SILVER BROTHERS, LIMITED (DEBTOR)

AND

ALLAN J. HART (TRUSTEE)

AND

THE ATTORNEY-GENERAL FOR CANADA (CREDITOR RESPONDENT).. APPELLANT;

AND

THE ATTORNEY-GENERAL FOR QUEBEC (CREDITOR PETITIONER).... RESPONDENT.

1928
*Nov. 15, 16.

1929
*Feb. 5.
**May 7.
**Sept. 26.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Constitutional law—Statute—Priorities of taxes, rates or assessments imposed by federal and provincial laws—Conflict—Preference—Bankruptcy—The Special War Revenue Act (1915), 5 Geo. V, c. 8, as amended by 12-13 Geo. V, c. 47, s. 17—Bankruptcy Act, 9-10 Geo. V, c. 36, s. 51 (6)—Interpretation Act, R.S.C., 1906, c. 1, s. 16—R.S.Q. (1909), s. 1357 —Art. 1985 C.C.

Section 1357, R.S.Q. (1909), states that "all sums due to the Crown in virtue of this section (the section dealing with taxes on commercial corporations) shall constitute a privileged debt ranking immediately after law costs." The Dominion *Bankruptcy Act*, s. 51 (6), enacts that "nothing in this section shall interfere with the collection of any taxes, rates or assessments now or at any time hereafter payable by or levied or imposed upon the debtor or upon any property of the debtor under any law of the Dominion, or of the province wherein such property is situate, or in which the debtor resides, nor prejudice or affect any lien

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

**PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe, Rinfret, Lamont and Smith JJ.

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or charge in respect of such property created by any such laws." In 1922, by an amendment to the *Special War Revenue Act*, 1915, being s. 17 of c. 47 of 12-13 Geo. V (D), the Dominion Parliament declared that "notwithstanding the provisions of *The Bank Act* and *The Bankruptcy Act*, or any other statute or law, the liability to the Crown of any person, firm or corporation, for payment of the excise taxes specified in *The Special War Tax Revenue Act*, 1915, and amendments thereto, shall constitute a first charge on the assets of such person, firm or corporation, and shall rank for payment in priority to all other claims of whatsoever kind heretofore or hereafter arising save and except only the judicial costs, fees and lawful expenses of an assignee or other public officer charged with the administration or distribution of such assets."

The debtor was owing to the Quebec Government the sum of $527.42 for taxes imposed under ss. 1345 *et seq.* R.S.Q., 1909, on commercial corporations. It was also indebted to the Dominion Government in the sum of $3,707.07 for sale taxes under *The Special War Revenue Act*, 1915, and amendments. After payment of law costs and the expenses of the trustee, there remained only $2,453.51 available for distribution. The trustee, confirmed by the trial judge, Panneton J., gave priority to the Dominion claim. The Court of King's Bench (Guerin J. dissenting) decided that the two claims should rank concurrently under article 1985 C.C.

Held, reversing the judgment of the Court of King's Bench (Q.O.R. 43 K.B. 234), Duff and Rinfret JJ. dissenting, that the Dominion claim is entitled to preference over the claim of the province.

Held, also, that s. 16 of the *Interpretation Act* (R.S.C., 1906, c. 1), which enacts that "no provision or enactment in any Act shall affect, in any manner whatsoever, the rights of His Majesty, his heirs or successors, unless it is expressly stated herein that His Majesty shall be bound thereby," does not operate to preserve the right asserted by the province to rank concurrently with the Dominion. Duff and Rinfret JJ. *contra.*

Held, also, that the language of s. 17 of c. 47 of 12-13 Geo. V (D)—"notwithstanding the provisions of * * * the *Bankruptcy Act* or of any other statute or law"—excludes from operation here s. 51 (6) of the *Bankruptcy Act* as well as s. 1357, R.S.Q., 1909.—*The King* v. *Canadian Northern Railway Co.* ([1923] A.C. 714) applied. Duff and Rinfret JJ. *contra.*

Held, further, that s. 17 of c. 47 of 12-13 Geo. V, (D) is *intra vires* of the Dominion Parliament.

Per Anglin C.J.C.—In so far as there may be conflict between priority created by the Dominion statute and that which the Quebec statute purports to give, each being within the legislative jurisdiction conferred by the B.N.A. Act on the legislature which enacted it, it is well established that the former must prevail; and this must be so whether the provision for priority—substantially the same in each Act—is attributable to the exercise of a jurisdiction which should be regarded as an integral part of that conferred by an enumerated head, or as ancillary thereto.

