THE ATTORNEY GENERAL OF CANADA (*Defendant*) ..... APPELLANT;

AND

THE READER'S DIGEST ASSOCIATION (CANADA) LTD., SELECTION DU READER'S DIGEST (CANADA) LTEE. (*Plaintiff*) ... RESPONDENT.

1961

*May 29, 30
Oct. 3

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Taxation—Excise tax—Tax on special editions of non-Canadian periodicals—Validity—Admissibility of extrinsic evidence—Interlocutory decisions—Excise Tax Act, R.S.C. 1952, c. 100, as amended by 1956 (Can.), c. 37, s. 3 [repealed in 1958].

*PRESENT: Kerwin C.J. and Taschereau, Locke, Cartwright, Fauteux, Abbott, Martland, Judson and Ritchie JJ.

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In an action attacking the constitutionality of a 1956 amendment to the *Excise Tax Act*, (1956 (Can.), c. 37, s. 3), imposing a tax on special editions of non-Canadian periodicals, it was alleged by the plaintiff that the true object or intent of the legislation was to benefit one segment of the Canadian publishing industry at the expense of another segment of the same industry, and that in pith and substance the legislation was in relation to property and civil rights reserved exclusively to provincial jurisdiction. At the trial, the plaintiff attempted to prove these allegations by introducing evidence by reference to the budget speech made by the Minister of Finance in the House of Commons. He submitted twenty-four questions to be asked the Minister and others. The Crown objected to such evidence and the trial judge sustained the objections. The Court of Queen's Bench, in a majority judgment, ruled that the evidence was admissible. The Crown obtained leave from this Court to appeal.

Held: The extrinsic evidence sought to be introduced by the plaintiff was inadmissible.

Dictum of Locke J. in *Texada Mines v. Attorney General of British Columbia*, [1960] S.C.R. 713 at 720, referring to certain statements purporting to have been made by the Premier of British Columbia and the Minister of Mines that had the evidence been tendered it would have been rejected as inadmissible declared to be a correct statement of the law.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec[1], reversing interlocutory decisions of Scott C.J. Appeal allowed.

François Mercier, Q.C., for the defendant, appellant.

J. L. O'Brien, Q.C., E. E. Saunders and *C. K. Irving*, for the plaintiff, respondent.

The judgment of Kerwin C.J. and of Taschereau, Abbott and Judson JJ. was delivered by

THE CHIEF JUSTICE:—By leave of this Court the Attorney General of Canada appeals from a judgment of the Court of Queen's Bench (Appeal Side) for the Province of Quebec[1], maintaining an appeal from twenty-four interlocutory judgments rendered during the trial of this action by the Honourable W. B. Scott, at that time Associate Chief Justice of the Superior Court. The plaintiff-respondent, Reader's Digest Association (Canada) Ltd., Sélection du Reader's Digest (Canada) Ltée, having its head office and principal place of business in Montreal, asks for a declaration that Part II of the *Excise Tax Act*, comprising ss. 8, 9, 10 and 11, as enacted by s. 3 of c. 37 of the Statutes of

[1] [1961] Que. Q.B. 118, [1961] C.T.C. 343, 61 D.T.C. 1189.

Canada, 1956, and the Regulations made pursuant thereto, are *ultra vires*. For the purposes of this appeal it is sufficient to state that in substance the respondent alleges that the impugned legislation and regulations have the intent of benefiting one part of the publishing industry at the expense of another and that the legislation and regulations in pith and substance are in relation to property and civil rights in the Province of Quebec and that therefore they are outside of the legislative competence of the Parliament of Canada.

In para. 15 of its declaration the respondent sets out what is alleged to be a speech made in the House of Commons by the then Minister of Finance, the Honourable Walter E. Harris. At the hearing the respondent attempted to adduce evidence by Mr. Harris, the Honourable Donald Fleming (the present Minister of Finance), Mr. David Sim (Deputy Minister of National Revenue), Mr. Léon Raymond (Clerk of the House of Commons) and Mr. Alan Donnelly (a Press Gallery correspondent). The objections to this evidence by the appellant were allowed by the presiding judge. The relevant questions and the rulings made thereon are as follows:

1. Mr. Harris

"Mr. Harris, I don't suppose there is anything privileged in the fact that the Minister of Finance, when he makes his budget report and presents his budget report, is speaking for the Government?"

Judgment:—

"Objection maintained."

2. Mr. Harris

"Mr. Harris, as Minister of Finance, when you were Minister of Finance, in 1956, did you authorize the distribution to the Press, to Radio, and to Television, in advance of your budget address, the text of the address, to be given to the public?"

Judgment:—

"Objection maintained."

and later:—

"The objection to this question is maintained."

3. Mr. Harris

"Mr. Harris, did you, as Minister of Finance, make a statement as to the true purpose and intent of the legislation herein?"

Judgment (To the witness):—

"Don't answer that question. I ruled that question is illegal."

4. Mr. Harris

"Mr. Harris, did you give to representatives of the press, television and radio a statement of the government's purpose in promoting this legislation before Parliament?"

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Judgment:—

"(Objection) maintained."

5. Mr. Harris

"Did you state, Mr. Harris, that the purpose of the impugned legislation was to equalize competition between the two segments of the publishing industry?"

