

66, 1933



In the Privy Council.

No. 32 of 1933.

ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA.

BETWEEN

THE ATTORNEY-GENERAL OF THE PROVINCE OF
BRITISH COLUMBIA SUING ON BEHALF OF HIS
MAJESTY THE KING IN THE RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA (Plaintiff) Appellant

AND

KINGCOME NAVIGATION COMPANY LIMITED (Defendant)
Respondent.

CASE FOR THE APPELLANT.

1. This is an appeal from the judgment of the Court of Appeal for British Columbia dated the 7th day of March, 1933, affirming, by a majority, the judgment of the Chief Justice of the Supreme Court of British Columbia, whereby the learned Chief Justice dismissed the Appellant's action to recover a tax imposed on the Respondent by Section 2 of the Fuel-oil Tax Act hereinafter referred to. RECORD. p. 40. p. 18.

2. The question involved is whether a Statute passed by the Legislative Assembly of the Province of British Columbia and assented to on the 25th day of March, 1930, entitled the "Fuel-oil Tax Act," as amended by a Statute passed by the said Legislative Assembly and assented to on the 13th day of April, 1932, entitled the "Fuel-oil Tax Act, Amendment Act, 1932," which Act came into force on the 1st day of June, 1932, is intra vires of the said Legislative Assembly. CASE. pp. 23-25. CASE. pp. 25-26.

3. The Act as so amended is set out at page 45 of the Record. Section 2 thereof provides as follows : pp. 45-8.

"For the raising of a revenue for Provincial purposes every person who consumes any fuel-oil in the Province shall pay to the Minister of Finance a tax in respect of that fuel-oil at the rate of one-half cent a gallon."

CASE FOR THE APPELLANT.

RECORD. 4. The Appellant sued the Respondent for the tax payable under
 pp. 15-17. said Section 2. The learned trial Judge held that the Act was ultra vires
 as it imposed an excise tax, and therefore imposed indirect taxation.
 pp. 20-1. On appeal, the Chief Justice of the Court of Appeal held that the Act
 was ultra vires because it imposed an excise tax and also because it offended
 p. 22. against the powers of the Dominion with regard to the regulation of trade
 and commerce; Martin J. A. felt considerable doubt about the matter
 but on the whole came to the conclusion that the appeal should be
 pp. 23-33. dismissed; McPhillips J. A. held the Act was intra vires, being of the
 opinion that the Act imposed a tax upon personal property and was a 10
 pp. 34-39. direct tax; and M. A. Macdonald J. A. was of the opinion that the Act
 was ultra vires because it imposed an excise tax.

p. 8, ll. 4-8. 5. There is some crude oil produced in Canada for commercial
 purposes. The greater part of the crude oil is imported into Canada
 pp. 9, ll. 40-44. duty free. By a process of refinement many products are extracted
 from the crude oil and the residue is fuel-oil.

CONTENTIONS OF APPELLANT.

6. The Appellant submits that the Province had power to impose
 the tax in question under the following heads of Section 92 of the British
 North America Act : 20

- (2) Direct taxation within the Province in order to the raising of
 a revenue for Provincial purposes.
- (13) Property and civil rights in the Province.
- (16) Generally, all matters of a merely local or private nature in
 the Province.

7. As to Head (2) of Section 92, Section 2 of the Act in question
 states that the tax is imposed for the purpose of raising a revenue for
 Provincial purposes and there is nothing to show to the contrary. The
 tax is obviously direct, as there is no possibility of its being passed on.
 As to Head (13), fuel-oil is property in the Province of British Columbia. 30
 It is not the same property as that which was imported; it is the residue
 after the crude oil has been manufactured into many products. The
 tax affects the civil right of the person who has to pay. As to Head (16),
 the tax only affects people in the Province.

The Tax is a direct tax.

8. In determining the nature of the tax, "the best general rule is
 to look to the time of payment."

Attorney-General for Quebec vs. Reed (1884) 10 App. Cas. 141
 at p. 144.

The time of payment of the tax in question here is after the fuel-oil 40
 has been consumed and there is no chance of passing it on.

9. In *Bank of Toronto vs. Lambe* (1887) 12 App. Cas. 575, Mill's definition of direct and indirect taxes was accepted as follows: RECORD.

"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."

and as one of the reasons for accepting said definition, their Lordships 10 stated at page 583 that it seemed to them

"to embody with sufficient accuracy for this purpose an understanding of the most obvious indicia of direct and indirect taxation, which is a common understanding, and is likely to have been present to the minds of those who passed the Federation Act."

This definition was that which was adopted in all cases down to and inclusive of 1927 by the Privy Council for the purpose of deciding whether or not a tax was direct or indirect, for in *Attorney-General for Manitoba v. Attorney-General for Canada* (1925) A. C. 561, at 566, Lord Haldane said:

20 "As to the test to be applied in answering this question, there is now no room for doubt. By successive decisions of this Board the principle as laid down by Mill and other political economists has been judicially adopted as the test for determining whether a tax is or is not direct within the meaning of Section 92, head 2, of the British North America Act. The principle is that a direct tax is one that is demanded from the very person who it is intended or desired should pay it. An indirect tax is that which is demanded from one person in the expectation and with the intention that he shall indemnify himself at the expense of another. 30 Of such taxes excise and customs are given as examples."

Again, in *Attorney-General for British Columbia vs. C. P. R.* (1927) A. C. 934 at 937, Lord Haldane laid down the same principle and, speaking of Sections 91 and 92, says at pp. 937 and 938:

40 "Still, as Lord Hobhouse pointed out, the legislation must have contemplated some tangible dividing line referable to and ascertainable by the general tendencies of the tax and the common understanding of men as to these tendencies. The definition given by John Stuart Mill was accordingly taken as a fair basis for testing the character of the tax in question, not as a legal definition, but as embodying with sufficient accuracy an understanding of the most obvious indicia of direct and indirect taxation, such as might be presumed to have been in the minds of those who passed the Act of 1867. Validity in accordance with such tendencies, and not according to results in isolated or merely particular instances, must be the test."

RECORD.

Finally, in *Lower Mainland Dairy Products Sales Adjustment Committee vs. Crystal Dairy Limited* (1933) A. C. 168 at p. 176, their Lordships said :

“ The principles on which taxes are to be classified as direct or indirect are now well established by decisions of this Board, which it is quite unnecessary to recapitulate. They are summarised in *Attorney-General for British Columbia vs. Canadian Pacific Railway Company* (1927) A. C. 934 at p. 937.