Per Duff and Rinfret JJ. (dissenting).—The decisions of the Privy Council, which give preference to Dominion claim in case of conflict between Dominion and provincial legislation, have no application in this case, as these statutes do not cover the same field.

Per Duff and Rinfret JJ. (dissenting).—The reference in s. 17 of c. 47 of 12-13 Geo. V to the *Bank Act* (which would appear to contemplate the liens constituted by section 88 of that enactment) seems to reveal the intention that the "charge" brought into being by section 17, in order to secure the payment of the "excise taxes" there named, should, when it takes effect, have priority over liens of like character with those arising under the *Bank Act;* including of course (if the primacy established affects other Crown debts) liens of a similar character created for the purpose of securing the payment of provincial taxes, or other pecuniary obligations owing to the provincial Crown, numerous examples of which are evidenced in the statutory law of the provinces. Section 17, so construed, would have the effect, the direct effect, of entitling the Dominion to deal with a subject of provincial taxation or other private property in which the province holds a *jus in re* as such security, in such manner as to obliterate that *jus in re,* if necessary to give priority to the Dominion charge. "Property," in section 125 of the *British North America Act,* should be construed in its widest sense, and, in its widest sense, it would embrace such a *jus in re.* As other Crown debts are not mentioned, section 17 ought, especially in view of the *Interpretation Act,* to be construed as excluding such debts from its purview.

Per Duff and Rinfret JJ. (dissenting).—If the Dominion Parliament, in enacting the above section 17, has intended to constitute "a first charge" having priority even over a "privileged debt" of the province of Quebec (R.S.Q., 1909, s. 1357), such legislation would be *ultra vires.*

Per Newcombe J.—Section 17, for the purposes of this case, is bankruptcy legislation under item 21 of the Dominion powers (B.N.A. Act, s. 91); and in enacting that section, it was the intention of Parliament, in the distribution of assets in a bankruptcy, to accord priority to the excise taxes specified in *The Special War Revenue Act,* 1915, and its amendments.

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1), reversing the judgment of the Superior Court, sitting in bankruptcy, Panneton J., and maintaining the claim contained in the petition of the Attorney-General for Quebec.

The material facts of the case and the questions at issue are fully stated in the above head-note and in the judgment now reported.

T. B. Heney and *F. P. Varcoe* for the appellant.

C. Lanctot K.C. and *A. Geoffrion K.C.* for the respondent.

ANGLIN C.J.C.—I have had the advantage of perusing the carefully prepared opinion of my brother Mignault, who states the question for determination and the relevant facts; and in his conclusion I agree.

(1) (1927) Q.O.R. 43 K.B. 234.

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In so far as there may be conflict between priority created by the Dominion statute (12-13 Geo. V, c. 47, s. 17) and that which the Quebec statute (R.S.Q., 1909, Arts. 1345 *et seq.*) purports to give, each being within the legislative jurisdiction conferred by the B.N.A. Act on the legislature which enacted it, it is well established that the former must prevail. This must be so whether the provision for priority—substantially the same in each Act—is attributable to the exercise of a jurisdiction which should be regarded as an integral part of that conferred by an enumerated head, or as ancillary thereto. *Royal Bank of Canada* v. *Larue* (1); *Attorney General of Ontario* v. *Attorney General for Canada* (2); *City of Toronto* v. *Canadian Pacific Railway Co.* (3); *Grand Trunk Railway Co.* v. *Attorney General for Canada* (4); *City of Montreal* v. *Montreal Street Railway Co.* (5).

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

> all other claims of whatsoever kind heretofore or hereafter arising,

over which

> the excise taxes specified in the *Special War Revenue Act, 1915*, and amendments thereto.

are given priority, shall include claims for taxes imposed by a Provincial statute which purports to give to them a like priority?

