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CRAPAUD THEATRE
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Friday 8:30
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"STAMPEDE"
Starring: Rod Cameron, Cale Storm, Johnny Mac Brown.
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BIG DOUBLE BILL
ROY ROGERS (King of the Cowboys) and TRIGGER (the Smartest Horse in the Movies)
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"PALS OF THE GOLDEN WEST"
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REGENT Today ..... 2:30-7-9:20 Saturday 2:30-7-9:20
2 - BIG ATTRACTIONS - 2

Symposium Of Views Gathered From Marketing Bd. Judgment

Running to nearly sixty type-written pages, the judgment of the Supreme Court of Canada on the marketing of Prince Edward Island potatoes, given at Ottawa on June 30, expresses diverse views on many points but in the main upholds the validity of the potato marketing scheme and indicates that of the many attempts to draft legislation of this kind, the scheme has been the most successful in avoiding the pitfalls of divided jurisdiction as between the Province and the Dominion.

Potato Marketing Judgment

The nine judges were unanimous in holding both the Dominion Act of 1949 and Order-in-Council P. C. 5159 which gave effect to it to be completely valid. On the third question it was held by seven out of nine judges that the Marketing Scheme established by the Provincial Government under the P. E. I. Act is valid with the exception of section 19 which provides for delegation of powers to an inter-provincial committee. One judge also excepted section 4 of the scheme which deals with its extent of application.

On the fourth question, as to the validity of the Board Orders, all were held to be valid by seven judges with the exception, however, of Orders No. 2 and 6 which provide for the levy of one cent per hundred pounds of potatoes. The other two judges, having held the scheme invalid, held the order made thereunder invalid also.

In the reference the validity of the Provincial Act (1940 chapter 40; amended 1950 chapter 18) was not questioned, no doubt, as pointed out by Estey, J. because its provisions are, in all material particulars, to the same effect as those of the act of British Columbia declared to be within the competence of the Provincial legislature in 1938."

Dominion Act Upheld

There was unanimity in replying "Yes" to the first question. Estey J., speaking also for Cartwright J., said that the Act "is restricted to the interprovincial and export trade and neither purports to nor does it interfere with provincial trade as did earlier legislation declared to be ultra vires." It does not provide for a "delegation by the Parliament of Canada to a provincial legislature, or by a provincial legislature to the Parliament of Canada, of their respective legislative powers," which was previously held to be beyond the competence of these bodies.

"The problem here presented," continued Estey J., "is quite different in that it is the delegation by the Governor General in Council to the Potato Board, an agency created by the legislature of the Province." Tashereau J. pointed out that the 1951 Nova Scotia judgment merely decided that neither Parliament nor the legislature can delegate powers to each other so as to change the distribution of powers provided for in sections 91 and 92 of the British North America Act."

Here Federal legislation vests such power in a group of persons to be exercised in the interprovincial and export field. "It is immaterial that the same persons be empowered by the legislature to control and regulate the marketing of Natural Products within the Province. It is true that the Board is a creature of the Lieutenant-Governor-in-Council, but this does not prevent it from exercising duties imposed by the Parliament of Canada."

Capacity To Accept Powers

On the same point Kellock J., speaking also for Locke J., dealt with the objection that the board, although not a corporation, might be considered an entity apart from its members, one which the provincial legislature might be without legislative competence to endow with capacity to accept powers from Parliament, exercisable with respect to international and interprovincial trade. His opinion was that the board "is but a name for the individuals that compose it" and that possible limitations of provincial incorporation did not apply.

Rinfret C. J. pointed out that the 1951 case held "that each legislature could only exercise the legislative powers respectively given to them by sections 91 and 92 of the B.N.A. Act, that these sections indicated a settled line of demarcation and it did not belong to the Parliament of Canada or the Legislatures to confer their powers upon the other."

The effect of the present enactment, added the Chief Justice, "is for the Governor-in-Council to adopt as its own a board, or agency already authorized under the law of a province, to exercise powers of regulation outside the province in interprovincial and export trade, and for such purposes to exercise all or any powers exercisable by such board, or agency, in relation to the marketing of such agricultural products locally within the province."

