

6, 1932

In the Privy Council.

No. 135 of 1929.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER OF SILVER BROTHERS LIMITED
IN BANKRUPTCY.

BETWEEN

THE ATTORNEY-GENERAL FOR THE PROVINCE
OF QUEBEC *Appellant*

AND

THE ATTORNEY-GENERAL FOR THE DOMINION
OF CANADA *Respondent.*

RECORD OF PROCEEDINGS.

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RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 135 of 1929.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER OF SILVER BROTHERS LIMITED
IN BANKRUPTCY.

BETWEEN

THE ATTORNEY-GENERAL FOR THE PROVINCE
OF QUEBEC *Appellant*

AND

THE ATTORNEY-GENERAL FOR THE DOMINION
OF CANADA *Respondent.*

RECORD OF PROCEEDINGS.

No. 1.

Petition of the Attorney-General of Quebec, Affidavit and Notice.

*In the
Superior
Court.*

Cour Supérieure (En matière de Faillites).

Canada, Province de Québec, District de Montréal. No. 183.

In Re

Silver Bros., Limited Débitrice
et

Allan J. Hart Syndic
et

10 Le Procureur-Général de la Province de Québec pour et au
nom de Sa Majesté, représentée par le Gouvernement
de la Province de Québec Créancier
Requérant

et

Le Procureur-Général du Canada, pour et au nom de Sa
Majesté, représentée par le Gouvernement du Canada,
Créancier Intimé.

b

A 2

In the
Superior
Court.

La requête du Procureur-Général de la Province de Québec, pour et au nom de Sa Majesté, représentée par le Gouvernement de la Province de Québec,

No. 1.
Petition
of the
Attorney-
General
of Quebec,
Affidavit
and Notice,
9th June 1925
—continued.

Expose respectueusement :—

1o. La débitrice a été mise en faillite par ordonnance rendue par cette Cour, le ou vers le 31 décembre 1923.

2o. Le ou vers le 28 janvier 1924, le Gouvernement de la Province de Québec a produit entre les mains du syndic une réclamation au montant de \$527.42, pour taxes dues par le débitrice pour les années 1921, 1922, et 1923, conformément aux articles 1345 et suivants des Statuts Refondus 10 de Québec, imposant une taxe sur les corporations commerciales : ainsi qu'il appert à copie de la réclamation produite comme exhibit No. 1 du réclamant ;

3o. Le Gouvernement du Canada a aussi produit, entre les mains du syndic, une réclamation au montant de \$3,707.07, pour taxes sur les ventes, imposées en vertu de la Loi fédérale intitulée "Loi spéciale du Revenu de Guerre, 1915" et amendements : ainsi que le tout appert à copie de la réclamation produite comme exhibit No. 2 ;

4o. Le 12 décembre 1924, le syndic a émis son bordereau final de dividende dont copie est produite comme exhibit No. 3 ; 20

5o. Il appert audit bordereau de dividende que les deniers réalisés se montent à la somme de \$5,897.67 et qu'après paiement des frais et dépenses du syndic, il ne reste qu'une somme de \$2,353.51, laquelle est insuffisante pour payer les réclamations privilégiées ;

6o. Le syndic a colloqué comme seul privilégié le Gouvernement du Canada dont la réclamation s'élevait à la somme de \$3,707.07, en lui accordant la balance ci-dessus mentionnée de \$2,353.51 sur et à même laquelle une somme de \$2,000.00 avait déjà été payée par le syndic au Gouvernement du Canada ;

7o. Le syndic n'a pas colloqué le Gouvernement de la Province de 30 Québec pour sa réclamation, quoique celle-ci soit, en vertu de la loi, une réclamation privilégiée ;

8o. Le Gouvernement de la Province de Québec a alors protesté auprès du syndic que son bordereau était illégal et irrégulier et lui a demandé de le modifier et de colloquer sa réclamation comme privilégiée ;

9o. Le syndic a refusé de se rendre à la demande du Gouvernement de la Province de Québec ;

10o. La réclamation du Gouvernement du Canada n'est pas privilégiée et la loi 12-13 Georges V, chapitre 47, section 17 qui prétend créer un privilège en faveur du Gouvernement du Canada pour ses réclamations 40 pour taxes de ventes, est nulle, illégale et ultra vires des pouvoirs du Gouvernement du Canada ;

11o. Subsidiairement, en supposant que la loi mentionnée au paragraphe précédent serait valide et *intra vires* des pouvoirs du Gouvernement du Canada, ce privilège n'a pas préséance sur le privilège du Gouvernement provincial pour sa réclamation pour taxes sur les corporations et les deux réclamations auraient dû être mises sur le même pied et être colloquées concurremment ;

120. Pour ces raisons, le requérant a le droit de se plaindre de la décision et de l'acte du syndic qui a colloqué comme privilégiée la réclamation du Gouvernement du Canada et qui lui en a payé d'avance la plus grande partie, et de demander l'annulation du bordereau de dividende et de demander que la réclamation du Gouvernement provincial soit payée par le syndic de préférence à celle du Gouvernement fédéral ;

*In the
Superior
Court.*

No. 1.
Petition
of the
Attorney-
General
of Quebec,
Affidavit
and Notice,
9th June 1925
—continued.

Pourquoi l'Honorable Procureur Général, agissant pour et au nom de Sa Majesté représentée par le Gouvernement de la Province de Québec, conclut à ce que l'article 17 de la Loi fédérale 12-13 Georges V, chapitre 47, soit déclaré nul, illégal et *ultra vires* ; à ce que le bordereau de dividende émis par le syndic soit annulé en autant que la collocation de la réclamation du Gouvernement fédéral est concernée ; à ce que la décision et l'acte du syndic colloquant par privilège le Gouvernement fédéral et lui payant partie de sa réclamation, soient cassés et annulés ; à ce qu'ordre soit donné au Gouvernement fédéral de rembourser immédiatement la somme de \$2,000.00 qu'il a ainsi reçue du syndic ; à ce qu'il soit déclaré que la réclamation du Gouvernement provincial est privilégiée et spécialement à l'encontre de la réclamation du Gouvernement fédéral ; à ce qu'ordre soit donné au syndic de payer immédiatement la réclamation du Gouvernement provincial ;

Subsidiairement, à ce que, dans le cas où l'article 17 de la loi fédérale 12-13 Georges V, chapitre 47 serait valide et intra vires des pouvoirs du Gouvernement fédéral, à ce qu'il soit dit et déclaré que les réclamations des deux Gouvernements sont également privilégiées et doivent être colloquées et payées concurremment et au marc la livre ; et à ce qu'ordre soit donné au syndic d'émettre un nouveau bordereau de dividende en conséquence ;

Le tout avec dépens, dans tous les cas, contre le syndic, en sadite qualité, et contre le Procureur Général agissant pour et au nom de Sa Majesté représentée par le Gouvernement du Canada, au cas de contestation.

Montréal, 9 juin, 1925.

CHARLES LANCTOT,

Procureur du requérant.

AFFIDAVIT.

Je, J. Alexandre Prud'homme, avocat et Conseil du Roi, domicilié au No. 538 de l'Avenue Argyle, en la cité de Westmount, district de Montréal, étant dûment assermenté sur les Saints Évangiles, dépose et dit :

10. Je suis l'un des membre de la société légale Geoffrion & Prud'homme qui agit comme agents de l'Assistant Procureur Général de la province de Québec ;

*In the
Superior
Court.*

20. Tous et chacun des faits allégués dans la requête ci-dessus sont vrais, au meilleur de ma connaissance.

Et j'ai signé :

J. ALEX. PRUD'HOMME.

No. 1.
Petition
of the
Attorney-
General
of Quebec,
Affidavit
and Notice,
9th June 1925
—continued.

Assermenté devant moi à Montréal,
dit district, ce 9ème jour de juin,
A.D. 1925.

GILLES DANSEREAU,
*Commissaire de la Cour Supérieure
pour le district de Montréal.*

10

AVIS

A monsieur ALLAN J. HART,
Syndic, et

A l'Honorable Procureur Général, agissant pour et au nom de Sa Majesté
représentée par le Gouvernement du Canada, Créancier intimé.

Messieurs,

Prenez avis que la requête ci-dessus sera présentée devant l'honorable
Juge Panneton de la Cour supérieure siégeant en matières de faillite, à sa
chambre, au Palais de Justice, à Montréal, le 15 juin 1925, à dix heures et
demie de l'avant-midi, ou aussitôt que Conseil pourra être entendu.

20

Et veuillez agir en conséquence.
Montréal, 9 juin, 1925.

CHARLES LANCTOT,
Procureur du requérant.

No. 2.

No. 2.
Statement of
Facts agreed
upon by the
Parties, 10th
November
1925.

Statement of Facts agreed upon by the Parties.

1. Messrs. Silver Brothers, the Debtor above named, was declared
Bankrupt by an Order rendered by this Honourable Court on or about
31st December, 1923.

2. The Government of the Dominion of Canada duly fyled with the
Trustee, a claim to the amount of \$3,707.07, for Sales Tax imposed in
virtue of the Special War Revenues Act 1915, and amendments, said
tax having become due subsequent to the 28th of June, 1922, the date
on which the Act 12 and 13 George V, Statutes of Canada, 1922, Chapter
47, amending the Special War Revenue Act, came into force.

3. The Government of the Province of Quebec also duly fyled with
the Trustee a claim to the amount of \$527.42, for taxes due by the Debtor
for the years 1921, 1922 and 1923, under the provisions of Articles 1345
and following, of the Revised Statutes of Quebec, imposing a tax on
Commercial Corporations.

40

4. On the 12th of December, 1924, the Trustee issued his final dividend sheet.

5. The monies realized from the sale of the assets of the Bankruptcy amounted to the sum of \$5,897.67, and after payment of the costs and expenses of the Trustee, there remained the sum of \$2,353.51, which was insufficient to pay privileged claims.

6. The Trustee in his said dividend sheet collocated the said claim of the Government of the Dominion of Canada, by privilege, according to it the balance above mentioned of \$2,353.51, of which amount the sum
10 of \$2,000 has already been paid by the Trustee.

7. The Government of the Province of Quebec duly protested said dividend sheet, contending as it now contends by its present petition that its claim should be paid before that of the Dominion Government, or subsidiarily that two claims should rank concurrently.

Montreal, this 10th day of November, 1925.

CHARLES LANCTOT,
Attorney for Creditor Petitioner.

COOK & MAGEE,
Attorneys for Creditor Respondent.

*In the
Superior
Court.*

No. 2.
Statement of
Facts agreed
upon by the
Parties, 10th
November
1925
—continued.

Reasons for Judgment of Mr. Justice Panneton.

Le trentième jour de décembre 1925.

Présent : L'Honorable Juge PANNETON.

Requête de la part du Procureur Général de la Province de Québec dans laquelle il allègue en substance ce qui suit :

“ Qu'il a produit entre les mains du syndic une réclamation de \$527.42, taxes dues par la Débitrice pour les années 1921, 1922 et 1923 conformément aux articles 1345 et suivants des Statuts Refondus de Québec imposant une taxe sur les Corporations Commerciales.” Il
30 allègue de plus que le Gouvernement du Canada a aussi produit entre les mains du syndic une réclamation de \$3,700.07 pour taxes sur les ventes imposées en vertu de la Loi Fédérale intitulée “ Loi spéciale du Revenu de Guerre 1915.” Le 12 décembre 1924 le syndic a fait un bordereau final de dividende pour distribuer \$5,897.67, et après le paiement des frais et dépenses du syndic il ne reste que \$2,353.51 montant insuffisant pour payer les réclamations privilégiées ci-dessus. Le syndic a alloué toute cette balance sur la réclamation du Gouvernement du Canada ce qui ne paye qu'une partie de la dite réclamation, le syndic avait déjà payé \$2,000. au Gouvernement du Canada, et le dit Gouvernement du Canada
40 est colloqué pour \$2,353.51 mentionnant en même temps que les \$2,000. lui avaient déjà été payées. Rien n'est alloué au Gouvernement de la

No. 3.
Reasons for
Judgment of
Mr. Justice
Panneton,
30th Decem-
ber 1925.

*In the
Superior
Court.*

No. 3.
Reasons for
Judgment of
Mr. Justice
Panneton,
30th Decem-
ber 1925
—continued.

Province de Québec pour sa réclamation. Il est de plus allégué dans la dite requête que la réclamation du Gouvernement du Canada n'est pas privilégiée et que la Loi 12-13 Geo. V. Chap. 47 Sec. 17 qui prétend créer un privilège en faveur du Gouvernement du Canada pour ces réclamations pour taxes de vente est nulle, illégale et *ultra vires* des pouvoirs du Gouvernement du Canada. Il est de plus allégué que subsidiairement en supposant que la Loi serait valide et *intra vires* le privilège ainsi établi n'a pas préséance sur le privilège du Gouvernement Provincial pour sa réclamation et que les deux réclamations auraient dû être mises sur le même pied et être colloquées concurremment, et la dite requête conclut 10 comme suit :

“ Pourquoi L'Honorable Procureur Général, agissant pour et au nom de Sa Majesté représentée par le Gouvernement de la Province de Québec, conclut à ce que l'article 17 de la Loi fédérale 12-13 Georges V., chapitre 47, soit déclaré nul, illégal et *ultra vires* ; à ce que le bordereau de dividende émis par le syndic soit annulé en autant que la collocation de la réclamation du Gouvernement fédéral est concernée ; à ce que la décision et l'acte du syndic colloquant par privilège le Gouvernement fédérale et lui payant partie de sa réclamation, soient cassés et annulés ; à ce qu'ordre soit donné au Gouvernement fédéral de rembourser immé- 20 diatement la somme de \$2,000.00 qu'il a ainsi reçue du syndic ; à ce qu'il soit déclaré que la réclamation du Gouvernement provincial est privilégiée et spécialement à l'encontre de la réclamation du Gouvernement fédéral ; à ce qu'ordre soit donné au syndic de payer immédiatement la réclamation du Gouvernement provincial ;

“ Subsidiairement, à ce que, dans le cas où l'article 17 de la loi fédérale 12-13 Georges V., chapitre 47 serait valide et *intra vires* des pouvoirs du Gouvernement fédérale, à ce qu'il soit dit et déclaré que les réclamations des deux Gouvernements sont également privilégiées et doivent être colloquées et payées concurremment et au marc la livre ; 30 et à ce qu'ordre soit donné au syndic d'émettre un nouveau bordereau de dividende en conséquence ;

“ Le tout avec dépens dans tous les cas, contre le syndic, en sa dite qualité, et contre le Procureur Général agissant pour et au nom de Sa Majesté représentée par le Gouvernement du Canada, au cas de contestation.”

Il n'y a pas de contestation écrite contre cette requête. Le solliciteur général du Canada fut représenté par un procureur et les questions soumises par la dite requête furent argumentées devant cette Cour. Il y a au dossier une admission de tous les faits. Le Syndic n'a pas comparu. 40

La première question à résoudre est celle qui concerne la prétendue illégalité de l'Acte fédéral imposant un privilège sur les biens pour le paiement de la taxe sur les ventes, le dit acte étant attaqué comme *ultra vires*.

