

THE CITY OF HALIFAX.....APPELLANT;

1934

AND

*May 9, 10
*Decr. 21HALIFAX HARBOUR COMMISSION- }
ERS. } RESPONDENT.ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA
EN BANC

Assessment and taxation—Crown—Assessment of Halifax Harbour Commissioners for business tax as “occupier” within s. 357 (1) of Halifax City Charter—Occupation for the Crown—The Halifax Harbour Commissioners’ Act, 1927, c. 58 (Dom.).

The Halifax Harbour Commissioners, who occupy the Crown property of Halifax Harbour for the exercise of their powers under 17 Geo. V (1927, Dom.), c. 58, are not assessable for business tax as an “occupier” within s. 357 (1) of the Halifax City Charter (1931). The relation of the Commissioners to the Crown in respect of their occupation of the harbour property is of such a character as to constitute that occupation an occupation “for the Crown” in the sense of the principle stated in *The Queen v. McCann*, L.R. 3 Q.B. 141, at 145-6, and as elucidated in its application in other cases. (*Coomber v. Justices of Berks*, 9 App. Cas. 61, and other cases, cited. *Fox v. Government of Newfoundland*, [1898] A.C. 667, and *Metropolitan Meat Industry Board v. Sheedy*, [1927] A.C. 899, distinguished, in view of the constitution, duties and powers of the bodies there in question). Provincial legislation to tax the Commissioners as occupier of the harbour property would be *ultra vires*; and the general taxing words of the City Charter should be read as excluding such a tax.

APPEAL by the City of Halifax from the judgment of the Supreme Court of Nova Scotia *en banc* (1) holding in effect that the Halifax Harbour Commissioners (respondents) occupy the Halifax Harbour property as agents of the Crown and are exempt from the business tax (for which they were assessed) imposed by The City Charter (1931) of the City of Halifax. Certain questions were submitted in a case stated by the Court of Tax Appeals of the City of Halifax, under s. 406 of the City Charter, for the Judge of the Supreme Court of Nova Scotia presiding in Chambers at Halifax, and were referred by Hall J. to the Supreme Court *en banc*.

The stated case sets out (*inter alia*) as follows: The Halifax Harbour Commissioners is a body corporate incorporated by c. 58 of the Statutes of Canada, 1927. It

*PRESENT:—Duff, C.J., and Rinfret, Cannon, Crocket and Hughes, JJ.

(1) 8 M.P.R. 263; [1934] 3 D.L.R. 614.

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does not own any real estate within the City of Halifax, the title to all real property occupied or operated by it being vested in His Majesty the King in the Right of the Dominion of Canada. It carries on operations at the Port of Halifax, as provided by said c. 58 of the Statutes of Canada, 1927, and for such purpose controls, operates and occupies certain lands in the City of Halifax. On February 6, 1933, Halifax Harbour Commissioners was assessed under the provisions of the Halifax City Charter (1931) on the assessment roll of the City of Halifax for \$450,000 in respect of business tax for property occupied for business or professional purposes, as provided by s. 357 (1) of the Halifax City Charter (1931) (said property being that above referred to). The Commissioners appealed to the Court of Tax Appeals for the City of Halifax. That court stated a case in writing for the opinion of a Judge in Chambers. Certain sections of the City Charter are set out, including the following:

356. The taxation of the City shall consist of

- (a) Business Tax,
- (b) Household Tax,
- (c) Licences and Special Taxes,
- (d) Poll Tax and Non-residential Tax,
- (e) Real Property Tax,

all as hereinafter specified and defined.

357. (1) The Business Tax shall be a tax payable by every occupier of any real property for the purposes of any trade, profession or other calling carried on for purposes of gain, except such as is exempt as is herein provided, and shall be payable by such occupier, whether as owner, tenant or otherwise and whether assessed as owner of such property for real property tax or not.

(2) [Tax rate and percentage of value of premises on which rate fixed].