10. A sharp contrast is provided by the different wording of ss. 3 and 6 of an earlier Act of the Province, which was considered in *Attorney-General of British Columbia v. C. P. R.* supra, providing (in part) as follows : 10

“ 3. Every purchaser shall pay to His Majesty for the raising of a revenue for Provincial purposes a tax equal to one-half cent per gallon of all fuel-oil purchased by him, which tax shall be levied and collected in the manner provided in this Act.

6. (1) Subject to subsection (3), every person who keeps or has in his possession or under his control for use or consumption (by himself, his family, agent, or employee, or in any business or occupation in which he is interested or employed), any fuel-oil respecting which no tax has been paid under this Act shall, prior to the use or consumption of the fuel-oil, or any part thereof, pay to His Majesty for the raising of a revenue for Provincial purposes a tax equal to one-half cent per gallon of the fuel-oil.” 20

An action was brought by the Attorney-General for the Province of British Columbia against the Canadian Pacific Railway Company to recover taxes imposed by the said s. 3. The Plaintiff was unsuccessful throughout. The Supreme Court of Canada (1927 S.C.R. 125) held that the tax imposed by said s. 3 was an indirect tax. The Chief Justice of Canada, in delivering the judgment of the majority of the Court, said at p. 187 as follows :

“ Had Section 6 been the only provision imposing the tax, it 30 would probably be difficult for the Respondent to maintain its inapplicability to the fuel-oil in its possession from time to time or successfully to challenge its validity.”

The Privy Council affirmed the judgment on the point of indirect taxation (1927 A. C. 934).

The tax does not conflict with the Dominion's power to regulate Trade and Commerce.

11. If the tax is direct, then it is within the competence of the Province, although it may to some extent affect trade and commerce in the Province.

In *Citizens Insurance Co. of Canada vs. Parsons* (1881) 7 App. Cas. 96, 40 at p. 113, Lord Hobhouse said :

“ Construing therefore the words ‘ regulation of trade and commerce ’ by the various aids to their interpretation above

suggested, they would include political arrangements in regard to trade requiring the sanction of parliament, regulation of trade in matters of interprovincial concern, and it may be that they would include general regulation of trade affecting the whole dominion. Their Lordships abstain on the present occasion from any attempt to define the limits of the authority of the dominion parliament in this direction. It is enough for the decision of the present case to say that, in their view, its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance in a single province, and therefore that its legislative authority does not in the present case conflict or compete with the power over property and civil rights assigned to the legislature of Ontario by No. 13 of sec. 92."

and at p. 108 :

" So ' the raising of money by any mode or system 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."

See *Bank of Toronto vs. Lambe* (1887) 12 App. Cas. p. 586, where it was said :

" But since that case was decided the question has been more completely sifted before the Committee in Parson's case, and it was found absolutely necessary that the literal meaning of the words should be restricted, in order to afford scope for powers which are given exclusively to the provincial legislatures. It was there thrown out that the power of regulation given to the parliament meant some general or interprovincial regulations. No further attempt to define the subject need now be made, because their Lordships are clear that if they were to hold that this power of regulation prohibited any provincial taxation on the persons or things regulated, so far from restricting the expressions, as was found necessary in Parson's case, they would be straining them to their widest conceivable extent."

12. *Brewers and Maltsters Association of Ontario vs. Attorney-General of Ontario* (1897) A.C. 231, was a case where the Dominion had occupied the whole field of legislation on the subject of liquor licenses and the Province of Ontario covered the same ground and in part compelled a brewer who had been compelled to take out a license under the Dominion Act to take out another license under the Ontario Act. It was argued that this affected trade and commerce and yet the legislation was held *intra vires*.

RECORD.

13. In *City of Montreal vs. Montreal Street Railway* (1912) A.C. 333, the Privy Council held that a provision of the Railway Act of Canada which subjected any Provincial Railway (although not declared by Parliament to be a work for the general advantage of Canada) to those of its provisions which related to through traffic, was ultra vires of the Dominion Parliament. In that case it was argued that the section was competent to the Dominion in pursuance "of an exclusive power to legislate with regard to the regulation of trade and commerce." Lord Atkinson said at pp. 343 and 344 as follows :

"It has, no doubt, been many times decided by this Board that the two sections 91 and 92 are not mutually exclusive, that the provisions may overlap, and that where the legislation of the Dominion Parliament comes into conflict with that of a provincial Legislature over a field of jurisdiction common to both the former must prevail . . . and lastly, that if the Parliament of Canada had authority to make laws applicable to the whole Dominion in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order, and good government of the Dominion, there is hardly a subject upon which it might not legislate to the exclusion of provincial legislation. The same considerations appear to their Lordships to apply to two of the matters enumerated in s. 91, namely, the regulation of trade and commerce."

14. In *Great West Saddlery vs. The King* (1921) 2 A.C. 91, it was said at p. 118 :

"The only other decision to which their Lordships desire to make reference is that in *Brewers and Malsters' Association v. A. G. for Ontario*. There the Dominion Legislature had previously and validly regulated the manufacture and wholesale vending of spirituous liquors, and provided for the issue of licences for such manufacture and sale. Ontario had subsequently passed an Act requiring every person so licensed by the Dominion also to obtain a licence for sale from the Province, and to pay a fee for it. It was held in the first place that this was direct taxation for provincial purposes, and therefore within the power of the Province, and secondly that the licence was such as to be authorized among the 'other licences' included in the general words of head 9 of s. 92—'shop, saloon, tavern, auctioneer, and other licences in order to the raising of a revenue for Provincial purposes.' Their Lordships think that what is implied in this decision is that while the Dominion Legislature had power to place restrictions throughout Canada on the traffic in liquor, the powers conferred by s. 91 did not in any way conflict with the positive powers of taxation and licensing for Provincial objects, expressly and particularly conferred by s. 92. These, in so far as there might have been any interference, had been conferred by the Imperial Parliament on the Provinces by way of

exception both from the general power of legislation given to the Dominion by the initial words of s. 91, and from any purely general enumerated head, such as the regulation of trade and commerce.” RECORD.

15. In *Caron v. The King* (1924) A.C. 999, at pages 1003 and 1004, it is said:

10 “ Money raised by an income tax Act is unquestionably money raised by a mode or system of taxation. It is true that by the provisions of s. 92 the Legislature in each Province may exclusively make laws in relation to certain matters coming within the classes of subjects which are there enumerated, and that one of these classes of subjects is ‘ direct taxation within the Province in order to the raising of a revenue for Provincial purposes.’

