

In the Privy Council.

No. 135 of 1929.

ON APPEAL FROM THE SUPREME COURT OF  
CANADA.

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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.*

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CASE OF THE ATTORNEY-GENERAL OF  
CANADA.

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RECORD.

1. This is an appeal by special leave granted on the 17th December, p. 46.  
1929, from a judgment of the Supreme Court of Canada pronounced on p. 36.  
the 26th September, 1929, allowing an appeal from a judgment of the  
Court of King's Bench (appeal side) for the province of Quebec, dated pp. 9-10.  
the 28th June, 1927.

2. On the 31st day of December, 1923, an order of the Superior Court p. 4, l. 27.  
of the Province of Quebec, was made declaring Messrs. Silver Brothers,  
Limited, bankrupt.

3. The Government of the Dominion of Canada duly filed with the p. 4, l. 30.  
10 trustee in bankruptcy a claim in the sum of \$3,707.07 for sales tax imposed  
in virtue of the Special War Revenue Act, 1915, the said tax having  
become due subsequent to the 28th June, 1922, the date on which a  
certain amendment to the Special War Revenue Act, namely 12 and 13,  
Geo. V, 1922, chap. 47, came into force.

- RECORD.  
p. 4, l. 36. 4. The Government of the Province of Quebec also duly filed with the trustee a claim in the sum of \$527.42 for taxes due by the debtor for the years 1921, 1922 and 1923 under the provisions of Article 1345 *et seq.* of the Revised Statutes of Quebec, 1909, imposing a tax on commercial corporations.
- p. 5, l. 3. 5. The moneys realized from the sale of the assets of the insolvent estate, after the payment of costs and expenses of the trustee, amounted to \$2,353.51, a sum insufficient to pay the two claims aforesaid.
- p. 5, l. 7. 6: The trustee in his final dividend sheet collocated the claim of the Dominion as privileged, according to it the sum of \$2,353.51 aforesaid 10 in priority to the claim of the province, and paid over to the Dominion \$2,000 out of this sum.
- pp. 1-3. 7. The Attorney-General of Quebec filed in the Superior Court a petition disputing the dividend sheet and claiming that the debt due to the province was privileged as a result of Article 1357 of the Revised Statutes of Quebec, 1909, and that the claim of the Dominion was not privileged and that section 17 of the Special War Revenue Act as enacted by 12-13 Geo. V, 1922, chap. 47, was *ultra vires*, or that if the said section was *intra vires* that the claims of the respective governments were equally privileged and should be paid concurrently. 20
- p. 31, l. 13. 8. Section 17 of the Special War Revenue Act aforesaid provides as follows :  
“ 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 30 lawful expenses of an assignee or other public officer charged with the administration or distribution of such assets.”
- This provision came into force on the 28th June, 1922, and remained in force until the 1st day of July, 1925, when it was repealed by 15-16, Geo. V, chap. 26, sec. 9.
- p. 32, l. 7. 9. Article 1357 of the Revised Statutes of Quebec aforesaid provides as follows :  
“ All sums due to the Crown in virtue of this section shall constitute a privileged debt, ranking immediately after law costs.” 40  
and came into force in 1906 (6 Edw. VII, Quebec, chap. 10).
- pp. 5-9. 10. The petition of the Attorney-General of Quebec was dismissed by Panneton, J. on the 3rd December, 1925, on the ground that section 17

of the Special War Revenue Act aforesaid accorded to the Dominion RECORD.  
claim a priority over that of the province.

11. The Attorney-General of Quebec appealed to the Court of King's p. 10.  
Bench (appeal side) which court (Guerin, J. dissenting) on the 28th June,  
1927, set aside the judgment of Panneton, J. and ordered that the claims  
of the two governments be collocated in the dividend sheet as of the  
same rank and concurrently.

12. The Court further recommended that the Government of Canada p. 10.  
repay to the trustee whatever sum should be required to make up the  
10 share of the province of Quebec according to the revised dividend sheet.

