

In the Privy Council.

No. 19 of 1942.

*44, 1943 Blake & Redden*

*C.V.B*

ON APPEAL  
FROM THE SUPREME COURT OF CANADA

BETWEEN

ATLANTIC SMOKE SHOPS LIMITED (Plaintiff) - - - *Appellant*

AND

JAMES H. CONLON, JOHN McDONOUGH AND THE  
ATTORNEY - GENERAL OF NEW BRUNSWICK  
(Defendants) - - - - - *Respondents*

AND

THE ATTORNEYS - GENERAL OF CANADA, QUEBEC,  
MANITOBA, ONTARIO, BRITISH COLUMBIA,  
SASKATCHEWAN, PRINCE EDWARD ISLAND AND  
NOVA SCOTIA - - - - - *Intervenants*

CASE FOR THE APPELLANT  
CASE FOR THE RESPONDENTS

CASE FOR THE ATTORNEY-GENERAL OF CANADA  
CASE FOR THE ATTORNEY-GENERAL OF QUEBEC

CASES FOR THE ATTORNEYS-GENERAL OF  
MANITOBA, ONTARIO, SASKATCHEWAN,  
PRINCE EDWARD ISLAND AND NOVA SCOTIA

RECORD OF PROCEEDINGS

DUNCAN M. OPPENHEIM,  
Westminster House,  
7, Millbank, S.W.1.  
*for the Appellant.*

BLAKE & REDDEN,  
17, Victoria Street, S.W.1.  
*for the Respondents.*

CHARLES RUSSELL & CO.,  
37 Norfolk Street, W.C.2.  
*for the Attorney-General of Canada.*

LAWRENCE JONES & CO.,  
Winchester House,  
Old Broad Street, E.C.2,  
*for the Attorney-General of Quebec.*

BLAKE & REDDEN,  
17 Victoria Street, S.W.1.  
*for the Attorneys-General of Manitoba,  
Ontario, Saskatchewan and Prince Edward Island.*

BURCHELLS,  
4, The Sanctuary, S.W.1.  
*for the Attorney-General of Nova Scotia.*

Chanella Consultati GCI. 9.16.

Wednesday 2.30

3<sup>rd</sup> May 1943  
Consultati } Teach  
                  } Grant } 2.30 -

Monday whole day  
Tuesday 1/2 day  
Wednesday Nil

(Fishes) Alto's Manitla  
1894

INSTITUTE OF ADVANCED  
LEGAL STUDIES,  
25, RUSSELL SQUARE,  
LONDON,  
W.C.1.

Tuesday 1/2 day 18  
Wed Nil 19  
Thursday 1/2 day 20  
Alto Manitla 21

Leeds 2-30

I

S C of New Binnis Held Intra Unis

SC 2 Cantle Duff } Unis  
Duff }

British Columbia  
— name for ad

Ringside } Unis  
Crest }

Harbor } Unis except  
Tuckers }

Rest / Tuckers  
Gram.

Marshall / Wallace Adp. Greeter Case  
Rest Case

Jacobson / Wallace adp. Rest C  
Pinnis Edmond }  
Tuckers }  
Gram. adp. }

Consultations

2/10/43

Tues 11.4  
Thurs 10.30

3<sup>rd</sup> May 1943

Tuech  
Grae

2.30 - 4.00

Consultations 5<sup>th</sup> May 1943

/ June

2.30 - 3.30

3 May 2.30

Tuech  
12<sup>th</sup> May 1943

/ June

11 - 12

5 May / June 2.30 - 3.30

12 May / June 11 o'clock - 12

4<sup>th</sup> May 1943

3  
13

Lord Chancellor (Simon)  
Viscount Simkey  
" Maugham

Lord Atkin  
" Russell of Killowen  
" Wright  
" Romer

Appellant

D. N. Pratt K.C.  
Hbroya Ponce

Respondents

J. Mullard Tucker K.C.  
Frederick Grant

Interveners

P.E. ISLAND :

J. Mullard Tucker K.C.  
Frederick Grant

QUEBEC :

Mr. Walter Monckton K.C.  
Patrick A. Restin

MANITOBA :

F. W. Wallace

SASKATCHEWAN :

F. W. Wallace

ONTARIO :

Patrick A. Restin

NOVA SCOTIA :

J. A. Kyffin

CANADA :

Frank Graham

4<sup>th</sup> May 1943 11 o'clock

23: May 1943

Pritt News Case.

Supreme Court P/42-143

Albin Cast Castro Day

Vallée	<del>Saskatchewan</del>	Saskatchewan	Manitoba	Alberta	Case for	Pop. & Land
Deolmi	Quebec	Ontario	"	"	"	Quebec
Tucke	Prince Edward Island	"	"	"	"	Pop.
Myppen	Nova Scotia	"	"	"	"	Pop.

Sir Walter gives additional papers

11.20 Pritt

Pitt Submissions

1.

2. If not sales tax but Commodity tax is not taxation within Prairie.

3. § 57 to Gov. Inv.