As such particular direct taxation is reserved to the Province, to that extent there is some deduction to be made from the totality of power apparently given exclusively to the Dominion Parliament to raise money for any purpose by any mode or system of taxation.

20 This apparent antinomy has been noticed in various decisions. It is sufficient to mention *Citizens Insurance Co. v. Parsons* (7 Appeal Cases 96) and the *Bank of Toronto v. Lambe* (12 Appeal Cases 575). In the latter case, their Lordships observed as follows: ‘ It is impossible to give exclusively to the Dominion the whole subject of raising money by any mode of taxation, and at the same time to give to the provincial Legislatures, exclusively or at all, the power of direct taxation for provincial or any other purposes. This very conflict between the two sections was noticed by way of illustration in the case of *Parsons*:’ and after quoting from the earlier judgment, their Lordships proceeded: ‘ Their Lordships adhere to that view, and hold that as regards direct taxation within the Province to raise revenue for provincial purposes, that subject falls

30 wholly within the jurisdiction of the provincial Legislatures.’ ”

The Tax is not an Excise Tax.

16. During the 19th century the actual use of the word “ excise ” became strictly confined to a duty charged on home goods either in the process of their manufacture or before their sale to the home consumer.

17. Vol. 3 of the Oxford Dictionary (p. 379) which was published in 1897, defines excise as—

“ A duty charged on home goods either in the process of their manufacture, or before their sale to the home consumers.”

and says eight lines lower down on the same page :

40 “ It was not until the present century that the actual use of the word became strictly conformed to the preceding definition.”

RECORD.

18. *Bateman's Excise Laws 1843* (p. 6) says as follows :

“ Excise (from the Belg. *Acciisse*, Tributum, see Jacob's Law Dictionary; or from the Latin '*excisum*,' to cut off, as a part of the profit cut from the whole; see Gilbert's Exch. 252) is the duty or imposition upon home-made goods or commodities as distinguished from customs which is a duty upon goods imported from another country. It has also been defined to be a tax laid in the first instance upon the manufacturer or vendor of various commodities, though ultimately in the increased price falling upon the consumer. 2 Chit. Burn's J. 273.”

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19. *Mill's Principles of Political Economy* (1869) p. 504, says as follows :

“ By taxes on commodities are commonly meant, those which are levied either on the producers, or on the carriers or dealers who intervene between them and the final purchasers for consumption. Taxes imposed directly on the consumers of particular commodities, such as a house-tax, or the tax in this country on horses and carriages, might be called taxes on commodities, but are not; the phrase being, by custom confined to indirect taxes—those which are advanced by one person, to be, as is expected and intended, reimbursed by another. Taxes on commodities are either on production within the country, 20 or on importation into it, or on conveyance or sale within it; and are classed respectively as excise, customs, or tolls and transit duties. To whichever class they belong, and at whatever stage in the progress of the community they may be imposed, they are equivalent to an increase of the cost of production; using that term in its most enlarged sense, which includes the cost of transport and distribution, or, in common phrase, of bringing the commodity to market.”

20. The *Encyclopædia Britannica*, 9th Edition, 1879, says that excise signifies a duty charged on home goods either in the process of manufacture or before their sale for consumption.

30

21. At page 15 is a list of all the English Acts from 1660 until 1867 which Counsel has been able to find imposing duties of excise; from this list have been omitted those Statutes which merely continued or revived or made perpetual existing or expired duties, Statutes imposing additional percentage duties, Statutes relating only to Scotland or to Ireland, and Statutes which dealt only with matters of management and machinery. It is submitted these show there was no statute imposing a tax upon the consumer, as does the Act under examination on this appeal.

22. Excise taxes were an actual charge upon all goods and commodities in process of manufacture or before their sale. Sect. 24 of the Excise Management Act, 4 & 5 Victoria, Chap. 20, provided as follows :

“ All goods and commodities for or in respect of which any duty of excise is, or shall by law be imposed, and all materials and preparations from which any such goods are made and all stills, vats, &c.,

presses, machinery, &c. and articles for manufacturing such goods . . . in the custody or possession of the person carrying on such trade or business, shall be and remain subject and liable to, and the same are hereby made chargeable with all the duties of excise which during the time of such custody or possession shall be or shall have been charged or become chargeable on or be in arrears or owing from or by the person carrying on such trade or business . . .

RECORD.

10 "Provided that where goods or commodities subject to excise duty shall have been taken account of and duly charged with duty by the proper officer and thereafter be fairly and bona fide and in the regular and in the ordinary course of trade sold to a purchaser and delivered into his possession for full and valuable consideration, before the teste or issuing of process . . . such goods in the possession of such bona fide purchaser shall be discharged from such liability."

23. Further, persons carrying on any trade or business under or subject to any law of excise were compelled to take out licences and to make an entry with respect to the premises where the excisable commodities were to be manufactured or dealt with. This shows there was no idea of imposing
20 a tax directly on the consumer.

Even if the tax is an excise tax it is intra vires of the Province as being a direct tax.

24. But should it be held that the tax in question here is identical with or similar to a tax imposed in England and called an excise tax, the tax is still not necessarily an indirect tax, for it is submitted that the Court of Appeal erred in regarding *City of Halifax vs. Fairbanks* (1928) A.C. 117, as
pp. 37-39. deciding that the tax was, because it was in their opinion an excise tax, ipso facto an indirect tax.

25. It is submitted that when in *City of Halifax vs. Fairbanks* above
30 and in *Attorney-General for British Columbia vs. McDonald Murphy Lumber Company* (1930) A.C. 357, their Lordships referred to duties of excise, they were referring to duties of excise as they existed in Canada in 1867, and were not deciding or even stating obiter, that any taxation that could be classified for some purposes as excise must necessarily be regarded, whatever its true nature, as indirect taxation within the meaning of the British North America Act.

26. In *Quinn vs. Leathem* (1901) A.C. 495 at page 506 Lord Herschell said :

40 "Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expressions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found."

RECORD.

In *Attorney-General for Canada vs. Attorney-General for Ontario* (1932) A.C. 54 at page 71, it was said :

“ While the decisions which the Board has pronounced in the many constitutional cases which have come under their consideration from the Dominion must each be regarded in the light of the facts involved in it . . . ”

27. In the *McDonald Murphy* case (supra) Lord Macmillan said at p. 364 :

“ The Appellant admitted that the imposition of customs and excise duties is a matter within the exclusive competence of the Dominion Parliament, as, indeed, plainly appears from section 122 of the British North America Act. The reason for this is, no doubt, that the effect of such duties is not confined to the place where, and the persons upon whom, they are levied, which is perhaps just another way of saying that they are indirect taxes.” 10

28. Now, the right of the Dominion to impose excise taxes is derived from head 3 of section 91. Section 122 is not a section which confers jurisdiction but is simply a section which was intended to continue in force the customs and excise laws in the Provinces forming the Union until such time as the Parliament of Canada might have an opportunity to legislate. 20

29. The said section 122 provides as follows :

“ The customs and excise laws of each Province shall, subject to the provisions of this Act, continue in force until altered by the Parliament of Canada.”