(3) The occupant of any real property for any other purpose other than for the purpose of any trade, calling or profession, or other calling carried on for purposes of gain, and not for residential purposes, and not otherwise exempted, shall be liable to a tax of one-half of one per cent on the value of the premises so occupied. 1921, c. 77, s. 20; c. 78.

370. The following real property shall be exempt from real property tax:

(a) the property of His Majesty used for Imperial, Dominion or Provincial purposes;

* * *

371. No household tax or business tax shall be paid by the occupiers of any of the foregoing properties declared to be exempt from real property tax if such occupiers are the owners thereof and are occupying the same solely for the purposes of the association or other body specified as entitled to exemption.

372. If any real property entitled to exemption is let for residential or business purposes, the portion so let shall cease during the period of such letting to be entitled to any exemption and the occupant thereof shall be liable to household tax or business tax as the case may be.

373. No exemption from taxation conferred by this Act or under the authority thereof shall apply to any person occupying for a residential, recreational, commercial or industrial purpose any building or land, the property of His Majesty, as represented by either the Government of Canada or of the Province of Nova Scotia; and every person so occupying any such land shall be rated and taxed in like manner as if he were the actual owner of such land and shall be liable to the rates and taxes assessed and rated in respect thereto, 1925, c. 83, s. 3.

374. Except as is herein otherwise provided, if any property is let to the Crown or to any person, corporation or association exempt from taxation, such property shall be deemed to be in the occupation of the owner thereof for business or residential purposes as the case may be, and he shall be assessed and rated for household tax or business tax according to the purpose for which it is occupied.

The stated case sets out that the Commissioners allege, and the City denies, that the assessment was illegal on the ground that the Halifax Harbour Commissioners is exempt from business tax by virtue of s. 125 of the *British North America Act* and the provisions of the City Charter, the reasons urged on behalf of the Commissioners being that:

(1) The said Halifax Harbour Commissioners does not own any real property in the City of Halifax.

(2) The only property at present occupied by the Commissioners is property of His Majesty used for Dominion purposes, which property is exempt from taxation by virtue of the *British North America Act*.

(3) Under the City Charter (1931) no business tax is payable in respect of the occupancy of any property exempt from taxation.

(4) The said Halifax Harbour Commissioners does not occupy any building or land whatever for any commercial or industrial purpose.

(5) All real property, lands and buildings within the City of Halifax at present occupied or used by the Commissioners are the property of His Majesty and are used for Dominion purposes and are not used for commercial or industrial purposes, and the said Halifax Harbour Commissioners in using and occupying such land is doing so as the agent and servant of the Government of Canada and for governmental purposes only.

The questions reserved for decision were:

(1) Whether the Halifax Harbour Commissioners are occupiers of any real property within the meaning of the City Charter (1931).

(2) If the answer to the first question is in the affirmative whether the Halifax Harbour Commissioners are occupiers of any real property for the purpose of any trade, profession or other calling carried on for the purpose of gain.

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(3) If the answer to the foregoing questions are in the affirmative and the Halifax Harbour Commissioners are occupiers of real property for the purposes of any trade, profession or other calling carried on for the purposes of gain, whether they are exempted from Business Tax by any provision of the Halifax City Charter or by any other enactment.

(4) If the answers to questions 1 and 2 are in the negative and it is decided that the Halifax Harbour Commissioners are not liable to be assessed for Business Tax whether the tax provided by Subsection 3 of Section 357 can be assessed against the Halifax Harbour Commissioners.

(5) How the costs of the application are to be borne.

In the Court *en banc*, Graham J., with whom Carroll and Hall JJ. concurred, came to the conclusion, "with some doubt," that "the Commissioners are to be considered agents of the Government," and that the third question should be answered in the affirmative. Doull J. held that the Commissioners were "exempt from business tax as agents and servants of the Crown occupying the property on behalf of the Crown." By the formal judgment of the Court *en banc*, the questions submitted were answered as follows: (1) Yes, (2) Yes, (3) Yes, (4) No, (5) There should be no costs to either party.

