

13, 1952

In the Privy Council.

No. 32 of 1951.

UNIVERSITY OF LONDON
W.C.1.

-4 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL
FROM THE SUPREME COURT OF CANADA.

11217

CASE FOR APPELLANTS

BETWEEN

THE ATTORNEY-GENERAL OF CANADA and
THE CANADIAN WHEAT BOARD . . . Appellants

AND

HALLET AND CAREY LIMITED and JEREMIAH
J. NOLAN . . . Respondents.

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Case for the Appellants.

RECORD.

1. This is an appeal by special leave from a judgment of the Supreme Court of Canada (Kerwin and Estey, JJ. dissenting) pronounced on 20th November, 1950. By that judgment the Supreme Court dismissed an appeal by the Appellants from a judgment of the Court of Appeal of Manitoba pronounced on 10th March, 1949, affirming a judgment of the Court of King's Bench pronounced on 19th April, 1948, in two actions which had been heard together. The respondent Nolan is the only Respondent now interested in the appeal.

Vol. 4, p. 27.
Vol. 4, pp. 25 & 26.
Vol. 3, p. 318.
Vol. 3, p. 272.

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2. The question raised by the appeal is as to the validity of an Order in Council P.C. 1292 dated 3rd April, 1947, and made under the authority of The National Emergency Transitional Powers Act, 1945.

Vol. 4, Appendix,
p. 24.
p. 2.

3. In order to indicate the circumstances giving rise to these two actions, a brief reference will now be made to the comprehensive scheme of emergency measures taken in Canada during the war and post-war period, of which the legislation and Order in Council concerned in these actions formed an important part.

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4. Commencing with the outbreak of the war in 1939 measures were taken by the Governor in Council under the authority of the War Measures Act to control and regulate the economy of Canada by, inter alia, controlling and regulating supplies and prices of commodities and services, foreign exchange, rentals, employment, exports and imports and the like.

Vol. 4, p. 2, l. 44,
p. 10, l. 32.

5. With respect to oats and barley and as part of the comprehensive scheme, regulations were made establishing a complicated system of control and regulation of supplies and prices. The most important of these regulations were to the following effect :—

(A) A maximum or ceiling price was established as part of the national price control policy to enable meat producers and others to acquire oats and barley at prices that would permit them in turn to sell their products at prices fixed for them under such policy.

(B) A support or floor price was established as the price at which the Appellant, The Canadian Wheat Board (a corporate Crown agent), always stood ready to purchase all oats or barley offered. The price was established to guarantee for producers a minimum price to encourage production of increased feed supplies for livestock required to provide meat for domestic use and to carry out war-time and post-war inter-governmental agreements. 10

(C) To ensure adequate domestic supplies, no export of oats and barley was allowed except under licence from the Appellant, The Canadian Wheat Board. During the period relevant to the present actions, the price of oats and barley abroad, particularly in the United States, greatly exceeded the Canadian support and maximum prices. 20

Vol. 4, Appendix,
p. 1.

6. Regulations up to 1st January, 1946, were enacted under the authority of the War Measures Act (Revised Statutes of Canada 1927 c. 206). Subsequent regulations up to 15th May, 1947, were enacted under the authority of The National Emergency Transitional Powers Act, 1945 (1945 Statutes of Canada c. 60) which for convenience is hereinafter referred to as the 1945 Emergency Act.

Vol. 4, Appendix,
p. 2.

7. With the cessation of hostilities in 1945 the measures constituting the comprehensive scheme of emergency control were progressively modified with a view to their ultimate revocation as supplies became available and prices in Canada were adjusted upwards to world prices. 30

Vol. 3, p. 211.

8. On 17th March, 1947, the Appellant, The Canadian Wheat Board, issued Instructions to the Trade No. 59 addressed to all companies and dealers in oats and barley in accordance with a change in policy announced that day by the Government in Parliament. Under the new policy there were to be substantial increases in the support and maximum prices. Exports were to be prohibited except by the Wheat Board. Subsidies were to be paid to users of oats and barley to enable them to buy at the new increased prices. Additional payments were to be made to the producers of oats and barley who had sold while the former maximum prices were in effect. Western oats and barley then in commercial positions were to be vested in the Appellant, The Canadian Wheat Board. The expression "oats and barley in commercial positions" means oats and barley not the property of the producer and in store in warehouses elevators or mills or in railway cars or vessels or in other facilities in Canada for the storage or transportation of grain. 40

9. This change in policy with respect to oats and barley was implemented in part by Order in Council P.C. 1292 dated 3rd April, 1947, made under the authority of the 1945 Emergency Act. That Order in Council provided, inter alia, for the vesting in the Wheat Board of oats and barley then in commercial positions and required the Wheat Board to pay for such oats and barley in general at the previous maximum prices.

