

# In the Privy Council.

No. 135 of 1929.



## ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER OF SILVER BROTHERS LIMITED  
IN BANKRUPTCY.

BETWEEN

THE ATTORNEY-GENERAL FOR THE PROVINCE  
OF QUEBEC ... .. *Appellant,*

AND

THE ATTORNEY-GENERAL FOR THE DOMINION  
OF CANADA ... .. *Respondent.*

### CASE OF THE APPELLANT THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC.

1. This is an appeal by special leave granted on the 17th day of December, 1929, from a judgment of the Supreme Court of Canada, dated the 26th September, 1929, reversing by a majority composed of Anglin, C.J., Lamont, Smith, Mignault and Newcombe, JJ., Duff and Rinfret, JJ., dissenting, the judgment of the Court of King's Bench of Quebec (Appeal Side), composed of Dorion, Allard, Letourneau and Rivard, JJ., Guerin, J., dissenting, which reversed the judgment of the Superior Court, Mr. Justice Panneton. Record. p. 36.

2. There is no dispute as to the facts, both the Dominion and the Province of Quebec have a claim for taxes duly imposed. An admission of facts by the parties is printed in the Record at page 4. p. 9.

The assets being insufficient to meet both claims the dispute is as to the priority which the trustee accorded to the Dominion claim for the whole balance of the moneys realized. p. 5.

Record.  
p. 1,  
p. 51.

3. The petition of the Appellant was filed in the Superior Court on the 9th June, 1925, for a declaration that Section 17 of the Dominion Statute "An Act to amend The Special War Revenue Act 1915" (12-13 George V, Chapter 47), by virtue of which the trustee in bankruptcy had collocated in his dividend sheet the claim of the Government of the Dominion by privilege, was ultra vires and, in the alternative, that the claims of the two Governments were equally privileged and should be paid rateably.

p. 49.

4. The claim of the Dominion for priority is based on Section 17 of the Act to amend The Special War Revenue Act, 1915 (12-13 George V, Chapter 47), which is as follows:—

p. 31, l. 13.

"17. Notwithstanding the provisions of The Bank Act and The Bankruptcy Act, or any other statute or law, the liability to the Crown of any person, firm or corporation, for payment of the excise taxes specified in The Special War Revenue Act, 1915, and amendments thereto, shall constitute a first charge on the assets of such person, firm or corporation, and shall rank for payment in priority to all other claims of whatsoever kind heretofore or hereafter arising save and except only the judicial costs, fees and lawful expenses of an assignee or other public officer charged with the administration or distribution of such assets."

p. 48.

5. The claim of the Appellant is under Article 1357 of the Revised Statutes of Quebec, 1909, in the Section providing for the levy and application of taxes, and is as follows:—

p. 32, l. 7.

"1357. All sums due to the Crown in virtue of this section shall constitute a privileged debt, ranking immediately after law costs."

p. 29.

6. The Bankruptcy Act, Statute of Canada, 9-10 George V, Chapter 36, Section 51, provides:—

"Priority of Claims.

"51. (1) \* \* \* \* \*

"(6) Nothing in this section shall interfere with the collection of 30  
"any taxes, rates or assessments now or at any time hereafter payable  
"by or levied or imposed upon the debtor or upon any property of the  
"debtor under any law of the Dominion, or of the Province wherein  
"such property is situate, or in which the debtor resides, nor prejudice  
"or affect any lien or charge in respect of such property created by  
"any such laws."

The French version of this Subsection (6) is as follows:—

"(6) Rien dans la présent article ne doit nuire à la perception de  
"taxes, taux ou cotisation maintenant ou à toute époque à l'avenir  
"payables par le débiteur, ou prélevés sur lui ou à lui imposés, ou 40  
"prélevés ou imposés sur des biens quelconques du débiteur par les  
"lois du Canada, ou de la province où ces biens sont situés, ou dans  
"laquelle le débiteur a son domicile, ni porter préjudice ou atteinte à  
"un privilège ou une charge sur ces biens créés par l'une quelconque  
"de ces lois."