13. The Attorney-General of Canada thereupon appealed to the  
Supreme Court of Canada and, on the 26th September, 1929, the Court  
consisting of Anglin, C.J.C. and Duff, Mignault, Newcombe, Rinfret,  
Lamont and Smith, JJ. allowed the appeal (Duff and Rinfret dissenting) p. 36.  
and set aside the judgment of the Court of King's Bench and restored  
the judgment of Panneton, J.

14. Anglin, C.J.C. (whose judgment was concurred in by Lamont  
and Smith, JJ.) held that there existed a conflict between section 17 of  
the Special War Revenue Act and Article 1357 of the Quebec Statutes  
20 and that, in the circumstances, the Dominion provision must prevail.  
He said :

“ In so far as there may be conflict between the priority created p. 37, l. 7.  
by the Dominion Statute (12-13 Geo. V, c. 47, Section 17) and  
that which the Quebec Statute (R.S.Q., 1909, arts. 1345 *et seq.*)  
purports to give, each being within the legislative jurisdiction  
conferred by the B.N.A. Act on the Legislature which enacted  
it, it is well established that the former must prevail. This must  
be so whether the provision for priority—substantially the same  
in each Act—is attributable to the exercise of a jurisdiction which  
30 should be regarded as an integral part of that conferred by an  
enumerated head, or as ancillary thereto, *Royal Bank v. Larue*  
(1928) A.C., 187; *A.G. for Ontario v. A.G. for Canada* (1894)  
A.C. 189, 200; *Toronto v. C.P.R. Co.* (1908) A.C., 54, 55; *Grand*  
*Trunk Railway Company v. A.G. for Canada* (1907) A.C., 65, 68;  
*Montreal v. Montreal Street Railway Company* (1912) A.C., 333,  
343-4.

Whether such conflict exists depends upon the construction  
of the Dominion Statute. Has Parliament expressed the intention  
that :

40 ‘ all other claims of whatsoever kind heretofore or here-  
after arising,’

over which ‘ the excise taxes specified in the Special War Revenue  
Act, 1915, and amendments thereto ’ are given priority, shall include

RECORD.

claims for taxes imposed by a provincial statute which purports to give to them a like priority?

*Prima facie* the phrase 'all other claims of whatsoever kind, etc.' would include such claims. That it was meant to embrace them is, I think, made manifest by the introductory words of the section:

'Notwithstanding the provisions of the Bank Act  
'or any other statute or law.'

15. Further the learned Chief Justice thought that section 51 (6) of the Dominion Bankruptcy Act which purports to preserve any priorities in the case of provincial taxes had been superseded by section 17 aforesaid of the Special War Revenue Act. 10

p. 30, l. 13. 16. Section 51 (6) of the Dominion Bankruptcy Act provides as follows:

"51. (6) Nothing in this section shall interfere with the collection of 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." 20

17. The learned Chief Justice said with reference to this provision:

p. 37, l. 33  
to p. 38, l. 2.

"The relevant provision of the Bankruptcy Act, Section 51 (6), had expressly preserved the priorities of taxes, rates and assessments imposed by provincial law. The intent to supersede that policy is expressed. Moreover, the words 'any other statute or law,' *prima facie* include all statutes and laws having force in regard to the administration of the property or estate being dealt with, by whatever authority imposed. If in a provincial statute providing for an exemption from taxation this *prima facie* meaning of the words 'any statute' should prevail so as to include within them not only Acts of the same provincial legislature within that description, but also a similar statute of the Dominion Parliament (*R. v. Canadian Northern Railway* (1923) A.C., 714, 716-8). I can see no good reason for refusing to give the like scope to the words, 'any other statute or law' in Section 17 of 12-13 Geo. V, c. 47 (D). In this respect I am unable to distinguish the case at bar in principle from the decision of the Judicial Committee in *R. v. Canadian Northern Railway Company*; and the reason upon which that decision proceeds is distinctly in point." 30 40

18. Mignault, J. held that section 16 of the Dominion Interpretation Act was of no assistance to the province in view of the terms of section 17 of the Special War Revenue Act. He said : RECORD.

