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\*Feb. 17, 18.

\*June 10.

IN THE MATTER OF A REFERENCE AS TO THE  
LIABILITY OF THE PROVINCE OF NOVA  
SCOTIA FOR EXPENSES INCURRED IN CALL-  
ING OUT TROOPS IN AID OF THE CIVIL  
POWER IN CAPE BRETON.

*Constitutional law—Riot—Calling of Active Militia—Requisition by At-  
torney General of the province—Liability of the province for expenses  
incurred—Militia Act, R.S.C., 1906, c. 41, sections 8 to 90; 1924 (D.)  
c. 57—Public Service Act, R.S.N.S., 1923, c. 9, s. 2, s. 3 (1), s. 4, s. 40.*

The question referred to this court is whether the province of Nova Scotia is liable, or not, to pay to the Dominion of Canada all expenses and costs incurred by the latter by reason of part of the active militia of

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\*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret, Lamont, Smith and Cannon JJ.

Canada being called out and serving in aid of the civil power in the county of Cape Breton in 1925, in a case of riot, upon a requisition, made by the Attorney-General of Nova Scotia in the form prescribed by s. 85 of the *Militia Act* (R.S.C., 1906, c. 41; (D) 1924, c. 57), which included an undertaking by him that these expenses and costs would be paid to the Dominion Government by the province.

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*Held*, Newcombe J. dissenting, that the question should be answered in the negative. Sections 80 to 90 of the *Militia Act* repose certain powers in the person occupying the position of Attorney-General in the province for the time being, but the exercise of these powers does not in any way depend upon the consent of the Lieutenant-Governor or of the provincial legislature. The *Militia Act* envisages the Attorney-General, not in his capacity as Attorney-General to His Majesty as the Sovereign Head of the province, but as a person in whom certain powers are vested and on whom certain duties are laid by the statute. These sections apply to every province and go into operation independently of the scope of the Attorney-General's authority to bind the province in respect of the expenditure of moneys for such purpose. Therefore these enactments do not contemplate a duty to pay, proceeding from a contract between the province and the Dominion. The revenues of the province are vested in His Majesty as the supreme head of the province, and the right of appropriation of all such revenues belongs to the legislature of the province exclusively. *Seem* that the Attorney-General (whose duties, in so far as now material, include the supervision of the administration of justice within the province) has no statutory authority to undertake the payment now demanded by the Dominion: the subject matters comprised within the supervision of the administration of justice would not embrace authority to enter into such an undertaking.

*Per* Newcombe J. (dissenting).—Assuming that sections 84, 86 (3) and 89 of the *Militia Act* are ineffective to bind the province without provincial sanction, there are other valid provisions remaining, respecting *Aid of the Civil Power*, which are independent of and separable from the impugned Dominion provisions, and which provide all legislation that the Dominion requires to enable it to maintain the claim now under consideration. An Order in Council was not necessary in order to bind the province, seeing the authority which the provincial Attorney-General, who requisitioned the troops, had by statute, as the political head to whom adequate executive power was delegated; and the provincial Government, during the long period of military activity, had stood by consenting.

*Per* Cannon J.—Such an undertaking, signed by the Attorney-General acting as such on behalf of the province of Nova Scotia, to be valid and binding on the province, would have to be ratified by the legislature, as it would affect the finances and dispose of the revenues of the province. But it is the spirit of our constitution that, in emergencies beyond the control of the civil power in one province, the cost of the aid given by the Dominion militiamen should be borne by the province. In this case, the province of Nova Scotia is only conditionally liable to the Dominion for the expenses now claimed, because, since the amending of the *Militia Act*, in 1924, the legislature has not yet passed legislation concurrent with that Act and has not yet voted the necessary funds to honour the signature of its Attorney-General who, under the rule of ministerial solidarity, acted for and on behalf of the government of the province.

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REFERENCE by the Governor General in Council to the Supreme Court of Canada for hearing and consideration, pursuant to the authority of s. 55 of the *Supreme Court Act*, R.S.C., 1927, c. 35, of the following question:

"Is the province of Nova Scotia, on the facts (hereinafter) set out, liable to pay to His Majesty in the right of the Dominion all expenses and costs incurred by reason of the calling out of part of the Active Militia in aid of the civil power in Cape Breton as aforesaid?"