Judicial Committee Ruling

In the Agricultural Products Marketing Act of 1949 "Parliament has granted authority to the Governor-in-Council to employ as its own a board, or agency, for the purpose of carrying out its own legislation for the marketing of agricultural products outside the province in interprovincial or export trade, two subject-matters which are undoubtedly within its constitutional authority. Moreover, it may be added, that in doing so Parliament was following the advice of the Judicial Committee in the several judgments which it rendered on similar Acts that the proper way to carry out the distribution of legislative powers under the British North America Act, was for Parliament and the Legislatures to act by co-operation."

This Court earlier decided, said Kerwin J., concurred with by Fateux J., that it would be "obnoxious to the tenor and scheme of the British North America Act" to hold that Nova Scotia could "delegate to and withdraw from the Parliament of Canada authority to make laws in any matter relating to employment in any industry, work or undertaking" exclusively within the legislative jurisdiction of the Legislature. "Admitting . . . that the Island Board was not made a corporation . . . it is a legal entity. Having been validly established by the Legislature it has the capacity to receive and accept the authority authorized by Parliament to be conferred upon it by the Governor General in Council."

"What the law in this case has done," pointed out Rand J., "has been to give legal significance called incidents to certain group actions of five men. That to the same men, acting in the same formality, another co-ordinate jurisdiction in a federal constitution cannot give other legal incidents to other joint actions is negated by the admission that the Dominion by appropriate words could create a similar board, composed of the same persons, bearing the same name, and with a similar formal organization, to execute the same Dominion functions. Twin phantoms of this nature must, for practical purposes, give way to realistic necessities . . . No question of disruption of provincial powers arises: both legislatures have recognized the value of a single body to carry out one joint, though limited, administration of trade. At any time the Province could withdraw the whole or any part of its authority. The delegation was, then effective."

Order-in-Council P. C. 5159

Having decided that the Federal Agricultural Products Marketing Act was valid the Court had no difficulty in also unanimously deciding the Order-in-Council was valid. In the words of Estey J., "The Governor General's Order-in-Council P.C. 5159 appears to be within the provisions of the Agricultural Products Marketing Act as enacted by the Parliament of Canada in 1949 and, therefore, the answer to question No. 2 should be in the affirmative."

The Scheme

In the judgment of Estey J. it is pointed out that "if the Lieutenant Governor in Council has established the scheme within the limits of the act of 1940, the competence of which is here not questioned, it is valid." Para. 4 reads: "This Scheme shall apply to all persons who grow, pack, store, buy or sell potatoes . . ." Para. 16. "The Potato Board shall have the following powers exercisable in Prince Edward Island in relation to the marketing of potatoes therein."

"When, therefore," said Estey J., "the general language of para. 4 is read in relation to the powers as vested in the Board under para. 16, it becomes clear that it was intended para. 4 should be construed and ought to be construed to apply only within the field of competent provincial jurisdiction."

Kellock J., dissenting on the point, said "In my view, the powers so given go beyond the mere regulation of the potato trade within the province or carriage thereof from one provincial point to another, and encroach upon the sphere of the regulation of interprovincial and export trade . . . and it is to be remembered that the business of marketing potatoes in the province is preponderently an export business."

Chief Justice Rinfret comments that, "Far from there being any intention on the part of the Legislature of Prince Edward Island to extend its scope to transactions outside the Province, the Act itself and the Scheme took particular care to limit it to the local trade, and under all canons of construction, including, of course, The Interpretation Act (section 31) they must be so understood."

Kerwin J., said, "In view of the similarity of the British Columbia and Prince Edward Island statutes, it should not be held that the Lieutenant Governor in Council exceeded the powers conferred upon him by statute and attempted something beyond provincial jurisdiction."

Rand J., a minority of one, said, "I find it difficult to limit this language (section 4) to local business, but to answer the question finally I take it in its application to the substantive provisions."

"These are to be found in clause 16: para. (a) which enables the Potato Board to prescribe the manner of marketing generally; (b) to designate the agencies through which potatoes may be marketed; and (c) prohibiting the buying, selling, etc., of potatoes which do not conform to quality standards set by the Potato Board. So considered, there is clearly a regulation of external trade which renders clause 4 ultra vires."

