

In the Privy Council.

No. 92 of 1936.

ON APPEAL FROM THE SUPREME COURT OF  
CANADA.

UNIVERSITY OF LONDON  
W.C.I.  
23 OCT 1956  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN  
JAMES FORBES . . . . . (Defendant) ~~Appellant~~  
AND  
THE ATTORNEY-GENERAL OF THE PROVINCE OF  
MANITOBA for and on behalf of His Majesty the King  
in the Right of the Province of Manitoba - (Plaintiff) Respondent.

RECORD OF PROCEEDINGS.

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ON APPEAL FROM THE SUPREME COURT OF  
CANADA.

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BETWEEN

JAMES FORBES . . . . . (Defendant) Appellant

AND

THE ATTORNEY-GENERAL OF THE PROVINCE OF  
MANITOBA for and on behalf of His Majesty the King  
in the Right of the Province of Manitoba - (Plaintiff) Respondent.

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RECORD OF PROCEEDINGS.

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No. 1.  
Particulars of Claim.

*In the  
County  
Court of  
Winnipeg.*

No. 1.  
Particulars  
of Claim,  
1st Febru-  
ary, 1934.

1. The plaintiff is the Attorney-General of the province of Manitoba and sues for and on behalf of His Majesty the King in the Right of the province of Manitoba.
2. The defendant is a married person and an employee in the Civil Service of Canada and resides at or near the city of Winnipeg in the province of Manitoba. The defendant has been a married person and an employee as aforesaid and has resided as aforesaid at all times material  
10 to this action.
3. The defendant as such employee aforesaid has earned wages continuously from the 1st day of May, A.D. 1933, to the 31st day of December, A.D.1933, both inclusive, which said wages earned as aforesaid were paid to the defendant by the Government of the Dominion of Canada on or about the 15th day and the last day of each and every month during the said period, and which said payments were in the amount of \$65.00 each.
4. The defendant having had paid to him such wages earned as afore-  
said at the times aforesaid without the tax of 2 per centum imposed upon  
the amount of all wages earned by him during the said period, which said  
20 tax is payable to His Majesty the King in the Right of the province of  
Manitoba under the provisions of "The Special Income Tax Act" being  
chapter 44 of the statutes of Manitoba 1933, being deducted therefrom,  
has neglected and refused to forthwith pay such tax as aforesaid to His

*In the  
County  
Court of  
Winnipeg.*

Majesty the King in the Right of the province of Manitoba and still neglects and refuses to pay the same.

5. The following are the particulars of the Plaintiff's claim :

1933				
No. 1. Particulars of Claim, 1st Febru- ary, 1934— <i>continued.</i>	May 15	Tax of 2 per centum payable on wages of \$65.00 received for May 1st to May 15th - - -	\$1.30	
	May 31	Tax of 2 per centum payable on wages of \$65.00 received for May 15th to May 31st - - -	1.30	
	June 15	Tax of 2 per centum payable on wages of \$65.00 received for June 1st to June 15th - - -	1.30	10
	June 30	Tax of 2 per centum payable on wages of \$65.00 received for June 15th to June 30th - - -	1.30	
	July 15	Tax of 2 per centum payable on wages of \$65.00 received for July 1st to July 15th - - -	1.30	
	July 31	Tax of 2 per centum payable on wages of \$65.00 received for July 15 to July 31st- - -	1.30	
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	September 30	Tax of 2 per centum payable on wages of \$65.00 received for September 15th to September 30th - - -	1.30	
	October 15	Tax of 2 per centum payable on wages of \$65.00 received for October 1st to October 15th - - -	1.30	
	October 31	Tax of 2 per centum payable on wages of \$65.00 received for October 15th to October 31st - - -	1.30	
November 15	Tax of 2 per centum payable on wages of \$65.00 received for November 1st to November 15th - - -	1.30	30	
November 30	Tax of 2 per centum payable on wages of \$65.00 received for November 15th to November 30th - - -	1.30		
December 15	Tax of 2 per centum payable on wages of \$65.00 received for December 1st to December 15th - - -	1.30		
December 31	Tax of 2 per centum payable on wages of \$65.00 received for December 15th to December 31st - - -	1.30		
			\$20.80	

6. The plaintiff therefore claims :

(a) payment of the said sum of \$20.80;

(b) the costs of this action;

(c) such further and other relief as the nature of the case may require, or as to this Honourable Court may seem meet.

40

Dated the 1st day of February, A.D. 1934.

JOHN ALLEN,  
Winnipeg, Manitoba,  
Solicitor for the Plaintiff.

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## No. 2.

## Statement of Defence.

*In the  
County  
Court of  
Winnipeg.*

No. 2.  
Statement  
of Defence,  
12th Feb-  
ruary, 1934.

1. The defendant disputes the plaintiff's claim and the grounds of his defence are as follows :

(a) Not indebted as alleged or at all.

(b) The defendant denies that he is an employee in the Civil Service of Canada and denies that he resides at or near the City of Winnipeg or that he has resided there at all times material to this action.

10 (c) The defendant denies that he has earned wages continuously from the 1st day of May, 1933, to the 31st day of December, 1933, or that any wages were earned or that wages were paid to the defendant by the Government of the Dominion of Canada and denies that payments were in the amount of \$65.00 each.

(d) The defendant denies that there was any tax of 2 per centum imposed and denies that he earned any wages upon which any tax was or could be imposed and denies that there was any tax payable to His Majesty the King in the Right of the Province under the provisions of "The Special Income Tax Act" and denies that he has neglected and refused to pay any tax for which there is any liability on his part.

(e) The defendant denies that he has earned wages as set out in the plaintiff's particulars of claim herein and denies that he is indebted in the sum of \$20.80 or any sum whatever.

(f) The defendant denies that he is taxable for the periods or in the amounts or on the sums set out in the plaintiff's particulars of claim herein and denies that he is a person liable to taxation under "The Special Income Tax Act" or that he has earned any moneys that would be taxable under such Statute.

30 (g) The defendant denies that he is a person who would be liable to any such taxation and says that he is not an employee as defined in the said Statute.

(h) The defendant denies that he received any moneys upon which any taxation could be levied by the Legislature of the Province.

(i) The defendant says that this Court has no jurisdiction to entertain or try this action.

(j) The defendant further says that the said Statute in no way affects the defendant or any moneys paid to him.

40 (k) The defendant further says that the Legislature of the Province of Manitoba cannot pass legislation intercepting or attempting to intercept moneys in the hands of the Dominion.

(l) The defendant further says that the said Statute is discriminating legislation and discriminating taxation.

*In the  
County  
Court of  
Winnipeg.*

No. 2.  
Statement  
of Defence,  
12th Febru-  
ary, 1934—  
*continued.*

(m) The defendant further says that the said Statute is indirect taxation and as such could not be enacted by the Legislature of the Province of Manitoba.

(n) The defendant further says that the Legislature of the Province of Manitoba has no right or power to enact the said Statute and the same has no effect and is inoperative.

(o) The defendant further says that the said Statute is unconstitutional, ultra vires and beyond the jurisdiction of the Legislature of the Province of Manitoba and is inoperative.

(p) The defendant further says that in view of the provisions of "The British North America Act" and existing Dominion Legislation the Province could not enact or enforce the said Statute. 10

Delivered this 12th day of February, 1934, by Messrs. Finkelstein, Finkelstein & White, 302 Montreal Trust Bldg., 218 Portage Ave., Winnipeg, Manitoba, Solicitors for Defendant.

No. 3.  
Opening  
proceedings  
at the trial,  
2nd May,  
1934.

**No. 3.**

**Opening Proceedings at the Trial.**

IN THE COUNTY COURT OF WINNIPEG.

Winnipeg, May 2nd, 1934. 20

Present : His Honour Judge Cory.

BETWEEN :

THE ATTORNEY-GENERAL OF THE PROVINCE OF MANITOBA  
for and on behalf of His Majesty the King in the Right  
of the Province of Manitoba - - - - - *Plaintiff*

AND

JAMES FORBES, 327, Morley Avenue, Winnipeg, Manitoba - *Defendant.*

Isaac Pitblado, Esq., K.C., and Wilson E. McLean, Esq., appear for the plaintiff;

C. E. Finkelstein, Esq., appears for the defendant.

Mr. PITBLADO : As my learned friend in this action has raised the question of ultra vires legislation it becomes necessary under one of the Rules of our Courts here that the Minister of Justice at Ottawa had to be notified and the first thing I would ask is that Mr. McLean file notice that we sent to the Minister of Justice notifying him. 30

Mr. McLEAN: I file a letter from the Deputy Minister of Justice, Ottawa, dated April 5th, 1934. This states: "Dear Sir: In reply to your letter of the 28th ultimo to the Minister of Justice I beg to advise you that the Attorney-General of Canada does not desire to be represented or heard at the present state of these proceedings" and that refers to the Forbes amongst other cases.

EXHIBIT No. ONE: Letter dated April 5th, 1934, Deputy Minister of Justice, Ottawa, to Wilson S. McLean, referred to filed and marked as Exhibit No. 1. (*Printed at p. 72.*)

10 Mr. Finkelstein objected to the jurisdiction of the Court (paragraph (i) of defence), arguing that a Crown action on its Revenue side cannot be brought in any County Court of this province.

Mr. McLean replied.

THE COURT: After listening to the argument of both counsel, I am of the opinion that this Court has jurisdiction and I so hold, and if this matter goes further that will be decided as well as the other point.

Mr. McLEAN: I wish to put in certain portions of the Examination for discovery of the defendant, James Forbes.

20 EXHIBIT No. TWO: Examination for discovery of James Forbes filed and marked as Exhibit No. 2.

Mr. McLean reads from exhibit two as follows:

"No. 50026.

This is the examination of JAMES FORBES, the above named defendant, for discovery, had and taken before William Killey, a Special Examiner of this Honourable Court, at Room 228, the Law Courts, in the City of Winnipeg and Province of Manitoba, this 27th day of February, A.D. 1934, at the hour of two o'clock in the afternoon, pursuant to appointment.

Present: Wilson E. McLean, Esq., appears for the plaintiff;

C. E. Finkelstein, Esq., appears for the defendant.

30 It is agreed that this examination be taken down in shorthand by the said Examiner, and afterwards extended by him on the typewriter, and that the reading over and signing of the transcript by the witness may be dispensed with.

It is agreed between Counsel that this examination is to be used for the purposes of this action only as the same is now constituted, and is not to be used for any other legal proceedings whatever whether at the instance of the Crown or of any person.

40 The witness objects to answering any and all questions on this examination as the same may tend to criminate him or may tend to establish his liability to legal proceedings at the instance of the Crown or of any person. The witness asks for such protection as the Statute affords him.

*In the  
County  
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Winnipeg.*

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Opening  
proceedings  
at the trial,  
2nd May,  
1934—con-  
tinued.

*In the  
County  
Court of  
Winnipeg.*

No. 3.  
Opening  
proceedings  
at the trial,  
2nd May,  
1934—*con-  
tinued.*

The said James Forbes having been first duly sworn is examined by Mr. McLean and deposes as follows :

1. Q. Mr. Forbes, you live at 327 Morley Avenue, Winnipeg, Manitoba?—A. Yes.

2. Q. And you are the defendant in this action?—A. Yes.

3. Q. Are you in receipt of salary, remuneration or wages of any sort?—A. I am in receipt of remuneration.

4. Q. And who pays you that remuneration?—A. The Receiver-General.

5. Q. That is from the Dominion Government?—A. Yes, sir. 10

6. Q. And you are employed by the Government of the Dominion of Canada?—A. I am a servant of the Crown.

7. Q. And you are in what department?—A. The meat department.

8. Q. The meat inspection department?—A. The Health of Animals Branch.

9. Q. That is in the Department of Agriculture?—A. Yes, the Department of Agriculture.

10. Q. Dominion Government?—A. Yes.

11. Q. And when were you appointed to that position?—A. 1921, when I came back from overseas. 20

12. Q. And you have been continuously with that service?—A. With them ever since.

13. Q. And where are your duties as an inspector performed, in what place?—A. Any part of Canada.

14. Q. And where are they performed?—A. At the present time, at St. Boniface.

15. Q. In Manitoba?—A. Yes.

16. Q. That is at the Harris Abattoir?—A. Yes.

17. Q. And have you been continuously employed since April 30th, 1933, to December 31st, 1933? 30

Mr. FINKELSTEIN : You used the word "employed."

18. Q. Or have you been engaged—

Mr. FINKELSTEIN : He has been continuously at that work.

WITNESS : I have been continuously at that work.

19. Q. And during that period, from the Dominion Government you have continuously received remuneration?—A. Yes.

20. Q. And you have been continuously in the Province of Manitoba at that work during that period?—A. During that period only I have been out of the Province several times, not to be away to any extent of time though. 40

21. Q. We will deal with that in a minute; and you say you got your salary or remuneration, as you describe it, for the services you rendered in the department from the Dominion Government through the Receiver General?—A. I get an order from him for my remuneration, for my services.

22. Q. You get an order?—A. On the Receiver General.



23. Q. Which order is cashable at any chartered bank?—A. Yes, I can cash it at any bank.

24. Q. This order for payment, that is sent from Ottawa?—A. Yes, from Ottawa.

25. Q. And it is headed, "Dominion of Canada, Department of Agriculture," is it?—A. Yes, Department of Agriculture.

26. Q. "Dominion of Canada, Department of Agriculture." It is addressed to the Receiver General of Canada, Ottawa, Canada. It is dated at Ottawa and it is for a given sum of money. "Pay to the order of" and your name would be inserted?—A. Yes.

29. Q. And it is signed also for the Comptroller of the Treasury and it is stated to be negotiable at par at any chartered bank in Canada and you simply endorse that and collect your money at the bank?—A. When it becomes due.

30. Q. And you have during that period always cashed yours in the Province of Manitoba?—A. Yes.

31. Q. And what is your rate of pay?—A. One hundred and fifteen and a quarter.

32. Q. \$115.25 per month?—A. Yes.

33. Q. And what deduction for pension?—A. 5%; that is plus the 5%.

34. Q. There would have to be 5% added on to \$115.25?—A. Added on to it.

35. Q. And that is the deduction for pension by the Dominion?—A. Well, it is not a pension, superannuation.

36. Q. Superannuation they describe it?—A. I am not in the pension. I draw this out when I retire or else leave.

37. Q. That is under the Dominion Statutes?—A. Yes.

38. Q. How often are you paid this \$115.25?—A. Once every month.

39. Q. And at what time approximately?—A. It varies; I have seen us get it a day before the month, two days; I have seen us getting it seventeen days after the month.

40. Q. Have you any details as to the times you got it from May to December?—A. No; I get it always by the end of the month.

41. Q. By the end of the month during the months from May to December, both inclusive, in 1933?—A. Yes.

42. Q. And the sum of \$115.25?—A. Yes.

43. Q. To it would be added the deduction for superannuation?—A. I suppose; we do not handle that at all.

44. Q. It is retained off?—A. It has been retained off ever since I joined the service. I do not get that.

45. Q. You will be entitled to that?—A. Perhaps, if the Government has got it then.

46. Q. But that is your understanding?—A. We only know they have got it there. We haven't seen any of it.

52. Q. How long have you been in the Province of Manitoba?—A. About 24 years, I should think, in it altogether.

In the  
County  
Court of  
Winnipeg.

No. 3.  
Opening  
proceedings  
at the trial,  
2nd May,  
1934—con-  
tinued.

*In the  
County  
Court of  
Winnipeg.*

No. 3.  
Opening  
proceedings  
at the trial,  
2nd May,  
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tinued.*

53. Q. You were overseas?—A. Yes, and I was up West for a bit too.

54. Q. When were you up West?—A. 1927, I think it was, to 1930.

55. Q. But before that time were you in the service of the Dominion Government?—A. Before that time, no; I was in the service of the Dominion Government when I was sent up there.

56. Q. But 1931?—A. 1931, I was in the Dominion Service, yes.

57. Q. Whereabout were you up West?

Mr. FINKELSTEIN: That is not material.

58. Q. What were you doing up West?—A. The same as I am 10  
doing now.

59. Q. The same thing?—A. Yes, as I told you.

60. Q. The rest of your service has been in Winnipeg or the environs of Winnipeg?—A. About that, yes.

61. Q. Are you a married man?—A. Yes.

62. Q. With a family?—A. Grown up now.

63. Q. Do they live with you?—A. Yes, I am keeping them in fact.

64. Q. And this residence, 327 Morley Avenue, do you own that?—  
A. No; I have a suite at the top of the house.

65. Q. And the performance of the duties of this department require 20  
your presence at the present time in the Province of Manitoba?—A. They may tonight when I go back send me up to Moose Jaw.

66. Q. But you have not been sent away since 1928, I think it was?—  
A. I said I was away from 1927 to 1930. I have been out of the town since then but not for any length of time.

67. Q. But you have had a home here?—A. Yes, I have been living here.

68. Q. You have had a home here since 1930?—A. I have had this suite; I haven't had a home.

69. Q. That is your home?—A. That is where I reside. 30

70. Q. And your wife and family have been here or your wife is here?—  
A. Yes.

72. Q. Have you a home any place else?—A. No, sir.

73. Q. And your absences from 1930 to the present time have only been temporary, your family have been here?—A. Oh, well, I had to shift my family with me.

74. Q. But since 1930?—A. Oh, yes, yes.

75. Q. Just temporary. You have got your own home here or rather your furniture and so on?—A. No, sir; I am living in a furnished suite.

76. Q. Now, during the periods that you received these cheques or 40  
orders for \$115.25 as your remuneration for services performed for the Dominion Government, did you have a two per cent. deducted for special income tax payable to His Majesty the King in the Right of the Province of Manitoba, May to December?

Mr. FINKELSTEIN: I do not like the form of the question because if you want an admission that no deduction of any kind has ever been

made on any moneys he received to pay this alleged 2% tax or any part of it, I am prepared to admit for the purposes of this examination that no such deductions have been made.

Mr. McLEAN: And for the purposes of the trial.

Mr. FINKELSTEIN: And for the purposes of the trial, yes; that he has not paid. I am prepared to admit that too.

77. Q. And that you have not paid?

Mr. FINKELSTEIN: Yes, we admit that.

78. Q. And your pay, you told me I think was once a month and not  
10 twice a month?—A. Once a month.

79. Q. On or about the end of the month, it might be a few days before?—A. It may be or may be afterwards but we always get it at the time except several occasions it was held up for a week or ten days.

80. Q. That is very rare?—A. I say on only two or three occasions.

81. Q. And you got all your remuneration for the months of May to December, both inclusive?—A. Yes, I got all my cheques.

By Mr. FINKELSTEIN:

82. Q. You said that since 1930 you had been absent from the City of Winnipeg?—A. Just for short periods.

20 83. Q. You would be out of the province?—A. The longest I was out of the Province was really for three weeks and that was a vacation.

84. Q. You say that these orders for this money that will be drawn on the Receiver General come to you from Ottawa?—A. They come direct from Ottawa.