L'Acte de l'Amérique Britannique du Nord, Sections 91 et 92 distribue les pouvoirs entre le Parlement Fédéral et les Législatures Provinciales. Par l'Article 91 (B.N.A. Act) il est déclaré que l'autorité législative exclusive du parlement du Canada s'étend à toutes les matières tombant dans les catégories de sujets qui y sont énumérés et dont le paragraphe 3

se lit comme suit : “ Le prélèvement des derniers par tout mode ou système de taxation.” Créer un privilège pour le paiement de taxes c’est simplement un mode ou système de taxation. En imposant ce système de taxation le parlement du Canada n’a fait que se servir du pouvoir direct qui lui est donné de recourir à tout ce système. Si on ne peut pas admettre que créer un privilège est un mode de taxation il ne devrait pas au moins y avoir y avoir de doute que c’est un incident auxiliaire *ancillary*, pour me servir du terme anglais usité, du droit de taxer. Le Parlement du Canada avait donc plein pouvoir de créer le privilège en question d’après les termes mêmes de l’Acte, et d’après le système judiciaire qui établit que tout ce qui est ainsi auxiliaire fait partie du pouvoir qui est donné. Cette loi dans sa partie qui crée un privilège n’est pas *ultra vires*.

C’est la deuxième question qu’il y a à considérer, celle de savoir si la réclamation du Gouvernement fédéral pour taxe sur les ventes comporte un privilège qui prime celui réclamé par le Gouvernement Provincial, ou si les deux réclamations doivent être mises au même rang sur le bordereau de dividende et colloquées proportionnellement. Ce privilège constitue une prérogative royale, (Stroud, Judicial Dictionary Vbo. “ Prerogative ”).

20 La réclamation de la Province est basée sur les articles 1345 paragraphes (1) (3), et 1347 des Statuts refondus, de la Province 1909. Le privilège pour le paiement des taxes créé par ces Statuts est énoncé dans l’article 1357 qui se lit comme suit : “ Toute somme due à la Couronne en vertu de la présente Section constitue une dette privilégiée prenant rang après les frais de justice ”. Les taxes réclamées sont comprises dans cette Section.

Le privilège réclamé par le Procureur Général du Canada et qui a été reconnu par le syndic comme primant le privilège réclamé par le Gouvernement Provincial est basé sur la Loi Fédérale 12-13 Geo. V, chap. 47, art. 17, (Statut 1922) qui en langue anglaise se lit comme suit :

30 “ Notwithstanding the provisions of the Bank Act and The Bankruptcy Act, or any other statute or law, the liability to the Crown of any person, firm or corporation, for payment of the excise taxes specified in The Special War Revenue Act, 1915, and amendments thereto, shall constitute a first charge on the assets of such person, firm or corporation, and shall rank for payment in priority to all other claims of whatsoever kind heretofore or hereafter arising save and except only the judicial costs, fees and lawful expenses of an assignee or other public officer charged with the administration or distribution of such assets.”

40 Par les Statuts de la Province et de la Puissance du Canada cités les taxes dues à chacun de ces Gouvernements ont un privilège qui vient immédiatement après les frais judiciaires. Les dispositions de l’Acte de faillite ne peuvent en aucune manière affecter l’ordre de ces privilèges puisque cet article 17 du chapitre 47 12-13 Geo. V, déclare que ses dispositions s’appliquent nonobstant l’acte de Faillite.

Le résultat de ces deux actes est de donner un privilège sur les biens du débiteur de la taxe qui vient immédiatement après les frais judiciaires. Il y a donc conflit entre ces deux dispositions, et c’est la même somme d’argent qu’elles affectant. Lorsqu’il y a conflit entre un Acte de la Puissance du

*In the
Superior
Court.*

No. 3.

Reasons for
Judgment of
Mr. Justice
Panneton,
30th Decem-
ber 1925

—continued.

*In the
Superior
Court.*

No. 3.
Reasons for
Judgment of
Mr. Justice
Panneton,
30th Decem-
ber 1925
—continued.

Canada et un Acte d'une Province, c'est l'Acte Fédéral qui domine d'après les décisions du Conseil Privé dans la cause de la Compagnie Hydraulique de St-François et Continental Heat and Light Company & another Respondents, dans laquelle les Lords déclarent que : "Those decisions (decisions of the Privy Council) have established that where a given field of legislation is within the competence both of the Parliament of Canada and of the Provincial Legislature and both have legislated, the enactment of the Dominion Parliament must prevail over that of the Province if the two are in conflict." Cette décision a été rendue en 1908, elle est rapportée dans les Law Reports, Appeal Cases (1909). Dans la cause "The City of Montreal & Montreal Street Railway Company" 1912 A.C. p. 333, le Conseil Privé a encore rendu une décision semblable.

La position que prend le Procureur-Général de la Province et que ces décisions ne s'appliquent pas lorsqu'il s'agit de deux privilèges de la Couronne accordés par deux corps constitutionnels qui ont chacun le pouvoir de passer les lois en question. Laisant de côté la question du pouvoir du Parlement Fédéral de passer cet acte, il demande qu'il soit donné effet aux deux actes en divisant l'argent en proportion de la créance respective de chacun.

A l'appui de cette prétention, l'Article 1985 du Code Civil doit être considéré. Il édicte ce qui suit : "Les créances privilégiées qui sont dans le même rang sont payées par concurrence." Il s'agit de décider si ces deux privilèges sont au même rang. Les termes de l'Acte Fédéral sont bien absolus quant au rang qu'ils donnent à cette taxe. Ils stipulent une priorité au-dessus non seulement de l'Acte de Faillite, et de l'Acte des Banques mais aussi au-dessus de toutes taxes en vertu de n'importe quelle loi. Cet acte n'a pas d'autre but que de créer cette taxe et d'en donner le rang. On argumente que malgré ses termes il n'est pas encore suffisant pour lui donner l'effet visé parcequ'il ne mentionne pas les autres prérogatives de la Couronne qui en sont affectées. L'Article 16 du chapitre premier des Statuts Refondus du Canada 1906 édicte ce qui suit en langue anglaise : "No provision or enactment in any Act shall affect in any manner whatsoever the rights of His Majesty, his heirs or successors unless it is expressly stated therein that His Majesty shall be bound thereby." L'application de cet Article paraît devoir être faite lorsqu'il s'agit de toute législation autre que celle faite spécialement pour créer un privilège à la Couronne, pour empêcher que dans un Acte quelconque si par des expressions générales les prérogatives de la Couronne sont affectées sans qu'on le dise spécialement, ces prérogatives restent quand même. Mais la clause de l'acte en question en cette cause traite seulement de ce privilège spécial de la Couronne, et c'est la Couronne avec son parlement qui parle concernant tout autre privilège qui existe en sa faveur et en vertu de n'importe quelle loi, et ce Statut est à une date subséquent à la clause des Statuts Refondus ci-dessus citée. C'est le même Parlement qui avait passé antérieurement la dite clause 16. Par la clause 17 de l'acte en question il fait de ce droit particulier de la Couronne exception à la règle générale du dit article 16 des Statuts Refondus. Ce dernier Statut domine donc celui qui est antérieur. C'est la dernière volonté clairement exprimée du même Parlement que ce statut ait priorité sur toute autre loi. Endlich, Interpretation of Statutes, paragraph 182, page 251 : "It is impossible to will contradictions ; and if two

passages are irreconcilable, the earlier stands impliedly repealed by the latter (b). *Leges posteriores priores contrarias abrogant. Ubi duae contrariae leges sunt, semper antiquae abrogat nova.* (c). ("Of course, subsequent legislation repeals previous inconsistent legislation, whether it expressly says so or not. In the nature of things it would be so, for contradictions cannot stand together"). Maxwell, pages 253-4, 5th edition, exprime la même opinion dans presque les mêmes termes.

L'Acte sous considération a été passé pour les fins de la guerre, comme ses titres l'indiquent, ce qui est du domaine exclusif du Parlement Fédéral 10 par le paragraphe 7 de l'Acte de l'Amérique Britannique du Nord. Quant il s'agit de ce sujet le Parlement Fédéral a le contrôle non seulement des biens des sujets de toute la Puissance, mais aussi des personnes de toutes les Provinces qui la composent au point qu'il les prive de leur liberté en les enrolant forcément pour le service militaire. Donner effet à une législation Provinciale qui limiterait les effets d'un Acte Fédéral sur ce sujet serait contraire à l'intention du dit Acte de l'Amérique Britannique du Nord. Autrement une Province pourrait neutraliser en partie sinon totalement le pouvoir de la Puissance de prélever des deniers nécessaires pour 20 pour des fins provinciales, seraient situés dans cette Province. Quand une Province a imposé une taxe, le Parlement Fédéral qui a la sauvegarde de toutes les Provinces ne pourrait en imposer une qui aurait la préséance sur les autres, les biens seraient ainsi plus respectés que les personnes lorsque l'intérêt de toute la Puissance est en jeu. Ce serait le résultat de l'interprétation que donne le Solliciteur général de la Province de ces statuts qui sont en conflit alors comme il est dit au commencement du jugement que la législation Fédérale domine sur la Provinciale.

La dite requête du Solliciteur Général de la Province de Québec est renvoyée et comme la contestation de cette requête en est une entre 30 deux pouvoirs constitutionnels publics agissant chacun au nom de la Couronne, il n'y a pas lieu d'accorder ni de suggérer le paiement des dépens.

L. E. PANNETON,
J. C. S.

*In the
Superior
Court.*

No. 3.
Reasons for
Judgment of
Mr. Justice
Panneton,
30th Decem-
ber 1925
—continued.

No. 4.

Formal Judgment.

La Cour, après avoir entendu les parties par leurs procureurs respectifs sur le fond de l'appel, après avoir examiné le dossier et la procédure tant en cour de première instance qu'en appel et après avoir sur le tout mûre- 40 ment délibéré :

Attendu que dans la faillite de Silver Brothers, Limited, l'appelant a produit une réclamation au montant de \$527.42 pour taxes dues par le failli pour les années 1921, 1922 et 1923 conformément aux articles

*In the
Court of
King's Bench.*

No. 4.
Formal
Judgment,
28th June
1927.

*In the
Court of
King's Bench.*

No. 4.
Formal
Judgment,
28th June,
1927
—continued.

1345 des Statuts Refondus de la Province de Québec imposant une taxe sur les corporations commerciales ;

Attendu que dans la même faillite l'intimé a produit une réclamation au montant de \$3,707.07 pour taxes sur les ventes imposée par la " loi spéciale du Revenu de Guerre 1915 " ;

Attendu que chacune de ces réclamation, en vertu des dispositions particulières de chacune d'elles, est garantie par premier privilège sur les biens du failli, après les frais de justice et de liquidation ;

Attendu que, après paiement des frais et dépenses du syndic, il ne reste qu'une somme de \$2,353.51 pour payer le montant des dites deux 10 réclamations ;

Attendu que, le syndic à la dite faillite a colloqué le Gouvernement du Canada pour privilège pour la dite somme de \$2,353.51 ;

Attendu que l'appelante a contesté la dite collocation par requête devant la Cour des faillites et que la dite collocation sur la feuille de dividende a été confirmée par la dite cour ;

Considérant que les deux réclamations, celle du Gouvernement du Canada, et celle du Gouvernement de la Province de Québec, sont également privilégiées et que les deux sont au même rang de privilège, étant toutes deux légalement créés par autorités indépendantes l'une de l'autre, 20 et également souveraines chacune dans son domaine et dans sa juridiction ;

Considérant que d'après la loi de la Province de Québec qui est la loi souveraine en matière de propriété et de privilège, les créanciers privilégiés qui sont dans le même rang sont payés par concurrence, C. C. 1985, et que cette loi ne peut pas être modifiée par une loi du Canada en autant qu'elle pourrait affecter les droits de sa Majesté représentée par le Gouvernement de la Province de Québec ;

Considérant qu'il y a erreur dans le jugement de la Cour de première instance, 30

La Cour infirme le dit jugement, et, procédant à rendre le jugement qui aurait dû être rendu, ordonne que la réclamation du Gouvernement de la Province de Québec et celle du Gouvernement du Canada soient colloquées sur le bordereau de dividende dans la dite faillite et au même rang et par concurrence, et ordre est donné au syndic nommé à la dite faillite de préparer un nouveau bordereau de dividende en conséquence, et recommande au Gouvernement du Canada de remettre au dit syndic telle somme qui sera requise pour compléter la part du Gouvernement de la Province de Québec d'après le dit bordereau, et de payer les frais du présent appel et de la contestation de l'appelant en cour de faillite. 40

C. E. DORION,

J. C. B. R.

No. 5.

Reasons for Judgment.

*In the
Court of
King's Bench.*

No. 5.
Reasons for
Judgment.
(A) Guerin J.

(A) GUERIN J.

Both the Quebec Legislature and the Dominion Parliament had equal and independent power to declare their claims to be privileged.

The Quebec law is incorporated in the Revised Statutes of Quebec 1909, and it constitutes a permanent tax imposed upon commercial corporations doing business within the Province.

The Dominion law is a sales tax of a transient nature which was 10 enacted long after the Quebec law was already in force and it affects the whole Dominion. It is an emergency impost of a nature which was rendered necessary to pay the debts of the whole country incurred as a result of the late World War. It will disappear when the indebtedness caused by the war is wiped out, just as the income tax and the taxes on the cheques, notes, etc., etc., have been already reduced and will eventually disappear altogether when the Dominion war debt shall have been paid.

In the meantime money and much money is required, and the whole country has to put up with these burdens which are an aftermath of the 20 war.

The money required to pay the war debts is more pressing and affects a greater multitude than the money which is being collected in the ordinary course from commercial corporations to pay the general debts of the Province.

The claims of both parties are equally valid, but the preference claimed by the Dominion is born of a war emergency which affects everybody. It will benefit the Province itself as well as all the Canadian nation. It will be for the greater good of a greater number.

The right claimed by the Dominion undoubtedly conflicts with 30 that claimed by the Province, the latter claiming that it should be paid by preference in toto, but in any case it should rank *ex aequo* with the Dominion.

It is not the first time that this question has been discussed before the Court. It had to be considered by the Privy Council dismissing an appeal from the Supreme Court of Canada in 1906, *Grand Trunk Railway Co. of Canada vs. Attorney General of Canada*, where Lord Dunedin expressed himself as follows :

40 “ The construction of the provisions of the British North America Act has been frequently before their Lordships. It does not seem necessary to recapitulate the decisions. But a comparison of two cases decided in the year 1894—viz., *Attorney General of Ontario v. Attorney General of Canada*, and *Tennant v. Union Bank of Canada*—seems to establish these two propositions : First, that there can be a domain on which provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires, if the field is clear ; and, secondly, that if the field is

*In the
Court of
King's Bench.*

No. 5.
Reasons for
Judgment.
(A) Guerin J.
—continued.

“ not clear, and in such a domain the two legislations meet, then the
“ Dominion legislation must prevail.”

Appeal Cases—Privy Council—Law Reports 1907—Pages 67 & s.

*La Compagnie Hydraulique de St. Francois v. Continental Heat &
Light Co.*

“ This contention seems to their Lordships to be in conflict
“ with several decisions of this Board. These decisions have
“ established that where, as here, a given field of legislation is within
“ the competence both of the Parliament of Canada and of the
“ Provincial Legislature, and both have legislated, the enactment 10
“ of the Dominion Parliament must prevail over that of the province
“ if the two are in conflict, as they clearly are in the present case.”

