of British
Columbia*

Exhibit No. 2

Plaintiff's
Document.

British
Columbia
Order-in-
Council,
25th October,
1929.

(Cont'd)

RECORD

EXHIBIT NO. 3.

*In the
Supreme Court
of British
Columbia*

Exhibit No. 3

Plaintiff's
Document.

British
Columbia
Order-in-
Council,
21st December,
1929.

Approved and ordered this 21st day of December, A.D. 1929.

R. RANDOLPH BRUCE,
Lieutenant-Governor.

AT THE EXECUTIVE COUNCIL CHAMBER, VICTORIA.

PRESENT:

THE HONOURABLE MR. TOLMIE in the Chair.
MR. POOLEY.
MR. HOWE.
MR. ATKINSON. 10
MR. BURDEN.
MR. MCKENZIE.
MR. SHELLY.
MR. HINCHLIFFE.

TO HIS HONOUR THE LIEUTENANT-GOVERNOR IN
COUNCIL:

THE undersigned has the honour to report: that by Order in Council No. 1543, approved the twenty-fifth day of October, 1929, the Lower Mainland Dairy Products Sales Adjustment Committee was constituted to apportion the difference in value received from the sale or other disposition of manufactured products, as defined in section 2 of the "Dairy Products Sales Adjustment Act" in that portion of the Province defined in the said Order in Council No. 1543. 20

That, pursuant to section 6 of the said "Dairy Products Sales Adjustment Act," at a series of meetings held between the twelfth and twenty-second days of November 1929, dairy-farmers, being members of co-operative associations in said portion of the Province, appointed Mr. Alexander H. Mercer, of Rosedale, B. C., a member of the said Lower Mainland Dairy Products Sales Adjustment Committee. 30

And that at a meeting of dairy-farmers in the said portion of the Province, other than members of a co-operative association, held at New Westminster on the fifteenth day of November, 1929, Samuel Howard Shannon, of Cloverdale, B. C., was appointed a member of the said Committee.

And to recommend that, pursuant to the provisions of the said section 6 of the "Dairy Products Sales Adjustment Act," the method of appointment, by the dairy-farmers, of the said Alexander H. Mercer and Samuel Howard Shannon be approved.

And further to recommend that, under authority of the said section 6 of the "Dairy Products Sales Adjustment Act," Charles Almeron Welsh, of New Westminster, be appointed a member of the said Lower Mainland Dairy Products Sales Adjustment Committee, to act as Chairman thereof.

- 10 And that a certified copy of this minute of Council, if approved, be forwarded to the said Committee.

Dated the nineteenth day of December, A.D. 1929.

WM. ATKINSON.

Minister of Agriculture.

Approved the nineteenth day of December, A.D. 1929.

S. F. TOLMIE.

Presiding Member of Executive Council.

759-jel2

RECORD
In the
Supreme Court
of British
Columbia

Exhibit No. 3

Plaintiff's
Document.

British
Columbia
Order-in-
Council,
21st December,
1929.

(Contd.)

EXHIBIT NO. 4.

1317

Approved and ordered this 7th day of November, A.D. 1930.

R. RANDOLPH BRUCE,

Lieutenant-Governor.

AT THE EXECUTIVE COUNCIL CHAMBER, VICTORIA.

PRESENT:

THE HONOURABLE MR. POOLEY, in the Chair.

MR. TOLMIE.

MR. BRUHN.

MR. ATKINSON.

MR. LOUGHEED.

MR. HINCHLIFFE.

MR. McKENZIE.

10

TO HIS HONOUR THE LIEUTENANT-GOVERNOR IN
COUNCIL:

THE undersigned has the honour to report that by Order in Council No. 1543, approved the 25th day of October, 1929, pursuant to the provisions of section 3, subsection (1), of the "Dairy Products Sales Adjustment Act," being chapter 20 of the Statutes of the year 1929, there was constituted a Committee of Adjustment, under the name of "Lower Mainland Dairy Products Sales Adjustment Committee." to apportion the difference in value received from the sale or other disposition of manufactured products as defined in section 2 of the said Act. 20

That by Order in Council No. 1833, approved the 21st day of December, 1929, the method of appointment by the dairy-farmers of Alexander H. Mercer and Samuel Howard Shannon as members of the said Committee was approved.