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

> Notwithstanding the provisions of *The Bank Act* and *The Bankruptcy Act*, or any other statute or law, * * *

The relevant provision of the *Bankruptcy Act*, s. 51 (6), had expressly preserved the priorities of taxes, rates and assessments imposed by provincial law. The intent to supersede that policy is expressed. Moreover, the words, " any other statute or law," *prima facie* include all statutes and laws having force in regard to the administration of the property or estate being dealt with, by whatever authority imposed. If in a provincial statute providing for an exemp-

(1) [1928] A.C. 187.
(2) [1894] A.C. 189, at p. 200.
(3) [1908] A.C. 54, at p. 55.
(4) [1907] A.C. 65, at p. 68.
(5) [1912] A.C. 333, at pp. 343-4.

tion from taxation this *prima facie* meaning of the words "any statute" should prevail so as to include within them not only Acts of the same provincial legislature within that description, but also a similar statute of the Dominion Parliament, as was held in *Rex* v. *Canadian Northern Railway Co.* (1), I can see no good reason for refusing to give the like scope to the words, "any other statute or law," in s. 17 of 12-13 Geo. V, c. 47 (D). In this respect I am unable to distinguish the case at bar in principle from the decision of the Judicial Committee in *Rex* v. *Canadian Northern Railway Co.* (1); and the reason upon which that decision proceeds is distinctly in point.

The right of the Dominion Parliament, under the legislative jurisdiction conferred upon it by heads 3 and/or 21 of s. 91 of the B.N.A. Act, to enact s. 17 appears to me to be so clear as to admit of no question. If so construed as to avoid any conflict with over-riding Dominion legislation, the provincial statute is, no doubt, within the authority given by head 2 of s. 92. The provincial tax in question is not covered by Art. 1994 (10) C.C. It depends entirely on post-Confederation legislation (6 Edw. 7, c. 10; Arts. 1345 *et seq.*, R.S.Q., 1909). To invoke Art. 1985 C.C. is, with respect, to beg the question. The effect of Arts. 1980-1 C.C. is not to create in favour either of the Dominion or of the province, as a creditor, a specific lien or charge on the debtor's property or any part thereof. There is nothing in the Quebec legislation which vests in the Crown in the right of the province, as a result of the imposition of the tax for which it provides, anything in the nature of "property" within the purview of s. 125 of the B.N.A. Act.

Nothing advanced upon the re-argument of this appeal before the full court has affected my views upon the questions in issue expressed in the foregoing opinion, which was written after the earlier argument had before a Court consisting of five judges.

DUFF J. (dissenting).—Subsection 6 of section 51 of the *Bankruptcy Act* preserves (see particularly the French version) the rights created by article 1357 of the statutory law of Quebec. Neither that article nor section 17 of the

(1) [1923] A.C. 714, at pp. 716-8.

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Duff J.

Amendment to the *War Revenue Act* passed in 1915, does in my opinion give any priority over any lien charge or privilege vested in the Crown and preserved by section 51.

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

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

Both claims seem therefore to be of equal rank and should be satisfied rateably.

I have had the opportunity of reading the judgment of my brother Rinfret and with his reasons I entirely concur.

The appeal should be dismissed with costs.

MIGNAULT J.—This litigation arose in connection with the distribution of the proceeds realized by the trustee out of the assets of Silver Brothers, Limited, insolvents. After payment of law costs and of the expenses of the trustee, there remained $2,453.51 available for distribution. The Government of Canada had filed a claim for $3,707.07 for sale taxes due by the insolvent under the *Special War Revenue Act,* 1915 (chapter 8 of the statutes of 1915), and amendments, and the Government of the province of Quebec claimed $527.42, taxes due by the insolvents for the years 1921, 1922 and 1923 under a provincial statute imposing a tax on commercial corporations (Articles 1345 and following, R.S.Q., 1909). Both these claims are given priority after law costs by the statutes governing them. The issue here, as it has developed, is whether the Dominion is entitled to preference over the province, or whether the two claims should rank *pari passu.* In his dividend sheet the trustee gave priority to the Dominion, and in that he was sustained by the learned trial judge (Panneton J.). The Court of King's Bench, on the contrary, held (Guerin J., dissenting) that both claims should rank concurrently. The Dominion now appeals.

It may be observed that each legislature was within its jurisdiction when it imposed the tax, and, under reserve of the question whether the Dominion enactment should prevail here, I can see no reason to doubt that, as an incident of its taxing power, each legislature could give to its claim priority over the claims of ordinary creditors, subject, however, to this qualification that Parliament can undoubtedly, in a bankruptcy law, determine the priority of claims against the estate of a bankrupt, and no provincial legislature can interfere with this priority (*Royal Bank of Canada* v. *Larue* (1)).