Vol. 4, Appendix,
p. 24.

10. While barley was under price control, the Respondent Nolan, a grain merchant of Chicago, in 1943 bought through his agents, Hallet and Carey Limited of Winnipeg, 40,000 bushels of certain barley then in various Canadian elevators for which Hallet and Carey Limited, as his agent, held warehouse receipts. This barley was included in the barley vested in the Wheat Board by the Order in Council.

Vol. 3., p. 256, l. 4.

11. On 22nd May, 1947, the Respondent Nolan commenced an action against his agent, Hallet and Carey Limited, in the Court of King's Bench in Manitoba, claiming the barley bought by him and the documents of title thereto. Hallet and Carey Limited defended the action on the ground that the documents of title, the barley and the right of possession thereof had passed to and become vested in the Appellant, The Canadian Wheat Board. The Appellant, the Attorney-General of Canada, was added as a party to this action by an order made by the learned trial judge after the delivery of his judgment but before the formal judgment was settled. This action is sometimes referred to as the first action. The Supreme Court Appeal Case in this action constitutes Volume 1 of the Record.

Vol. 1, p. 6.

Vol. 1, p. 7.

Vol. 1, p. 20.

12. On 8th October, 1947, the Appellant, The Canadian Wheat Board, commenced another action in the same court against Hallet and Carey Limited claiming possession of the barley and of the warehouse receipts. The Respondent Nolan was added as a defendant. This action is sometimes referred to as the second action. The Supreme Court Appeal Case in this action constitutes Volumes 2 and 3 of the Record.

Vol. 2, p. 1.

Vol. 2, p. 10.

13. As the issues raised in the two actions were similar, these actions were tried together and the appeals were argued together in the Manitoba Court of Appeal and in the Supreme Court of Canada. The Judicial Committee in granting special leave to appeal was of opinion that Hallet and Carey Limited (who agreed to be bound by the judgment in this appeal) need not appear on the appeal.

14. The two issues raised by the Respondent Nolan and by Hallet and Carey Limited in their pleadings in these actions were :—

(A) the constitutional validity under the British North America Act of the 1945 Emergency Act, and

(B) the validity under the 1945 Emergency Act of the provisions of the Order in Council P.C. 1292, whereby all oats and barley in commercial positions in Canada were, with specified exceptions, vested in The Canadian Wheat Board on terms therein specified.

15. The first of these two issues was not argued by the Respondent Nolan or by Hallet and Carey Limited in the Canadian courts. It was, however, dealt with by the learned trial judge who held the Act intra vires.

Vol. 4, p. 1, l. 13

In the Court of Appeal, the view of the majority was that there was no emergency at the date of the Order in Council. The effect of this view would be that the continuation in force of the Act was at that time ultra vires of the Parliament of Canada. Before the appeal to the Supreme Court of Canada was argued, a substantially similar question was settled by that court against the view of the Court of Appeal (*in re Wartime Leasehold Regulations*, 1950 S.C.R. 124) and this issue was not raised by the Respondent Nolan or by Hallet and Carey Limited in the Supreme Court in the present case. This issue is not discussed in any of the judgments in the Supreme Court.

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16. As to the second of the two issues mentioned, the contentions of the Appellants in support of the validity of the Order in Council may be summarized as follows :—

(1) The 1945 Emergency Act plainly conferred upon the Governor in Council power to enact the provisions of the Order in Council vesting the barley in question in the Appellant The Canadian Wheat Board if he deemed it necessary or advisable to do so for any of the purposes mentioned in the Act.

(2) Since, as appears from the Order in Council, the Governor in Council deemed it necessary for one of the purposes mentioned in the Act to vest the barley in the Appellant The Canadian Wheat Board, it was not for the court to review the decision of the Governor in Council, there having been no bad faith on his part.

