Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Liquidators of the Maritime Bank of Canada v. *The Receiver General of New Brunswick, from the Supreme Court of Canada; delivered 2nd July* 1892.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.
LORD SHAND.

[*Delivered by Lord Watson.*]

This appeal is brought by special leave in a suit which followed upon a case submitted for the opinion of the Supreme Court of the Province of New Brunswick, by the Appellants, the Liquidators of the Maritime Bank of the Dominion of Canada, in the interest of unsecured creditors of the Bank, on the one side, and by the Receiver General of the Province, claiming to represent Her Majesty, on the other. The only facts which it is necessary to refer to are these: that the Bank carried on its business in the City of St. John, New Brunswick; and that, at the time when it stopped payment in March 1887, the Provincial Government was a simple contract creditor for a sum of $35,000, being public moneys of the Province deposited in the name of the Receiver General. The case, as originally

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framed, presented two questions for the decision of the Court; but, owing to the condition of the Bank's assets, the first of these has ceased to be of practical importance, and it is only necessary to consider the second, which is in these terms: "Is the Provincial Government entitled to pay- "ment in full over the other depositors and "simple contract creditors of the Bank?"

The Supreme Court of New Brunswick unanimously, and, on appeal, the Supreme Court of Canada with a single dissentient voice, have held that the claim of the Provincial Government is for a Crown debt to which the prerogative attaches, and therefore answered the question in the affirmative.

The Supreme Court of Canada had previously ruled, in *The Queen* v. *The Bank of Nova Scotia* (11 Sup. Court Can. Rep., p. 1), that the Crown, as a simple contract creditor for public moneys of the Dominion deposited with a Provincial Bank, is entitled to priority over other creditors of equal degree. The decision appears to their Lordships to be in strict accordance with constitutional law. The property and revenues of the Dominion are vested in the Sovereign, subject to the disposal and appropriation of the Legislature of Canada; and the prerogative of the Queen, when it has not been expressly limited by local law or statute, is as extensive in Her Majesty's colonial possessions as in Great Britain. In *The Exchange Bank of Canada* v. *The Queen* (11 App. Ca., 157), this Board disposed of the appeal on that footing, although their Lordships reversed the judgment of the Court below, and negatived the preference claimed by the Dominion Government, upon the ground that, by the law of the Province of Quebec, the prerogative was limited to the case of the common debtor being an officer liable to account to the Crown for public moneys collected or held by him. The Appellants did not impeach the

authority of these cases, and they also conceded that, until the passing of the "British North "America Act, 1867," there was precisely the same relation between the Crown and the Province which now subsists between the Crown and the Dominion. But they maintained that the effect of the statute has been to sever all connection between the Crown and the Provinces; to make the Government of the Dominion the only Government of Her Majesty in North America; and to reduce the Provinces to the rank of independent municipal institutions. For these propositions, which contain the sum and substance of the arguments addressed to them in support of this appeal, their Lordships have been unable to find either principle or authority.

Their Lordships do not think it necessary to examine, in minute detail, the provisions of the Act of 1867, which nowhere profess to curtail in any respect the rights and privileges of the Crown, or to disturb the relations then subsisting between the Sovereign and the Provinces. The object of the Act was neither to weld the Provinces into one, nor to subordinate Provincial Governments to a central authority, but to create a Federal Government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each Province retaining its independence and autonomy. That object was accomplished by distributing, between the Dominion and the Provinces, all powers executive and legislative, and all public property and revenues which had previously belonged to the Provinces; so that the Dominion Government should be vested with such of these powers, property, and revenues as were necessary for the due performance of its constitutional functions, and that the remainder should be retained by the Provinces for the purposes of Provincial govern-

ment. But, in so far as regards those matters which, by Section 92, are specially reserved for Provincial legislation, the legislation of each Province continues to be free from the control of the Dominion, and as supreme as it was before the passing of the Act. In *Hodge* v. *The Queen* (9 App. Ca., 117), Lord Fitzgerald, delivering the opinion of this Board, said: "When the British North America Act enacted "that there should be a legislature for Ontario, "and that its legislative assembly should have "exclusive authority to make laws for the "Province and for provincial purposes in re- "lation to the matters enumerated in Section 92, "it conferred powers not in any sense to be "exercised by delegation from or as agents of the "Imperial Parliament, but authority as plenary "and as ample within the limits prescribed by "Section 92 as the Imperial Parliament in the "plenitude of its power possessed and could "bestow. Within these limits of subject and "area, the local legislature is supreme, and has "the same authority as the Imperial Parliament, "or the Parliament of the Dominion." The Act places the constitutions of all Provinces within the Dominion on the same level; and what is true with respect to the legislature of Ontario has equal application to the legislature of New Brunswick.

