

The Attorney-General of British Columbia - - - *Appellant*

v.

The Attorney-General of Canada - - - - - *Respondent*

AND

The Attorney-General of Ontario - - - - - *Intervener*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 18TH OCTOBER, 1923.

Present at the Hearing :

VISCOUNT HALDANE.

LORD BUCKMASTER.

LORD ATKINSON.

LORD SHAW.

LORD SUMNER.

[*Delivered by* LORD BUCKMASTER.]

The question raised upon this appeal is whether there is power conferred upon the Dominion Parliament by the British North America Act of 1867 to impose Customs duties or Excise or sales tax upon goods when they enter the Dominion although they are the property of one of the Provinces. The case arises in the following way :—

The Province of British Columbia in 1921 established Government control and sale of alcoholic liquors by various statutes, enumeration of which is unnecessary. The Dominion Parliament, on the other hand, imposed Customs or sales or excise duty upon, among other things, alcoholic liquors imported into the Dominion. In July of 1921 the appellant, acting as duly authorised agent

under the British Columbia Liquor Act, purchased in Great Britain in the name and on behalf of His Majesty in right of the Province one case of "Johnny Walker Black Label" whiskey, which was duly shipped from Glasgow and consigned to His Majesty in the right of the Province. Upon demand for delivery of this whiskey the Collector of Customs, on behalf of the Dominion Government, refused delivery until payment of the Customs duty and excise or sales tax. The appellant denied his right to claim these duties and took the proceedings out of which this appeal has arisen to test his claim. The statutes under which it was claimed the right to impose such duties arose were the following :—

- Section 3 and item A of the Customs Tariff Act, 1907 ;
- Section 2, sub-section (3) of the Customs Act, 1917 ;
- Section 19, BBB, sub-section 1 of the Special War Revenue Act, 1915 ; and
- Section 6 (1) of the Special War Revenue Act, 1915.

Nothing depends upon the language of these statutes. They admittedly embrace all consignments without distinction of consignee. The question is whether there was power so to legislate.

The Exchequer Court of Canada dismissed the appellant's claim with costs and the Supreme Court, by a majority, have supported that judgment. The real issue lies in determining the true meaning to be given to Section 125 of the British North America Act, which provides that "No lands or property belonging to Canada or any Province shall be liable to taxation." Taken alone and read without consideration of the scheme of the statute, this section undoubtedly creates a formidable argument in support of the appellant's case. It is plain, however, that the Section cannot be regarded in this isolated and disjunctive way. It is only a part of the general scheme established by the statute with its different allocations of powers and authorities to the Provincial and Dominion Governments. Section 91, which assigns powers to the Dominion, provides, among other things, that it shall enjoy exclusive legislative authority over all matters enumerated in the schedule, included among which are the regulation of trade and commerce and raising of money by any mode or system of taxation. The imposition of Customs duties upon goods imported into any country may have many objects ; it may be designed to raise revenue or to regulate trade and commerce by protecting native industries, or it may have the two-fold purpose of attempting to secure both ends ; in either case it is a power reserved to the Dominion. It has not indeed been denied that such a general power does exist, but it is said that a breach is created in the tariff wall, which the Dominion has the power to erect, by Section 125, which enables goods of the Province or the Dominion to pass through, unaffected by the duties. But Section 125 cannot, in their Lordships' opinion, be so regarded.

It is to be found in a series of sections which beginning with Section 102 distribute as between the Dominion and the Province certain distinct classes of property and confer control upon the Province with regard to the part allocated to them. But this does not exclude the operation of Dominion laws made in exercise of the authority conferred by Section 91. The Dominion have the power to regulate trade and commerce throughout the Dominion, and, to the extent to which this power applies, there is no partiality in its operation. Section 125 must, therefore, be so considered as to prevent the paramount purpose thus declared from being defeated. The case is not dissimilar from the case of *The Attorney-General of New South Wales v. The Collector of Customs, New South Wales*, in 5 Common Law Reports, page 518, but it is unnecessary to examine whether the reasoning upon which that judgment depends can be made applicable in the present case because in their Lordships' view, the true solution is to be found in the adaptation of Section 125 to the whole scheme of Government which the statute defines.

Their Lordships will humbly advise His Majesty that the Appeal should be dismissed. In accordance with the usual practice in these cases there will be no order as to costs.

In the Privy Council.

THE ATTORNEY-GENERAL OF BRITISH
COLUMBIA

v.

THE ATTORNEY-GENERAL OF CANADA
AND
THE ATTORNEY-GENERAL OF ONTARIO.

DELIVERED BY LORD BUCKMASTER.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2.
1923.