85. Q. Payable to you.—A. To me, to my name.

86. Q. Issued at Ottawa and signed by some person at Ottawa?—

A. Two persons sign them generally.

87. Q. Signed by two parties at Ottawa, forwarded to you through the mail, I presume?—A. Forwarded to the head supervisor here. He  
30 gives it to us at the office.

Mr. McLEAN:

88. Q. They are handed out to you by the supervisor who is in charge of your work?—A. Yes; that is where all the cheques go.

Mr. FINKELSTEIN: One thing I would like to correct in this examination, question 70, Mr. Forbes was asked whether he had his wife with him; the way the question is asked is, "And your wife and family have been here or your wife is here?" Answer, "Yes." Mr. Forbes' wife as a matter of fact is dead and his family is with him. I want to make that correction to question 70.

40 Mr. PITBLADO: "Your wife was here," change that to "was."

Mr. FINKELSTEIN: Question 28 is the only one.

Mr. PITBLADO: That is covered in the end anyway.

Mr. FINKELSTEIN: I think it is covered in the end. Signed by an officer covering two signatures.

*In the  
County  
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No. 3.  
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proceedings  
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tinued.

*In the  
County  
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Winnipeg.*

No. 3.  
Proceedings  
at the trial,  
2nd May,  
1934—con-  
tinued.

Mr. PITBLADO : That is the evidence in this case.

Mr. FINKELSTEIN : I do not think there is any other evidence your Honour, I want to put in.

(After argument by Counsel, His Honour reserved judgment).

Friday, June 8th, 1934. 3 p.m.

Present : His Honour Judge Cory.

Mr. Wilson E. McLean appears for the plaintiff;

Mr. C. E. Finkelstein appears for the defendant.

The case is resumed as follows :

Mr. FINKELSTEIN : I am now applying to your Honour for leave to amend the Statement of Defence in each of the defences by adding this paragraph : 10

“(g) It was unlawful for the Legislature of the Province of Manitoba to enact a Bill for the passing of ‘The Special Income Tax Act’ as the same had not been first recommended to the Legislature by message of the Lieutenant-Governor in the session in which the Bill was proposed.”

I also wish to file as evidence and as Exhibit three the Manitoba Gazette dated 18th February, 1933. The portion of that I wish to file as evidence is the “Speech From the Throne.” 20

I also wish to file as evidence and as Exhibit four, certified copy of Order-in-Council dated May 19th, 1933, containing “The Regulations under ‘The Special Tax on Incomes Act’.”

Mr. McLEAN objects.

THE COURT : I am allowing the amendment asked for and the filing of the exhibits.

EXHIBIT No. THREE : Manitoba Gazette dated February 18th, 1933, referred to, filed and marked as Exhibit No. 3. (*Printed at page 67.*)

EXHIBIT No. FOUR : Certified copy of Order-in-Council referred to filed and marked as Exhibit No. 4. (*Printed at page 70.*) 30

No. 4.  
Reasons for  
Judgment of  
Cory, C.C.J.,  
6th June,  
1934.

No. 4.  
Reasons for Judgment.

These are three separate actions brought by the Manitoba Government to enforce collection of arrears alleged to be due under an Act entitled an Act to Impose a Special Tax on Incomes (assented to, May 4, 1933), and being Cap. 44, S. M. Vol. 1 & 2, Geo. V.

The defendant in each action is an employee of the Dominion Government. They refuse to pay the tax in question and Mr. Finkelstein, for defendants, bases such refusal on four grounds, viz :

*In the  
County  
Court of  
Winnipeg.*

(1) That the County Court has no jurisdiction to try an action of this nature.

(2) That the tax levied by this Act is an indirect, and not a direct tax.

10 (3) That the Dominion Government does not come within the meaning of the term "employer" as defined by sub-section (c) of section 2, of the said Act, and

(4) The non-constitutionality of the said Act.

Dealing with these contentions seriatim I find :

No. 4.  
Reasons for  
Judgment of  
Cory, C.C.J.,  
6th June,  
1934—con-  
tinued.

1. *Jurisdiction.*

In my opinion the actions are properly brought and the County Court has jurisdiction.

2. *Direct or Indirect Tax.*

Mr. Pitblado cited several authorities in support of his argument that the tax was a direct tax, amongst others the *City of Brandon vs. Municipal Commissioner of Manitoba and Attorney-General of Manitoba.*  
20 This action came up before Judge Adamson and is reported in M. R. 39, p. 583, and at page 585 of Judge Adamson's judgment the following in part appears :

"At page 124 (A.C.) and 497 (W.W.R.) Viscount Cave, L.C., is reported as saying :

'Thus taxes on property or income were everywhere treated as direct taxes; and John Stuart Mill himself, following Adam Smith, Ricardo and James Mills, said that a tax on rents falls wholly on the landlord and cannot be transferred to any one else.'

"And at p. 125 (A.C.) and 498 (W.W.R.); he states :

30 'The imposition of taxes on property and income, of death duties and of municipal and local rates is, according to the common understanding of the term, direct taxation, just as the exaction of a customs or excise duty on commodities or of a percentage duty on service would ordinarily be regarded as indirect taxation.'

"And at page 126 (A.C.) and 498 (W.W.R.) :

'It is the nature and general tendency of the tax and not its incidence in particular or special cases which must determine its classification and validity; and, judged by that test, the business tax imposed on an owner under sec. 394 is a direct tax.'

40 And on page 586 M.R. Vol. 39, Judge Adamson comes to the following conclusion :

"These taxes then in their nature and essence are direct taxes, and no 'theory as to the ultimate incidence of such taxation' will put them in the category of indirect taxation. This seems to be to be conclusive."

*In the  
County  
Court of  
Winnipeg.*

No. 4.  
Reasons for  
Judgment of  
Cory, C.C.J.,  
6th June,  
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tinued.

Judge Adamson's judgment was appealed. We find the citation on page 592 of the same Manitoba Reports. The result of the appeal was that Judge Adamson's judgment was sustained and the appeal dismissed with costs, Judge Robson dissenting in part.

In my opinion this case is exactly on all fours with the actions under consideration. I have no hesitation in coming to the conclusion that the tax imposed is a direct tax.

### 3. *Employer.*

Sub-section (c) of section 2 reads as follows :

“(c) ‘Employer’ includes every person, manager or representative 10  
having control or direction of or responsible, directly or indirectly, for wages of any employee, and in case the employer resides outside the province, the person in control within the province shall be deemed to be the employer.”

Sub-section (d) reads :

“ ‘Wages’ include all wages, salaries, and emoluments from any source whatsoever, including

(i) any compensation for labour or services, measured by the time piece, or otherwise ;

(ii) the salaries, indemnities, or other remuneration of members of 20  
the Senate and House of Commons of the Dominion and officers thereof, members of the Provincial Legislative Councils and Assemblies, members of municipal councils, commissions, or boards of management, and of any judge of any Dominion or provincial court, and of all persons whatsoever, whether such salaries, indemnities, or other remuneration are paid out of the revenues of His Majesty in right of the Dominion or in right of any province thereof, or any person.”

It is clearly the intention of the Act brought out in the above section (ii) of (d) that Dominion Government officials are not exempt from the wage tax. It also appears quite clear from the wide definition of the term 30  
“wages” that all civil servants or officers of the Government are employees within the meaning of the Act.

Chapter 22 of the Civil Service Act, Revised Statutes of Canada, 1927, describes civil servants as employees and describes their remuneration in various sections as salary.

Sub-section (1) of Section 3 of the Act to Impose a Special Tax on Incomes reads as follows :

“In addition to all other taxes to which he is liable under this or any other Act, every employee shall pay to His Majesty for the raising of a revenue for provincial purposes a tax of two per centum upon the amount 40  
of all wages earned by or accruing due to him on or after the first day of May, 1933, which tax shall be levied and collected at the times and in the manner prescribed by this part.”

In regard to the interpretation of this Act :

“ *Scottish Shire Line v. Latham*, 6 *Tax Cas.* 91 at 99.

“ Even in a taxing statute it is legitimate to consider which of two possible constructions is most in accordance with the spirit and intention of the Act.”

“ *Whitney v. Commissioners*, 10 *Tax Cas.* 88 at 110.

10 “ Per Lord Dunedin : Once that it is fixed that there is liability, it is antecedently highly improbable that the statute should not go on to make that liability effective. A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable.”

“ *Colquhoun v. Brooks*, 2 *Tax Cas.* 500.

“ We are entitled and indeed, bound, when construing the terms of any provision found in a statute to consider any other parts of the Act which throw light upon the intention of the legislature and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the statute.”

20 “ *Commissioners v. Incorporated Society*, 3 *Tax Cas.* 108.

“ Ascertain what is the main object of the statute, and then, if there is any doubt, construe the doubtful passage so as to effectuate the main object rather than to contradict or contravene it.”

Section 4, sub-section (1) of the Act under consideration provides as follows :

30 “ Every employer at the time of payment of wages to an employee shall levy and collect the tax imposed on the employee by this part in respect of the wages of the employee earned or accruing due during the period covered by the payment, and shall deduct and retain the amount of the tax from the wages payable to the employee, and shall, on or before the fifteenth day of the month next following that in which the payment of wages takes place, or at such other time as the regulations prescribe, pay to the administrator the full amount of the tax. No employee shall have any right of action against his employer in respect of any moneys deducted from his wages and paid over to the administrator by the employer in compliance or intended compliance with this section.”

Section 7 provides :

40 “ In case the wages earned or accruing due to an employee are paid to him without the tax imposed thereon being deducted therefrom by his employer, it shall be the duty of the employee to forthwith pay the tax, and all the provisions of sections 23, 23A, 24 and 25 of ‘ The Income Tax Act ’ shall, mutatis mutandis, apply to the collection and recovery of the tax so imposed from the employer and employee, or either of them.”

*In the  
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Reasons for  
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tinued.

The result of these two sections is that the employer is to act as a Government tax collector, but, if by any circumstances he does not collect these taxes, or that he is not bound to perform such a duty, then the responsibility for payment rests upon the employee himself.

The definition of "Employer" as taken from :

*Oxford Dictionary, Vol. 3, pp. 129-130 is :*

" 'Employer' one who employs; one who employs servants, workmen, etc., for wages."

" 'Employe,' 'employee' one who is employed; in English use general to persons employed for wages or salary by house or business or by Government." 10

*Corpus Juris, Vol. 20, p. 1241.*

"The term 'employee' is the correlative of 'employer' and the two are doubtless the outgrowth of the old terms 'master and servant' and have been adopted by reason of and in deference to the exalted position labour has acquired by the education of the masses."

*Corpus Juris, Vol. 20, p. 1244.*

"The term (employer) is the correlative of 'employee' and is defined as one who employs; one who engaged or keeps in service; one who uses or engages the services of other persons for pay." 20

*People v. City of Buffalo, 64 S.C. Repts, N.Y. (57 Hun) 577 at 581.*

"The term 'employee' is the correlative of 'employer' and neither term has either technically or in general use a restricted meaning by which any particular employment or service is indicated."

In my opinion I can only come to this conclusion that the word "employer" in its ordinary meaning is sufficiently broad to include the Crown and does include the Crown in this particular Act.

It would seem that the defendants in this action insist that they are exempt from this tax. 30

*In Vol. 11, C.E.D., Ont. Ed. p. 399, sec. 7, under the definition, Construction of Exemptions, we find : " While a taxing Act is to be construed strictly in the sense that the subject must be shown to come within its purview, yet where there is expressed the clear intention to tax a person, the onus is on the person seeking to establish that income received by him is exempt from the taxation to which income in the hands of similar persons is liable. There is no such thing as presumption of exemption; if anything, the presumption would be in favour of the taxing power. Immunity from taxation by statute will not be recognized unless granted in terms too plain to be mistaken." 40*

It would thus appear that whatever onus exists, it lies upon the defendants in these actions. It is clearly the intention of the Act that the defendants are liable and they have not satisfied me that they are entitled to any exemption.



4. *Constitutionality.*

I did not take this into consideration. It was intimated to me that notwithstanding what conclusion I came to the matter would have to go to a higher Court and under the circumstances I decided not to put the Counsel to the trouble of arguing the constitutional question twice.

I am therefore, giving judgment for the plaintiff in the several actions with costs.

Dated this 6th day of June, A.D. 1934.

J. G. CORY,  
County Court Judge.

*In the  
County  
Court of  
Winnipeg.*

No. 4.  
Reasons for  
Judgment of  
Cory, C.C.J.,  
6th June,  
1934—*con-  
tinued.*

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No. 5.  
Formal Judgment.

IN THE COUNTY COURT OF WINNIPEG.

Suit No. 50026.

BETWEEN :

THE ATTORNEY-GENERAL OF THE PROVINCE OF MANITOBA  
for and on behalf of His Majesty the King in the Right  
of the Province of Manitoba - - - - -

*Plaintiff*

AND

20 JAMES FORBES, 327 Morley Avenue, Winnipeg, Manitoba - *Defendant.*

This action coming on for trial the 2nd day of May, A.D. 1934, before this Court in the presence of counsel for the plaintiff and defendant, upon hearing read the pleadings and upon hearing the evidence adduced and what was alleged by counsel aforesaid, this court was pleased to direct that this action should stand over for judgment and the same coming on this 8th day of June, A.D. 1934, for judgment.

This Court doth order and adjudge that the plaintiff for and on behalf of His Majesty the King in the Right of the province of Manitoba do recover from the defendant the sum of \$20.80 as claimed in the  
30 pleadings.

J. G. CORY,  
J.

No. 5.  
Formal  
Judgment,  
8th June,  
1934.

*In the  
Court of  
Appeal.*

No. 6.

**Motion on Appeal to Court of Appeal.**

No. 6.  
Motion on  
appeal to  
Court of  
Appeal,  
21st June,  
1934.

IN THE COURT OF APPEAL

BETWEEN :

THE ATTORNEY-GENERAL OF THE PROVINCE OF MANITOBA for and on  
behalf of His Majesty the King in the Right of the Province of  
Manitoba - - - - - (Plaintiff) Respondent

and

JAMES FORBES,

(Defendant) Appellant. 10

Take Notice that the above named (Defendant) Appellant has set the cause down and entered the same with the Registrar of this Honourable Court by way of appeal and motion on behalf of the (Defendant) Appellant for an order setting aside the decision and judgment made and pronounced herein by His Honour Judge Cory in the County Court of Winnipeg after reserving judgment at the trial of this action, which said judgment was pronounced on or about the 8th day of June, 1934, and for an order directing in lieu thereof that judgment in the said action be entered for the (Defendant) Appellant and that the Plaintiff's action be dismissed or that a non-suit may be entered in favour of the (Defendant) Appellant or that the said decision and judgment thereon being set aside it may be ordered and directed by this Honourable Court that there be a new trial of this action or for such further and other order as to this Honourable Court may seem meet upon the following amongst other grounds :

1. That the said judgment is against law, evidence and the weight of evidence.
2. That, upon the evidence before him, the Learned Trial Judge should have dismissed the Plaintiff's action.
3. That the County Court have no jurisdiction to entertain or to try this action and that Crown Revenue actions can only be brought on the Revenue Side of the Court of King's Bench and the said Court is the only one that can give equitable relief to a subject from taxation.
4. That the Defendant is not an "employee" within the meaning of "The Special Income Tax Act" 23 Geo. V. Cap. 44 and is not liable for taxation thereunder.
5. That the Defendant did not earn nor was there paid to him any "wages" as defined in the said Statute.
6. That the Defendant received no moneys upon which any taxation could be levied by the Legislature of the Province.
7. That the Defendant is not taxable for the periods or in the amounts set out in the Plaintiff's particulars of claim and the Defendant is not a person liable to taxation under the said Statute.

8. That the said Statute in no way affects the Defendant or any moneys received by him.

9. That no tax could be and none was imposed upon the Defendant under the said Statute and there was none payable under the provisions of the said Statute.

*In the  
Court of  
Appeal.*

No. 6.

Motion on  
appeal to  
Court of  
Appeal,  
21st June,  
1934—*con-  
tinued.*

10. That no debt arose as the said Statute creates no debt and section 7 of the said Statute does not come into effect so far as the Crown in the Right of the Dominion or its servants is concerned. The crown not being an "employer" within the meaning of the said Statute, the Defendant, therefore, did not receive any moneys within the meaning of said section 7 and therefore no provisions of the said section or of "The Income Tax Act" of the Province of Manitoba could apply to the Defendant.

11. That the Crown in the Right of the Dominion not having been specifically named is not an "employer" within the meaning of the said Statute and that no Statute could be read as including the Crown unless specifically named and no Statute of the Province could include the Crown in the Right of the Dominion unless an Act had been passed to that effect by the Parliament of Canada and in view of the fact that no such Act having been passed the said Statute cannot be interpreted as including the Crown in the Right of the Dominion.

12. That the said Statute is discriminating legislation and discriminating taxation and therefore cannot be enforced.

13. That the said Statute is indirect taxation and as such could not be enacted by the Legislature of the Province of Manitoba.

14. That the Legislature of the Province of Manitoba cannot pass legislation intercepting or attempting to intercept moneys in the hands of the Dominion or moneys which are the property of His Majesty the King in the Right of the Dominion.

15. That the said Statute attempts to attach moneys which are still the property of the Dominion and under section 125 of "The British North America Act" no tax can be imposed by the Province on property of the Dominion.

16. That it was unlawful for the Legislature of the Province of Manitoba to enact a bill for the passing of "The Special Income Tax Act" as the same had not been first recommended to the Legislature by message of the Lieutenant-Governor in the session in which the bill was proposed and the same was unlawful according to law and under the provisions of sections 54 and 90 of "The British North America Act."

17. That the Legislature of the Province of Manitoba has no right or power to enact the said Statute and the same has no effect.

18. That the said Statute is unconstitutional, ultra vires and beyond the jurisdiction of the Legislature of the Province of Manitoba and is inoperative.

19. That in view of the provisions of "The British North America Act" and existing Dominion Legislation the Province could not enact or enforce the said Statute.

*In the  
Court of  
Appeal.*

No. 6.  
Motion on  
appeal to  
Court of  
Appeal,  
21st June,  
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tinued.*

20. That the Parliament of the Dominion of Canada having enacted legislation respecting taxes on incomes and having drawn the same into the domain of Dominion Legislation the Province could not enact any such legislation and such legislation if enacted is not enforceable and inoperative so long as the Dominion Legislation is still in force.

21. That the construction to be placed upon taxation Statutes by the Courts is always against the Statute.

Dated at Winnipeg, in Manitoba, this 21st day of June, 1934.

FINKELSTEIN, FINKELSTEIN & WHITE,  
Solicitors for the above named  
(Defendant) Appellant.

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To—

The Registrar of the Court of  
Appeal and to the above named  
(Plaintiff) Respondent and to  
his Solicitor, John Allen.

No. 7.  
Formal  
Judgment,  
12th Nov-  
ember, 1934.

