Privy Council Appeal No. 102 *of* 1936

The Attorney-General of British Columbia - - - *Appellant*

v.

The Attorney-General of Canada and others - - - *Respondents*

In the matter of a Reference as to whether the Parliament of Canada had legislative jurisdiction to enact Section 498a of The Criminal Code

FROM

THE SUPREME COURT OF CANADA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH JANUARY, 1937

Present at the Hearing:

LORD ATKIN.
LORD THANKERTON.
LORD MACMILLAN.
LORD WRIGHT (Master of the Rolls).
SIR SIDNEY ROWLATT.

Delivered by LORD ATKIN.

This is an appeal from a judgment of the Supreme Court of Canada delivered on 17th June, 1936, on a reference by the Governor-General in Council dated 5th November, 1935, raising the question whether section 498A of the Criminal Code is *ultra vires* of the Parliament of Canada. The Supreme Court unanimously held that subsections (*b*) and (*c*) were not *ultra vires*, and by a majority, the Chief Justice, Rinfret, Davis and Kerwin JJ., Cannon and Crocket JJ. dissenting, held that subsection (*a*) also was not *ultra vires*. The section 498A was introduced into the Criminal Code by section 9 of 25 & 26 G. 5. c. 56, the title of which is an Act to amend the Criminal Code:—

"Section 9. The said Act is further amended by inserting after section four hundred and ninety-eight the following section:—

"498A. Every person engaged in trade or commerce or industry is guilty of an indictable offence and liable to a penalty not exceeding one thousand dollars or to one month's imprisonment, or, if a corporation, to a penalty not exceeding five thousand dollars, who

"(*a*) is a party or privy to, or assists in, any transaction or sale which discriminates, to his knowledge, against competitors of the purchaser in that any discount, rebate or allowance is granted to the purchaser over and above any discount, rebate or allowance available at the time of such transaction to the aforesaid competitors in respect of a sale of goods of like quality and quantity;

"The provisions of this paragraph shall not, however, prevent a co-operative society returning to producers or consumers, or a co-operative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales to the society;

"(*b*) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, for the purpose of destroying competition or eliminating a competitor in such part of Canada;

> " (*c*) engages in a policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor."

Their Lordships agree with the Chief Justice that this case is covered by the decision of the Judicial Committee in the *Proprietary Articles* case [1931] A.C. 310. The decision in that case seems to be inconsistent with the ground of dissent of Crocket J. that subsection (*a*) lacks " the characteristic feature of crime, viz. the intent to do wrong." The basis of that decision is that there is no other criterion of " wrongness " than the intention of the legislature in the public interest to prohibit the act or omission made criminal. Cannon J. was of opinion that the prohibition cannot have been made in the public interest because it has in view only the protection of the individual competitors of the vendor. This appears to narrow unduly the discretion of the Dominion legislature in considering the public interest. The only limitation on the plenary power of the Dominion to determine what shall or shall not be criminal is the condition that Parliament shall not in the guise of enacting criminal legislation in truth and in substance encroach on any of the classes of subjects enumerated in section 92. It is no objection that it does in fact affect them. If a genuine attempt to amend the criminal law it may obviously affect previously existing civil rights. The object of an amendment of the criminal law as a rule is to deprive the citizen of the right to do that which apart from the amendment he could lawfully do. No doubt the plenary power given by section 91 (2) does not deprive the Provinces of their right under section 92 (15) of affixing penal sanctions to their own competent legislation. On the other hand there seems to be nothing to prevent the Dominion if it thinks fit in the public interest from applying the criminal law generally to acts and omissions which so far are only covered by provincial enactments. In the present case there seems to be no reason for supposing that the Dominion are using the criminal law as a pretence or pretext or that the legislature is in pith and substance only interfering with civil rights in the Province. Counsel for New Brunswick called the attention of the Board to the Report of the Royal Commission on Price Spreads, which is referred to in the order of reference. It probably would not be contended that the statement of the Minister in the order of reference that the section was enacted to give effect to the recommendations of the Royal Commission bound the Provinces or must necessarily be treated as conclusive by the Board. But when the suggestion is made that the legislation was not in truth criminal legislation, but was in substance merely an encroachment on the provincial field, the existence of the report appears to be a material circumstance. Their Lordships are in agreement with the decision of the majority of the Supreme Court. They are of opinion that no part of the section is *ultra vires*: and they will humbly advise His Majesty that this appeal should be dismissed.

(40292—3A) Wt. 8136—2 175 2/37 P. St. G. 338.

In the Privy Council.

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BRITISH COLUMBIA

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DELIVERED BY LORD ATKIN.

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