The City of Halifax appealed.

C. P. Bethune for the appellant.

C. B. Smith K.C. for the respondent.

The judgment of the Court was delivered by

DUFF, C.J.—The question, the answer to which, in my view, must determine this appeal, is whether or not the respondents, the Halifax Harbour Commissioners, fall within the description "occupier" within the meaning of section 357 (1) of the Halifax charter. The conclusion I have reached is that this question must be answered in the negative.

The governing principle can, perhaps, for the purposes of this case, be most conveniently stated in the words of Lord Blackburn (Blackburn J. as he then was), in his

judgment in *The Queen v. McCann* (1). He is there dealing with an issue raised as to the liability of the Commissioners of Works and Buildings to be rated to the relief of the poor under 43 Eliz., ch. 2, s. 1, in respect of their occupation of a bridge across the Thamas at Chelsea. He says:

Since the decision relating to the Mersey Docks, as a general rule, the occupier of property from which profit is derived, is to be rated, without regard to the purpose to which the profits are ultimately appropriated; but property in the occupation of the Crown—the Crown not being named in the statute of Elizabeth—forms an exception to this rule; consequently where the Crown is the occupier of property it is not to be rated; and further, where property is occupied for the Crown it is not to be rated. It is on this principle that a servant of the Crown, who had taken a lease of premises to be used as barracks, as in *Lord Amherst v. Lord Sommers* (2), was held not liable to be rated; and this principle extends to the case of a person in occupation of premises, whether as servant or trustee for the Crown: and so far from being overruled in the case of *Mersey Docks* (3), this principle was affirmed.

The courts have had to decide, in a number of cases, whether property occupied for public purposes was occupied "for the Crown," or in trust for the Crown, within this principle. I think the principle is properly applicable to the construction of such an enactment as section 357. The rule has been uniformly followed in England and Scotland in the application of rating statutes, and one may fairly assume that one is not running counter to the intention of the legislature in applying it to a Canadian enactment *in pari materia* and expressed in terms not substantially differing in effect.

There are, moreover, relevant considerations resting upon the circumstances that the respondents are a public body charged with the management and administration of property of the Crown in the right of the Dominion, and that their revenues are derived from charges collected in the course of such administration, and from tolls levied under the authority of the Parliament of Canada, in respect of the use of the public harbour of Halifax of which the Crown, in the right of the Dominion, is proprietor, to which it will be necessary to advert.

Before discussing these matters, it is advisable to consider the powers and rights of the respondents, under the

(1) (1868) L.R. 3 Q.B. 141, at 145-6 (2) (1788) 2 T.R. 372.

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(3) *Jones v. Mersey Docks*, (1864) 11 H.L.C. 443, at 464.

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statute of 1927, by which they were incorporated, and subsequent statutes affecting them, and, in particular, the relation in which they stand, in the exercise of these powers, to His Majesty and His Majesty's Privy Council and Ministers of State for Canada.

The property occupied by the respondents consists of property belonging to the harbour of Halifax, and is the property of the Crown. The object and purposes of the Legislature in vesting the occupation of this property in the respondents are disclosed by the legislation we have to discuss. Broadly speaking, the duties of the Commissioners are, in general terms, of two descriptions. First, they are responsible for the management and administration of the harbour and of property belonging to the harbour and of facilities connected therewith; secondly, they are charged with the duty of regulating the exercise of public rights of navigation within the harbour, including the mooring, berthing, discharging or loading of vessels, and everything incidental thereto.

In the exercise of all their powers, they are, as we shall see, subject to the control of the Crown, exercised either through the Governor in Council, that is to say, the Governor, as the representative of His Majesty, acting upon the advice of His Majesty's Privy Council for Canada, or through the Minister of Marine and Fisheries. This is a matter of no little importance and it is right, therefore, to enter into particulars.