“ The contention chiefly relied on by the Respondent is founded on Section 16 of The Interpretation Act (R.S.C., 1906, ch. 1), which states that— p. 41, l. 1.

10                   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.

And the Respondent argues that, under this rule of construction, Section 17 of the amendment to the Special War Revenue Act, 1915, notwithstanding the generality of its language, must be read as if it had stated that the right of the Crown in right of the Province to the priority granted by Article 1357 R.S.Q., 1909, is not to be affected thereby.

20                   It may be observed that Section 16 of The Interpretation Act is merely a re-statement of the fundamental rule of statutory construction of the common law that the Crown is not bound by a statute unless it be specially named therein, or unless there is a necessary implication to be drawn from the provisions of the statute or the nature of the enactment that the Crown was intended to be bound thereby (Beal, *Cardinal Rules of Legal Interpretation*, 3rd ed. p. 332).

30                   It would seem likely that ‘ the rights, of His Majesty, his heirs or successors,’ intended to be preserved by Section 16, are rights derived from the prerogative, and not rights created by statute. Rights of the latter category could hardly continue to exist for the future when the statute creating them is repealed, or excluded by a subsequent enactment, and the consent of the Crown as a component part of the Legislature would seem to be all that is required. In the case of the prerogative, the Crown’s expressed consent is necessary, but even then ‘ if the whole ground of something which could be done by the prerogative is covered by the statute, it is the statute that rules ’ (per Lord Dunedin in *Attorney-General v. De Keyser’s Royal Hotel* (1920) A.C. 508 at p. 528).

40                   Here, moreover, we have an enactment the whole purpose of which is to grant to the Crown in right of the Dominion priority for the excise taxes specified by The Special War Revenue Act, 1915, and amendments, which priority exists ‘ notwithstanding the provisions . . . of any other statute or law.’ These terms are wide enough to exclude any statute federal or provincial

RECORD.

(*The King v. Canadian Northern Railway Co.* (1923) A.C. 714, the converse case), and of course such an enactment as Article 1357 R.S.Q. 1909. The Appellant's contention based on Section 16 of *The Interpretation Act*, a federal statute, which moreover would come within the scope of the words 'notwithstanding the provisions of . . . any other statute or law,' would defeat the very purpose of Section 17. It is obvious that the Dominion tax could not be 'a first charge' after judicial costs and the fees and expenses of the assignee, if the provincial tax were to rank immediately after law costs. Even if the rights of the Crown referred to in *The Interpretation Act* could be considered as comprising statutory rights, the exclusion of the statute creating these rights would render them ineffective against the Crown in right of the Dominion." 10

19. Mignault, J. also referred to subsection 6 of section 51 of the Bankruptcy Act as follows :

p. 41, l. 46.

"The Respondent also relies on Subsection 6 of Section 51 of *The Bankruptcy Act*, which, with respect to the collection of taxes, rates or assessments, recognises the priority or lien conferred by provincial legislation. But full effect must be given to Section 17, notwithstanding *The Bankruptcy Act*, so that, if Parliament did not transcend its jurisdiction, there appears little doubt that any priority granted by Article 1357 R.S.Q., 1909, and preserved by *The Bankruptcy Act*, is excluded." 20

20. Newcombe, J. held that section 17 was competently enacted under heads 1, 3 or 21 of section 91 of the B.N.A. Act and that the Dominion power was overriding. He said :

p. 42, l. 41.

"In this case, the provincial Crown has no prerogative preference, the debtor not being a *comptable*. *Exchange Bank v. The Queen* (1886), 11 A.C. 157.

The Quebec tax was imposed under Section XVIII, R.S.Q., 1909; the preference upon which the Attorney-General of Quebec relies is created by these words (Article 1357 of that section); 30

'All sums due to the Crown in virtue of this Section (XVIII) shall constitute a privileged debt, ranking immediately after law costs.'

