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In the Supreme Court of Canada

BETWEEN :

JAMES FORBES,

(Defendant) Appellant,

—AND—

THE ATTORNEY-GENERAL OF THE PROVINCE OF MANITOBA
for and on behalf of His Majesty the King in the Right of the Province of
Manitoba,

(Plaintiff) Respondent.

APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

APPELLANT'S FACTUM

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PART I.

STATEMENT OF FACTS

The Plaintiff (Respondent) is the Attorney-General of the Province of Manitoba who brings this action for and on behalf of His Majesty the King in the Right of the Province of Manitoba.

The Defendant (Appellant) James Forbes is a Civil Servant of His Majesty the King in the Right of the Dominion of Canada and is engaged as a Meat Inspector in the Health of Animals Branch of the Department of Agriculture. His duties are to be performed in any part of Canada.

10 The Defendant John Henry Brookes who is mentioned in the case in appeal herein is also a Dominion Civil Servant engaged in the Postal Department and Samuel Harper is also a Dominion Civil Servant and is an Inspector in the Weights and Measures Branch of the Department of Trade and Commerce.

The Defendant James Forbes has been receiving as his remuneration \$115.25 per month plus 5% of his salary which is deducted for a superannuation fund. Payment is made by the (Dominion) Crown to James Forbes by means of an order issued at Ottawa signed by two persons in the Department at Ottawa and drawn upon the Receiver-General at
20 Ottawa. James Forbes resides at the City of Winnipeg in the Province of Manitoba.

The Plaintiff (Respondent) brought a civil action in the County Court of Winnipeg claiming from the Defendant (Appellant) James Forbes the sum of \$20.80 which the Plaintiff (Respondent) claims as a debt owing by the Defendant (Appellant).

The action is based on "The Special Income Tax Act" 23 Geo. V. Cap. 44 (Manitoba) assented to by the Lieutenant-Governor on the 4th day of May, 1933 (a copy of said Statute is contained in the Appendix at page 25 to this Factum). The Plaintiff (Respondent) alleges that under this statute the Defendant (Appellant) became liable for payment of 2 per centum
30 of the amount of the monthly remuneration which the Defendant (Appellant) received from His Majesty the King in the Right of the Dominion for the services which the Defendant (Appellant) rendered to His Majesty as a Dominion Civil Servant.

The Defendant (Appellant) denies that he is liable for payment and contends that the statute is ultra vires, the County Court has no jurisdiction, that there is no obligation on his part to make payment of the alleged tax and that the Province cannot place a tax upon his salary.

The three cases were tried before His Honor Judge Cory, on the 2nd day of May, 1934 (Proceedings at Case pages 5 et seq). Judgment was reserved and delivered in favor of Plaintiff (reasons at Case pages 19 to 23) on the 8th day of June, 1934.

The Defendants in all three cases appealed to the Court of Appeal for Manitoba and the cases were argued on the 3rd day of October, 1934. Judgment was reserved and on the 12th day of November, 1934, was delivered, dismissing the appeals of all three Appellants (formal order Case page 27 and reason for judgment at Case pages 28 to 31).

10 The Court of Appeal for Manitoba on the 12th day of November granted to the Appellant special leave to appeal from the said judgment to The Supreme Court of Canada (Case page 32).

PART II.

The Defendant (Appellant) contends that the judgment is erroneous because the Court should have held:

(1) That a County Court in the Province of Manitoba has no jurisdiction to entertain or try Crown Revenue Actions and that such actions can only be brought in The Court of King's Bench and that in such Court relief could on its equitable jurisdiction be granted.

(2) That Bills for taxation legislation cannot be enacted by the Legislature of a Province unless the proposed statute is foreshadowed and
10 first recommended in the Lieutenant-Governor's Speech from the Throne in the session in which it is intended to bring in such legislation and that the taxation statute in question was not so recommended and therefore could not be passed by the Manitoba Legislature.

(3) That the relationship of "employer" and "employee" does not exist between the Crown (Dominion) and its servants.

(4) That the Act in question does not include the Crown in the Right of the Dominion and such statute does not define the Crown as an "employer" within the meaning of such statute and the Manitoba Legislature cannot include the Crown in the Right of the Dominion as an "em-
20 ployer" and has not attempted to do so by the statute.

(5) That the Crown in the Right of the Dominion not being an "employer" within the meaning of the statute there could be nothing payable by a Dominion Civil Servant under Section 7 of the statute and therefore there was nothing for which the Plaintiff (Respondent) could bring action.

(6) That the moneys attempted to be taxed under the Act are the property of the Dominion and are not situated within the Province and the Provincial Legislature would therefore have no power to tax such moneys.

(7) That the Province cannot tax monies in the hands of the
30 Dominion.

(8) That the Act is invalid as it could by its terms imprison all Dominion Civil Servants by penalty if they failed to pay the tax and thereby prevent the Dominion from carrying out its powers.

(9) That the compensation of Dominion Civil Servants is fixed by the Dominion Parliament and no reduction or alteration can be made therefrom nor can any portion of it be taxed or intercepted by the Provincial Legislature.

(10) That the Provincial Legislature cannot tax the remuneration of Dominion Civil Servants or intercept moneys in the hands of the

(Dominion) Crown and the statute having attempted to do so it is ultra vires. The tax is not an "Income Tax" but merely a "wage tax" attempted to be levied against the wages as such.

(11) That a tax of 2% on the remuneration of the Defendant (Appellant) who is only receiving \$115.25 and has a family to support tends to impairment of his efficiency and there is no ability on his part to pay the tax.

(12) That the Dominion Parliament having passed legislation respecting "Income Tax" and having drawn income tax legislation within its domain then the Provincial Legislature cannot legislate upon that subject and any legislation passed by the Provincial Legislature would be inoperative so long as the Dominion Legislation remains in force.

(13) That the Act is indirect taxation and therefore ultra vires the Legislature of the Province.

(14) That Taxation Statutes should be construed against taxation.

PART III.

COUNTY COURT HAS NO JURISDICTION IN CROWN
REVENUE CASES.

The County Court of Winnipeg, where this action was brought is a statutory court deriving its jurisdiction from R.S.M. (1913) Cap. 44 and there is no provision in that Statute giving to the County Court in the Province of Manitoba jurisdiction to entertain or try Crown Revenue actions.

It is submitted that in Manitoba jurisdiction to try Crown Revenue actions vests solely in the Court of King's Bench and the procedure and practice is the same as it existed in England on the 15th day of July, 1870, when Manitoba entered Confederation. There has been no legislation affecting same in Manitoba since confederation, therefore the law and practice as it then stood has not been altered. In England, the Court of Exchequer had peculiar exclusive jurisdiction in Crown Revenue cases which in 1865 was transferred from the Court of Exchequer to the King's Bench Division. The jurisdiction which the King's Bench Division in England held on the 15th day of July, 1870, now vests in the Court of King's Bench in the Province of Manitoba. "The King's Bench Act" R.S.M. 1913, Cap. 46, Sec. 10 and now 21 Geo. V. Cap. 6, Sec. 49 reads as follows:

"49. The Court is and shall continue to be a court of record of original jurisdiction, and shall possess and exercise all such powers and authorities as by the laws of England are incident to a superior court of record of civil and criminal jurisdiction in all matters civil and criminal whatsoever, and shall have, use, enjoy and exercise all the rights, incidents and privileges of said courts as fully to all intents and purposes as the same were, on the fifteenth day of July in the year 1870, possessed, used, exercised and enjoyed by any of Her late Majesty's superior courts of common law at Westminster, or by the Court of Chancery at Lincoln's Inn, or by the Court of Probate, or by any other court in England having cognizance of property and civil rights, and of crimes and offences."