**No. 7.**

**Formal Judgment.**

IN THE COURT OF APPEAL.

The Honourable  
The Chief Justice of Manitoba,  
The Honourable R. M. Dennistoun,  
The Honourable W. H. Trueman,  
The Honourable H. A. Robson,  
The Honourable S. E. Richards,  
Judges of Appeal.

Monday, the 12th day  
of November, A.D. 1934.

20

Between :

THE ATTORNEY-GENERAL OF THE PROVINCE OF MANITOBA  
for and on behalf of His Majesty the King in the Right  
of the province of Manitoba,

(Plaintiff) Respondent

30

and

JAMES FORBES, 327 Morley Avenue, Winnipeg, Manitoba,

(Defendant) Appellant.

[Seal]

The appeal of the above-named defendant appellant from and against the judgment given or pronounced by His Honour Judge Cory in the County Court of Winnipeg on the 8th day of June, A.D. 1934 having come on for hearing before this Court on the 3rd day of October, A.D. 1934 in the presence of counsel as well for the said appellant as for the said respondent, 40

whereupon and upon reading the pleadings and proceedings and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment and the same having come on this day for judgment;

This Court did order and adjudge that the said appeal should be and the same was dismissed.

Certified,

A. J. CHRISTIE,

Dep. Registrar.

*In the  
Court of  
Appeal.*

No. 7.  
Formal  
Judgment,  
12th Nov-  
ember, 1934  
—continued.

10

No. 8.

**Reasons for Judgment.**

IN THE COURT OF APPEAL.

THE ATTORNEY-GENERAL FOR MANITOBA *v.* HARPER; ·  
THE ATTORNEY-GENERAL FOR MANITOBA *v.* FORBES;  
THE ATTORNEY-GENERAL FOR MANITOBA *v.* BROOKES.

No. 8.  
Reasons for  
Judgment.  
(A) Robson,  
J.A.

(A) ROBSON, J. A.

Suits were brought in the County Court of Winnipeg by the Attorney-General (Manitoba) against the defendants, who are employed in the civil service of Canada, for taxes, being two per cent. of wages under The Special Income Tax Act, 1933, ch. 44. Judgment was given against the defendants and they appealed to this Court.

Samuel Harper is an inspector of weights and measures; John Henry Brookes is a senior postal clerk, and James Forbes is engaged in the Health of Animals Branch of the Department of Agriculture.

The argument had not proceeded far in the Worthington case, heard the same day, when the apparent disqualification of the Judge below and of this Court as to one aspect was remarked upon. The same remark might be made in these cases.

In the Special Income Tax Act "wages" includes the salaries "of any judge of any Dominion or provincial court."

There occurred here a situation like that in *Toronto (City) v. Morson* (1916) 37 O.L.R. 369. There Riddell J. said:

"In this case we would consider ourselves disqualified except ex necessitate; but, there being no Judges who are not in like position, we must, if the matter calls for decision, follow the practice in *Dimes v. Grand Junction Canal Co.* (1852) 3 H.L.C. 759, 10 E.R. 301, and in our own Court of Error and Appeal in *Boulton v. Church Society of the Diocese of Toronto* (1868) 15 Gr. 450."

Various objections were raised by the defendants but except two it seems to me they were disposed of at the hearing. The two remaining were,

In the  
Court of  
Appeal.

No. 8.  
Reasons for  
Judgment.  
(A) Robson,  
J.A.—con-  
tinued.

first, that the defendants were employees of the Dominion Government and therefore their salaries were not subject to reduction by means of provincial taxation, and, second, that the taxation in question was indirect.

I think that it is clear that these defendants are in the relation of servants to the federal authority and that as far as this inquiry is concerned there is no substantial distinction between their relationship to the Crown and that of a servant or employee to an individual or corporate employer. It seems to me that this first question is now beyond all possible discussion, at all events in this Court, by reason of the decision in *Abbott v. St. John (City)* (1908) 40 S.C.R. 597; applied in *Toronto (City) v. Morson* (1917) 40 O.L.R. 227; and approved by the Judicial Committee in *Caron v. Rex* (1924) 3 W.W.R. 417, (1924) A.C. 999, 94 L.J.P.C. 9. 10

With regard to the second objection, that the taxation is indirect, it seems to me that it is clear from sec. 3 of The Special Income Tax Act that the tax is placed directly on the person by whom it is intended that it shall be borne and that secs. 4, 5 and 6 merely impose a duty on an employer, if he is a person within the control of the province, to make the collection. I do not see that sec. 7 alters the case. It does not show that the employer is the person primarily to pay with the right of recoupment. It means that if the collector, i.e. the employer, shall have failed to collect, the taxpayer, i.e. the employee, shall make the payment to the province direct. It provides for recovery from the employer as money had and received if he has deducted it, and from the employee as tax, if he has not. If the employer omit to collect the tax as required by the statute he would come under the penalty named in sec. 6. It seems to me to be clear that the Act does not make the employer liable for the tax; he is liable to the Crown for the amount of the tax if he has collected it. I think that the only consequence of an employer's neglect to levy would be what is expressed, namely, that he would be liable to the penalty. 20

I am quite aware that the degree of compulsion which the Act imposes on the employer as involuntary collector is, from the standpoint of his own pocket or personal liberty, in a practical sense liable for the tax. Yet I cannot say that this makes the tax indirect or that the method employed is merely a device, in form of direct, to impose indirect taxation. 30

I think the case as to the penal nature of the liability of the employer is well within *Erie Beach Co. v. Atty.-Gen. for Ont.* (1930) 1 W.W.R. 31, (1930) A.C. 161, 99 L.J.P.C. 38.

I think the appeals must be dismissed.

(B) Rich-  
ards, J.A.

(B) RICHARDS, J. A.

Two important questions are raised by the appeals. They are whether the defendants are taxpayers within sec. 3 of The Special Income Tax Act, 1933, ch. 44, and whether the tax is direct and within the province's power of taxation for provincial purposes, or indirect and ultra vires of the province. 40

Sec. 3 is, in part, as follows :

“ In addition to all other taxes to which he is liable under this or any other Act, every employee shall pay to His Majesty for the raising of a revenue for provincial purposes a tax of two per centum upon the amount of all wages earned or by accruing due to him on or after the first day of May, 1933 . . . ”

“ Employee ” is defined by sec. 2 (1) (b) as meaning “ any person who is in receipt of or entitled to any wages.”

10 “ Wages ” is defined by sec. 2 (1) (d) as including “ all wages, salaries, and emoluments from any source whatsoever.”

Harper is senior inspector of weights and measures at Winnipeg under the Department of Trade and Commerce of the Dominion Government; Brookes is a senior postal clerk under the Post Office Department of the Dominion Government; and Forbes is an inspector of the Health of Animals Branch of the Department of Agriculture of the Dominion Government. Persons holding their positions are referred to as employees in a number of sections of the Civil Service Act, R.S.C., 1927, ch. 22, which applies to the several departments of the Government of Canada. All three are paid for their services by monthly cheques or orders drawn upon the Receiver General of Canada. They are undoubtedly “ employees ” and 20 “ in receipt of or entitled to wages ” in the ordinary sense of the word and phrase and within the meaning of the Act.

The definition of direct and indirect taxes by John Stuart Mill has been accepted by the Supreme Court of Canada and the Judicial Committee as giving the sense in which the words are used in the British North America Act, 1867. See *Security Export Co. The Hetherington* (1923) S.C.R. 539, at 559, and *Atty.-Gen. for B.C. v. Kingcome Navigation Co.* (1933) 3 W.W.R. 353, (1934) A.C. 45, at 51-55. The definition is set out at p. 53 of the Kingcome case, supra, and is as follows :

30 “ Taxes are either direct or indirect. A direct tax is one which is demanded from the very persons who it is intended or desired should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another; such are the excise or customs.

“ The producer or importer of a commodity is called upon to pay a tax on it, not with the intention to levy a peculiar contribution upon him, but to tax through him the consumers of the commodity, from which it is supposed that he will recover the amount by means of an advance in price.”

40 Sec. 3 imposes the tax directly upon the employee. He is not in a position to indemnify himself in respect thereto at the expense of another and there is nothing in the provisions of sec. 3 bearing any resemblance to an indirect tax.

*In the  
Court of  
Appeal.*

No. 8.  
Reasons for  
Judgment.  
(B) Rich-  
ards, J.A.—  
*continued.*

*In the  
Court of  
Appeal.*

No. 8.  
Reasons for  
Judgment.  
(B) Rich-  
ards, J.A.  
*continued.*

Appellant's counsel, however, contends that by means of sec. 4, an indirect tax is, in reality, imposed upon the employer, who shall indemnify himself at the expense of the employee. Sec. 4 is as follows :

" 4.—(1) Every employer at the time of payment of wages to an employee shall levy and collect the tax imposed on the employee by this part in respect of the wages of the employee earned or accruing due during the period covered by the payment, and shall deduct and retain the amount of the tax from the wages payable to the employee, and shall, on or before the fifteenth day of the month next following that in which the payment of wages takes place, or at such other time 10 as the regulations prescribe, pay to the administrator the full amount of the tax. No employee shall have any right of action against his employer in respect of any moneys deducted from his wages and paid over to the administrator by the employer in compliance or intended compliance with this section.

" (2) Every employer shall, with each payment made by him to the administrator under this section, furnish to the administrator a return showing all taxes imposed by this part on the employees of the employer in respect of wages during the period covered by the return, which shall be in the form and verified in the manner 20 prescribed by the administrator.

" (3) Every employer who deducts or retains the amount of any tax under this part from the wages of his employee shall be deemed to hold the same in trust for His Majesty and for the payment over of the same in the manner and at the time provided under this part."

By this section the employer is made an involuntary collecting agent for the province, but there is nothing in its provisions which imposes any tax upon him. He is required to deduct the tax from the employees' wages and having done so is required to pay the retained moneys of the employee to the administrator of income tax. 30

Sec. 6 provides for payment of penalties by the employer, no doubt out of his own moneys, in case of failure to comply with the provisions of sec. 4, but that is not imposing the tax upon him.

But the appellants say, that it is so imposed upon the employer is shown by the concluding lines of sec. 7, which reads as follows :

" 7. In case the wages earned or accruing due to an employee are paid to him without the tax imposed thereon being deducted therefrom by his employer, it shall be the duty of the employee to forthwith pay the tax, and all the provisions of sections 23, 23A, 24 and 25 of 'The Income Tax Act' shall, mutatis mutandis, apply to 40 the collection and recovery of the tax so imposed from the employer and employee, or either of them."

Secs. 23, 23A, 24 and 25 of The Income Tax Act, C.A., 1924, ch. 91, referred to in sec. 7 provide for collection of the taxes, penalties and costs.



There is nothing in them which would impose any liability for the tax upon an employer.

I think the provisions of sec. 7, so far as they affect the employer, must necessarily refer to the case where the tax has been deducted, because then, and only then, the employer is liable to pay the tax under the provisions of sec. 4. I do not think sec. 7 is any aid to the appellants' claim that what the Act really provides is an indirect tax upon the employer hidden behind the sham front of a direct tax upon the employee.

I think the appeals should be dismissed.

*In the Court of Appeal.*

No. 8.  
Reasons for Judgment.  
(B) Richards, J.A.—  
*continued.*

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No. 9.

Order granting special leave to appeal to the Supreme Court of Canada.

IN THE COURT OF APPEAL.

The Chief Justice of Manitoba,  
The Honourable R. M. Dennistoun,  
The Honourable W. H. Trueman,  
The Honourable H. A. Robson,  
The Honourable S. E. Richards,  
Judges of Appeal.

Monday, the 12th day  
of November, A.D. 1934.

No. 9.  
Order granting special leave to appeal to Supreme Court of Canada, 12th November, 1934.

BETWEEN :

20 THE ATTORNEY-GENERAL OF THE PROVINCE OF MANITOBA  
for and on behalf of His Majesty the King in the Right  
of the province of Manitoba - - - - (Plaintiff) Respondent,  
and  
JAMES FORBES, 327 Morley Avenue, Winnipeg, Manitoba - (Defendant)  
Appellant.

30 Upon Motion on behalf of the above named Appellant, in the presence of counsel as well for the Appellant as for the Respondent herein, for special leave of this Honourable Court to appeal to the Supreme Court of Canada against the judgment, order and decision of this Honourable Court upon said appeal rendered and pronounced herein on Monday, the 12th day of November, A.D. 1934.

This Court doth order and adjudge that special leave to appeal to the Supreme Court of Canada by the above named Appellant against the judgment, order and decision of this Honourable Court upon said appeal rendered and pronounced herein on the 12th day of November, A.D. 1934, be and the same is hereby granted unto the said Appellant.

[Seal]

Certified,  
A. J. CHRISTIE,  
Deputy Registrar.

40

*In the  
Court of  
Appeal.*

No. 10.

No. 10.

**Bond for Security for Costs. 28th December 1934.**

*(Not printed.)*

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No. 11.

No. 11.

**Order allowing Security and Appeal. 2nd January 1935.**

*(Not printed.)*

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No. 12.  
Certificate  
of Registrar  
of Court of  
Appeal,  
14th March,  
1935.

No. 12.

**Certificate of Registrar of Court of Appeal.**

BETWEEN :

JAMES FORBES - - - - - *(Defendant) Appellant* 10

and

THE ATTORNEY-GENERAL OF THE PROVINCE OF MANITOBA  
for and on behalf of His Majesty the King in the Right  
of the Province of Manitoba - - - - - *(Plaintiff) Respondent.*

I, the undersigned, Deputy Registrar of the Court of Appeal for Manitoba, do hereby certify that the foregoing printed documents from pages one (1) to thirty-four (34) both inclusive is the Case stated by the parties pursuant to Section 68 of "The Supreme Court Act," Cap. 35, Revised Statutes of Canada, 1927, and Amendments, and the Rules of the Supreme Court of Canada, in an appeal to the Supreme Court of Canada by said Appellant in a certain case pending in said Court of Appeal of Manitoba between the said James Forbes, Appellant, and the said The Attorney-General of the Province of Manitoba, for and on behalf of His Majesty the King in the Right of the Province of Manitoba, Respondent. 20

And I do further certify that the said James Forbes, Appellant, has given proper security to the satisfaction of the Honourable Mr. Justice Richards, a judge of the said Court of Appeal of Manitoba, as required by Section 70 of the said "The Supreme Court Act," being a Bond to the amount of Five hundred dollars (\$500.00), a copy of which security, and a copy of the Order of the Honourable Mr. Justice Richards allowing the same, may be found in pages 33 and 34 of the annexed Case. 30

And I do further certify that I have applied to the judges of the Court of Appeal of the Province of Manitoba for their opinions or reasons for judgment in this case, and that the only reasons delivered to me by the said judges are those of the Honourable Mr. Justice Robson and the Honourable Mr. Justice Richards. The Honourable the Chief Justice of

Manitoba and the Honourable Mr. Justice Dennistoun and the Honourable Mr. Justice Trueman having agreed in dismissing the appeals.

And I do hereby certify that I have applied to the Clerk of the County Court of Winnipeg for the opinion or reasons for judgment in this case given by His Honour Judge Cory, and that the only reasons delivered to me are those set out in the annexed case.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Court of Appeal of the Province of Manitoba, this 14th day of March, A.D. 1935.

10

[Seal]

A. J. CHRISTIE,  
Deputy Registrar of the Court of Appeal  
for the Province of Manitoba.

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No. 12.  
Certificate  
of Registrar  
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*continued.*

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No. 13.  
Certificate of Solicitor of Comparison.  
(*Not printed.*)

No. 13.

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No. 14.  
Appellant's Factum.  
(*See separate document.*)

*In the  
Supreme  
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No. 14.  
Appellant's  
Factum.

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No. 15.  
Respondent's Factum.  
(*See separate document.*)

No. 15.  
Respon-  
dent's  
Factum.

20

In the  
Supreme  
Court of  
Canada.

No. 16.

Formal Judgment.

IN THE SUPREME COURT OF CANADA.

Wednesday the fifteenth day of January, A.D. 1936.

No. 16.  
Formal  
Judgment,  
15th Janu-  
ary, 1936.

Present :

The Right Honourable Sir Lyman P. Duff, P.C., C.J.C.,  
The Honourable Mr. Justice Lamont,  
The Honourable Mr. Justice Cannon,  
The Honourable Mr. Justice Crocket,  
The Honourable Mr. Justice Davis.

10

Between :

JAMES FORBES . . . . . (Defendant) Appellant,  
and

THE ATTORNEY-GENERAL OF THE PROVINCE OF MANITOBA  
for and on behalf of His Majesty the King in the Right  
of the Province of Manitoba . . . . . (Plaintiff) Respondent.

The appeal of the above-named Appellant from the judgment of the Court of Appeal for Manitoba pronounced in the above cause on the twelfth day of November in the year of Our Lord one thousand nine hundred and thirty-four, affirming the judgment of His Honour Judge Cory of the County Court of Winnipeg, rendered in the said cause on the eighth day of June in the year of Our Lord one thousand nine hundred and thirty-four, having come on to be heard before this Court on the Tenth, Thirteenth, Fourteenth and Fifteenth days of May in the year of Our Lord one thousand nine hundred and thirty-five, in the presence of Counsel as well for the Appellant as for the Respondent, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment,

This Court did order and adjudge that the said judgment of the 30 Court of Appeal for Manitoba should be and the same was affirmed and that the said appeal should be and the same was dismissed without costs.

(Sgd.) J. F. SMELLIE,  
Registrar.



## Reasons for Judgment.

WORTHINGTON

v.

THE ATTORNEY-GENERAL OF THE PROVINCE OF MANITOBA.

FORBES

v.

THE ATTORNEY-GENERAL OF THE PROVINCE OF MANITOBA.

In the  
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Court of  
Canada.No. 17.  
Reasons for  
Judgment.

(A) DUFF, C.J. (concurrent in by LAMONT J.).

10 I agree entirely with the judgment of Mr. Justice Davis.

I must confess, I have never had any doubt upon the question raised by these appeals touching the construction and effect of the British North America Act. The legislative authority of the provinces, with respect to direct taxation within a province, does, admittedly, embrace the power to levy taxes upon the residents of the province in respect of their incomes; and it would seem to be axiomatic that a resident of the province is none the less so because he is an official, or an employee, or a servant of the Dominion Government or Parliament, or a person in receipt of emoluments from that Government or Parliament.

(A) Duff,  
C.J. (con-  
curred in by  
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20 In *Abbott v. City of St. John* it was held that there is nothing in the statute which exempts such persons, or the salaries, wages or emoluments received by such persons, from the jurisdiction of the provinces in relation to the subject of taxation. In that case, this Court had to consider the judgment of the very able judges who decided *Leprohon v. Ottawa* (2 Ont. App. R. 522); and it may be worth while to devote a sentence or two to Leprohon's case.

