

In the Privy Council.

ON APPEAL
FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

BETWEEN

LOWER MAINLAND DAIRY PRODUCTS SALES
ADJUSTMENT COMMITTEE (Plaintiff) - - *Appellant*

AND

CRYSTAL DAIRY LIMITED (Defendant) - - *Respondent.*

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Case for the Respondent.

1. This is an Appeal by the Plaintiff from a Judgment of the Court of Appeal of British Columbia dismissing an appeal from the Judgment of Mr. Justice Murphy.

RECORD.
p. 82.
p. 54.

2. The action was brought in the Supreme Court of British Columbia by the Lower Mainland Dairy Products Sales Adjustment Committee Appellant against the Crystal Dairy Limited Respondent for a Mandamus to compel the Respondent to make returns to the Plaintiff of all milk or manufactured products purchased or received by it from dairy farmers. The obligation to make the return is imposed by "The Dairy Products Sales Adjustment Act" passed by the Provincial Legislature.

p. 1.

3. The action was contested on the ground that the enactment was beyond the competence of the legislature because the levies imposed were indirect taxes.

p. 5.

4. At the trial the action was dismissed by Mr. Justice Murphy who upheld the Respondent's contention that the levies imposed by the Act were taxes and not direct taxes. His Judgment was upheld by the Court of Appeal, Mr. Justice M. A. Macdonald dissenting in part.

pp. 49-53.
pp. 57-71.
pp. 72-81.

5. The Dairy Products Sales Adjustment Act was enacted by Chapter 20 of the Statutes of 1929. It was amended in 1930 and 1931. It is intituled "An Act for the Relief of Dairy Farmers."

The Act recites—

"Whereas the demand for milk and cream in fluid form is not always equal to the supply, and consequently some dairy-farmers, in order to avoid a congestion of the fluid-milk market, are obliged to market a portion of their milk in the form of manufactured products at world market prices, which prices are much lower than the price obtained for milk in fluid form : 10

And whereas the whole body of dairy-farmers benefits from the consequent relief of the fluid-milk market :

And whereas it is just and equitable that the result of such sale of milk products be equally distributed over the whole body of dairy-farmers in the district :

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

6. The scheme of the Act is as follows :—

(1) The dairy farmers of any certain portion of the Province 20 may meet and resolve to petition the Lieutenant-Governor in Council for the constitution of a Committee to be known as the committee of adjustment for the district (Sections 3 & 4).

(2) The committee when constituted by order in council shall consist of three members. Two to be appointed by the farmers and one by the Lieutenant-Governor in Council. The Committee shall be a corporation but shall not be deemed to represent the Crown (Sections 5 & 6).

(3) Under the Act commodities are divided into two classes :—

Fluid milk and 30

Manufactured products—such as cheese, butter, condensed milk etc.

The price of each class is considered in terms of "butter fat."

"The standard price of milk" means the average price paid from time to time by retail purchasers for standard milk containing 3.25 per cent. butter-fat, less a spread covering distributors' costs of distribution and a reasonable profit to distributors, which spread shall be determined by the committee :

“ The standard price of manufactured products ” in respect of any period shall mean the average wholesale price of butter in bulk on the Vancouver market for that period :

“ The weight of milk ” shall mean in any particular case the actual weight of milk multiplied by the percentage of butter fat contained in that milk :

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(4) The Lower Mainland district involved in the present action is the farming area contiguous to the City of Vancouver. It is the only district in which the Act is operative. The conditions which prompted the relief to the Dairy farmers as sought in the preamble to the Act are :—

(A) The fluid market is a limited one confined to greater Vancouver. p. 23, l. 17.

(B) The price for milk in fluid form has always been much higher than for the manufactured article. The reason being that in the manufactured article world prices have to be met.

(C) The supply of fluid milk has always exceeded the demand, so that the more milk is sold in manufactured form the easier it is to maintain prices in the fluid market.

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(5) The scheme of the Act therefore was for the Committee of adjustment—

(A) To ascertain each month the standard price of milk and of the manufactured articles—the price in each case to be measured in terms of butter fat.

(B) To ascertain the weight and quantity of each class sold or disposed of by all the farmers in the district.

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(C) To “ Spread the difference ” in total value so that in the result the dairy farmer who sells his milk in fluid form will have an amount extracted from his sales receipts which when added to the sales receipts of the dairy farmer selling the manufactured article will equalise the two prices and thus each farmer will receive the same price per pound of butter fat for his commodity.

In this way the farmer A. who keeps out of the fluid market thereby not disturbing the fluid milk price is bonused for his action by a levy on farmer B. who has sold in the more profitable but restricted field. If Farmer A. receives 30 cents per pound butter fat for his manufactured milk and farmer B. receives 70 cents per pound for his fluid milk, 20 cents is taken from B. and given to A. so that each in the result receives 50 cents. p. 21.

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(6) To carry out the scheme the Committee has power—

(A) To require dairy farmers and distributors to make returns of sales and purchases.

(B) To require any dairy farmer to pay to the committee his proportion of the difference in total value as ascertained and apportioned hereunder. (Section 9 (g).)

(C) To pay to any one or more dairy farmers his proper proportionate share of the contribution towards the difference in total value. (Section 9 (h).)

(D) For the purpose of defraying expenses of operation to impose levies on milk and manufactured products sold or disposed of. (Section 9 (i).)

(E) Where the amount levied on a dairy farmer by the committee is not paid by him within any time fixed for payment the committee may sue and recover the amount as a debt due to it by the dairy farmer. (Section 11.)