Licenses Required

"In so far as the Lieutenant Governor in Council in para. 16 (b) and (c), authorized the Potato Board to require licenses and to impose fees therefor", said Estey J., "the act was within the competence of the province."

Chief Justice Rinfret said, "As to the vague suggestion that the levy provided for in section 16 (k) of the Scheme might be looked upon as 'a measure of indirect taxation', it has not been made a point for the decision appealed from, but it would seem to have lost its weight—and I do not consider that it ever had any weight—since the adoption of the Board by the Governor-in-Council."

"The assessment," said Rand J., "is clearly a mode of indirect taxation effecting primarily a regulation of trade; and as the cases examined indicate, its application to trade beyond the province puts it ultra the powers of the Board."

"This section 5 (d) is the same as . . . the British Columbia statute (as to license) . . . and is therefor valid. Clause (k) authorizes the Board, to establish a fund . . . and may stand as it is comparable to section 4A (j) of the British Columbia Statute".

Subdelegation

"Para. 19 of the scheme," said Estey J., "provides for an interprovincial committee "to regulate and co-ordinate the marketing of potatoes produced' in the Province of Prince Edward Island, Nova Scotia, New Brunswick and Newfoundland and provides that, subject to the approval of the Prince Edward Island Marketing Board, the Potato Board may delegate to that committee 'such of its powers as it may deem advisable.' This provision contemplates the provinces dealing with interprovincial and export trade and is beyond the competence of the province to enact."

"Section 19", said Taschereau J., "is not authorized by the Act. We find in section 6 of the Act the necessary authority given to the Board to co-operate with other Provincial Marketing Boards to regulate the marketing of natural products, but nowhere do we find that the Potato Board is empowered to appoint a committee and delegate to it, subject to the approval of the Board, such of its powers, as it may deem advisable." "In my view," said Kellock J., as quoted above, "the powers so given (by para. 19) go beyond the mere regulation of the potato trade within the province."

On the other hand Chief Justice Rinfret said, "With deference, I am unable to see how the word 'regulate' in section 19 of the Scheme indicates an intention on the part of the Provincial Legislature to extend the scope of this whole enactment beyond the confines of provincial jurisdiction. On the contrary, it seems to me that section 19 should be 'regarded as harmless authority to confer and collaborate informally' with representatives (of other Boards) . . . and for those Boards to 'act conjointly' with the representatives of the Prince Edward Island Potato Marketing Board."

"Co-operative action," said Rand J., "between boards of different provinces having the same administrative objects is quite unobjectionable; but I find nothing in the statute permitting a sub-delegation of powers of this nature." Kerwin J., declared, "No authority can be found for the kind of sub-delegation therein provided for and, in my opinion, this clause is not within the jurisdiction and competence of the Lieutenant Governor in Council."

Board Orders (The Levy)

"The scheme," said Estey J., "as constituted by the Lieutenant Governor in Council, may be valid, and yet the board, in adopting orders and regulations, may exceed its authority . . . all but Orders Nos. 2 and 6 are within the authority of the board. Under Order No. 2 the board imposed, for the purpose of establishing a fund in connection with the scheme, upon every dealer a charge or levy for the purpose of establishing a fund in connection with the scheme, upon every dealer a charge or levy at the rate of one cent for every 100 pounds of potatoes shipped or exported by such dealer. This Order was repealed by Order No. 6, but it was provided that any amount due or accruing due and unpaid under Order No. 2 remained an outstanding liability.

Order No. 6 then proceeded to impose a similar charge or levy of one cent per 100 pounds of potatoes upon every producer in respect of all potatoes sold or marketed by such producer.

It might be sufficient to say that neither the act nor the scheme authorizes the Potato Board to make a levy of the sort contemplated by these Orders, but there is a further objection to their validity This charge or levy is in relation to a sale of potatoes and its nature and character is such that it would be passed on by the dealers as part of, and therefor would enter into, the price of the commodity. It is, therefor, in substance an indirect tax and cannot be competently enacted by the province or any agency thereof."