That by said Order in Council No. 1833. Charles Almeron Welsh, of New Westminster, was appointed a member of said Lower Mainland Dairy Products Sales Adjustment Committee to act as Chairman thereof. 30

That subsection (2) of Section 3 of said Act provides that, on request of a Committee constituted under the provisions of

RECORD

In the
Supreme Court
of British
Columbia

Exhibit No. 4

Plaintiff's
Document.

British
Columbia
Order-in-
Council,
7th November,
1930.

said Act, the Lieutenant-Governor in Council may from time to time, by order in Council, extend the period of existence of such Committee.

That by request in writing dated the 28th day of October, 1930, addressed to His Honour the Lieutenant-Governor in Council, and signed by all members of the said Committee, the said Committee has requested that its existence be extended for a period of one year.

And to recommend that, in pursuance of the provisions of
10 said Act and of the said request, the existence of the said Committee be extended for a further period of one year.

And that a certified copy of this Minute of Council, if approved, be transmitted to the said Committee.

Dated this 6th day of November, A.D. 1930.

WM. ATKINSON.

Minister of Agriculture.

Approved this 6th day of November, A.D. 1930.

R. H. POOLEY,

Presiding Member of the Executive Council.

20 1464-no13

RECORD
 In the
 Supreme Court
 of British
 Columbia
 Exhibit No. 4
 Plaintiff's
 Document.
 British
 Columbia
 Order-in-
 Council,
 7th November,
 1930.
 (Cont'd)

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit No. 5

Plaintiff's
Document.

British
Columbia
Order-in-
Council,
17th December,
1930.

EXHIBIT NO. 5.

1528

Approved and ordered this 17th day of December, A.D. 1930.

R. RANDOLPH BRUCE,

Lieutenant-Governor.

AT THE EXECUTIVE COUNCIL CHAMBER, VICTORIA.

PRESENT:

THE HONOURABLE MR. MCKENZIE, in the Chair.

MR. TOLMIE.

MR. HOWE.

MR. HINCHLIFFE.

MR. POOLEY.

MR. JONES.

MR. ATKINSON.

MR. BRUHN.

MR. MAITLAND.

MR. LOUGHEED.

10

TO HIS HONOUR THE LIEUTENANT-GOVERNOR IN
COUNCIL:

THE undersigned has the honour to report that by Order 20
in Council No. 1317, approved the 7th day of November, 1930,
the period of existence of the Lower Mainland Dairy Products
Sales Adjustment Committee was extended for one year.

That section 7 of the "Dairy Products Sales Adjustment
Act" provides that the member of the Committee appointed by
the Lieutenant-Governor in Council shall hold office for the period
of existence of the Committee, or until he is removed or resigns,
and that the other members of the Committee shall, if the exis-
tence of the Committee has not expired, be appointed each year 30
by dairy-farmers, within the district according to some method
to be approved by the Lieutenant-Governor in Council.

That at a series of meetings held during the month of
November, 1930, dairy-farmers, being members of co-operative
associations within the district for which said Committee was
constituted, appointed Alexander H. Mercer, of Rosedale, B. C.,

a member of said Lower Mainland Dairy Products Sales Adjustment Committee for the period for which the existence of the Committee was extended by said Order in Council No. 1317.

And to recommend that, pursuant to the provisions of said section 7 of the "Dairy Products Sales Adjustment Act," the method of appointment by the said dairy-farmers of the said Alexander H. Mercer be approved.

And that a certified copy of this Minute of Council, if approved, be forwarded to the Lower Mainland Dairy Products
10 Sales Adjustment Committee.

Dated this 16th day of December, A.D. 1930.

WM. ATKINSON,
Minister of Agriculture.

Approved this 16th day of December, A.D. 1930.

W. A. McKENZIE.
Presiding Member of the Executive Council.

1631-de18

RECORD

*In the
Supreme Court
of British
Columbia*

Exhibit No. 5

Plaintiff's
Document.

British
Columbia
Order-in-
Council,
17th December,
1930.

(Cont'd)

RECORD

EXHIBIT NO. 6.

April 7, 1931.

