

"The Senior Rationing Officer issued a monthly permit, 'R.B. 146', to the accused for their monthly quotas. These permits are the legal rationed documents and no other valid rationed documents are issued to 'industrial users'. The permits are surrendered to the supplier and the supplier returns the permits to the Senior Rationing Officer. Permits were issued to the accused for the months of November, 1945, December, 1945, January, 1946, and February, 1946. The accused used all their quota for the year 1945 except two coupons. The accused also used their permits for the months of January and February, 1946, the White Packing Co. being the supplier, and the rationed documents or permits were returned to the Senior Rationing Officer, according to the evidence of Mr. Brydges.

"From these facts, I must come to the conclusion that the accused had no valid rationed documents to surrender, either at the time of ordering or delivery, for the butter delivered to them on Feb. 14, 1946, for none were in existence. This conclusion is corroborated by the written statements of the accused admitted in evidence in this case.

"Secondly, I shall deal with the law involved in the case. This will naturally fall into two parts:

- (1) The law in force up to and including Dec. 31, 1945.
- (2) The law in force on and after Jan. 1, 1946.

"The legal basis for the prosecution for the period Nov. 1, 1945, to Dec. 31, 1945, is the Wartime Prices and Trade Board Orders 464 and 465 and amendments there-to made pursuant to Order-in-Council P.C. 8528, and amendments. These orders depending for their validity on the question whether the War Measures Act, under which the Orders were made, was in full force and effect for this period. It was within the powers of the Parliament of Canada to fix a date by Proclamation when the war against Germany and Japan should be, for the purposes of The War Measures Act, deemed no longer to exist.

"No Proclamation was issued by the Parliament of Canada declaring that 'The War' for the purposes of The War Measures Act be deemed no longer to exist, until the National Emergency Transitional Powers Act, 1945, came into effect on the

1st day of January, 1946. The Proclamation is contained in section 5 of the said The National Emergency Act.

"Counsel for the accused raised the question of the constitutional validity of the Orders and Regulations passed pursuant to The War Measures Act. Order-in-Council P.C. 6223, passed Aug. 6, 1943, says, section 1:

'Where in any action or proceeding, the constitutional validity of any Order-in-Council made under the authority of The War Measures Act, or any Order made on authority of such Order-in-Council, is brought in question, the same shall not be adjudicated to be invalid until after notice has been given to the Attorney-General of Canada, and the Attorney-General of the Province in which such action, or other proceeding has been instituted.'

No such notice was given to the said Attorney-Generals by the accused in this case. The War Measures Act, under which these provisions were passed, has been held in previous proceedings to be *intra vires*. Therefore, the constitutional validity of the Orders and Regulations cannot be raised in this case, and the Orders and Regulations must be found valid and in full force and effect for this period.

"Now, I shall deal with the law which came into force on the 1st day of January, 1946.

"The only question to be determined on this point is the 'constitutional validity' of the National Emergency Transitional Powers Act.

"The Plenary powers of the Parliament of Canada are prescribed by the British North America Act. Germany and Japan surrendered unconditionally last May and August, respectively. The peace treaties have not been signed yet, and it may be some considerable time before they will be signed.

"In the transition period from 'War' to 'Peace' many national emergencies may arise. Occupational armed forces must be maintained until withdrawn. Demobilization must be continued. Veterans must be rehabilitated. Economic stability must be maintained. Famine, caused by the wastages of war, must be alleviated. Essential supplies and services must be justly distributed. All of which are of 'national importance'.