HIS MAJESTY THE KING.....PLAINTIFF;

1921
June 27.

AND

JOSEPH EUGENE CARON.....DEFENDANT.

Revenue—Constitutional Law—Income War Tax Act—B. N. A. Act—Direct taxation—Minister of Provincial Crown.

C. was a minister of the Crown for the Province of Quebec, and in receipt of a salary as such and of an indemnity as a member of the provincial legislature. Being assessed by the Dominion authorities on his income, he claimed (1) that the Income War Tax Act, 1917, and amendments, was unconstitutional and *ultra vires* of the powers of the Dominion Government, and (2) that in any event it was *ultra vires*, and unconstitutional in so far as it purports to apply to him.

Held, that the right of the Dominion of Canada under Art. 3 of Sec. 91 of the B.N.A. Act to raise a revenue by "any mode or system of taxation," namely, by direct or indirect taxation, in no way conflicts with the right granted to the provinces by section 92, Art. 2 to raise a revenue by direct taxation for provincial purposes.

2. That the Dominion Crown has independent plenary power within its own proper legislative domain, and disparate from and unrelated to any provincial right of taxation, to raise a revenue by direct taxation upon the income of persons residing within its territorial jurisdiction, and that the defendant could not claim any immunity or exemption from such taxation.

INFORMATION by the Dominion Crown to recover from defendant the sum of $210 income tax.

May 13th, 1921.

The case now heard before the Honourable Mr. Justice Audette, at Ottawa.

E. L. Newcombe K.C. and *C. P. Plaxton*, for plaintiff.

Aimé Geoffrion K.C. and *Charles Lanctot K.C.*, for defendant.

The facts are stated in the reasons for judgment.

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AUDETTE J. now (27th June, 1921), delivered judgment.

This is an information, exhibited by the Attorney-General of Canada, whereby it appears, *inter alia*, that the defendant is the Minister of Agriculture for the Province of Quebec, receiving as such a salary (R.S.P.Q., 1909, Sec. 574), of $6,000, and an indemnity of $1,500.00 as a member of the Legislature, and that in computing the amount of income tax for which the defendant is claimed to be liable for the year 1917, the said sums have been taken into consideration and account, showing in the result a liability to the Crown, for such income tax, of the sum of $210.00.

By his amended statement of defence the defendant denies, among other things, that he is "a person liable to taxation under the Income War Tax Act, 1917, and amendments thereof, alleging that the said Acts are unconstitutional and *ultra vires* of the powers of the Parliament of the Dominion of Canada in so far as they intend to apply to the defendant who is a Minister of the Crown for the Province of Quebec.

The defence rests upon paragraphs 6a and 7 thereof, which respectively read as follows, viz.:—

"6a. The Income War Tax Act, 1917, and amendments thereto, are unconstitutional and *ultra vires* of the powers of the Parliament of Canada."

"7. The Income War Tax Act, 1917, and amendments thereof are unconstitutional and *ultra vires* of the Parliament of the Dominion of Canada in so far as they intend to apply to the defendant, who is a Minister of the Crown for the Province of Quebec."

By sec. 2 (I) of 9-10 Geo. V, (1919) sub. sec. 1 of sec. 3 of the Income War Tax Act, 1917, was amended by including in the term "income" the salaries and indemnities or other remuneration of members of

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Provincial Legislative Councils and Assemblies, whether such salaries or indemnities are paid out of the revenues of His Majesty in respect of any province. And by sec. 10 of the Act this amendment is deemed construed to have come into operation on and from the date upon which the Income War Tax Act, 1917, came into operation.

The parties hereto have filed the following admission of facts, viz.:

"It is admitted for all purposes of this action that the Minister of Finance determined the amount payable for the tax by the defendant herein pursuant to the requirements of the Income War Tax Act, 1917, and amendments thereto, as being the sum of $210.00, and thereupon, 21st November, 1918, sent by registered mail a notice of the said assessment in the form prescribed by the Minister to the defendant notifying him of the aforesaid amount as payable by him for the tax; also it is admitted that of the income in respect of which such tax was determined six thousand dollars is defendant's salary as Minister of Agriculture of Quebec under Article 574 of the Revised Statutes, 1909."

The whole controversy rests upon Art. 3 of sec. 91 of the British North America Act, 1867, and Art. 2 of sec. 92 thereof, which respectively read as follows:

"Sec. 91, Art. 3.—*The raising of money by any mode or system of taxation.*"

"Sec. 92, Art. 2.—Direct taxation within the Province in order to the raising of a revenue for provincial purposes."

It is a sound rule of statutory construction that every word ought to be construed in its ordinary or primary sense, unless a second or more limited sense is required by the subject-matter of the context.