By section 8, the statute declares that nothing shall be deemed "to give the Corporation jurisdiction or control respecting private properties or rights" within the limits of the harbour as defined.

Then, by the same section, it is enacted that the respondents shall have no right to enter upon, or to deal with, any property of the Crown, except when so authorized by Order in Council.

The respondents, by section 10, are given wide powers for the acquisition of real and personal property for the purposes of the harbour, but these powers can only be executed after approval by the Governor in Council. There is also, under the same section, a power to sell or lease, but subject to the same condition. The section, moreover, enacts that real property acquired under these

powers shall "be acquired in the name of, and vested in, His Majesty."

Where the respondents proceed (under the authority of the Government, of course) by way of expropriation, they are entitled to avail themselves of the provisions of the *Railway Act*, but, even in such proceedings, the powers vested by that statute in the Board of Railway Commissioners are to be exercised by the Governor in Council (section 13).

Again (section 14), the Governor in Council is authorized to transfer elevators, wharfs, piers, buildings, structures, machinery and equipment, the property of His Majesty, within the limits of the harbour, foreshores, water lots and other real property "to the jurisdiction of" the respondents, to be "subject to the control of and administration by" the respondents; but under such terms and conditions as may be prescribed by the Governor in Council.

The respondents are empowered to make regulations by by-law, concerning the conduct and government of the Corporation, its officers and servants; the compensation or salaries to be paid to such officers or servants; the management, control and improvement of the property, real and personal, under its jurisdiction; the use of harbour facilities; the lease or allotment of harbour property, plant or facilities; the construction and maintenance of wharfs, piers, buildings and other structures within the harbour limits; the imposition and collection of rates and tolls on vessels and their cargoes, on goods or cargo landed, shipped or stored in the harbour, and for the use of any buildings, plant or facilities under the control of the Corporation; but no such by-law can have any force or effect until confirmed by the Governor in Council. The same observation applies to by-laws regulating the navigation of the harbour and matters incidental thereto.

For our present purposes, perhaps the most significant provisions of the statute are those relating to the sources of capital funds and revenue and the expenditure thereof. The contemplated sources of revenue appear to be the rates and tolls on vessels and cargoes, and on goods, and the charges for the use of buildings, plant and harbour facilities, which, as already mentioned, the respondents are empowered to impose by by-laws confirmed by the

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Governor in Council; and penalties imposed under like authority. As to the sources of capital funds, the respondents are, by the statute of 1927, invested with borrowing powers (section 18). These borrowing powers are given for the purpose of enabling the respondents to construct, acquire, repair or improve wharves and other works and structures in the harbour; but only

after the approval by the Governor in Council, on the recommendation of the Minister, of the plans, specifications and estimates in detail for the work proposed, and the amount proposed to be borrowed.

Debentures may be issued, secured upon the revenues or property receivable or controlled by the Corporation, and may be sold on terms approved by the Governor in Council.

It does not appear, from the statute of 1927 itself, whether or not it was supposed that the capital funds provided by borrowing should be obtained from or through the Government, or from other sources. However that may be, statutes were passed in substantially identical terms, except as to amounts, in the years 1928, 1929 and 1931, for providing the respondents with capital funds by loans from time to time from the Government of Canada, not exceeding a maximum named in each case.

Under the statute of 1928, the total amount to be advanced, which, the statute declares, it was understood would meet the total requirements of the respondents for the ensuing year, was not to exceed the sum of \$500,000. The statute of 1929 authorized the advance of a total sum not exceeding \$5,000,000 in addition to moneys already placed at the disposition of the respondents; and that of 1931, a further sum of \$3,500,000.

It is material to refer to the conditions controlling the Governor in Council in making these advances. The purposes of the advances, the statutes declare in general terms, is to enable the respondents to construct such terminal facilities in the harbour of Halifax, according to plans approved by the Governor in Council, as may be necessary properly to equip the harbour. No loan, it is enacted, is to be paid, unless detailed plans, specifications and estimates, for the works on which the money is to be expended, satisfactory to the Minister of Marine, have been approved by the Governor in Council, before any part of the work has been commenced.