The procedure in England is governed by the "Crown Suits Act" (1865) 28 and 29 Vic. Cap. 104. That Statute is still in force in the Province of Manitoba.

The Manitoba Legislature carefully preserved the old practice as it existed in England by Rule 1 of the King's Bench Act. R.S.M. (1913) Cap. 46, which provides:

"1. Nothing in these rules shall be construed as intended to affect the practice or procedure in criminal proceedings, or proceedings on the Crown or revenue side of the Court, or upon election petitions, or under the Winding-Up Acts."

The Court of Exchequer in England (now the Court of King's Bench in Manitoba) could relieve a subject from liability in a Crown Revenue action under the equitable jurisdiction which it can exercise in such cases and it is the only Court which could grant such relief. On his argument that such Court has exclusive jurisdiction to entertain such actions, and equitable jurisdiction to grant such relief, the Appellant cites the following authorities:

Archibold's Q.B. Practice (1866) Vol. 1, page 2.

10 "The Court of Exchequer has exclusive jurisdiction in all matters
 "which concern the King's profit or revenue, as of debts or duties to the
 "King, or of matters which concern the lands, rents, franchises, heredita-
 "ments, goods and chattels of the King. . . . If an action be brought in
 "either of the other Courts, it would be good ground for removing it into
 "the Exchequer, if any matter properly cognizable on the revenue side of
 "that Court is drawn into question and it seems that the Court will make an
 "order for the removal of such a cause at any stage of the proceedings
 ". . . the equity jurisdiction of the Court as a Court of Revenue still re-
 "mains."

Attorney-General v. Hallet 15 M. & W. at page 107, 153 E.R. at page 781.

20 Alderson B. says: "I am quite of the same opinion. This is a matter
 "that clearly touches the profit of the Crown; and really the whole arises
 "out of this, that in ancient times it was, for the convenience of all parties,
 "agreed that the Court of Queen's Bench should have certain peculiar
 "jurisdictions, the Common Pleas certain other peculiar jurisdictions, and
 "the Court of Exchequer certain others. Among the last, belonging to the
 "Court of Exchequer, was assigned the jurisdiction in all those cases which
 "touched the profit of the King; and in order to bring them here, this pro-
 "cess must be adopted. It is not in truth any claim of prerogative ad-
 "verse to the subject, because it belongs to the Crown."

30 *Attorney-General v. Halling 15 M. & W. at page 698, 153 E.R. at page 1032.*

Pollock C.B. says: "Again, by the 33rd Henry 8, C.39 the Judges of
 "this Court, who have the care of its equitable procedure, are empowered
 "to relieve the subjects from recognizances and bonds, upon proper proof,
 "and to relieve persons who can shew sufficient cause, in reason and good
 "conscience, in bar of any debt or duty to the Crown. . . . Nor would it, we
 "think, be very seemly for the Court of Chancery to interfere, in a matter
 "of revenue, with a Court which from time immemorial has held exclusive
 "jurisdiction in such matters, and this too, in cases in which the Court of
 "Chancery must itself govern its proceedings by precedents to be found
 40 "only in our records."

Miller v. Attorney-General 9 Gr. Ch. at page 560.

Vankoughnet C. says: "The claim of the Crown against the Plaintiff is "one relating to the revenue, with which in England the Court of Exchequer, "and in this country the Courts of Queen's Bench and Common Pleas have "peculiar power to deal. The statute 33 Hen. VIII., Ch. 39, Sec. 55, directs "in what courts (the Court of Chancery not being one) debts due to the "Crown shall be sued for. Section 79 provides, 'that if any person or per-
 10 "sons of whom any such debt or duty is at any time demanded or required, "allege, plead, declare, or shew in any of the said courts, good, perfect, "and sufficient cause and matter in law, reason or good conscience in bar or
 "discharge of the said debt,' etc., 'then the said courts shall have full "power to adjudge and discharge the person so impleted,' etc. Under the "authority of this section the Court of Exchequer in England has frequent-
 "ly granted relief against the strictly legal claims of the Crown. All the "cases which were cited to me in support of this bill were cases from the "Exchequer, and it seems reasonable and convenient that the whole matter
 "should be disposed of there when on grounds of equity the court can stay "its legal process. The Court of Exchequer has long claimed and exercised
 "an equitable jurisdiction in matters of revenue and while the Attorney-
 20 "General was proceeding by a sci. fa., or an extent on the one side of the "Court, matter in equity might be shown on the other side why the legal
 "process should not have effect. The history of this jurisdiction is traced "and its character explained in the very interesting and elaborate judg-
 "ment of Pollock C.B., in *Attorney-General v. Halling*."

The Appellant also relies upon *Norwich v. Attorney-General* 9 Gr. Ch. 563; *Lord Stanley of Alderley v. Wild & Son* (1900) 1 Q.B. 256 at page 263; *Churtin v. Wilkin* (1884) W.N. 62.

"The Special Income Tax Act" upon which the action is founded does not provide that action can be brought in the County Court. This being a
 30 Crown Revenue action, it is submitted, that the only Court that could entertain such action in Manitoba would be the Court of King's Bench and if such action were brought there, relief could be granted to the subject on the peculiar equitable jurisdiction which that Court possesses.

TAXATION LEGISLATION CANNOT BE PASSED BY LEGISLATURE UNLESS FIRST RECOMMENDED IN LIEUTENANT-GOVERNOR'S SPEECH FROM THE THRONE.

Exhibit No. 3 at the trial (Case, pages 13 to 16) contains the Lieutenant-Governor's Speech from the Throne at the session of the Legislature in which "The Special Income Tax Act" was passed. The message of the
 40 Lieutenant-Governor at that session does not foreshadow the Statute or any such legislation. It is submitted that no such Statute enacting a new

form of taxation can be passed by the legislature of the Province unless it has been first mentioned by the Lieutenant-Governor in his message to the legislature in accordance with section 54 of "The British North America Act." That section is by section 90 made applicable to Provincial Legislatures.

The object of the section is that imposition of burthens upon the people in the shape of public taxes cannot be enacted unless they have first been mentioned in the message of the Lieutenant-Governor and the Crown must first come down with recommendations before the tax can be imposed or the Statute considered.

The sections of "The British North America Act" (1867) relied upon are as follows:

"54. It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to that House by message of the Governor-General in the Session in which such vote, resolution, address, or bill is proposed."

"90. The following Provisions of this Act respecting the Parliament of Canada, namely,—the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts and the Signification of Pleasure on Bills reserved . . . shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant-Governor of the Province for the Governor-General, of the Governor-General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada."

Bourinot in his book on Parliamentary Procedure (4th Edition) at page 404 dealing with the above sections of the Act says:

"The rules of the house with respect to the expenditure of public money and the imposition of burthens upon the people are in conformity with the practice of its English prototype. All the checks and guards which the wisdom of English Parliamentarians has imposed in the course of centuries upon public expenditures now exist in their full force in the Parliament of the Dominion. The Cardinal principle, which underlies all parliamentary rules and constitutional provisions with respect to money grants and public taxes is this—when burthens are to be imposed on the people, every opportunity must be given for free and frequent discussion, so that parliament may not, by sudden and hasty votes, incur any expenses, or be induced to approve of measures, which may entail heavy and lasting burthens upon the country. Hence it is ordered that the Crown must first come down with a recommendation whenever the government finds it necessary to incur a public expenditure. . . ."

And further Bourinot at page 405 says:

“... ‘one of the greatest advantages of the union will be that it will be possible to introduce a new system of legislation, and, above all a restriction upon the initiation of money votes’ observed Lord Sydenham in his celebrated report.”

