

1967  
 \*Feb. 10  
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NICKEL RIM MINES LIMITED }  
 (Plaintiff) ..... } APPELLANT;  
 AND  
 THE ATTORNEY GENERAL FOR }  
 ONTARIO (Defendant) ..... } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Constitutional law—Mining tax—Provincial tax on net profits of sold and unsold ore—Whether direct taxation—Mining Tax Act, R.S.O. 1950, c. 237, s. 4.*

The plaintiff company commenced this action for a declaration that a tax imposed on it under the authority of the *Mining Tax Act, R.S.O. 1950, c. 237*, was *ultra vires* in that it was an indirect tax. Section 4 of the Act imposes a tax on the net profits of the sales of ore and also upon estimated net profits on unsold ore based upon actual market value. The trial judge ruled that the statute was *intra vires* in so far as it imposed a tax on the output sold during the mine's calendar year; that this aspect of the tax was severable; and that in so far as the statute imposed a tax on output not sold during the calendar year but treated or in the course of treatment, the statute was *ultra vires*. The Court of Appeal held that the tax imposed by the *Mining Tax Act* was *intra vires in toto* as being a direct tax. The plaintiff company appealed to this Court where the constitutional question raised was

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\*PRESENT: Cartwright, Fauteux, Martland, Judson, Ritchie, Hall and Spence JJ.

<sup>1</sup> [1933] A.C. 533 at pp. 548-49.

stated as follows: "Whether section 4 and related sections of the *Mining Tax Act*, being chapter 237 of the Revised Statutes of Ontario 1950 as amended by ... is *ultra vires* the Legislature of the province of Ontario in so far as the tax purported to be imposed by that section and the related sections is an indirect tax."

1967  
NICKEL RIM  
MINES LTD.  
v.  
ATTORNEY  
GENERAL  
FOR ONTARIO

APPEAL from a judgment of the Court of Appeal for Ontario<sup>1</sup>, allowing an appeal from a judgment of Wells J. Appeal dismissed.

*R. F. Reid, Q.C.*, and *J. W. Morden*, for the plaintiff, appellant.

*F. W. Callaghan, Q.C.*, and *A. E. Charlton*, for the defendant, respondent.

*Gérald LeDain, Q.C.*, for the intervenant, the Attorney General for Quebec.

At the conclusion of the argument of counsel for the appellant, the following judgment was delivered:

CARTWRIGHT J. (*orally for the Court*):—Mr. Callaghan and Mr. LeDain, we need not call upon you. We are all of opinion that the appeal fails. We are in substantial agreement with the reasons of the Court of Appeal delivered by the Chief Justice of Ontario. The appeal is therefore dismissed with costs.

*Appeal dismissed with costs.*

*Solicitors for the plaintiff, appellant: Day, Wilson, Campbell & Martin, Toronto.*

*Solicitor for the defendant, respondent: F. W. Callaghan, Toronto.*

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