17. The first of these contentions is directed to the question as to whether the Governor in Council had power to appropriate property and this question depends for its determination upon the interpretation of the following words of section 2 (1) of the 1945 Emergency Act :—

“ 2.—(1) The Governor in Council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, deem necessary or advisable . . . ” for certain purposes there set out.

18. By this provision the Governor in Council is empowered to do anything “ he may . . . deem necessary or advisable ” for the purposes set out. The only limitation on the means he may adopt is that he “ deem ” such means “ necessary or advisable ” for one of the purposes set out. It is difficult to conceive how Parliament could have conferred on the Governor in Council broader powers for determining what means he might adopt to achieve any of the purposes for which he was authorized to act. It would seem abundantly clear from that language that if the Governor in Council deemed it necessary or advisable to appropriate property in order to carry out an authorized purpose, he had power to do so.

It has been contended by the Respondent Nolan that the above provision does not authorize the appropriation of property.

That contention requires those words to be interpreted to mean that the Governor in Council "may do and authorize such acts and things . . . as he may deem necessary or advisable" except appropriate property. Section 2 (1) does not, of course, contain such an exception and, it is submitted, there is no foundation for importing into its plain language any such exception.

19. Since the language is clear and unambiguous, there is no need or justification for looking outside the terms of the Act for help in interpretation.

10 The Respondent Nolan, however, has contended that the War Measures Act enacted in 1914 is a proper aid to the interpretation of section 2 (1) of the 1945 Emergency Act. He has further contended that a comparison of these two Acts shows that Parliament did not intend the Governor in Council under the 1945 Emergency Act to have the power to appropriate property and, therefore, that section 2 (1) of the 1945 Emergency Act must be interpreted as excluding that power. That argument requires that there be read into the plain words of section 2 (1) of the 1945 Emergency Act a provision denying the Governor in Council
20 purpose, notwithstanding that no such qualification is expressed.

20. Even if it were proper to go to the War Measures Act as an aid to the interpretation of section 2 (1) of the 1945 Emergency Act, it is submitted that the result of that comparison is to support the view that no such qualification can properly be implied. Section 3 of the War Measures Act reads in part as follows:—

30 "3. The Governor in Council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada; and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor in Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say:—

* * * * *

(B) Arrest, detention, exclusion and deportation;

* * * * *

(F) Appropriation, control, forfeiture and disposition of property and of the use thereof."

Vol. 4, Appendix,
p. 1, l. 16.

40 21. It will be observed that the identical words, "The Governor in Council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may . . . deem necessary or advisable," which appear in this section also appear in section 2 (1) of the 1945 Emergency Act. In the War Measures Act the emergency referred to is different and the authorized purposes, namely, "the security, defence, peace, order and welfare of Canada," are broader. The words defining what means may be adopted for achieving the authorized purposes are, however, identical.

22. Section 3 of the War Measures Act expressly provides that "for greater certainty, but not so as to restrict the generality of the foregoing terms" it is declared that the powers of the Governor in Council shall extend to, inter alia, the appropriation of property (sub-paragraph (F)).

The general power given to the Governor in Council in the opening part of the section to make such orders as he deems "necessary or advisable" for the prescribed purposes is in no way limited by the enumerated powers that follow.

The Judicial Committee in the *Japanese Reference* (1947 A.C. 87) in considering whether the expression "deportation" in the enumerated 10 powers (sub-paragraph (b)) included deportation of British subjects or should be construed as being restricted to deportation of aliens, held that the enumerated power contained in sub-paragraph (b) was not so restricted. The judgment went on to say (at p. 105): "Even if this were not the case, the same result may be reached by another route. The general power given to the Governor in Council in the opening part of s. 3 of the Act is not in this statute limited by reference to the acts particularly enumerated, and their Lordships see no reason for differing from the view expressed by Rinfret, C.J., that the order was justifiable under that general power."

Since the opinion of the Judicial Committee was that the general 20 power contained in the opening part of section 3 of the War Measures Act was not limited by the powers expressly enumerated in that section, a fortiori, the general power conferred by identical language in the opening part of section 2 (1) of the 1945 Emergency Act could not be limited by such enumeration in the War Measures Act. And certainly, the general power conferred by the 1945 Emergency Act could not be limited by the absence from that Act of any such enumeration.