1908

30 The trial judge was Mr. Justice Moss (afterwards Chief Justice of Ontario). He proceeded upon principles which had been laid down in judgments of the Supreme Court of the United States, notably in the judgment of Marshall C.J. in *McCulloch v. Maryland* (4 Wheat. 316), the effect of which may be summed up in these words, quoted by Moss J. from the judgment of Nelson J. in *Buffington v. Day* (11 Wallace 113, 132):

“ . . . there is no express constitutional prohibition upon the States against taxing the means or instrumentalities of the General Government; but it was held, and we agree properly held, to be prohibited by necessary implication, otherwise States might impose taxation to an extent that would impair, if not wholly defeat the operations of the Federal authorities when acting in their appropriate sphere (40 U.C.Q.B. 484). ”

40 Mr. Justice Moss himself proceeds: -

“ In this case the Central authority, in the exercise of its appropriate functions, appointed the plaintiff to a position of emolument.

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In the exercise of its proper powers it assigned to him a certain emolument. This emolument the Plaintiff is entitled to receive for the discharge of duties for which the Central Government is bound to provide. I do not find in the British North America Act that there is any express constitutional prohibition against the Local Legislatures taxing such a salary, but I think that upon the principles thus summarized in the case which I have just cited there is necessarily an implication that such power is not vested in the Local Legislature."

The learned judges in the Court of Appeal for Ontario base their 10 conclusions upon the same grounds.

In *Abbott v. St. John* (40 S.C.R. 597), four of the five judges of this Court were clearly of the view that this reasoning was not admissible for the purpose of determining the limits of the powers vested in the provinces by the British North America Act. Davies, J., said (at p. 606):

"Time and again the Judicial Committee have declined to give effect to this anticipatory argument or to assume to refuse to declare a power existed in the legislature of the province simply because its improvident exercise might bring it into conflict with an existing power of the Dominion." 20

At page 618, I observed,

"... *Leprohon v. The City of Ottawa* . . . was decided in 1877. Judicial opinion upon the construction of the British North America Act has swept a rather wide arc since that date; to mention a single instance only, it would not be a light task to reconcile the views upon which *Leprohon v. The City of Ottawa* proceeded with the views expressed by the Judicial Committee in the later case of the *Bank of Toronto v. Lambe* (12 A.C. 575). Indeed, although *Leprohon v. The City of Ottawa* has not been expressly overruled, 30 the grounds of it have been so thoroughly undermined by subsequent decisions of the Judicial Committee, that it can,—I speak, of course, with the highest respect for the eminent judges who took part in it,—no longer afford a guide to the interpretation of the British North America Act."

*Abbott v. City of St. John* was approved in *Caron v. The King* (1924 A.C. 999) and both decisions are, of course, binding upon this Court.

In view of an argument addressed to us, one may, perhaps observe that *Abbott v. St. John* was not founded on the decision of the Privy Council in *Webb v. Outrim* [1907] A.C. 81, a decision upon the Commonwealth Act of Australia. It proceeded, as plainly appears from the judgments, 40 upon the view that the reasoning in *Leprohon's case* had been swept away by subsequent decisions of the Judicial Committee of the Privy Council on the British North America Act.

I agree with Mr. Justice Davis that the provisions of sections 4, 5 and 6, and the last clause of section 7 are concerned with the collection and the recovery of the taxes imposed upon the employee by sections 3 and 7.

It is conceivable, no doubt, that a province might, while professing to act under clause 2 of section 92 of the British North America Act, attempt to invade the exclusive legislative authority of the Parliament of Canada under clause 8 of section 91 in respect of the

“fixing of . . . the salaries and allowances of civil and other officers of the Government of Canada.”

10 Attempts on the part of both the Parliament of Canada and the legislatures of the provinces to employ their admitted powers for the purpose of legislating in a field from which they are excluded by the terms of the British North America Act have sometimes come before the courts. One of the most recent cases of the kind concerned an attempt on the part of the Dominion to make use of its powers in respect of taxation in order to exercise legislative control over a subject withdrawn from its jurisdiction by the B. N. A. Act. The attempt failed for the reasons given by Lord Dunedin, speaking on behalf of the Judicial Committee, in *re the Insurance Act of Canada* [1932] A.C. 41 at pp. 52 and 53.

20 If a province should attempt to employ its authority in respect of taxation for the purpose of invading the field of jurisdiction marked out and exclusively appropriated to the Dominion by clause 8 of section 91, then such an attempt must necessarily fail. But there is in truth no reason for imputing such a character to the legislation now before us. The statute, no doubt, specifically mentions wages earned by employees of His Majesty in the right of the Dominion or in right of any province of Canada, but there is no suggestion that there is any discrimination between such employees who are subject to the tax created by this statute. Nor could there be any ground for a suggestion, nor, indeed, does anybody suggest  
30 that the purpose of this statute is anything other than that which is expressed in section 3 (1), viz., the levying of a tax for the purpose of raising a provincial revenue.

Counsel for the appellant emphasized sections 4, 5 and 6 and the second branch of section 7. The argument, if I understood it, appeared to be that these sections are *ultra vires* because they constitute an attempt to impose duties upon the Crown, or the officers of the Crown in the right of the Dominion, or of provinces of Canada other than Manitoba, with respect to the disposal of the revenues of the Crown in such rights; that these provisions are inextricably connected with those of sections 3 and 7,  
40 and that the whole of the series of enactments beginning with section 3 and ending with section 7 form a *unum quid* which is struck with invalidity because of the legislature's illegal assumption of authority in enacting sections 4, 5 and 6 and the second part of section 7.

There are, as I conceive, three conclusive answers to this contention. First of all, assuming everything in sections 4, 5 and 6 and the second branch of section 7 which imposes any duty or liability upon the employer to be

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struck from the statute as *ultra vires*, there would still stand enactments valid and complete for the purpose of making the taxes in question exigible from the taxpayer. I shall elaborate this later.

Second, the impeached enactments (sections 4, 5 and 6, and the second part of section 7), read by the light of well settled and well known canons of construction, do not, as it appears to me, extend to the Crown or to the officers of the Crown in the right of the Dominion or of any province of the Dominion, other, at all events, than Manitoba, or to the revenues of the Crown in these respective rights; and further, even if this were not so, the form and character of the legislation is such that the enactments, insofar as they relate to such governments and such revenues, must be treated as severable, and that the enactments would still have their full operation as regards other employers and other revenues. 10

Thirdly, section 11 of the Interpretation Act of Manitoba (ch. 105, R.S. 1913) precludes the extension of sections 4, 5 and 6 and the second part of section 7 at least to the Crown in right of the Dominion or in right of any province other than Manitoba.

Reading sections 4, 5 and 6 and without reference to the interpretation clauses, but in light of accepted rules of construction, it is clear that these sections must be construed as imposing duties and liabilities only upon employers within the territorial jurisdiction of the Legislature of Manitoba, and as dealing with monies or revenues having a situs which would enable the Legislature to exercise control over them. The general rule, I think, is stated with perfect accuracy in the treatise on statutes in Lord Halsbury's collection, Vol. 27, section 310, at p. 163. 20

“When Parliament uses general words it is dealing only with persons or things over which it has properly jurisdiction; it would be futile to presume to exercise a jurisdiction which it could not enforce.”

The presumption in favour of this general rule is fortified in this case by the penal provisions of section 6, which become operative in any case in which an employer fails to observe the duty created by sections 4 and 5 to collect and pay over any tax imposed by Part 1, that is to say, by sections 3 and 7. Such penal provisions, expressed in general terms, ought not to be construed so as to bring within their sweep employers who are neither domiciled nor resident in Manitoba and whose moneys out of which the wages are paid are in their possession beyond the limits of that province, nor to acts or defaults of such employers committed outside the province (*Macleod v. Attorney-General*, [1891] A.C. 455). Since subsection 1 of section 6 applies to all employers who fail to collect and pay over taxes under the provisions of Part 1, and subsection 2 applies to everybody who contravenes any provision of Part 1, this is solid ground for the inference that the duties imposed by sections 4 and 5, in respect of which section 6 provides the sanctions, are duties which the statute contemplates shall be performed in the province. The last sentence of the first paragraph of section 4 ought not to be overlooked. It professes to provide for a discharge 30 40



*pro tanto* of the obligation of the employer to pay the wages of the employee in the manner prescribed, that is to say, by payment of the tax to the province. Now the obligation of the employer would, as a rule, being a simple contract debt, have its situs at the residence of the employer; and the legislature of the province would be impotent to regulate the conditions of its discharge when the employer's residence is not in the province (*Royal Bank of Canada v. The King* [1913] A.C. 283). This observation applies equally to subsection 3 of Section 4.

10 This construction of Sections 4, 5 and 6 receives powerful support by reference to the definition of "employer" in subsection (c) of Section 2. It is in these words,

"2 (1) (c) "Employer" includes every person, manager or representative having control or direction of or responsible, directly or indirectly, for the wages of any employee, and in case the employer resides outside the province, the person in control within the province shall be deemed to be the employer;"

20 The Legislature seems to have recognized that the enactments of Part I, imposing duties upon employers and penalties for failing to perform them, could not be operative in respect of employers and their acts and property outside of the province. The last part of Section 7 is not without its significance. It, by reference, makes the procedure established by Sections 23, 23A and 24 of the Income Tax Act (C.A. 1924) available for the collection and recovery of the tax. They are made available for recovery and collection, not only from the tax-payer, the person on whom the tax is imposed, but, as well, for the enforcement of payment by the employer pursuant to the obligation created by Section 4. Now, it is obvious from inspection that these sections of the Income Tax Act are only intended to apply to employers having goods in Manitoba susceptible to distress.

30 The provision upon which the argument of the appellant largely rests is that of section 2 (d(ii)) which is in these words,

"(ii) the salaries, indemnities, or other remuneration of members of the Senate and House of Commons of the Dominion and officers thereof, members of the Provincial Legislative Councils and Assemblies members of municipal councils, commissions, or boards of management, and of any judge of any Dominion or provincial court, and of all persons whatsoever, whether such salaries, indemnities, or other remuneration are paid out of the revenues of His Majesty in right of the Dominion or in right of any province thereof, or any person;"

40 The argument, as I understand it, proceeds thus: Where the word "wages" occurs in Sections 4, 5 and 6, you must substitute therefor the explanatory phrases of the interpretation section. Now, in the first place, it is important to observe that under this interpretation section, these explanatory clauses only apply "where the context does not otherwise require Sec. 2 (1)". I should have thought it reasonably clear, in view of the considerations I have mentioned, and especially in view of section 2(c)

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that the definition in section 2(d(ii)) could not properly be applied in such a way as to give to sections 4 and 5 the scope necessary to make them applicable to the payment of wages by, for example, a provincial government, other than that of Manitoba, or to an employee of that government.

It is unnecessary to discuss the effect of the words "resident" and "residence" as applied to the Crown. The general principle of construction to which I have referred would, I should have thought, obviously have excluded from the scope of the general words of sections 4, 5 and 6 wages payable by the Crown in the right of another province and, necessarily, out of the revenue of that province and by authority of legislative appropriation or statute. Every consideration in favour of the rule which restricts the operation of the general words of a provincial statute, in such a way as to exclude from them property situate outside the territorial jurisdiction of the legislature and persons and the acts of persons outside that jurisdiction, applies with greatly multiplied force in favour of the view that these sections ought not to be construed as extending to the officials of the government of another province, or to the acts of such officials in dealing with the assets and revenues of the province. *A fortiori*, they ought not to be construed as attempting to impose legal obligations and duties on the Crown in the right of the Dominion, or the officials of the Crown in the right of the Dominion, or as assuming to direct under penal sanctions the disposition of the revenues of the Dominion. No court ought, it seems to me, to attribute to the legislature of a province an intention to enact legislation so obviously beyond the scope of its legitimate action in absence of almost intractable words.

Again, subsection 3 of section 4 provides that the amount of the tax, after having been deducted and retained by the employer, shall be held in trust for His Majesty in the right of the province. This seems to be an illuminating provision. The term employer, must, as we have seen, receive some qualification. What is the qualification here? In the first place, the monies deducted would in most cases where payable by the Dominion, or a provincial government, not have a situs in Manitoba, and that alone is sufficient for excluding such governments from the scope of the term. But beyond that, is it conceivable that a legislature of a province of Canada would assume to declare the Dominion Government or another provincial government a trustee of its revenues for that province? We cannot, I think, in the absence of some plain words, impute such an intention to the legislature.

Then, there is a special observation as regards section 5. By that section, the employer is required to keep "at some place in the province" a list of his employees with their residences. Obviously, such a provision is inoperative in relation to employers not domiciled or resident in the province. Plainly here effect must be given to the presumption excluding persons outside the jurisdiction of the legislature.

I now turn to the effect of section 11 of the Interpretation Act (R.S.M. 1913, ch. 105) which contains this provision:

"No provisions or enactment in any Act shall affect in any manner or way whatsoever the rights of His Majesty, His heirs or

successors, unless it is expressly stated therein that His Majesty shall be bound thereby; . . .”

By section 2 of the Act, there are certain cases in which Section 11 does not apply. These cases are where that section,

“(a) is inconsistent with the intent and object of any such Act, or (b) would give to any word, expression or clause of any such Act an interpretation inconsistent with the context, or (c) is in any such Act declared not applicable thereto.”

10 There is nothing in the statute before us which declares section 11 to be inapplicable thereto, nor, in view of what I have said, can it, I think, be affirmed that section 11 is in any way inconsistent with the intent and object of the statute.

Can it be said then that section 11, if given effect to, “would give to any word, expression or clause” of the statute “an interpretation inconsistent with the context?” There is nothing in the context which is inconsistent with section 11 unless it can be discovered in the word “wages,” reading that word by reference to the explanatory clause in the interpretation section 2 (1 (d)).

20 It does not appear to be necessary to consider the question whether, by force of section 2, the word “employer” in these sections (sections 4, 5, 6 and the second part of section 7) should be extended to include His Majesty in right of the province of Manitoba. The statute as a whole is for the behoof of His Majesty in right of that province. On the other hand, the tone of the sections in question (4, 5, 6 and the enactments of the Income Tax Act referentially introduced by the second part of section 7), as well as the substance of some of the provisions of these sections, are not entirely consonant with the idea that they are intended to apply to His Majesty in any capacity.

30 It is, however, unnecessary to pass upon this point. Our concern is with the application of these provisions to His Majesty in right of the Dominion and of the other provinces of Canada. Is His Majesty in these capacities comprehended within the general term “employer”?

*In re Silver Brothers, Ltd.*, [1932] A.C. 514, at pp. 523-4, contains observations by Lord Dunedin, delivering the judgment of the Judicial Committee, valuable for our present purpose touching the effect of an enactment by the legislature of a province which, if operative, would prejudicially affect the rights of the Crown in relation to its revenues and assets under the control of another legislative jurisdiction in Canada. He says:

40 “The next point made was that the provisions of s. 16 do not apply when what is being done is not to affect the Crown prejudicially, but to give a benefit to the Crown, and along with this it is urged that there is only one Crown, and reference is made to the case of *Att.-Gen. for Quebec v. Nipissing Central Ry. Co.* [1926] A.C. 715. It is quite true that the section refers to cases where the Crown would be “bound,” i.e., subjected to liability, and not to those where the Crown is benefited. But the fallacy lies in the application

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of this truth to the case in question. Quoad the Crown in the Dominion of Canada the Special War Revenue Act confers a benefit, but quoad the Crown in the Province of Quebec it proposes to bind the Crown to its disadvantage. It is true that there is only one Crown, but as regards Crown revenues and Crown property by legislation assented to by the Crown there is a distinction made between the revenues and property in the Province and the revenues and property in the Dominion. There are two separate statutory purses. In each the ingathering and expending authority is different.”

10

I have already called attention to the fact that the legislature in the interpretation clause (s. 2 (1) (c)) seems to recognize the rule of interpretation which presumptively imputes to the legislature an intention of limiting the direct operation of its enactments to persons and things within its jurisdiction. When these sections are examined as a whole, the form, as well as the substance of them, enormously strengthens this presumption. The immediate context, therefore, offers no obstacle whatever to the application of section 11 to them. Indeed, these sections, read by themselves, in the absence of section 11 and in the absence of the interpretation clause, would be applied upon the footing that “ employer ” does not include His Majesty in right of the Dominion or of another province. Such being the case, it would appear that effect ought to be given to the introductory words of section 2 (1); “ unless the context otherwise requires.” It results, therefore, from the terms of section 11 of the Manitoba Interpretation Act, applied by the light of the general considerations adverted to above, and of the definition of the term “ employer ” in the interpretation section, that that part of clause (ii) of section 2 (1(d)) which refers to remuneration

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“ paid out of the revenues of His Majesty in right of the Dominion or in right of any province thereof ”

ought not, by reason of the restriction which must be placed upon the general term “ employer,” to be regarded as governing the interpretation of the term “ wages ” in these sections.

30

Apart from these considerations, it would appear that those parts of the definition of “ wages ” which relate to monies payable out of revenues of the Dominion are severable from the other parts of the definitions. If you excise these references, you do not affect the meaning of the enactments of sections 4, 5 and 6 in their application to other persons. Since the application of these enactments to His Majesty in the right of the Dominion, or His Majesty’s officers, or to the revenues of His Majesty in the right of the Dominion, would be *ultra vires*, there seems to be no reason why, in treating that part of the statute as null, the validity of these enactments in other respects should be impeachable. In *Brooks-Bidlake v. A.G. for British Columbia* [1923] A.C. 450, the Judicial Committee, dealing with the statutory stipulation of a timber license under the British Columbia Crown Lands Act, which provided that

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“ this license is issued and accepted on the understanding that no Chinese or Japanese shall be employed in connection therewith,” held that, by reason of the Japanese Treaty Act, 1913, enacted by the Dominion Parliament, the stipulation as regards Japanese was void; but that it must prevail as regards the employment of Chinese. The words of the judgment (at p. 458) are,

“ The stipulation is severable, Chinese and Japanese being separately named; and the condition against employing Chinese labour having been broken, the appellants have no right to renewal.”

10 The present case seems clearly to fall within this rule.

In *A.G. for Manitoba v. A.G. for Canada* [1925] A.C. at p. 568, the Judicial Committee had to deal with a case in which they were obliged to hold that an enactment which was *ultra vires* in some respects, but which would, in a separate enactment, have been valid in some other respects, must be treated as invalid as a whole, because, in view of the circumstances, it was quite impracticable for a court of law to effect the necessary division. The words of the judgment are,

20 “ If the statute seeks to impose on the brokers and agents and the miscellaneous group of factors and elevator companies who may fall within its provisions, a tax which is in reality indirect within the definition which has been established, the task of separating out these cases of such persons and corporations from others in which there is a legitimate imposition of direct taxation, is a matter of such complication that it is impracticable for a Court of Law to make the exhaustive partition required. In other words, if the statute is *ultra vires* as regards the first class of cases, it has to be pronounced to be *ultra vires* altogether. Their Lordships agree with Duff J. in his view that if the Act is inoperative as regards brokers, agents and others, it is not possible for any Court to presume that the  
30 Legislature intended to pass it in what may prove to be a highly truncated form.”