Judgment:—

"(Objection) maintained."

6. Mr. Harris

"Mr. Harris, when you spoke as Minister of Finance, is it necessary in advance to have your budget report and address approved by Cabinet?"

Judgment:—

"(Objection) maintained."

7. Mr. Harris

"Mr. Harris, when presenting this legislation, the impugned legislation to Parliament, did you speak on behalf of the then government?"

Judgment:—

"(Objection) maintained."

8. Mr. Harris

"Mr. Harris, did you find that after you had proposed this legislation to Parliament that your statement as to the purpose of the legislation was given wide publicity throughout the Dominion of Canada?"

Judgment:—

"(Objection) maintained."

9. Mr. Sim

"Mr. Sim, it was part of your duties as head of the Department of National Revenue to look to the administration of Part Two of the Excise Tax Act as enacted in 1956?"

Judgment:—

"Do not answer that."

Questioned by the Court:—

"Q. Are your duties laid down by an Act of Parliament as Deputy Minister? A. Yes, sir.

Q. By Statute? A. Yes, sir."

"By Me O'Brien:—

With respect, My Lord, I think that in the absence of an objection from my friends that the question should be allowed.

By the Court:—

The Court has some discretion.

By Me OBrien:—

I do not think so, My Lord, with respect.

By the Court:—

You can take an exception.

By Me OBrien:—

I so do, My Lord.

By the Court:—

I think that is the best evidence.

By Me OBrien:—

I think the best evidence would probably be an Order in Council.

By the Court:—

He is the Deputy Minister of National Revenue. I maintain my ruling as to that."

10. Mr. Donnelly

"Will you tell the Court what was done by the government in releasing to the press the statement of the Minister of Finance concerning his budget address and, more particularly, concerning the resolution he was introducing in respect of the legislation here impugned?"

Judgment:—

"Objection maintained."

11. Mr. Donnelly

"Did you actually see the text of the budget address outside the limits of the House of Commons before it was delivered on March 20th, 1956?"

Judgment:—

"(Objection) maintained."

12. Mr. Donnelly

"Now, will you state to the Court to how many newspapers in Canada you forwarded the text of the budget address?"

Judgment:—

"(Objection) maintained."

13. Mr. Donnelly

"Will you state, Mr. Donnelly, whether you have read in newspapers in Canada a reproduction of the statement given by the Minister of Finance to the Press, television and radio outside of the limits of the House of Commons?"

Judgment:—

"(Objection) maintained."

14. Mr. Donnelly

"Mr. Donnelly, when despatches that are sent by Canadian Press are published in newspapers, do they usually have some indication in the first line of the despatch as to the source of the news?"

Judgment:—

"(Objection) maintained."

15. Mr. Donnelly

"I show you a copy, Mr. Donnelly, of the Montreal Gazette dated March 21st, 1956. It is the text of the Minister's statement given to the press."

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Judgment:—

"I am not going to allow that to be put in. That is disallowed. I am not going to allow it. I am not going to allow that newspaper to be put in, the Montreal Gazette of the 21st of March, 1956."

16. Mr. Donnelly

"Just to save the time of the Court I would call attention to the fact that I wish to ask this witness if the Globe and Mail of Toronto for March 21st, 1956, the Winnipeg Free Press for March 21st, 1956, 'La Presse' of Montreal for March 21st, 1956, the Halifax Chronicle Herald for March 21st, 1956, and the Vancouver Sun for March 21st, 1956, did not all contain despatches sent by Canadian Press in which there was a statement of the avowed purpose and intent of the government to promote the impugned legislation in this case, before Parliament."

Judgment:—

"(Objection) maintained."

17. Mr. Donnelly

"To how many papers did you forward your despatches of the budget address?"

Judgment:—

"(Objection) maintained."

18. Mr. Raymond

"As Clerk of the House of Commons subject to the jurisdiction of Parliament, of course, and of the Speaker, have you the custody of the records of the House of Commons?"

Judgment:—

"By the Court:—

What is the purpose of this question?

By Me O'Brien:—

I am going to introduce the Journal of the House of Commons for the 7th of August 1956 to show that on that date the resolution introduced by the government in respect of the impugned legislation was adopted; that the bill then presented to put into effect the legislation, was given first, second and third reading at the same session; was passed without amendment and without a recorded vote.

By the Court:—

Is this the appeal?

By Me O'Brien:—

No, My Lord, this was enacted legislation.

By the Court:—

How could that be relevant?

By Me O'Brien:—

I think . . . .

By the Court:—

The question is disallowed."

19. Mr. Raymond

"Mr. Raymond, there is an official report of the statements made in the House of Commons published each day, is there not?"

Judgment (after discussion):—

"Anyway there is no relevancy whatever to this and it does not need to be answered."

20. Mr. Raymond

"Mr. Raymond, will you produce for the Court the record of Hansard for March 20, 1956 and August 7th . . . ."

Judgment:—

"(Objection) maintained."

21. Mr. Fleming

"Now, Mr. Fleming, in connection with the annual financial report which the Minister of Finance makes to Parliament which is commonly called the Budget Address, would you state to the Court whether in advance of the presentation of that address to the House of Commons it is approved by Cabinet?"

