

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Attorney-General for the Province of British Columbia v. Ostrum, from the Supreme Court of the Province of British Columbia; delivered the 25th November 1903.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

SIR JOHN BONSER.

[*Delivered by Lord Macnaghten.*]

This appeal turns on the meaning of the expression "income" in the Assessment Act, Chap. 179 of the Revised Statutes of British Columbia, 1897. The Act contains no definition of the word. But it explains "personal property" as comprehending, among other things, "all income," and it declares that "all land and personal property and income in the Province shall be liable to taxation," subject to certain exemptions, including the exemption of "the income of every person up to one thousand dollars."

The question was raised at the instance of certain locomotive engineers in the employment of the Canadian Pacific Railway. Railway servants in that class are, it seems, not paid by wages or by salary, but according to a mileage rate on the number of miles they run their engines. It was contended on their behalf that the amount of their annual remuneration under

this arrangement in excess of the statutory limit of 1,000 dollars was not "income" within the meaning of that word in the Assessment Act. The point was referred by the Lieutenant-Governor of the Province under the Supreme Court Act to a Judge of the Supreme Court for hearing and consideration. Irving J., before whom the matter came in the first instance, decided in favour of the Crown, but, on appeal, his decision was reversed by the unanimous judgment of the Full Court.

The question has been set at rest for the future by an amending Act, passed in 1901, which explains the expression "income" in terms sufficient to negative the effect of the decision of the Full Court. But owing to the confusion said to have been created by that decision in the meantime, it seemed right to this Board to advise His Majesty to grant special leave to appeal on terms reserving to their Lordships power to provide for the costs of the Respondent. The Respondent, however, has not appeared to support the decision appealed from.

Their Lordships are of opinion that there is no ground for cutting down the plain and ordinary meaning of the word "income." In their view the expression was intended to include, and does include, all gains and profits derived from personal exertions, whether such gains and profits are fixed or fluctuating, certain or precarious, whatever may be the principle or basis of calculation.

The learned Judges in the Full Court seem to have held that nothing was to be regarded as "income" for the purpose of taxation but what was actually "received, gained, or earned." "It is quite possible," said Drake, J., who gave the leading judgment, "that an income tax " could be imposed upon personal earnings " which have been received, but in my opinion,"

he added, "it cannot be imposed on unascertained earnings in the nature of wages because "it is not income until it is earned." But then the scheme of the Assessment Act and of every other income tax Act with which their Lordships are familiar is to provide for the collection of the tax on the basis of the gains and profits of an earlier period. The scheme is plain enough. The Province is to be divided into Districts. For each District an assessor is to be appointed. The duty of the assessor is to make up the Assessment Roll in each year. Everybody, when required, is to furnish returns of his property or income liable to be assessed; as regards income, the expression in the Section relating to returns (Section 32(*e*)) is, "income whether derivable from salary or "otherwise,"—an expression which seems to comprehend every possible source of income. Then every assessor is to begin to make up his roll in each year not later than the 10th of July, and to complete it on or before the 1st of November; and lastly the Act provides that "in each year "the taxes shall be deemed to be due and "collected under the roll revised during the "previous year" (Section 78), and that "the "taxes assessed, levied, and collected under the "Act shall be deemed to be due and payable on "the second day of January in each year" (Section 79).

The conclusion at which their Lordships have arrived is (1) that the language of the Section in the Assessment Act imposing a tax on income is clear and unambiguous, and (2) that no ambiguity is introduced by the language of the Section relating to returns. Their Lordships desire to add that in construing this Act no assistance, in their opinion, is to be obtained from decisions or dicta turning on expressions found in the English Bankruptcy Act. The language is not the same, and the scope of the enactment is widely different.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be allowed, the Order of the Full Court discharged, and the questions submitted to the Full Court answered in accordance with the opinion of Irving, J.

Their Lordships make no Order as to costs.

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