Law Journal 1909—Privy Council Page 61 ; [1909] A.C. p. 198.

I agree with the views expressed by the learned trial judge, and am
of opinion to confirm the judgment of the Superior Court, and would
respectfully recommend the Appellant to pay the costs of both Courts.

(B) Dorion J. (B) DORION J.

Voici les faits de la cause tels qu'ils sont exposés dans le factum de
l'appelant.

La débitrice Silver Brothers, Limited, ayant été déclarée en ban-20
queroute le 31 décembre, 1923, le Gouvernement fédéral a produit,
entre les mains du syndic, une réclamation au montant de \$3,707.07,
pour taxes sur les ventes, imposées en vertu de la loi Spéciale des Revenus
de Guerre, 1915, et amendements.

Cette taxe était due pour des ventes faites subséquemment à la date
du 28 janvier 1922, date de la mise en vigueur de la loi 12-13 George V,
1922, chapitre 47, qui a créé un privilège spécial pour les taxes en question.

Le Gouvernement de la Province de Québec a aussi produit entre
les mains au syndic une réclamation au montant de \$527.42, pour taxes
dues par les faillis pour les années 1921, 1922 et 1923, en vertu des articles 30
1345 et suivants des Statuts refondus de Québec, 1909, qui imposent une
taxe sur les corporations commerciales.

Le 12 décembre 1924, le syndic a déclaré un dividende final démontrant
que l'actif avait réalisé \$5,897.67, laissant, après paiement des frais et
des dépenses du syndic, une somme de \$2,353.51 qui est insuffisante pour
payer les réclamations privilégiées des deux Gouvernements.

Le syndic, dans son bordereau, a colloqué la réclamation du Gouverne-
ment fédéral comme première privilégiée et lui a attribué en plein cette
somme de \$2,353.51, sur laquelle il lui a même payé en acompte.

Le Gouvernement provincial a protesté contre cette collocation et, 40
sur le refus du syndic de la modifier, il en a appelé par requête de cet
acte et de cette décision du syndic ; dans ses conclusions, il demande
d'abord que sa propre réclamation soit déclarée privilégiée spécialement
à l'encontre de la réclamation du Gouvernement fédéral ; que l'article
17 de la loi fédérale 12-13 George V, chapitre 47, soit déclaré nul, illégal
et ultra vires et, subsidiairement, il conclut à ce que les réclamations des

deux Gouvernements soient déclarées également privilégiées et soient colloquées et payées concurremment et au marc la livre.

Par son jugement, l'honorable juge Panneton a renvoyé la requête de l'appelant et maintenu le droit du Gouvernement fédéral de créer un privilège pour sa taxe, et il a déclaré que ce privilège avait préséance sur celui du Gouvernement provincial.

Le privilège pour le paiement des taxes imposées sur les corporations commerciales est énoncé dans l'article 1357 des Statuts refondus de Québec, 1909, et il est reproduit à l'article 15 du chapitre 26 des nouveaux
10 Statuts refondus, 1925.

Cet article se lit comme suit :—

“ Toute somme due à la Couronne en vertu de la présente
“ Section constitue une dette privilégiée prenant rang après les frais
“ de justice ”.

Le privilège réclamé par le Gouvernement fédéral pour la taxe sur les ventes découle de l'article 17 du chapitre 47 de la Loi fédérale 12-13 George V, qui amende la Loi spéciale des Revenus de Guerre. La version anglaise de cet article 17 se lit comme suit :—

20 “ Notwithstanding the provisions of the Bank Act and The
“ Bankruptcy Act, or any statute or law, the liability to the Crown
“ of any person, firm or corporation, for payment of the excise taxes
“ specified in The Special War Revenue Act, 1915, and amendments
“ thereto, shall constitute a first charge on the assets of such person,
“ firm or corporation, and shall rank for payment in priority to all
“ other claims of whatsoever kind heretofore or hereafter arising save
“ and except only the judicial costs, fees and lawful expenses of an
“ assignee or other public officer charged with the administration or
“ distribution of such assets.”

30 Les autorités citées par les parties sont les décisions rendues par le
Conseil Privé sur les questions de compétence respective du Parlement du
Canada et des Législatures des Provinces. Elles ne soutiennent rien sur
le sujet particulier du présent appel, qui est le conflit de deux privilèges
également valides, et dont aucune loi ne détermine le rang.

En pure droit privé le cas n'offre aucune difficulté : les deux créances
devraient être colloquées au même rang et payées par concurrence, C.C.
1985.

Pourquoi en serait-il autrement en droit public ? D'ailleurs le rang
des privilèges est une question de droit privé et de propriété.

40 Il n'y a pas de doute que le parlement fédéral a le pouvoir d'imposer
des taxes, et alors cette imposition crée un droit de créance contre le
contribuable qui les doit. Cette imposition crée un charge sur les biens
du débiteur, comme toute autre dette et, à ce point de vue, elle rentre
dans le droit commun C. C. 1980. Mais elle va plus loin, en créant un
privilège, qui affecte les droits des tiers, c'est même essentiellement au
point de vue des tiers que le privilège existe. C'est entr'eux seuls que
le conflit nait.

Il faut bien reconnaître cependant que le Parlement du Canada, qui
peut imposer des taxes sur certaines personnes, peut aussi les imposer

*In the
Court of
King's Bench.*

No. 5.
Reasons for
Judgment.
(B) Dorion J.
—continued.

*In the
Court of
King's Bench.*

No. 5.
Reasons for
Judgment.
(B) Dorion J.
—continued.

sur toutes, et c'est ce qu'il fait dans une certaine mesure en créant un privilège, qui est un prélèvement indirect sur les créances des autres créanciers.

Les législateurs Provinciales ont également le droit de créer des privilèges. Elles le peuvent en vertu de l'article 92 de la constitution du Canada, paragraphe 13, qui leur donne juridiction exclusive en matière de propriété et de droit civil. Elles le peuvent également en vertu de leur droit de taxer, comme le Parlement du Canada.

Les deux privilèges, celui du Gouvernement Fédéral, et celui du Gouvernement Provincial, existent donc sur les mêmes biens. Mais l'un 10 doit-il être préféré à l'autre ?

Les deux, d'après les termes des lois qui les constituent, ont premier rang après les frais de justice. Je ne vois rien dans la constitution qui donne préséance aux droits du Gouvernement Fédéral sur les droits du Gouvernement Provincial : chacun est souverain et représente le souverain dans les limites de ses attributions. *Liquidateurs Maritime Bank vs New Brunswick* A. C. 1892, p. 437.

Par conséquent, les termes suivants employés dans la section 17 du Statut Fédéral 12-13 Geo. V, ch. 47 :

“ Notwithstanding the provisions of the Bank Act and the 20
“ Bankruptcy Act, or any other Statute . . . ”

ne peuvent pas affecter les lois Provinciales, celles-ci n'étant aucunement subordonnées aux lois fédérales.

Le savant juge de Cour des faillites a considéré qu'il a avait contradiction entre la loi fédérale et la loi locale dans la présente cause, et appliquant le précédent créé dans la cause de *La Cie Hydraulique de St. François vs Continental Heat & Light Co.* [A. C. 1909, p. 194], il décide que dans le cas de lois contradictoires sur des manières qui sont de la compétence des deux autorités, c'est la loi fédérale qui doit l'emporter.

Il faut remarquer cependant que dans la cause citée, il s'agissait 30 d'une loi fédérale antérieure à la loi provinciale. La première de ces deux lois (60-61 ch. 72) accordait des pouvoirs à la compagnie Hydraulique, sur un certain territoire ; la seconde, la loi provinciale (4 Ed. VII, 84) accordant les mêmes pouvoirs à la Continental Heat & Light Co. sur le même territoire à l'exclusion de toutes autres compagnies. Voici le sommaire de ce jugement :

“ Where a given field of legislation is within the competence
“ both of the Dominion and provincial Legislatures, and both have
“ legislated, the Dominion enactment must prevail :—

“ Held, accordingly, that the respondent company, which under 40
“ Dominion Act, 60 & 61 Vict. C. 72 was empowered to supply, sell,
“ and dispose of gas and electricity, with other powers, could not
“ be restrained from operating thereunder at the suit of the appellants,
“ who under later Quebec Statutes had exclusive power of so operating
“ in the locality chosen by the respondents.”

On voit que la loi de la législature Provinciale avait prétendu enlever à la première compagnie les pouvoirs qui lui avaient été concédés par la loi Fédérale passée antérieurement et les droits acquis en vertu de cette loi.

Dans la présente cause il n'en est pas ainsi et la loi Provinciale a été passée la première.

Mais y a-t-il contradiction entre les privilèges créés par le deux lois dont il s'agit dans la présente cause? Pas plus qu'il n'y a contradiction entre les créanciers chirographaires qui ont la même droit sur les biens de leurs débiteurs commun. Les deux droits coexistent, ils ne s'excluent pas, ils s'exercent tous les deux dans la mesure du possible.

Pareille situation se présente dans le cas d'un legs universel à deux personnes. L'une n'exclut pas l'autre: seulement comme il n'y a pas 10 moyen pour les deux légataires d'exercer tout leur droit, chacun se trouve réduit de moitié: *Ex concursu partes fiunt*. Il résulte aussi de l'existence du même droit en faveur des deux que, si l'un disparaît, l'autre reçoit le tout. *Jure non decrescendi*. Il en est de même du droit d'accroissement en faveur des deux légataires particuliers de la même chose conjointement. Ces principes du droit civil sont les règles de sens commun, qui ont lieu partout. Si l'on applique la règle que le fédéral doit toujours l'emporter même dans le cas de simple concours, il en résulterait que, malgré son droit exclusif de légiférer sur la propriété et son droit de 20 prélever des taxes, le Gouvernement Provincial serait réduit aux miettes de la table du Gouvernement Fédéral.

Une autre raison invoquée par l'intimé et admise par la Cour de première instance, est la priorité qu'il faut donner aux mesures de guerre sur toutes autres dispositions de la loi.

La loi 12-13 Geo. V, ch. 47 sec. 17, invoquée par le gouvernement Fédéral est plutôt une mesure d'après-guerre, car elle a été passée en 1922. Il est vrai qu'elle est un amendement à la "Loi spéciale de Revenus de Guerre, 1915". Mais elle n'a pas pu aider à la guerre. Elle n'a pu qu'aider à en payer les dettes.

Mais l'objet de cette loi n'était que de prélever des taxes en vertu 30 du pouvoir général de taxation. Une taxe n'est pas une mesure de guerre. Ce n'est pas une mesure exceptionnelle, urgente, devant laquelle tout doit céder. Une expropriation opérée dans les formes légales, pour construire des fortifications, n'est pas une mesure de guerre. Mais le fait par l'autorité militaire de s'emparer d'une maison, sans aucune procédure, au cours, ou à la veille, d'une bataille, pour s'y établir et repousser l'ennemi, est une mesure de guerre. Une levée de contributions par l'autorité militaire sur l'habitant, pour faire vivre l'armée en campagne est aussi une mesure de guerre. C'est bien le cas de dire: *necessity knows no law*. Je ne prétends pas cependant poser une règle générale ni définir 40 les mesures de guerre, car cela n'est pas nécessaire dans cette cause. On pourrait concevoir des cas où des prélèvements seraient des mesures de guerre.

Mais promulguer des lois pour imposer des taxes afin de payer des dettes encourues quelques années auparavant, ce n'est pas une mesure de guerre. Le pays n'étant plus en guerre.

Je crois donc que les deux privilèges, celui que réclame le Gouvernement du Canada, et celui que réclame le Gouvernement de la Province,

*In the
Court of
King's Bench.*

No. 5.
Reasons for
Judgment.
(B) Dorion J.
—continued.

*In the
Court of
King's Bench.*

No. 5.
Reasons for
Judgment.
(B) Dorion J.
—continued.

existent tous deux, qu'ils viennent au même rang, et qu'ils doivent être payés par concurrence.

J'infirmérais le jugement de la Cour des Faillites et j'ordonnerais que la réclamation du Gouvernement de la Province de Québec soit colloquée sur le bordereau de dividende par concurrence avec la réclamation du Gouvernement du Canada, et qu'ordre soit donné au syndic nommé à la faillite de préparer un nouveau bordereau de dividende en conséquence, et je recommanderais au Gouvernement du Canada de remettre telle somme qui sera requise pour compléter la part de l'appelant d'après le dit bordereau, et de payer les frais du présent appel et de la contestation 10 de l'appelant en Cour des Faillites.

(c) Allard J. (C) ALLARD J.

Je suis d'opinion que l'appel doit être maintenue et le jugement infirmé.

Je considère, pour les raisons données par mon collègue Mr. le Juge Dorion dans ses notes, que les créances de l'Appelant et de l'Intimé, ayant le même rang, doivent être payées par concurrence.

(D) Letour-
neau J.

(D) LETOURNEAU J.

Pour les raisons que donne dans ses notes mon collègue le juge Dorion, je ferais droit à l'appel, j'infirmérais le jugement de la Cour des Faillites 20 et j'ordonnerais que la réclamation du Gouvernement de la Province de Québec soit colloqué sur la bordereau de dividende par concurrence avec la réclamation du Gouvernement du Canada, et qu'ordre soit donné au Syndic nommé à la faillite de préparer un nouveau bordereau de dividende en conséquence, et je recommanderais au Gouvernement du Canada de remettre telle somme qui sera requise pour compléter la part de l'Appelant d'après le dit bordereau, et de payer les frais du présent appel et de la contestation de l'Appelant en Cour des Faillite.

(E) Rivard J. (E) RIVARD J.

Je partage l'opinion exprimée par M. le juge Dorion, que les deux 30 privilèges, du Fédéral et du Provincial, ayant le même rang, doivent être payés par concurrence.

J'infirmérais.

Québec, 9 juin 1927.

No. 6.

Petition of the Attorney-General of Canada for leave to appeal to Supreme Court of Canada, Affidavit and Notice.

*In the
Supreme
Court of
Canada.*

To one of the Honourable Judges of the Supreme Court of Canada :

Your Petitioner humbly says :

1. That the firm of Silver Brothers, Limited, was declared bankrupt by an Order of the Superior Court rendered on the 31st December, 1923.

2. That the Government of the Dominion of Canada duly filed with the Trustee a claim for the amount of \$3,707.07 for sales tax imposed in virtue of the Special War Revenue Act 1915, and amendments, said tax having come due subsequent to the 28th of June, 1922, the date on which the Act 12 and 13 George V, Statutes of Canada, 1922, Cap. 47, amending the Special War Revenue Act, came into force.

3. That the Province of Quebec also duly filed with the Trustee a claim to the amount of \$527.42, for taxes due by the Debtor for the years 1921, 1922 and 1923, under the provision of Article 1345 and following of the Revised Statutes of Quebec, imposing a tax on Commercial Corporations.

4. That the monies realized from the sale of the assets of the Debtor amounted to the sum of \$5,897.67, and after payment of the costs and expenses of the Trustee there remained the sum of \$2,353.51, which was insufficient to pay the privileged claims. The Trustee in his dividend sheet, which was issued on the 12th December, 1924, collocated by privilege the claim of the Dominion Government.