Judgment:—

"(Objection) maintained. That could have no possible bearing on this case."

22. Mr. Fleming

"Now, Mr. Fleming, I understand that there is a procedure under which the secrecy of the budget address is maintained but in order to—let me say—make it more facile for the communication industries, the press, radio and television, the body of the representatives of those industries are segregated in a certain room and outside of the House of Commons. The content of the Budget Address is given to them but they are not allowed to disclose it until after it is delivered in Parliament? Is that correct?"

Judgment:—

"It has no bearing on the case, Mtre O'Brien. The question is disallowed."

23. Mr. Fleming

"Mr. Fleming, I am not going to ask you about any part you have played in the House of Commons in respect of this legislation but you were fully aware of the fact that it was being introduced and of the publicity given to it throughout Canada."

Judgment:—

"(Objection) maintained."

24. Mr. Fleming

"Mr. Fleming, who speaks on behalf of the government of Canada in respect of financial matters, the question of taxation, the public debt, etc.?"

Judgment:—

"Objection maintained."

It is conceded by counsel on behalf of the respondent that the majority, if not all, of the questions set out above would not ordinarily be proper but it is argued that the well known

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rule in that respect does not apply when the constitutional validity of a statute is in question in Canada. In *Home Oil Distributors Ltd. v. Attorney General of British Columbia*[1], I, with the concurrence of Rinfret J., as he then was, took into consideration a report of a commission under the circumstances there existing, but only for the purpose of showing what was present to the mind of Parliament. The same course had been adopted by the Privy Council in *Attorney General for British Columbia v. Attorney General for Canada*[2] and *Ladore v. Bennett*[3]. In the 1937 A.C. case the Committee said at p. 376:

> It probably would not be contended that the statement of the Minister in the order of reference that the section was enacted to give effect to the recommendations of the Royal Commission bound the Province or must necessarily be treated as conclusive by the Board. But when the suggestion is made that the legislation was not in truth criminal legislation, but was in substance merely an encroachment on the Provincial field, the existence of the Report appears to be a material circumstance.

Here the argument is that the legislation is not what it appears to be. In the 1939 A.C. case the Report of a commission was objected to in the Courts in Canada but before the Judicial Committee the objection was withdrawn and by consent the Report was placed before Their Lordships. As to this Report it was said at p. 477:

> Their Lordships do not cite this report as evidence of the facts there found, but as indicating the materials which the Government of the Province had before them before promoting in the Legislature the statute now impugned.

We are not concerned in this appeal with the Report of a commission and it is therefore unnecessary to pass upon the point. The dictum of Locke J., speaking for all the Members of this Court, in *Texada Mines v. Attorney General of British Columbia*[4], referring to certain statements purporting to have been made by the Premier of British Columbia and the Minister of Mines, that had the evidence been tendered it would have been rejected as inadmissible, should now be declared to be a correct statement of the law. This conclusion is sufficient to dispose of the matter.

[1] [1940] S.C.R. 444, 2 D.L.R. 609.
[2] [1937] A.C. 368, 1 W.W.R. 317, 1 D.L.R. 688, 67 C.C.C. 193.
[3] [1939] A.C. 468, 2 W.W.R. 566, 3 D.L.R. 1.
[4] [1960] S.C.R. 713 at 720, 32 W.W.R. 37, 24 D.L.R. (2d) 81.

The appeal should be allowed, the judgment of the Court of Queen's Bench (Appeal Side) set aside and the rulings of the Superior Court restored and the record returned to that Court. The respondent must pay the appellant his costs in this Court and in the Court of Queen's Bench.

The judgment of Locke and Cartwright JJ. was delivered by

CARTWRIGHT J.:—This is an appeal, brought pursuant to leave granted by this Court, from a judgment of the Court of Queen's Bench[1] allowing an appeal from a number of interlocutory decisions of Scott C.J. and returning the record to the Superior Court.

By section 3 of chapter 37 of the Statutes of Canada, 1956, 4-5 Elizabeth II, Parliament amended the *Excise Tax Act* by adding thereto Part II.

By the terms of this Part there was levied a tax of 20% on the value of advertising material contained in periodicals printed in or outside Canada for publication in Canada, if the periodical

(1) contained editorial material (which is defined as any printed material other than advertising) at least 25% of which was the same or substantially the same as editorial material contained in one or more copies of a particular non-Canadian periodical, whether in the same or in some other language; and

(2) contained any advertising material that was not contained in such non-Canadian periodical.

The effect of this Statute was to levy on the respondent a tax of 20% on the value of advertising material in its two publications which were printed and published in Canada, namely, "The Reader's Digest" and "Sélection du Reader's Digest". The tax, under the terms of the Statute, was to become applicable on January 1, 1957.

The respondent alleges that duly authorized representatives of the Government of Canada called upon respondent to make payment of a tax of $35,225.32, in respect of advertising contained in respondent's two said magazines, which were printed, issued and delivered to the public in Canada in the month of January 1957.

[1] [1961] Que. Q.B. 118, [1961] C.T.C. 343, 61 D.T.C. 1189.

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Cartwright J.