"The charge or levy," said Taschereau J., "seems in either case to be clearly indirect . . . it follows that both must be held invalid."

As noted above, Chief Justice Rinfret held that, "the vague suggestion that the levy . . might be looked upon as 'a measure of indirect taxation' . . . would seem to have lost its weight—and I do not consider that it ever had any weight—since the adoption of the Board by the Governor-in-Council."

Rand J., however, said that, "neither para. (e) of clause 16, which authorizes license fees nor (k) which permits the establishment of a fund . . . was adopted by the Dominion order-in-council, and I cannot take it that the express omission can be supplied by either (o) or (p) which authorize generally such acts as may be considered necessary to the execution of the scheme . . . The assessment is clearly a mode of indirect taxation effecting primarily a regulation of trade; and as the cases examined indicate, its application to trade beyond the province puts it ultra the powers of the Board."

Kerwin J. said of paragraphs 2, 3, 4 and 5 of Order No. 6: "These paragraphs are clearly referable to export trade and cannot be supported."

In summary: All nine judges agreed that the Dominion Act is valid and the court consequently ruled that question No. 1 should be answered in the affirmative.

All agreed that the Dominion Order-in-Council conferring powers in the inter-Provincial marketing field on the local Board was valid. The court ruled that question No. 2 should be answered in the affirmative.

Seven out of nine judges agreed that the Provincial Marketing scheme was valid (with the exception of Section 19) and the court's answer to question number three was, Yes, except as to that section. Only the Chief Justice thought Section 19 should be upheld.

Seven out of nine judges approved of the orders of the Board with the exception of Order 6 and Order 2 for which 6 was substituted—the levy of one cent per hundred pounds. The Chief Justice considered that they were valid but the other eight judges ruled against them on various grounds.

Red Cross Chairman

John Alexander MacAulay, Q. C., of Winnipeg, has been elected chairman of the, XVIIIth International Red Cross Conference at Toronto. Mr. MacAulay is former chairman of the Central Council of the Canadian Red Cross Society and past president of the Manitoba Division of the Society. He served for two and a half years with the Canadian Army Medical Corps.

Trinidad was discovered by Columbus in 1498 and colonized by the Spaniards in the next century.

ATTENTION SPORTSMEN

The monthly meeting of the Prince County Fish and Game Association will be held on Friday at 8 p.m. in the Town Hall, Summerside. All sportsmen are invited.

Signed:
N. E. MacLEOD,
Secretary.

Howlan And Vicinity

Peter Gallant was in Howlan on Monday, July 21st, on business.

Mrs. Anthony Finnan recently spent a day in Summerside.

Mrs. Leo Arsenault spent a recent afternoon at the home of Mrs. Jerry Gallant.

Mr. and Mrs. Frank Richard of Duvar spent a recent evening in Howlan.

Frank Gallant was in Lot 7 on Monday night, July 21st, on business.

Mrs. Tenis Peters has as her guest her sister, Mrs. Josele Arsenault, of Borden.

Harry MacWilliams of O'Leary was in Howlan on business recently.

Quite a crowd from Howlan and vicinity attended the recent Scotch program in O'Leary.

Mrs. Mary Cahill of Summerside is now visiting in Howlan and Woodstock with relatives.

Mr. and Mrs. A. A. Arsenault are now moved to their beautiful new home here at Howlan.

With the fine weather haying is pretty well finished in this community.

Mrs. John Finnan of Woodstock was a recent guest of Mrs. J. B. Arsenault.

Mrs. Lorraine Gallant and little daughters Theresa and Elaine were in O'Leary Monday afternoon, July 21st.

Mr. and Mrs. Jim Kinch and Mr. and Mrs. Leonard Arsenault of Alberton spent Sunday, July 20th in Howlan.

Mrs. Frank Peters who is vacationing in Duvar, spent Sunday afternoon, July 20th with her in-laws, Mr. and Mrs. Tenis Peters, at Howlan.

Mrs. Marie Arnold of the U.S. A. is now visiting at the home of her mother, Mrs. Catherine Gallant, Woodstock.