5. That by Petition dated the 9th of June, 1925, the present Respondent attacked the Trustee's Dividend Sheet, concluding with the following prayer :—

(A) That Article 17 of the Dominion Act 12 and 13 George V, Cap. 47, be declared null, illegal and ultra vires, and that the Dividend Sheet made by the Trustee be annulled in so far as the collocation of the claim of the Respondent is concerned ; that the decision and act of the Trustee in collocating the privilege of the Dominion Government and in paying it part of its claim, be set aside and annulled ; that the Dominion Government be ordered immediately to reimburse the sum of \$2,000 received by it from the Trustee ; that it be declared that the claim of the Provincial Government is privileged especially as against the claim of the Dominion Government and that the Trustee be ordered to immediately pay the claim of the Provincial Government.

(B) That subsidiarily in the event of Article 17 of the Dominion Act 12 and 13 George V, Cap. 47, being declared valid and intra vires of the powers of the Dominion, that it be declared that the claims of the two Governments are equally privileged and must be collocated and paid concurrently, and that, in consequence, the Trustee be ordered to issue a new dividend sheet.

No. 6.
Petition
of the
Attorney-
General of
Canada for
leave to
appeal to
Supreme
Court of
Canada,
Affidavit
and Notice,
12th July
1927.

*In the
Supreme
Court of
Canada.*

No. 6.
Petition
of the
Attorney-
General of
Canada for
leave to
appeal to
Supreme
Court of
Canada,
Affidavit
and Notice,
12th July
1927
—continued.

6. That the Trial Court (Mr. Justice Panneton) dismissed the Petition of the Provincial Government, by Judgment rendered 30th December, 1925.

7. That the Court of King's Bench, Appeal Side, on the 28th of June, 1927, reversed the Judgment of the Superior Court (Mr. Justice Guerin dissenting) and ordered that the said sum of \$2,353.51 be distributed rateably between the Petitioner and the Respondent.

8. That your Petitioner is aggrieved by the said Judgment of the Court of King's Bench, Appeal Side, and desires to appeal therefrom to the Supreme Court of Canada.

9. That the sum in controversy exceeds Two thousand dollars (\$2,000) and, moreover, important questions of public interest, as well as important questions of law are involved—*i.e.*, the interpretation of a Public Statute ; a conflict of Dominion and Provincial Statutes as well as of Dominion and Provincial Rights.

10. That the privilege of the Crown in the right of the Dominion of Canada to preference over other Creditors was raised and determined adversely to the Crown by reason of the Judgment of the Court of King's Bench, Appeal Side, from which your Petitioner seeks to obtain redress.

11. That the question to be raised on the Appeal involves future rights, which may affect other cases of a similar nature in the future and which concern questions of law applicable to the whole Dominion.

Wherefore your Petitioner prays that your Petitioner be granted leave to appeal to the Supreme Court of Canada on such terms as may be fixed by your Lordship, the whole with costs.

Montreal, 12th July, 1927.

COOK & MAGEE,
Attorneys for Petitioner.

AFFIDAVIT.

I, John W. Cook, Advocate and King's Counsel, domiciled at No. 331 Peel Street, in the City of Montreal, District of Montreal, being duly sworn do depose and say :—

That I am a member of the legal firm of Cook and Magee, and I have taken communication of the foregoing Petition for leave to appeal to the Supreme Court of Canada, and that all of the allegations thereof are true.

Sworn before me at the City
of Montreal, this 12th day
July, 1927.

And I have signed,
JOHN W. COOK.

.....
*A Commissioner of the Superior
Court, District of Montreal.*

NOTICE.

To Mtre. CHAS. LANCTOT, K.C.,
Attorney for Respondent.

Sir :

Take notice of the foregoing Petition and that the same will be presented to a Judge of the Supreme Court of Canada, in Ottawa, on Wednesday, the 27th of July, 1927, at eleven o'clock in the forenoon, or so soon thereafter as Counsel may be heard, and do you govern yourself accordingly.

10 Montreal, July 12th, 1927.

COOK & MAGEE,
Attorneys for Petitioner.

No. 7.

Consent to change of date for hearing Petition, 19th July 1927.

(Not printed.)

No. 8.

Order of Chief Justice of Canada granting leave to appeal to Supreme Court of Canada.

Upon the application of counsel for the Appellant and upon hearing
 20 read the petition of the Appellant praying for leave to appeal to this
 Court from the judgment of the Court of King's Bench, Appeal Side,
 pronounced herein on the 28th day of June, A.D. 1927, the affidavit of
 John W. Cook verifying the allegations contained in the said petition,
 the notice, dated the 12th day of July, A.D. 1927, of presentation of the
 said petition on Wednesday, the 27th day of July, A.D. 1927, at eleven
 o'clock in the forenoon or so soon thereafter as counsel might be heard,
 together with the admission of service thereof on the solicitors for the
 Respondent, and the consent of the solicitors for both parties to the
 change of date for the hearing of this application to this day in lieu of
 30 Wednesday, the 27th day of July, A.D. 1927, and upon hearing what
 was alleged by counsel for the Appellant, no one appearing on behalf
 of the Respondent,

It is ordered that the Appellant be and he is hereby granted special
 leave to appeal from the said judgment of the Court of King's Bench,
 Appeal Side, dated the 28th day of June, A.D. 1927, to the Supreme
 Court of Canada.

And it is further ordered that the costs of this application be costs
 in the appeal to the successful party.

FRANK A. ANGLIN,
C.J.C.

*In the
 Supreme
 Court of
 Canada.*

No. 6.
 Petition
 of the
 Attorney-
 General of
 Canada for
 leave to
 appeal to
 Supreme
 Court of
 Canada,
 Affidavit
 and Notice,
 12th July
 1927
 —continued.

No. 7.

No. 8.
 Order of
 Chief Justice
 of Canada
 granting leave
 to appeal to
 Supreme
 Court of
 Canada,
 22nd July
 1927.

*In the
Supreme
Court of
Canada.*

No. 9.

No. 9.

Consent as to contents of Appeal Book, 26th January 1928.

(Not printed.)

No. 10.
Certificate
of Deputy
Prothonotary
of Superior
Court, 28th
January 1928.

No. 10.

Certificate of Deputy Prothonotary of Superior Court.

Je, soussigné député-protonotaire de la Cour Supérieure de la Province de Québec, pour le district de Montréal, certifie par le présentes que l'Hon. Juge Panneton n'a pas produit de notes en la présente cause.

Montréal ce 28ème jour de janvier, 1928.

R. AIMÉ TISON, 10
Deputé Protonotaire, C.S.M.

No. 11.

No. 11.

Certificate of Clerk of Appeals, 7th March 1928.

(Not printed.)

No. 12.
Factum
of the
Attorney-
General
of Canada,
15th June
1928.

No. 12.

Factum of the Attorney-General of Canada.

The Appellant has inscribed before the Supreme Court of Canada, in appeal from a Judgment of the Court of King's Bench (Appeal Side) rendered on the 28th of June, 1927, maintaining the Respondent's Appeal, by a majority of four to one, and reversing the Judgment of the Superior Court sitting in Bankruptcy, rendered on the 30th December, 1925, by the terms of which last mentioned Judgment the Petition of the Respondent, attacking the dividend sheet prepared by the Trustee, was dismissed with costs.

STATEMENT OF FACTS.

The facts of the case, which are admitted by the parties, are briefly as follows :

The firm of Silver Brothers, Limited, was declared bankrupt by an Order of the Superior Court rendered on the 31st December, 1923.

The Government of the Dominion of Canada duly filed with the Trustee a claim to the amount of \$3,707.07 for sales tax imposed in virtue of the Special War Revenue Act 1915, and amendments, said tax having come due subsequent to the 28th of June, 1922, the date on which the Act 12 and 13 George V, Statutes of Canada, 1922, Cap. 47, amending the Special War Revenue Act, came into force.

*In the
Supreme
Court of
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No. 12.
Factum
of the
Attorney-
General
of Canada,
15th June
1928
—continued.

Section 17 of the Act as amended reads as follows :

10 “ Notwithstanding the provisions of the Bank Act and the Bank-
ruptcy Act, or any other statute or law, the liability to the Crown of
“ any person, firm or corporation, for payment of the excise taxes
“ specified in the Special War Revenue Act, 1915, and amendments
“ thereto, shall constitute a first charge on the assets of such person,
“ firm or corporation, and shall rank for payment in priority to all
“ other claims of whatsoever kind heretofore or hereafter arising save
“ and except only the judicial costs, fees and lawful expenses of an
“ assignee or other public officer charged with the administration or
“ distribution of such assets.”

20 The Government of the Province of Quebec also filed with the Trustee
a claim to the amount of \$527.42, for taxes due by the Debtor for the years
1921, 1922 and 1923, under the provisions of Article 1345 and following
of the Revised Statutes of Quebec, imposing a tax on Commercial
Corporations.

Article 1357 relating to the privilege attached to this tax reads as
follows :

“ All sums due to the Crown in virtue of this section shall
“ constitute a privileged debt, ranking immediately after law costs.”

30 The monies realized from the sale of the assets of the Debtor amounted
to the sum of \$5,897.67 and after payment of the costs and expenses of the
Trustee, there remained the sum of \$2,453.51, which was insufficient to
pay the privileged claims. The Trustee in his Dividend Sheet, issued on
the 12th December, 1924, collocated the claim of the Dominion Govern-
ment by privilege, according to it the balance of \$2,353.51 above
mentioned, of which amount the sum of \$2,000.00 has already been paid.

By Petition dated the 9th of June, 1925, the present Respondent
attacked the Trustee's Dividend Sheet, concluding with the following
prayer :

40 (A) That Article 17 of the Dominion Act, 12 and 13 George V,
Cap. 47, be declared null, illegal and ultra vires, and that the Dividend
Sheet made by the Trustee be annulled in so far as the collocation of
the claim of the Respondent is concerned ; that the decision and act
of the Trustee in collocating the privilege of the Dominion Govern-
ment and in paying it part of its claim, be set aside and annulled ;
that the Dominion Government be ordered immediately to reimburse
the sum of \$2,000.00 received by it from the Trustee ; that it be
declared that the claim of the Provincial Government is privileged
especially as against the claim of the Dominion Government and
that the Trustee be ordered to immediately pay the claim of the
Provincial Government.

*In the
Supreme
Court of
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No. 12.
Factum
of the
Attorney-
General
of Canada,
15th June
1928
—continued.

(B) That subsidiarily in the event of Article 17 of the Dominion Act, 12 and 13 George V, Cap. 47, being declared valid and in accordance with the powers of the Dominion that it be declared that the claims of the two Governments are equally privileged and must be collocated and paid concurrently, and that in consequence the Trustee be ordered to issue a new dividend sheet.

JUDGMENTS.

The Judgment of the Superior Court sitting in Bankruptcy rendered on the 30th of December, 1925, dismissed the Respondent's Petition on the ground that the two statutes in question being in conflict with one another that of the Dominion should prevail, especially as it was a war measure. The text of this Judgment will be found at pages 5 and following of the Record.

The Judgment of the Court of King's Bench, rendered on the 28th of June, 1927 (page 9), by a majority of four to one, reversed the Judgment of the Superior Court, declared that the two claims should have been collocated concurrently and ordered the Trustee, in consequence, to prepare a new dividend sheet. The reasons given for this Judgment were that according to the law of the Province of Quebec the privileged creditors who are in the same rank are paid concurrently (C.C. 1985) and that this law cannot be modified by a law of the Dominion in so far as it may affect the rights of His Majesty, represented by the Government of the Province of Quebec.

ARGUMENT.

The Appellant submits that the Judgment appealed from should be reversed and the original Judgment of the Superior Court restored, for the following, among other reasons :

1. Because the Provincial Statute merely states a general rule, whereas the Dominion Statute passed subsequent thereto is an exception to the general rule and by its very terms makes the Federal Tax rank ahead of that of the Province.
2. Because in a case of conflict between a Dominion and Provincial Statute, that of the Dominion must prevail.
3. Because the Dominion Statute in question is essentially a war measure and being of paramount importance to the country as a whole must override any Provincial Legislation which is inconsistent with it.

1. BECAUSE THE PROVINCIAL STATUTE MERELY STATES A GENERAL RULE, WHEREAS THE DOMINION STATUTE PASSED SUBSEQUENT THERETO IS AN EXCEPTION TO THE GENERAL RULE AND BY ITS VERY TERMS MAKES THE FEDERAL TAX RANK AHEAD OF THAT OF THE PROVINCE :

40

We submit that from the very wording of the two Acts in question it is apparent that the Dominion Act creates a privilege ranking before the one created by the Provincial Act. The Dominion Act (Section 17) passed subsequent to the Provincial Act and to the Bankruptcy Act, is a law creating an unqualified exception to the general rule.

Mr. Justice Dorion, who rendered the Judgment of the majority of the Court of King's Bench, in his notes on page 14 of the Record, declared that Section 17 of the Dominion Act could not affect Provincial laws as they were in no way subordinate to Federal laws. We submit that in this particular case the learned Judge was in error. It must not be forgotten that we are dealing here with a case of Bankruptcy, that the Dominion Government alone has power to legislate on this subject and that such legislation is of paramount authority even though it interferes with property, civil rights and procedure within the Provinces. In view of the many decisions of the Privy Council on this point, we deem it unnecessary to do more than merely refer to two cases, namely :

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of the
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—continued.

Cushing v. Dupuy, 5 Appeal Cases, page 409 :

“ The British North America Act, 1867, S. 91, in assigning to the Dominion Parliament the subjects of Bankruptcy and Insolvency, intended to confer and did confer on it, legislative power to interfere with property, civil rights and procedure within the provinces, so far as these latter might be affected by a general law relating to those subjects.”

Tennant v. The Union Bank of Canada, L.R. Appeal Cases (1894) page 31 :

“ The legislation of the Dominion Parliament, so long as it strictly relates to the subjects enumerated in Section 91, is of paramount authority—even though it trenches upon the matters assigned to the Provincial Legislature by Section 92.”

Now by Section 86 of the Bankruptcy Act, Crown privileges are taken away except in so far as they are preserved by Section 51 (6). These sections read as follows :

Section 51 (6) :

“ Nothing in this section shall interfere with the collection of any taxes, rates or assessments now or at any time hereafter payable by or levied or imposed upon the debtor or upon any property of the debtor under any law of the Dominion, or of the Province, wherein such property is situate, or in which the Debtor resides, nor prejudice or affect any lien or charge in respect of such property created by any such laws.”

Section 86 :

“ Save as provided in this Act, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.”

It will be noted that Section 51 (6) specially refers to Provincial taxes and in consequence the privilege of the Province if not created, is at least preserved by the Bankruptcy Act, and therefore depends on the Bankruptcy Act in the present case for its privilege. Therefore, Section 17 of the Special War Revenue Act clearly refers to the Provincial law in question, not only by reason of the words “ any other statute or law ” used therein but also by reason of the expression “ the Bankruptcy Act ” as the

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—continued.

Provincial law depends on the Bankruptcy Act in the present case for the preservation of its privilege.

On this point we would refer to the case of *West and Company*, 2 Canadian Bankruptcy Reports, Page 3 :

“ *Held* : In the winding up of an insolvent Estate under the Bankruptcy Act, the priorities of creditors depend upon the provisions of the Act itself; no priority given to any provincial statute can be of any avail unless that priority is preserved by the Bankruptcy Act.”