*In the
Supreme Court
of British
Columbia.*

Exhibit No. 6

Plaintiff's
Document.

Letter, plaintiff
to defendant,
7th April, 1931.

The Crystal Dairy,
1803 Commercial Drive,
Vancouver, B. C.

Sir:—

You are hereby requested to forward to the Lower Mainland Dairy Products Sales Adjustment Committee a complete list of the names and addresses of all dairy-farmers from whom you are purchasing or receiving milk or manufactured products, as required under sub-section (c) of section 7 of the Dairy Products Sales Adjustment Act Amendment Act 1931. 10

You are further notified that, under the terms of the same Amendment, you must make returns of all milk or manufactured products purchased from the aforesaid dairy-farmers, together with the disposal of same, not later than the 15th day of the month succeeding that on which such purchases are made, and under separate cover we are enclosing the necessary return forms to enable you to carry out this requirement.

This Committee is desirous of co-operating in every way possible with the distributor in order to make the administration of the Act function with the least possible friction, but there are certain obligations laid on the Committee by the Act which must be carried out, and they have no alternative but to enforce the provisions that the Act has laid down. 20

We are aware that there is a considerable amount of misunderstanding existing, even among the distributors and dairy-farmers, regarding the exact functions of the Act, and it occurs to us that possibly a great deal of this misunderstanding might be cleared up if a meeting could be arranged between the distributors and the Committee, and it is our suggestion that if you can appoint a day to meet the Committee, either at its New Westminster office or at your own plant, most of the difficulties which are at present being encountered could be satisfactorily overcome to the advantage, not only of the dairy-farmer, but also of the distributor. If you are agreeable to this course of action, kindly let us know, either by mail or by telephone, and the Committee will make the necessary arrangements for a conference. 30

Yours truly,

C. A. WELSH
CHAIRMAN.

40

EXHIBIT NO. 7.

April 16, 1931.

REGISTER

Crystal Dairy,
1803 Commercial Drive,
Vancouver, B. C.

Sir:—

Your attention is directed to sub-section (c) of Section 9 of the Dairy Products Sales Adjustment Act as amended by the
10 Dairy Products Sales Adjustment Act Amendment Act 1931, which reads as follows:—

“(c) Every distributor shall make to the committee, not later than the fifteenth day of each month, returns of all milk or manufactured products purchased or received by such distributor from dairy-farmers during the preceding month, and shall, if required by the committee, file with it copies of invoices, bills of lading, account sales, statements or returns, and other documents, with respect to milk or manufactured products
20 purchased or received by such distributor from dairy-farmers during the preceding month”.

TAKE NOTICE, therefore, that in accordance with the provisions of the aforementioned sub-section (c), the Lower Mainland Dairy Products Sales Adjustment Committee, constituted pursuant to the terms of the Dairy Products Sales Adjustment Act, hereby requires you to file with it returns of all milk purchased or received by you from dairy-farmers during the month of March.

AND FURTHER TAKE NOTICE that the aforesaid re-
30 turns must be in the hands of this Committee on or before Monday, the twentieth day of April, 1931.

DATED at New Westminster, B.C., this 16th day of April, 1931.

THE LOWER MAINLAND DAIRY PRODUCTS
SALES ADJUSTMENT COMMITTEE.

C. A. WELSH.

CHAIRMAN.

RECORD

*In the
Supreme Court
of British
Columbia*

Exhibit No. 7

Plaintiff's
Document.

Letter, plaintiff
to defendant,
16th April, 1931

RECORD

*In the
Supreme Court
of British
Columbia*

Letter,
Plaintiff's
Solicitors to
Attorney-
General for
Canada,
6th October,
1931.

CORRESPONDENCE BETWEEN PLAINTIFF'S SOLICITOR
AND ATTORNEYS-GENERAL FOR CANADA
AND BRITISH COLUMBIA.

October 6, 1931.

Hon. Hugh Guthrie, K.C., M.P.,
Minister of Justice and Attorney General
For Canada,
Ottawa, Ontario.

Dear Sir:

A.1062

10

Re: Lower Mainland Dairy Products Sales Adjustment
Committee vs. Crystal Dairy Limited.