It will be noted that reference is made here to certain existing laws the exact terms of which were known to Parliament. These were all laws which imposed taxes which were by their own nature indirect taxes.

30. The excise laws in force at the time of Confederation referred to in said section 122 are shown by the Dominion Statute 31 Victoria, chap. 8, intituled “ An Act respecting the Inland Revenue,” which repealed the following Acts : 30

(a) *Province of Canada* :

27-28 Victoria, chap. 3, “ An Act to Amend and Consolidate the Acts Respecting Duties of Excise and to impose certain new duties,” (as amended by 29 Victoria chap. 3 and 29-30 Victoria chap. 7) imposing duties of excise on all spirits and all beer distilled, brewed or manufactured within that Province and on manufactured tobacco, and providing for the licensing of distillers, brewers and tobacco manufacturers.

(b) *Nova Scotia* :

(1) Revised Statutes (1864) Chap. 9, “ Of Excise Duties,” providing that all ale, porter and other malt liquors brewed or manufactured in that Province should pay a duty, and that all 40

tobacco leaf manufactured into tobacco, cigars or snuff should pay a duty, and containing provisions for the granting of licences for the brewing and manufacturing of ale, porter and other malt liquors and for the manufacture of tobacco.

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(2) 30 Victoria, chap. 14, which gave power to refine sugar and to manufacture tobacco in bond.

(c) *New Brunswick* :

10 23 Victoria, chap. 20, providing that every distillery for the manufacture of spirituous liquors must have a licence and imposing a tax on all such liquor distilled by the licensee and payable by him after the manufacture is completed.

31. If to the word "excise" in section 122 any broader meaning is attached than that which is contained in the Acts cited in the preceding paragraph, then a conflict between this section and head 2 of section 92 arises. As pointed out above, the inference has been drawn from section 122 that the Imperial Parliament recognized that excise laws were within the exclusive competence of the Dominion. Head 9 of section 92, however, conferred on the Provinces the right to impose shop, saloon, tavern, auctioneer and other licenses. Included in these licenses were certain
20 licenses which had for a great many years, as appears from the schedule at page 15, been invariably treated in England as excise licenses.

32. If then the word "excise" in section 122 is to be given a meaning which embraces the whole subject matter of the English Excise Acts, then by section 122 Parliament was inferring a right in the Dominion to repeal laws with which by head 2 of section 92 it was giving the Provinces jurisdiction to deal.

33. But if the nature of the excise laws of Canada existing at the time of Confederation is considered, and the meaning of section 122 is confined thereto, and the use of the word "excise" in the *Halifax* and *McDonald*
30 *Murphy* cases above is similarly confined, all conflict is avoided.

34. It is submitted, therefore, that the fact that the tax in question may be one which was or would at one time have been called an excise tax in England, is not conclusive of its being an indirect tax, and that it still remains to be considered whether or not it is by its own nature an indirect tax.

35. It is submitted this is apparent from the judgment in *Attorney-General for British Columbia vs. McDonald Murphy Lumber Co. Ltd.* (1930) A.C. 357, where the question was whether a tax was an export tax. Their Lordships decided that it was and said at pages 363 and 364 :

40 "Once it is ascertained that the tax is in its real nature an export tax, as their Lordships are satisfied that it is, the task of justifying its imposition by the Provincial legislature becomes one of great difficulty. The Appellant admitted that the imposition of

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customs and excise duties is a matter within the exclusive competence of the Dominion Parliament, as, indeed, plainly appears from s. 122 of the British North America Act. The reason for this is, no doubt, that the effect of such duties is not confined to the place where, and the persons upon whom, they are levied, which is perhaps just another way of saying that they are indirect taxes."

At page 364 their Lordships said as follows :

"Mr. Lawrence, however, contended that although the tax might accurately be described as an export duty, this did not necessarily negative its being a direct tax within the meaning of the Act." 10

Their Lordships then considered this and came to the conclusion that the tax was indirect. If the *Halifax* case (supra) had gone the length of holding that once it was found that a tax was a customs tax no further inquiry could be made, it would not have been necessary for their Lordships to consider Mr. Lawrence's argument on this point.

36. Again, in the case of *Lower Mainland Dairy Products Sales Adjustment Committee vs. Crystal Dairy Limited* (1933) A.C. 168, their Lordships in referring to the principle on which taxes are to be classified as direct or indirect, said that these principles were laid down in *Attorney-General for British Columbia vs. C. P. R.* (1927) A.C. 934 at p. 937, and did not refer to the principles as laid down in the *Halifax* case. 20

The tax is intra vires as a personal tax on the consumer.

37. The Appellant submits that the tax is a personal tax upon the consumer and as such within the competence of the Province. The Act does not tax the fuel-oil at all. It taxes the person consuming the fuel-oil after it has been consumed and when it is no longer a commercial commodity.

In *Attorney-General for British Columbia vs. McDonald Murphy Co.* supra, at p. 365, Lord Macmillan said :

"While it is no doubt true that a tax levied on personal property, no less than a tax levied on real property, may be a direct tax where the taxpayer's personal property is selected as the criterion of his ability to pay . . ."

 30

The same field of taxation may be occupied simultaneously by the Dominion and the Province.

38. In *John Deere Plow Co. Ltd. vs. Wharton* (1915) A.C. 330, at p. 339, their Lordships said, speaking of Sections 91 and 92 :

"It must be borne in mind, in construing the two sections, that matters which, in a special aspect and for a particular purpose, may fall within one of them, may in a different aspect and for a different purpose, fall within the other." 40

39. In *Brewers and Maltsters Association of Ontario vs. Attorney-General of Ontario* (1897) A.C. 231, the Dominion had fully occupied the field of legislation with regard to liquor licences under the powers of regulating trade and commerce, and the raising of money by any mode of taxation. The Province of Ontario passed a Statute covering exactly the same ground. It was held there that the Provincial legislation was *intra vires* because, *inter alia*, it was direct taxation.