“ Any prerogative rights possessed by the Crown for the recovery of Crown debts whether in the nature of taxes or otherwise and either in respect of the remedies which it possessed against the property of the Debtor or in respect of any priority over other creditors are taken away by Section 86 of the Bankruptcy Act except in so far as they may be preserved under Section 51 (6) for the purpose of enabling the Crown to collect taxes, rates and assessments.”

Bringing down Section 17 to meet the present case, this section reads as follows :

“ Notwithstanding the provisions of Section 51 (6) of the Bankruptcy Act, preserving the privilege of the Crown for sums due under Articles 1345 et seq., R.S.Q., 1909, which declare that such privileged debts shall rank immediately after law costs, the liability to the Crown of any person, firm or corporation for payment of the excise taxes specified in the Special War Revenue Act, 1915, and amendments thereto, shall constitute a first charge on the assets of such person, firm or corporation, and shall rank for payment in priority to all other claims of whatsoever kind heretofore or hereafter arising (including the claim of the Crown under Articles 1345 et seq., R.S.Q., 1909, as aforesaid) save and except only the judicial costs, fees and lawful expenses of an assignee or other public officer charged with the administration or distribution of such assets.”

2. BECAUSE IN A CASE OF CONFLICT BETWEEN A DOMINION AND PROVINCIAL STATUTE, THAT OF THE DOMINION MUST PREVAIL :

As already pointed out, by the very terms of the Special War Revenue Act, the taxes due under it are granted a privilege ranking prior to that of the Provincial Government for business tax, but even if this were not the case and the claim of the Province was made to rank rateably with that of the Dominion Government by the terms of some Provincial legislation it would be inconsistent with the provisions of the Special War Revenue Act and in consequence the Dominion Act would prevail.

Clement's Canadian Constitution, 3rd Edition, page 468 :

“ Intra vires Federal legislation will override inconsistent intra vires Provincial legislation. Upon a careful analysis of the provisions of Sections 91 and 92, the Privy Council has finally enunciated the above proposition assigning paramount authority to Federal legislation in all cases of conflict between intra vires enactments.”

La Cie Hydraulique de St. Francis and Continental Heat & Light Company, L.R., A.C. [1909], Page 194 :

“ *Held* : Where a given field of legislation is within the competence both of the Dominion and Provincial Legislature, and both “ have legislated, the Dominion enactment must prevail.”

3. BECAUSE THE DOMINION STATUTE IN QUESTION IS ESSENTIALLY A WAR MEASURE AND BEING OF PARAMOUNT IMPORTANCE TO THE COUNTRY AS A WHOLE MUST OVERRIDE ANY PROVINCIAL LEGISLATION WHICH IS INCONSISTENT WITH IT.

10 The Special War Revenue Act and amendments were passed by the Dominion Parliament as a direct consequence of the Great War and not merely under the authority of its general power of taxation, but also under its power of legislating in regard to all matters connected with the War. It is a matter of common knowledge that the monies collected under the War Revenue Acts are kept separate and distinct from the monies received for ordinary taxes and are used for the sole purpose of paying the debts incurred as a result of the Great War. As pointed out by Guerin, J., the dissenting Judge in the Court of King’s Bench, at page 11 of the Record the Dominion law is “ an emergency impost of a nature which was rendered
20 necessary to pay the debts of the whole country incurred as a result of the late World War. It will disappear when the indebtedness caused by the war is wiped out just as the income tax and the tax on cheques, notes, etc., have already been reduced and will eventually disappear altogether when the Dominion war debt shall have been paid.”

We respectfully submit that the opinion of Mr. Justice Dorion as to what constitutes war measures (Page 15, Lines 32 et seq.) is incorrect. Apparently he would restrict the term “ war measures ” to things done under military authority and would exclude all legislative acts. Under the restricted meaning given by him the Military Service Act itself could
30 not be classed as a war measure. The view of Panneton, J., would appear to be the correct one when he pointed out that to give effect to a Provincial Enactment which would limit the effect of a Federal Act dealing with war measures would be contrary to the intention of the British North America Act, as otherwise a Province could neutralize in part if not in whole the power to raise the necessary moneys for such end, and would make goods more respected than persons, when the interest of Canada, as a whole, was at stake.

On the whole, the Appellant respectfully requests that the Judgment appealed from be set aside and that the original Judgment of the
40 Superior Court be restored, the whole with costs distracts to the under- signed Attorneys.

Montreal, 15th June, 1928.

COOK & MAGEE,
Attorneys for Appellant.

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—
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of the
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of Canada,
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—continued.

Factum of the Attorney General of Quebec.

No. 13.
Factum
of the
Attorney-
General
of Quebec,
13th Sep-
tember 1928.

This is an appeal from a judgment of the Court of King's Bench, Dorion, Allard, Letourneau and Rivard, JJ., Guerin, J., dissenting, reversing a judgment in bankruptcy of Panneton, J.

PART FIRST.

The facts are not contested and appear from an admission of the parties (Record, p. 4).

The Estate of the bankrupt debtors in this case is indebted to both the Dominion of Canada and the Province of Quebec for taxes. 10

The amount realized is insufficient to pay both claims in full.

The trustee's dividend sheet collocated the Dominion of Canada by preference over the Province.

The Province attacked the dividend sheet, but it was confirmed by the Judge in bankruptcy.

In appeal, this judgment was reversed and it was held that the claims of the two governments should rank equally.

The Attorney General for Canada appeals from this judgment.

PART SECOND.

It is submitted on behalf of the Attorney General of Quebec that 20 the judgment of the Court of King's Bench is right, because the Dominion Statute making of the Dominion tax a privileged claim does not purport to give it preference over the Provincial tax and because the Dominion Parliament would not have the power to give it such a preference.

PART THIRD.

The preference given by the Dominion Statute to the Dominion tax in question in this case results from section 17 of chapter 47 of the Dominion Statute 12-13 George V. This section reads as follows:—

“Notwithstanding the provisions of The Bank Act and The
“Bankruptcy Act, or any other statute or law, the liability to the 30
“Crown of any person, firm or corporation, for payment of the
“excise taxes specified in The Special War Revenue Act, 1915,
“and amendments thereto, shall constitute a first charge on the
“assets of such person, firm or corporation and shall rank for pay-
“ment in priority to all other claims of whatsoever kind heretofore
“or hereafter arising save and except only the judicial costs, fees,
“and lawful expenses of an assignee or other public officer charged
“with the administration or distribution of such assets.”

The preference given by the Provincial Statute to the provincial tax in question in this case results from article 1357 S.R.Q., 1909. This 40 article reads as follows:—

“All sums due to the Crown in virtue of this section shall
“constitute a privileged debt, ranking immediately after law costs.”

Respondent submits, in the first place, that the Dominion Statute not having mentioned other preferences in favour of the Crown has not affected such other preferences. S.R.C., 1906, chapter 1, section 16, says :—

“ No provision or enactment in any Act shall affect, in any manner whatsoever, the rights of His Majesty, His heirs or successors, unless it is expressly stated therein that His Majesty shall be bound thereby.”

It is submitted that this section does not only refer to His Majesty in the rights of the Dominion, but to His Majesty in any rights whatsoever.

If such is the case, this Dominion Statute cannot affect the right of the Crown under the above provincial Statute.

Even if the Dominion privilege is good, which is not admitted, the above claims being both first claims must rank equally : Civil Code, art. 1985.

It must not be forgotten that the Civil Code in its original form was adopted previous to Confederation and, as regards Quebec Province, is both Federal and Provincial law. This is an original article not a recent amendment.

Alternatively, Respondent submits that the Dominion Parliament could not even by express words, provide that its taxes would take precedence over Provincial first preferred taxes.

The B. N. A. Act, section 91, provides that, notwithstanding anything in the act, the exclusive legislative authority of the Parliament of Canada extends to :

* * * * *

(3) The raising of money by any mode or system of taxation.

Section 92 provides that, in each province, the Legislature may exclusively make laws in relation to

* * * * *

(2) Direct taxation within the province in order to the raising of a revenue for provincial purposes ;

* * * * *

(13) Property and civil rights.

Laws providing for the rank of claims are primarily laws respecting property and civil rights.

The possible effect of the assignment to the Dominion of legislative power over bankruptcy and insolvency need not be considered, as this does not purport to be a bankruptcy law.

If, as apparently held by the Court of Appeals, the power to make a Dominion tax a first claim is implied in the power to provide for the raising of such tax, as necessarily incidental thereto, it is submitted that the same power is quite as necessary to the full exercise by the Province of its power to levy money by direct taxation.

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No. 13.
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tember 1928
—continued.

*In the
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No. 13.
Factum
of the
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tember 1928
—continued.

It is however objected that under closing words of section 91 of the B. N. A. Act and several decisions of the Privy Council, it is now settled that, when the Dominion and the Provincial jurisdictions come in conflict, the Dominion jurisdiction should prevail. This rule was laid down in cases where a certain subject might, from one point of view, be considered as coming within Dominion jurisdiction and from another point of view coming within Provincial jurisdiction. But the question has never arisen where exactly the same power was given to both and in substantially the same words as in this case.

Further, it is submitted that, if the power to give a preference to the 10 tax may be considered as a necessary incident to the power to levy the tax, the power to make the Dominion tax rank ahead of the provincial tax is not at all reasonably necessary to the effective exercise of the Dominion power of taxation. Except in very few cases, a first preference concurrent with the provincial tax first preference will secure to the Dominion payment of its claims.

If the special power was necessary to the exercise by the Dominion of its taxing right, it would be quite as essential to the exercise by the province of its taxing right and the latter's right would, therefore, be seriously impaired. 20

The rule that the power given to the Dominion must have preference has never been applied so as to destroy or seriously impair an express power given to the Provinces. Ex.: *Marriage Reference* 1912 A.C., p. 880 and all "Trade and Commerce regulation" cases, specially *Parson's case* 7 A.C., at pp. 108, 109.

Granting that the right to make of a tax a preferential claim is not exclusively "property and civil rights," as held by the Court of Appeals, it is submitted that the proper view is that each of the two legislative authorities have the full power to levy money by taxation, including the power to secure those levies by preferences, liens or otherwise; that 30 the Dominion cannot claim a preference for its revenue over the Provincial revenue, as both functions of the State are equally essential and, in the rare cases where there is not enough for both, each must lose proportionately.

It has been submitted that this being War legislation, a right to give preference over Provincial taxes results. It is submitted that there is no justification in the B. N. A. Act for such a view. In the first place, this is not War legislation; it is fiscal legislation to raise money for the payment of expenses that have been incurred during the War. The debt is a debt of the Government as all others, no matter what is the expenditure 40 that caused it. The matter is governed by paragraph 3, section 91, not by paragraph 7 under which war powers must be found. Even if it came under paragraph 7, the arguments above made as to paragraph 3 would be applicable.

Whatever there may be in the theory that there might be such an emergency as not to be taken care of in the special enumerations of sections 91 and 92, thus calling for the exercise of the residuum power, that theory

is obviously inapplicable here. The slight possible losses of revenue to the Dominion through the Provinces ranking concurrently with it do not constitute such an emergency.

It is therefore submitted that the judgment should be confirmed.

Ottawa, Ont., September 13th, 1928.

CHARLES LANCTOT,

Attorney for Respondent.

AIME GEOFFRION,

Counsel.

In the Supreme Court of Canada.

No. 13.
Factum of the Attorney-General of Quebec, 13th September 1928
—continued.

10

No. 14.

Extracts of Statutes.

9-10 George V, Chap. 36.

An Act respecting Bankruptcy.

(Assented to 7th July, 1919.)

No. 14.
Extracts of Statutes.
(A) The Bankruptcy Act, 9-10 Geo. V., Ch. 36 (Canada).

* * * * *

Part IV.

Creditors.

* * * * *

Priority of Claims.

51. (1) Subject to the provisions of the next succeeding section as to rent, in the distribution of the property of the bankrupt or authorized assignor, there shall be paid, in the following order of priority :—

Firstly, The fees and expenses of the trustee ;

Secondly, The costs of the execution creditor (including Sheriff's fees and disbursements) coming within the provisions of section eleven, subsections one and ten ;

Thirdly, All wages, salaries, commission or compensation of any clerk, servant, travelling salesman, labourer or workman in respect of services rendered to the bankrupt or assignor during three months before the date of the receiving order or assignment.

(2) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

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No. 14.
Extracts of
Statutes.
(A) The Bank-
ruptcy Act,
9-10 Geo. V.
Ch. 36
(Canada)
—continued.

(3) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(4) Subject to the provisions of this Act, all debts proved in the bankruptcy or under an assignment shall be paid *pari passu*.

(5) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order or assignment at the rate of six per cent. per annum on all debts proved in the bankruptcy or under the assignment.

(6) Nothing in this section shall interfere with the collection of any taxes, rates or assessments now or at any time hereafter payable by or levied or imposed upon the debtor or upon any property of the debtor under any law of the Dominion, or of the province wherein such property is situate, or in which the debtor resides, nor prejudice or affect any lien or charge in respect of such property created by any such laws.

* * * * *

Part VII.

Supplemental Provisions.

20

* * * * *

86. Save as provided in this Act, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

* * * * *

(B) The
Special War
Revenue Act,
5 Geo. V.,
Ch. 8
(Canada) and
amending
Acts.

The Special War Revenue Act, 1915, was first enacted in 1915 by 5 Geo. V, c. 8. "An Act to supplement the Revenue required to meet War Expenditures." Sec. 20, s.s. 1 of the Act provided:—

"20. All taxes or sums payable under this Act shall be recoverable at any time after the same ought to have been accounted for and paid, and all such taxes and sums shall be recoverable, and all rights of His Majesty hereunder enforced, with full costs of suit, as a debt due to or as a right enforceable by His Majesty, in the Exchequer Court or in any other court of competent jurisdiction" (now R.S.C., 1927, c. 179, s. 108).

* * * * *

(1918.)

8-9 Geo. V, chap. 46 "An Act to amend The Special War Revenue Act, 1915," amongst other amendments to the Act, imposed further taxes and s. 6, s.s. (1):—

"6. (1) The provisions of the CUSTOMS ACT, chapter forty-eight of the Revised Statutes of Canada, 1906, and the Acts

“ amending the same, shall apply to any war excise tax payable
 “ under this Act upon the importation of any article into Canada in
 “ the same way and to the same extent as if such war excise tax
 “ was payable under THE CUSTOMS TARIFF, 1907, chapter eleven
 “ of the statutes of 1907, or the Acts amending the same.”

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 Statutes.

* * * * *
 10-11 Geo. V, c. 71, “ An Act to amend The Special War Revenue
 Act, 1915,” imposed further taxes.

(B) The
 Special War
 Revenue Act,
 5 Geo. V.,
 Ch. 8.

11-12 Geo. V, c. 50, “ An Act to amend The Special War Revenue
 Act, 1915,” again amongst other amendments to the Act, imposed further
 10 taxes.

(Canada) and
 amending
 Acts
 —continued.

12-13 Geo. V, c. 47, “ An Act to amend The Special War Revenue
 Act, 1915,” also imposed further taxes and s. 17 :—

“ 17. Notwithstanding the provisions of THE BANK ACT and
 “ THE BANKRUPTCY ACT, or any other statute or law, the
 “ liability to the Crown of any person, firm or corporation, for pay-
 “ ment of the excise taxes specified in THE SPECIAL WAR
 “ REVENUE ACT, 1915, and amendments thereto, shall constitute
 “ a first charge on the assets of such person, firm or corporation, and
 “ shall rank for payment in priority to all other claims of whatsoever
 20 “ kind heretofore or hereafter arising save and except only the
 “ judicial costs, fees and lawful expenses of an assignee or other
 “ public officer charged with the administration or distribution
 “ such assets.”