There is, however, a saving clause in section 51 of *The Bankruptcy Act* which deals with the priority of claims. This clause, subsection 6 of section 51, reads as follows:

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

(1) [1928] A.C. 187.

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Section 86 of the Act should also be noted:

86. Save as provided in this Act, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

As the matter stood under the *Bankruptcy Act*, therefore, no lien created by federal or provincial legislation to secure the payment of taxes was affected.

The priority claimed by the provincial authorities was first enacted in 1906 by 6 Edward VII (Que.), c. 10. Under the Quebec civil code (which antedates Confederation, and consequently is the enactment of a legislature with plenary legislative power), the only privileged claim of the Crown was against persons accountable for its moneys (comptables), this privilege being on movables only (Art. 1994, parag. 10). There does not appear to be, under the common law of Quebec as expressed in the civil code, or the code of civil procedure, which have been held to be binding on the Crown, any prerogative or other right of the Crown to priority, except as provided by Art. 1994 C.C. See *Exchange Bank of Canada* v. *The Queen* (1).

The priority asserted by the Dominion was enacted in 1922 by an amendment to the *Special War Revenue Act*, 1915. This amendment—which is section 17 of chapter 47 of 12-13 George V (Can.), (this section was repealed in 1925 by 15-16 Geo. V, c. 26, s. 9)—reads as follows:

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

Article 1357 R.S.Q., 1909, gives the provincial tax priority after law costs. It says:

All sums due to the Crown in virtue of this section (the section dealing with taxes on commercial corporations) shall constitute a privileged debt ranking immediately after law costs.

The appellant contends that full effect must be given to section 17, notwithstanding any priority created by provincial legislation such as Article 1357, R.S.Q., 1909. This

(1) (1886) 11 A.C. 157.

section states that the Dominion tax "shall constitute a first charge on the assets," and shall rank for payment "in priority to all other claims of whatsoever kind heretofore or hereafter arising," save only the judicial costs, fees and lawful expenses of the assignee or other public officer charged with the administration or distribution of the assets. This tax, the appellant argues, would not be "a first charge," if the claim for the provincial tax were entitled to rank concurrently with it upon the assets of the insolvent.

The contention chiefly relied on by the respondent is founded on section 16 of *The Interpretation Act* (R.S.C., 1906, c. 1), which states that

> no provision or enactment in any Act shall affect, in any manner whatsoever, the rights of His Majesty, his heirs or successors, unless it is expressly stated herein that His Majesty shall be bound thereby.

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

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

It would seem likely that "the rights of His Majesty, his heirs or successors", intended to be preserved by section 16, are rights derived from the prerogative, and not rights created by statute. Rights of the latter category could hardly continue to exist for the future when the statute creating them is repealed, or excluded by a subsequent enactment, and the consent of the Crown as a component part of the Legislature would seem to be all that is required. In the case of the prerogative, the Crown's expressed consent is necessary, but even then "if the whole

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ground of something which could be done by the prerogative is covered by the statute, it is the statute that rules" (per Lord Dunedin in *Attorney General* v. *De Keyser's Royal Hotel* (1)).

Here, moreover, we have an enactment the whole purpose of which is to grant to the Crown in right of the Dominion priority for the excise taxes specified by *The Special War Revenue Act,* 1915, and amendments, which priority exists "notwithstanding the provisions . . . . of any other statute or law". These terms are wide enough to exclude any statute federal or provincial (*The King* v. *Canadian Northern Railway Co.* (2), the converse case), and of course such an enactment as Article 1357, R.S.Q. 1909. The appellant's contention based on section 16 of *The Interpretation Act,* a federal statute, which moreover would come within the scope of the words "notwithstanding the provisions of any other statute or law," would defeat the very purpose of section 17. It is obvious that the Dominion tax could not be "a first charge" after judicial costs and the fees and expenses of the assignee, if the provincial tax were to rank immediately after law costs. Even if the rights of the Crown referred to in *The Interpretation Act* could be considered as comprising statutory rights, the exclusion of the statute creating these rights would render them ineffective against the Crown in right of the Dominion.