The facts, as stated in the Order in Council, are as follows:

"Upon and in pursuance of a requisition dated 11th June, 1925, from the Attorney-General of Nova Scotia (a true copy whereof is contained in the Schedule hereto annexed, marked "A"), made by him under the provisions of sections 81, 85 and 86 of the Militia Act, as enacted by chapter 57 of the Statutes of Canada, 1924, the District Officer Commanding, Military District No. 6, at Halifax, pursuant to the provisions of said section 81 and of section 82 of the Militia Act, as enacted by said Chapter 57 of the Statutes of 1924, called out a portion of the Permanent Force to aid the civil power in connection with certain riots and disturbances in the County of Cape Breton, and as specified in the said requisition.

"Subsequently, it appeared to the District Officer Commanding, Military District No. 6, to whom the said requisition was addressed, that the services of the Active Militia in Districts other than the one of which he was in Command were necessary for the purpose of suppressing or preventing the riot or disturbance mentioned. The said District Officer Commanding, pursuant to the provisions of Section 83 of the Militia Act, as enacted by the said Chapter 57 of the Statutes of 1924, notified the Adjutant-General of the number of officers and other ranks, horses and equipment which he considered necessary, and of which number the said section 83 makes the District Officer Commanding the sole judge.

"On receipt of this notification, the Adjutant-General, pursuant to the powers vested in him by the said Section 83, ordered the despatch to Cape Breton of the further number of troops, horses and equipment required, the per-

sonnel, horses and equipment of the Permanent Force in Military Districts Nos. 1 (London), 2 (Toronto), 3 (Kingston), 4 (Montreal), 5 (Quebec), and (10 (Winnipeg), being used to fulfil the requirements of the District Officer Commanding, Military District No. 6.

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"The troops so called out remained on duty in aid of the civil power from the 12th June, 1925, to the 24th August, 1925, both dates inclusive, on which latter date they were finally withdrawn pursuant to the notification, dated 25th August, 1925, received from the Attorney-General of Nova Scotia (a true copy whereof is contained in the Schedule annexed hereto, marked "B"), that the services of the Active Militia were no longer required.

"The expenses and costs incurred by His Majesty in the right of the Dominion, by reason of the Active Militia being called out as aforesaid, amount to \$133,116.73, the details whereof are set out in the statement contained in the Schedule annexed hereto, marked "C."

"The Minister is informed by the Deputy Minister of National Defence that the said statement sets out only those expenses which were actually incurred by His Majesty in the right of the Dominion by reason of the Militia being called out in aid of the civil power as aforesaid, and that there are not included in such expenses any sums with respect to the pay and allowances paid to the officers and men so called out which would have been paid or with respect to the costs of the rations which would ordinarily have been issued to them in any event irrespective of whether or not they had been called out in aid of the civil power.

"The Minister observes that the expenses and costs so incurred by His Majesty in the right of the Dominion are, by section 89 of the Militia Act, as enacted by chap. 57 of the Statutes of 1924, required to be paid to His Majesty by the province of which the Attorney-General made the requisition, and the Attorney-General of Nova Scotia purporting to act for and on behalf of the Province of Nova Scotia, moreover, gave an undertaking in the terms set forth in the requisition made by him as aforesaid that all expenses and cost so incurred by His Majesty should be paid to His Majesty by the said province.