7. The Interpretation Act, Revised Statutes of Canada, 1906, Chapter I, Section 16, provides :— Record.  
p. 32, l. 25.

“ 16. No provision or enactment in any Act shall affect, in any manner whatsoever, the rights of His Majesty, his heirs or successors, unless it is expressly stated therein that His Majesty shall be bound thereby.”

8. The British North America Act, 1867, provides, Section 125 :—

“ 125. No lands or property belonging to Canada or any Province shall be liable to Taxation.”

10 9. The case came on for hearing in the Superior Court of Quebec (Panneton, J.), and judgment was delivered on the 30th December, 1925, dismissing the claim of the Province of Quebec.

The learned judge gave the following (among other) reasons for his decision :— p. 5.

(1) That Section 91, Subsection 3 (British North America Act) provides that the exclusive power of the Dominion Parliament includes “ The raising of Money by any Mode or System of Taxation.”

(2) That creating a privilege is a mode or system of taxation.

20 (3) That as Article 1357 of the Revised Statutes of Quebec, 1909, provided for the priority of the claim of the Crown as also did that of Section 17 of The Special War Revenue Act, 1915, as amended by 12-13 George V, Chapter 47, Section 17, both the Parliament of Canada and the Legislature of Quebec had legislated on a subject within their competence, and the case fell within numerous decisions by the Courts that where both the Parliament and the Legislature had legislated on a field which was common to both, the legislation of the Parliament of Canada must override that of the Provincial Legislature.

30 (4) That the Interpretation Act of the Parliament of Canada being prior to The Special War Revenue Act as amended, the latter statute overrides the earlier.

(5) That The Special War Revenue Act, as amended, was a war measure within the jurisdiction of the Parliament of Canada under Section 91 (7) “ Militia, Military and Naval Service, and Defence.”

10. The judgment of the Court of King’s Bench for the Province of Quebec (Appeal Side) was given on the 28th June, 1927, and reversed the judgment of the Superior Court by the majority of four judges to one (Dorion, Allard, Letourneau and Rivard, JJ.—Guerin, J., dissenting).

The learned judges gave the following (among other) reasons for their judgments :— p. 11.

40 Mr. Justice Dorion held :—

p. 12, l. 17.

(1) That each of the Legislatures had power to impose the tax, the subject of their respective claims, but that taxes due were debts and the subject of privilege in the payment of debts was one within “ property and civil rights,” which is within the exclusive power of the provincial Legislature, and accordingly that the claims in the present suit should be paid rateably in accordance with Article 1985 of the Civil Code.

Record.

(2) That the Act amending The Special War Revenue Act, 1915, passed in the year 1922, long after the conclusion of the war, was not a war measure.

p. 16.

Justices Allard, Letourneau and Rivard concurred with Dorion, J.

p. 11.

Mr. Justice Guerin, dissenting, held :—

That the legislation of the Parliament of Canada and of the Quebec Legislature was in a common field and that the Statute of the Parliament of Canada must therefore prevail over that of the Provincial Legislature.

11. The Attorney-General for Canada appealed to the Supreme Court of Canada and after argument on the 15th day of November, 1928, the 10 Court directed the appeal to be set down again for re-argument before the full Court.

p. 36.

The appeal came on for re-argument accordingly on the 6th day of May, 1929, and judgment was delivered on the 26th day of September, 1929, and the reasons for judgment appear to show :—

p. 37, l. 3.

(1) The Chief Justice of Canada, with whom Lamont and Smith, JJ., concur, holds that when there is a conflict between Dominion and Provincial laws, the former must prevail.

He further holds that the opening words in Section 17 of the Dominion Statute of 1922, “notwithstanding the provisions of The 20 Bank Act or any other statute or law,” and also the words in the same section, “all other claims of whatsoever kind, etc.,” are sufficient to override the Provincial statute giving the provincial tax a first preference.

He relies on the judgment in *The King v. Canadian Northern Railway Co.* (1923) A.C., p. 714.

He also holds that the preferential right of the Province is not property within the meaning of Section 125 of the British North America Act, 1867, which provides that no land or property belonging to Canada or any province shall be liable to taxation.

p. 39, l. 10.