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There is no conflict between these two sections, and taking them in their plain and ordinary meaning it is beyond cavil that the plenary power of "raising money by any mode or system of taxation"—either direct or indirect—is vested in the Dominion; and it is equally true that the Province has plenary power to raise money by "direct taxation," but for provincial purposes exclusively. This is the proper meaning that judicial interpretation arising out of decided cases attaches to these two sections. "Each class is allowed full scope to which upon the natural import of language used it is entitled, the jurisdictions must inevitably overlap, or to use Lord Watson's expression, 'interlace.' . . . The federal classes are to be viewed as confined to matters of common Canadian concern and the provincial as covering matters of local provincial concern, and after applying further the great cardinal rule of interpretation laid down by the Privy Council in the *Parson's case* that the two sections 91 and 92 must be read together and the language of the one *interpreted and where necessary*, modified by that of the other, it will appear that there are domains in which *intra vires* federal legislation will meet *intra vires* provincial legislation." Clement's Canadian Constitution, 464. See also Lefroy's Canada's Federal System, 166, 265, 279 and 281.

But there is more. The powers of the Dominion, given by the opening enactment of sec. 91, makes it lawful to make laws for the peace, order and good government of Canada, in relation to all matters *not coming* within the classes of subjects assigned to the provinces. And it adds: "and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section—as above mentioned—it is hereby declared that (*notwithstanding anything in the*

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Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated." And there follows the several Articles, among which Art. 3 is found which gives the Dominion the right to raise a revenue by direct taxation, *notwithstanding anything in the Act. Intra vires* federal legislation must override, if necessary, inconsistent *intra vires* provincial legislation; because when such authority is so given to the Dominion, it has paramount authority, and the plenary operation assured by the *non obstante* clause with which the class enumeration opens. *Tennant's case* (1); *The Fisheries Case* (2). By the very language of the opening clause of sec. 91 the rule of federal paramountcy must obtain.

However, is there in this case actual conflict? There is nothing repugnant to either enactment in finding that the Dominion has full authority, etc., and that it is acting within the full scope of its powers and with respect to matters of common Canadian concern or of the body politic of the Dominion, in enacting the Income Tax Act and that the Province has the power, in raising revenues for Provincial purposes, to raise revenue by direct taxation.

The Dominion has a right, under sec. 91, to raise revenue, for matters of common Canadian concern—and for peace, order and good government—by direct and indirect taxation, whilst the province, for provincial purposes can only raise by direct taxation. There is no repugnancy or conflict between these respective powers. The exercise by the Dominion of the authority to raise revenue by direct and indirect taxation for federal purposes does not trench upon the authority of the Province to raise revenue for provincial purpose by direct taxation.

(1) [1894] A.C. 31. (2) [1898] A.C. 700.

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Finding otherwise would, without justification, interfere with the revenues of the Dominion when there is no text in the Act, or possible construction thereof, to justify such course.

In the interpretation of a self-governing constitution founded upon a written organic instrument, such as the B.N.A. Act, if the text is explicit, the text is conclusive. But, when the words establish two mutually exclusive jurisdictions, recourse must be had to the general context of the Act. *Reference case* (1).

Dealing with the proviso at the end of sec. 91, the case of the *Attorney-General of Ontario* v. *Attorney-General for Dominion* (2), settles and correctly describes all the classes enumerated in sec. 92 as being from a provincial point of view of a local or private nature. It is to be read, therefore, as a limiting proviso to sec. 92. In other words, as put by Mr. Justice Clement's Canadian Constitution: "Provincial jurisdiction extends to all matters in a provincial sense, local or private within the province; subject, however, to this proviso, that any matter really falling within any of the class enumerations of sec. 91, is to be deemed of common Canadian concern and not in any sense a matter local or private within any province." And at p. 366 he adds: "It has been frequently recognized by this Board, and it may be regarded as settled law, that according to the scheme of the British North America Act, the enactments of the Parliament of Canada, in so far as they are within its competency must override provincial legislation."

In *Citizens Insurance Co.* v. *Parsons* (3), cited by plaintiff's counsel at bar, Sir Montague Smith, L. J., referring to the apparent conflict of powers between

(1) [1912] A.C. 571. (2) [1896] A.C. 348.
(3) 7. A.C. 96-108.

secs. 91 and 92, by way of illustration of the principle that the powers exclusively assigned to the provincial legislatures were not to be absorbed in those given the Dominion Government, said:—

"So 'the raising of money by any mode or system of taxation' is enumerated among the classes of subjects in sec. 91; but, though the description is sufficiently large and general to include 'direct taxation within the province in order to the raising of a revenue for provincial purposes,' assigned to the provincial legislatures by sec. 92, it obviously could not have been intended that in this instance also the general powers should override the particular one."