There can be no doubt, if in substance the severance of part of the legislation which is *ultra vires* from the statute as a whole would have the effect of “ transforming it into one to which the legislature has not given its assent”, then it would be beyond the province of any court to deal with the matter in that way (*A.G. for Ontario v. Reciprocal Insurers*, [1924] A.C. 328, at p. 346). In view of what has already been said, such an objection would, as it appears to me, in the present case, be groundless.

40 Again, even if one could come to the conclusion that sections 4, 5 and 6 must be treated as inoperative as a whole, sections 3 and 7 are, in themselves, quite sufficient. Section 3 provides :

“ 3. (1) In addition to all other taxes to which he is liable under this or any other Act, every employee shall pay to His Majesty for the raising of a revenue for provincial purposes a tax of two per centum upon the amount of all wages earned by or accruing due to

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him on or after the first day of May, 1933, which tax shall be levied and collected at the times and in the manner prescribed by this part;”

It is the employee on whom it is to be imposed, but the tax is to be “collected at the times and in the manner prescribed by this part.” Now, it is perfectly clear, as I have already pointed out, especially in view of section 2 (1(c)), that the legislature must have contemplated that sections 4, 5 and 6 would fail of application in many cases; in all cases in which the employer is resident outside of Manitoba, has all his assets and revenues outside of Manitoba, and has no representative in Manitoba who has any control or direction or responsibility in relation to the wages to be taxed. It would be quite inadmissible to hold that in such cases sections 3 and 7 have no application. The rule laid down by Lord Cairns in *Partington v. Attorney-General* (L.R. 4 H.L. at p. 122) is this, 10

“If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.” 20

The operation of sections 3 and 7 is not in any way dependent upon sections 4, 5 and 6 or any of them taking effect against the employer. There is no ground for holding that, when the last mentioned sections do not affect the employer, because he and his assets are beyond the territorial jurisdiction of the legislature, the operations of sections 3 and 7 are in any degree impaired. Section 7 plainly includes such a case, which clearly falls within the words, 30

“In case the wages earned or accruing due to an employee are paid to him without the tax imposed thereon being deducted therefrom by his employer . . .”

And in all cases in which the employer is not within the general terms of sections 4, 5 and 6, section 7 equally applies.

The tax is imposed by section 3 and the obligation to pay the tax is created by that section and section 7, and which includes by reference section 25 (1) of “The Income Tax Act” (C.A. 1924, Ch. 91) which, by section 7, applies in all cases within section 3,

“In addition to all other remedies herein provided, taxes, penalties and costs and unpaid portions thereof assessed or imposed under this Act may be recovered as a debt due to His Majesty from the taxpayer.” 40

The appellants have, in my view, presented no answer to the claim of the Crown.

*Appellants*

*Davis* *concurring*

(B) DAVIS, J. (concurrent in by Lamont J.).—These appeals were heard together as they raise substantially the same question. The appellant Worthington is an officer of the permanent force of the active militia of Canada, having been duly commissioned under the provisions of the Militia Act of Canada. The appellant Forbes is a civil servant employed by the government of the Dominion of Canada in the Department of Agriculture. Both appellants were at all material times continuously resident within the Province of Manitoba. Both appellants seek to escape from the imposition of an income tax upon them by the Province of Manitoba. While several grounds of escape were urged upon us by counsel for the appellants, the main contention was that the Province had no right to impose an income tax upon members of the permanent force of the Canadian militia or upon Dominion civil servants as such imposition of income tax would result in diminution of the pay or salary of such persons and constitute interference with the conduct of the Federal Government in matters of militia and of the civil service of the Dominion. These two actions were brought as test cases and we have had the benefit of full and helpful argument by counsel in the appeals.

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20 Apart from the special considerations that may apply to persons holding office or employment in the two classifications with which we are specially concerned in these appeals, there can be no doubt of the general proposition that every province has a right to raise revenue for provincial purposes by direct taxation within the province. That power was very clearly given to the provinces by sec. 92, sub-head (2) of the British North America Act.

Turning then to the special legislation with which we are concerned, the Province of Manitoba has what may be called a general income tax, imposed under the provisions of The Income Tax Act, being ch. 91 of the Manitoba Statutes consolidation of 1924 with subsequent amendments. By 30 sec. 8 of that statute there shall be assessed, levied and paid upon the income during the preceding year of every person :—

- “(a) residing or ordinarily resident in Manitoba; or
- (b) who remains in Manitoba during any calendar year for a period or periods equal to one hundred and eighty-three days;
- (c) who is employed in Manitoba during such year;
- (d) who not being resident in Manitoba is carrying on business in Manitoba during such year;
- (e) who not being resident in Manitoba derives income for services rendered in Manitoba during such year otherwise than in the course of regular or continuous employment for any person resident or carrying on business in Manitoba;

40

a tax at the rates applicable to persons other than corporations and joint stock companies set forth in the first schedule of this Act upon the amount of income in excess of the exemptions provided in this Act; provided that the said rates shall not apply to corporations and joint stock companies, but

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shall apply to income of personal corporations, as provided for in 8B of this Act. 1931, C.25, S.11.

“In addition to the taxes provided by the schedule there shall be assessed, levied and paid a tax of five per cent., on the tax payable by persons with an income of five thousand dollars or over, before any allowance is made for deductions and exemptions. 1932, C.49, S.8.”

By the interpretation section of the statute (sec. 2 (j) ) “taxpayer” is defined to mean “any person paying, liable to pay, or believed by the Minister to be liable to pay, any tax imposed by this Act.” For the purpose of the statute an extended meaning is given to the word “income” by sec. 3 10 and the word is used as

“including the salaries, indemnities or other remuneration 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, and all other gains or profits of any kind derived from any source within or without the province whether received in money or its equivalent, with the exemptions and deductions hereinafter respectively set out.”

A long list of detailed exemptions and deductions from taxation under the Act is provided by secs. 4 and 5 with none of which exemptions or deductions we are specially concerned in these appeals. Sections 23A, 24 and 25 of the statute deal with the collection and enforcement of the tax. It may be observed in passing that sec. 25 (1) provides that 20

“In addition to all other remedies herein provided, taxes, penalties and costs and unpaid portions thereof assessed or imposed under this Act may be recovered as a debt due to His Majesty from the taxpayer.”

In 1933 the Province of Manitoba passed an Act to impose a special tax on incomes. This Act is known as “The Special Income Tax Act,” 30 and it is with this statute that we are particularly concerned. It is divided into two main parts. Part I is headed “Taxation of Wages” and Part II is headed “Taxation of Income other than Wages.” The question before us falls to be determined mainly under Part I of this statute, it being admitted that the tax sought to be collected from each of the appellants has been imposed under Part I of the statute. To fully understand and appreciate the nature and scope of the taxation under Part I it is necessary to study the provisions of Part II as well as the provisions of the general income tax act above mentioned, being “The Income Tax Act of 1924” with amend- 40

Part II of the Special Income Tax Act imposes (sec. 8 (1) ) upon every person other than a corporation an annual tax of two per centum upon the value of his taxable income, other than wages as to which a tax has been paid under Part I, and such tax shall be ascertained and collected in accord-



ance with the provisions of this part. By sec. 8 (2) the tax imposed by this part shall apply in respect of all taxpayers, other than corporations, within the scope of "The Income Tax Act," or who would be within the scope of that Act if no deductions or exemptions were allowed therein. I have set out above the definition of "taxpayer" in the general Act. The Special Income Tax Act having been assented to on May 4th, 1933, it was provided by sec. 9 that the tax imposed by Part II for the year 1933 should be based on the income of the taxpayer for the year 1932 and the tax for each year thereafter on the income for the previous year; and by sec. 12 (2) the tax imposed on a taxpayer by Part II shall be assessed and levied and payable annually at the same times as the annual income tax under "The Income Tax Act" is assessed, levied and made payable. The legislature of Manitoba, faced with the obvious delay in raising revenue under Part II of the special Act on the basis of an annual assessment, adopted for practical expediency a method of taxation whereby revenue would be raised at once in monthly payments on the basis of a tax of two per centum upon the amount of all wages earned or accruing due on or after the first day of May, 1933. This monthly assessment and collection of the taxes on wages was undoubtedly adopted as a matter of practical expediency to produce revenue at once without awaiting an annual payment on the basis of the provisions of Part II of the Act. It is to be recalled that by sec. 8 (1) of Part II the annual tax of two per centum upon the value of the taxpayer's taxable income excludes "wages as to which a tax has been paid under Part I." Now in Part I it is provided, sec. 3 (1), that in addition to all other taxes to which he is liable under this or any other Act, every employee shall pay to His Majesty for the raising of a revenue for provincial purposes a tax of two per centum upon the amount of all wages earned by or accruing due to him on or after the first day of May, 1933, which tax shall be levied and collected at the times and in the manner prescribed by this part. "Employee" by sec. 2 (1(b)) "means any person who is in receipt of or entitled to any wages"; and "wages" by sec. 2 (1(d)).

"includes all wages, salaries, and emoluments from any source whatsoever, including

(i) any compensation for labour or services, measured by the time, piece, or otherwise;

(ii) the salaries, indemnities, or other remuneration of members of the Senate and House of Commons of the Dominion and officers thereof, members of the Provincial Legislative Councils and Assemblies, members of municipal councils, commissions, or boards of management, and of any judge of any Dominion or provincial court and of all persons whatsoever, whether such salaries, indemnities or other remuneration are paid out of the revenues of His Majesty in right of the Dominion or in right of any province thereof, or any person;

(iii) personal and living expenses and subsistence when they form part of the profit or remuneration of the employee; and

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(iv) emoluments, perquisites, or privileges incidental to the office or employment of the employee which are reducible to a money value,”

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It was argued that sec. 4 under part I indicates that the tax in substance is on the employer's payroll rather than on the employee and that the tax is therefore indirect and beyond the power of the province to impose. Sec. 4 is as follows:—

“ 4. (1) Every employer at the time of payment of wages to an employee shall levy and collect the tax imposed on the employee by this part in respect of the wages of the employee earned or accruing due during the period covered by the payment, and shall deduct and retain the amount of the tax from the wages payable to the employee, and shall, on or before the fifteenth day of the month next following that in which the payment of wages takes place, or at such other time as the regulations prescribe, pay to the administrator the full amount of the tax. No employee shall have any right of action against his employer in respect of any moneys deducted from his wages and paid over to the administrator by the employer in compliance or intended compliance with this section. 10

(2) Every employer shall, with each payment made by him to the administrator under this section, furnish to the administrator a return showing all taxes imposed by this part on the employees of the employer in respect of wages during the period covered by the return, which shall be in the form and verified in the manner prescribed by the administrator.

(3) Every employer who deducts or retains the amount of any tax under this part from the wages of his employee shall be deemed to hold the same in trust for His Majesty and for the payment over of the same in the manner and at the time provided under this part.” 20 30

Sec. 4 is the machinery set up for the collection of the tax. For the purpose of carrying into effect the provisions of parts I and II of The Special Income Tax Act, it is provided by sec. 16 thereof that the Lieutenant-Governor-in-Council may make regulations governing the administration of the Act and that such regulations shall have the force of law as if made part of the Act. Turning to the regulations made by the Lieutenant-Governor-in-Council we find the following :

“ 3. If an employer be satisfied that the total wages of an employee during a period of twelve months will not exceed a sum which entitled the employee to exemption under this Act, the employer shall not be obliged to collect or remit the tax. He shall, nevertheless, show the total amount paid such employee. 40

4. An employer shall not be liable to collect a tax from a person casually and not regularly employed where in any case he is satisfied

that the wages of the employee during the period of twelve months will not exceed a sum which entitled the employee to exemption under this Act.

5. Every employer who levies and collects any tax imposed under said Act with respect to wages of any employee shall, as remuneration for his collection and payment thereof to the Provincial Treasurer, be entitled to deduct from the amount so paid two per centum of such payments and in no case shall such deduction be less than ten cents."

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10 There is nothing to justify the contention of the appellants that the taxation of wages under the statute is in substance an indirect tax on the employer's payroll. Sec. 3 of Part I above set out is the charging section and as Lord Thankerton said in *The Provincial Treasurer of Alberta v. Kerr*, [1933] A.C., 710, at 720—

"The identification of the subject-matter of the tax is naturally to be found in the charging section of the statute, and it will only be in the case of some ambiguity in the terms of the charging section that recourse to other sections is proper or necessary."

20 Sec. 7 of Part I provides that in case the wages earned or accruing due to an employee are paid to him without the tax imposed thereon being deducted therefrom by his employer, it shall be the duty of the employee to forthwith pay the tax. That section does not impose a liability upon the employer for the tax. Sec. 6 (1) provides that if an employer in violation of the provisions of Part I fails to collect and pay over any tax imposed by Part I, the administrator of the Act may demand and collect from him, that is the employer, as a penalty ten per cent. of the tax payable and in addition the employer is liable to a fine. Sec. 6 (2) draws the distinction between the tax payable and moneys in the hands of an employer. "Nothing contained  
30 in this section nor the enforcement of any penalty thereunder shall suspend or affect any remedy for the recovery of any tax payable under this Part or of any moneys in the hands of an employer belonging to His Majesty." The somewhat inapt language used in section 7, that

"all the provisions of sections 23, 23A, 24 and 25 of 'The Income Tax Act,' shall, *mutatis mutandis*, apply to the collection and recovery of the tax so imposed from the employer and employee, or either of them."

cannot be read, having regard to the statute taken as a whole, as imposing the tax upon the employer. The collection and recovery of the tax, and not its imposition, is the substance of the language used.

40 The imposition of the tax upon the employee is clearly made in the charging section (sec. 3 (1)) and secs. 4, 5, 6 and 7 do not attempt to impose the tax as such upon the employer but merely provide for the collection of the tax by the employer and in respect of which collection the employer is entitled, under regulation 6 above set out, to remuneration to the extent of two per centum of the amount collected and paid over by him to the Pro-

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vincial Treasurer. The collection and recovery provisions are clearly within the competence of the provincial legislature.

My conclusion therefore, is that the imposition of the tax on wages under Part I of the statute is direct taxation to raise revenue for provincial purposes within the province and valid under sec. 92 sub-head (2) of the British North America Act.

The appellant Worthington, an officer of the permanent force of the active militia of Canada, contends through his counsel, firstly, that the pay of a soldier is a gratuity from the Crown and cannot in any sense be regarded as wages, and secondly, that in any case a soldier is immune from income taxation by provincial governments as such taxation involves a diminution in the pay and allowance of the soldier and constitutes an interference with national defence and is beyond the competence of any province. The Militia Act, R.S.C., 1927, ch. 132, sec. 48 provides in part as follows :

“(1) Officers, warrant officers, and non-commissioned officers of the permanent force shall be entitled to daily pay and allowances at rates to be prescribed.”

and the Regulations issued pursuant to the Militia Act called Pay and Allowance Regulations state (No. 43) :

“In compliance with sec. 8 of the Militia Pension Act, a deduction of 5 per cent. will be made from the pay of every officer and warrant officer, and this will be calculated on his total emoluments, including the amounts granted for lodging, fuel, light, rations and servant, as set forth in article 74, notwithstanding that he may be provided with these in kind instead of in money, but excluding any married allowance or allowances for forage, travelling or transfer.”

The word “ emoluments ” is used. The word “ wages ” in the Special Income Tax Act is defined (sec. 2 (1(d)) as above set out) to include “ all wages, salaries and emoluments from any source whatsoever ” and the definition is sufficiently wide to cover the pay and allowance of an officer in the militia. As to the second point, that this taxation by the province is unconstitutional as causing a diminution in the soldier’s pay and interfering with national defence, the statute imposes a provincial tax of general application and cannot be construed as legislation respecting the salaries of soldiers as such. It is taxation aimed at citizens at large and there is no ground, in the absence of express provision, to protect the military man from the incidence of the general tax. It is a tax upon persons within the province who are receiving wages within the broad definition of that word as used in the statute and the amount of the tax (2 per cent.) is not such as can be said to constitute any interference with the federal government in relation to its soldiers. The British North America Act has made two broad divisions in the distribution of legislative power, one Dominion and the other Provincial. Within these two divisions the different legislatures possess their own legislative jurisdiction. To the provinces have been given generally all matters of local municipal government. The execution of

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certain prescribed duties of a local character are entrusted to the provinces in relation to education, the establishment, maintenance and management of public and reformatory prisons, hospitals and asylums in and for the province, the administration of justice, municipal institutions, local works and undertakings, property and civil rights, and generally all matters of a merely local or private nature in the province. These public services entail enormous expenditures of money by the provinces, and when a general levy upon all its citizens is imposed by a province for the purpose of raising revenue by direct taxation within the province, it does not create any  
10 conflict between federal and provincial authority such as to entitle a military officer who actually resides in the province to escape from the incidence of the purely local taxation. There is nothing in the legislation directed against the salary of the military officer as such and he must, like all other good citizens, carry his burden of the local taxation of the province within which he resides.

This Court in *Abbott v. City of Saint John*, 40 S.C.R. (1908) 597, held that notwithstanding No. 8 of section 91, which provides that the Dominion Parliament shall have exclusive legislative authority over the fixing of and providing for the salaries and allowances of civil and other officers of  
20 the government of Canada, a civil or other officer of the government of Canada may be lawfully taxed in respect of his income, as such, by the municipality in which he resides, under the authority of provincial legislation. The principle of that case applies to the facts of this appeal and is clearly binding upon us.

The appellant in the other case, Forbes, who is a Dominion civil servant, stands in no different position from that of the appellant Worthington.

Both appeals should be dismissed, but under the circumstances without costs.

30 (C) CANNON, J.

*allow appeal*

In support of the competency of the provincial legislature to impose this 2% tax under the Special Income Tax Act upon the salary or wages of a Dominion civil servant who is within the province in the same manner as it is imposed upon all other persons of the province, the respondent invokes the decision in *Abbott v. The City of St. John*, 1908, S.C.R., which was applied in *Toronto v. Morson* (1917) 40 O.L.R., 227, and approved by the Judicial Committee of the Privy Council in *Caron v. The King* (1924) A.C. 999. In this last case, their Lordships could see no reason in principle why any of the sources of income of a taxable citizen should  
40 be removed from the power of taxation of the Parliament of Canada. They also referred with approval to the judgment of Sir Louis Davies, J., *re Abbott vs. City of St. John* as follows:

“ He was dealing with the imposition of tax by the Province upon a Dominion official, which imposition, it was contended, contravened the provisions of head 8 of s. 91, a provision which

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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, 'the Legislature might authorize an income tax denuding a Dominion official of a tenth or even a fifth of his official income, and, in this way, paralyze 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.'"