40. Martin J. A. in his dissenting judgment in *Attorney-General of British Columbia vs. C. P. R.* (1926) 37 B.C. 481 at 499, said :

10 “ Since this is my opinion upon the question of this tax being a direct one in its true nature, the further objection that it is one of excise cannot prevail because those two forms of taxation are based upon independent and irreconcilable powers, the former Provincial, the latter Federal ; each of which may, nevertheless, in its due exercise operate upon the same subject-matter simultaneously, the readiest example of which is to be found in the existing taxation, since the war, of incomes by both the Federal and Provincial Legislatures under radically distinctive powers ; and the imposition of Federal taxes upon liquor imported by the Province under its recent Govern-
20 ment Liquor Control Act is another apt local illustration of the principle to which effect has been given by the decision of this Court in *Little v. Attorney-General for British Columbia* (1922) 31 B.C. 84, wherein it was said, p. 86 :

 ‘ It is not true that the Provincial Legislature cannot do that which is within its legislative powers, because the effect of what it does may indirectly affect those subjects over which the Parliament of Canada has been given jurisdiction.’

30 And cf. our decision in *Rex v. Ferguson*, *ib.* 100. In brief, the fact that the tax before us is direct in its nature and therefore Provincial does not prevent the Federal Parliament from imposing a true excise tax upon the same subject-matter without any conflict arising therefrom between the respective legislative powers.”

41. In *Caron v. The King* (1924) A.C. 999, the Dominion’s power to impose income tax was upheld although such power also belonged to the Province.

42. The Appellant submits the appeal should be allowed for the following amongst other

REASONS

40 (1) Because the Fuel-oil Tax Act is *intra vires* of the Province of British Columbia under head (2) of Section 92 of the British North America Act, as it imposes a direct tax within

the Province in order to the raising of a revenue for Provincial purposes.

- (2) Because the Fuel-oil Tax Act is intra vires of the Province of British Columbia under head (13) of Section 92 of the British North America Act, as it deals with property and civil rights in the Province.
- (3) Because the Fuel-oil Tax Act is intra vires of the Province of British Columbia under head (16) of Section 92 of the British North America Act, as it deals with matters of a merely local or private nature in the Province. 10
- (4) Because the said Act does not infringe on the powers of the Dominion Parliament.
- (5) Because the reasons given by McPhillips J. A. in the Court of Appeal are right.

D. N. PRITT.

HAROLD B. ROBERTSON.

SCHEDULE.

Act.	Article or Form.	By whom payable.	Remarks.
<u>CAR. 2.</u>			
12, c. 23.	Beer or ale brewed, cyder and perry retailed, mead sold, aqua vitæ made and sold, beer imported, cyder and perry imported, spirits imported; coffee, chocolate, sherbet and tea made and sold.	Brewer, retailer, maker.	See s. 15 seq.
10			
12, c. 24. 13 st. 1, c. 7	Ditto.		12 Car. 2, c. 5; 12 Car. 2, c. 8; 12 Car. 2, c. 23; 12 Car. 2, c. 24; confirmed.
15, c. 11.			Application of excise to importations, s. 17; vinegar - beer for sale, s. 20; colleges and halls in universities excepted, s. 21.
20			
22 & 23, c. 5.	Beer, cyder made and imported, mead sold, aqua vitæ, low wines extracted, coffee sold, chocolate, sherbet and tea sold.	Brewer, maker, importer, retailer.	Expressed to be by way of excise.
<u>30 WM. 3 & MARY.</u>			
1 St. 1, c. 24.	Beer, vinegar, cyder made or imported, brandy imported, mead made for sale.	Brewer, maker, importer.	Expressed to be by way of excise.
2 St. 1, c. 3.			Duties under 12 Car. 2 granted to W. & M.
2 St. 2, c. 10.	Beer, vinegar, cyder, brandy, mead made or imported.	Brewer, maker, importer.	Expressed to be by way of excise.
4, c. 3.	Beer, vinegar, brandy, etc., made and imported.	Brewer, maker, importer, retailer.	Duties under excise.
40			
5 & 6, c. 7.	Salt imported and produced.		Duties under excise.
5 & 6, c. 20.	Beer, ale, cyder, vinegar made.		
7 & 8, c. 30.	Low wines or spirits extracted.		
10 & 11, c. 21.	Sweets.		
12 & 13, c. 11.	Low wines or spirits.		Expressed to be by way of excise, s. 1.

Act.	Article or Form.	By whom payable.	Remarks.
<u>ANNE.</u>			
1 st. 1, c. 7.			Duties under 12 Car. 2 c. 23, granted to Anne.
8, c. 7.	Beer, cyder and perry, verjuice, mead, vinegar, aqua vitæ.	Brewer, retailer, maker.	
8, c. 9.	Candles made.		Duties under Excise, s. 5.
10, c. 19.	Soap, paper, etc.		12 Car. 2 to apply, s. 25, 26, 60, 61. But special commissioners to administer, s. 5, 27, 41, 62.
12, st. 2, c. 9.	Soap, paper and starch made.		Duties under Excise, s. 11.
<u>GEORGE 1.</u>			
1 st. 1, c. 1.			Duties under 12 Car. 2 granted to Geo. 1.
<u>GEORGE 2.</u>			
1 st. 1, c. 1.			Duties under 12 Car. 2 granted to Geo. 2.
9, c. 23.	License of retailers of spirits.		
10, c. 17.	Sweets.		Under Commissioners of Excise.
18, c. 26.	Tea sold.	Proprietor.	
19, c. 2.	Glass made; spirits made.		Under Commissioners of Excise.
29, c. 14.	Silver plate.	Owner or user.	Under Commissioners of Excise.
33, c. 9.	Low wines and aqua vitæ made and brandy imported.	Maker, importer.	Under Commissioners of Excise. 30
<u>GEORGE 3.</u>			
1, c. 1.	Beer, ale and other liquors; vinegar.		Hereditary duties under 12 Car. 2 granted to George 3.
1, c. 7.	Beer and ale.		
17, c. 39.	Glass.		
17, c. 50.	Licenses of auctioneers.		Licences under excise; but as to duties on proceeds of auctions 40 (s. 5) see s. 18.
19, c. 56.	Licenses of auctioneers.		To be granted by Commissioners of Excise.
20, c. 35.	Malt, low wines and spirits made, spirits imported, licences of dealers in coffee, tea and chocolate.		Duties under excise.
20, c. 52.	Starch and hair powder imported, starch and sweets made.		