Continuing, Sir Montague Smith says:—"With regard to certain classes of subjects, therefore, generally described in sec. 91, legislative power may reside as to some matters falling within the general description of these subjects in the legislature of the province. In these cases it is the duty of the courts, however difficult it may be, to ascertain in what degree, and to what extent, authority to deal with matters falling within these classes of subjects exists in each legislature and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist, and in order to prevent such a result, *the two sections must be read together, and the language of one interpreted, and when necessary, modified by that of the other.*"

And that is the principle of construction which I have sought to apply to this case.

Part of the passage last cited has been referred to by Lord Hobhouse in the *Lambe case* (1), and relied upon by defendant's counsel at bar, but in my opinion

(1) 12 A.C. 575.

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nothing can be gathered from it which would justify the contention that the Dominion could in any way be deprived of its power of direct taxation.

Then we have a recent expression of opinion touching the respective powers of legislation granted by secs. 91 and 92 by their Lordships of the Judicial Committee in the *John Deere Plow Co's case* (1) to the following effect: "The language of these sections and of the various heads which they contain obviously cannot be construed as having been intended to embody the exact disjunctions of a perfect logical scheme. The draftsman had to work on the terms of a political agreement, terms which were mainly to be sought for in the resolutions passed at Quebec. . . . To these resolutions and the sections founded on them, the remark applies which was made by this Board about the Australian Commonwealth Act in a recent case, *Attorney-General for Commonwealth* v. *Colonist Sugar Refining Co.* (2), that if *there is at points obscurity in language, this may be taken to be due, not to uncertainty* about general principle, but to the difficulty in obtaining ready agreement about phrases which attends the drafting of legislative measures by large assemblages. It may be added that the form in which provisions in terms overlapping each other have been placed side by side, shews that those who passed the Confederation Act, intended to leave the working out and interpretation of these provisions to practice and to judicial decision."

There is an early case which deserves mention if only for the clarity of its language touching the matter in controversy between the parties in the case now before the Court. I refer to *Dow* v. *Black* (3), where

(1) [1915] A.C. 330. (2) [1914] A.C. 237, at 254.
(3) L.R. 6 P.C. 272, at p. 282.

Lord Colville says: "They (their Lordships) conceive that the 3rd article of sec. 91 is to be reconciled with the 2nd article of sec. 92 by treating the former as empowering the supreme legislature to raise revenue by any mode of taxation whether direct or indirect; and the latter as confining the provincial legislature to direct taxation within the Province for provincial purposes."

Now, passing to the other contention of the defence respecting property and civil rights, counsel asserts, *inter alia*, that an outside authority over which the provincial legislature has no control cannot deprive its members of part of the monies voted actually to them as members, compensating them in the discharge of their duties as representatives of the people of the Province, or voted as salaries to members of the Provincial Government. And he asks that if this tax is lawfully imposed what is then to prevent the Parliament of Canada imposing a direct tax and to *any amount* expressly on members of the Provincial Legislature? And he adds that the revenues, and duties, under sec. 126, raised by the legislature form a consolidated revenue fund.

The reply to this purely supposititious case is that the proper time to deal with it will be when it arises. The Courts do not concern themselves with or forestall difficulties that may be imagined but which do not exist in the facts before them; nor are they disposed to answer hypothetical questions. See per Lord Mansfield in *The King* v. *Inhabitants of West Riding of Yorkshire* (1), *and Dyson* v. *Attorney-General* (2).

The Dominion in raising this tax does not in any manner attempt to interfere with the exercise of provincial powers, but merely asserts that when the power is exercised the recipient of the indemnity and

(1) [1773] Lofft's Rep. 238. (2) [1911] 1 K.B. 410.

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the salary shall be answerable to federal legislation in the same manner as other persons or residents, irrespective of the source from which the individual's income is derived.

In the *Lambe case* (1), their Lordships make the following observation in respect of oppression or *ad convenienti* argument: "If they find that on the due construction of the Act a legislative power falls within sec. 92, *it would be quite wrong of them to deny its existence because by some possibility it may be abused,* or may limit the range which otherwise would be open to the Dominion Parliament." And per Lord Loreburn L.C. in *Attorney-General of Ontario* v. *Attorney-General for Canada* (2): "It certainly would not be sufficient to say that the exercise of a power might be oppressive, because that result might ensue from the abuse of a great number of powers indispensible to self-government, and obviously bestowed by the B.N.A. Act. Indeed it might ensue from the breach of almost any power."