7. It will be seen that there are two distinct levies under the Act.

A.—The adjustment levy (Section 9 (h)).

B.—The operating expense levy (Section 9 (i)).

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A.—THE ADJUSTMENT LEVY.

There are two questions to be considered—First, is the levy a tax, and second, is it an indirect tax ?

First : Is the adjustment levy a tax ?

It is submitted that the scheme of the Act is to tax one dairy farmer and bonus another.

(1) The question of levies imposed by a board constituted similarly to the present committee was considered in the Supreme Court of Canada in *Lawson vs. Interior Tree Fruit & Vegetable Committee* (1931) S.C.R. 357.

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(2) This case in its application is considered by Mr. Justice Murphy. Record p. 49.

(3) Mr. Justice M. A. Macdonald in the Court of Appeal held that the levy was not a tax. The learned Judge says :—

“ If A. sells milk at 70 cents a pound and B. sells butter at 30 cents, 20 cents per pound is taken from A.'s return and given to B. The resemblance of this ‘ adjustment ’ to a tax

is too faint to be visible to the mental eye. Twenty cents is not taken from A. . . . for public purposes, nor yet given to B. for public purposes. It is for the benefit of A. and B., particularly B., and others in the industry (i.e. private owners) not for the benefit of the public . . . Substantially it is in the nature of an agreement with legislative sanction to pool receipts."

It is submitted that the learned Judge is in error :—

10 (A) To euphaneously call the levy an "adjustment" does not change the nature of the levy. Every tax is more or less of an adjustment. The "dole" might be termed an adjustment. If Parliament should earmark a special fund collected from those in receipt of income to be paid to the destitute it might be a very satisfactory adjustment to the beneficiaries. Mere language would not convince the paying group that the adjustment was not a tax.

20 (B) The suggestion that it is not a tax because only private persons are benefited and not the public is difficult to follow. Parliament may tax A. to benefit B. The tax may be paid into general revenue and B. bonused out of general revenue. The tax may be "ear marked" and B. may be paid out of the special fund. In either case it is a tax. In either case it is presumed to be for the benefit of the public. What Parliament may do directly it may do by delegating authority to a board of its own creation. Municipalities are an instance. The B.C. Workmen's Compensation Board is another.

See Canadian Pacific Railway *vs.* Workmen's Compensation Board (1920) A.C. 184.

30 Lord Haldane expressly held the levy by the board under this Act to be a tax.

It is submitted that if Parliament may delegate to a board the power of taxation, no test of "public benefit" can be introduced which is not applicable to an impost by Parliament itself.

It is submitted that a levy which is imposed directly by Parliament would be invalid as an indirect tax would be equally invalid if imposed by a delegated authority.

(C) It is submitted the suggestion that the levy is "an agreement with legislative sanction to pool receipts" is not an answer.

There can be no agreement without consent. Under the Statute 66 per cent. of those present at the preliminary meeting may force their wishes on the other 34 per cent. (Section 4 (3).) What percentage changes the legislation from a tax into an agreement? Again it is submitted the expression "to pool receipts" is only a euphony for the harsher reality that A.'s money is taken from him and paid to B.

Second : The Tax is an indirect tax.

(1) Under Section 92 (2) of the British North America Act 1867 the provinces have their power of taxation :—

" Direct taxation within the Province in order to the raising 10
of a revenue for Provincial purposes."

(2) The Canadian Pacific Railway *vs.* Workmen's Compensation Board—cited above, held the levy of the board was a direct tax. In so far as the Workmen's Compensation Act provided for the extraction of money by a board from one group to be paid to another group the Act is a direct authority that such a process is one of taxation. The method of extraction in that case, however, marks the point of cleavage between that Act and the present one. There the tax was on the pay rolls. Here it is on the gross receipts from the sale of milk. Both are taxes, but one was held to be direct. The other it is submitted is indirect. 20

(3) The question has already been decided by your Lordships' board.

Rex v. Caledonian Collieries (1928) A. C. 358. There it was held a tax similar in nature to the present one—being a tax on gross sales receipts, was an indirect one.

(4) Not only is the tendency of the present Act to pass on the tax but it is framed for that purpose. Reference is particularly made to the purpose and the tendency of the Act as indicated in the Judgments of Mr. Justice Murphy, page 52, Chief Justice Macdonald, page 57, Mr. Justice M. A. Macdonald, page 74, l. 12.

B.—THE LEVY FOR EXPENSES.

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(1) This levy is identical with that imposed in the Lawson case. Mr. Justice M. A. Macdonald held this to be a tax while disagreeing that the adjustment levy was a tax. It is difficult to see the distinction. The expense levy is only in furtherance of the primary purpose of imposing the adjustment levy on farmer A. and applying it in aid of farmer B. One is no more for public purposes than the other. It is submitted both are in furtherance of a public policy determined upon by Parliament.

(2) It is submitted that if the operating expense levy is invalid, the whole Act is invalid, because without this levy the Act is unworkable— See the evidence of Mercer, page 21, l. 20.

8. The Respondent therefore submits that the Appeal should be dismissed for the following, among other

REASONS.

- (1) BECAUSE the Adjustment levy provided for in the Dairy Products Sales Adjustment Act is an indirect tax.
- (2) BECAUSE the levy for expenses provided for in the said Act is an indirect tax.
- (3) BECAUSE the imposition of the said taxes by the Legislature of the Province is beyond its competence.

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J. W. DE B. FARRIS.

W. N. Tilley -

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Case for the Respondent.

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