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

The trial judge sustained the trustee's dividend sheet on the ground that there being a conflict here between Dominion and provincial legislation in a field open to both, the Dominion statute must prevail. In support of this view, the appellant has referred us to four pronouncements of

(1) [1920] A.C. 508, at p. 528. (2) [1923] A.C. 714.

the Judicial Committee: *Tennant* v. *Union Bank of Canada* (1); *Attorney General of Ontario* v. *Attorney General of Canada* (2); *Grand Trunk Railway Co.* v. *Attorney General of Canada* (3); *Compagnie Hydraulique de St. François* v. *Continental Heat and Light Co.* (4).

The principle deducible from these cases can be stated in the words of Sir Arthur Wilson, in the last mentioned case, at page 198:

> Where a given field of legislation is within the competence both of the Parliament of Canada and of the provincial Legislature, and both have legislated, the enactment of the Dominion Parliament must prevail over that of the province if the two are in conflict.

Assuming that both Parliament and the Quebec Legislature were within their jurisdiction when they granted priority to these taxes after law costs, there would clearly appear to be conflict between the two statutes. It is *nihil ad rem* to say that these enactments do not by themselves necessarily clash, but that the conflict is brought about by the accidental circumstance that the assets are insufficient to pay both claims, because it is in view of this very circumstance that Parliament has ordered that the claim for the Dominion tax "shall constitute a first charge on the assets". The judgment appealed from denies this right to the Dominion, since it allows the province to share with the former this first place in the distribution of the assets after payment of costs. Such a case of conflict between enactments of the Dominion and the province should not be met by giving both enactments concurrent effect. I do not think that article 1985 of the Civil Code applies to such a case. Any argument based on that article begs the question, for the point to be decided is whether the two claims are of "equal rank".

The appeal should be allowed with costs here and in the Court of King's Bench and the judgment of the learned trial judge restored.

NEWCOMBE J.—In this case, the provincial Crown has no prerogative preference, the debtor not being a *comptable*. *Exchange Bank* v. *The Queen* (5).

(1) [1894] A.C. 31.
(2) [1894] A.C. 189.
(3) [1907] A.C. 65.
(4) [1909] A.C. 194.
(5) (1886) 11 A.C. 157.

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Newcombe J.

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

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

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

Assuming that the province had the power of enactment, an over-riding power is to be found in the following items of s. 91:—

(1) "The public debt and property";

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

(21) "Bankruptcy and insolvency";

one or another, but not logically within each of them. *Cushing* v. *Dupuy* (1); *Attorney General of Ontario* v. *Attorney General of Canada* (2).

The exercise of the Dominion power is evidenced by s. 17 of c. 47 of the Dominion Acts of 1922, which reads:—

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

As to the interpretation of this section, I see no reason to doubt that it was the intention of Parliament, in the distribution of assets in bankruptcy, to accord priority to the excise taxes specified in *The Special War Revenue Act*, 1915, and its amendments.

(1) (1880) 5 A.C. 409, at pp. 415, 416.

(2) [1894] A.C. 189, at pp. 200, 201.

The competing claims are stated in the admissions, as follows:—

1. Messrs. Silver Brothers, the debtor above named was declared bankrupt by an order rendered by this honourable court on or about 31st December, 1923.

2. The Government of the Dominion of Canada duly fyled with the trustee, a claim to the amount of $3,707.07, for sales tax imposed in virtue of the *Special War Revenue Act,* 1915, and amendments, said tax having become due subsequent to the 28th of June, 1922, the date on which the Act 12 and 13 George V, Statutes of Canada, 1922, Chapter 47, amending the *Special War Revenue Act,* came into force.

3. The Government of the Province of Quebec also duly fyled with the trustee a claim to the amount of $527.42, for taxes due by the debtor for the years 1921, 1922 and 1923, under the provisions of Articles 1345 and following, of the Revised Statues of Quebec, imposing a tax on commercial corporations.

And, for the purposes of this case, s. 17 is, in my judgment, bankruptcy legislation under item (21) of the Dominion powers. The provision is, therefore, competent to the Dominion Parliament.

I do not think there is anything in the Dominion *Interpretation Act* which is intended to conflict with these conclusions; and, in any case, s. 17 must have its operation as expressed, " notwithstanding any other statute or law ".

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

Il ne me paraît pas y avoir d'analogie entre la question qui nous est soumise et, par exemple, la subordination du pouvoir provincial en matière de propriété et de droits civils au pouvoir fédéral en matière de faillite, qui a fait l'objet de la décision *re Royal Bank of Canada* v. *Larue.* (1).