And, as said, *inter alia,* in Clement's Canadian Constitution, 3rd Ed., p. 482: "In the case from which this finding is taken, the right of the provinces to tax objects and institutions over which the federal parliament has legislative jurisdiction was affirmed in the *Lambe case* (*ubi supra*) . . . Dominion excise laws may be rendered nugatory by provincial prohibition. A province may sell its timber on terms prohibiting exports . . . As has been said, lawful legislation does not become unlawful because it cannot be separated from its inevitable consequences."

As a further answer to the defence's contention in this respect, the observations of Lord Hobhouse in the same case are very apposite. He said: "Their

(1) 12 A.C. 575. (2) [1912] A.C. 571.

Lordships cannot conceive that when the Imperial Government conferred wide powers of local self-government on great countries, such as Quebec, it intended to limit them on the speculation that they would be used in an injurious manner. People who are trusted with the great power of making laws for property and civil rights may well be trusted to make laws to levy taxes."

The well-known cases of *Webb* v. *Outrim* (1), and *Abbott* v. *City of St. John* (2) were much discussed at the argument.

In the case of *Railroad Co.* v. *Paniston* (3), Strong J. is reported as saying, at page 36: "It is therefore manifest that exemption of federal agencies from state taxation is dependent not upon the nature of the agent or upon the mode of their constitution, or upon the fact that they are agents, *but upon the effect of the tax*, that is upon the question whether the tax does in truth deprive them of powers to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect; it leaves them free to discharge the duties they have undertaken to perform. A tax upon their operation is a direct obstruction to the exercise of federal powers."

The stock argument of interference with property and civil rights in the province needs only a passing observation. In the case of *Cushing* v. *Dupuy* (4), their Lordships offered, *inter alia*, the following observations: "It is therefore to be presumed, indeed it is a necessary implication, that the Imperial Statute, in assigning to the Dominion Parliament the subjects

(1) [1907] A.C. 81.
(2) 40 S.C.R. 597.
(3) 18 Wall (85 U.S.) 5.
(4) 5 A.C. 409; 49 L.J.P.C. 63.

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of bankruptcy and insolvency intended to confer on it legislative power to interfere with property, civil rights and procedure within the provinces, *so far as a general law relating to those subjects might affect them.*" Thereby reserving to the sovereign legislature its plenary power in relation to all matters coming within the classes of subjects mentioned in sec. 91, as the Act expressly states. See also *Tennant* v. *Union Bank* (1); *Attorney-General* v. *Queen Insurance Co.* (2); *Bourgoin* v. *Montreal, Ottawa and Occidental Ry. Co.* (3).

Again in the *Russel's case* (4), is found the following language: "Few, if any, laws could be made by Parliament for the peace, order, and good government of Canada, which did not in some incidental way affect property and civil rights; and it could not have been intended when assuring to the provinces exclusive legislative authority on the subject of property and civil rights, to exclude the parliament from the exercise of this general power whenever any such incidental interference could result from it. The true nature and character of the legislation in the particular instances under discussion must always be determined in order to ascertain the class of subject to which it really belongs."

And again per Anglin J. in *re Insurance Act* (5);..... "when a matter primarily of civil rights has attained such dimensions that it 'affects the body politic of the Dominion' and has become 'of national concern', it has, in that aspect of it, not only ceased to be 'local and provincial,' but has also lost its character as a matter of 'civil rights *in the province*' and has thus so far ceased to be subject to provincial jurisdiction that

(1) [1894] A.C. 31; 63 L.J.P.C. 25.
(2) 3 A.C. 1090, per Sir George Jessel. M.R. at p. 1096.
(3) 49 L.J.P. C. 68.
(4) 7 A.C. 829.
(5) [1910] 48 S.C.R. 260 at p. 310.

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Dominion legislation upon it under the 'peace, order and good government,' provision does not trench upon the exclusive provincial field and is, therefore, valid and paramount."

On the whole I fail to see any ground upon which the defendant should be treated with discrimination as regards the other citizens or public of Canada in relation to liability for a tax of the nature here in question. See *Hollinshead* v. *Hazleton* (1).

I have come to the conclusion that the Dominion has, under the several provisions of sec. 91 of the British North America Act, 1867, independent plenary power within its own proper legislative domain, and disparate from and unrelated to any provincial right of taxation, to raise revenue by direct taxation upon the income of persons residing within its territorial jurisdiction, and that the immunity or exemption claimed by the defendant cannot avail.

There will be judgment against the defendant, as prayed, for the sum of $210, with interest thereon at the rate of seven per centum per annum (as provided by sec. 10 of 7-8 Geo. V, ch. 28) from the 21st November, 1918, to the date hereof and with costs.

Judgment accordingly.

(1) [1916] 1. A.C. 428 at pp. 436 and 461.