Referring to a letter which we received from the Deputy
Minister of Justice dated the 11th of June 1931 we are enclosing
herewith copy of reasons for judgment of the Hon. Mr. Justice
Murphy delivered herein on September 26th 1931 together with
copy of notice of appeal dated the 2nd instant, and would be very
much obliged if you would advise us by return of post whether or
not you intend to be represented on this appeal.

Yours truly,

20

McQUARRIE, WHITESIDE & DUNCAN,

Per: W.G.M.

WGM:MM
Encls.

October 6, 1931. RECORD

HON. R. H. POOLEY, K.C.,
Attorney General,
Victoria, B. C.

*In the
Supreme Court
of British
Columbia*

Dear Sir:

Re: Lower Mainland Dairy Products Sales Adjustment
Committee vs. Crystal Dairy Limited.

Letter,
Plaintiff's
Solicitors to
Attorney-
General for
British
Columbia,
6th October,
1931.

We herewith beg to enclose copy of reasons for judgment
of Hon. Mr. Justice Murphy delivered herein on September 26th
10 1931 together with notice of appeal dated the 2nd instant. Kindly
advise us by return of post whether or not you intend to be
represented on the hearing of this appeal and oblige.

Yours truly,

McQUARRIE WHITESIDE & DUNCAN.

Per: W.G.M.

WGM:MM
Encls.

RECORD

October 7th 1931.

*In the
Supreme Court
of British
Columbia* D-313-1

Letter,
Attorney-
General for
British
Columbia
to Plaintiff's
Solicitors,
7th October,
1931.

Messrs. McQuarrie, Whiteside & Duncan,
Barristers and Solicitors,
New Westminster, B. C.

Dear Sirs:

Re Lower Mainland Dairy Products Sales Adjustment
Committee v. Crystal Dairy Ltd.

Your communication of the 6th instant, with Notice of
Appeal herein, received. As intimated on former occasions, and 10
now repeated, the Crown does not intend to take any part in the
proceedings.

Yours faithfully,

R. H. POOLEY

Attorney-General.

IVX 10

OTTAWA ONT 955AM OCT 17 1931

W G MCQUARRIE K.C.
NEW WESTMINSTER B.C.

RE CRYSTAL DAIRY LIMITED DOMINION WILL
NOT INTERVENE ON APPEAL

W. STUART EDWARDS
DEPUTY MINISTER OF JUSTICE

730AM

RECORD

*In the
Supreme Court
of British
Columbia*

Telegram,
Deputy Minister
of Justice for
Canada to
Plaintiff's
Solicitor,
17th October,
1931.

RECORD

*In the
Supreme Court
of British
Columbia.*

Letter,
Plaintiff's
Solicitors to
Attorney-
General for
Canada,
30th January,
1932.

30th January, 1932.

Hon. Huth Guthrie, K.C.,
Minister of Justice, and
Attorney General for Canada,
Ottawa, Ontario.

Dear Sir:

RE LOWER MAINLAND DAIRY PRODUCTS SALES
ADJUSTMENT COMMITTEE VS CRYSTAL DAIRY
LIMITED

Referring to our previous correspondence with you we beg 10
to advise you that this case came on for hearing before the British
Columbia Court of Appeal on the 17th, 18th and 19th November
1931 when decision was reserved. On the 5th instant the Court
of Appeal pronounced judgment (Macdonald J. A. dissenting)
dismissing the plaintiff's appeal. We are enclosing herewith copy
of reasons for judgment of the Chief Justice and Mr. Justice
Macdonald, which are the only ones which have been handed
down. On the 25th instant we made application to the Court of
Appeal for leave to appeal to the Privy Council and an order 20
granting conditional leave to appeal was made, a copy of which
is enclosed herewith. It is proposed to proceed with the appeal
as expeditiously as possible and we would be greatly obliged if
you would kindly inform us at your earliest convenience whether
or not you propose to take any part in the appeal to the Privy
Council.

Yours truly,

McQUARRIE & WHITESIDE:

Per: W.G.M.

WGM.WP
—enclosures.

30

30th JANUARY 1932. RECORD

Hon. R. H. Pooley, K.C.,
Attorney General,
Victoria, B.C.