The respondent commenced an action in the Superior Court of the Province of Quebec, on April 17, 1957, asking "that it be adjudged that Part II of the *Excise Tax Act*, Sections 8, 9, 10 and 11 as enacted by Section 3 of Chapter 37 of the Statutes of Canada, 1956, and the Regulations made pursuant thereto, are outside the competence and *ultra vires* of the Parliament of Canada, and unconstitutional, and null and void and non-existent; that plaintiff's said two magazines "The Reader's Digest" and "Sélection du Reader's Digest" are not periodicals as defined by Part II of the *Excise Tax Act;* and that plaintiff is not liable for payment of the said sum of $35,225.32 nor required to take out a licence and post a bond for the payment of taxes under Part II of the *Excise Tax Act.*"

The grounds on which the claim for this relief is asserted, so far as they are relevant to this appeal, are set out in the declaration as follows, (i) that Part II of the *Excise Tax Act* "was avowedly enacted for the sole purpose of benefiting one segment of the publishing industry at the expense of another segment thereof", (ii) that Part II and the regulations made thereunder are *ultra vires* "as being legislation dealing with classes of subjects in relation to which the Parliament of Canada has no jurisdiction," and (iii) that in pith and substance Part II and the regulations made thereunder are "related to the property and civil rights of the plaintiff".

The appellant in his plea denied each of the paragraphs in the declaration in which the grounds summarized above were alleged and in paragraph 12 pleaded:

> That Part II of the Excise Tax Act sections 8, 9, 10, 11 as enacted by section 3 of chapter 37 of the Statutes of Canada 1956 and the regulations made pursuant thereto by the Minister of National Revenue published on November 14th, 1956 in The Canada Gazette, vol. 90, Part II, page 441, were enacted and made within the competence, the jurisdiction and the legislative powers of the Parliament of Canada;

The issue so raised is the only one relevant to the question of admissibility of evidence with which we are concerned on this appeal.

The main ground on which the respondent attacks the constitutional validity of Part II of the *Excise Tax Act* is stated in its factum as follows:

> The principal basis of Respondent's action is that the impugned statute, while in form a taxing statute, was not intended for the raising of money, but that the true object or intent of the statute was to benefit one segment

of the publishing industry in Canada at the expense of another. Respondent takes the position that if the true object and intent of the statute were achieved its success would be measured inversely by the revenue which it yields.

We are not concerned, on this appeal, with the soundness of this contention or with the merits of the action. The only question before us is as to the admissibility of certain evidence tendered at the trial on behalf of the respondent and rejected by the learned trial judge.

It is not necessary to set out in detail the items of evidence tendered and rejected at the trial for the questions raised are accurately summarized in the respondent's factum as follows:

> The only real questions in issue in the present appeal are:—
>
> (1) whether Respondent could introduce evidence of the pronouncement made on behalf of the Government by the Minister of Finance concerning the intent of the legislation in order to show the material that was before Parliament when the legislation was being promoted; and
>
> (2) whether Respondent could prove that the legislation so introduced and promoted was given first, second and third readings on the same day without amendment, and was enacted by the Senate in the form in which it was introduced without amendment.

Counsel for the respondent concedes that if no question were raised as to the constitutional validity of the statute the evidence in question would be inadmissible in aid of the interpretation of any ambiguous provision thereof. That this is so was laid down as long ago as 1769 when in *Millar v. Taylor*[1], Willes J. said:

> The sense and meaning of an Act of Parliament must be collected from what it says when *passed* into a law; and *not* from the history of changes it underwent in the house where it took its rise. That history is not known to the other house or to the sovereign.

The general rule in this regard, where the question is one of interpretation, is accurately stated in Halsbury, 2nd ed., vol. 31, p. 490, as follows:

> 621. Light may be thrown on the scope of a statute by looking at what Parliament was doing contemporaneously, and at the history of the statute; but even when words in a statute are so ambiguous that they may be construed in more than one sense, regard may not be had to the Bill by which it was introduced nor to the fate of amendments dealt with in committee of either House, nor to what has been said in Parliament or elsewhere, nor to the recommendations of a Royal Commission which shortly preceded the statute under consideration.

[1] (1769), 4 Burr. 2303 at 2332, 98 E.R. 201.

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Accepting the above as a correct statement of the law where the question is one of the interpretation of an admittedly valid statue, Mr. O'Brien argues that the rule is otherwise when the question is whether a legislature, possessing not an absolute jurisdiction but a law-making authority of a limited or qualified character, has exceeded its powers and under the guise of legislating in relation to a subject-matter committed to it has in reality legislated in relation to a subject-matter assigned exclusively to another body.

Both counsel informed us that they had been unable to find any reported case in which the question presented in this appeal has been decided although there is a dictum in a recent decision of this Court, to be mentioned later, which deals with the matter.

In support of the admissibility of the evidence in question Mr. O'Brien puts forward the following argument:— To aid in interpreting a statute the report of a Royal Commission which shortly preceded the passing of the statute is inadmissible. It was so held by the House of Lords in *Assam Railways and Trading Co. v. Commissioners of Inland Revenue*[1]. Lord Wright, with whom all the other law lords agreed on this point, said at p. 458:

> It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible and the report of Commissioners is even more removed from value as evidence of intention, because it does not follow that their recommendations were accepted.

