

Lower Mainland Dairy Products Sales Adjustment Committee - *Appellants*

v.

Crystal Dairy, Limited - - - - - *Respondents*

FROM

THE COURT OF APPEAL FOR BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 10TH NOVEMBER, 1932.

Present at the Hearing :

LORD TOMLIN.
LORD THANKERTON.
LORD MACMILLAN.
LORD WRIGHT.
SIR GEORGE LOWNDES.

[*Delivered by* LORD THANKERTON.]

This appeal arises out of an action by the appellants for a mandamus commanding the respondents, as a distributor as defined by Section 2 of the Dairy Products Sales Adjustment Act, being Chapter 20 of the Statutes of British Columbia, 1929, as amended by the Statutes, 1930, Chapter 13, and 1931, Chapter 14 (hereinafter called "the Act of 1929"), to make forthwith to the appellants, an incorporated Committee appointed under the Act of 1929, returns of all milk or manufactured products purchased or received by the respondents from dairy farmers as defined by the Act and for damages.

The action was brought in the Supreme Court of British Columbia, and is contested by the respondents on the ground that the Act of 1929 is *ultra vires* and beyond the competence of the Legislature of the Province of British Columbia.

The case was tried by Murphy J., who gave judgment on the 26th September, 1931, dismissing the action. On an appeal by the present appellants, the Court of Appeal of British Columbia

affirmed the judgment of Murphy J. on the 5th January, 1932, and the appellants now appeal from that judgment.

Section 3 of the Act of 1929 authorises the Lieutenant-Governor in Council, upon a petition supported by 66 per cent. of the dairy farmers present at a meeting held in terms of Section 4, to appoint an Adjustment Committee, in such portion of the Province as may be set forth in the order, to ascertain and apportion between the dairy farmers the returns received from the sale of milk on the fluid market and the sale of manufactured products, which are defined as any product manufactured wholly from, or derived by any form of treatment from, milk.

The appellant Committee were so appointed in 1929 for the Lower Mainland District of the Province. The chief market for disposal of fluid milk in that district is in the Cities of Vancouver and New Westminster.

It is common ground that disposal of milk in its fluid form affords a better return to the dairy farmer than its disposal in manufactured form, and, as the Act makes clear, the purpose of the Legislature was to relieve congestion in the fluid milk market, caused by a shortage of demand. Broadly stated, this object is attained by the Committee fixing monthly the standard prices for fluid milk and manufactured products respectively and the weight and quantity of each sold or disposed of by all the farmers in the district, based on returns compulsorily obtained from them, and thereafter apportioning the difference between the total value of the sales of each, calculated at the respective standard prices, over the whole body of farmers, in proportion to the weight of fluid milk sold or disposed of by each farmer. Each farmer is then bound to contribute his share of the apportionment to the Committee, who apportion and pay the total amount so received to the farmers who have sold or disposed of the manufactured products. This contribution by the farmers is hereinafter called the "adjustment levy."

The expenses of the Committee are met by a compulsory levy collected from the farmers, hereinafter called the "expenses levy."

The adjustment levy and the expenses levy are both recoverable by the Committee as a debt (Section 11), and the Committee may also require from the farmer an order for their amount on the purchaser of the farmer's milk or manufactured products (Section 9 (g)).

The main question at issue between the parties is whether the imposition of these levies, or either of them, involves taxation within the meaning of Sections 91 and 92 of the British North America Act, 1867, and, if so, whether they constitute direct taxation within the meaning of Section 92 (2) of the Act. Both the Courts below have held that both these levies are taxes and do not constitute direct taxation, and that the legislation is *ultra vires* of the Province. Mr. Justice M. A. Macdonald felt bound

by the decisions to hold, contrary to his personal view, that the adjustment levy was taxation and indirect; while holding that the expenses levy was an indirect tax, he doubted whether on that ground alone the whole Act would have to be regarded as *ultra vires*.

In the first place, it is clear, in the opinion of their Lordships, that the substantive provision of the Act of 1929 is to transfer compulsorily a portion of the returns obtained by the traders in the fluid milk market to the traders in the manufactured products market; the other statutory provisions afford the machinery by which this is enabled to be done. The decision of this appeal turns mainly, if not entirely, on whether such a compulsory transfer is within the legislative competence of the Province.

The appellants based their contention that the Act is *intra vires* of the Province (a) on paragraph 13 of Section 92 of the Act of 1867, viz., "Property and civil rights in the Province"; (b) on paragraph 16, viz., "Generally, all matters of a merely local or private nature in the Province," and (c) on Section 95 of the Act of 1867, which empowers the Legislature in each Province to make laws in relation to agriculture in the Province, so long as they are not repugnant to any existing law of the Dominion Parliament.

The respondents founded (a) on paragraph 3 of Section 91 of the Act of 1867, claiming that the Act of 1929 operated as taxation, and was not direct taxation, which is lawful to the Province under paragraph 2 of Section 92 of the Act of 1867, (b) that the Act of 1929 was an attempt to regulate trade in infringement of the reservation of trade and commerce to the Dominion under paragraph 2 of Section 91 of the Act of 1867, and (c) that it dealt with the merchandising of commodities and was not local in its operation, and was repugnant to existing legislation as to trade combines.