Little Eva Mae Perry of Charlottetown is now visiting in Howlan at the home of her aunt, Mr. and Mrs. Leo Arsenault.

Rev. Father Trainor of Lot 7 made recent business trips to Howlan in search of a carpenter to build the spire on Lot 7 Catholic Church.

Miss Dena Gaudet and her sister, Mrs. Eva Hickey, both of Summerside, are now guests at the home of Mr. and Mrs. Gilbert Gaudet at Woodstock.

Mr. and Mrs. Rosamund Casey and son Eugene, and Mrs. F. C. Gallant and little Jean motored to Summerside on Tuesday, July 22nd.

Mr. and Mrs. Lawrence Gallant and little daughter Linda, of Toronto, and Mrs. Elizabeth Gallant and Delma and Walter of Piusville, called on relatives in Howlan on Wednesday evening, July 23rd.

Mr. and Mrs. Rosamund Casey and little son Eugene, of Rumford, Me., arrived in Howlan on Monday, July 21st, and will visit here for a while.

On Tuesday morning, July 22, there left on return to his home in Rumford, Me., John James Arsenault who spent two weeks visiting in Howlan and vicinity.

Mr. and Mrs. Bill Hayes and Mr. and Mrs. Henry Perry motored from Charlottetown to attend the wake of the late Sanfod Phillips at O'Leary.

—Mr. and Mrs. Lawrence Peters and Mrs. Bennett Peters of Bloomfield, and Mr. Jack Peters of Rumford, Me., were guests at the home of Mr. and Mrs. Joe DesRoches on Friday evening, July 18th.

Mr. and Mrs. Clayton Carruthers and son David, and Mr. Bruce Carruthers motored to Wilmot to the home of Mr. and Mrs. Francis MacQuarrie, on Sunday, July 20.

Master Willard MacQuarrie of Wilmot is now visiting at the home of his grandparents in Howlan.

Mr. and Mrs. Howard Cahill and son of Missouri, U.S.A., and his father, Mr. John Cahill, were in this district on Thursday, July 24th.

Mrs. John Cahill who spent a day or two in this vicinity, returned to her home in Summerside on Thursday evening, July 24.

A car of pulp was loaded in Howlan on Friday morning, July 25th. This car had been awaiting transportation since early Spring.

Miss Audrey Murphy is spending some time with her aunt, Mrs. Robert Arsenault, Howlan.

Mrs. Marie Arnold and her brother, C. J. Gallant, were recent guests at the home of their sister, Mrs. John F. Gallant, Woodstock.

Master Ralph Arsenault returned to his home in Albany on Monday morning, July 21. He was accompanied by his cousin, Master Alfred Arsenault, who will spend a few days there.

Mrs. and Mrs. R. Casey and son Eugene of Rumford, Me., and Mrs. John Cahill of Summerside were guests at the home of their sister, Mr. and Mrs. F. C. Gallant, Howlan, on Wednesday afternoon, July 23rd.

A birthday party was held at the home of Mr. and Mrs. Jack Arsenault of O'Leary in honor of their little daughter Alma Ann, who was one year old on July 23. Among those present were her little cousins Linda Arsenault and Audrey Ann Gallant, of Howlan.

Mr. and Mrs. Tenis Peters and Mrs. Peters' sister, Mrs. Josie Arsenault, were among the many who attended the wedding supper on Wednesday, July 23rd, at the home of Mr. and Mrs. Dorice Gallant, Duvar, in honor of their eldest son Desmond and his bride, the former Hazel Corcoran of Piusville.

A.G.

PRINCE COUNTY
RED CROSS BLOOD DONOR CLINICS

PLACE	DATE	TIME
Borden School—		
Aug. 3rd		8— 9 P. M.
& Aug. 4th		10—12 Noon
Tignish School—		
Aug. 4th		7— 9 P. M.
Alberton in W. I. Hall—		
Aug. 5th		2— 3 P. M.
O'Leary School—		
Aug. 5th		7— 9 P. M.
R. C. A. F. Station—		
Aug. 6th		11—12 Noon
		1— 4 P. M.
Tyne Valley Hall—		
Aug. 6th		7— 9 P. M.

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