This language indicates that the statement of a Minister of the Crown in introducing a bill in Parliament would be more readily admitted than the report of a commission; but in determining questions arising under the *British North America Act* as to whether Parliament or a provincial legislature by the use of a colourable device has invaded the legislative field reserved to the other the Judicial Committee and this Court have from time to time admitted in evidence and made use of the reports of commissions as appears from the judgments in *Ladore v. Bennett*[2]; *Attorney-General for B.C. v. Attorney-General for Canada*[3]; *Proprietary Articles*

[1] [1935] A.C. 445.
[2] [1939] A.C. 468, 2 W.W.R. 566, 3 D.L.R. 1.
[3] [1937] A.C. 368, 1 W.W.R. 317, 1 D.L.R. 688, 67 C.C.C. 193.

Trade Association v. Attorney-General for Canada[1] and *Home Oil Distributors Ltd. v. Attorney-General of B.C.*[2]; therefore *a fortiori* in determining such questions the statement of a Minister of the Crown in introducing a bill in Parliament is admissible in evidence.

The above brief summary scarcely does justice to Mr. O'Brien's logical and persuasive argument but it indicates its substance. In considering this argument it is necessary to examine the four cases last mentioned above.

In *Ladore v. Bennett, supra,* a Royal Commission had made a report in April 1935 disclosing the existence of a serious financial position in the City of Windsor and three adjoining municipalities. With the materials in that report before them the Government of the Province of Ontario promoted in the legislature an Act to amalgamate the four municipalities and containing, *inter alia,* provisions for refunding the debts of those municipalities. The Act was attacked, in an action, as being *ultra vires* of the legislature on the ground that it invaded the field of the Dominion as to (i) Bankruptcy and Insolvency and (ii) Interest and on the further ground that it affected private rights outside the province. In the courts in Canada the report when tendered in evidence was objected to and the objection was upheld, but before the Judicial Committee the objection was withdrawn and by consent of both parties the report was placed before their Lordships. Lord Atkin, who delivered the judgment of the Board, after setting out in some detail the serious financial position disclosed by the report said, at p. 477:

> Their Lordships do not cite this report as evidence of the facts there found, but as indicating the materials which the Government of the Province had before them before promoting in the Legislature the statute now impugned.

The manner in which the report had been dealt with in the courts below appears in the reasons of Henderson J.A., who delivered the unanimous judgment of the Court of Appeal[3]:

> This Commission in due course made a report which was tendered in evidence and received by the learned trial judge (Hogg J.) subject to objection. Subsequently he sustained the objection and ruled that the report is not evidence, with which conclusion I agree.

[1] [1931] A.C. 310, 1 W.W.R. 552, 2 D.L.R. 1, 55 C.C.C. 241.
[2] [1940] S.C.R. 444, 2 D.L.R. 609.
[3] [1938] O.R. 324 at 353, 3 D.L.R. 212.

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Attorney-General for B.C. v. Attorney-General for Canada, supra, was an appeal from a judgment of this Court on a reference by the Governor-General in Council raising the question whether s. 498A of the *Criminal Code,* introduced by s. 9 of 25 and 26 Geo. V, c. 56, was *ultra vires* of Parliament. It appears from the report in this Court[1], that the order of reference contained the following statement:

> The Minister observes that the said section 498A was enacted for the purpose of giving effect to certain recommendations contained in the Report of the Royal Commission on Price Spreads but that doubts exist or are entertained as to whether the Parliament of Canada had legislative jurisdiction to enact this section in whole or in part.

The reasons delivered in this Court make no reference to this Report of the Royal Commission. The only mention made of it in the judgment of the Judicial Committee is in the following passage at p. 376:

> In the present case there seems to be no reason for supposing that the Dominion are using the criminal law as a pretence or pretext, or that the legislature is in pith and substance only interfering with civil rights in the Province. Counsel for New Brunswick called the attention of the Board to the Report of the Royal Commission on Price Spreads, which is referred to in the order of reference. It probably would not be contended that the statement of the Minister in the order of reference that the section was enacted to give effect to the recommendations of the Royal Commission bound the Provinces or must necessarily be treated as conclusive by the Board. But when the suggestion is made that the legislation was not in truth criminal legislation, but was in substance merely an encroachment on the Provincial field, the existence of the report appears to be a material circumstance.

Proprietary Articles Trade Association v. Attorney-General for Canada, supra, was an appeal from a judgment of this Court on a reference by the Governor-in-Council. The only mention of any report in the judgment of the Judicial Committee is of a report by a select committee of the House of Commons made in 1888 which preceded the enactment in 1889 of 52 Victoria, c. 41, an Act for the prevention and suppression of combinations formed in restraint of trade. This is referred to (at p. 318) as part of "the history of the Act and the section of the Code so far as it has been laid before their Lordships." The report was printed as part of the factum of the Attorney-General for Canada in this Court. It was not referred to in any of the reasons delivered

[1] [1936] S.C.R. 363 at 364, 3 D.L.R. 593, 66 C.C.C. 161.

in this Court and there is no discussion as to whether it would have been admissible had objection been taken to its introduction in evidence.