At page 408 Bourinot quotes Speaker Cockburn as having said:

“But the constitutional provision contained in the 54th section of the Imperial Act of Union, is one that, being absolutely binding, should be neither extended nor restrained by implication, but should at all times be
10 “most carefully considered by the House.”

It is therefore submitted that the taxation statute in question, not having been mentioned in the Speech from the Throne (exhibit 3, Case Pages 13 to 16), could not be lawfully passed by the Legislature of the Province of Manitoba.

RELATIONSHIP OF EMPLOYER AND EMPLOYEE DOES NOT EXIST BETWEEN CROWN (DOMINION) AND ITS SERVANTS.

All persons in the service of the Crown are merely its servants, the relationship of employer and employee does not exist between them. Crown servants for instance cannot bring action against the Crown for compensation, wrongful dismissal or for any of the ordinary rights arising out of the relationships which exist between employer and employee. Halsbury Laws of England, Vol. 20, page 98, section 188 and Halsbury (2nd Ed.) Vol. 6, page 488 is authority that servants of the Crown may be dismissed at any time and that the Crown cannot even deprive itself by agreement of the power of dismissing a servant at will and no contract with the servant could be binding upon the Crown.
20

It is therefore submitted that any definition in the Statute in question defining “employer” or “employee” could not be taken to extend to the Crown in the right of the Dominion.

30 STATUTE DOES NOT INCLUDE THE CROWN IN THE RIGHT OF THE DOMINION AND THE CROWN IS NOT AN “EMPLOYER” WITHIN THE MEANING OF THE STATUTE.

Sec. 2 ss. 1 (c) of “The Special Income Tax Act” defines an “employer” as follows:

“(c) ‘employer’ includes every person, manager or representative ‘having control or direction of or responsible, directly or indirectly, for the wages of any employee, and in case the employer resides outside the Province, the person in control within the Province shall be deemed to be the employer.’”

It is submitted that this section does not specifically state that an "employer" includes the Crown in the Right of the Dominion and that the Crown not having been specifically named it cannot be taken to be included in the interpretation of an "employer." It is further submitted that the Provincial Legislature in any event could not in this Statute include the Crown in the Right of the Dominion and furthermore that they have not by the wording of the Statute included the Crown at all.

In *Hamilton v. The King* 54 S.C.R. at page 357, Idington J. says that a Provincial Legislature cannot affect the rights of any one in his
10 relations to the Crown on behalf of the Dominion and that "it will be unsuccessful unless adopted by Parliament." It was there held that the Ontario Statute did not apply to the Dominion as the Dominion had not intermeddled in the legislation, and Idington J. says further "that the Ontario Legislation giving the Crown the right to receive acknowledgments in writing independently of the Dominion Parliament was *Ultra Vires*" and it was held that the Statute does not include or bind the Dominion.

In *Rex v. Anderson* 39 M.R. 84 the Manitoba Court of Appeal held that the Motor Vehicles Act does not apply to a Dominion Military Officer
20 and that Provincial Legislation did not affect him and he could not be compelled to obtain a license to drive the car.

In *Rex v. Rhodes* (1934) 1 D.L.R. 251, Armour J. of the Ontario Supreme Court also held that the Ontario Highway Act could not be extended to a Dominion Officer and that he was not compelled to obtain a license under that Statute.

In *Rex v. Cooke* (1789) 3 T.R. at page 521, Lord Kenyon C.J. says: "Generally speaking in the construction of Acts of Parliament the King
"in his Royal character is not included unless there be words to that
"effect."

30 Alderson B. in delivering the judgment of the Court in *Attorney-General v. Donaldson* (1842) 10 M. & W. at pages 123 and 124 says:

"It is a well established rule, generally speaking, in the construction
"of acts of Parliament that the King is not included unless there be words
"to that effect, for it is inferred prime facie that the law made by the
"Crown with the assent of Lords and Commons is made for subjects and
"not for the Crown" and in *Perry v. Eames* (1891) 1 Ch. page 665 Chitty J.
says: "The general rule that the Crown is not bound by a Statute unless
"named." In *re Adams Shoe Co. Ltd.* 54 O.L.R. 626 Fisher J. held that
40 the Dominion and at page 629 he held that reference to the Crown in Provincial Legislation could only mean the Crown as represented by the

Province and that therefore the Legislation which attempted to make taxes a claim prior to the claim of a Crown in the Dominion would be ultra vires.

Audette J. in *The King v. Powers* (1923) Ex. C.R. 131 held "that Provincial Legislature cannot proprio vigore take away or abridge any privilege, any right of the Dominion Crown emanating from the royal prerogative or resting upon any competent legislation of the Parliament of Canada."

Gauthier v. The King 56 S.C.R. 176, is submitted as authority from this Court that a reference in a Provincial Statute to the Crown means the Crown in the right of the Province only and that it does not mean a Crown in the rights of the Dominion.

In *Mersey Docks v. Cameron* (1865) 11 H.L. Cas. 443: The question arose as to whether the term "occupier" used in the Statute could be extended to include the Crown or any of its servants and it was held that it could not extend to the Crown or its direct and immediate servants and Lord Cranworth at page 508 says: "that the Crown not being named is not bound by the Act and that lands and houses occupied by the Crown or by servants of the Crown for the purposes of the Crown are not liable to be rated."

Angers J. in *McLaren v. Minister of National Revenue* (1934) Ex. C.R. page 15 held that the Crown was not bound by the Winding-Up Act as it was not specifically mentioned and that section 16 of the Dominion Interpretation Act makes that clear.

The Dominion Interpretation Act, R.S.C. (1927) Cap. 1, sec. 16 provides as follows:

"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 "The Manitoba Interpretation Act," R.S.M. (1913) Cap. 105 Sec. 11 provides as follows:

"11. No provisions or enactment in any Act shall affect in any manner or way 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 further submitted that the definition of an "employer" under the Statute could not and in fact does not include the Crown and the defendant was, therefore, not receiving compensation from an "employer" as defined by the Statute.

**THE CROWN IN THE RIGHT OF THE DOMINION NOT BEING AN
 "EMPLOYER" THERE SHOULD BE NOTHING PAYABLE BY A
 DOMINION CIVIL SERVANT UNDER SECTION 7 OF THE
 STATUTE.**

It is submitted that the Crown in the right of the Dominion, not being an "employer" within the meaning of the Statute, there was no debt owing by the Appellant to the Province. The Crown in the right of the Dominion could not be compelled to deduct from its servant and pay over to the Province any portion of remuneration which it was paying to its own servants. 10 The fact is that the Dominion Crown has not done so and has paid to the Appellant the full amount of his remuneration. If the Dominion Crown is not an "employer" then its servant does not become liable to pay 2% of his remuneration, for it is only in cases as where an "employer" pays to an "employee" that the 2% is payable. The Dominion Crown not being an "employer," within the definition of the Statute, then its servant is not liable.

Sec. 4 (1) of the Act in question reads as follows:

"4. (1) Every employer at the time of payment of wages to an employee shall levy and collect the tax imposed on the employee by this part 20 "in respect of the wages of the employee earned or accruing during the "period covered by the payment, and shall deduct and retain the amount of "the tax from the wages payable to the employee, and shall, on or before "the fifteenth day of the month next following that in which the payment "of wages takes place, or at such other time as the regulations prescribe, "pay to the administrator the full amount of the tax. No employee shall "have any right of action against his employer in respect of any moneys "deducted from his wages and paid over to the administrator by the em- "ployer in compliance or intended compliance with this section."