23. Moreover, it would appear from the reasoning in the judgment in the *Japanese Reference*, that the general power contained in section 3 of the War Measures Act conferred on the Governor in Council the power to 30 appropriate property, quite apart from the expressly enumerated power to appropriate property, if he deemed it necessary or advisable to do so for any of the purposes prescribed by that Act. That being so, it is submitted that the general power expressed in identical terms in section 2 (1) of the 1945 Emergency Act also conferred on the Governor in Council the power to appropriate property if he deemed it necessary or advisable for any of the purposes prescribed by that Act.

24. The Appellants' contention is, therefore, that the Governor in Council was given the power to appropriate property, as a means of carrying out an authorized purpose, by the plain, unambiguous words of section 2 (1) 40 and that there is no need or justification for looking to the War Measures Act as an aid to interpretation. Even if that Act is examined, the comparison will be found to support the submission of the Appellants that the power conferred on the Governor in Council by the opening part of section 2 (1) of the 1945 Emergency Act includes the power to appropriate property, if he deems it necessary or advisable so to do for one of the prescribed purposes.

25. The second of the Appellants' contentions, as set out in paragraph 16 hereof, is that since, as appears from the Order in Council, the Governor in Council deemed it necessary for one of the purposes mentioned in the Act to vest the barley in the Appellant The Canadian Wheat Board, it was not for the court to review the decision of the Governor in Council, there having been no bad faith on his part.

The majority judges in the Court of Appeal of Manitoba proceeded on the view that it was open to them to consider the necessity for the Order in Council. It is submitted, with respect, that it was not open to them to do
 10 so, except for the purpose of investigating the truth or falsity of an allegation of bad faith and they expressly negatived bad faith.

Vol. 3, p. 338, l. 12.

Vol. 3, p. 340, l. 1.

26. By the terms of the Act the decision as to the necessity for making an order is left to the Governor in Council. This is shown by the part of section 2, under which the order was enacted, reading as follows:—

“ 2.—(1) The Governor in Council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, deem necessary or advisable for the purpose of—

Vol. 4, Appendix,
p. 3, l. 29.

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* * * * *

(c) maintaining, controlling and regulating supplies and services, prices, transportation, use and occupation of property, rentals, employment, salaries and wages to ensure economic stability and an orderly transition to conditions of peace ; ”

That the Governor in Council deemed it necessary to make the Order for a purpose set out in clause (c) is demonstrated by the preamble of the Order in Council reading as follows:—

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“ Whereas it is necessary, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, for the purpose of maintaining, controlling and regulating supplies and prices to ensure economic stability and an orderly transition to conditions of peace, to make provision for—

Vol. 4, Appendix,
p. 24, l. 29.

(A) the vesting in the Canadian Wheat Board of all oats and barley in commercial positions in Canada and products of oats and barley in Canada ;

(B) the closing out and termination of any open futures contracts relating to oats or barley outstanding in any futures market in Canada ; and

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(c) the prohibition of the export of oats or barley by persons other than the Canadian Wheat Board until otherwise provided ;

and other matters incidental thereto as set forth in the Regulations set out below.”

Thus it will be seen that Parliament left it to the Governor in Council to determine the necessity of making orders under the Act, and that the Governor in Council determined it was necessary to make the present Order.

27. In these circumstances it was not open to the court to consider the necessity for the Order in Council, except for the purpose of investigating the truth or falsity of an allegation of bad faith.

Vol. 1, p. 17, l. 4.

Vol. 2, p. 7, l. 37.

Although the Respondent Nolan and Hallet and Carey Limited did not allege in terms that there was bad faith on the part of the Governor in Council, their pleadings are open to that interpretation. At the trial they adduced evidence which would appear to have been directed to that issue. No finding of bad faith could possibly be made on such evidence and none of the three Canadian courts have made such a finding.

Vol. 3, p. 303, l. 1.

Vol. 3, p. 303, l. 5.

Vol. 3, p. 309, l. 10.

28. The learned trial judge (Williams, C.J.K.B.) after dealing at length with the question as to the constitutional validity of the 1945 Emergency Act, held that Act to be valid. In considering the validity of the Order in Council he compared the provisions of the 1945 Emergency Act with the provisions of the War Measures Act. He concluded from his comparison that it was the intention of Parliament in enacting the 1945 Emergency Act not to confer on the Governor in Council the power of appropriation of property but to withhold that power. He held, therefore, that those parts of the Order in Council whereby the Governor in Council exercised that power were ultra vires.

Vol. 3, p. 336, l. 11.