The respondents are required to

submit to the Minister of Marine and Fisheries, for approval, monthly applications for loans on account of the different items of construction of terminal facilities, accompanied by statements showing the total expenditure on these different items in detail, for the month which the loan is to cover, and any other statements required in such form as the Minister shall direct; and upon approval of the application, authority for the payment of the amount so applied for may be granted by the Governor in Council.

Upon any loan being made, debentures equal in par value to the loan, bearing interest at five per cent, payable half-yearly, are to be deposited with the Minister of Finance; and the principal and interest of the sums loaned are to be payable "by the Corporation out of all its property and assets and out of all its tolls, rates, dues, penalties and other sources of revenue and income" and charged thereon under the conditions laid down by section 19 of the Act of 1927.

The legislation provides no means of obtaining capital funds other than such borrowing, except the sale of property; and, in resorting to that, as well as in exercising their borrowing powers, the respondents are entirely under the control of the Governor in Council.

The property under the control of the respondents, other than its revenues, consists, therefore, of properties transferred by the Crown "to the jurisdiction of" the respondents, or "entered upon," with the authority of the Governor in Council; properties purchased with money taken from revenue, with the consent of the Governor in Council; properties acquired and constructed through the expenditure of moneys borrowed (which, in fact, seem to have been confined to moneys advanced by the Governor in Council under the legislation of 1928, 1929 and 1931); and, as regards this last mentioned class, the respondents, as we have seen, are, at every step in the course of the acquisition of such properties, under the control of the Minister of Marine and Fisheries and the Governor in Council.

The revenues, as already indicated, would be revenues derived from charges collected for the use of the property and facilities under the "jurisdiction" of the respondents, and tolls payable for the use of the port, and from penalties; all such charges and tolls and penalties being fixed by by-laws which must be approved by the Governor in Council.

The control over the expenditure is singularly rigorous. We have noticed the conditions under which moneys borrowed are disbursed. By section 19 (1) (a) all revenue is to

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be applied, first of all, in payment of the necessary expenses incurred in the collection of it, and in the management and operation of the harbour services, and in the maintenance and ordinary repair of its works and facilities; and, by the same clause, the expenditure of all revenue is subject to the supervision and control of the Minister. The compensation and salaries of all officers, assistants, engineers, clerks and servants are to be fixed by by-law, which must receive the approval of the Governor in Council.

By section 21 (a) the respondents are required to keep separate detailed accounts of receipts and disbursements on capital account, as well as on revenue account, and there is to be an audit by the Department of Marine and Fisheries.

Then, by section 20, the Minister may, when the gross revenue exceeds \$50,000 per annum, require the respondents to submit at the beginning of each current year, an estimate of its expenditures on each of the different services of the harbour, (a) out of revenue, and (b) out of capital funds. These estimates are to be subject to the approval of the Minister; who may require the reduction of any item. And the statute requires peremptorily that the expenditure for the year shall be confined "to a total within the estimates so approved." This last is a statutory provision binding, apparently, upon the Minister and the Governor in Council, as well as on the respondents. But further, within the limits so fixed, the expenditure of all revenue is, as already mentioned, by section 19, subject to the supervision and control of the Minister. Any surplus of revenue, after payment of the costs of collection and services, is to be applied, first, in payment of interest on money borrowed, and, secondly, under the direction of the Minister, in the creation of a sinking fund.

The remaining provisions of the statute, except those concerned with the constitution of the Corporation, do not require any special comment save, perhaps, this: the powers of the respondents in respect of the collection of rates and tolls, and the enforcement and collection of penalties, and their rights in respect of the recovery of damages to their property are exceptional, and of such a character as to suggest that the services of the respondents are regarded by the statute as exclusively governmental services.

