

31, 1937

No. 118 of 1936.

# In the Privy Council.

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## ON APPEAL

FROM THE COURT OF APPEAL FOR SASKATCHEWAN.

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IN THE MATTER of The Constitutional Questions Act, being Chapter 60 of The Revised Statutes of Saskatchewan, 1930, and

10 IN THE MATTER of a reference pursuant thereto by The Lieutenant-Governor in Council to the Court of Appeal for the hearing and consideration of certain questions arising under The Income Tax Act, 1932, being Chapter 9 of The Statutes of Saskatchewan, 1932, and amendments thereto.

BETWEEN

THE JUDGES - - - - - *Appellants*

AND

THE ATTORNEY-GENERAL FOR THE PROVINCE  
OF SASKATCHEWAN - - - - - *Respondent.*

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## Case for the Respondent.

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RECORD.

20 1. This is an appeal from the Judgment of the Court of Appeal of Saskatchewan dated June 6, 1936, answering the questions referred to the said Court for hearing and consideration by order of His Excellency the Lieutenant-Governor in Council dated January 25, 1936, pursuant to the provisions of the Constitutional Questions Act, 1930, Revised Statutes of Saskatchewan Chapter 60.

2. The questions referred to the Court were as follows :—

(1) Are Judges (A) of the Court of Appeal, (B) of the Court of King's Bench, (c) of the District Courts, of the Province of p. 2, ll. 12-25.

RESPONDENT'S CASE.

Saskatchewan, appointed by His Excellency, the Governor-General, pursuant to section 96 of the British North America Act, 1867, subject to the taxation authorised by The Income Tax Act, 1932, of Saskatchewan, being otherwise persons subject to the provisions of the said Act ?

(2) If the said Judges or any of them are subject to the said taxation, then has the Legislature of Saskatchewan legislative authority to include in income for the purposes of The Income Tax Act, the salary and allowances of the said Judges or any of them paid pursuant to the provisions of the Judges Act, being chapter 105 of the Revised Statutes of Canada, 1927 ?

3. The Sections of the British North America Act and of the Income Tax Act directly in question in this appeal are—

The British North America Act, 1867.

Section 96. The Governor-General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

Section 99. The Judges of the Superior Courts shall hold office during good Behaviour, but shall be removable by the Governor-General on Address of the Senate and House of Commons.

Section 100. The Salaries, Allowances, and Pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in Cases where the Judges thereof are for the time being paid by salary, shall be fixed and provided by the Parliament of Canada.

Section 92. In Province the Legislature may exclusively make Laws in relation to matters coming within the Classes of Subjects next hereinafter enumerated that is to say :—

(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.

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Income Tax Act 1932.

Section 3. For the purposes of this Act, "income" means the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary or other fixed amount, or unascertained as being fees or emoluments, or as being

profits from a trade or commercial or financial or other business or calling, directly or indirectly received by a person from any office or employment, or from any profession or calling, or from any trade, manufacture or business, as the case may be, whether derived from sources within Saskatchewan or elsewhere; and includes interest, dividends or profits directly or indirectly received from money at interest upon any security or without security, or from stocks, or from any other investment, and whether such gains or profits are divided or distributed or not, and also the annual profit or gain from any other source including :

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- (c) the salaries, indemnities or other remuneration of all persons whatsoever, whether the said salaries, indemnities or remuneration are paid out of the revenue of His Majesty in respect of his Government of Canada, or of any province thereof, or by any person, except as herein otherwise provided; and
- (d) all other gains or profits of any kind derived from any source within or without the province whether received in money or its equivalent.

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Section 7. (1) There shall be assessed, levied and paid upon the income during the preceding year of every person :

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

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

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4. The matter came on for hearing before the Court of Appeal (Haultain C.J. Martin, Mackenzie and Gordon J.J.A.) and on June 6, 1936, the Court unanimously answered both questions in the affirmative for reasons appearing in a judgment delivered by Mr. Justice Martin.

p. 5, ll. 32-33.

5. In the course of the hearing a question arose as to the competence of the Court, all the members thereof being interested pecuniarily in the result of the litigation; but the Court held that it was its duty under the Statute—the Constitutional Questions Act—to hear and consider the subject referred, and to certify its opinion to the Lieutenant-Governor and further that, all the Judges in the Province being similarly interested, the Court must ex necessitate decide the matters in question. This decision it is submitted was correct on both grounds.

p. 7, l. 10.

6. By its reasons for judgment the Court further held that as the legislature, in pursuance of the powers given to it by S. 92. 2. of the Constitution, had enacted that every person resident or ordinary resident in the province should pay Income Tax, there was no reason, in the absence of express provision, from exempting the salaries of judges from the incidence of the tax and that there was nothing in sections 96, 99 and 100 of the British North America Act which “ placed limitations upon the powers of the province to tax the salaries and income of judges to the same extent as the salaries and incomes of other residents.

p. 8, l. 31,  
to p. 9, l. 3.

7. The Respondent humbly submits that this Appeal should be dismissed for the following amongst other

### REASONS.

- (1) BECAUSE Income Tax is a direct tax within the province in order to the raising of a Revenue for Provincial purposes.
- (2) BECAUSE the Judges as residents within the province are liable to income tax.
- (3) BECAUSE Income Tax is taxation of the person in respect of his profits gains receipts and emoluments and is not taxation of those profits gains receipts or emoluments.
- (4) BECAUSE neither by reason of the provisions of the British North America Act nor otherwise are the Judges of Saskatchewan exempt from Income Tax.
- (5) For the reasons set out in the judgment of the Court of Appeal.

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WILFRID BARTON.

**In the Privy Council.**

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**ON APPEAL**

*From the Court of Appeal for Saskatchewan.*

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being Chapter 60 of the Revised Statutes of  
Saskatchewan, 1930

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AND

**THE ATTORNEY-GENERAL  
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SASKATCHEWAN** - - - *Respondent.*

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**Case for Respondent.**

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J. M. ISAACS,  
52 /54 High Holborn, E.C.,  
*for the Respondent the  
Attorney-General of Saskatchewan.*