Moreover, the Privy Council considered that the Dominion Income Tax Acts were not discriminating statutes. They were 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. The appellant says:

"That case is clearly distinguishable from the one at bar for there the Court was dealing with a general income tax statute and held that a Dominion Government Official's salary should be included in computing his general income but that case was not one of a statute placing a tax upon his salary but was merely a general income statute."

#### I.

Are Dominion civil servants entitled to retain the full salary which the Legislature of Manitoba is attempting to reduce by a tax as "wages" earned and paid within the province?

Without discussing for the moment whether or not the statute under consideration imposes a direct or indirect tax, it might be advisable to ascertain what is the meaning of the word 'taxation' used in sections 91 and 92 of the B.N.A. Act. A tax is an enforced contribution in money levied on persons, property or income by the proper authority for the support of government. The province is empowered to make laws in relation to direct taxation within the province in order to the raising of a revenue for provincial purposes. This is evidently confined to the levying of money and this taxation must be imposed equally on all citizens. No one is supposed to be conscripted into the public service under the guise of taxation. Can there be equality of taxation as between the ordinary

citizen enjoying all the civil rights and liberties and privileges of free agents and a person living in the province who is in the service of the federal government? Does the civil servant enjoy the same liberties as the other subjects in the province? Has he the same rights to freedom of speech and discussion at public meetings? and especially, does he enjoy the right to strike or the right to withhold his labour, so long as he commits no breach of contract or tort or crime? See Halsbury, Law of England, 2nd Edition, Vo. Constitutional Law, No. 437—Pages 391–392. Can he, at will, leave the province to earn his living elsewhere? Has he, like other citizens, absolute freedom to use as he intends his working power or his earning capacity? In other words, is he, as far as his wages are concerned, to be considered as a free agent who can refuse to work?

The Civil Service Act (R.S.C. 1927, c. 22) contains these provisions :

“ 44. The Commission shall by regulation prescribe working hours for each portion of the civil service, and there shall be kept and used in each branch of the civil service a book, system or device approved by the Commission for preserving a record of the attendance of the employees.”

20 “ 46. The deputy head may grant to each officer, clerk or other employee a yearly leave of absence for a period not exceeding eighteen days in any one fiscal year, exclusive of Sundays and holidays, after they have been at least one year in the service.

“ 2. Every such officer, clerk or employee shall take the leave so granted at such time each year as the deputy head determines.”

30 “ 55. No deputy head, officer, clerk or employee in the civil service shall be debarred from voting at any Dominion or provincial election if, under the laws governing the said election, he has the right to vote; but no such deputy head, officer, clerk or employee shall engage in partisan work in connection with any such election, or contribute, receive or in any way deal with any money for any party funds.

“ 2. Any person violating any of the provisions of this section shall be dismissed from the civil service.”

Moreover, any permanent or temporary employment in the service of the Government of Canada disqualifies the holder thereof as a candidate to a seat in Parliament. See also article 160 of the Criminal Code—imposing special criminal liability on civil servants.

40 This means that the civil servant must give and is considered as having dedicated all his activities and work to the State and is entitled to receive in return the compensation fixed for the class in the civil service to which he belongs.

His activities are even restricted during his vacation or outside of his office hours. This appears clearly by the following orders-in-council :

(a) P.C. 1802, of the 7th day of August, 1931, which enacts that

“ Where any employee is known to be using any of his annual leave for the purpose of engaging in temporary employment in

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connection with the operation of any race track, exhibition, or in the selling of goods of any kind, thereby depriving wholly unemployed people of such temporary work, he shall, on the production of evidence proving the said offence to the satisfaction of the Deputy Head, be subject to immediate suspension, investigation and appropriate discipline, except in cases where, for sufficient cause shown, the Minister of Labour shall have granted special permission authorizing such temporary employment.”

(b) P.C. 95, of the 16th day of January, 1932.

“Whereas section 2 of the Civil Service Superannuation Act, 10  
chapter 24 of the Revised Statutes of Canada, 1927, provides  
that :

“ ‘ Civil servant ’ means and includes any permanent officer,  
clerk or employee in the Civil Service as herein defined, (i) who  
is in receipt of a stated annual salary of at least six hundred  
dollars; and

(ii) who is required, during the hours or period of his active  
employment, to devote his constant attention to the performance  
of the duties of his position and the conditions of whose employment 20  
for the period or periods of the year over which such employment  
extends precludes his engaging in any other substantially gainful  
service or occupation.

“ And whereas the Secretary of State of Canada reports that  
‘ civil servants ’ within the meaning of the said Act have heretofore  
been accustomed to become candidates in municipal and civil  
elections, and thereafter, if elected, to accept municipal and civic  
offices, or to engage in other substantially gainful services and  
occupations, which preclude such civil servants from devoting their  
constant attention to the performance of the duties of their respective  
positions in the Civil Service of Canada; 30

“ Now therefore His Excellency the Governor General in  
Council, on the recommendation of the Secretary of State of  
Canada, is pleased to order and it is hereby ordered that anyone,  
who may now be or hereafter may become a civil servant within  
the meaning and intent of said Act, shall hereafter be precluded  
from becoming a candidate at any municipal or civil election, or  
from engaging in any other substantially gainful service or  
occupation, without first having obtained leave of absence, without  
pay, from his duties as such civil servant for the term of the municipal  
or civic office which he proposes to accept or for the period or periods 40  
of the year over which it is proposed that such other gainful service  
or occupation shall extend.”

which was amended by

(c) P.C. 2463, of the 7th day of November, 1932 as follows :

“ Provided always that the Minister administering or in charge  
of any Department may, in his discretion, grant permission to any



of his officers, clerks or employees, to accept a municipal or civic office which does not carry with it a salary, honorarium or other emolument exceeding five hundred dollars per annum, if, in the opinion of the Minister, the acceptance of such office does not interfere with the proper and regular performance of his duties as a civil servant."

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10 It, therefore, appears abundantly that the federal civil servant is bound by law to render his service exclusively to the State. Contrary to the ordinary citizen, he is—towards the Government, in the public interest—in a state of servitude. He has accepted this "capitis diminutio" for an indemnity fixed by Parliament.

## II.

Since the Abbott case, new elements have appeared in this constitutional problem. Parliament has imposed on federal employees the War Time Income Tax. It has even introduced the dangerous practice—which has found ready imitators—of disregarding the respectable principle of the sanctity of contracts by reducing by 10% the salaries by the unilateral action of one of the contracting parties claiming inability to pay.

20 Now, what is the position of a civil servant when a proportion of his salary is taken away by provincial legislation? Towards the State, he is not, and cannot be, in the same position as the ordinary taxpayer who is required to contribute his share in money for public purposes. The civil servant, if subject to this taxation, is required to contribute the same quota in money plus his services which must nevertheless be given to the nation gratuitously in the proportion of the deduction made from his salary by the impost. In this case, he would be bound by provincial legislation to give 100% services for 98% indemnity. I see nothing in the B.N.A. Act, either in section 91 or 92, empowering any provincial government to compel any citizen to give gratuitously, in whole or in part, his  
30 services to the central government and to the public. Taxation under the B.N.A. Act must be in money and not in money plus services.

Now in this case the effect of taxation on men bound to give all their working hours to the public is to discriminate against them by imposing a levy of money plus 2% of their services as a gratuitous extra contribution to the nation more than what the other citizens of the Province are called upon to contribute—for local purposes. Under the old system of serfdom the State had a direct claim upon the bodies, the goods, the time of the serfs. This has long ago disappeared; but the effect of this kind of  
40 legislation is to impose statutory labour upon public servants who, having to bear the disadvantages, disabilities and the reduction of their status as citizens, have a right to claim as their own, as intangible by no authority but that of Parliament, the compensation fixed for their work.

Common sense indicates that, in order to have a contented public servant, willing and ready to renounce some of the rights and privileges of ordinary citizens, he must feel that both his tenure of office and his

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salary are secure and not subject to reductions in proportion to the means and needs of the province or municipality where his superior officers may send him to perform his public duties.

It may be noted that in rendering judgment *re Abbott v. City of St. John*, Sir Louis Davies expressly reserved to this court the faculty of reconsidering the question involved if confiscation of a substantial part of official or other salaries were attempted. *Rebus sic stantibus*, the decision was supposed to stand. But the situation is now entirely different. A small provincial or municipal tax in 1908, in the happy pre-war days, before any federal War Income Tax could be anticipated, when a 10% reduction of the federal salaries was not within the realm of possibilities, before Canada plunged into the vortex of European militarism, when a world-wide depression did not threaten the municipalities and provinces with bankruptcy, may have seemed a negligible matter, and *de minimis non curat praetor*. But now we must face the situation as it is; the fact indisputedly is that the efficiency of federal services is threatened if they have to provide besides the exigencies of Parliament, to the pressing and ever-increasing needs of the local administrations. As Frederick Pollock says in 45 *Law Quarterly Review* (1929), pp. 293 & foll.: "The court must find and apply the rule which in all circumstances appears most reasonable. . . . The duty of the court is to keep the rules of law in harmony with the enlightened common sense of the nation. Such a duty, being put upon fallible men, cannot be performed with invariable and equal success. It is a matter of judgment, knowledge of the world, traditional or self-acquired bent of opinion, and perhaps above all of temperament. Caution and valour are both needed for the fruitful constructive interpretation of legal principles. The court should be ever valiant to override the merely technical difficulties of professional thinking, and also current opinions having some show of authority, in the search for a solution which will be acceptable and in a general way intelligible to reasonable citizens, or the class of those whom the decision concerns. . . . Discretion is good and very necessary, but without valour the law would have no vitality at all." 10 20 30

We are, therefore, free, notwithstanding the doctrine of *stare decisis*, and I deem it our duty, to reopen the broad question of the power of the legislature under the guise of direct taxation within the province to interfere with the salaries fixed and provided for by the Parliament of Canada for its civil and other officers. Moreover, it may not be amiss to point out that Abbott was a tide waiter in the outside service of the Department of Customs, at a salary of \$600.00 per year; and it is not clear, from the report of the case, that in the year 1907 such employees were precluded from engaging in gainful occupation outside of official duties. He complained that the City of St. John assessed his salary and attempted to levy the sum of \$2.22 for county taxes and \$11.30 for city taxes. The court of New Brunswick, relying on a decision of the Privy Council in *Webb v. Outtrim*, 1907 A.C. 81, affecting the Commonwealth of Australia, set aside the jurisprudence which had prevailed in Canada since Confederation and 40

which had been very ably set forth and established in the powerful judgments of Spragg C., Hagarty C. J. C.P. and Burton and Patterson JJ. A. in *Leprohon v. Corporation of the City of Ottawa*, 2 Ont. App. Rep. 522. When the Abbott case came before this court, Girouard, J., wrote a strong dissenting opinion and refused to set aside the consistent and almost unanimous doctrine of our courts on the sole authority of *Webb v. Outrim*.

It is difficult to understand why the considered conclusions of most eminent judges of our country, who, being in a better position to determine exactly the spirit and effect of the Confederation pact adopted in their  
 10 lifetime, thought that, on this continent of America, the principles accepted by Chief Justice Marshall and other eminent judges of the Supreme Court of the United States with reference to the constitution of the neighbouring country and the reciprocal independence of National and State instrumentalities were to be adopted as a simple matter of common sense and propriety, should have been set aside to follow a decision of the Judicial Committee concerning the interpretation of the Australian constitution which is substantially different from ours, as appears in the judgments of the High Court of Australia when it subsequently refused to accept the Privy Council views in *Baxter v. Commissioners of Taxation*  
 20 *for South Wales*, 4 Commonwealth Law Reports, 1087, and *Commissioners of Income Tax v. Cooper*, 4 Comm. L.R. 1304. It will be sufficient to quote sec. 107 of the Australian constitution to show the complete divergence with Canada as to the division of powers :

“ Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.”

30 See Clement, On Canadian Constitution, 3rd ed. Pages 375 and 642, and 23 Law Quarterly Review (1907) 373—about this much criticized decision.

In *Caron v. The King*, 64 S.C.R. 255, the appellant refused to pay the Dominion Income Tax on his salary as Minister of Agriculture for the province of Quebec and his indemnity as a Member of the Legislature. This Court said that the case was the converse of *Abbott v. The City of St. John*, considered the authority of the Dominion to impose a tax on the salary of a provincial official and declared itself unable to distinguish the two cases.

40 With all due deference and diffidence, I would point out, however, that the facts in those two cases differed, because the Minister of Agriculture or a Member of the Legislature of the province of Quebec is not bound, for the salary or indemnity received as such, to devote his entire time or earning power to the province. These positions are not permanent and, as members of the Executive or of the Legislature, they are entirely free to enjoy all the civil rights of citizens; they are expected to have

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other gainful occupation and are not restricted as are members of the federal civil service. In view of this material difference as to the fundamental facts of the present case with those in *Caron v. The King*, I am of opinion that the judgments of this court and of the Privy Council in *Caron v. The King* are not binding on us in the premises.

The respondent has also quoted *City of Toronto v. Morson*, 40 Ont. Law Reports, 227, where the Appellate Division of Ontario held that the defendant, one of the judges of a county court, was not exempt from municipal taxation under provincial legislation in respect of his salary or income as such judge. The fundamental error of this finding is to be found in the reasons of Mulock, C.J., and Riddell, J., put tersely by the latter as follows (p. 232):

“As to the power of the provinces to tax such salaries, *Leprohon v. City of Ottawa*, 2 A.R. 522, decided that this power did not exist; and, had that decision stood, we should be bound to allow this appeal. But the Supreme Court of Canada, in the case of *Abbott v. City of St. John*, 40 S.C.R. 597, has deprived it of all authority; and, unless we are to disregard the Supreme Court decision we must hold that the power exists.”

Clearly the learned judges in appeal assimilated one of His Majesty's judges to a civil servant. The exemption from taxation by provincial legislation of the salaries of judges would be based partly on different considerations than those that would apply to civil servants. Judges are not servants of the Crown; they are called to decide as between the subject and the Crown; and since the Act of Settlement their complete independence, economic and otherwise, has to be safeguarded in the public interest. Even Parliament, in order to reduce their salaries, had to impose a special tax whose validity is not to be affirmed or denied in the present case where the question does not arise. Suffice it to say that the case of *Abbott v. City of St. John* should not have been considered as a binding precedent by the Court of Appeal of Ontario when a substantially different question was before them. Therefore, the *Morson* decision has nothing to do with the case we are now considering and, in any event, was based on a wrong appreciation of the subject-matter that was at the root of this court's decision in the *Abbott* case.

### III.

It has been said that both the Dominion Parliament and the Provincial Legislature have each been given sovereign powers within the scope of sections 91 and 92 of the B.N.A. Act. The Imperial Parliament also gave to each of them the fixing of, and providing for, the salaries and allowances of civil and other officers for the respective government of Canada and of the provinces. These salaries or emoluments are attached to the position and are paid to the individual who happens to discharge the commission or the public duties assigned to him. In this case, the salary is payable by

the federal departments. If the Dominion, to carry on the nation's business, has one of its officials living in one of the provinces, can it be said that the salary attached to the position whose duties for federal purposes are carried out within the geographical limits of the province, becomes a "thing" within the province and may be taxed for local purposes for the sole reason that the remittance may reach the recipient outside of the capital of the Country? It seems to me that the principle of extra-territoriality, as in the case of the representative of a foreign power, should apply *qua* salary to the mutual benefit and advantage of the officials of the two sovereign powers co-existing and organized in this country under 91 (8) and 92 (4) of the B.N.A. Act.

In *Attorney General for Ontario v. Attorney General for Canada*, 1912 A.C., 571, at p. 583, Lord Loreburn said :

"In the interpretation of a completely self-governing Constitution founded upon a written organic instrument, such as the British North America Act, if the text is explicit the text is conclusive, alike in what it directs and what it forbids. When the text is ambiguous, as, for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the Act."

The purpose of the constitution was the creation of a new Dominion. Canada was intended to take its place among the free nations with such attributes and sovereignty as were consistent with its being still under the Crown. It is essential to the attribute of the sovereignty of any government that it shall not be interfered with by any external or internal power. The only interference, therefore, to be permitted is that prescribed by the constitution itself. A similar consequence follows with respect to the constituting provinces. In their case, however, the central government is empowered to interfere in certain prescribed cases. But under the scheme of the document, there is a number of subjects upon which the legislative power of both the Dominion and the provinces may be exercised. In such a state of things, if questions arise which interfere with the exercise of the sovereign power of the two sovereign authorities concerned, then the doctrine: "*Quando lex aliquid concedit, concedere videtur et illud sine quo res ipsa valere non potest*" applies, as it must be the construction of all grants of powers. It follows that a grant of a sovereign power includes a grant of a right to disregard any attempt by any authority to control its exercise. A remarkable illustration of the application of this maxim is afforded in *Attorney-General for the Dominion of Canada & Everett E. Cain*, and *Attorney-General for the Dominion of Canada & Gilhula*, 1906 A.C. 542, where it was held that the doctrine might be applied so as to exercise said powers even beyond territorial limits.

This view is emphasized in *British Coal Corp. v. The King* (1935) A.C., 500 at 518.

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Under Section 91 of the B.N.A. 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 :

.....

“ (8) The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada.”

“ 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.” 10

Therefore, the Dominion Parliament alone can fix compensation to the Dominion Civil Servants and the same cannot be altered and no deduction made therefrom except by Parliament.

By the Civil Service Act, R.S.C. (1927), Cap. 22, as amended by the Act 22 and 23 Geo. V, Cap. 40, Parliament has enacted new legislation regarding the Civil Servants that come within that statute.

This remuneration is fixed under this statute, and Sec. 10. s.s. 1, provides as follows : 20

“ 10. (1) The civil service shall, as far as practicable, be classified and compensated in accordance with the classification of such service dated the first day of October one thousand nine hundred and nineteen, signed by the Commission and confirmed by chapter ten of the statutes of the year one thousand nine hundred and nineteen, second session, and with any amendments or additions thereto thereafter made; and references in this Act to such classification shall extend to include any such amendments or additions.”

This being an Act of Parliament, it is evident that no Provincial Legislature could interfere with, deduct from or pass any legislation compelling a Dominion Civil Servant to give up his salary or any portion thereof. It is Parliament and Parliament alone that can make any alteration in the law as it stands under the Civil Service Act. Even the Dominion Government itself could not without special enactment by Parliament change, alter or deduct from a Dominion Civil Servant any portion of the compensation to which he would be entitled and which has been set by the Civil Service Act. 30

IV.

If the Special Income Tax Act of the Manitoba Legislature taxes and attempts to intercept in the hands of the Dominion a portion of the remuneration which is fixed by the Dominion Parliament as compensation to the Dominion Civil Servant, would this be within the legislative power of the Provincial Legislature? The answer must be in the negative. 40

Is the exemption from provincial interference by taxation or otherwise necessarily incidental to the exercise of the powers conferred upon the Parliament of Canada by head (8) of Section 91? It is for the Courts to lay down the line of necessity in this case. See: *Montreal Street Railway v. Montreal*, 43 S.C.R. 197, per Duff, J., at p. 229—with whom Chief Justice Sir Charles Fitzpatrick and Girouard, J., concurred, which decision was upheld in the Privy Council, 1912 A.C. 333.