The above section only imposes upon those who are within the defini- 30 tion of "employer" an obligation to deduct and pay the tax and if the Dominion Crown is not an "employer" then it is not incumbent upon the Dominion Crown to make any deduction or payment.

Sec. 7 of the said Act reads as follows:

"7. In case the wages earned or accruing due to an employee are paid "to him without the tax imposed thereon being deducted therefrom by his "employer, it shall be the duty of the employee to forthwith pay the tax, "and all the provisions of sections 23, 23A, 24 and 25 of 'The Income Tax "Act' shall, mutatis mutandis, apply to the collection and recovery of the "tax so imposed from the employer and employee, or either of them."

40 It is submitted that the above section only makes it a duty on an "employee" to pay the tax where his "employer" has failed to deduct it.

It is again submitted that the Dominion Crown not being an "employer" the case at bar is not one where an "employer" has failed to deduct the tax and in view of the fact that it is only in cases where an "employer" has failed to make the deduction that it is the duty of the "employee" to pay it, there is no duty on a Dominion Civil Servant to pay it. The Appellant herein did not receive any money from an "employer" within the definition of the Act and therefore could not under section 7 have become liable for payment of 2% of the amount he received.

It is contended by the Appellant that he did not receive any money 10 from an "employer" and that the Manitoba Legislature had never defined or intended that the Dominion Crown should be an "employer" within the meaning of that Statute nor had they legislative authority to so declare.

Since Sec. 7 is the only one under which the Plaintiff could argue that any debt or liability would be created on the part of an "employee," then it is submitted that the Plaintiff's action must fail.

THE MONEYS ATTEMPTED TO BE TAXED ARE THE PROPERTY OF THE DOMINION AND ARE NOT SITUATED WITHIN THE PROVINCE.

It is quite evident that it is the intention under Sec. 4 (1) of the Act 20 to place that tax whilst the moneys are still in the hands of and are the property of the "employer" and before they have passed over to the "employee." This means that in the Appellant's case the Provincial Act attempts to reach the moneys whilst they are still Dominion property and in the hands of the Dominion. It is submitted that the Province cannot enact such legislation.

Sec. 125 of the British North America Act reads as follows:

"125. No Lands or Property belonging to Canada or any Province shall be liable to Taxation."

The Appellant receives his remuneration by way of an order addressed 30 to the Receiver-General of Canada at Ottawa which is signed by the Comptroller of the Treasury (case page 8, lines 10 to 24). This document is not a bill of exchange and is eventually paid upon presentation to the Department at Ottawa. It is not drawn upon any chartered bank. The property or money for which this is paid is therefore never situated in the Province of Manitoba.

In *King v. National Trust* (1933) 4 D.L.R. 465, The Supreme Court of Canada held that the law of situs applies on taxation and therefore debent-

tures not situated in the Province of Quebec were not taxable for succession duties.

It is therefore submitted that the order for payment of the money being cashed at Ottawa was never property situated in the Province of Manitoba and that the property belongs to the Dominion at the time the Act attempts to attach it, and the Province cannot enact such legislation.

PROVINCE CANNOT TAX MONEYS IN THE HANDS OF THE DOMINION.

10 The Dominion alone has right to fix salaries or allowances of its servants. In the exclusive powers given to the Dominion Parliament under "The British North America Act" Sec. 91 (8) reads as follows:

"91. (8) The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada."

Under this section the Dominion alone fixes the remuneration which it pays to its servants and decides what is necessary in each case. If the Province taxes specifically any part of that remuneration it would be impairing the efficiency of the Dominion servant and taking away that which the Dominion has considered is necessary for him to maintain himself in his station of life.

20 The Appellant contends that taking away part of such salary is in effect an interference with the Dominion's exclusive power to fix the amount which its servants should receive.

PROVINCE UNDER PENALTIES IMPOSED IN SECTION 6 (2) OF THE ACT MIGHT IMPRISON ALL DOMINION SERVANTS AND THEREBY PREVENT THE DOMINION FROM CARRYING OUT ITS POWERS.

Under Section 6 (2) of the Act every person who contravenes any provision of part 1 shall be liable to a fine not exceeding \$500.00 and each day's continuance of the act or default shall constitute a separate offence.

30 Under this section a Dominion Civil Servant would be liable to prosecution and if unable to pay might be imprisoned. It would, therefore, follow that if the Province could enact such legislation it could prosecute all Dominion Civil Servants and if they were unable to pay the penalty might imprison them and thereby impair the various important Dominion Departments such as the Post Office, Customs, etc.

It is submitted that the Provincial Legislature could not pass such enactments. This section also shows the attempt on the part of the Province to interfere with the Dominion powers.

**COMPENSATION OF DOMINION CIVIL SERVANTS IS FIXED BY
DOMINION PARLIAMENT AND NO DEDUCTION OR ALTERA-
TION CAN BE MADE THEREFROM.**

It is the Dominion Parliament alone that can fix compensation to the Dominion Civil Servants and the same cannot be altered and no deduction made therefrom except by Parliament.

10 By the "Civil Service Act" R.S.C. (1927) Cap. 22, as amended by the Act 22 and 23 Geo. V. Cap. 40, Parliament has enacted legislation regarding those Civil Servants that come within that statute. All servants of the Crown do not come under that Act but the majority of them do.

The remuneration is fixed under this statute and Sec. 10, ss. 1 provides as follows:

20 "10. (1) The civil service shall, as far as practicable, be classified "and compensated in accordance with the classification of such service "dated the first day of October, one thousand nine hundred and nineteen, "signed by the Commission and confirmed by chapter ten of the statutes of "the year one thousand nine hundred and nineteen, second session, and
"with any amendments or additions thereto thereafter made; and refer-
"ences in this Act to such classification shall extend to include any such
"amendments or additions."

30 This being an Act of Parliament it is submitted that no Provincial Legislature could interfere with, deduct from or pass any legislation compelling a Dominion Civil Servant to give up his salary or any portion thereof. It is Parliament and Parliament alone that can make any alterations in the law as it stands under the "Civil Service Act." Even the Dominion Government itself could not without special enactment by Parliament change, alter or deduct from a Dominion Civil Servant any portion of the compensation to which he would be entitled and which has been set by the "Civil Service Act."

"The Special Income Tax Act" of the Manitoba Legislature clearly taxes and attempts to intercept in the hands of the Dominion a portion of the remuneration which is fixed by the Dominion Parliament as compensation to the Dominion Civil Servant and it is submitted that this would not be within the legislative power of the Provincial Legislature.

PROVINCE CANNOT TAX DOMINION SERVANTS' REMUNERATION OR INTERCEPT MONEYS IN THE HANDS OF THE DOMINION.

The Appellant contends that Part 1 of the Act is not an Income Tax Act but is a Wage Tax Act. Part 1 of this Act taxes only the salary and thereby taxes it "qua" salary.

An Income Tax Act would be one which groups together a person's entire income regardless of its source, and after allowing certain exemptions taxes the balance.

10 A discrimination is made under Part 1 of the Act against the wage earner. It is thereby distinguished from an Income Tax Act which would tax all persons alike. Part 1 of the Act does not for instance tax farmers or persons who are not paid wages but is confined to a tax on the wages earned by a wage earner.

Section 4 (1) of the Act endeavors to place the tax against the salary itself and to intercept it in the hands of the employer. It is contended by the Appellant that the Province could not tax a Dominion Civil Servant's remuneration nor could it enact legislation intercepting or attempting to intercept it in the hands of the Dominion.