The constitution of the Corporation is important. There are three Commissioners, each of which is appointed by the Governor in Council on the recommendation of the Minister. Their tenure of office is "during pleasure." One of them is to be President, to be named from time to time by the Governor in Council. A Commissioner resigns his office by notice in writing to the Minister. The Governor in Council determines their remuneration, which is to be paid out of the revenue of the harbour.

I agree with the view unanimously accepted by the Supreme Court of Nova Scotia that the relation of the respondents to the Crown, in respect of the occupation for which they have been assessed, is of such a character as to constitute that occupation an occupation "for the Crown" in the sense of the principle as stated above, in the language of Lord Blackburn, and as elucidated in its application by the courts in England and by the Judicial Committee of the Privy Council.

It is not necessary, I think, to go through the authorities in detail. The judgments of Lord Blackburn and Lord Watson in *Coomber v. Justices of Berks* (1) show very clearly indeed the view accepted by these great judges as to the scope of the principle. They both adopt the statement of it by Lord Cairns in *Greig v. University of Edinburgh* (2) in these words:

The Crown not being named in the English or Scotch statutes on the subject of assessment, and not being bound by statute when not expressly named, any property which is in the occupation of the Crown or of persons using it exclusively in and for the service of the Crown, is not rateable to the relief of the poor.

It is quite clear, however, that the phrase "service of the Crown" is not understood by them in any such limited sense as would exclude such services as those performed by the respondents. At page 68, Lord Blackburn, after referring to Lord Westbury's language in the *Mersey Docks* case (3), says:

* * * in *Greig v. University of Edinburgh* (4) he more clearly shows what was his view by using this language "property occupied by the servants of the Crown, and (according to the theory of the Constitution) property occupied for the purposes of the administration of the government of the country, became exempt from liability to the poor-rate."

(1) (1883) 9 App. Cas. 61.

(2) (1868) L.R. 1 H.L., Sc. 348, at 350.

(3) (1864) 11 H.L.C. 443.

(4) (1868) L.R. 1 H.L., Sc. 348, at 354.

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He proceeds to say that Lord Cranworth (in his judgment in the *Mersey Docks case* (1)) was on his guard against being supposed to decide that all the earlier cases were right "in deciding that the purposes were those of the public government"; but that he does not impeach them.

Turning to the judgment of Lord Watson, we find him employing language pointing to the essential distinction as that between public purposes in the broad sense and (in Lord Blackburn's phrase) "purposes of the public government." At p. 73, Lord Watson says it was sufficient in the *Mersey Docks case* (2)

to establish that occupation for what were strictly speaking public, though in no sense Government, purposes, was not, as regarded exemption from the poor-rate, in *pari casu* with the occupation of the Crown.

He seems to say that the point for consideration in such cases is whether or not the occupation "must be held to be" for "a proper Government use," and this appears to be adopted by Lord Bramwell at p. 79.

To state again, in more summary fashion, the nature of the powers and duties of the respondents: Their occupation is for the purpose of managing and administering the public harbour of Halifax and the properties belonging thereto which are the property of the Crown; their powers are derived from a statute of the Parliament of Canada; but they are subject at every turn in executing those powers to the control of the Governor representing His Majesty and acting on the advice of His Majesty's Privy Council for Canada, or of the Minister of Marine and Fisheries; they cannot take possession of any property belonging to the harbour property without the consent of, and only upon such terms as may be imposed by, the Government; they cannot acquire property or dispose of property without the same consent; they can only acquire capital funds by measures taken under the control of the Government; they can only apply capital funds in constructing works and facilities under a supervision and control, the character of which has been explained; the tolls and charges which are the sources of their revenue they can only impose under the authority of the Government; the expenditure of revenues in the maintenance of services is under the control and supervision of a Government Department;

(1) (1864) 11 H.L.C. 443, at 508. (2) (1864) 11 H.L.C. 443.

the salaries and compensation payable to officers and servants are determined under the authority of the Government; the regulations necessary for the control of the harbour, the harbour works, officers and servants, the proceedings of the Corporation, can only take effect under the same authority; the surplus of revenue after providing for costs of services and the interest on the debenture debt goes into a sinking fund under the direction of the Minister; finally, they are appointed by the Crown and hold office during pleasure.