Act.	Article or Form.	By whom payable.	Remarks.
<u>GEORGE 3 (contd.).</u>			
21, c. 31.	Male servants.		Transfers management of duties to Commissioners of Excise.
22, c. 39.	Salt made and imported.		
22, c. 66.	Additional duty on all excisable goods.		
10 22, c. 68.	Beer and ale, coaches and other carriages, soap made.		
23, c. 64.	Malt.		
24, c. 18.	Paper made.	Maker.	Is this excise ?
24, c. 40.	Linens printed etc., Cotton stuffs bleached or dyed, licences <i>re</i> same.		Licence duties under excise.
24, c. 41.	Licences of brewers, distillers, rectifiers, brandy dealers, makers of sweets and vinegar, maltsters, candle makers, soap makers, paper stainers, calico printers, starch makers, tanners, dressers of hides, curriers, vellum makers, glass makers.		Commissioners of Excise to grant licences. In title reference is made to "excisable commodities."
20			
25, c. 74.	Tea sold by E. I. Co.	Purchaser.	Part duties under customs and part under excise.
26, c. 59.	Wines imported.		Duties under excise.
30 27, c. 13.	Auction, beer, bricks, candles, coaches, cocoanuts and coffee imported and delivered out of warehouse.	Auctioneer, brewer, maker.	All existing excise duties, except those under 26 Geo. 3, c. 6, and 27 Geo. 3, c. 4, and those on licences, to cease. New duties imposed; s. 35-36; to be under Excise 37-38.
	Cyder and perry.	Retailer, dealer, possessor for sale, importer.	Consolidation of stamps, s. 41.
40	Glass made, hides and skins.	Maker, tanners, etc.	
	Hops growing.	Owners.	
	Malt made and imported.	Maker and importer.	
	Metheglin or mead made.	Maker.	
	Paper made.	Maker.	
	Printed goods made and imported.	Maker and importer.	
	Soap made, spirits made.	Maker.	
50	Spirits imported, starch made.	Importer, maker.	
	Sweets made, tea sold by E. I. Co.	Maker, purchaser.	

Act.	Article or Form.	By whom payable.	Remarks.
<u>GEORGE 3 (contd.).</u>			
	Verjuice and vinegar made. Wine imported, wire made.	Maker. Importer, maker.	
27, c. 28.	Glass imported and made.		Duties under excise.
28, c. 37.	Hides dressed.	Dresser.	
29, c. 63.	Licence for dealers in brandy.		
31, c. 1.	Wort, wash, perry, cyder made; spirits imported.	Maker. Importer.	10
31, c. 27.	Goat and sheep skins made.	Tanner.	
34, c. 2.	Wort, cyder, wash, etc., made and spirits imported from Scotland.	Maker, Importer.	Duties under excise.
34, c. 4.	Spirits and sugar imported.		Certain earlier limited duties made perpetual.
34, c. 20.	Paper and pasteboard made.	Maker.	Customs duties imposed on similar imports and both duties to be under respective commissioners. 20
36, c. 10.	Foreign wines imported and in possession of dealers; sweets made.	Importer or dealer, maker.	Duties under excise.
36, c. 11.	Worts, wash and other liquors made.	Makers.	Duties under excise.
36, c. 13.	Tobacco and snuff imported.		Duties under excise.
36, c. 123.	Fresh wine in possession and same sold by auction.		Excise duties under ex- cise.
37, c. 14.	Auctions, bricks made, cocoa- nuts imported, spirits made and imported, tea sold by E.I. Co.	Auctioneer, maker, impor- ter, purchaser.	Duties under excise. 30
38, c. 42.	Tea sold by E.I. Co.	Purchaser.	Duties under excise.
38, c. 89.	Salt made and imported.		Management of duties transferred to excise.
40, c. 23.	Spirits made and imported; tea sold by E.I. Co. at its sales.	Maker, impor- ter, Purchaser.	
43, c. 69.	Auctions, beer, bricks and tiles, candles, cocoanuts and coffee, cyder and perry, glass, hides and skins, hops, licences (various) malt, mead, paper, printed goods, salt, soap, spirits, starch, sweets, tea, tobacco and snuff, ver- juice, vinegar, wine, wire.	Auctioneer, brewer and importer; maker; first buyer; tanners and dressers; owners and possessors of hops; printer; refiners; pur- chaser from E.I. Co.	Duties under excise. 40 Countervailing duties also. Consolidation Act. 50

Act.	Article or Form.	By whom payable.	Remarks.
GEORGE 3 (contd.).			
43, c. 81.	Malt made and imported and in possession; wines imported and in possession; sweets made and imported; spirits made and in possession; stills used; spirits imported; tea sold by East India Co.	Purchaser.	Duties under excise.
10			
44, c. 49.	Wines imported and in possession of dealer in foreign wines.		Duties under excise.
51, c. 59.	Wash and other liquors used in distillation of spirits; foreign spirits imported.		Duties under excise.
51, c. 69.	Glass made.		Duties under excise.
53, c. 34.	Tobacco, snuff and French wines imported.		Duties under excise.
20			
53, c. 97.	Muriate of potash to be used in manufacture of alum.		Duties under excise.
54, c. 97.	Glass bottles imported.		Duties under excise.
54, c. 148.	Silk handkerchiefs imported by the East India Co. and sold by it for home consumption.	Purchaser, s. 2.	
54, c. 183.	Bleaching powder imported from Ireland.		Countervailing; duties under excise.
30			
55, c. 30.	Sweets, tobacco, snuff. Various licences; auctioneers, brewers, candles, coffee, tea, cocoa, nuts and chocolate dealers; tanners; maltsters; makers of mead, paper; traders in gold, etc.; calico printers; makers of soap; distillers; dealers in spirits; makers of starch, sweets, wines, tobaccos, snuff, vinegar, wire; wire drawers.		Additional. To be collected as excise.
40			
57, c. 32.	Stone bottles imported.		Duties under excise.
57, c. 123.	Excess of spirits made from corn above certain proportion to wash.		Duties under excise.
58, c. 13.	Licences to retail aqua vitæ in Scotland.		
58, c. 65.	Vinegar or acetous acid made.	Maker.	Duties under excise.
50	Vinegar or acetous acid imported.	Importer.	