It will be observed that none of these three cases decides that, in an action *inter partes* raising the question of the validity of a statute, a report of a Royal Commission is admissible in evidence if objected to. In civil cases the rules of evidence may be relaxed by consent of parties and this was done in *Ladore v. Bennett*. There is nothing in the judgment of the Judicial Committee in that case to suggest that in the view of the Board the decision of the Court of Appeal affirming the rejection of the report by Hogg J. was wrong in law. It is scarcely necessary to say that the statement that the rules of evidence may, in civil cases, be relaxed by the consent of parties does not mean that the parties can empower the Court to found its decision on matters which are not, as a matter of law, germane to the issue which it is called upon to decide; it means rather that proof of matters which are germane may be made in such manner as the parties agree and not necessarily in strict compliance with the technical rules as to admissibility.

In *Home Oil Distributors Ltd. v. Attorney-General of B.C., supra,* an action was brought for a declaration that the *Coal and Petroleum Products Control Board Act,* 1937 (B.C.), c. 8, was *ultra vires* of the legislature and for other relief. Manson J., at the trial, held that certain sections of the Act were *ultra vires* and granted an injunction. The Court of Appeal unanimously reversed his decision on the merits and their decision was upheld by this Court. The plaintiff tendered in evidence a report made by a commission on the petroleum industry. Its admission was objected to but Manson J. over-ruled the objection. On appeal this ruling was upheld by a majority of the Court of Appeal, Martin C.J.B.C. and Sloan J.A.; McQuarrie J.A. dissenting was of opinion that the report was inadmissible. The report consisted of three volumes only the first two of which were in existence when the impugned Act was passed.

On an interlocutory appeal Martin C.J.B.C. dealt with the point as follows[1]:

> It is submitted by appellants' counsel that this report cannot be admitted to supply facts to support an attempt to show what was in the mind of the Legislature in passing a statute valid *ex facie,* and the objection

[1] (1938), 53 B.C.R. 355 at 359, 360.

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is one of primary importance because it is conceded by respondents' counsel that, if the report cannot be resorted to, then there are no facts before us to support an attack upon the validity of the Act. But it is submitted by respondents' counsel that the report should be admitted as being that of a commission finding facts not yet contradicted going to show that the real purpose and effect of the Act is an attempt to regulate the international oil industry and to foster our native coal industry at the expense of that of foreign petroleum. Many cases were cited, *pro* and *con*, which have received careful consideration with the result that we think the report should be admitted in evidence in so far only as it finds facts which are relevant to the ascertainment of the said alleged purpose and the effect of the enactment.

Sloan J.A. agreed while McQuarrie J.A. dissented.

In giving judgment on the main appeal Sloan J.A., with whom Martin C.J.B.C. agreed, said[1]:

> In leaving this appeal I would make short reference to the admissibility in evidence of the report of the Commissioner on the Petroleum Industry. It comprises three volumes two of which we held on an interlocutory appeal in this case to be admissible in evidence "in so far only as it (the report) finds facts which are relevant to the ascertainment of the . . . purpose and the effect of the enactment:" (1938) 53 B.C., 355 at 360. I see no reason to depart from the conclusion therein reached and include Vol. III within that ruling."

McQuarrie J.A., as mentioned, dissented as to this ruling.

If the matter rested here, I would have no hesitation in preferring the conclusion of McQuarrie J.A. on this point to that of the majority in the Court of Appeal, but it is necessary to consider whether a contrary view was expressed in the judgment of this Court. The appeal to this Court was heard by six members. They were unanimous in holding that the appeal was governed by the judgment of the Judicial Committee in *Shannon's* case[2], and should be dismissed. Duff C.J., Crocket J. and Hudson J. made no mention of the report of their reasons. Kerwin J. (as he then was), with whom Rinfret J. (as he then was) agreed, after holding that the *Shannon* case was decisive of the appeal, ended his reasons as follows, at pp. 447 and 448:

> In coming to this conclusion I have taken the report of a commissioner appointed by the Lieutenant-Governor in Council as being a recital of what was present to the mind of the legislature, in enacting the principal Act, as to what was the existing law, the evil to be abated and the suggested remedy (*Heydon's* Case, (1584) 2 Coke's Rep. 18.). There can, I think, be no objection in principle to the use of the report for that pur-

[1] (1939), 54 B.C.R. 48 at 71, 2 W.W.R. 418, 3 D.L.R. 397.
[2] [1938] A.C. 708, 2 W.W.R. 604, 4 D.L.R. 81.

pose, and Lord Halsbury's dictum in *Eastern Photographic Machine Company v. Comptroller General of Patents* (1898) A.C. 571, at 575, is to the same effect. It was argued by counsel for the appellants that the statements in the report were to be taken as facts admitted or proved, but that this cannot be done is quite clear from the authorities, the most recent of which is *Assam Railways and Traders Company v. The Commissioners of Inland Revenue* (1935) A.C. 445.

I have not considered the provisions of the amending Act which are objected to, and make no comment as to those provisions.