The same law which has prescribed bounds to the legislative power has imposed upon the judges the duty of seeing that these bounds are not overstepped. *L'Union St. Jacques v. Bélisle*, 20 L.C. Jurist, 39, per Duval, C.J.

Can it be denied that under existing conditions in Canada since the war, the reduction of the salaries of Dominion employees in proportion to the needs of the provinces or municipalities, which in some cases are very great and are increasing alarmingly, would, if added to the reductions imposed by the Dominion Parliament, amount to confiscation of a substantial part thereof and would as a necessary consequence seriously impair the efficiency, morale and economic independence of the national service? It is a patent fact to anyone conversant with Canadian conditions, and any attempt by a Province to confiscate even in part the stipend fixed by Parliament, whatever name may be given to the operation, under whatever disguise it may be presented, is an unauthorized assumption of a power which is essentially national in its scope and operation and is expressly denied to the Province by the last phrase of Section 91. The Dominion alone can fix the salaries; and once fixed, they cannot be changed or reduced by the Province. According to elementary common sense, without the necessity of recourse to learned legal distinctions or disquisitions, a salary minus a tax of 2, 5 or 10 per cent. is a reduced salary *pro tanto*. Such reduction in the case of Dominion servants can be effected by Parliament only in the exercise of its exclusive jurisdiction under head (8) of 91. Now the respondent contends that the Act contemplates and contains such an interference. I quote from the factum of the Attorney General:

"It is submitted that the Civil Servant is an 'employee' and that which he receives, viz., salary, is 'wages' within the meaning of the statute.

"The 'employee,' who is required to pay the tax imposed by section 3 of the Act, is defined by section 2 (1) (b) as meaning 'any person who is in receipt of, or is entitled to any "wages."' The final determination, therefore, of who is an 'employee,' must depend upon the definition of 'wages.'

"The opening words of the definition of 'wages' contained in section 2 (1) (d) are as follows:

"'Wages' includes all wages, salaries and emoluments from any source whatever. . . ."

"It is submitted that no matter what term is used in describing the remuneration paid to a Civil Servant for his services, such

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remuneration will fall within the scope of that portion of the definition of wages quoted above. But the definition of wages is still broader in its scope for it continues :

“ ‘ including

(i) any compensation for labour or services, measured by the time, piece or otherwise ;

(ii) the salaries, indemnities or other remuneration of members of the Senate and House of Commons of the Dominion and officers thereof, members of the Provincial Legislative Councils and Assemblies, members of municipal councils, commissions, or boards of manage- 10  
ment, and of any judge of any Dominion or provincial court, and of all persons whatsoever, whether such salaries, indemnities, or other remuneration are paid out of the revenues of His Majesty in right of the Dominion or in right of any province thereof, or any person.’

“ It is submitted on behalf of the Respondent that the words ‘ the salaries, indemnities or other remuneration . . . of all persons whatsoever,’ in the above quotation, plainly comprehend the salary or remuneration of the Civil Servant.”

I should now come to the legislation submitted to our scrutiny, which 20  
provides in part :

#### “ PART I.

#### TAXATION OF WAGES.

“ 3.—(1) In addition to all other taxes to which he is liable under this or any other Act, every employee shall pay to His Majesty for the raising of a revenue for provincial purposes a tax of two per cent. upon the amount of all wages earned by or accruing due to him on or after the first day of May, 1933, which tax shall be levied and collected at the times and in the manner prescribed by this part ;

.....  
“ 4.—(1) Every employer at the time of payment of wages to 30  
an employee shall levy and collect the tax imposed on the employee by this part in respect of the wages of the employee earned or accrued during the period covered by the payment, and shall deduct and retain the amount of the tax from the wages payable to the employee, and shall, on or before the fifteenth day of the next month following that in which the payment of wages takes place, or at such other time as the regulations prescribe, pay to the administrator the full amount of the tax. No employee shall have any right of action against his employer in respect of any moneys deducted from his wages and paid over to the administrator by the employer in 40  
compliance or intended compliance with this section.

“ (2) Every employer shall, with each payment made by him to the administrator under this section, furnish to the administrator a return showing all taxes imposed by this part on the employees of the employer in respect of wages during the period covered by the return, which shall be in the form and verified in the manner prescribed by the administrator.



“(3) Every employer who deducts or retains the amount of any tax under this part from the wages of his employee shall be deemed to hold the same in trust for His Majesty and for the payment over of the same in the manner and at the time provided under this part.”

10 “6.—(1) If an employer, in violation of the provisions of this part fail to collect and pay over any tax imposed by this part, the administrator may demand and collect from him as a penalty ten per cent. of the tax payable, and he shall in addition be liable to a fine of ten dollars for each day of default, but not more than two hundred dollars.

20 “(2) Every person, who contravenes any provision of this part in respect of which no penalty is otherwise provided, shall be liable to a fine not exceeding five hundred dollars, and each day's continuance of the act of default out of which the offence arises shall constitute a separate offence; but nothing contained in this section nor in the enforcement of any penalty thereunder shall suspend or affect any remedy for the recovery of any tax payable under this part or of any moneys in the hands of an employer belonging to His Majesty.

“7. In case the wages earned or accruing due to an employee are paid to him without the tax imposed thereon being deducted therefrom by his employer, it shall be the duty of the employee to forthwith pay the tax, and all the provisions of sections 23, 23A, 24 and 25 of ‘The Income Tax Act’ shall, mutatis mutandis, apply to the collection and recovery of the tax so imposed from the employer and employee, or either of them.”

30 It would appear that section 7 makes the employee liable secondarily and conditionally, if—against the clear purpose of the legislator,—the salary has been paid to him; the operation of the whole act as contemplated by the legislature seems to strike at the employer first and directly for the recovery of the tax on his accruing obligation to pay wages; this is intercepting it and preventing its receipt by the officer to whom it is due. This, as pertinently remarked by Mr. Clement in his work on the Constitution, 3rd ed. p. 642, can be enacted by the federal parliament only. Moreover, if the employer pays the tax, it is expected, and in fact it is embodied in the Act, that he will recoup himself: “he shall deduct and retain the amount of the tax from the wages payable to the employee” to whom a right of action is denied by section 4 (1) against the employer in respect  
40 of any moneys so deducted and paid over to the provincial collector.

Now, direct taxes are those that are levied upon the very person who is supposed as a general thing to bear their burden. When a person pays one of these taxes, he is likely to bear the burden himself and is not likely to shift it to another. Indirect taxes are those that are collected from one person (the employer according to the operation of Part I of the Act) and then transferred in whole or in part by that person to another (in this case the employee). The distinction between direct and indirect

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taxation is made clear by considering the manner in which the tax is levied. "Direct taxes are amongst those levied on permanent and recurring occasions and are assessed according to some list or roll of persons. The taxpayer is regarded as definitely and permanently ascript to the treasury. Indirect taxes, on the other hand, are levied according to a tariff on the occurrence of transactions and events which are not previously ascertainable as regards particular persons. The amount of a direct tax assessed in this way is certain and regular, while an indirect tax is uncertain and irregular, as regards individuals."—(Nicholson). Under Part I of the Act, no employee is required to make returns—only the employer. 10  
No penalty against the employee is enacted; but we find a heavy one against the employer who would dare not to disclose his payroll and deduct the tax.

Reading the whole *modus operandi* of this Part I, I feel inclined to classify it as a clear attempt by the legislature to strike first directly at the source of these wages, before they reach the employee, expecting direct payment from the employer and indirectly by the wage earner; this would be *ultra vires* of 92 (2), as understood and applied in a long line of decisions. But is it necessary to declare the Act "*ultra vires*" in its entirety? would it be sufficient in this case to say that it cannot affect 20  
the salaries or "wages" or other remunerations paid out of the revenues of His Majesty in the right of the Dominion?

It seems obvious that the bones and sinews of Part I consist in the interception of wages in the hands of the employer. Now, as shown above, the respondent says that the "employer" referred to in the statute includes the Crown, but does not claim that the rights of the Dominion Crown can be or are affected by the collecting sections 4, 5, 6 and 7. The contract of employment by the Crown cannot be severed and if the salary cannot be intercepted in the hands of the government because it is earned and paid 30  
purely and solely to carry out the business of the country, it should also be left alone by Provincial Taxation after it reaches the employee. Section 7 must be read with the preceding sections, and if, admittedly, the Federal Crown cannot be forced to make returns and payments to the Province, the same protection should enure to the benefit of the other party to this particular contract of employment.

It would seem that the tax is "the exaction . . . of a percentage duty on services" of which Lord Cave said that it "would ordinarily be regarded" and should be classified "as indirect taxation," *City of Halifax v. Fairbanks Estate* (1928) A.C. 117, at 125, quoted by Rinfret, J., in rendering judgment for this court in *City of Charlottetown v. Foundation 40  
Maritime Ltd.* (1932) S.C.R. 589, where the authorities are very accurately and concisely reviewed.

## V.

The appellant does not claim protection as a resident of Manitoba, but as an instrumentality of the Dominion Government. The present Chief Justice, in his judgment in the Abbott case, referred to *Bank of Toronto v. Lambe* (1887) 12 A.C. 575. But we cannot at this date overlook

the reasoning of the Privy Council *re Attorney General of Manitoba v. Attorney-General for Canada* (1929) A.C. 263, where was declared *ultra vires* a provincial Act which interfered, directly and substantially, with the status and capacity conferred on certain companies by Dominion legislation *intra vires* under sec. 91. In this present case also, this legislation is not saved by the fact that all wage-earners in the Province are aimed at and that there is no special discrimination against Dominion employees. "The matter," says Lord Sumner at p. 268, "depends upon the effect of the legislation not upon its purpose." The effect in this case is clearly to impair the status and earnings of a class of persons who are entitled to look to the Dominion Parliament as the exclusive authority with power to fix and determine such matters. *A fortiori* in the case of a federal civil servant, should the words of Lord Sumner apply, *mutatis mutandis*, when he says at p. 267: "As a matter of construction, it is now well settled that in the case of a company incorporated by Dominion authority with power to carry on its affairs in the Provinces generally it is *not competent* to the Legislatures of those Provinces so to legislate as to impair the status and essential capacities of the company in a substantial degree."

20 It is my firm view that, as a matter of fact, the Province of Manitoba, by the Act under consideration, does, in effect if not purposely, impair the status and essential rights of the civil service to receive whole and without reduction the salary fixed and voted by Parliament. By doing so, the statute is bound to affect and reduce the efficiency of the service for the reasons above given.

Now, if admittedly Part I of the statute is *ultra vires*, as applying to the employer, because the tax as collected would have to be charged back to the employee, can the illegal part of the statute be severed from the allegedly legal part, section 7? The answer is found in a judgment of the Privy Council *re Attorney General of Manitoba v. Attorney General of Canada* (1925) A.C., 568, where Lord Haldane said:

" . . . If the statute is *ultra vires* as regards the first class of cases, it has to be pronounced *ultra vires* altogether. Their Lordships agree with Duff, J., in his view that if the Act is inoperative as regards brokers, agents and others, it is not possible for any court to presume that the Legislature intended to pass it in what may prove to be a highly truncated form."

## VI.

40 This statute is designed to exact a percentage not from the total income, but from the "wages or salaries" at their source. This would be sufficient to distinguish this case from *Abbott v. City of St. John*, in which, as pointed out by Sir Louis Davies, the statute did not provide for a special tax on the wages of Dominion officials, but was a general indiscriminatory tax upon the total incomes of all residents in the province. In this view, this appeal could be maintained, even if this Court considered itself bound by the rule "stare decisis."

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The statute is essentially an attempt to reach the wage earner indirectly through the employer who, to all intents and purposes, is the taxpayer and the only one subject to penalties under the scheme of Part I of the Act. In this respect, this Part I of the statute providing for the interception before payment, with such provisions for recoupment as shown above, must be held to be obnoxious to the restrictions imposed upon the provincial authority.

I would, therefore, allow the appeal without costs, as agreed between the parties, and dismiss the action.

10

(Signed) L. A. CANNON, J.

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As I read Part I of "The Special Income Tax Act" of 1933, with the provisions of its interpretation section, its primary purpose is to tax, subject to the exemptions set forth in s. 3, the wages of all employees in the hands of their respective employers.

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While s. 3 (1) enacts that in addition to all other taxes to which he is liable "every employee shall pay to His Majesty . . . a tax of two per centum upon the amount of all wages earned by or accruing due to him on or after the first day of May, 1933," it specifically provides in the succeeding clause that this tax "shall be levied and collected at the times and in the manner prescribed by this part."

S. 4 then prescribes, not only the times at which and the manner in which the tax shall be levied and collected, but in the most explicit terms imposes upon every employer at the time of payment of wages to an employee the duty of levying and collecting the tax "in respect of the wages of the employee *earned or accruing due* during the period covered by the payment" by deducting and retaining "the amount of the tax from the wages *payable* to the employee, and of paying the full amount thereof to the administrator on or before the fifteenth day of the month next following that in which the payment of wages takes place or at such other time as the regulations prescribe. It then enacts that no employee shall have any right of action against his employer in respect of any moneys "deducted from his wages and paid over to the administrator by the employer in compliance or intended compliance with this section."

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With all deference I cannot think that these provisions of s. 4 (1) are mere provisions of procedure. Read in connection with the language of s. 3, as they are expressly required to be by the words of reference above quoted from that section, they are the vital provisions which specifically indicate the real incidence and effect of the tax, fixing not only the time or times at which the tax shall be paid and the manner in which it shall be levied and collected, but the particular moneys upon and from and out of which it shall be levied, deducted and paid, and the person (the employer) who shall so levy and deduct it and ultimately pay it to the

10 Income Tax Administrator.

If it is the normal or general tendency of the tax which is to be considered and the intention is to be inferred from the form in which the tax is imposed, as laid down in the *Fairbanks case* [1928] A.C., at p. 122, quoted by Rinfret, J., in delivering the judgment of this Court in *City of Charlottetown v. Foundation Maritime Ltd.*, 1932, C.L.R., pp. 594-5, it seems to me to be perfectly clear that, notwithstanding the tax is described as imposed on the employee in respect of his wages, ss. 3, 4, 5 and 6 of Part I plainly demonstrate that the real purpose and intention, primarily at least, is to impose the tax, not upon the employee or upon the income

20 from wages received by the employee, but upon the earned and accruing wages of the employee in the hands of the employer before they are paid to the employee. The words "upon the amount of all wages earned or accruing due to him" in s. 3; the obligation so expressly imposed on the employer in s. 4 to "deduct and retain the amount of the tax from the wages payable to the employee" and "pay to the administrator the full amount of the tax"; the duty cast upon the employer by s. 4 (2) to "furnish to the administrator a return showing all taxes imposed by this part"; and the penalty provisions of s. 6 (1 and 2), it seems to me, all show that this is the only fair and reasonable construction of these four

30 sections.

The provisions of s. 7 completely accord with this conclusion, requiring, as they do, the employee to pay the tax only in the event of the employer paying over to the employee the wages earned or accruing due to him without deducting the tax imposed thereon, and prescribing, as they do by their reference to s. 25 of The Income Tax Act of 1924, the only manner in which the tax may be recovered from the employee in such a contingency, viz. : by action for its recovery as a debt due to His Majesty. This remedy obviously is not available against the employee if the employer has deducted and withheld the full amount of the tax from the employee's

40 wages and paid it to the tax administrator, as he is explicitly obliged to do by the provisions of s. 4 (1), on pain of the fines and penalties prescribed by s. 6.

Considering the enactment, therefore, as a whole, I cannot for my part accede to the proposition so strenuously pressed upon us by the learned counsel for the respondent that its real intent and effect is to impose the tax upon the person of the employee in respect of his income. In my view, as I have already indicated, its normal and general effect is, not to impose the tax as a general income tax upon the employee personally, but

*In the  
Supreme  
Court of  
Canada.*

No. 17.  
Reasons for  
Judgment.  
(D) Crocket,  
J.—con-  
tinued.

*In the  
Supreme  
Court of  
Canada.*

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J.—con-  
tinued.

to tax his earned and accruing wages as such in the hands of the employer before they are received by the employee. Earned and accruing wages, payable to an employee, but not in fact paid to him, cannot well be said to be income at all.

That the enactment was intended to apply to the salaries, pay and allowances of civil servants and other employees of the Dominion Government and of officers and men of the Militia of Canada, as well as to the salaries and wages of all other persons, is plainly shewn by s. 2 (1) (b), (c) and (d). S. 2 (1) (d), after defining "wages" as including "all wages, salaries and emoluments from any source whatsoever", specifically provides that the term shall include inter alia the salaries, indemnities or other remuneration of members of the Senate and House of Commons of the Dominion and officers thereof, and of any Judge of any Dominion or Provincial Court, and of all persons whatsoever "whether such salaries, indemnities or other remuneration are paid out of the revenues of His Majesty in right of the Dominion or in right of any Province thereof or any person". 10

Whatever may be said as to the constitutional right of a provincial legislature to impose, in addition to the increasingly burdensome federal income and other taxes, a tax of two per cent. upon earned or accruing wages in the hands of other employers, there can, I think, be no doubt that no provincial legislation can validly tax the funds of the Government of Canada, appropriated and held in its hands for the payment of the salaries, pay and emoluments of its own civil servants and other employees and the officers and men of the Militia of Canada, or compel the Government of Canada or any of its representatives by means of fines and penalties to withhold any portion of such salaries, pay and emoluments, from those to whom they are due and payable, and hand it over to a provincial tax receiver in payment of any provincial tax. 20

As regards the enactment now under review I have for my part no hesitation in holding that, in so far as its provisions seek to tax federal salaries or other pay or allowances in the hands of the Government of Canada, they are entirely void and inoperative. The Dominion Government very properly ignored the Act, and the appellants Worthington and Forbes continued to receive their pay and salary cheques in full as before, the former as an officer of the Active Militia of Canada and the latter as a member of the Civil Service of Canada. 30

These actions were afterwards brought against them to recover the tax of two per cent. on all wages earned by them as employees of the Government of Canada, and paid to them respectively out of the revenues of His Majesty in right of the Dominion of Canada, monthly between May 1st and Dec. 31st, 1933, without the said tax having been deducted therefrom. They are, as the statements of claim in both cases clearly show, actions for the recovery of the tax upon wages, not only "earned or accruing due", but upon wages "paid to the defendant without the said tax having been deducted therefrom", and as such clearly can be supported, if at all, only under the provisions of s. 7. 40

§7 // The question accordingly arises as to whether this section, which purports to impose upon the employee the liability to pay the tax only

in the event of its not having been deducted from his wages and paid by the employer, can reasonably be severed in an action brought against an employee of the Dominion Government from the provisions of the previous sections, which in their application to the salaries, pay and allowances of civil and other employees of the Dominion Government are ultra vires of the legislature. In my opinion they cannot, the liability for payment of the tax having been primarily placed upon the employer and only secondarily or conditionally upon the employee. The secondary liability of the employee cannot fairly be held in a taxing statute to stand alone if the primary liability, out of which it arises or for which it is substituted, is unconstitutional and void.