Bad as relating to Customs, Cruise - 121 BNA Act.  
- Trade & Commerce

4. Prayer Act

Agony of prayer for long appeal are ultra vires are not reversible

No Cross Appeal

Matter Quebec as Remot Cross Appeal  
Quebec as matter to Algeria

Tuck Not P 142 of Beau  
Cross Appeal

Case Note 4 P. 11.

8/5/43 Consultation Tuck  
Sic W Matter  
Wallace  
Debrai Devler  
Grant

2.30 - 3-30



6 10.30 6/5/43

2nd Day.

10.30 Simon

As to learn all intarsia on the  
head

Pratt folk of Mr. Graham

Don Tucke Don Quebec and any other  
intarsias.

One Carol of some intarsias.

Pratt

12.30 Trunks near pratt

Cases

- 2.30. Green Buttons Case: 1925 ac. 561
- 1st Fuel Oil case 1927 ac 934
- Halifax & Jarrinton 1928 ac 117

10th May 1943 3rd Day

10/5/43 11.10. Pratt

Simon Whole quantity  
1/2 quantity.

Pratt  
Cases.

2.15 Kind of hair that can be passed on

3.5 Reversibility - discuss later

Taxation not within the Province  
Customs are hair points

3.50 Carl-Ries's



11<sup>th</sup> May 1943 4<sup>th</sup> Day

11 am Pitt - continuing

Secs 121 - 122 BNA Act

Sovereignty

Grain Jubilee Case 1925 A.C. 521.

Alli Pound & Credit Reference 1937 A.C. 355

Natural Products case 1937 A.C. 377

Toronto York Case 1938 A.C.

12.45 Gahan:

4 Propositions

1. (a) Sec 5 imposes a <sup>or import</sup> customs duty & admission of ~~goods~~ into the Province

(b) 1. Insofar as Sec 5 imposes a duty from other parts of Canada Sec 5 is invalid under Sec 121 of BNA Act

2. (a) Insofar as Sec 5 imposes duty on goods from abroad, invalid as Canada has Customs duty

(b) If Sec 5 is invalid, whole act falls because effect of provision results that N.B. is not desired or contemplated

2a Sec 4 imposes on ~~goods~~ Act

Sec 4 is invalid because Canada has exclusive authority over ~~goods~~

3 a Secs 4 & 5 impose tax on a commodity and transmission of sale and purchase

b Such a tax was recognized 1867 as not being direct taxation

4. (a) Secs 4 & 5 tax an agent for buying of another and in that respect is indirect

(b) words "tax" must be given its ordinary meaning

8

1 to rewritten

part the army troops to return after present meeting  
by men starting out

1 pm. Cont. news.

13<sup>th</sup> May 1942 5<sup>th</sup> Day 11-4

Graham Cont. news

Com. Airline Tariff Act 1937 R.S.C. Cat. 44  
Group 3.

Ringbone case

14<sup>th</sup> May 6<sup>th</sup> Day 10-30-1

Graham Cont. news

1.00 ~~Graham~~ Sirian plane deal in  
Mand. no. P22. & P113

17<sup>th</sup> May 7<sup>th</sup> Day. (11.30 & 3.45)

11.00

Graham Cont. news

12.58 Michael Tucker

Selmon 1<sup>st</sup> find one case nature of tax

Rex v Caledonia Co. 1428-258 Tax on Mines

1 Direct & Indirect. what is it? Tax Mills form.  
(b) exception where tax is one which when it is true nature  
is certain in fact to fall within the exceptional rule  
when it is fully

Cotton v The King (agency)  
Halsford v Johnston  
Refines phrase "commodity"  
Mills test itself

Proc. Truman v Ken (agency)  
De J Tor v Lamb  
Allyn v Barthe (agency)  
Burland v The King

9

18<sup>th</sup> May - 8<sup>th</sup> day  $\frac{1}{2}$  day 10-36-1

10-30. Tucker K.C. continuing

Cotton v The King  
Allyn v Barthe  
Proc. Truman v Ken

} True effect of these cases  
regarding agency point

Primer:

agent only a collector of the  
tax on behalf of the consumer,  
who ultimately pays it.

note Sec 131 BNA Act

Tobacco Grant in BC  
Quebec }  
Quebec }

20<sup>th</sup> May  
Tucker Monday (11)

10  
Supreme Court NB. Held Ultra Vires P25

Supreme Ct Canada Held Ultra Vires P143  
except as to provisions making Agreements  
liable.

Ridgeway } Ultra Vires  
Davis }

Ridgeway } Intra Vires  
Craik }

Heron / Intra excep. (1) Agmt.  
(2) Sec 121 B.N.A. Act

Hudson / Intra excep. Agmt.

9<sup>th</sup> Day: May 1943 1943  
11 AM to 1.15 PM

11 am / minutes - contg

Gram Fisheries case.

Reasons 6-11 of Report here

10<sup>th</sup> Day 21 May 1943 10.35 AM

Tucker Continuing

12.20 Gram rolling to add

12.20 Sir Walter Mackenzie K.C.

3.45 Sir Walter Clark in Agmt.  
11. Day 24: May 1943

Quebec Tobacco Tax Act.

Quebec: Factum

~~See~~ See P 4