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"The Minister reports that he has received from the Attorney-General of Nova Scotia in confirmation of allegations of fact first communicated to the Dominion Government or any officer thereof by telegram from the Attorney-General of Nova Scotia to the Deputy Minister of Justice, dated 3rd February, 1928, satisfactory proof, in the form of a statutory declaration, dated 9th February, 1928, made by one Arthur S. Barnstead of the city of Halifax, in the Province of Nova Scotia, Clerk of the Executive Council for the said province, of the statements of fact hereinafter set out, and the Minister recommends that the said statements of fact be embodied in the narrative of facts herein set out, subject to the reservation of all pleas or claims in law or equity which are or may be open or available to the Crown in the right of the Dominion. The said statements of fact, numbered paragraphs (1) and (2) are as follows:

"(1) That His Honour the Lieutenant-Governor of Nova Scotia in Council made no order authorizing, ratifying, or confirming, or in any way whatever referring to the making of a requisition by the Honourable W. J. O'Hearn, Attorney-General of Nova Scotia, addressed to the District Officer Commanding Military District No. 6, Halifax, N.S., or to any other official or person, requiring such officer, official or person to call out the Active Militia or any part or portion thereof for the purpose of suppressing or dealing with any riot or disturbance, or authorizing, ratifying or confirming, or in any way whatever referring to the giving of an undertaking by the said W. J. O'Hearn that all of any expenses and costs, or either of them incurred by His Majesty by reason of the Militia or any part or portion thereof being called out or serving in aid of the civil power pursuant to any requisition should be paid to His Majesty by the Province of Nova Scotia, and that there is no record of any such authorizing, ratifying or confirming by His Honour the Lieutenant-Governor in Council in any other way, nor is there any record of any advice respecting the matter having been tendered to His Honour the Lieutenant-Governor by the Executive Council for the Province of Nova Scotia; and

"(2) That His Honour the Lieutenant-Governor of Nova Scotia in Council made no order authorizing, ratify-

ing, or confirming, or in any way whatever referring to the giving of a notification by the late the Honourable John C. Douglas, Attorney-General of Nova Scotia, addressed to the District Officer Commanding Military District No. 6, Halifax, N.S., or the officer appointed to administer that District or for the time being performing the duties of the District Officer Commanding that District, or to any other official or person, that the services of the Active Militia were no longer required in aid of the civil power, and that there is no record of any such authorizing, ratifying or confirming by His Honour the Lieutenant-Governor in Council in any other way, nor is there any record of any advice respecting that matter having been tendered to His Honour the Lieutenant-Governor by the Executive Council for the Province of Nova Scotia.

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“The Minister further reports that there was not communicated, in any manner or form, to the Crown in the right of the Dominion, or to its officers, either at the time the said requisition with the undertaking therein embodied was made or during the whole period the Active Militia so called out remained on duty in Cape Breton, any notice of repudiation on the part of the Lieutenant-Governor in Council or Government of Nova Scotia of the authority of the Attorney-General to give the said undertaking for and on behalf of the Province or disavowal of the liability of the Crown in the right of the Province, under the said undertaking, to pay to the Crown in the right of the Dominion the expenses aforementioned, and that the first intimation received by the Dominion Government or by any of its officers of any intention on the part of the Province of Nova Scotia to repudiate the authority of the Attorney-General of Nova Scotia to give such undertaking for and on behalf of the said Province, was contained in the telegram of the 3rd February, 1928, from the Attorney-General of Nova Scotia to the Deputy Minister of Justice aforementioned.

“The Minister further reports that at the conference recently held at Ottawa between representatives of the Dominion and the several provincial governments, the representatives of the Government of Nova Scotia disputed the liability of the province of Nova Scotia to pay the expenses

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and cost incurred by His Majesty in the right of the Dominion as aforesaid, and it was agreed that this question was a proper question for the determination of the Supreme Court of Canada."

*L. Cannon K.C.* and *F. P. Varcoe* for the Attorney-General of Canada.

*W. L. Hall K.C.* for the Attorney-General of Nova Scotia.

*Aimé Geoffrion K.C.* for the Attorney-General of Quebec.

The judgment of the majority of the court (Anglin C.J.C. and Duff, Rinfret, Lamont and Smith JJ.) was delivered by

DUFF J.—The liability which the province of Nova Scotia is alleged to have incurred is based, if it exists, upon the requisition printed in the case, in these words:

Schedule

"A"

#### ATTORNEY-GENERAL OF NOVA SCOTIA

Province of Nova Scotia

To Wit: Halifax

Whereas a notification has been received by me from the County Court Judge having jurisdiction in such place, that a riot or disturbance of the peace beyond the powers of the civil authorities to suppress or to deal with, and requiring the aid of the Active Militia to that end has occurred and is in progress at the Waterford Power plant at or near the town of New Waterford in the county of Cape Breton and elsewhere in the said county.

