Privy Council Appeal No. 75 of 1922.

The Honourable J. E. Caron - - - - - - - *Appellant*

v.

The King - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST AUGUST, 1924.

Present at the Hearing:

VISCOUNT CAVE.
LORD PHILLIMORE.
LORD BLANESBURGH.
SIR ADRIAN KNOX.

[*Delivered by* LORD PHILLIMORE.]

This is an appeal from a judgment of the Supreme Court of Canada affirming the judgment of Audette J. in the Exchequer Court upon an information filed by the Attorney-General of Canada on behalf of H.M. The King, whereby the appellant Caron was ordered to pay the sum of $210 with interest and costs.

There is no dispute of fact in the case; and the sole point to be determined is whether the appellant was rightly assessed and taxed under the Dominion Income War Tax Act, 1917, and the amending Dominion statute of 1919 in respect of his salary of $6,000 a year as Minister of Agriculture in the Government of the Province of Quebec and sessional indemnity of $1,600 as a member of the Legislative Assembly of the Province, as being his income or part of his income.

It was admitted for the purposes of the action that the Minister of Finance determined pursuant to the requirements of the Acts that the amount payable for tax by the appellant was

the sum of $210 and duly notified the appellant that this amount was payable by him, and that in so determining the Minister took into account the appellant's salary as Minister of Agriculture.

It was contended on behalf of the appellant that he was notwithstanding not liable to pay this sum (1) because it was *ultra vires* of the Parliament of Canada to pass the Income War Tax Acts and (2) because in any event he was not liable to taxation in respect of his salary as provincial Minister or his sessional indemnity.

The important provisions of the Income War Tax Act, 1917, are secs. 3 and 4:

> By sec. 3. (1) "For the purposes of this Act, 'Income' means the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary, or other fixed amount, or unascertained as being fees or emoluments, or as being profits from a trade or commercial or financial or other business or calling, directly or indirectly received by a person from any office or employment, or from any profession, or calling."

Then follow certain exemptions and deductions not material.

> By sec. 4. (1) "There shall be assessed, levied and paid, upon the income during the preceding year of every person residing or ordinarily resident in Canada or carrying on any business in Canada, the following taxes. :—"

And then follow the varying rates according to the amount of the income.

The statute of 1919 (9–10 Geo. V. ch. 55) amending the Income War Tax Act, 1917, provided as follows:—

> Sec. 2. (1) "Subsection one of section three of the said Act (the Income War Tax Act, 1917) is amended by inserting. . . . and after the word 'contract' in the twenty-second (*i.e.*, the last) line thereof the following: 'and including the salaries, indemnities or other remuneration of members of the Senate and House of Commons of Canada and officers thereof, members of Provincial Legislative Councils and Assemblies and Municipal Councils, Commissions or Boards of Management, any Judge of any Dominion or Provincial Court appointed after the passing of this Act, and of all persons whatsoever whether the said salaries, indemnities or other remuneration are paid out of the revenues of His Majesty in respect of His Government of Canada, or of any Province thereof, or by any person, except as provided in section five of this Act.'"

Both the points now raised by the appellant were fully dealt with in the judgment of Audette J. When the case came before the Supreme Court of Canada, the judgment was concise, the Chief Justice on behalf of the Court stating that he thought that the case was settled by the previous decision of the Court in *Abbott* v. *City of St. John* (40 S.C.R. 597), in which case an official of the Dominion Government had been assessed on his income as such official, and it had been held that the Provinces had the right to impose Income Taxes upon Dominion officials resident within them in respect of their official salaries. The Court thought that the present case was the converse of the case of *Abbott* and was governed by the same reasons.

The whole matter turns on the construction and application of sections 91 and 92 of the British North America Act of 1867,

and their Lordships in determining it are assisted and guided by the mass of decisions on these two sections which have been previously given by the Board.

By Section 91 of the Act it is provided that :—

> 91. "It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces ; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated, that is to say :—
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> * * * *
>
> (3) The raising of money by any mode or system of taxation.
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> * * * *
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> And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces."

Money raised by an Income Tax Act is unquestionably money raised by a mode or system of taxation.

It is true that by the provisions of section 92 the legislature in each province may exclusively make laws in relation to certain matters coming within the classes of subjects which are there enumerated, and that one of these classes of subjects is "direct taxation within the province in order to the raising of a revenue for provincial purposes."

As such particular direct taxation is reserved to the province, to that extent there is some deduction to be made from the totality of power apparently given exclusively to the Dominion Parliament to raise money for any purpose by any mode or system of taxation.

This apparent antinomy has been noticed in various decisions. It is sufficient to mention the case of the *Citizens Insurance Co.* v. *Parsons* (7 App. Cases, page 96) and the *Bank of Toronto* v. *Lambe* (12 App. Cases 575).