Davis J. deals at some length with the question of the admissibility and possible effect of the report. He refers to the *Assam* case, *supra,* and the dictum of Lord Halsbury in the *Eastman Photographic* case[1], states that the furthest the Courts have gone recently is in *Ladore v. Bennett, supra,* points out that in that case the report was put before their Lordships by consent and continues, at p. 453:

> A rule somewhat wider than the general rule may well be necessary in considering the constitutionality of legislation under a federal system where legislative authority is divided between the central and the local legislative bodies. But even if that be so, the legislation here in question is expressly confined and limited to the sale of the products of the particular industry in, and for use in, the province and must, upon the well settled authorities, be held to be valid legislation.

On a careful reading of all that he said on the subject it would appear to me that Davis J. expressed no final opinion on the admissibility of the report.

I have reached the conclusion that there is no decision which requires us to hold that a report of a Royal Commission made prior to the passing of a statute and relating to the subject-matter with which the statute deals, but not referred to in the statute, is admissible in evidence in an action seeking to impugn the validity of that statute. In my opinion the general rule is that if objected to it should be excluded.

If I am right in this conclusion the basis of Mr. O'Brien's argument, which I endeavoured to summarize above, disappears, and it becomes unnecessary to consider whether if it were held that in a case such as the present a report of a royal commission would be legally admissible, although objected to, it would follow that the statement alleged in the pleadings to have been made by the Minister who

[1] [1898] A.C. 571.

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introduced the bill was also admissible. It may, however, be well to recall the statement of Lord Halsbury in *Quinn v. Leathem*[1]:

> . . . a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it.

In my opinion the learned Chief Justice of the Superior Court was right in rejecting the evidence which is the subject-matter of this appeal. It was conceded and is clear on the authorities that the statement of the Minister in introducing the bill would be inadmissible in aid of the interpretation of the statute as finally passed into a law. I can discern no difference in principle to afford a sufficient reason for holding it to be admissible where, the words of the statute being plain, it is sought to show that Parliament was encroaching upon a field committed exclusively to the provincial legislature.

The nature of the task which confronts the Court when such a claim is put forward has been dealt with in many judgments of the Judicial Committee and of this Court. Nowhere, I think, is it more accurately and succinctly stated than by Duff C.J. in *Reference re Alberta Statutes*[2]. After stating that the question to be determined in relation to the Act respecting the Taxation of Banks was whether it was an enactment in exercise of the provincial power to raise a revenue for provincial purposes by direct taxation or was legislation which in its true character related to the Incorporation of Banks and Banking, he said, at p. 127:

> The judgment of the Judicial Committee in *Union Colliery of B.C. Ltd. v. Bryden* (1899) A.C. 580, is sufficient authority for the proposition that the answer to this question is to be found by ascertaining the effect of the legislation in the known circumstances to which it is to be applied.

This statement was adopted by my brother Locke in giving the unanimous judgment of this Court in *Texada Mines Ltd. v. Attorney-General of B.C.*[3].

In the case at bar it will be open to the parties to lead evidence to show the circumstances to which the impugned sections are to be applied but it must be evidence in a form

[1] [1901] A.C. 495 at 506.
[2] [1938] S.C.R. 100, 2 D.L.R. 81.
[3] [1960] S.C.R. 713 at 722, 32 W.W.R. 37, 24 D.L.R. (2d) 81.

that is legally admissible and the statement of the Minister, alleged in the plaintiff's declaration to have been made, is not in my opinion legally admissible.

As was said by Viscount Sumner in delivering the judgment of the Judicial Committee in *Attorney-General for Manitoba v. Attorney-General for Canada*[1]:

> The matter (i.e. the question of the validity of the statute) depends upon the effect of the legislation not upon its purpose.

Something was said in argument as to the necessity of ascertaining the true intention of Parliament in enacting the impugned sections. But Parliament is an entity which from its nature cannot be said to have any motive or intention other than that which is given expression in its formal acts. While he was speaking of an incorporated company, the words of Lord Sumner in *Inland Revenue Commissioners v. Fisher's Executors*[2], appear to me to apply with even greater force to Parliament, consisting as it does of the Sovereign, the Senate and the House of Commons. At p. 411 Lord Sumner said:

> In any case desires and intentions are things of which a company is incapable. These are the mental operations of its shareholders and officers. The only intention that the company has is such as is expressed in or necessarily follows from its proceedings. It is hardly a paradox to say that the form of a company's resolutions and instruments is their substance.

While I have reached the conclusion that the evidence in question in this appeal is inadmissible as a matter of law under the authorities and on principle and not from a consideration of the inconvenience that would result from a contrary view, it may be pointed out that if it were held that the Minister's statement should be admitted there would appear to be no ground on which anything said in either House between the introduction of the bill and its final passing into a law could be excluded.

I am fortified in the conclusion at which I have arrived by the dictum of my brother Locke in the *Texada* case, *supra,* at p. 720:

> At the trial of this action Sullivan J. considered the earlier legislation in arriving at the conclusion that the statute itself was invalid as being an attempt, under the guise of imposing a direct tax upon an interest in land, to regulate or restrain the export of ore and concentrates from the province. While that learned judge, in the course of his judgment, referred to

[1] [1929] A.C. 260 at 268, 1 W.W.R. 136, 1 D.L.R. 369.
[2] [1926] A.C. 395, 95 L.J.K.B. 487, 10 Tax. Cas. 302.