In the first place, the contention of the appellants that the Act of 1929 is a law relating to agriculture under Section 95 of the Act of 1867 may be disposed of as untenable, for the Act of 1929 does not appear in any way to interfere with the agricultural operations of the farmers, and Section 21 of the Act expressly prohibits the Committee from fixing prices at which milk or manufactured products may be sold, and from directing in what quantity, to whom, or when milk or manufactured products may be sold or disposed of by a dairy farmer.

The main issue of this appeal is whether the adjustment levies are taxes, and, if so, whether they are direct taxes. If both these questions are to be answered affirmatively, it matters not that they incidentally affect property and civil rights in the Province, for taxation necessarily has that effect, and the closing words of Section 91 will exclude any operation of paragraph 16 of Section 92. In that event it would be unnecessary to consider the remaining contentions of the respondents.

In the opinion of their Lordships, the adjustment levies are taxes. They are compulsorily imposed by a statutory committee consisting of three members, one of whom is appointed by the Lieutenant-Governor in Council, the other two being appointed by the dairy farmers within the district under Section 6 of the Act. They are enforceable by law, and a certificate in writing under the hand of the chairman of the committee is to be *prima facie* evidence in all Courts that such amount is due by the dairy farmer (Section 11). A dairy farmer who fails to comply with every determination, order or regulation made by a committee under the Act is to be guilty of an offence against the Act (Section 13), and to be liable to a fine under Section 19. Compulsion is an essential feature of taxation (*City of Halifax v. Nova Scotia Car Works*, [1914] A.C. 992, at p. 998). Their Lordships are of opinion that the Committee is a public authority, and that the imposition of these levies is for public purposes. Under Section 22 the Lieutenant-Governor in Council has power to suspend the functions of a committee, if its operations are adversely affecting the interests of consumers of milk or manufactured products, and the committee is to report annually to the Minister and to send him every three months the auditor's report on their accounts (Sections 12 (2) and 8A). The fact that the monies so recovered are distributed as a bonus among the traders in the manufactured products market does not, in their Lordships' opinion, affect the taxing character of the levies made. The district here affected is a considerable part of the whole Province, but the Act might have still wider application within the Province. While not saying that these elements are exhaustive of the elements which might be found in other cases to point to the same conclusion, their Lordships are of opinion that they are sufficient to characterise the adjustment levies in the present case as taxes. Somewhat similar considerations led Duff J. to the same conclusion as regards the levy for expenses in *Lawson's case*, (1931) S.C.R. 357, at p. 362, though the other members of the Court do not appear to have found it necessary to express any opinion on that ground of judgment, the main ground of decision being on "The regulation of Trade and Commerce."

It seems to follow that the expenses levies in the present case, which are ancillary to the adjustment levies, must also be characterised as taxes.

The principles on which taxes are to be classified as direct or indirect are now well established by decisions of this Board, which it is quite unnecessary to recapitulate. They are summarised in *Attorney-General for British Columbia v. Canadian Pacific Railway Co.*, [1927] A.C. 934, at p. 937. The adjustment levies are imposed on traders in the fluid milk market in proportion to the weight sold or disposed of by each of them calculated at the standard price; the expenses levies are imposed

“on milk and (or) manufactured products sold or disposed of.” In effect, both levies are imposed on the sale of commodities by the persons taxed, and, in their Lordships’ opinion, there can be little doubt that such taxes have a tendency to enter into and affect the price which the taxpayer will seek to obtain for his commodities, as is the case with excise and customs. That tendency is likely to be enhanced in the present case by the limitation of competition among the dealers in the fluid milk market, which seems to follow from the compensating bonus given to those who deal in the less remunerative market for manufactured products. The distinction between the present class of tax and that class of direct tax of which the assessments for the workmen’s compensation fund were an example (*Workmen’s Compensation Board v. Canadian Pacific Railway Co.*, [1920] A.C. 184), is pointed out in the judgment of the Board in that case. Lord Haldane, in delivering the judgment (at p. 190), says :—

“Nor can it be successfully contended that the Province had not a general power to impose direct taxation in this form on the respondents if for provincial purposes. In *Bank of Toronto v. Lambe* (12 App. Cas. 575), it was decided by the Judicial Committee that a Province could impose direct taxes in aid of its general revenue on a number of banks and insurance companies carrying on business within the Province, and none the less that some of them were, like the respondents, incorporated by Dominion statute. The tax in that case was not a general one, and it was imposed, not on profits, nor on particular transactions, but on paid-up capital and places of business.”

The tax in that case was assessed according to the amount of the employers’ pay-rolls. The tax here is imposed on the proceeds of particular transactions. Their Lordships are of opinion that both the levies here are indirect taxes. It is therefore unnecessary to consider the remaining contentions of the respondents.

Their Lordships are therefore of opinion that the Act of 1929, as amended, was not within the legislative competence of the Province, and that the decision of the Courts below was correct. They will humbly advise His Majesty that the judgment appealed from should be affirmed and that the appeal should be dismissed.

In accordance with an arrangement between the parties there will be no order as to costs.

In the Privy Council.

LOWER MAINLAND DAIRY PRODUCTS SALES
ADJUSTMENT COMMITTEE

2.

CRYSTAL DAIRY, LIMITED.

DELIVERED BY LORD THANKERTON.

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