And whereas it has been made to appear to my satisfaction that the services of the Active Militia are required in aid of the civil power.

Now therefore I, the Attorney-General of Nova Scotia under and by virtue of the powers conferred by the *Militia Act* do hereby require you to call out the Active Militia or such portion thereof as you consider necessary for the purposes of suppressing or dealing with such riot or disturbance.

And for and on behalf of the said province of Nova Scotia I, the said Attorney-General, hereby undertake that all expenses and costs incurred by His Majesty by reason of the militia, or any part thereof being called out or serving in aid of the civil power pursuant to this requisition shall be paid to His Majesty by the said province.

Dated at Halifax, this eleventh day of June, 1925.

(Sgd.) W. J. O'HEARN,  
*Attorney-General.*

The District Officer Commanding,  
 M.D. No. 6,  
 Halifax, N.S.

On behalf of the Dominion, it is contended that the effect of the pertinent sections of the *Militia Act* (sections 80-90 inclusive) is to prescribe certain specified duties for the militia, upon a requisition being made by the Attorney-General of a province which includes an undertaking by the province to pay the expenses and costs incurred in the execution of the prescribed duties; that these provisions constitute in effect an offer by the Dominion to the province, and that upon the acceptance of the offer, accompanied by such an undertaking, a contractual obligation arises binding the province to pay such expenses and costs.

On behalf of Nova Scotia, it is contended that such is not the effect of the statute, and, moreover, that the Attorney-General of Nova Scotia, who signed the requisition upon which the Dominion's claim is based, had no authority to bind the Crown in right of the province by any such undertaking.

To deal with the second question first, I am not satisfied that the Attorney-General (whose duties, in so far as now material, include the supervision of the administration of justice within the province) had any statutory authority to undertake the payments now demanded. I think the subject matters comprised within the supervision of the administration of justice would not embrace authority to enter into such an undertaking.

In the view I am about to state, however, it is really unnecessary to pass upon any question as to the scope of the authority of the Attorney-General of Nova Scotia. I think Mr. Geoffrion's contention is unanswerable, that the sections of the *Militia Act*, upon which the Dominion relies, repose certain powers in the person occupying the position of Attorney-General in the province for the time being, but that the exercise of these powers does not in any way depend upon the consent of the Lieutenant-Governor, or of the provincial legislature. That, I think, is made clear by subsection 3 of section 86, which is in these words:

(3) Every statement of fact contained in any requisition made under the provisions of this Act shall be conclusive and binding upon the province on behalf of which the requisition is made; and every undertaking or promise in any such requisition contained shall be binding upon the province and not open to any question or dispute by reason of any alleged incompetence or lack of authority on the part of the Attorney-General to make the same, or for any other reason.

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Obviously this statute envisages the Attorney-General, not in his capacity as Attorney-General to His Majesty as the Sovereign Head of the province, but as a person in whom certain powers are vested, and on whom certain duties are laid by the statute. The sections apply to every province and go into operation independently of the scope of the Attorney-General's authority to bind the province in respect of the expenditure of moneys for such purposes.

It follows that these enactments do not contemplate a duty to pay proceeding from a contract between the province and the Dominion. The Solicitor-General in his very candid argument did not contend that the duty to pay these expenses could be imposed by the Dominion on the province *in invitum*, and that, of course, would be a plain violation of the fundamental principle of the *British North America Act*. The revenues of the province are vested in His Majesty as the supreme head of the province, and the right of appropriation of all such revenues belongs to the legislature of the province exclusively.

The provision authorizing the deduction of moneys due by a province under these sections from the annual subsidy does not help the Dominion. Obviously such a deduction could not constitutionally be made unless the province was under an obligation to pay.

NEWCOMBE J. (dissenting).—I shall state very briefly my view, which, unfortunately, differs from that of the majority.