(1920)
 (1921)
 (1922)

13-14 Geo. V, c. 70, “ An Act to amend The Special War Revenue (1923)
 Act, 1915,” again imposed further taxes and by s. 8 added s. 19e.

14-15 Geo. V, c. 68, “ An Act to amend The Special War Revenue (1924)
 Act, 1915,” amended the Act apparently in immaterial particulars

15-16 Geo. V, c. 26, “ An Act to amend The Special War Revenue (1925)
 Act, 1915,” amending the Act includes s. 9 :—

30 “ 9. Section seventeen of chapter forty-seven of the statutes of
 “ 1922, an Act to amend The Special War Revenue Act, 1915, is
 “ repealed.”

17 Geo. V, c. 10, “ An Act to amend The Special War Revenue Act, (1927)
 1915,” imposes further taxes.

17 Geo. V, c. 36, “ An Act to amend The Special War Revenue Act,
 1915,” contains nothing material.

17 Geo. V, c. 69, “ An Act to amend The Special War Revenue Act,
 1915,” provides s. 8 :—

40 “ 8. The said Act is amended by inserting the following section
 immediately after section 19e :—

* * * * *

18-19 Geo. V, c. 50, “ An Act to amend The Special War Revenue (1928)
 Act, 1915,” numerous changes and modifications of taxes.

Revised Statutes of the Province of Quebec, 1909.

Title IV.

Division III, Sec. XVIII.

Taxes upon Commercial Corporations, Companies, Partnerships,
Associations, Firms and Persons.

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Statutes.
(c) Revised
Statutes of
Quebec,
Article 1357.

* * * * *

§ 3.—Levy and application of taxes.

* * * * *

1357. All sums due to the Crown in virtue of this section shall constitute a privileged debt, ranking immediately after law costs.

* * * * *

(D) Quebec
Civil Code.

Quebec Civil Code.

Title Seventeenth.

10

Of Privileges and Hypothecs.

Chapter First.

Preliminary provisions.

1980. Whoever incurs a personal obligation, renders liable for its fulfilment all his property, moveable and immoveable, present and future, except such property as is specially declared to be exempt from seizure.

1981. The property of a debtor is the common pledge of his creditors, and where they claim together they share its price rateably, unless there are amongst them legal causes of preference.

1982. The legal causes of preference are privileges and hypothecs. 20

Chapter Second.

Of Privileges.

General Provisions.

* * * * *

1985. Privileged claims of equal rank are paid rateably.

* * * * *

(E) The Inter-
pretation Act,
Revised
Statutes of
Canada, 1906,
Ch. 1.

Revised Statutes of Canada, 1906, Chap. 1.

An Act respecting the Form and Interpretation of Statutes.

* * * * *

Rules of Construction.

* * * * *

16. No provision or enactment in any Act shall affect, in any manner whatsoever, the rights of His Majesty, his heirs or successors, unless it is expressly stated therein that His Majesty shall be bound thereby.

* * * * *

30

9-10 George V, Chap. 68.

An Act to consolidate and amend the Railway Act.

(Assented to 7th July, 1919.)

* * * * *

The Taking and Using of Lands.

Restrictions—Crown Lands.

189. (1) No company shall take possession of, use or occupy any lands vested in the Crown, without the consent of the Governor in Council.

(2) Any railway company may, with such consent, upon such terms as the Governor in Council prescribes, take and appropriate, for the use of its railway and works, so much of the lands of the Crown lying on the route of the railway which have not been granted or sold, as is necessary for such railway, and also so much of the public beach, or bed of any lake, river or stream, or of the land so vested covered with the waters of any such lake, river or stream as is necessary for making and completing and using its said railway and works.

(3) The company may not alienate any such lands so taken, used or occupied.

(4) Whenever any such lands are vested in the Crown for any special purpose, or subject to any trust, the compensation money which the company pays therefor shall be held or applied by the Governor in Council for the like purpose or trust.

* * * * *

British North America Act, 1867.

30 & 31 Victoria, Chap. 3.

* * * * *

VI.—Distribution of Legislative Powers.

Powers of the Parliament.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons to make Laws for the Peace, Order and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters

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Ch. 68
(Canada).

(G) The
British North
America Act,
1867,
30-31 Victoria
Ch. 3.

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(c) The
British North
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30-31 Victoria
Ch. 3
—continued.

coming within the Classes of Subjects next hereinafter enumerated;
that is to say :—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of 10
Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine
Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country
or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the issue of paper money. 20
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians and Lands reserved for the Indians.
25. Naturalisation and Aliens. 30
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal
Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance and Management of Peniten-
tiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumer-
ation of the Classes of Subjects by this Act assigned exclusively to the
Legislatures of the Provinces.

And any Matter coming within any of the classes of Subjects enumer-
ated in this Section shall not be deemed to come within the class of 40
Matters of a local or private nature comprised in the Enumeration of the

classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Exclusive Powers of Provincial Legislatures.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the classes of Subjects next hereafter enumerated; that is to say:—

1. The Amendment from time to time, notwithstanding anything in this Act of the Constitution of the Province except as regards the Office of Lieutenant-Governor.
- 10 2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province other than Marine Hospitals.
- 20 8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licenses in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:—
 - A. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province.
 - 30 B. Lines of Steam Ships between the Province and any British or Foreign Country.
 - C. Such Works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
- 40 15. The imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all matters of a merely local or private Nature in the Province.

* * * * *

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No. 15.

Formal Judgment.

In the Supreme Court of Canada.

Thursday, the 26th day of September, A.D. 1929.

No. 15.
Formal
Judgment,
26th Sep-
tember 1929.

Present :

The Right Honourable F. A. Anglin, P.C., C.J.C.
The Right Honourable Mr. Justice Duff, P.C.
The Honourable Mr. Justice Mignault.
The Honourable Mr. Justice Newcombe.
The Honourable Mr. Justice Rinfret. 10
The Honourable Mr. Justice Lamont.
The Honourable Mr. Justice Smith.

Between :

Silver Brothers, Limited	...	...	...	...	...	Debtor,
						and
Allan J. Hart	...	...	...	...	...	Trustee,
						and
The Attorney-General for Canada	...	...	...	...	...	Appellant,
						and
The Attorney-General for the Province of Quebec	...	...	...	...	...	Respondent. 20

The Appeal of the above named Appellant from the judgment of the Court of King's Bench of the Province of Quebec (Appeal Side), rendered on the twenty-eighth day of June in the year of our Lord one thousand nine hundred and twenty-seven, reversing the judgment of the Superior Court sitting in Bankruptcy, rendered on the thirtieth day of December in the year of our Lord one thousand nine hundred and twenty-five, having come on to be heard before this Court on the fifteenth day of November in the year of our Lord one thousand nine hundred and twenty-eight, in the presence of counsel as well for the Appellant as the Respondent, whereupon and upon hearing what was alleged by counsel aforesaid, this 30 Court was pleased to direct a re-argument, and the same having come on for re-argument on the sixth day of May in the year of our Lord one thousand nine hundred and twenty-nine, and the same coming on this day for judgment ;

This Court did order that the said Appeal should be and the same was allowed ; that the said judgment of the Court of King's Bench of the Province of Quebec (Appeal Side) should be and the same was reversed and set aside ; and that the judgment of the said Superior Court sitting in Bankruptcy should be and the same was restored ;

And this Court did further order and adjudge that the said Respondent 40 should and do pay the costs of the said Appellant as well in this Court as in the Court of King's Bench.

(Sgd.) E. R. CAMERON,

Registrar.

No. 16.

Reasons for Judgment.

In the
Supreme
Court of
Canada.

(A) ANGLIN C.J. (concurrent in by LAMONT and SMITH JJ.)

I have had the advantage of perusing the carefully prepared opinion of my brother Mignault, who states the question for determination and the relevant facts and in his conclusion I agree.

In so far as there may be conflict between the priority created by the Dominion Statute (12-13 Geo. V, c. 47, Section 17) and that which the Quebec Statute (R.S.Q., 1909, arts. 1345 et seq.) purports to give, each being within the legislative jurisdiction conferred by the B.N.A. Act on the Legislature which enacted it, it is well established that the former must prevail. This must be so whether the provision for priority—substantially the same in each Act—is attributable to the exercise of a jurisdiction which should be regarded as an integral part of that conferred by an enumerated head, or as ancillary thereto. *Royal Bank v. Larue*, [1928] A.C., 187; *A.G. for Ontario v. A.G. for Canada* [1894] A.C. 189, 200; *Toronto v. C.P.R. Co.* [1908] A.C., 54, 55; *Grand Trunk Railway Company v. A.G. for Canada* [1907] A.C., 65, 68; *Montreal v. Montreal Street Railway Company* [1912] A.C., 333, 343-4.

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and
Smith JJ.).

20 Whether such conflict exists depends upon the construction of the Dominion Statute. Has Parliament expressed the intention that :

“all other claims of whatsoever kind heretofore or hereafter arising,”

over which “the excise taxes specified in the Special War Revenue Act, 1915, and amendments thereto” are given priority, shall include claims for taxes imposed by a provincial statute which purports to give to them a like priority ?

30 *Prima facie* the phrase “all other claims of whatsoever kind, etc.” would include such claims. That it was meant to embrace them is, I think, made manifest by the introductory words of the section :

“Notwithstanding the provisions of the Bank Act or any other statute or law.”

The relevant provision of the Bankruptcy Act, Section 51 (6), had expressly preserved the priorities of taxes, rates and assessments imposed by provincial law. The intent to supersede that policy is expressed. Moreover, the words “any other statute or law,” *prima facie* include all statutes and laws having force in regard to the administration of the property or estate being dealt with, by whatever authority imposed. If in a provincial statute providing for an exemption from taxation this *prima facie* meaning of the words “any statute” should prevail so as to include within them not only Acts of the same provincial legislature within that description, but also a similar statute of the Dominion Parliament (*R. v. Canadian Northern Railway* [1923] A.C., 714, 716-8). I can see no good reason for refusing to give the like scope to the words, “any other statute or law,” in Section 17 of 12-13 Geo. V., c. 47 (D). In this respect I am unable to distinguish the case at bar in principle from the decision of the Judicial Committee in

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R. v. Canadian Northern Railway Company; and the reason upon which that decision proceeds is distinctly in point.

The right of the Dominion Parliament, under the legislative jurisdiction conferred upon it by heads 3 and/or 21 of Section 91 of the B.N.A. Act, to enact Section 17 appears to me to be so clear as to admit of no question. If so construed as to avoid any claim with over-riding Dominion legislation, the provincial statute is, no doubt, within the authority given by head 2 of Section 92. The provincial tax in question is not covered by Art. 1994 (10) C.C. It depends entirely on post-Confederation legislation (6 Edw. 7, c. 10; Arts. 1345 et seq., R.S.Q., 1909). To invoke Art. 1985¹⁰ C.C. is, with respect, to beg the question. The effect of Arts. 1980-1 C.C. is not to create in favour either of the Dominion or of the Province, as a creditor, a specific lien or charge on the debtor's property or any part thereof. There is nothing in the Quebec legislation which vests in the Crown in the right of the Province, as a result of the imposition of the tax for which it provides, anything in the nature of "property" within the purview of Section 125 of the B.N.A. Act.

Nothing advanced upon the re-argument of this appeal before the Full Court has affected my views upon the questions in issue expressed in the foregoing opinion, which was written after the earlier argument had before²⁰ a Court consisting of five judges.

(B) Duff J.

(B) DUFF J.

Subsection 6 of Section 51 of the Bankruptcy Act preserves (see particularly the French Version) the rights created by Article 1357 of the Statutory Law of Quebec. Neither that article nor Section 17 of the Amendment to the War Revenue Act passed in 1915, does in my opinion give any priority over any lien, charge, or privilege vested in the Crown and preserved by Section 51.

The reference to the Bank Act (which would appear to contemplate the liens constituted by Section 88 of that enactment) seems to reveal³⁰ the intention that the "charge" brought into being by Section 17, in order to secure the payment of the "excise taxes" there named, should, when it takes effect, have priority over liens of like character with those arising under the Bank Act; including of course (if the primacy established affects other Crown debts) liens of a similar character created for the purpose of securing the payment of Provincial taxes, or other pecuniary obligations owing to the Provincial Crown, numerous examples of which are evidenced in the statutory law of the Provinces. Section 17, so construed, would have the effect, the direct effect, of entitling the Dominion to deal with a subject of provincial taxation or other private property in which the Province⁴⁰ holds a *jus in re* as such security, in such manner as to obliterate that *jus in re*, if necessary to give priority to the Dominion charge. "Property," in my opinion, in Section 125 of the British North America Act, should be construed in its widest sense, and, in its widest sense, it would embrace such a *jus in re*.

That, I think, must be the natural construction of Section 17, if it is read as applying to other debts of the Crown. The Crown is not mentioned and the result of what I have just said, having regard to the provisions of

the Interpretation Act, is that other pecuniary claims of the Crown are not prejudiced by the priority declared by Section 17. Likewise, the priority established by Section 1357 neither by the express terms of that section nor by necessary inference affects such claims.

Both the claims seem therefore to be of equal rank and should be satisfied rateably.

I have had the opportunity of reading the judgment of my brother Rinfret and with his reasons I entirely concur.

The appeal should be dismissed with costs.

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Judgment.

(B) Duff J.
—continued.

10 (c) MIGNAULT J.

(c) Mignault J.

This litigation arose in connection with the distribution of the proceeds realised by the trustee out of the assets of Silver Brothers, Limited, insolvents. After payment of law costs and of the expenses of the trustee, there remained \$2,453.51 available for distribution. The Government of Canada had filed a claim for \$3,707.07 for sale taxes due by the insolvent under the Special War Revenue Act, 1915 (Chapter 8 of the statutes of 1915), and amendments, and the Government of the Province of Quebec claimed \$527.42, taxes due by the insolvents for the years 1921, 1922 and 1923 under a provincial statute imposing a tax on commercial corporations 20 (Articles 1345 and following R.S.Q., 1909). Both these claims are given priority after law costs by the statutes governing them. The issue here, as it has developed, is whether the Dominion is entitled to preference over the Province, or whether the two claims should rank *pari passu*. In his dividend sheet the trustee gave priority to the Dominion, and in that he was sustained by the learned trial judge (Panneton J.). The Court of King's Bench, on the contrary, held (Guerin J., dissenting) that both claims should rank concurrently. The Dominion now appeals.

It may be observed that each legislature was within its jurisdiction when it imposed the tax, and, under reserve of the question whether the 30 Dominion enactment should prevail here, I can see no reason to doubt that, as an incident of its taxing power, each legislature could give to its claim priority over the claims of ordinary creditors, subject, however, to this qualification that Parliament can undoubtedly, in a bankruptcy law, determine the priority of claims against the estate of a bankrupt, and no provincial legislature can interfere with this priority (*Royal Bank of Canada v. Larue* [1928], A.C. 187).