In the latter case, their Lordships observed as follows :—

> "It is impossible to give exclusively to the Dominion the whole subject of raising money by any mode of taxation, and at the same time to give to the provincial legislatures, exclusively or at all, the power of direct taxation for provincial or any other purposes. This very conflict between the two sections was noticed by way of illustration in the case of *Parsons*,"

and after quoting from the earlier judgment, their Lordships proceeded :—

> "Their Lordships adhere to that view, and hold that, as regards direct taxation within the province to raise revenue for provincial purposes, that subject falls wholly within the jurisdiction of the provincial legislatures."

Both sections of the Act of Parliament must be construed together ; and it matters not whether the principle to be applied is that the particular provision in subsection 2 of section 92, effects a deduction from the general provision in sub-section 3

of section 91, or whether the principle be that subsection 3 of section 91 is confined to Dominion taxes for Dominion purposes.

The only occasion on which it could be necessary to consider which of these two principles was to guide, would be in the not very probable event of the Parliament of Canada desiring to raise money for provincial purposes by indirect taxation. It might then become necessary to consider whether the taxation could be supported because the power to impose it, given by subsection 3 had not been taken out of the general power by the particular provision, or because though not given by subsection 3, it was given as a residual power by the other parts of section 91. But no such question arises now.

Upon any view there is nothing in section 92 to take away the power to impose any taxation for Dominion purposes which is prima facie given by subsection 3 of section 91. It is not therefore *ultra vires* on the part of the Parliament of Canada to impose a Dominion Income Tax for Dominion purposes; and the first point must therefore be decided against the appellant.

Then as to the second point, certain incomes such as those of the Governor-General of Canada and Consuls and Consuls-General are exempted from taxation by the Acts in question; and if there were Foreign Ministers resident in Canada, it would no doubt be proper that in accordance with international law, their incomes should either be expressly exempted or impliedly held exempt from taxation. But their Lordships can see no reason in principle why any of the sources of income of a taxable citizen should be removed from the power of taxation given to the Parliament of Canada.

It may be doubted whether it was necessary to amend the original Act in order to bring the various officers mentioned in section 2 of the Act of 1919 within the scope of the Act of 1917. But assuming that this amending legislation was necessary, it is not to be regarded as in the nature of specific legislation directed against certain public officers, but merely as declaratory that certain classes of income are, as they certainly would be in this country, liable to taxation and not exempt.

Various extreme cases were suggested by counsel in argument.

Objections of this class, however, were well met by Davies J. when giving the leading judgment in the case of *Abbott* v. *City of St. John*. He was dealing with the imposition of tax by the province upon a Dominion official, which imposition, it was contended, contravened the provisions of subsection 8 of section 91, a subsection which gives to the Dominion "the fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada."

He said:

> "The Province does not attempt to interfere directly with the exercise of the Dominion power, but merely says that, when exercised, the recipients of the salaries shall be amenable to provincial legislation in like manner as all other residents."

* * * *

> " It is said," he continued, " that the legislature might authorise an income tax denuding a Dominion official of a tenth or even a fifth of his official income, and in this way, paralyse the Dominion service and impair the efficiency of the service. But it must be borne in mind that the law does not provide for a special tax on Dominion officials but for a general undiscriminatory tax upon the incomes of residents and that Dominion officials could only be taxed upon their incomes in the same ratio and proportion as other residents.
>
> At any rate, if under the guise of exercising power of taxation, confiscation of a substantial part of official and other salaries were attempted, it would be then time enough to consider the question and not to assume beforehand such a suggested misuse of the power."

In *The Great West Saddlery Co.* v. *The King* (1921, 2 App. Cas. page 91) provincial legislation which had the effect of precluding Dominion trading Companies from carrying on their business in the province unless they complied with certain special terms, was held *ultra vires* as calculated to abrogate the capacity or derogate from the status which it was in the power of the Parliament of Canada to bestow ; and a general principle was laid down that no provincial legislature could use its special powers as an indirect means of destroying powers given by the Parliament of Canada.

By parity of reason the Parliament of Canada could not exercise its power of taxation so as to destroy the capacity of officials lawfully appointed by the Province.

But the Income Tax Acts, notwithstanding the special language of the second Act, are not discriminating statutes. They are statutes for imposing on all citizens contributions according to their annual means, regardless of, or it may be said not having regard to, the source from which their annual means are derived.

For these reasons and for those given by the learned judges of the majority in *Abbott* v. *City of St. John* to which their Lordships desire to express their assent, their Lordships will humbly recommend His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

THE HONOURABLE J. E. CARON

v.

THE KING.

DELIVERED BY LORD PHILLIMORE.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1924