Let it be assumed that sections 84, 86 (3) and 89 are ineffective to bind the province without provincial sanction. Nevertheless, the other provisions of the *Militia Act* respecting *Aid of the Civil Power* are independent of these, and, having regard to the facts as I interpret them, establish the liability in question. I suggest that if the sections mentioned above had been re-enacted by the legislature of Nova Scotia, the province could not have escaped responsibility upon any of the grounds which have been urged. I am not convinced that it was the purpose of Parliament to subject the province, *in invitum*, to a statutory charge; I do not think it is necessary to infer such an intention from any of the provisions of the *Militia Act*. It is, I think, on

the other hand, reasonably apparent that the foundation of the Dominion provisions, as enacted in 1924, rests upon an assumed authority in the Attorney-General, existing or provincially recognized, to bind his province by the terms of his requisition.

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Now the conditions under which the military forces may become serviceable are subject exclusively to Dominion regulation, and I think it must be considered, in view of the distribution of legislative power, as it exists, that the intention of Parliament in enacting the pertinent clauses was to formulate an offer to each of the provinces, setting forth the terms upon which the requisite military aid might be had. That, I am persuaded, is the meaning—the pith and substance—of the statutory requirements regulating the requisition; and, although it may be that provincial legislation is desirable, in order to facilitate the proof, and to implement and give comprehensive effect to the Dominion project, I am not satisfied that it is necessarily frustrated in the absence of a provincial enactment establishing the conclusive character of the requisition; or that a province, which has in form and in fact, by the proceedings of its Attorney-General, accepted the legislative offer of the Dominion and availed itself of the services of the militia and the benefits of the Act, should, in the circumstances of this case, be permitted to evade the payment of indemnity upon the contention that the Attorney-General has exceeded his authority. If Parliament has, in some particulars, such as sections 84, 86 (3) and 89, transcended its powers, or if the Dominion executive has acted in advance of the provincial legislation which may have been contemplated, the impugned Dominion provisions are nevertheless, separable, and there are valid clauses remaining which provide all legislation that the Dominion requires to enable it to maintain the claim now under consideration.

By the *Public Service Act* of Nova Scotia, chapter 9, of the Revised Statutes of the province, 1923, section 2,

For the administration of the public affairs of the Province there shall be the following departments:—

(1) The department of the Attorney-General, presided over by the Attorney-General \* \* \*.

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Follows the enumeration of seven other departments, namely, Crown Lands, Provincial Secretary, Provincial Treasurer, Public Works and Mines, Education, Agriculture and Highways; and, by subsection (1) of section 3, it is enacted that the Governor in Council may create other departments, not exceeding three in number, and may from time to time assign thereto such affairs as are deemed expedient. There is thus the usual distribution and delegation of executive authority. By section 4 it is declared that

The functions, powers and duties of the Attorney-General shall be the following:—

(1) He shall be the law officer of the Crown, and the official legal adviser of the Lieutenant-Governor, and the legal member of the Executive Council.

(2) He shall see that the administration of public affairs is in accordance with law, and shall have the superintendence of all matters connected with the administration of justice in the province not within the jurisdiction of the Dominion of Canada.

\* \* \* \* \*

(5) He shall have the regulation and conduct of all litigation for or against the Crown or any public department in respect to any subject within the authority or jurisdiction of the Government.

(6) He shall have the functions and powers which belong to the office of the Attorney-General of England by law or usage so far as the same are applicable to this Province, and also the functions and powers which previous to coming into force of *The British North America Act, 1867*, belonged to the office of Attorney-General, in the Province of Nova Scotia and which under the provisions of that Act are within the scope of the powers of the Government of the province.

It is, moreover, provided by section 40:

Every official appointed under the authority of this chapter or any other statute of the province shall have such powers and perform such duties as are specified in any statute in that behalf, or are from time to time determined by the Governor in Council.