Act.	Article or Form.	By whom payable.	Remarks.
<u>GEORGE 3 (contd.).</u>			
59, c. 53.	Coffee and cocoa nuts imported; malt made; pepper imported; spirits for home consumption and imported; tea sold by E. I. Co. and imported; tobacco and snuff imported.		Duties under excise; also countervailing duties. 10
59, c. 105.	Spirits extracted in England or Ireland and imported into Scotland.		Countervailing; to be recovered as duties of excise.
<u>GEORGE 4.</u>			
1, c. 75.	Unmanufactured tobacco imported.		To be recovered as duties of excise.
1, c. 77.	Irish spirits imported.		Countervailing; to be recovered as duties of excise.
4, c. 23.			Several boards of Excise consolidated. 20
4, c. 51.	Beer, licences to brew.	Brewer.	Duties under excise.
5, c. 54.	Licences for brewers, retailers of beer, spirits and foreign wines.		Duties under excise.
6, c. 37.	Sweets, mead and vinegar, Cyder and perry.	Maker, First buyer or maker.	Duties under excise; previous duties repealed.
6, c. 81.	Licences re auctions, beer, spirits, candles, coffee, glass, hides, malt, paper, printed goods, soap, spirits, starch, sweets, tobacco and snuff, vinegar, wine and wire.		Excise licences to determine and new ones to be imposed. 30
6, c. 117.	Flint glass.		Duties under excise.
6, c. 118.			Collection and management consolidated and amended.
7 & 8, c. 53.			Management of duties on gold and silver plate in Ireland, and on certain licences transferred from Commissioners of Excise to Commissioners of Stamps. 40
9, c. 44.			Recites certain transfers of import duties from Excise to Customs.
9, c. 48.	Glass.		Excise laws to apply.

	Act.	Article or Form.	By whom payable.	Remarks.
	<u>WILLIAM 4.</u>			
	11 Geo. 4 & 1 W. 4, c. 49.	Spirits distilled in England.		Additional duties; management of Excise Commissioners.
10		Spirits made in Scotland or Ireland and taken out of warehouse there to import into England for consumption.	Distiller or Proprietor.	
		Spirits in stock in England, etc.	Distiller.	
	2 & 3, c. 102.	Flint glass made.		
	3 & 4, c. 16.	Soap made in G. B. Soap brought from Ireland to G. B.	Maker. Importer.	Management of Excise Commissioners.
20	6 & 7, c. 45.			Management of duties on horses let for hire, on licences re same, transferred from Commissioners Stamps and Taxes to Excise.
	<u>VICTORIA.</u>			
	7 W. 4 & 1 Vict., c. 57.	Sugar made from beetroot.		Management of Excise Commissioners.
	1 & 2, c. 44.	Glass		Consolidation Act; management of Excise Commissioners.
30	2 & 3, c. 23.	Paper made.		Consolidation Act; management of Excise Commissioners.
	2 & 3, c. 24.	Bricks made.		Consolidation Act; management of Excise Commissioners.
	3 & 4, c. 22.	Broad or spread glass.		
	3 & 4, c. 49.	Soap made.		Consolidation Act.
	3 & 4, c. 57.	Sugar manufactured.		Management of Excise Commissioners.
40	5 & 6, c. 25.	Mixtures and preparations of spirits.		Countervailing on removal; Commissioners of Excise to manage.
	8 & 9, c. 13.	Sugar manufactured.		By s. 3 Commissioners of Excise to manage.
	8 & 9, c. 15.	Auctioneers' licences.		Duties on sales by auction repealed.
50	8 & 9, c. 65.	Spirits imported from Channel Islands.		Countervailing; by s. 2 to be under management of Commissioners of Excise and to be collected as duties of excise.

Act.	Article or Form.	By whom payable.	Remarks.
<u>VICTORIA (contd.).</u>			
10 & 11, c. 42.			Stage carriage duties' management transferred from Commrs. of Stamps & Taxes to Commrs. of Excise; to be deemed duties of excise, s. 1.
12 & 13, c. 1.			Boards of Excise and Stamps and Taxes consolidated into one Board of Commissioners of Inland Revenue. 10
13 & 14, c. 67.	Sugar used in brewing.		Deemed to be a duty of excise, s. 4.
17 & 18, c. 27.	Malt made; spirits distilled.		By s. 7 duties may be added to price where contracts already made.
17 & 18, c. 30.	Sugar made in U.K.		20
18 & 19, c. 22.	Spirits distilled.		
18 & 19, c. 94.	Spirits distilled.		
19 & 20, c. 34.	Sugar used in brewing s. 14.		
19 & 20, c. 82.	Race horses running.	Owner s. 4.	Deemed to be a duty of excise, s. 3.
20 & 21, c. 61.	Sugar made in U.K. Sch. B.		
21 & 22, c. 15.	Spirits distilled.		By s. 4 duties may be added to price where contracts already made.
23 & 24, c. 113.	Chicory grown in U.K.; licences to sell sweets, wines, etc.		30
24 & 25, c. 21.	Retail spirits and beer licences.		
24 & 25, c. 91.	Licence to retail methylated spirits s. 1.		
26 & 27, c. 33.	Beer licences; stage carriages.		
27 & 28, c. 18. Sch. B.	Sugar made in U.K.; used in brewing; licences to sell tea to refreshment house keepers, retailers of wine, hawkers and peddlers.		40
29, c. 36. Sch. B.	Mileage duty on stage carriages. Licences to let horses for hire.		
30, c. 5.	Dog licences.		Excise duty substituted for assessed tax.
30, c. 10.	Sugar made in U.K. s. 4. Sugar used for brewing s. 5.		50

APPENDIX OF STATUTES.

THE FUEL-OIL TAX ACT, STATUTES OF BRITISH COLUMBIA,
1930, CHAPTER 71.AN ACT to provide for the imposition and collection of a tax
on Fuel-oil.*(Assented to 25th March, 1930.)*The Fuel-oil
Tax Act,
Statutes of
British
Columbia,
1930,
Chapter 71.His Majesty, by and with the advice and consent of the
Legislative Assembly of the Province of British Columbia,
enacts as follows :—