Vol. 3, p. 336, l. 11.

Vol. 3, p. 339, l. 36.

Vol. 3, p. 341, l. 18.

Vol. 3, p. 327, l. 22.

Vol. 3, p. 330, l. 12.

Vol. 3, p. 343, l. 16.

Vol. 3, p. 345, l. 21.

29. The majority of the Court of Appeal (Adamson, J.A., concurred in by McPherson, C.J.M., and Richards, J.A.) were of the view that both the 1945 Emergency Act and the Order in Council relied for their justification and legality upon the continued existence of the national emergency arising out of the war against Germany and Japan. It was their opinion that in this case there was very clear evidence that there was no economic crisis or emergency at the date of the Order in Council. They further found as a fact that the Order in Council was not necessary or related to any of the purposes of the Act, though they expressly said they were not imputing bad faith to the Governor in Council. They thought he had merely been mistaken in his view. Finally, they held that the power to appropriate property did not come within the fair meaning of the 1945 Emergency Act.

Dysart, J.A., felt that there was no need for him to inquire into the validity of the Act, and so concerned himself solely with the Order in Council. He was of the opinion that the real purpose of the Order was not the carrying out of one of the purposes mentioned in the Act, but was to confiscate the profits of certain owners of barley and was, therefore, invalid.

Coyne, J.A., assuming the Act to be valid, thought it was perfectly plain that the Order in Council was not authorized by the statute. He held that the real purpose of the Order in Council was to exact an impost of $28\frac{1}{2}$ cents per bushel from holders of barley and that no such authority was conferred by the Act.

Vol. 4, p. 1, l. 4.

30. In the Supreme Court of Canada five of the learned judges held that the Order in Council was ultra vires while two held it was valid.

Rinfret, C.J., concurred with Taschereau, Rand, Locke and Cartwright, J.J., that the appeal should be dismissed and added that he agreed substantially with their reasons.

Kerwin, J. (dissenting), held the Order in Council valid. As he put it, Vol. 4, p. 5, l. 1.
 “ The action taken was in the opinion of the Governor in Council, necessary or advisable and it is not for the judiciary to question that decision.” He found it impossible to read the words of section 2 (1), particularly clauses (c) and (E), as withholding from the Governor in Council the power to appropriate barley and pay the price fixed by him.

Taschereau, J., pointed out that the powers to appropriate property Vol. 4, p. 7, l. 35.
 which were given to the Governor in Council by the War Measures Act had been deleted from the 1945 Emergency Act and he thought it was fair
 10 to assume that it was the clear intention of Parliament that such powers would not exist in the future. He was of opinion that if Parliament Vol. 4, p. 8, l. 34.
 had intended by the 1945 Emergency Act to give to the Governor in Council the power of compulsory taking, such power would have been specifically mentioned. He held, therefore, that the provisions of the Order in Council dealing with the compulsory taking were ultra vires.

Rand, J., was of the opinion that it would be out of the question Vol. 4, p. 11, l. 41.
 for any court, except at least in a case of demonstrated bad faith, to attempt to substitute its judgment for that of the Governor in Council. He then went on to say : “ When Parliament enables the Executive to take such
 20 measure for the purposes mentioned as it may ‘ deem necessary or advisable,’ an endowment of legislative power which is here admitted to be valid, it will require more convincing reasons than have been addressed to us to satisfy me that the Government, in so acting, has exceeded the authority conferred upon it or has been guilty of misrepresenting its purpose.” Having apparently reached the conclusion that there was no bad faith and that the decision of the Governor in Council was conclusive, he nevertheless
 30 went on to say that “ The capture of the so-called profit, was, in my opinion, a legitimate measure in price control ; but whether it could be achieved by the device of appropriating title is a question which I find unnecessary to
 answer because I am unable to construe the appropriation under the Order in Council to be limited to that purpose.” His conclusion was that the appropriation was invalid. Vol. 4, p. 12, l. 1.