There is, however, a saving clause in Section 51 of *The Bankruptcy Act* which deals with the priority of claims. This clause, Subsection 6 of Section 51, reads as follows:—

40 “(6) Nothing in this section shall interfere with the collection of
“any taxes, rates or assessments now or at any time hereafter payable
“by or levied or imposed upon the debtor or upon any property
“of the debtor under any law of the Dominion, or of the province
“wherein such property is situate, or in which the debtor resides, nor
“prejudice or affect any lien or charge in respect of such property
“created by any such laws.”

Section 86 of the Act should also be noted:—

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(c) Mignault J.
—continued.

“ 86. Save as provided in this Act, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.”

As the matter stood under the Bankruptcy Act, therefore, no lien created by federal or provincial legislation to secure the payment of taxes was affected.

The priority claimed by the provincial authorities was first enacted in 1906 by 6 Edward VII (Que.) ch. 10. Under the Quebec Civil Code (which antedates Confederation, and consequently is the enactment of a legislature with plenary legislative power), the only privileged claim of the Crown was against persons accountable for its moneys (comptables), this privilege being on moveables only (Art. 1994, parag. 10). There does not appear to be, under the common law of Quebec as expressed in the civil code, or the code of civil procedure, which have been held to be binding on the Crown, any prerogative or other right of the Crown to priority, except as provided by Art. 1994 C.C. See *Exchange Bank of Canada v. The Queen* [1886] 11 A.C. 157.

The priority asserted by the Dominion was enacted in 1922 by an amendment to the Special War Revenue Act, 1915. This amendment— which is Section 17 of ch. 47 of 12-13 Geo. V. (Can.) (this section was repealed in 1925 by 15-16 Geo. V., ch. 26, Sect. 9)—reads as follows:—

“ 17. Notwithstanding the provisions of *The Bank Act* and *The Bankruptcy Act*, or any other statute or law, the liability to the Crown of any person, firm or corporation, for payment of the excise taxes specified in *The Special War Tax Revenue Act*, 1915, and amendments thereto, shall constitute a first charge on the assets of such person, firm or corporation, and shall rank for payment in priority to all other claims of whatsoever kind heretofore or hereafter arising save and except only the judicial costs, fees and lawful expenses of an assignee or other public officer charged with the administration or distribution of such assets.”

Article 1357 R.S.Q., 1909, gives the provincial tax priority after law costs. It says:—

“ All sums due to the Crown in virtue of this section (the section dealing with taxes on commercial corporations) shall constitute a privileged debt ranking immediately after law costs.”

The Appellant contends that full effect must be given to Section 17, notwithstanding any priority created by provincial legislation such as Article 1357 R.S.Q., 1909. This section states that the Dominion tax shall constitute a first charge on the assets,” and shall rank for payment in priority to all other claims of whatsoever kind heretofore or hereafter arising,” save only the judicial costs, fees and lawful expenses of the assignee or other public officer charged with the administration or distribution of the assets. This tax, the Appellant argues, would not be “ a first charge,” if the claim for the provincial tax were entitled to rank concurrently with it upon the assets of the insolvent.

The contention chiefly relied on by the Respondent is founded on Section 16 of *The Interpretation Act* (R.S.C., 1906, ch. 1), which states that—

No provision or enactment in any Act shall affect, in any manner whatsoever, the rights of His Majesty, his heirs or successors, unless it is expressly stated therein that His Majesty shall be bound thereby.

And the Respondent argues that, under this rule of construction, Section 17 of the amendment to the *Special War Revenue Act*, 1915, notwithstanding the generality of its language, must be read as if it had stated that the right of the Crown in right of the Province to the priority granted by Article 1357 R.S.Q., 1909, is not to be affected thereby.

It may be observed that Section 16 of *The Interpretation Act* is merely a re-statement of the fundamental rule of statutory construction of the common law that the Crown is not bound by a statute unless it be specially named therein, or unless there is a necessary implication to be drawn from the provisions of the statute or the nature of the enactment that the Crown was intended to be bound thereby (Beal, *Cardinal Rules of Legal Interpretation*, 3rd ed. p. 332).

It would seem likely that “the rights of His Majesty, his heirs or successors,” intended to be preserved by Section 16, are rights derived from the prerogative, and not rights created by statute. Rights of the latter category could hardly continue to exist for the future when the statute creating them is repealed, or excluded by a subsequent enactment, and the consent of the Crown as a component part of the Legislature would seem to be all that is required. In the case of the prerogative, the Crown’s expressed consent is necessary, but even then “if the whole ground of something which could be done by the prerogative is covered by the statute, “it is the statute that rules” (per Lord Dunedin in *Attorney-General v. De Keyser’s Royal Hotel* [1920] A.C. 508 at p. 528).

Here, moreover, we have an enactment the whole purpose of which is to grant to the Crown in right of the Dominion priority for the excise taxes specified by *The Special War Revenue Act*, 1915, and amendments, which priority exists “notwithstanding the provisions . . . of any other statute or law.” These terms are wide enough to exclude any statute federal or provincial (*The King v. Canadian Northern Railway Co.* [1923] A.C. 714, the converse case), and of course such an enactment as Article 1357 R.S.Q. 1909. The Appellant’s contention based on Section 16 of *The Interpretation Act*, a federal statute, which moreover would come within the scope of the words “notwithstanding the provisions of . . . any other statute or law,” would defeat the very purpose of Section 17. It is obvious that the Dominion tax could not be “a first charge” after judicial costs and the fees and expenses of the assignee, if the provincial tax were to rank immediately after law costs. Even if the rights of the Crown referred to in *The Interpretation Act* could be considered as comprising statutory rights, the exclusion of the statute creating these rights would render them ineffective against the Crown in right of the Dominion.

The Respondent also relies on Subsection 6 of Section 51 of *The Bankruptcy Act*, which, with respect to the collection of taxes, rates or assessments, recognises the priority or lien conferred by provincial legislation. But full effect must be given to Section 17, notwithstanding *The Bankruptcy*

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Act, so that, if Parliament did not transcend its jurisdiction, there appears little doubt that any priority granted by Article 1357 R.S.Q., 1909, and preserved by *The Bankruptcy Act*, is excluded.

The trial judge sustained the trustee's dividend sheet on the ground that there being a conflict here between Dominion and provincial legislation in a field open to both, the Dominion statute must prevail. In support of this view, the Appellant has referred us to four pronouncements of the Judicial Committee :—

Tennant v. Union Bank of Canada [1894] A.C. 31 ;

Attorney-General of Ontario v. Attorney-General of Canada [1894] 10 A.C. 189 ;

Grand Trunk Rly Co. v. Attorney-General of Canada [1907] A.C. 65 ;

Compagnie Hydraulique de St. François v. Continental Heat and Light Co. [1909] A.C. 194.

The principle deducible from these cases can be stated in the words of Sir Arthur Wilson, in the last-mentioned case, at page 198 :—

“ Where a given field of legislation is within the competence both of the Parliament of Canada and of the provincial legislature, and both have legislated, the enactment of the Dominion Parliament must prevail over that of the province if the two are in conflict.”

Assuming that both Parliament and the Quebec Legislature were within their jurisdiction when they granted priority to these taxes after law costs, there would clearly appear to be conflict between the two statutes. It is *nihil ad rem* to say that these enactments do not by themselves necessarily clash, but that the conflict is brought about by the accidental circumstance that the assets are insufficient to pay both claims, because it is in view of this very circumstance that Parliament has ordered that the claim for the Dominion tax “ shall constitute a first charge on the assets.” The judgment appealed from denies this right to the Dominion, 30 since it allows the Province to share with the former this first place in the distribution of the assets after payment of costs. Such a case of conflict between enactments of the Dominion and of the Province should not be met by giving both enactments concurrent effect. I do not think that Article 1985 of the Civil Code applies to such a case. Any argument based on that Article begs the question, for the point to be decided is whether the two claims are of “ equal rank.”

The appeal should be allowed with costs here and in the Court of King's Bench and the judgment of the learned trial judge restored.

(D) Newcombe (D) NEWCOMBE J.

40

In this case, the provincial Crown has no prerogative preference, the debtor not being a *comptable*. *Exchange Bank v. The Queen*, [1886], 11 A.C. 157.

The Quebec tax was imposed under Section XVIII, R.S.Q., 1909 ;

the preference upon which the Attorney General of Quebec relies is created by these words (Article 1357 of that section) ;

“ All sums due to the Crown in virtue of this Section (XVIII) shall constitute a privileged debt, ranking immediately after law costs.”

The alleged provincial privilege therefore depends upon an exercise of legislative power which Quebec claims to possess under Section 92 of the British North America Act, 1867. The provision is *ultra vires* of Quebec, if the power do not exist ; or, if it do exist, the provincial enactment may be overridden by the Parliament of Canada in the use of any apt ancillary power which the Dominion has under the enumerated heads of Section 91 of that Act.

Assuming that the Province had the power of enactment, an overriding power is to be found in the following items of Section 91 :—

- (1) “ The public debt and property ” ;
- (3) “ The raising of money by any mode or system of taxation ” ;
- (21) “ Bankruptcy and insolvency ” ;

one or another, but not logically within each of them. *Cushing v. Dupuy* [1880] 5 A.C., 415-416 ; *Attorney-General of Ontario v. Attorney-General of Canada* [1894] A.C., 200-201.

The exercise of the Dominion power is evidenced by Section 17 of ch. 47 of the Dominion Acts of 1922, which reads :—

“ Notwithstanding the provisions of *The Bank Act* and *The Bankruptcy Act*, or any other statute or law, the liability to the Crown of any person, firm or corporation, for payment of the excise taxes specified in *The Special War Revenue Act*, 1915, and amendments thereto, shall constitute a first charge on the assets of such person, firm or corporation, and shall rank for payment in priority to all other claims of whatsoever kind heretofore or hereafter arising save and except only the judicial costs, fees and lawful expenses of an assignee or other public officer charged with the administration or distribution of such assets.”

As to the interpretation of this section, I see no reason to doubt that it was the intention of Parliament, in the distribution of assets in bankruptcy, to accord priority to the excise taxes specified in *The Special War Revenue Act*, 1915, and its amendments.

The competing claims are stated in the admissions, as follows :—

“ 1. Messrs. Silver Brothers, the debtor above named, was declared bankrupt by an Order rendered by this honourable Court on or about 31st December, 1923.”

“ 2. The Government of the Dominion of Canada duly filed with the Trustee, a claim to the amount of \$3,707.07, for Sales Tax imposed in virtue of the Special War Revenue Act, 1915, and amendments, said tax having become due subsequent to the 28th of June, 1922, the date on which the Act 12 and 13 George V, Statutes of Canada, 1922, Chapter 47, amending the Special War Revenue Act, came into force.”

*In the
Supreme
Court of
Canada.*

—
No. 16.

Reasons for
Judgment.

—
(D) Newcombe
J.

—continued.

*In the
Supreme
Court of
Canada.*

No. 16.
Reasons for
Judgment.

(D) Newcombe
J.

--continued.

“ 3. The Government of the Province of Quebec also duly filed
“ with the Trustee a claim to the amount of \$527.42, for taxes due by
“ the debtor for the years 1921, 1922 and 1923, under the provisions of
“ Articles 1345 and following, of the Revised Statutes of Quebec,
“ imposing a tax on Commercial Corporations.”

And, for the purposes of this case, Section 17 is, in my judgment, bankruptcy legislation under item (21) of the Dominion powers. The provision is, therefore, competent to the Dominion Parliament.

I do not think there is anything in the Dominion Interpretation Act which is intended to conflict with these conclusions; and, in any case, 10 Section 17 must have its operation as expressed, “ notwithstanding any other statute or law.”

(E) Rinfret J. (E) RINFRET J.

Je suis d'avis qu'il ne s'agit pas ici d'un cas où les deux Parlements ont légiféré sur le même sujet (“ same field ”) et, dès lors, qu'un ne doit pas appliquer à cette cause les arrêts du Conseil Privé qui, dans les cas de conflit, ont accordé la prépondérance à la législation fédérale.

Il ne me paraît pas y avoir d'analogie entre la question qui nous est soumise et, par exemple, la subordination du pouvoir provincial en matière propriété et de droits civils au pouvoir fédéral en matière de faillite, qui 20 a fait l'objet de la décision *re Royal Bank of Canada v. Larue* [1928] A.C. 187).

L'effet de cette décision et des autres semblables est d'oblitérer la législation provinciale et de laisser subsister exclusivement la législation fédérale sur le point en conflit.

Ainsi, pour poursuivre l'exemple tiré de la cause de *Royal Bank v. Larue*, l'hypothèque judiciaire créée en vertu de la loi provinciale y fut déclarée inexistante parce que la loi de faillite fédérale le décrétait. Le résultat fut que la loi provinciale en l'espèce fut complètement mise de 30 coté.

Il ne saurait en être ainsi en matière de taxation. Il ne me paraît pas admissible que le Parlement fédéral puisse de cette façon contrôler ou limiter—et, au besoin, rendre inefficace—le pouvoir de taxer qui appartient aux provinces. Cette distinction nécessaire a été signalée précisément par le Conseil Privé dans la cause de *Citizens Insurance Company of Canada v. Parsons* [7 A.C. p. 96], où Sir Montague Smith dit (p. 108) :—

“ Notwithstanding this endeavour to give pre-eminence to the
“ Dominion Parliament in cases of a conflict of powers, it is obvious
“ that in some cases where this apparent conflict exists, the legislature
“ could not have intended that the powers exclusively assigned to 40
“ the provincial legislature should be absorbed in those given to the
“ Dominion Parliament. Take as one instance the subject ‘ marriage
“ and divorce,’ contained in the enumeration of subjects in sect. 91 ; it is
“ evident that solemnization of marriage would come within this

10 “ general description ; yet ‘ solemnization of marriage in the province ’
 “ is enumerated among the classes of subjects in sect. 92, and no one
 “ can doubt, notwithstanding the general language of sect. 91, that
 “ this subject is still within the exclusive authority of the legislatures
 “ of the provinces. So ‘ the raising of money by any mode 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.
 “ With regard to certain classes of subjects, therefore, generally
 “ described in sect. 91, legislative power may reside as to some matters
 “ falling within the general description of these subjects in the legis-
 “ latures of the provinces. In these cases it is the duty of the Courts,
 “ however difficult it may be, to ascertain in what degree, and to what
 “ extent, authority to deal with matters falling within these classes of
 “ subjects exists in each legislature, and to define in the particular
 “ case before them the limits of their respective powers. It could not
 20 “ have been the intention that a conflict should exist ; and, in order
 “ to prevent such a result, the two sections must be read together,
 “ and the language of one interpreted, and, where necessary, modified,
 “ by that of the other. In this way it may, in most cases, be found
 “ possible to arrive at a reasonable and practical construction of the
 “ language of the sections, so as to reconcile the respective powers they
 “ contain, and give effect to all of them.”

*In the
Supreme
Court of
Canada.*

No. 16.
Reasons for
Judgment.

(E) Rinfret J.
—continued.