L'effet de cette décision et des autres semblables est d'oblitérer la législation provinciale et de laisser subsister exclusivement la législation fédérale sur le point en conflit.

Ainsi, pour poursuivre l'exemple tiré de la cause de *Royal Bank of Canada* v. *Larue* (1), l'hypothèque judiciaire créée en vertu de la loi provinciale y fut déclarée inexistante parce que la loi de faillite fédérale le décrétait. Le résultat fut que la loi provinciale en l'espèce fut complètement mise de côté.

(1) [1928] A.C. 187.

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Rinfret J.

Il ne saurait en être ainsi en matière de taxation. Il ne me paraît pas admissible que le Parlement fédéral puisse de cette façon contrôler ou limiter—et, au besoin, rendre inefficace—le pouvoir de taxer qui appartient aux provinces. Cette distinction nécessaire a été signalée précisément par le Conseil Privé dans la cause de *Citizens Insurance Company of Canada* v. *Parsons* (1), où Sir Montague Smith dit (p. 108):

> Notwithstanding this endeavour to give pre-eminence to the Dominion Parliament in cases of a conflict of powers, it is obvious that in some cases where this apparent conflict exists, the legislature could not have intended that the powers exclusively assigned to the provincial legislature should be absorbed in those given to the Dominion Parliament. Take as one instance the subject "marriage and divorce," contained in the enumeration of subjects in sect. 91; it is evident that solemnization of marriage would come within this general description; yet "solemnization of marriage in the province" is enumerated among the classes of subjects in sect. 92, and no one can doubt, notwithstanding the general language of sect. 91, that this subject is still within the exclusive authority of the legislatures of the provinces. So "the raising of money by any mode of taxation" is enumerated among the classes of subjects in sect. 91; but, though the description is sufficiently large and general to include "direct taxation within the province, in order to the raising of a revenue for provincial purposes," assigned to the provincial legislatures by sect. 92, it obviously could not have been intended that, in this instance also, the general power should override the particular one. With regard to certain classes of subjects, therefore, generally described in sect. 91, legislative power may reside as to some matters falling within the general description of these subjects in the legislatures of the provinces. In these cases it is the duty of the Courts, however difficult it may be, to ascertain in what degree, and to what extent, authority to deal with matters falling within these classes of subjects exists in each legislature and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist; and, in order to prevent such a result, the two sections must be read together, and the language of one interpreted, and, where necessary, modified, by that of the other. In this way it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the sections, so as to reconcile the respective powers they contain, and give effect to all of them.

Je répète, avec le Conseil privé, parlant du pouvoir fédéral, "Le prélèvement de deniers par tous modes ou systèmes de taxation" (*Acte de l'Amérique Britannique du Nord,* art. 91, parag. 3) et le comparant avec le pouvoir provincial, "La taxation directe dans les limites de la province, dans le but de prélever un revenu pour les objets provinciaux" (Acte cité, art. 92, parag. 2),—

(1) (1881) 7 A.C. 96, at p. 108.

It obviously could not have been intended that, in this instance * * * the general power should override the particular one

—Ces deux paragraphes (91-3 et 92-2) confèrent des pouvoirs absolus et indépendants, dont l'un ne peut empiéter sur l'autre, tant en vertu de leur nature même que par application de l'article 125 de *l'Acte de l'Amérique Britannique du Nord* (comme le fait remarquer mon collègue, Mr. le Juge Duff, dont j'adopte le raisonnement).

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

Mais l'intention de donner à la taxe fédérale préséance sur la taxe provinciale ne résulte pas nécessairement du texte de l'article 17 de *Special War Revenue Act,* 1915. L'intention " d'y atteindre Sa Majesté " n'y est pas " formellement exprimée " (*Loi d'interprétation*—S.R.C. 1906—c. 1, c. 16). Il est à présumer que le législateur fédéral a voulu que sa loi sur *The Special War Revenue* fût comprise conformément à cette prescription de sa propre loi d'interprétation.

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

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

Je rejetterais le pourvoi en appel avec dépens.

LAMONT J. concurs with the Chief Justice.

SMITH J. concurs with the Chief Justice.

Appeal allowed with costs.

Solicitors for the appellant: *Cook & Magee.*

Solicitor for the respondent: *Charles Lanctot.*