Estey, J. (dissenting), was of the opinion that Parliament had recognized the narrower or more restricted scope of the emergency which Vol. 4, p. 16, l. 3.
 existed when the 1945 Emergency Act was passed. He pointed out that what Parliament did was to restrict the exercise of the powers conferred upon the Governor in Council to matters specified under sub-paragraphs (A) to (E) inclusive of section 2. In his view, Parliament could not anticipate
 40 all the circumstances with regard to which legislative measures might be necessary to effect the ends and purposes specified in these sub-paragraphs and, therefore, conferred upon the Governor in Council the same wide and comprehensive powers for the attainment of these specific purposes as it had conferred upon the Governor in Council for the attainment of the more general purposes set out in the War Measures Act. He considered that the omission from the 1945 Emergency Act of a provision such as section 7 of the War Measures Act was not sufficient to support a conclusion that Parliament intended the identical language, so long and so recently
 construed to include appropriation, should here be differently construed. Vol. 4, p. 16, l. 16.
 He, therefore, held that the Order in Council was valid.

Vol. 4, p. 21, l. 6.

Locke, J., was of the opinion that if Parliament had considered that, in the exercise of the powers granted by the 1945 Emergency Act, it would be necessary for the Governor in Council to trespass upon the property and civil rights of the subject by appropriating his property, either with or without recompense, Parliament would no doubt have vested in the Governor in Council the power to do so in express terms and that it had not done so. He thought that the omission from the 1945 Emergency Act of the provisions dealing with the appropriation of property contained in the War Measures Act was a plain indication that it was not intended that the Governor in Council should be vested with any such 10 power.

Vol. 4, p. 21, l. 36.

Cartwright, J., was satisfied that "the Court cannot say that the Governor in Council did not deem the enactment of P.C. 1292 necessary or advisable for the purposes set out in clauses (c) and (E) of subsection (1) of section 2" of the 1945 Emergency Act. He was of opinion that the introductory words of section 2 (1) of the 1945 Emergency Act were "so wide and general that, if they alone are considered, they would seem to give power to the Governor in Council to enact any Order which would be within the competence of Parliament itself provided that it is enacted for one or more of the specified purposes." He considered, however, that 20 some limitation must be put upon these words. He did not think that an interpretation which gave the Governor in Council power to appropriate property would be in accord with the intention of Parliament. If Parliament had wished to confer such a power on the executive by the 1945 Emergency Act it would have used express words declaring that intention. He, therefore, held that the Governor in Council did not have such power.

Vol. 4, p. 21, l. 49.

Vol. 4, p. 24, l. 19.

31. The Appellants respectfully submit that this appeal should be allowed for the following among other

REASONS.

- (1) BECAUSE the Order in Council was intra vires of the 30 Governor in Council under the 1945 Emergency Act.
- (2) BECAUSE section 2 (1) of the 1945 Emergency Act conferred on the Governor in Council the power, for any of the purposes set out in that section, to vest the barley in question in the Appellant The Canadian Wheat Board, if he deemed it necessary to do so.
- (3) BECAUSE the Governor in Council, as appears from the Order in Council, deemed it necessary for one of the purposes set out in section 2 (1) of the 1945 Emergency Act to vest the barley in question in the Appellant The 40 Canadian Wheat Board.
- (4) BECAUSE the language of section 2 (1) of the 1945 Emergency Act in its plain and natural meaning empowered the Governor in Council to appropriate property if he deemed it necessary to do so for any of the purposes set out in that section.

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- (5) BECAUSE the provisions of section 2 (1) of the 1945 Emergency Act are clear and unambiguous and should not, therefore, be interpreted by reference to the provisions of the War Measures Act.
- (6) BECAUSE such reference, if permissible, supports the view that section 2 (1) of the 1945 Emergency Act confers the power to appropriate property.
- (7) BECAUSE it was not open to the court to consider the necessity for the Order in Council, except for the purpose of investigating the truth or falsity of an allegation of bad faith.
- (8) BECAUSE there could be no finding of bad faith on the part of the Governor in Council in enacting the Order in Council and none of the three courts below have made such a finding.
- (9) BECAUSE the reasons in the judgments of Kerwin, J., and Estey, J., are right.
- (10) BECAUSE the 1945 Emergency Act was intra vires of the Parliament of Canada under the British North America Act.

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C. F. H. CARSON.

D. W. MUNDELL.

FRANK GAHAN.

No. 32 of 1951.

In the Privy Council.

ON APPEAL
from the Supreme Court of Canada.

BETWEEN
THE ATTORNEY-GENERAL
OF CANADA and THE
CANADIAN WHEAT
BOARD - - - - Appellants

AND

HALLET AND CAREY
LIMITED and JEREMIAH
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Case for the Appellants

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