I cannot doubt that the services contemplated by this legislation are, not only public services in the broad sense, but also, in the strictest sense, Government services; or that the occupation of the Government property with which we are concerned is, in the meaning with which Lord Cairns used the words in the passage cited (and in the sense in which those words were interpreted by Lord Blackburn and Lord Watson), an occupation by persons "using" that property "exclusively in and for the service of the Crown."

It is not without importance to observe that, since Confederation, except in special cases where it has been found convenient to make provision for the administration of harbours by the appointment of harbour commissioners, the control, management and regulation of the matters committed to the charge of the respondents have been treated in this country as belonging to the services of the Crown.

By chapter 89 of the Revised Statutes of Canada (1927), section 4,

* * * the use, maintenance, and ordinary repairs of all harbours, wharfs, piers and breakwaters constructed or completed at the expense of Canada, or in any way the property of Canada, and the making and enforcing of regulations concerning such use, maintenance and ordinary repairs, and the collection of tolls and dues for such use,

are placed under the control and management of the Minister of Marine and Fisheries. By the same statute (section 7), the Governor in Council is empowered "on the recommendation of the Minister" (of Marine and Fisheries) to "make rules and regulations for the use and management of such harbours, wharfs, piers and breakwaters" and to establish "a tariff or tariffs of the tolls and dues to be paid for the use of" them "to be levied

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on persons or vessels using them, and on goods, wares or merchandise landed or shipped on or from off them.”

The statute substantially in its present form has been in effect since 1877. Prior to that date, the powers vested in the Department of Marine and Fisheries by the statute of 1877 had been exercised in part by that department, and in part by the Public Works Department. By chapter 42 of the statutes of 1872 it was enacted:

2. The Governor in Council may from time to time appoint a fit and proper person to be Harbour Master for the Port of Halifax, in the Province of Nova Scotia.

3. Every Harbour Master appointed under this Act shall be under the control of the Minister of Marine and Fisheries, to whom he shall furnish a report in writing and on oath, as soon as possible after the thirty-first day of December in each year, of his doings in office, and of the fees of office received by him during such year.

4. The rights, powers and duties of the Harbour Master for the Port of Halifax, shall be such as may from time to time be conferred and imposed upon him by rules and regulations made by the Governor in Council for the government of his office and of the Port of Halifax, and for his remuneration, which rules and regulations the Governor in Council is hereby authorized and empowered to make, and from time to time to alter, amend or repeal.

These provisions applied to the Port of Halifax down to 1927.

Two judgments of the Judicial Committee of the Privy Council are relied upon by the appellants. The first is *Fox v. Government of Newfoundland* (1). The question involved in that case was whether certain moneys owing to the boards of education of Newfoundland took priority over ordinary debts in the liquidation of a bank, as falling within the description “debts and claims due to the Crown or to the government or revenues of the Colony.” The question considered by the Judicial Committee was whether or not these boards were agents of the government. It was held they were not. That view was based upon provisions of the statute by which the boards were constituted. Their Lordships held that,

The appointment of boards for each of the three religious denominations, and the constitution of the board, indicate that it is * * * to have within the limit of general educational purposes a discretionary power in expending

the moneys transferred to it—“a power which is independent of the Government.” There was provision for auditing of the accounts, but it was held that this was merely for

(1) [1898] A.C. 667.

the information of the Government and Legislature and not in order that any item of expenditure might be disallowed if the Government did not approve of it. The statute made a distinction between money to be expended by a board of education and money to be expended as the Governor in Council might determine.

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It is quite evident that these considerations have no application in the present case. The control, carefully reserved, as we have seen, to the Government, by the statute before us, had no place in the Newfoundland scheme.