The alleged provincial privilege therefore depends upon an exercise of legislative power which Quebec claims to possess under Section 92 of the British North America Act, 1867. The provision is *ultra vires* of Quebec, if the power do not exist; or, if it do exist, the provincial enactment may be overridden by the Parliament of Canada in the use of any apt ancillary power which the Dominion has under the enumerated heads of Section 91 of that Act. 40

Assuming that the Province had the power of enactment, an overriding power is to be found in the following items of Section 91 :—

RECORD.

(1) ' The public debt and property ' ;

(3) ' The raising of money by any mode or system of taxation ' ;

(21) ' Bankruptcy and insolvency ' ;

one or another, but not logically within each of them. *Cushing v. Dupuy* (1880) 5 A.C., 415-416; *Attorney-General of Ontario v. Attorney-General of Canada* (1894) A.C., 200-201."

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21. Duff J., in his dissenting judgment, said :

" Subsection 6 of Section 51 of the Bankruptcy Act preserves (see particularly the French Version) the rights created by Article 1357 of the Statutory Law of Quebec. Neither that article nor Section 17 of the Amendment to the War Revenue Act passed in 1915, does in my opinion give any priority over any lien, charge, or privilege vested in the Crown and preserved by Section 51. p. 38, l. 23.

The reference to the Bank Act (which would appear to contemplate the liens constituted by Section 88 of that enactment) seems to reveal the intention that the ' charge ' brought into being by Section 17, in order to secure the payment of the ' excise taxes ' there named, should, when it takes effect, have priority over liens of like character with those arising under the Bank Act; including of course (if the primacy established affects other Crown debts) liens of a similar character created for the purpose of securing the payment of Provincial taxes, or other pecuniary obligations owing to the Provincial Crown, numerous examples of which are evidenced in the statutory law of the Provinces. Section 17, so construed, would have the effect, the direct effect, of entitling the Dominion to deal with a subject of provincial taxation or other private property in which the Province holds a *jus in re* as such security, in such manner as to obliterate that *jus in re*, if necessary to give priority to the Dominion charge. ' Property, ' in my opinion, in Section 125 of the British North America Act, should be construed in its widest sense, and, in its widest sense, it would embrace such a *jus in re*.

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That, I think, must be the natural construction of Section 17, if it is read as applying to other debts of the Crown. The Crown is not mentioned and the result of what I have just said, having regard to the provisions of the Interpretation Act, is that other pecuniary claims of the Crown are not prejudiced by the priority declared by Section 17. Likewise, the priority established by Section 1357 neither by the express terms of that section nor by necessary inference affects such claims."

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RECORD.

p. 44, l. 14.

22. Rinfret J., in his dissenting judgment, said :

“ Je suis d’avis qu’il ne s’agit pas ici d’un cas où les deux Parlements ont légiféré sur le même sujet (‘ same field ’) et, dès lors, qu’on ne doit pas appliquer à cette cause les arrêts du Conseil Privé qui, dans les cas de conflit, ont accordé la prépondérance à la législation fédérale.

Il ne me paraît pas y avoir d’analogie entre la question qui nous est soumise et, par exemple, la subordination du pouvoir provincial en matière propriété et de droits civils au pouvoir fédéral en matière de faillite, qui a fait l’objet de la décision re 10  
*Royal Bank of Canada v. Larue* (1928) A.C. 187.

p. 44, l. 31.

Il ne saurait en être ainsi en matière de taxation. Il ne me paraît pas admissible que le Parlement fédéral puisse de cette façon contrôler ou limiter—et, au besoin, rendre inefficace—le pouvoir de taxer qui appartient aux provinces. Cette distinction nécessaire a été signalée précisément par le Conseil Privé dans la cause de *Citizens Insurance Company of Canada v. Parsons* (7 A.C. p. 96).”

And, after quoting from the judgment of Sir Montague Smith in that case, at page 108, the learned Judge continued as follows : 20

p 45, l. 27.