*In the
Supreme Court
of British
Columbia*

Dear Sir:

RE LOWER MAINLAND DAIRY PRODUCTS SALES
ADJUSTMENT COMMITTEE VS CRYSTAL DAIRY
LIMITED

Letter,
Plaintiff's
Solicitors to
Attorney-
General for
British
Columbia,
30th January,
1932.

10 Referring to our previous correspondence with you we beg
to advise you that this case came on for hearing before the British
Columbia Court of Appeal on the 17th, 18th and 19th November
1931 when decision was reserved. On the 5th instant the Court
of Appeal pronounced judgment (Macdonald J. A. dissenting)
dismissing the plaintiff's appeal. We are enclosing herewith copy
of reasons for judgment of the Chief Justice and Mr. Justice
Macdonald, which are the only ones which have been handed
down. On the 25th instant we made application to the Court of
Appeal for leave to appeal to the Privy Council and an order
20 granting conditional leave to appeal was made, a copy of which
is enclosed herewith. It is proposed to proceed with the appeal
as expeditiously as possible and we would be greatly obliged if
you would kindly inform us at your earliest convenience whether
or not you propose to take any part in the appeal to the Privy
Council.

Yours truly,

McQUARRIE & WHITESIDE:

Per: W.G.M.

WGM.W.P.
—enclosures.

RECORD D-313-1

*In the
Supreme Court
of British
Columbia.*

Letter,
Attorney-
General for
British
Columbia to
Plaintiff's
Solicitors,
2nd February,
1932.

ATTORNEY-GENERAL
Province of British Columbia

VICTORIA
February 2nd 1932.

Messrs. McQuarrie & Whiteside,
Barristers and Solicitors,
New Westminster, B. C.

Dear Sirs:

Re: Lower Mainland Dairy Products Sales
Adjustment Committee v. Crystal Dairy Ltd.

10

Your communication of the 30th ultimo received with enclosures. This case refers to special legislation passed for the benefit of a special class. In addition, it was put through the House on a clear understanding that it was to be tested in the Courts, but that the Crown would not take part in the litigation.

Yours faithfully,

"R. H. POOLEY"
Attorney-General.

14 VX 39

OTTAWA ONT 1151 AM MAR 1 1932

MCQUARRIE AND WHITESIDE

WESTMINSTER TRUST BLDG NEW WESTMINSTER BC

RE CRYSTAL DAIRY PRESENT INTENTION IS NOT TO
INTERVENE BUT WE RESERVE RIGHT TO DO SO AFTER
SEEING RECORD PLEASE FORWARD ME COPY OF
RECORD AT YOUR EARLIEST CONVENIENCE AND IN-
FORM ME WHEN PARTIES PROPOSE APPEAL SHOULD
10 BE HEARD.

W STUART EDWARDS.

RECORD

*In the
Supreme Court
of British
Columbia*

Telegram,
Deputy Minister
of Justice for
Canada to
Plaintiff's
Solicitors,
1st March, 1932

RECORD

CERTIFICATE OF REGISTRAR.

*In the
Court of Appeal
for British
Columbia.*

—
Certificate of
Registrar,
10th March,
1932.

I, the undersigned, Registrar at Vancouver of the Court of Appeal, DO HEREBY CERTIFY that the foregoing is a transcript of the Record of Proceedings in this action for the purpose of appeal to His Majesty in Privy Council herein as prepared and settled by this Court.

I FURTHER CERTIFY that the said Record of Proceedings contains the Reasons for Judgment of the Honourable Mr. Justice Murphy, Trial Judge, and of the Honourable the Chief Justice of the Court of Appeal, the Honourable Mr. Justice Mc-Phillips, and the Honourable Mr. Justice Macdonald, being all the Judges before whom the trial and appeal herein were heard who have delivered reasons for judgment herein. 10

AND I FURTHER CERTIFY that the said Record of Proceedings contains an Index of all the papers and Exhibits in the case.

DATED at Vancouver, B. C., this 10th day of March A.D. 1932.

J. F. MATHER
REGISTRAR. 20

Court of Appeal
(Seal)
British Columbia

B.C.	Vancouver
L.S.	Mar. 10, 1932
\$1.00	Registry