20 In *Evans vs. Hudson* (1877) 22 Lower Canada Jurist Reports at page 268 and at 2 Cart. page 346 Rainville J. in the Superior Court at Montreal held that the salary of an Inland Revenue Officer cannot be seized in the hands of the collector of Inland Revenue and that the exemption of salaries of public employees from seizure is a matter of public order and that the Legislature of the Province of Quebec has not the power to declare seizable the salaries of employees of the Federal Government.

In *Leprohorn vs. Corporation of the City of Ottawa*—2 O.A.R. 522, the Ontario Court of Appeal held that the Provincial Legislature has no power to impose a tax upon the official income of an officer of the Dominion Government.

30 *Abbott vs. City of St. John*, 40 S.C.R. 597 was cited on behalf of the plaintiff. That case is clearly distinguishable from the one at bar for there the Court was dealing with a general income tax statute and held that a Dominion Government Official's salary should be included in computing his general income but that case was not one of a statute placing a tax upon his salary but was merely a general income statute. In the judgments delivered there was a careful distinction made between a general income tax and a specific tax upon salary and MacLennan J. at page 616 in dealing with the statute there in question says: "From all this it is appar-

40 ent that the tax to be levied in any year is not a part of the income, as

“such, of the inhabitant, but a sum of money to be measured by or in proportion to the amount of his income during the preceding year . . . no attempt is made to seize or appropriate the income itself, or to anticipate its payment.”

There is a vast difference between the Abbott case and the one at bar. In the Abbott case it was not a tax upon the salary. In our case it is a tax upon the salary itself and the Manitoba Act does anticipate its payment. It is therefore not taxable, the very salary that the Dominion Servant receives is anticipated. It is submitted that in the
 10 Abbott case, had the statute been one taxing the salary, this Honourable Court would have come to a different conclusion but what saved the statute there was the fact that it was not a tax upon salary but upon the general net income. The case at bar is one upon the salary and it is therefore submitted that the statute cannot stand and the Provincial Legislature cannot tax a Dominion Servant's salary.

Clement on Canadian Constitution (3rd Ed.) at page 642 says:

“Dominion Officials cannot be ordered to pay a judgment by instalments under Provincial Acts and that their salaries cannot be attached or made exigible in execution under such Acts” and in referring to the
 20 Abbott case and the Australian case, Clement further says:

“The judgment, however, does not touch the larger question as to the power of a provincial legislature to affect directly the salary payable by the Crown by provisions designed to intercept it and prevent its receipt by the officer to whom it is due. Such provisions could, it is conceived, be enacted by the federal parliament only.”

The Abbott case was also referred to in Caron vs. The King (1924) A.C. 999, but there again the Privy Council was dealing with a general income tax Act and the remarks of Lord Phillimore at page 1006 are important upon this subject where he says:

30 “But the Income Tax Acts, notwithstanding the special language of the second Act are not discriminating statutes. They are statutes for imposing upon all citizens contributions according to their annual means, regardless of, or it may be said not having regard to the source from which their annual means are derived.”

The Abbott and Caron cases are clearly distinguishable from our Act. The other statutes tax all persons alike on their general income regardless of its source. The Manitoba statute taxes the wages only. It is submitted that the Leprohorn case has never been overruled in so far as it holds that the Province cannot tax a Dominion Servant's remuneration. The Province has no power to tax such remuneration. Under the
 40 above authorities the Province could not anticipate, intercept or tax the remuneration or salary which the Dominion Servant receives from the Dominion and in so far as the statute attempts to do so it is ultra vires.

TAX IMPAIRS THE EFFICIENCY OF DOMINION SERVANT.

The Appellant receives a remuneration of only \$115.25 per month plus 5% which has been deducted for a superannuation fund (case page 8, lines 27 to 38 and p. 9, lines 1 to 10). On this sum he supports himself and his family (case page 9, lines 27 to 43 and at page 11, lines 1 to 9). This is a small salary for a man who must maintain himself and family in such respectable manner as would be required of a Dominion Civil Servant in his position. Any amount taken from him, by the Province would impair his efficiency and affect his mode of life and efficiency. There is no ability on his part to pay such a tax.

DOMINION LEGISLATION OVERRIDES PROVINCIAL AND THE DOMINION HAVING PASSED "INCOME TAX" LEGISLATION, PROVINCE CANNOT LEGIASLATE UPON THAT SUBJECT.

The Appellant contends that the legislation is a wage tax. If the statute is "income tax" legislation then the same could not be enacted by the Province as the Dominion has drawn "income taxes" into the domain of Dominion Legislation and therefore the Provinces cannot enact income tax legislation.

Income Tax legislation is Direct Taxes and can therefore be dealt with by both the Dominion and the Province. If, however, the Dominion has covered the field then the Province cannot legislate upon the subject.

The Dominion Parliament by various statutes has legislated upon Income Taxes. The first of these statutes 7 and 8 George V. Cap. 28, was enacted in 1917 and the present Dominion statute is R.S.C. (1927) Cap. 97 and amendments thereto.

It is quite clear that the Dominion has drawn income tax legislation within the domain of its legislative authority.

The first Income Tax statute enacted by the Manitoba Legislature is 13 George V. Cap. 19, assented to May 5th, 1923, which is now Cap. 91 of the 1924 Consolidated Amendments and further amending statutes made thereto. The other Manitoba Income Tax statute is the one in question in this action, namely "The Special Income Tax Act" 23 George V. Cap. 44 (1933) a copy of which is contained in appendix to this factum.

For authority that the Province cannot legislate and that Provincial legislation would be inoperative where the Dominion has already legislated the Appellant cites:

overlapping legislation

- G.T.R. v. Atty-Gen. (1907) A.C. 65.
- Rex v. Stuart 34 M.R. 516.
- Rex v. Lichman 54 O.L.R. 502.
- Ex Parte Ashley 8 C.C.C. 328.
- Rex v. Ottenson (1932) 1 W.W.R. 40.
- Hoffer v. C.C.M.A. (1929) 2 D.L.R. 73.
- Rex v. Gallant 51 C.C.C. 209.
- Tennant v. Union Bank (1894) A.C. 31.
- Atty-Gen. of Can. v. Atty-Gen. of B.C. (1930) A.C. 111.

10 In Re Silver Bros. Limited, Attorney-General of Quebec v. Attorney-General of Canada (1932) A.C. 514 the Privy Council reiterated the principle that Dominion Legislation prevails where the two legislations overlap. This case is particularly in point, for it was one where two taxation statutes both Dominion and Provincial came into question. Although the two taxation statutes did not overlap in their main parts as the Dominion was a sales tax and the Provincial was a commercial corporations tax, yet the opinion was expressed that the concomitant parts of the statute did overlap and the Dominion would prevail. Lord Dunedin at page 521 referring to a previous judgment of Lord Tomlin says: "but if the

20 "field is not clear and the two legislations meet, the Dominion Legislation "must prevail" and he says further "as soon as you come to the concomitant privileges of absolute security they cannot stand side by side and "must clash; consequently the Dominion must prevail." In that case the two legislations were different kinds of taxations and it was held that the taxation did not overlap but the concomitant parts did. It is submitted that from that decision it can be drawn that had the two taxations been of the same kind they would have been held by the Privy Council to overlap and the Dominion prevail. That case, it is contended, also holds that where the two statutes overlap the Dominion shall prevail.

30 "The Income Tax Act" of Manitoba has in many of its sections followed the exact wording of the Dominion Income Tax Statute and it is the contention of the Appellant that these two statutes cannot stand side by side and that the Provincial statute must give way to the Dominion Legislation. If the Special Income Tax Act which is in question in this action is an income tax statute, then it also must give way as the Dominion has legislated upon the subject.