“ Je répète, avec le Conseil Privé, parlant du pouvoir fédéral ‘ Le prélèvement de deniers par tous modes ou systèmes de taxation ’ (Acte de l’Amérique Britannique du Nord, Article 91, parag. 3) et le comparant avec le pouvoir provincial, ‘ La taxation directe dans les limites de la province, dans le but ‘ de prélever un revenu pour les objets provinciaux ’ (Acte cité, Article 92, parag. 2); ‘ it obviously could not have been intended that, in this instance . . . the general power should override the particular one ’ (7 A.C. p. 108). Ces deux paragraphes 91-3 et 92-2) confèrent 30  
des pouvoirs absolus et indépendants, dont l’un ne peut empiéter sur l’autre, tant en vertu de leur nature même que par application de l’article 125 de l’Acte de l’Amérique Britannique du Nord (comme le fait remarque mon collègue, Mr. le Juge Duff, dont j’adopte le raisonnement).

Si, par conséquent, la législation fédérale qu’on invoque (‘ An Act to amend The Special War Revenue Act 1915,’ 12-13 Geo. V, c. 47, s. 17) a eu pour but de créer ‘ a first charge ’ ayant priorité même sur la dette privilégiée de la Province de Québec (S.R.Q. 1909, Article 1357), je conclurais que, en cela, cette législation 40  
est *ultra vires*.

Mais l’intention de donner à la taxe fédérale préceance sur la taxe provinciale ne résulte pas nécessairement du texte de l’article 17 de Special War Revenue Act, 1915. L’intention ‘ d’y atteindre Sa Majesté ’ n’y est pas ‘ formellement exprimée ’ (Loi d’interprétation—S.R.C. 1906—Ch. 1, s. 16). Il est à presumer que le



législateur fédéral a voulu que sa loi sur The Special War Revenue fut comprise conformément à cette prescription de sa propre loi d'interprétation.

RECORD.

Il en résulterait que l'art 17 du Special War Revenue Act, 1915, ne porte pas 'atteinte . . . aux droits de Sa Majesté' représentée par la Province de Québec, tels qu'ils sont exprimés dans l'article 1357 des Statuts Révisés de Québec, 1909, et que chaque législation doit recevoir son plein effet.

10 Par suite de l'insuffisance des deniers dans la faillite de Silver Bros. il survient une impossibilité de payer intégralement les deux réclamations. La division proportionnelle s'impose donc par la force même des choses. Ce n'est pas, si l'on veut, l'article 1985 du Code Civil qui s'applique, mais c'est le principe général de droit énoncé dans cet article qui entre en jeu."

23. The Attorney-General of Canada submits that the judgment of the Supreme Court is right and should be affirmed.

### REASONS.

20 1. Section 17 of the Special War Revenue Act 1915, as enacted by 12-13, Geo. V, 1922, chap. 47, was competently enacted as coming within the following classes of subjects enumerated in section 91 of the British North America Act :

"(1) The public debt and property;

(3) The raising of money by any mode or system of taxation;

(21) Bankruptcy and insolvency."

2. The said section 17 conflicts with Article 1357 of the Revised Statutes of Quebec, 1909, and overrides the same.

30 3. The said section 17 of the Special War Revenue Act takes effect notwithstanding section 51 subsection 6 of the Bankruptcy Act and section 16 of the Interpretation Act, and supersedes the said provision and excludes the priority granted by article 1357, R.S.Q. 1909.

4. Section 16 of the Interpretation Act does not relate to the right established by the Dominion Bankruptcy Act, section 51, subsection 6.

5. Section 17 of the Special War Revenue Act since it establishes a right in favour of His Majesty, by implication is intended to affect any other conflicting right of His Majesty notwithstanding section 16 of the Interpretation Act.

6. Section 17 of the Special War Revenue Act aforesaid does not render liable to taxation any property belonging to any province within the meaning of section 125 of the British North America Act.
7. Section 17 of the Special War Revenue Act aforesaid not only establishes the priority of the Dominion tax, but creates a first charge or lien in favour of the Dominion, which is superior in character to the privilege accorded the province by Article 1357 of the Revised Statutes of Quebec.

H. GUTHRIE. 10

C. P. PLAXTON.

F. P. VARCOE.

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CASE OF THE ATTORNEY-GENERAL OF  
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