

The Judges - - - - - Appellants

v.

The Attorney-General for the Province of Saskatchewan - Respondent

FROM

THE COURT OF APPEAL FOR SASKATCHEWAN

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 26TH FEBRUARY, 1937.

Present at the Hearing :

LORD BLANESBURGH.

LORD ATKIN.

LORD MAUGHAM.

LORD ROCHE.

SIR SIDNEY ROWLATT.

[*Delivered by* SIR SIDNEY ROWLATT.]

This is an appeal from a judgment of the Court of Appeal for Saskatchewan dated the 6th June, 1936, answering in the affirmative certain questions referred to the Court by the Lieutenant-Governor in Council for hearing and consideration pursuant to the Constitutional Questions Act, Chapter 60 of the Revised Statutes of Saskatchewan, 1930.

The questions so referred were:—

(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 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? "

The reference in question placed the Court in an embarrassing position, all its members being from the nature of the case personally interested in the point in controversy. They took the view (quite rightly in their Lordships' opinion) that they were bound to act *ex necessitate*. In the result they came unanimously to a conclusion adverse to the contention put before them on behalf of their order.

The statutory provisions which it is necessary to consider are as follows:—

By section 92 of the British N. America Act, 1867, one of the subjects assigned to Provincial Legislatures is "Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes."

The other material Sections of the same Act are:—

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.

Pursuant to the powers conferred by the last mentioned section the Parliament of Canada has at various times passed statutes fixing and providing the salaries and allowances of the judges of the several provinces specifically. The enactment affecting this appeal is the Judges Act C.105 of the Rev. Stat. of Canada, 1927, mentioned in the second question in the present reference. In addition to the salaries the Act provides by section 21 for the payment to judges of certain living and travelling expenses when acting away from their places of residence.

The Income Tax Act, 1932, of Saskatchewan referred to in the questions for the Court provides as follows:—

Section 2. In this Act, unless the context otherwise requires, the expression:

* * * *

(8) "Person" means an individual, and includes a guardian, trustee, executor, administrator, agent, receiver or any other individual, firm or corporation acting in a fiduciary capacity and the heirs, executors, administrators, successors, and assigns of such person.

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:

* * * *

(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.

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;

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;

* * * *

No special provision is made for taxing or for exempting from taxation judges' salaries or allowances.

Certain allowances and deductions are to be made in ascertaining the taxable income. These deductions include

Section 5 " (1) (f) travelling expenses, including the entire amount expended for meals and lodging while away from home in the pursuit of a trade or business."

It is to be observed that no question arises in the reference which has given rise to this appeal as to the general validity of any provision of this Income Tax Act the only point being whether the salaries and allowances of the judges are exempt from its operation. Nor is it in question whether or how far, assuming judicial emoluments to be validly taxed by the statute the living and travelling allowances of the judges should be included in the quantum of their assessments. It should be added that Counsel for the appellants expressly disclaimed in argument any contention that the judges were exempt from income tax save in respect of their official emoluments.

The judgment in the Court below answering both questions in the reference in the affirmative was delivered by Martin J. It was pointed out that the judges of the Courts in question, being persons residing in Saskatchewan and in receipt of salaries out of the revenues of the Dominion, were *prima facie* subject to taxation by the

province in respect of their incomes just as other residents, and that there was nothing in sections 96, 99 and 100 of the British North America Act, 1867, to limit the powers of the provinces to tax their salaries. An argument had apparently been addressed to the Court based upon the word "fixed" in section 100. The same word is used in section 91 (8) of the British North America Act in defining the powers of the Parliament of Canada with respect to the salaries of civil servants and the Court had before it two decisions of the Supreme Court of Canada, namely *Abbott v. St. John* 40 S.C.R. 597 and *Attorney General for Manitoba v. Forbes* (1934) 3 W.W.R. 681, in which a provincial income tax upon such salaries was upheld. The latter of these two cases was appealed to His Majesty in Council and the judgment of this Board has been recently given but is not yet reported. The decision of the Supreme Court was affirmed and the argument under discussion is not now open.

This in effect disposes of the present case also, unless judicial emoluments are in a class apart protected by some paramount principle making inapplicable to that form of income a tax imposed by statute in terms wide enough to include it. There is no foundation in the realities of the situation for any such conception. Neither the independence nor any other attribute of the judiciary can be affected by a general income tax which charges their official incomes on the same footing as the incomes of other citizens. The Court below, agreeing with though not bound by two decisions in other Dominions namely *Cooper v. Commissioner of Income Tax* (1907) 4 C.L.R. 1304 before the High Court of Australia and *Krause v. Commissioner for Inland Revenue* (1929) S.A.R. (A.D.) 286 in the Supreme Court of South Africa, found no reason for exempting judicial emoluments from income tax. Their Lordships are of the same opinion.

They will therefore humbly advise His Majesty that the appeal be dismissed. Pursuant to an arrangement between the parties there will be no order as to costs.



In the Privy Council.

THE JUDGES

v.

THE ATTORNEY-GENERAL FOR THE
PROVINCE OF SASKATCHEWAN

DELIVERED BY SIR SIDNEY ROWLANDT

Printed by His Majesty's STATIONERY OFFICE PRESS,
Pocock Street, S. F. 1.

1937