Sec. 5 of the Dominion Income Tax Act exempts certain income and reads, in part, as follows:

40 5. "Income" as hereinafter defined shall for the purposes of this Act be subject to the following exemptions:

- (c) Three thousand dollars in case of a married person or householder or any other person who has dependent upon him any of the following persons:

(i) A parent or grandparent.

(ii) A daughter or sister.

(iii) A son or brother under twenty-two years of age or incapable of self support on account of mental or physical infirmity.

(d) Fifteen hundred dollars in the case of other persons, and

(e) Five hundred dollars for each child under twenty-one years of age who is dependent upon the taxpayer for support.

The Appellant's income coming within the exempted class, he contends that such income should be exempted from any Income Tax.

In *Attorney-General of British Columbia v. Kingcombe Navigation Co.* 47 B.C. 114, Macdonald, J.A., at page 134 says that "Dominion asserted right to tax by exemption."

As long as the Dominion has asserted its right to taxation by exemption of certain income from taxation then the Province cannot step in and tax that which the Dominion has already exempted.

In *Hoffer v. C.C.M.A.* (1929) 2 D.L.R. 73, it was held by the British Columbia Court of Appeal that the Dominion having drawn into the domain of bankruptcy legislation and having dealt with fraudulent preferences, such legislation prevails over a Provincial Statute dealing with preferences.

Gallagher J.A. at page 74 says:

"In such case the law is well settled that there, as here, the field of legislation is within the competence of both Parliaments, and both have legislated, the enactments of the Dominion Parliament must prevail—*St. Francois Hydraulic Co. v. Continental Heat & Light Co.* (1909) A.C. 194, at page 198."

In *Abbott v. City of St. John*, 40 S.C.R. at page 605, Davies J. on this point says:

"But, even if you have found it there, you must go further and see whether the same or an equivalent power is not given to the Dominion Parliament under section 91. If it is not, then, of course, provincial legislation on the subject is constitutional. But, if it is found in section 91 also, then at any rate in cases where the Dominion Parliament has legislated and to the extent it has legislated, the local legislature is incompetent to legislate."

Re *Trenwith* (1934) 3 D.L.R. 195 the Ontario Court of Appeal held that the common field of legislation respecting the distribution of the estates of insolvents now being occupied by the Bankruptcy Act the provisions of the Assignments and Preferences Act, R.S.O. (1927) C. 162 as to preferential transactions have thereby been superseded and the latter Act

cannot be resorted to by a Trustee in Bankruptcy to impeach such a transaction even though that transaction does not come within the time limited by sec. 64 of The Bankruptcy Act.

It is therefore contended by the Appellant that once the domain of income tax legislation has been invaded by the Dominion then the Province cannot enter the field of that legislation and if it does so the Provincial legislation would be inoperative, furthermore the Province cannot tax what the Dominion has exempted nor can it legislate upon that which the Dominion has left unlegislated on that subject.

10 STATUTE IS INDIRECT TAXATION AND THEREFORE ULTRA
VIRES THE LEGISLATURE.

The Legislature of the Province has no power to enact indirect taxation. The Appellant contends that the Act is indirect taxation and that being within the exclusive jurisdiction of the Dominion Parliament the Province could not legislate. No matter what wording the draughtsman may have used the tax is in effect placed upon the employer and he is to reimburse himself from the employee and the tax is therefore indirect. At no time is the money paid to the employee but it is at all times the employer's money and the employer is by the statute in substance compelled
20 to pay over his own money and then to make a deduction of that amount from the employee's salary.

It being the employer's money and never having been paid to the employee this case does not come in the same category as an amusement tax or a Trustee having other persons funds in his hands, in those cases the person who is compelled to collect the tax, collects moneys from a third person and pays them over to the Tax Collector but in the case at bar there are no moneys that belong to the employee but the moneys when taxed are still the employer's and he is compelled to pay his own funds and make a deduction from the employee. That, it is submitted, makes the
30 tax an indirect one as the person who pays the tax reimburses himself from another.

Viscount Cave in *Nadan v. The King* (1926) A.C. 495 approves of the judgment of Hodges J. in which he says:

"And in my opinion it is outside their power to do that very thing in
"a roundabout way."

If the Province taxes an employer with the object that the employer reimburses himself from the employee and that being indirect taxation and ultra vires, then the Province cannot by its language in a roundabout way endeavor to make the legislation constitutional.

40 In *Attorney-General for Manitoba v. Attorney-General for Canada*

(1925) A.C. 561 which is known as the Grain Futures taxation case, Viscount Haldane at page 566 says:

“An indirect tax is that which is demanded from one person in the expectation and with the intention that he shall indemnify himself at the expense of another.” The Privy Council held that the Manitoba Act ultra vires despite the fact that the statute declared it to be a direct tax.

In the Succession Duties cases the Privy Council held that taxation statutes wherein the executor or administrator was to pay a succession duties tax and then deduct it from moneys in the estate belonging to a beneficiary was ultra vires the Provincial Legislature as it was indirect taxation. In those cases the executor was compelled to pay the tax and reimburse himself from the beneficiaries' share in the estate, here the employer pays the tax and reimburses himself from the employee. The succession duties cases were held to be indirect taxation and it is therefore submitted on the same principle the case at bar should also be held to be indirect taxation.

These succession duties are as follows:

Cotton v. Rex (1914) A.C. 176 where the Succession Duties Act of the Province of Quebec was held ultra vires as not being indirect taxation. The executor was compelled to pay the tax and to recoupe himself from the beneficiaries. Lord Moulton at page 195 in delivering judgment of the Privy Council says:

“It could only be from some one who was not intended himself to bear the burden but to be recouped by some one else. Such an impost appears to their Lordships plainly to be outside the definition of direct taxation accepted by this Board in previous cases.”

And further on same page he says:

“Indeed the whole structure of the scheme of this succession duties depends on a system of making one person pay duties which he is not intended to bear but to obtain from other persons.”

Burland v. The King (1922) 1 A.C. 215, another Quebec Succession Duties Act in which Lord Phillimore at page 223 says:

“But there was a further and wholly independent ground of decision, and that was that by art. 1191 g, the tax might be payable in the first instance by a class of persons, who recouped themselves for the payment from the legatees; and, therefore, in accordance with a distinction between direct and indirect taxation traceable to a definition given by John Stuart Mill, and acted upon by the Board in the cases of Attorney-General for Quebec v. Reed; Bank of Toronto v. Lambe; and Brewers' and Maltsters' Association of Ontario v. Attorney-General for Ontario, the taxation was held to be indirect and outside the power of the Province.”

Provincial Treasurer v. Kerr (1933) A.C. 710 was an Alberta Succession Duties Act case which was held to be ultra vires as the same was imposed upon the executor with the obvious intention that he should indemnify himself out of the beneficiaries' estate.

Lork Thankerton at page 723 says:

“In their Lordships' opinion the determination of this issue depends
 “on the answer to a simple test, which was applied in the cases of Cotton
 “and Alleyn, already referred to, viz., whether the executor is personally
 “liable for the duties. If the executor is so liable, then the tax is imposed
 10 “on the executor, with the obvious intention that he should indemnify him-
 “self out of the beneficiaries' estate, and the taxation is indirect.”

In Attorney-General for Manitoba v. Attorney-General for Canada (1925) A.C. 561, the Privy Council held that if the tax imposed is direct in some instances and indirect in others it is impracticable for courts of law to make the exhaustive partition required and the statute has to be pronounced ultra vires altogether.