The Dominion, therefore, in naming the Attorney-General, selected the head of that provincial department of Government which is charged by the local statutes with these wide-reaching powers relating to the administration and enforcement of law and order, and with whom the provincial decision as to the propriety and necessity of invoking military intervention seems constitutionally to rest. The question submitted is based upon stated facts, and it is not suggested that the Attorney-General came to an erroneous conclusion, or that his government was in any manner misled. The military force assigned to the duty was called out and remained on service from 12th June until

24th August, a period of 72 days, when the successor in office of the requisitioning Attorney-General gave the statutory notice that the services of the militia were no longer required. We are told that there was no order of the provincial executive council for either of these proceedings, also that there was no notice repudiating the authority of the Attorney-General; but, seeing the authority which the Attorney-General had by statute as the political head to whom adequate executive power was delegated, an Order in Council was not, in my view, essential; and, of course there is the plain inference, which is irresistible, that the Government, during the long period of military activity, stood by consenting; and, as said by Lord Eldon in *Dann v. Spurrier* (1):

The circumstance of looking on is, in many cases, as strong as using the terms of encouragement.

There is no evidence as to the state of the provincial appropriations for the expenses incurred, but that is an internal matter; besides, there is at least the presumption of regularity, which is not in anywise rebutted; and, if the province deny the authority of its Attorney-General in matters apparently within the scope of his powers, it must, in my opinion, in order to maintain its position, make out a case which does not appear upon this record.

I would, with all hesitation and deference which habitually attend upon my conclusion when I am persuaded to differ from my learned brethren, answer "Yes" to the question submitted.

CANNON J.—The Governor General in Council has referred for the consideration of the Supreme Court of Canada the following question: "Is the province of Nova Scotia, on the facts set out in the Order in Council, liable to pay to His Majesty in the right of the Dominion all expenses and costs incurred by reason of the calling out of part of the active militia in aid of the civil power in Cape Breton?"

The Attorney-General of Nova Scotia, by his requisition of the 11th of June, 1925, complied with the provisions of sections 81, 85 and 86 of the *Militia Act*, as enacted by the Parliament of Canada, c. 57, Statutes of Canada, 1924.

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The requisition signed by the Attorney-General of Nova Scotia contains an unconditional undertaking that the province shall pay to His Majesty all expenses and costs incurred by His Majesty by reason of the militia being called out in aid of the civil power.

It is not contended by the Dominion Government that the *Militia Act* would bind the province of Nova Scotia to pay, but that they are liable, on the facts of the case, either (1) by express contract (a) duly authorized, or (b) ratified, or (c) enforceable by virtue of estoppel, or (2) by implied contract, or (3) by implied constitutional obligation.

Even if such a contract had been duly signed by the Attorney-General acting as such on behalf of the province of Nova Scotia, I believe that such a contract, to be valid, and binding on the province, would have to be ratified by the Legislature, as it affects the finances and disposes of the revenues of the province; and under sections 53, 54 and 90 of the B.N.A. Act, bills for the appropriation of any part of the public revenue must originate in the House of Commons or the Legislature and must first be recommended by message of the Governor General or Lieutenant-Governor in the session in which such vote is proposed. The following remarks of Wurtele J., a well known constitutional authority, *re Demers v. Reginam* (1), are in point:

The legislature enacts laws and grants supplies, but does not administer. The Crown under the advice of its constitutional advisers, or in other words the Executive Government, administers the affairs of the country, and on it rests the responsibility for all contracts which it may be necessary to enter into. The Executive Government deals with all matters respecting the administration of the public affairs of the country as it may deem conducive to the public good when its action is not restricted by a constitutional rule or by a prohibitory statute, but it has no constitutional authority to make a contract which will bind the Legislative Assembly to supply the necessary funds for carrying it on. It may be laid down, therefore, as an axiom that before entering into a contract which requires the expenditure of public monies, it is, in general, proper and expedient that the consent of the Legislature should be first obtained. The Executive Government may however, by exception, make a contract involving the expenditure of public monies before a grant has been made by the Legislature for the purpose contemplated by such contract; but such contract is in the nature of a conditional obligation, is in fact a conditional contract, and the condition is the granting by the Legislature of the necessary funds. Until this event happens, the obligation is suspended, and if the necessary supply should be refused, then the contract is dissolved. The Legislative Assembly has the right to approve or disapprove

