

Privy Council Appeal No. 121 of 1921.

The Nova Scotia Steel and Coal Company, Limited - - *Appellants*

v.

The Minister of Finance and Customs - - - *Respondent*

FROM

THE SUPREME COURT OF NEWFOUNDLAND.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 15TH JUNE, 1922.

Present at the Hearing :

LORD BUCKMASTER.

LORD ATKINSON.

LORD SUMNER.

LORD PARMOOR.

[*Delivered by* LORD SUMNER.]

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs. As applied to the appellant company, the Business Profits Tax Act, 1917, imposes on them a tax of 20 per cent. of the net profits arising from and earned by their Newfoundland business for the accounting period in question. The earlier Act, 10 Edw. VII, ch. 26, provides that for a time, which includes that period, there shall be levied or imposed upon or in respect of the ore, which it is the appellants' Newfoundland business to export from Bell Island, no other or further charge than the amount of 7½ cents per ton. In their Lordships' opinion, the Business Profits Tax is not a charge or tax levied or imposed on or in respect of this ore. Clearly it is not levied on the ore itself, ton by ton, or at all; it is levied on profits. Nor is it levied in respect of the ore; it is levied on or consists in taking a fraction of profits, which result indeed from some kind of trading in the ore, but are earned by dealings with it after it has become liable to the payment of the 7½ cents per ton. The profits may be variously made, for the ore, after being exported,

may be either used by the appellants themselves or sold to others. In the latter case, the whole profit arising from dealing with a particular parcel of ore might accrue from fluctuations in freight or exchange under the terms of a forward sale. In the former, the whole question of profit might be determined by the price at which the ore in question was taken into consumption by the appellants themselves. The exporting of the ore and the liability to pay the 7½ cents might fall into an accounting period different from that in respect of which the business profits tax in question would be chargeable.

So much for actual conditions, but in general a tax on profits and an export tax on commodities are different imposts, financially and economically, and cannot be identified even by the indefinite expression "in respect of." Taxes or charges "in respect of" the ore, to which the provisions of the earlier Act would apply, may easily be suggested, as for example stamp duties or registration fees. These provisions can, therefore, be satisfied without extending them to the Business Profits Tax, and no question arises of reading two Acts together, so as to involve the subordination of the terms of the one to the provisions of the other, because both apply to the same subject matter, the one generally and the other particularly.

In the Privy Council.



THE NOVA SCOTIA STEEL AND COAL
COMPANY, LIMITED,

o.

THE MINISTER OF FINANCE AND CUSTOMS.



DELIVERED BY LORD SUMNER.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.
1922.