It is submitted further that on the wording of the Act the employer is made liable for the tax. Sec. 4 (1) of the Act (page 27 of appendix to this factum) says in part “every employer . . . shall on or before the
 20 “15th day of the month next following that in which the payment of wages
 “takes place or at such other time as the regulations may transcribe pay
 “to the Administrator the full amount of the tax” and Sec. 7 (page 28
 of the appendix to this factum) says in part that “. . . all the provisions
 “of sections 23, 23A, 24 and 25 of ‘The Income Tax Act’ shall, mutatis
 “mutandis, apply to the collection and recovery of the tax so imposed
 “from the employer and employee, or either of them.” (The above sections of “The Income Tax Act” will be found at pages 27-28 of the appendix).

These portions of the Act make the employer personally liable for the payment of the tax and he can be sued in the same manner as an employee.

30 The employer is personally liable for the tax under the Act and in addition to such direct liability he is also liable for heavy penalties under section 6. The point is that these penalties are in addition to his liability for payment of the tax. The liability for payment as a debt and the penalties taken together compel the employer to pay the tax and he in turn under the statute has a right to reimburse himself from the employee distinctly making the entire tax indirect.

CONSTRUCTION AGAINST TAXATION STATUTE.

A taxation statute should always be construed against taxation and in favor of the subject.

In *Munro v. Commissioner of Stamp Duties* (1934) A.C. 61, Lord Tomlin at page 68 says: "It is not always sufficiently appreciated that it is for the taxing authority to bring each case within the taxing Act, and that the subject ought not to be taxed upon refinements or otherwise than by clear words."

In *re Saskatchewan Co-operative Elevator Co. Ltd.* (1933) 3 W.W.R. 669, Taylor, J., followed the principle enunciated by the Privy Council in the *Munro* case in interpreting "The Income Tax Act" of Saskatchewan.

In *McLaren v. Minister of National Revenue* (1934) Ex. C.R. at page 1023, Angers, J., says:

"There is, of course, the well established principle that in a Taxing Act, the tax must be expressed in unambiguous terms and that in case of reasonable doubt, the Act must be interpreted in favor of the Taxpayer."

Foss Lumber vs. The King 47 S.C.R., it was held by this Honourable Court that in construing customs and revenue laws the intention of the Legislature in the imposition of duties must be clearly expressed and that in cases of doubtful interpretation the construction should be in favor of the importer and that duties and taxes are not to be imposed on vague or doubtful interpretation. Brodeur, J., at page 154 says: "We should take into consideration also the fact that a statute imposing a tax should always be strictly construed and that, in case of a doubt, the tax should not be levied."

All of which is respectfully submitted.

C. E. FINKELSTEIN,
Counsel for the Appellant, James Forbes.

APPENDIX

CHAPTER 44

AN ACT TO IMPOSE A SPECIAL TAX ON INCOMES.

[Assented to May 4th, 1933]

His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

SHORT TITLE.

Short title.

1. This Act may be cited as "The Special Income Tax Act."
Note: "The Special Revenue Tax Act"—S.B.C. 1931, c. 61.

INTERPRETATION.

10

Definition.

2. (1) In this Act, unless the context otherwise requires:

"Administrator."

(a) "Administrator" means the Income Tax Administrator, appointed pursuant to "The Income Tax Act"; and for the purpose of collecting taxes or enforcing the provisions of this Act includes any official delegated by him;

"Employee."
"Employer."

(b) "Employee" means any person who is in receipt of or entitled to any wages;

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(c) "Employer" includes every person, manager, or representative having control or direction of or responsible, directly or indirectly, for the wages of any employee, and in case the employer resides outside the province, the person in control within the province shall be deemed to be the employer;

"Wages."

(d) "Wages" includes all wages, salaries, and emoluments from any source whatsoever, including

Compensation
as wages.

(i) any compensation for labour or services, measured by the time, piece, or otherwise;

Salaries and
indemnities.

(ii) the salaries, indemnities, or other remuneration of members of the Senate and House of Commons of the Dominion and officers thereof, members of the Provincial Legislative Councils and Assemblies, members of municipal councils, commissions, or boards of management, and of any judge of any Dominion or provincial court, and of all persons whatsoever, whether such salaries indemnities, or other remuneration are paid out of the revenues of His Majesty in right of the Dominion or in right of any province thereof, or any person;

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Living expenses.

(iii) personal and living expenses and subsistence when they form part of the profit or remuneration of the employee; and

Emoluments.

(iv) emoluments, perquisites, or privileges incidental to the office or employment of the employee which are reducible to a money value.

Determination of Wages.

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(2) The value of that part of the wages of an employee which is within the scope of sub-paragraphs (iii) or (iv) of the definition of wages in subsection (1) shall be determined by the administrator at the actual amount thereof if payable in money, or otherwise in accordance with any prevailing rates.

Withdrawals deemed wages.

(3) Withdrawals by any person from a business, whether the owner thereof or an employee therein, shall, subject to adjustment by the administrator on the filing of the next annual return under this Act, be deemed to be wages and subject to the provisions of this part.

PART I.

TAXATION OF WAGES.

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Employee to pay tax upon wages.

3. (1) In addition to all other taxes to which he is liable under this or any other Act, every employee shall pay to His Majesty for the raising of a revenue for provincial purposes a tax of two per centum upon the amount of all wages earned by or accruing due to him on or after the first day of May, 1933, which tax shall be levied and collected at the times and in the manner prescribed by this part; but no tax shall be paid under this part by

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(a) a married person, in case his wages be at a rate of forty cents an hour, three dollars and twenty cents a day, eighty dollars a month, or nine hundred and sixty dollars a year or under; nor

(b) an unmarried person, in case his wages be at a rate of twenty cents an hour, one dollar and sixty cents a day, forty dollars a month, or four hundred and eighty dollars a year or under.

Refunds to certain unmarried persons.

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(2) In case an unmarried person has resident with him and wholly dependent upon him, a mother, father or sister, he shall be entitled to a refund of his tax if his total taxable income under this Act be less than nine hundred and sixty dollars a year, but a claim for the refund, in a form prescribed by the administrator, shall be made to the administrator within thirty days after the thirtieth day of April following.

Refund on
over-payment.

(3) In case the total income during any year does not exceed nine hundred and sixty dollars in the case of a married person, or four hundred and eighty dollars in the case of an unmarried person, he shall be entitled to a refund of the taxes paid by him, but a claim for the refund shall be made to the administrator within thirty days after the thirtieth day of April following.

Duty of
employer to
collect tax.

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4. (1) Every employer at the time of payment of wages to an employee shall levy and collect the tax imposed on the employee by this part in respect of the wages of the employee earned or accruing due during the period covered by the payment, and shall deduct and retain the amount of the tax from the wages payable to the employee, and shall, on or before the fifteenth day of the month next following that in which the payment of wages takes place, or at such other time as the regulations prescribe, pay to the administrator the full amount of the tax. No employee shall have any right of action against his employer in respect of any moneys deducted from his wages and paid over to the administrator by the employer in compliance or intended compliance with this section.

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Return by
employer.

(2) Every employer shall, with each payment made by him to the administrator under this section, furnish to the administrator a return showing all taxes imposed by this part on the employees of the employer in respect of wages during the period covered by the return, which shall be in the form and verified in the manner prescribed by the administrator.

Money
withheld
a trust.

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(3) Every employer who deducts or retains the amount of any tax under this part from the wages of his employee shall be deemed to hold the same in trust for His Majesty and for the payment over of the same in the manner and at the time provided under this part.

Note: Penalty for Breach of Trust—See secs. 390 and 596 of "The Criminal Code".

Record to
be kept by
employers.

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Production
for
inspection.

5. (1) Every employer shall keep at some place in the province, of the location of which he shall inform the administrator when requested to do so, a true and correct record of the names and residential addresses of all his employees, and of the dates upon which each of them worked, the wages paid to each, and such other matters as the administrator requires.