For these reasons I concur in the conclusions of my brother Cannon that both these appeals should be allowed and the actions against the appellants dismissed.

*In the  
Supreme  
Court of  
Canada.*

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J.—*con-  
tinued.*

**No. 18.**

**Order in Council granting special leave to appeal to His Majesty in Council.**

(L.S.)

AT THE COURT AT BUCKINGHAM PALACE THE 28<sup>TH</sup> DAY  
OF MAY, 1936.

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

<p>HIS ROYAL HIGHNESS THE DUKE OF YORK ARCHBISHOP OF CANTERBURY LORD CHANCELLOR PRIME MINISTER LORD PRESIDENT EARL MARSHAL H.H. THE AGA KHAN LORD CHAMBERLAIN</p>	<p>LORD COLEBROOKE SECRETARY SIR JOHN SIMON MR. SECRETARY MALCOLM MACDONALD MR. ORMSBY-GORE SIR ISAAC ISAACS MR. EARLE PAGE SIR MICHAEL MYERS</p>
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*In the  
Privy  
Council.*

No. 18.  
Order in  
Council  
granting  
special leave  
to appeal to  
His Majesty  
in Council,  
28th May,  
1936.

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 1st day of May 1936 in the words following viz. :—

“Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of James Forbes in the matter of an Appeal from the Supreme Court of Canada between the Petitioner Appellant and the Attorney-General of the Province of Manitoba for and on behalf of Your Majesty the King in the Right of the Province of Manitoba Respondent setting forth

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(amongst other matters) that the Petitioner is a Civil Servant of Your Majesty the King in the Right of the Dominion of Canada and is engaged in such Civil Service as a Meat Inspector in the Health of Animals Branch of the Department of Agriculture being one of the departments of the Dominion Government: that the Respondent on the 1st February 1934 instituted an Action in the County Court of Winnipeg for recovery from the Petitioner of the sum of \$20.80 claiming such amount as a tax of two *per centum* on the Petitioner's remuneration as such Civil Servant between the 15th May 1933 and the 31st December 1933: that the Respondent's claim was based on sections 2 to 7 of the Special Income Tax Act being Chapter 44 of the Statutes of Manitoba 1933: that the Respondent in the particulars of claim filed in the Action alleged in part as follows:—the Defendant is a married person and an employee in the Civil Service of Canada and resides at or near the City of Winnipeg in the Province of Manitoba. The Defendant has been a married person and an employee as aforesaid and has resided as aforesaid at all times material to this Action; the Defendant as such employee aforesaid has earned wages continuously from the 1st May 1933 to the 31st December 1933 both inclusive which wages earned as aforesaid were paid to the Defendant by the Government of the Dominion of Canada on or about the 15th and the last days of each and every month during the period and which payments were in the amount of \$65.00 each; the Defendant having had paid to him such wages earned as aforesaid at the times aforesaid without the tax of 2 *per centum* imposed upon the amount of all wages earned by him during the period which tax is payable to Your Majesty in the Right of the Province of Manitoba under the provisions of 'The Special Income Tax Act' being chapter 44 of the Statutes of Manitoba 1933, being deducted therefrom, has neglected and refused to forthwith pay such tax as aforesaid to Your Majesty in the Right of the Province of Manitoba and still neglects and refuses to pay the same; that the Respondent accordingly contends that the Petitioner is liable for the payment to the Province of a tax of two (2) *per centum* on all remuneration received by the Petitioner from the Dominion and on all such remuneration which he may receive from time to time in the future: that the Petitioner defended the Action substantially on the grounds amongst others:—(1) that the County Court of Winnipeg had no jurisdiction to entertain or try the Action; (2) that the Act in no way affects the Petitioner or any moneys paid to him; (3) that the Petitioner is not an employee as defined in the Act or a person liable to taxation or in receipt of any moneys taxable under the Act or of any moneys upon which any taxation could be levied by the Provincial Legislature; (4) that the Provincial Legislature cannot pass legislation intercepting or attempting to intercept moneys in the hands of the Dominion;



(5) that the Act is invalid as discriminating legislation and discriminating taxation; (6) that the Act is invalid as indirect taxation; (7) that the Act is *ultra vires* the Provincial Legislature: that similar Actions were brought by the Respondent against John Henry Brookes and Samuel Harper also persons in the Dominion Civil Service and against Captain Frederick Franklin Worthington a Commissioned Officer of the Permanent Force of the Active Militia of Canada: that all these Actions were brought by way of test cases to determine whether the tax is a constitutionally valid one and whether the Defendants are liable thereto: that this Action raises the question of liability for the tax by all wage earners and persons coming within the provisions of the Act in the Province of Manitoba and the issues are therefore of general public interest: that this Action also raises the question of liability for such tax by over 2,000 Dominion Civil Servants in the Province against whom the Respondent has postponed action pending the final determination of this Action: that the Action was tried by His Honor Judge Cory who on the 8th June 1934 gave judgment in favour of the Respondent for the amount claimed: that the Petitioner appealed to the Court of Appeal of the Province of Manitoba: that the Appeal together with Appeals in the Respondent's Actions against Brookes and Harper was argued before the Court of Appeal and on the 12th November 1934 the Court unanimously dismissed the Appeal: that the Petitioner by leave granted by the Court of Appeal appealed to the Supreme Court of Canada: that judgment was delivered on the 15th January 1936: that three of the Judges namely the Chief Justice and Lamont and Davis JJ. held that the Appeal should be dismissed and Cannon and Crockett JJ. were of opinion that the Appeal should be allowed: that the important matters for determination in this case are the constitutionality of the Act; whether the taxation thereby imposed is direct or indirect; whether the Provincial Legislature can impose a tax on the salaries or remuneration of Dominion Civil Servants and whether the Province could enact such legislation when the Dominion Parliament had already drawn income tax within the domain of Dominion legislation: that the questions are of general importance affecting as they do not only the 2,000 Dominion Civil Servants in the Province of Manitoba but all wage earners in the Province as well and their rights and obligations under the Act and the right of the Attorney-General of the Province to enforce payment of the tax: that an arrangement was entered into between the Petitioner and the Respondent that no costs of the trial or any Appeals from the Judgment should be awarded to the successful party against the unsuccessful party and for that reason all the Judgments and decisions aforesaid were without costs and the arrangement with reference to costs extends also to any Appeal to Your Majesty in Council: And humbly praying Your Majesty

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in Council to order that the Petitioner shall have special leave to appeal from the Judgment of the Supreme Court dated the 15th January 1936 or for such further or other Order as to Your Majesty in Council may appear fit :

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Supreme Court of Canada dated the 15th day of January 1936 : 10

“And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

His Majesty having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed 20 obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

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**E X H I B I T S .**

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**No. 3.**

**Speech from the Throne.**

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Exhibits.

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No. 3.  
Speech from  
the Throne,  
18th Feb-  
ruary, 1933.

At the Opening of the First Session Nineteenth Legislature of the Province of Manitoba, Honourable James Duncan McGregor, Lieutenant-Governor.

**MR. SPEAKER**

**AND MEMBERS OF THE LEGISLATIVE ASSEMBLY OF MANITOBA :**

In greeting you on your first coming together to-day as the newly-  
10 elected Legislative representatives of the citizens of Manitoba, I desire to extend to you my cordial best wishes.

You are faced, in entering upon this opening Session of the Nineteenth Legislative Assembly, by the continuance of the world-wide conditions of distress which are putting the people of every land to severe and prolonged testing. This, I am sure, you will take as a challenge to your citizenship, as well as to your sense of duty in doing your work efficiently and with faithfulness to your responsibilities.

In grappling with the adverse conditions of this period of our Province's history there is inspiration to be gained from the spirit shown by the  
20 people in the face of many difficulties, from the determination and energy which they have displayed in meeting them, and from the willingness to co-operate that has been shown. In this connection you will be asked to approve of a proposal urging still further co-operation between the Provinces and the Dominion in a united attempt to bring about an adjustment upwards of prices of primary products and an adjustment downwards of the interest burdens made heavier by the unprecedented decline in prices of most of our products.

While an increase in the prices of basic commodities or relief from the oppressive burden of interest, and other more or less rigid charges is essential  
30 to any permanent remedy for the present conditions, the difficulties in which farmers and others are placed by the extreme decline in the prices for the products of their industry, resulting in almost a total collapse of their purchasing power, warrants your most serious thought and action. You will be asked to give consideration to the causes of and possible remedies for the wide variation between the prices paid the producer for his primary products and those charged the consumer of both primary and manufactured goods.

The loss of the purchasing power of our people having caused increase  
40 in unemployment in villages, towns and cities to the extent that close upon one-tenth of the population is in need of assistance, the plain dictates of humanity compel the organized authorities to do all that is possible in providing food, shelter, fuel and clothing when necessary. The total cost

Exhibits.  
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 No. 3.  
 Speech from  
 the Throne,  
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 ruary, 1933  
 —continued.

of relief works and direct relief by the Government of the Province, by Municipalities and by the Federal Government has amounted to close upon half a million dollars a month during more than two years, to say nothing of the relief given privately. While the cost has been greatly reduced by changes in method, it is still proving to be a very heavy burden to the Municipalities and the Governments of the Provinces and the Dominion, with their falling revenues and their increasing difficulty in balancing their budgets. You will be asked to give careful and sympathetic consideration to the administration of relief by the Dominion, the Province and the Municipalities, and the financial aspects of the problems presented by that work, particularly in Winnipeg and Greater Winnipeg. 10

In the meantime in view of the high costs of unemployment your approval will be asked to a request to the Dominion Government to loan for the Municipalities and the Province the monies necessary for unemployment relief purposes in order to avoid the excessive interest rates that the Municipalities and the Province will otherwise be required to pay.

In view of the magnitude and international aspect of the unemployment and related problems of the depression and the necessity of remedying them at the least cost, and at the earliest opportunity by the most effective means available, namely, International Agreement, you will be asked 20 to place on record your earnest support of any action that may be taken by the interested nations to bring about as the first necessity of a return to normal conditions the cancellation or a radical reduction of reparations and war debts; and you will be asked to urge upon the representatives of Canada at the coming World Conference the necessity of using their best efforts to bring about international co-operation in securing (a) the raising of prices of primary products; (b) a reduction of the existing barriers to world trade; (c) the stabilization of the monetary system; and (d) the lessening of expenditures on armaments.

Under the difficult economic conditions obtaining it is gratifying to 30 know that the Debt Adjustment Act passed last year has provided security against the possible dispossession of many farmers and home owners, and has otherwise furnished a considerable measure of relief. It is worthy of note that the activities of the Board constituted under this Act have met with general approval, and that the principle and method of this legislation is being copied elsewhere. At this session certain amendments will be laid before you in order to make this legislation serve more effectively the purposes for which it was placed on the Statute books.

My Government has co-operated with the Federal and other authorities, not only in Unemployment Relief, but in regard also to other matters 40 of general interest to the people of Manitoba. At the recent Dominion-Provincial Conference at Ottawa there was placed on record the willingness of my Government to co-operate with the Dominion in its agricultural and other services, the desire of the Province to have the Dominion call a conference of the wheat exporting nations of the world to consider the problems relating to the wheat crop, and more particularly my Government offered to cede to the Federal jurisdiction certain constitutional powers

possessed by the Provinces, with a view to the establishment of a system of Federal unemployment insurance and of Federal supervision and control of insurance companies.

Exhibits.

No. 3.

Speech from  
the Throne,  
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ruary, 1933  
—continued.

It is pleasing to record that another milestone in the development of transportation in Manitoba was reached during the past summer, when some 5,000,000 bushels of grain were shipped to Churchill, half of which provided cargoes for ten ocean-going steamships leaving that port last year. You will be interested to know that the port facilities are being rapidly completed and that plans are under way for the official opening of the port and for the opening up of the townsite during the coming summer.

The continued shut-down of the Manitoba Paper Company plant at Pine Falls has been a matter of great concern to my Government in that it has thrown out of employment a large number of men and removed from circulation within the Province the cash expenditures used to purchase wood supplies from the settlers and the usual supplies necessary for the operation of the mill. Every effort has been made to bring about the re-opening of the mill, but so far without success. Pending its re-opening, measures to provide for a greater sharing of the cost by the company of the unemployment resulting therefrom will be laid before you.

The fishing industry in the Province has also been directly affected by existing economic conditions. Exports to the United States have fallen off during the past two years and my Government, acting in co-operation with the Dominion Government, has been active in attempting to restore them. Representations have been made through the usual diplomatic channels and directly to the Department of Agriculture of the United States Government and it is hoped that success will meet our efforts.

The work of revising and consolidating the Statutes has been continued. Among those which will be laid before you as the result of this work are the Municipal Act, the Evidence Act, the Arbitration Act and the Expropriation Act.

There will be submitted to you proposed legislation for the more effective control of mental defectives.

You will be asked to consider amending the Public Utilities Act with the purpose of extending the term of the jurisdiction of the Public Utilities Board in regard to milk and its sale and distribution.

Legislation similar in principle to that which is in operation in the three Provinces to the west and in Ontario respecting the financial responsibility of children to parents will be submitted to you for approval.

Legislation for the compulsory consolidation of Municipal tax arrears, but with an optional provision to Municipalities by by-law, to withdraw from the provisions of such legislation, will be submitted to you.

A number of other measures will be placed before you for your consideration dealing with amendments to existing Statutes.

The Public Accounts will be laid before you on an early day in the Session.

The Estimates for the fiscal year to end April 30th, 1934, will be laid before you in due course. They have been prepared after careful

Exhibits. study and recognition of the necessity of economy. They will show increasing requirements for meeting the charges on relief expenditures. While recognizing the desirability of maintaining essential services, you will be asked to approve of reductions in many items.

No. 3. *Speech from the Throne, 18th February, 1933* —continued.

I leave you now to your work, with full confidence that you will discharge your duties and responsibilities faithfully in the best interest of all the people of Manitoba, who have every ground for steadfast faith in the future of the Province. In your deliberations and decisions may you have the guidance of Divine Providence.

No. 4.  
Order in Council and regulations under "The Special Tax on Incomes Act," 19th May, 1933.

No. 4.

10

Order in Council and regulations under "The Special Tax on Incomes Act."

No. 603/33.

The Honourable the MUNICIPAL COMMISSIONER submits to Council a report setting forth—

WHEREAS Subsection 1 of section 16 of the Special Income Tax Act, being chapter 44 of the Statutes of Manitoba, 1933, provides as follows :

" For the purpose of carrying into effect the provisions of Parts I and II of this Act, the Lieutenant-Governor-in-Council may make regulations governing the administration of this Act, not inconsistent with the spirit of this Act, and may provide for any proceeding, matter, or thing for which express provision is not made in this Act, or for which only partial provision is made."

On the recommendation of the Honourable the Minister, Committee advise—

That the following regulations governing the administration of said Act be made :

REGULATIONS UNDER "THE SPECIAL TAX ON INCOMES ACT."

1. The administrator shall determine subsistence, not payable in money at a rate of fifteen dollars a month.
2. In determining liability to taxation under the Act,
  - (a) An unmarried person having resident with him and wholly dependent upon him a mother, father or sister; or
  - (b) a widow or widower supporting a child or children under the age of twenty-one years wholly dependent upon and resident with him or her

shall be deemed to be a married person, if the facts be evidenced by a declaration in a form prescribed.

3. If an employer be satisfied that the total wages of an employee during a period of twelve months will not exceed a sum which entitled the employee to exemption under this Act, the employer shall not be obliged to collect or remit the tax. He shall, nevertheless, show the total amount paid such employee.

4. An employer shall not be liable to collect a tax from a person casually and not regularly employed where in any case he is satisfied that the wages of the employee during the period of twelve months will not exceed a sum which entitled the employee to exemption under this Act.

10 5. Nothing in these regulations shall exempt any person from liability for the tax if his wages and income from all sources for the twelve months render him liable therefor.

6. Every employer who levies and collects any tax imposed under said Act with respect to wages of any employee shall, as remuneration for his collection and payment thereof to the Provincial Treasurer, be entitled to deduct from the amount so paid two per centum of such payments and in no case shall such deduction be less than ten cents.

Certified.

F. AXFORD,  
Clerk, Executive Council.

20 Winnipeg, Man., May 19th, 1933.

[Seal]

(The Hon. Mr. BRACKEN in the Chair)

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No. 2.

Examination for discovery of James Forbes, 27th February 1934.

(Printed at page 7.)

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Exhibits.  
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No. 4.  
Order in  
Council and  
regulations  
under "The  
Special Tax  
on Incomes  
Act," 19th  
May, 1933  
—continued.

No. 2.  
Examina-  
tion for  
discovery of  
James  
Forbes, 27th  
February,  
1934.

Exhibits.

No. 1.

No. 1.  
Letter :  
W. Stuart  
Edwards to  
Wilson S.  
McLean,  
5th April,  
1934.

Letter: W. Stuart Edwards to Wilson S. McLean.

Dept. of Attorney-General,  
Received  
Apr. 7—1934.

“ W. McLean.”

DEPARTMENT OF JUSTICE, CANADA.

W. S. E./E. L. J.

Please address  
The Deputy Minister of Justice,  
Ottawa.

10

Ottawa, April 5th, 1934.

A. 457—1.

*Re* : ATTORNEY-GENERAL *v.* HARPER*Re* : ATTORNEY-GENERAL *v.* FORBES*Re* : ATTORNEY-GENERAL *v.* BROOKES

Dear Sir,

In reply to your letter of the 28th ultimo to the Minister of Justice,  
I beg to advise you that the Attorney-General of Canada does not desire  
to be represented or heard at the present stage of these proceedings.

20

Yours truly,

“ W. STUART EDWARDS,”

Deputy Minister of Justice.

Wilson S. McLean, Esq.,  
Counsel for the Attorney-General,  
Department of the Attorney-General of Manitoba,  
Winnipeg, Manitoba.

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In the Privy Council.

No. 92 of 1936.

ON APPEAL FROM THE SUPREME COURT  
OF CANADA.

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BETWEEN

JAMES FORBES - - (*Defendant*) *Appellant*

AND

THE ATTORNEY-GENERAL OF THE  
PROVINCE OF MANITOBA for and on  
behalf of His Majesty the King in the right of  
the Province of Manitoba  
(*Plaintiff*) *Respondent.*

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RECORD OF PROCEEDINGS.

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HERBERT SMITH & CO.,

62, London Wall,

London, E.C.2.

- *Solicitors for the Appellant.*

BLAKE & REDDEN,

17, Victoria Street,

S.W.1.

*Solicitors for the Respondent.*