(2) Mr. Justice Mignault holds that the rule embodied in the 30 Interpretation Act, Chapter 1, Revised Statutes of Canada, 1906, Section 16, applies only to prerogative rights, and further relies on words of Lord Dunedin in re *Attorney-General v. De Keyser's Royal Hotel* (1920), A.C., 508, at p. 528.

He also relies on the above mentioned judgment in *The King v. Canadian Northern Railway Co.*

He also holds that the application of Section 16 of the Interpretation Act would defeat the purpose of Section 17 of the Statutes of 1922. Section 16 of the Interpretation Act is excluded by the opening words of the same Section 17 already quoted. 40

p. 42, l. 40.

He finally holds that there being a conflict between the two Statutes, the Dominion Statute must prevail.

(3) Mr. Justice Newcombe holds that in case of conflict between Dominion and Provincial powers the Dominion power must prevail, and adds that the Dominion Interpretation Act does not help the Province.

He also holds that Section 17 of the Statutes of 1922 is bankruptcy

legislation and that in any case Section 17 must have its operation as expressed, "notwithstanding any other statute or law." Record.

(4) Mr. Justice Duff, dissenting, concurs with Mr. Justice Rinfret, and further says that the reference to the Bank Act, in Section 17 of the Statutes of 1922, would seem to suggest, in view of the nature of the Bank Act liens constituted by Section 88 of that enactment, that the preference intended to be given was over liens giving a *jus in re* and this would be a violation of Section 125 of the British North America Act 1867, if applicable to the Provinces. p. 38, l. 22.

10 He further holds that the Crown not being mentioned, the Provinces cannot be affected by the Section.

(5) Mr. Justice Rinfret, dissenting, concurs with Mr. Justice Duff, and further holds that the two powers of the Dominion and the Provinces to raise money by taxation are not powers to which the rule that the Dominion power should prevail over the Provincial applies, and that if Section 17 of the Dominion Statute of 1922 is read as destroying the priority granted by Article 1357 of the Revised Statutes of Quebec, 1909, it would be *ultra vires*, but that that is not the true construction of Section 17, since the Crown not being mentioned, the Province is not affected in view of the terms of the Interpretation Act. p. 44, l. 13.

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12. The Appellant submits that the judgment of the Supreme Court should be reversed and the judgment of the Court of King's Bench maintained for the following, among other

## REASONS.

1. Because Section 17 of the Dominion Statute, "An Act to amend The Special War Revenue Act, 1915" (12-13 George V (Chapter 47), on its proper interpretation does not profess to give and does not in fact give any priority to the taxes specified in The Special War Revenue Act, 1915, and amendments thereto, over the privileged debt due to the Province of Quebec under the Revised Statutes of Quebec, 1909, Article 1357, the privilege of which is preserved by the Bankruptcy Act, Statute of Canada, 9-10 George V, Chapter 36, Section 51, Subsection (6). 30
2. Because by Section 17 of the Act to amend The Special War Revenue Act, 1915, the Crown is not expressed to be bound and by the Interpretation Act (Revised Statutes of Canada, 1906, Chapter 1, Section 16) is not affected in any manner whatsoever. 40
3. Because such a priority as is claimed to have been created by Section 17 would be a contravention of Section 125 of the British North America Act, 1867, unconstitutional and *ultra vires* of the Parliament of Canada.

4. Because there is here no conflict between the legislation of the Parliament and the Provincial Legislature, each legislating within their respective powers in the same field.
5. Because the Act to amend The Special War Revenue Act, 1915, is neither a bankruptcy Act nor a war measure.
6. Because the claim of the Dominion and that of the Province, being of equal rank, should be satisfied rateably. 10
7. Because for the reasons appearing in the judgments of Dorion, J., concurred in by Allard, Letourneau and Rivard, JJ., in the Court of King's Bench and those of Duff and Rinfret, JJ., in the Supreme Court.

CHARLES LANCTOT.

AIMÉ GEOFFRION.

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CASE OF THE APPELLANT

THE ATTORNEY-GENERAL FOR THE  
PROVINCE OF QUEBEC.

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