(2) Every employer shall, on request of the administrator or any person authorized by him in writing, produce for inspection all records kept by the employer relating to his employees.

Note: Inspection of Records—See sec. 14.

Penalty
for non-
payment.

6. (1) If an employer, in violation of the provisions of this part fail to collect and pay over any tax imposed by this part, the administrator may demand and collect from him as a penalty ten per cent. of the tax payable, and he shall in addition be liable to a fine of ten dollars for each day of default, but not to more than two hundred dollars.

Penalty for
contravention.

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(2) Every person, who contravenes any provision of this part in respect of which no penalty is otherwise provided, shall be liable to a fine not exceeding five hundred dollars, and each day's continuance of the act or default out of which the offence arises shall constitute a separate offence; but nothing contained in this section nor the enforcement of any penalty thereunder shall suspend or affect any remedy for the recovery of any tax payable under this part or of any moneys in the hands of an employer belonging to His Majesty.

Enforcement
provisions
of "The
Income Tax
Act."

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7. In case the wages earned or accruing due to an employee are paid to him without the tax imposed thereon being deducted therefrom by his employer, it shall be the duty of the employee to forthwith pay the tax, and all the provisions of sections 23, 23A, 24 and 25 of "The Income Tax Act" shall, *mutatis mutandis*, apply to the collection and recovery of the tax so imposed from the employer and employee, or either of them.

PART III.

SUPPLEMENTARY.

Inspection
of records.

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14. (1) The administrator and every person authorized by him in writing, for the purposes of this section, may inspect and examine all books, pay-rolls, and other records of any employer which in any way relate to his employees or of any taxpayer relating in any way to his income; and may take extracts from or make copies of any entry in such books, pay-rolls and records; and may by notice in writing require from any employer or from any person liable to taxation under this Act, full and correct statements in writing, duly verified on oath, respecting any matter of which he is required by or under this Act or "The Income Tax Act" to keep a record.

Notice to
be complied
with.

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(2) Every person to whom a notice is given pursuant to this section shall comply fully with its requirements within fourteen days after its receipt by him.

Errors
corrected.

15. In case any error be found in the levy or collection of any tax imposed by Part I, the administrator may correct the same and refund to the taxpayer the amount erroneously

collected. In case any error be found in a notice of assessment of any tax imposed by Part II, the administrator may correct the same accordingly.

Regulation.

16. (1) For the purpose of carrying into effect the provisions of Parts I and II of this Act, the Lieutenant-Governor-in-Council may make regulations governing the administration of this Act, not inconsistent with the spirit of this Act, and may provide for any proceeding, matter, or thing for which express provision is not made in this Act, or for which only partial provision is made.

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Regulating application of "The Income Tax Act" hereto.

(2) Without thereby limiting the generality of the foregoing subsection, the power of the Lieutenant-Governor-in-Council under this Act shall extend to the making of regulations

(a) for providing for the joint administration of this Act or any part or provision of this Act and "The Income Tax Act"; and for obviating any doubt as to matters of procedure arising therefrom;

(b) for determining what sections or what provisions of any section of "The Income Tax Act" shall apply for the purposes of this Act, and with what exceptions and modifications.

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Force of regulations.

(3) Such regulations shall have the force of law as if made an integral part of this Act.

Coming into force.

17. This Act shall come into force on the day it is assented to.

CHAPTER 91

AN ACT TO AUTHORIZE THE LEVYING OF A TAX UPON PERSONAL ENACTMENTS.

His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

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1. This Act may be cited as "The Income Tax Act," 1923, c. 19, s. 1.

COLLECTION AND ENFORCEMENT OF TAX.

Taxpayer leaving Manitoba.

23. (1) The Minister, if he suspects that the taxpayer is about to leave Canada, may for that or any other reason by registered letter addressed to the taxpayer, demand payment of all taxes, penalties and accrued interest for which the taxpayer is liable, and the same shall be paid within ten days from

the date of mailing such registered letter, notwithstanding any other provisions in this Act contained. Non-payment of the said tax within the specified time shall render the goods of the taxpayer liable to seizure by the bailiff of the County Court division in which the goods of the taxpayer are situate. A certificate of non-compliance with any such demand, signed by authority of the Minister setting forth the particulars of the demand and placed in the hands of such bailiff, shall be sufficient authority for the bailiff to seize sufficient of the goods of the taxpayer to meet the said demand and costs.

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Sale of
goods seized.

R.S.M. c. 44.

(2) The sale of such goods and disposition of the moneys realized shall be conducted in the manner prescribed by "The County Courts Act," as if seizures were made under a writ of execution issued out of the said county court.

Summary
collection
of tax.

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23A. If any person, not having given notice of appeal, neglects or refuses to pay any tax, interest or penalty or instalment of tax due under this Act, the Minister, on giving ten days' notice by registered mail addressed to the last known place of residence of the taxpayer, may issue a certificate declaring said person to be in default and may authorize any person whom he deems proper, upon receipt of such certificate, to distrain the person in default by his goods and chattels. The distress levied in accordance with this section shall be kept for ten days at the cost and charges of the person neglecting or refusing to pay, and if the person aforesaid does not pay the sum due, together with the costs and charges, within the said ten days the goods and chattels distrained shall be sold by public auction. Except in the case of perishable goods, notice of such sale setting forth the time and place thereof, together with a general description of the goods to be sold shall be published at least once in one or more of the local newspapers of general local circulation. Any over-plus coming by the distress after deduction of the amount owing by the taxpayer and of all costs and charges shall be restored to the owner of the goods distrained. Such goods and chattels of any person in default as would be exempt from seizure under a writ of execution shall be exempt from distress under this section.

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24. Any person liable to pay the tax shall continue to be liable, and in case any person so liable shall fail to make a return as required by this Act, or shall make an incorrect or false return and does not pay the tax in whole or in part the Minister may at any time assess such person for the tax, or such portion thereof as he may be liable to pay and may in such cases prescribe the time within which any appeals relat-

ing thereto may be made under the provisions of this Act, from the assessment, or from the decision of the commission on an appeal to it, and may fix the date for payment of the tax.

25. (1) In addition to all other remedies herein provided, taxes, penalties and costs and unpaid portions thereof assessed or imposed under this Act may be recovered as a debt due to His Majesty from the taxpayer.

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(2) All taxes, interest and penalties payable under this Act remaining unpaid, whether in whole or in part, after two months from the date of mailing of the notice of assessment, may be certified by the Minister.

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(3) On the production to the County Court or Court of King's Bench of Manitoba, the certificate shall be registered in the said court and shall, from the date of such registration, be of the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the said court for the recovery of a debt of the amount specified in the certificate, including interest to date of payment as provided for in this Act and entered upon the date of such registration.

Costs.

(4) All reasonable costs and charges attendant upon the registration of such certificate shall be recoverable in like manner as if they were part of such judgment.

Collection of tax from third party.

(5) When the Minister has knowledge or suspects that any person is or is about to become indebted to a taxpayer he may, by registered letter, demand of such person that the moneys otherwise payable to the taxpayer be in whole or in part, paid over to the Commission on account of said taxpayer's liability under the provisions of this Act.

30 Receipt of Commission.

(6) The receipt of the Commission therefor shall constitute a good and sufficient discharge of the liability of such person to said taxpayer to the extent of the amount referred to in the receipt.

Personal liability.

(7) Any person discharging any liability to a taxpayer after receipt of the registered letter herein referred to shall be personally liable to His Majesty to the extent of the liability discharged as between him and the taxpayer or to the extent of the liability of the taxpayer for taxes, interest and penalties, whichever is the lesser amount.