In *Metropolitan Meat Industry Board v. Sheedy* (1) a similar question was raised: that is to say, whether a debt due to the Metropolitan Meat Industry Board of New South Wales was a debt due to the Crown. Lord Haldane, who delivered the judgment of the Committee, discusses the cases to which reference has already been made. As regards *Fox v. Government of Newfoundland* (2), he explains the *ratio decidendi* in this way:

The reason was that the various boards of education were not mere agents of the Government for the distribution of money entrusted to them, but were to have, within the limits of general educational purposes, uncontrolled discretionary power in expending it. The service, in other words, was not treated as being the service of the Sovereign exclusively within the meaning of the principle, but their own service.

As regards the New South Wales Board, whose powers were under review, he says,

They are a body with discretionary powers of their own. Even if a Minister of the Crown has power to interfere with them, there is nothing in the statute which makes the acts of administration his as distinguished from theirs. That they were incorporated does not matter. It is also true that the Governor appoints their members and can veto certain of their actions. But these provisions, even when taken together, do not outweigh the fact that the Act of 1915 confers on the appellant Board wide powers which are given to it to be exercised at its own discretion and without consulting the direct representatives of the Crown. Such are the powers of acquiring land, constructing abattoirs and works, selling cattle and meat, either on its own behalf or on behalf of other persons, and leasing its property. Nor does the Board pay its receipts into the general revenue of the State, and the charges it levies go into its own fund.

Obviously, there is little relevant analogy between such a body and the respondents, whose duties mainly consist in managing and administering property which belongs to the Crown, and whose activities, and whose revenues and ex-

(1) [1927] A.C. 899.

(2) [1898] A.C. 667.

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penditures, are subject to the control and supervision of the Crown, as explained above.

The position of the respondents cannot, I think, in any pertinent sense, be distinguished from that of the Commissioners whose status was in question in *The Queen v. McCann* (1). Indeed, if, instead of three Harbour Commissioners to be appointed by the Crown, holding office during pleasure, the statute had made provision for the appointment of a single Harbour Commissioner, that Commissioner to be the Minister of Marine, or the Deputy Minister of Marine, for the time being, we should have had a substantially identical case.

But there is another point of view from which the controversy in this appeal ought to be considered. It results, I think, from the examination of the legislation, first, that, as I have already said, the occupation by the respondents of the property and facilities under their "jurisdiction" is an occupation for the Dominion of Canada; and, second, that the property of the respondents is part of the public property of Canada.

I have nothing to add upon the first branch of this proposition. As to the second, there are some points which ought, perhaps, to be emphasized.

First of all, the public harbour of Halifax passed, by force of section 108 of the *British North America Act*, as property, to the Crown in right of the Dominion, and is still part of the public property of the Dominion. Admittedly, indeed, all the real property and harbour facilities over which the respondents exercise any control are the property of the Government. The sources of revenue are the charges and tolls payable in respect of the use of the harbour and harbour facilities. Moneys obtained by borrowing are obtained upon the security of these revenues and sources of revenue—in actual fact in the form of advances by the Government upon such security. The ultimate source of all revenue, outside of port dues (part of the duties and revenues vested in the Dominion by the *British North America Act*, section 102), is the property of the Dominion. The statute treats all these revenues as moneys at the disposition of Parliament, and, subject to the specific direc-

tions of the statute, gives the control of them to the Government.

If the Corporation had been constituted as above suggested, as consisting of a single Commissioner, to be the Minister of Marine for the time being, it would not have been disputed that a proposal to levy a tax upon the Corporation's occupation of the harbour property was virtually a proposal to tax the Dominion Government, or the property of the Dominion Government. Any such attempt must fail, as *ultra vires* of a Provincial Legislature. The general words of the charter should be read as excluding such a tax.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *C. P. Bethune.*

Solicitor for the respondent: *C. B. Smith.*

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