of all such contracts, and therefore it is usual to insert a clause that they are made subject to the ratification of the Legislature, or that the payments to be made on behalf of the same will be made out of monies to be voted by the Legislature. Should the Legislative Assembly, by a resolution, expressly disapprove of a contract which has been entered into without an appropriation for its performance having been made before its execution, even when it does not contain a clause making it subject to the ratification of the Legislature or to the grant of the necessary supply, then also the contract is dissolved. But should the necessary funds be voted, then the contract acquires retroactively full legal force and should be carried out by the Government, and can be enforced by the other contracting party. Every contract entered into by the Executive Government without there being a fund out of which the payment of the price stipulated can be made, or without there being an appropriation which is available for the purpose, is made on the tacit condition that it is dependent for its validity upon the necessary supply being voted; and as every person entering into a contract with the Government is presumed to know the law, he cannot complain, in the event of a grant being refused, or having no right to claim damages for its non-fulfilment.

Although such contracts are conditional, the Executive Government has no right or power of its own motion to rescind them, but, on the contrary, it should ask the Legislature to grant the necessary appropriation and await the action of the Legislative Assembly.

I would therefore say that the province of Nova Scotia, in this case, is conditionally liable to the Dominion for these expenses.

It seems to me that the spirit of our constitution, properly understood and applied, after establishing independent autonomous legislatures and also a central government to look after the common interests, requires that in emergencies beyond the control of the civil power in one province, the aid of the Dominion militiamen to act as special constables might be secured; but the extra cost of such co-operation should be borne by the province within whose limits the local disturbance of the King's peace occurs. The legislation of Nova Scotia, so far, has recognized this as equitable and just and has provided for the payment by the interested municipality of such expenditure. The laws of Nova Scotia concurred with the *Militia Act* before the latter was amended in 1924, to levy this money from the interested municipalities. Since 1924, no concurrent legislation has been passed by Nova Scotia; and under the present state of legislation, we must say that the province is only conditionally bound to pay, because the legislature of Nova Scotia has not yet agreed to do so.

But I am of opinion that the Attorney-General of Nova Scotia, as law officer and legal adviser to the Crown, and

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the Government of Nova Scotia, which is continuous, should recommend and secure from the legislature of the province the necessary funds to honour the signature given by his predecessor in office to the requisition in conformity to schedule A of the *Militia Act* of 1924, which requisition and undertaking by the Attorney-General of the province of Nova Scotia should not by the latter be now treated as a mere scrap of paper. Under the rule of ministerial solidarity, the act of the Attorney-General in 1925 was the act and undertaking of the government of Nova Scotia; if the Premier or his colleagues disapproved of his requisition for the aid of the militia, the Attorney-General should have been called upon to resign and his act disallowed; nothing of the sort took place and the province is in honour bound to redeem his pledge and pay the expenditure made in good faith, in their local interest, by the Dominion, as representing the other partners to the Confederation Pact. Quoting again the above mentioned judgment:

The Government of the Province is not the Government of the Cabinet which may be in office, and when cabinets succeed one another, this fact does not entail the consecution of one Government to another. The Government of the country is the King's Government, which has always to be carried on, and which is in fact continuous. The advisers of the Crown may be changed, and with this change there may be a change of policy. The Government, after a change of advisers, may therefore be carried on in accordance with other political views; but notwithstanding this, the Government of the country and the administration of its affairs are continuous. After a new cabinet has assumed office, the administration of public affairs may be carried on on other lines, but the Executive Government is bound by the ordinary rules of law as regards contracts which may have been entered into under a previous cabinet. Of its own will it has no right to rescind without the consent of the other contracting party a valid and binding contract, and if there should be good legal cause to annul the contract, the legal mode for doing so should be adopted.

*Question answered in the negative.*

Solicitor for the Attorney-General of Canada: *W. Stuart Edwards.*

Solicitor for the Attorney-General of Nova Scotia: *Fred. F. Mathers.*

Solicitor for the Attorney-General of Quebec: *Charles Lanctot.*