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certain statements purporting to have been made by the Premier of the Province and the Minister of Mines to the effect that the legislation was designed to discourage the export of iron ore so that eventually an integrated steel industry could be established in the province, he made it clear that he came to his conclusion without reference to this. That such statement had been made was not proven at the trial *and had the evidence been tendered it would, no doubt, have been rejected as inadmissible.*

I realize that the words I have italicized were not necessary to the decision of that appeal but they were concurred in by every member of the full Court. In my opinion they correctly state the law.

For the above reasons I would allow the appeal, set aside the judgment of the Court of Queen's Bench, restore the rulings of the Superior Court on the objections to evidence and direct that the record be returned to the Superior Court.

The appellant is entitled to his costs in this Court and in the Court of Queen's Bench.

FAUTEUX J.:—For the reasons given by the Chief Justice, I agree that the Appeal should be allowed, the judgment of the Court of Queen's Bench (Appeal Side) set aside, the rulings of the Superior Court restored and the record returned to that Court; the whole with costs against the respondent, in this Court and in the Court of Queen's Bench.

It may be pertinent to add the following comment. The Judges of the majority, in the Court of Appeal, relied particularly on the decision of this Court in *Henry Birks and Sons Ltd. and others v. City of Montreal and A.G. of Quebec*[1]. On their interpretation of the reasons given in that case, this Court would have considered, as evidence admissible for the purpose of establishing the true object and nature of the municipal by-law giving rise to the litigation, two letters addressed to the members of the Municipal Council prior to the adoption of the by-law.

With deference, the validity of the statute, under the authority of which the by-law was adopted, to wit: *An Act to amend the Early Closing Act,* 1949, 13 Geo. VI, c. 61, was the sole subject-matter of the debate and of the judgment in this Court. Indeed, having reached the view that the Act under consideration was *ultra vires* of the Legislature, this Court did not and did not have to concern itself with the by-law, or any matters related to its adoption.

[1] [1955] S.C.R. 799, 5 D.L.R. 321, 113 C.C.C. 135.

The evidence relevant to the issue and considered in the *Birks* case did not include these letters nor was it evidence of a character similar to that which is objected to in the present case.

The judgment of Martland and Ritchie JJ. was delivered by

RITCHIE J.:—The circumstances giving rise to this appeal have been fully outlined in reasons for judgment to be delivered by other members of the Court and it would be superfluous for me to repeat them. I agree that this appeal should be allowed, but wish to add the following observations concerning the argument of counsel for the respondent which has been referred to by my brother Cartwright.

In support of his contention that the statements by Ministers of the Crown sought to be introduced in this case, which would not ordinarily be admissible, should be admitted on the ground that the statute here in question is being attacked as a colourable attempt to encroach on a forbidden field of legislation, counsel for the respondent cited certain observations made by Lord Wright in *Assam Railways and Trading Company v. Commissioners of Inland Revenue*[1], as authority for the following statement contained in his factum:

> The Report of a Commission is of less evidentiary value than the statement of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law.

Based upon this premise, it was contended that because the Reports of Royal Commissions have on occasion been considered by this Court and the Privy Council in cases in which the constitutional validity of a statute was in question, it should, therefore, follow that statements of Ministers made in the course of proposing the legislation are to be admitted in such cases.

It is to be noted that the opening words of the passage from Lord Wright's decision on which the respondent's counsel relies so heavily are:

> It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is *inadmissible* . . . . (The italics are mine.)

[1] [1935] A.C. 445 at 458.

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This is an unqualified statement, and when Lord Wright goes on to say, "the Report of Commissioners is even more removed from value as *evidence of intention* . . . ." (the italics are mine), he seems to me to be limiting his observations to *direct evidence of intention.* In my view this interpretation of the passage in question is borne out by the language employed later in the same paragraph which indicates that Lord Wright was not prepared to question Lord Halsbury's admission of such a report in *Eastman Photographic Materials Company v. Comptroller-General of Patents, Designs, and Trade-Marks*[1], which he explained as follows:

> . . . Lord Halsbury refers to the Report *not directly to ascertain the intention* of the words used in the Act, but because, as he says, "no more accurate source of information as to what was the evil or defect which the Act of Parliament now under construction was intended to remedy could be imagined than the report of that commission." Lord Halsbury, it is clear, was treating the Report as extraneous matter to show what were the surrounding circumstances with reference to which the words were used . . . . (The italics are mine.)

While I do not find it necessary in this case to pass upon the admissibility of the Report of a Royal Commission, it does seem to me to be important to note that when such reports have been referred to by this Court and the Privy Council in cases involving the constitutional validity of a statute, they have been referred to *otherwise than as direct evidence of intention,* and, accordingly, a consideration of these cases in conjunction with Lord Wright's statement to the effect that a Report of Commissioners is less valuable *as direct evidence of intention* than statements made by Ministers in proposing legislation, cannot afford any basis for the conclusion that the rule excluding such statements by Ministers should be relaxed in the present case.

I would dispose of this appeal as proposed by the Chief Justice and Mr. Justice Cartwright.

Appeal allowed.

Attorney for the defendant, appellant: François Mercier, Montreal.

Attorneys for the plaintiff, respondent: O'Brien, Home, Hall & Nolan, Montreal.

[1] [1898] A.C. 571.