Je répète, avec le Conseil Privé, parlant du pouvoir fédéral “ Le
 prélèvement de deniers par tous modes ou systèmes de taxation ” (Acte de
 l’Amérique Britannique du Nord, Article 91, parag. 3) et le comparant avec
 30 le pouvoir provincial, “ La taxation directe dans les limites de la province,
 dans le but de prélever un revenu pour les objets provinciaux ” (Acte cité,
 Article 92, parag. 2),—; “ it obviously could not have been intended that, in
 this instance . . . the general power should override the particular
 one ” (7 A.C. p. 108).—Ces deux paragraphes (91-3 et 92-2) confèrent des
 pouvoirs absolus et indépendants, dont l’un ne peut empiéter sur l’autre,
 tant en vertu de leur nature même que par application de l’article 125 de
 l’Acte de l’Amérique Britannique du Nord (comme le fait remarquer mon
 collègue, Mr. le Juge Duff, dont j’adopte le raisonnement).

Si, par conséquent, la législation fédérale qu’on invoque (“ An Act to
 40 amend The Special War Revenue Act 1915,” 12-13 Geo. V., c. 47, s. 17)
 a eu pour but de créer “ a first charge ” ayant priorité même sur la dette
 privilégiée de la Province de Québec (S.R.Q. 1909, Article 1357), je conclurais
 que, en cela, cette législation est *ultra vires*.

Mais l’intention de donner à la taxe fédérale précéance sur la taxe
 provinciale ne résulte pas nécessairement du texte de l’article 17 de Special
 War Revenue Act, 1915. L’intention “ d’y atteindre Sa Majesté ” n’y est
 pas “ formellement exprimée ” (Loi d’interprétation—S.R.C. 1906—Ch. 1,
 s. 16). Il est à présumer que le législateur fédéral a voulu que sa loi sur

*In the
Supreme
Court of
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No. 16.
Reasons for
Judgment.

(E) Rinfret J.
—continued.

The Special War Revenue fut comprise conformément à cette prescription de sa propre loi d'interprétation.

Il en résulterait que l'art. 17 du Special War Revenue Act, 1915 ne porte pas "atteinte . . . aux droits de Sa Majesté" représentée par la Province de Québec, tels qu'ils sont exprimés dans l'article 1357 des Statuts Revisés de Québec, 1909, et que chaque législation doit recevoir son plein effet.

Par suite de l'insuffisance des deniers dans la faillite de Silver Bros. il survient une impossibilité de payer intégralement les deux réclamations. La division proportionnelle s'impose donc par la force même des choses. 10 Ce n'est pas, si l'on veut, l'article 1985 du Code Civil qui s'applique, mais c'est le principe général de droit énoncé dans cet article qui entre en jeu.

Je rejeterais le pourvoi en appel avec dépens.

*In the
Privy Council.*

No. 17.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
17th Decem-
ber 1929.

No. 17.

Order in Council granting special leave to appeal to His Majesty in Council.

At the Court at Buckingham Palace.
The 17th day of December, 1929.

Present :

THE KING'S MOST EXCELLENT MAJESTY.

20

* * * * *

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 12th day of December 1929 in the words following viz. :—

"Whereas by virtue of His late Majesty King Edward the
"Seventh's Order in Council of the 18th day of October 1909 there
"was referred unto this Committee a humble Petition of the Attorney-
"General of the Province of Quebec in the matter of an Appeal from
"the Supreme Court of Canada between the Petitioner Appellant
"and the Attorney-General of the Dominion of Canada Respondent
"setting forth (amongst other matters) that the parties to the Suit 30
"in the Superior Court of Quebec agreed upon the following state-
"ment of facts : (1) Messrs. Silver Brothers the Debtors were declared
"bankrupt by an Order on the 31st December 1923 ; (2) the Govern-
"ment of the Dominion filed with the Trustee a claim to the amount
"of \$3,707.07 for sales tax imposed by virtue of the Special War
"Revenue Act 1915 and amendments the tax having become due
"subsequent to the 28th June 1922 the date on which the Act 12
"and 13 George V Statutes of Canada 1922 c. 47 amending the
"Special War Revenue Act came into force ; (3) the Government of
"Quebec also filed with the Trustee a claim to the amount of \$527.42 40
"for taxes due by the Debtors for 1921 1922 and 1923 under the
"provisions of Articles 1345 and following of the Revised Statutes
"of Quebec imposing a tax on Commercial Corporations ; (4) on the
"12th December 1924 the Trustee issued his final dividend sheet ;

10 “(5) the monies realised from the sale of the assets of the bank-
 ruptcy amounted to the sum of \$5,897.67 and after payment of the
 costs and expenses of the Trustee there remained the sum of
 “ \$2,353.51 which was insufficient to pay privileged claims ; (6) the
 “ Trustee in his dividend sheet collocated the claim of the Govern-
 ment of the Dominion by privilege according to it the balance
 “ of \$2,353.51 of which amount the sum of \$2,000 has already been
 “ paid by the Trustee ; (7) the Government of Quebec protested the
 “ dividend sheet contending as it now contends by this Petition that
 “ its claim should be paid before that of the Dominion Government
 “ or subsidiarily that the two claims should rank concurrently : that
 “ the case came on for hearing in the Superior Court (Panneton J.)
 “ and Judgment was delivered on the 30th December 1925 dismissing
 “ the claim of the Province of Quebec : that the Judgment of the
 “ Court of King’s Bench for the Province of Quebec (Appeal Side)
 “ was given on the 28th June 1927 and reversed the Judgment of
 “ the Superior Court by the majority of four Judges to one (Dorion
 “ Allard Letourneau and Rivard JJ.—Guerin J. dissenting) : that
 “ the Respondent appealed to the Supreme Court and after argument
 20 “ on the 15th November 1928 the Court directed the Appeal to be
 “ set down again for re-argument before the Full Court : that the
 “ Appeal came on for re-argument accordingly and Judgment was
 “ delivered on the 26th September 1929 by a majority (Duff and
 “ Rinfret JJ. dissenting) allowing the Appeal : And humbly praying
 “ Your Majesty in Council to order that the Petitioner shall have
 “ special leave to appeal from the Judgment of the Supreme Court
 “ of the 26th September 1929 or for such further or other Order as
 “ to Your Majesty in Council may appear fit :

30 “ The Lords of the Committee in obedience to His late Majesty’s
 “ said Order in Council have taken the humble Petition into con-
 “ sideration and having heard Counsel in support thereof and on
 “ behalf of the Respondent Their Lordships do this day agree humbly
 “ to report to Your Majesty as their opinion that leave ought to be
 “ granted to the Petitioner to enter and prosecute his Appeal against
 “ the Judgment of the Supreme Court of Canada dated the 26th day
 “ of September 1929 :

40 “ And Their Lordships do further report to Your Majesty that
 “ the authenticated copy under seal of the Record produced by the
 “ Petitioner upon hearing of the Petition ought to be accepted
 “ (subject to any objection that may be taken thereto by the Respon-
 “ dent) as the Record proper to be laid before Your Majesty on the
 “ hearing of the Appeal.”

His Majesty having taken the said Report into consideration was
 pleased by and with the advice of His Privy Council to approve thereof
 and to order as it is hereby ordered that the same be punctually observed
 obeyed and carried into execution.

50 Whereof the Governor-General Lieutenant-Governor or Officer ad-
 ministering the Government of the Dominion of Canada for the time being
 and all other persons whom it may concern are to take notice and govern
 themselves accordingly.

*In the
Privy Council.*

No. 17.
 Order in
 Council
 granting
 special leave
 to appeal to
 His Majesty
 in Council,
 17th Decem-
 ber 1929
 —continued.

M. P. A. HANKEY.

Exhibits.

EXHIBITS.

No. 1.
Claim of the
Attorney-
General of
Quebec,
28th January
1924.

No. 1.—Claim of the Attorney-General of Quebec.

In the matter of the estate of Silver Brothers Limited, in Liquidation, of Montreal.

I, John T. Finnie of the City of Montreal, in the Province of Quebec, do solemnly declare and say :

1. That I am one of the Joint Collectors of Provincial Revenue for the Revenue District of Montreal, and acting as such for the creditor hereinafter named and have knowledge of all circumstances connected with the claim herein mentioned. 10

2. That the said Silver Brothers Limited, was at the date of the Bankruptcy Act, namely : the twenty-second day of December, 1923, and is still justly and truly indebted to the Government of the Province of Quebec in the sum of \$527.42 as shown by the account hereto annexed and marked " A."

3. That the Government of the Province of Quebec has not, nor any person in its name has, by its order, to my knowledge or belief, had received payment or security of any kind, save and except that this claim constitutes in favor of the Crown a privileged claim ranking after law costs, under the authority of Article 1357 Revised Statutes of the Province of Quebec, 1909, and, keeps its prior rights under paragraph 6 of Article 51 of the Bankruptcy Act (9-10 Geo. V, Can. Ch. 36).

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

(Signed) JOHN T. FINNIE.

Declared before me at Montreal,
in the Province of Quebec, this
twenty-eighth day of January,
1924.

30

(Signed) H. H. RODGER,
*A Commissioner of the Superior Court
for the District of Montreal.*

Please acknowledge receipt and, in future, address all correspondence and notices in regard to this claim to :—

J. A. Bégin, Comptroller of Provincial Revenue, Quebec, P.Q.

Copy	SILVER BROTHERS LIMITED, in Liquidation		Jan. 28 1924.	Exhibits.
	C/—Allan J. Hart, Esq., 136 St. James Street.			No. 1.
	To THE GOVERNMENT OF THE PROVINCE OF QUEBEC		Dr.	Claim of the
	Principal Tax			Attorney-
			Balance	General of
	From 1st July 1921 to 30th June 1922 on the paid-up capital of	157,800		Quebec,
	" 22 " " 23	176,300		28th January
	" 23 to Dec. 22/23 Pro rata	189,300		1924
10				—continued.
			<u>413.47</u>	
	Additional Tax			
	From 1st July 1921 to 30th June 1922 for 1 place of business at	\$30.00	30.00	
	" 22 " " 1923 1	30.00 ea.	30.00	
	" 23 to Dec. 22/23 1 pro rata	30.00	14.38	
			<u>74.38</u>	
			<u>487.85</u>	
	Cheque should be made payable to the Order of the Provincial Revenue and Addressed to the Comptroller of Provincial Revenue of Quebec.			
	Interest.			
20	When Remitting add interest at 5% from 1st July 1921 on 176.41 to Dec. 22/23		21.85	
	" " 22 206.30		15.22	
	" " 23 105.14		2.50	
			<u>39.57</u>	
			<u>\$527.42</u>	

No. 2.—Claim of the Attorney-General of Canada.

" A "

Customs and Excise, Canada.

Statement of Claim of the Department of Customs and Excise, for excise taxes accrued and unpaid on sales made by Silver Bros. Ltd., in liquidation.

30	1923 — Adjustments	...	...	...	...	\$ 420.68
	" Aug. ...	...	...	...	...	508.56
	" Sept. ...	...	...	...	...	204.19
	" Oct. ...	...	...	...	...	134.53
	" Nov. ...	...	...	...	...	416.38
						<u>1,684.34</u>
	" Dec. ...	...	...	...	...	2,022.73
						<u>\$3,707.07</u>
	1924 — March	...	...	...	...	2,000.00
						<u>\$1,707.07</u>

No. 2.
Claim of the
Attorney-
General of
Canada,
19th Novem-
ber 1925.

Exhibits.
 —
 No. 2.
 Claim of the
 Attorney-
 General of
 Canada,
 19th Novem-
 ber 1925
 —continued.

I, the undersigned, hereby certify that I have audited the books of Silver Bros. Ltd., in liquidation, and to the best of my knowledge and belief the above is a true and correct statement of claim of the Department of Customs and Excise against the above estate.

(Signed) J. H. S. PARKE,
*Assistant Inspector,
 Customs and Excise.*

Proof of Debt.

The Bankruptcy Act.

In the matter of :

10

Silver Brothers Limited, of Montreal.

I, James Harkness Sloane Parke, of the City of Montreal, in the Province of Quebec, do solemnly declare and say :

1. That I am an Assistant Inspector of the undermentioned Creditor and have knowledge of all circumstances connected with the debt hereinafter referred to.

2. That the said Silver Brothers Limited, were at the date of the authorized Assignment (or Receiving Order) namely, the 31st December, 1923, justly and truly indebted to the Department of Customs and Excise of the Dominion of Canada, in the sum of Three Thousand Seven Hundred 20 and Seven Dollars and Seven Cents (\$3,707.07), as shown by the account hereto annexed and marked "A"; and still is justly and truly indebted to the said Department in the sum of One Thousand Seven Hundred and Seven Dollars and Seven Cents (\$1,707.07) as shown by the account hereto annexed and marked "A."

3. That the said Department of Customs and Excise has not, nor has any person by his order to my knowledge or belief for its use, had or received any manner of satisfaction or security whatsoever, save and except the following :

The said claim is secured in virtue of the Special War Revenue Act, 30 1915, as amended by 12 and 13 George V, Statutes of Canada, 1922, Chapter 47.

And I make this solemn Declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

(Signed) J. H. S. PARKE.

Declared before me at the City of
 Montreal, this 19th day of November
 A.D. 1925.

(Signed) GEORGE B. FOSTER,
*A Commissioner of the Superior Court
 of the District of Montreal.*

40

No. 3.—Trustee's Dividend Sheet.

Re : Silver Bros. Limited—Insolvent.

Exhibits.

No. 3.
Trustee's
Dividend
Sheet,
12th Decem-
ber 1924.

Final Dividend Sheet.

Receipts.					
Sale of Assets	...	...	...	\$5,568.25	
Accounts collected...	...	...	...	329.42	
					\$5,897.67
Disbursements.					
Custodian (Paul Koenig, Esq.)	...	...	...	\$ 260.91	
10 Insolvency office and bond	...	...	...	34.00	
Insurance (J. N. Neumann)	...	...	...	50.46	
Snow removal and sundries	...	...	...	26.65	
Dominion Messenger (Protection)	...	...	...	21.52	
Travelling expenses (L. E. Auger)	...	...	...	44.40	
Salary (book-keeper 2 weeks)	...	...	...	90.00	
Trustee's costs taxed by court	...	...	...	959.00	
Legal Fees.					
Bercovitch, Calder...	...	...	...	100.00	
Louis Fitch	...	...	...	391.90	
20 Rent of premises (occupation only)	...	...	...	1,140.32	
Trustee's fee and for discharge	...	...	...	300.00	
Inspector's fees 5 at \$25.00	...	...	...	125.00	
Preferential payment.					
Customs & Excise (\$2,000.00 paid)	...	...	...
Sales tax on account	...	...	...	2,353.51	
					\$5,897.67

No dividend for ordinary creditors.

Notice is hereby given that a first and final dividend sheet has been prepared in this matter which will be open to objection until the 31st day of December, 1924, after which date dividend will be payable at the office of the undersigned.

Montreal, 12th December, 1924.
136 St. James St.

ALAN J. HART,
Trustee.

In the Privy Council.

No. 185 of 1929.

ON APPEAL FROM THE SUPREME COURT OF
CANADA.

IN THE MATTER OF SILVER BROTHERS
LIMITED IN BANKRUPTCY.

BETWEEN

THE ATTORNEY-GENERAL FOR THE
PROVINCE OF QUEBEC ... *Appellant*

AND

THE ATTORNEY-GENERAL FOR THE
DOMINION OF CANADA ... *Respondent.*

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,

17, Victoria Street, S.W.1,

for the Appellant.

CHARLES RUSSELL & CO.,

37, Norfolk Street, W.C.2,

for the Respondent.