It is clear, therefore, that the provincial legislature of New Brunswick does not occupy the subordinate position which was ascribed to it in the argument of the Appellants. It derives no authority from the Government of Canada, and its *status* is in no way analogous to that of a municipal institution, which is an authority constituted for purposes of local administration. It possesses powers, not of administration merely, but of legislation, in the strictest sense of that word; and, within the limits assigned by Section 92 of the Act of 1867, these powers are exclusive and

supreme. It would require very express language, such as is not to be found in the Act of 1867, to warrant the inference that the Imperial Legislature meant to vest in the provinces of Canada the right of exercising supreme legislative powers in which the British Sovereign was to have no share.

In asking their Lordships to draw that inference from the terms of the statute, the Appellants mainly, if not wholly, relied upon the fact that, whereas the Governor-General of Canada is directly appointed by the Queen, the Lieutenant-Governor of a province is appointed, not by Her Majesty, but by the Governor-General, who has also the power of dismissal. If the Act had not committed to the Governor-General the power of appointing and removing Lieutenant-Governors, there would have been no room for the argument, which, if pushed to its logical conclusion, would prove that the Governor-General, and not the Queen, whose Viceroy he is, became the sovereign authority of the Province whenever the Act of 1867 came into operation. But the argument ignores the fact that, by Section 58, the appointment of a Provincial Governor is made by the "Governor-"General in Council by Instrument under the "Great Seal of Canada," or in other words by the Executive Government of the Dominion, which is, by Section 9, expressly declared "to "continue and be vested in the Queen." There is no constitutional anomaly in an executive officer of the Crown receiving his appointment at the hands of a governing body who have no powers and no functions except as representatives of the Crown. The act of the Governor-General and his Council in making the appointment is, within the meaning of the statute, the act of the Crown; and a Lieutenant-Governor, when appointed, is as much the representative of Her Majesty for all

purposes of Provincial Government, as the Governor-General himself is, for all purposes of Dominion Government.

The point raised in this appeal, as to the vesting or non-vesting of the public property and revenues of each Province in the Sovereign as supreme head of the State, appears to their Lordships to be practically settled by previous decisions of this Board.

The whole revenues reserved to the Provinces for the purposes of provincial government are specified in Sections 109 and 126 of the Act. The first of these clauses deals with "all lands, "mines, minerals, and royalties belonging to the "several Provinces of Canada, Nova Scotia, and "New Brunswick at the Union," which it declares "shall belong to the several Provinces "of Ontario, Quebec, Nova Scotia, and New "Brunswick, in which the same are situate or "arise." If the Act had operated such a severance between the Crown and the Provinces, as the Appellants suggest, the declaration that these territorial revenues should "belong" to the Provinces would hardly have been consistent with their remaining vested in the Crown. Yet, in *The Attorney-General of Ontario* v. *Mercer* (8 Ap. Ca., 767), *St. Catherine's Milling and Lumber Co.* v. *The Queen* (14 Ap. Ca., 46), and *The Attorney-General of British Columbia* v. *The Attorney-General of Canada* (14 Ap. Ca., 295), their Lordships expressly held that all the subjects described in Section 109, and all revenues derived from these subjects, continued to be vested in Her Majesty as the sovereign head of each Province. Section 126, which embraces provincial revenues other than those arising from territorial sources, and includes all duties and revenues raised by the Provinces in accordance with the provisions of the Act, is expressed in language which favours the

right of the Crown, because it describes the interest of the Provinces as a right of appropriation to the public service. And, seeing that the successive decisions of this Board, in the case of territorial revenues, are based upon the general recognition of Her Majesty's continued sovereignty under the Act of 1867, it appears to their Lordships that, so far as regards vesting in the Crown, the same consequences must follow in the case of provincial revenues which are not territorial.

Being of opinion that the decisions of both Courts below were sound, and agreeing with the reasons assigned by the learned judges, their Lordships will humbly advise Her Majesty to affirm the judgment appealed from, and to dismiss the appeal. The Appellants must pay to the Respondent his costs of this appeal.