- 10 Short title. **1.** This Act may be cited as the “ Fuel-oil Tax Act.”
- Tax on fuel-oil. **2.** For the raising of a revenue for Provincial purposes every person who consumed any fuel-oil in the Province shall pay to the Minister of Finance a tax in respect of that fuel-oil at the rate of one-half cent a gallon.
- Collection of tax. **3.** The tax imposed by this Act shall be paid and collected at such times and in such manner as the regulations may prescribe.
- Recovery of tax by action. **4.** The amount of any tax imposed by this Act may be recovered by action in any Court as for a debt due to the Crown in right of the Province, and the Court may make an order as to the costs of the action in favour of or against the Crown.
- Vendor’s licences. **5.—(1)** Upon the expiration of thirty days after the commencement of this Act, no person shall keep for sale or sell fuel-oil in the Province unless he is the holder of a licence issued pursuant to this section in respect of each place of business at which fuel-oil is so kept for sale or sold by him.
- Application and licence fee. **(2)** The manner of application and the forms of application and of the licence shall be as prescribed in the regulations. A licence fee of one dollar shall be payable in respect of each licence.
- 30 Cancellation of licence. **(3)** The Minister of Finance may, without holding any formal or other hearing, cancel any licence issued pursuant to this section if the licensee is convicted of any offence against this Act, and may during the period of twelve months next succeeding the cancellation of that licence refuse to issue any new licence to the person so convicted.
- Powers of inspection. **6.—(1)** Every Collector, constable, and every person authorized in writing by the Minister of Finance to exercise the powers of inspection under this section may without
- 40

warrant enter upon any premises on which he has cause to believe that any fuel-oil is kept or had in possession, and may inspect the premises and all fuel-oil found thereon, and may interrogate any person who is found on the premises or who owns, occupies, or has charge of the premises.

(2) Every person interrogated under this section who refuses or fails to answer any question put to him respecting the fuel-oil kept or had on the premises, or who refuses or fails to produce for inspection or to permit inspection of any book, record, or document, or any barrel, tank, or receptacle in his possession or under his control which he is required to produce for inspection or of which he is required to permit inspection, shall be guilty of an offence against this Act. 10

Returns.

7.—(1) Every person who consumes any fuel-oil in the Province and every person who keeps for sale or sells fuel-oil in the Province shall keep such books and records and shall make and furnish such returns as are prescribed in the regulations.

(2) Every person who refuses or fails to keep any book or record or to make and furnish any return prescribed by the regulations, or who withholds any entry or information required by the regulations to be made or entered in any book, record, or return, or who makes any false or deceptive entry or statement in any such book, record, or return shall be guilty of an offence against this Act. 20

Offences.

8.—(1) Every person who violates any provision of this Act or the regulations shall be guilty of an offence against this Act.

Penalties.

(2) Every person guilty of an offence against this Act shall be liable, on summary conviction, to a fine not exceeding five hundred dollars, and each day's continuance of the act or default out of which the offence arises shall constitute a separate offence; but nothing contained in this section nor the enforcement of any penalty thereunder shall suspend or affect any remedy for the recovery of any tax or amount payable under this Act. 30

Regulations.

9.—(1) For the purpose of carrying into effect the provisions of this Act according to their true intent, the Lieutenant-Governor in Council may make such regulations as are considered necessary or advisable. 40

(2) Without thereby limiting the generality of the provisions contained in subsection (1), the power of the Lieutenant-Governor in Council to make regulations shall extend to:—

(a) Prescribing that any person by whom any tax is payable under this Act shall, without any notice

or demand, pay the same at such times and places and in such manner as are stated in the regulations :

(b) Determining, in the case of any fluid or substance used or intended for use as fuel, whether or not a fluid or substance is fuel-oil within the meaning of this Act.

The Fuel-oil Tax Act, Statutes of British Columbia, 1930, Chapter 71
—continued.

Commence-
ment. **10.** This Act shall come into force on a day to be named by the Lieutenant-Governor by his Proclamation.

10 Repeal. **11.** The "Fuel-oil Tax Act," being chapter 251 of the "Revised Statutes of British Columbia, 1924," is repealed.

STATUTES OF BRITISH COLUMBIA 1932, CHAPTER 51.

AN ACT TO AMEND THE "FUEL-OIL TAX ACT."

(Assented to 13th April, 1932.)

An Act to amend the Fuel-oil Tax Act, 1932, Chapter 51.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows :—

Short title. **1.** This Act may be cited as the "Fuel-oil Tax Act Amendment Act, 1932."

20 Amends s. 4. **2.** Section 4 of the "Fuel-oil Tax Act," being chapter 71 of the Statutes of 1930, is amended by adding thereto the following subsection :—

"(2) In every action for the recovery of any tax imposed by this Act, the burden of proving the quantity of fuel-oil consumed by the defendant, and of proving that the tax has been paid in respect of the fuel-oil in question, shall be upon the defendant."

Enacts
ss. 8A and
9A. **3.** Said Chapter 71 is amended by inserting therein the following as sections 8A and 9A respectively :—

30 "8A. Where a railway company within the meaning of Part XI of the 'Taxation Act' is liable to assessment and taxation on its railway under subsection (1) of section 112 of that Act, the tax imposed on it under this Act in respect of the fuel-oil consumed in the operation of its railway locomotives shall be deemed to be an alternative tax to the tax on its railway. The tax under this Act in respect of the fuel-oil so consumed shall be levied and collected from the railway company pursuant to the provisions of this Act and the regulations; and in case

An Act to
amend the
Fuel-oil
Tax Act,
1932,
Chapter 51
—*continued*.

the tax on its railway proves to be greater in amount than the total tax under this Act so levied and collected for the corresponding period, the amounts of tax so levied and collected under this Act during that period shall be considered to be in part payment of the tax on its railway, or, in case the total tax levied and collected under this Act in respect of the fuel-oil so consumed proves to be greater in amount than the tax on its railway for the corresponding period, no tax shall be payable by the railway company on its railway under subsection (1) of section 112 of the 'Taxation Act.' 10

" 9A. In the case of locomotive or stationary engines used in the forest in connection with logging operations, if the conditions under which they are operated are such as in the opinion of the Chief Forester require the use of fuel-oil therein in the interest of the protection of forests from fire, the Minister of Finance, on the recommendation of the Chief Forester, may by permit in writing, and subject to such conditions as are specified in the permit, exempt from the tax imposed by this Act all fuel-oil 20 consumed in those locomotive or stationary engines during the period of the close season in any year as defined by or under section 94 of the 'Forest Act.' "

In the Privy Council.

No. 32 of 1933.

ON APPEAL FROM THE COURT OF
APPEAL FOR BRITISH COLUMBIA.

BETWEEN

THE ATTORNEY-GENERAL OF THE
PROVINCE OF BRITISH COLUMBIA
SUING ON BEHALF OF HIS MAJESTY
THE KING IN THE RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

(Plaintiff) Appellant

AND

KINGCOME NAVIGATION COMPANY, LIM-
ITED - - - *(Defendant) Respondent.*

CASE FOR THE APPELLANT.

CHARLES RUSSELL & CO.,

37, Norfolk Street,

Strand, W.C.2,

Solicitors for the Appellant.