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mine, and "mine owner" is, in effect, defined as the immediate proprietor, lessee, licensee or occupier of any mine, as distinguished from an owner not actually operating the mine.

The Order in Council fixed the rate at 2 per cent.

H. S. Patterson for the appellant.

J. J. Frawley for the respondent.

The judgment of the court was delivered by

DUFF J.—It is not disputed that, as a rule, the "gross revenue" upon which the impeached tax is levied is merely the aggregate of sums received from sales of coal. In substance, the tax does not differ from a tax levied upon every sum received from the sale of coal. In the ordinary course there could be no doubt that allowance would be made for it in the price charged, and that it would, almost in its entirety, be borne by the purchasers of coal. To label the tax as an income tax does not affect the substance of the matter. We are constrained by a long series of well known decisions to hold that the legislation is *ultra vires*.

The appeal should be allowed and the action dismissed with costs.

Appeal allowed with costs.

Solicitor for the appellant: *H. S. Patterson.*

Solicitor for the respondent: *J. J. Frawley.*

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HIS MAJESTY THE KING.....APPELLANT;

AND

ARTHUR BELLOS .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Criminal law—Evidence—Statements by accused at time of arrest—Admissibility in evidence

At a trial on a charge of committing assault occasioning actual bodily harm, the constable who arrested accused gave evidence for the Crown to the effect that, at the time of the arrest, having cautioned accused,

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

and accused having stated that he had not been out since twelve o'clock that night, he called accused's attention to the condition of his hat, and accused said he had not worn that hat the night the offence was committed; the constable also called accused's attention to a scrape on his arm, and accused said it was an old mark, whereas the constable testified that it was fresh.

Held, reversing judgment of the Court of Appeal for British Columbia ([1927] 1 W.W.R. 471), that the evidence was admissible; the Crown discharged its burden of establishing the voluntary character of the statements of accused, who had been given the customary warning; the mere asking of a question by the constable subsequently, or his directing accused's attention to the subject of one of such statements, did not amount to an inducement or persuasion such as would render the statements inadmissible. *Prosko* v. *The King* (63 Can. S.C.R. 226) referred to.

APPEAL by the Attorney General of the province of British Columbia from the judgment of the Court of Appeal for the said province (1) setting aside the conviction of, and granting a new trial to, the respondent who had been convicted, on trial before Murphy J. and a jury, of committing an assault occasioning actual bodily harm. The ground upon which the Court of Appeal proceeded was that of error in wrongfully admitting evidence.

The evidence of which wrongful admission was claimed was that of a constable of the municipal police of the said province, who arrested the respondent, and who was called at the trial as a witness for the Crown. He testified that on making the arrest he cautioned the respondent and told him that he (the respondent) was not bound to say anything, but that if he did say anything it might be u ed in evidence against him; the respondent made a statement that he was in bed since twelve o'clock and that he had not been out since twelve o'clock that night; the constable called the attention of the respondent to the condition of the respondent's hat, and the respondent said he had not worn that hat the night the offence was committed, but that he had worn another; the constable also at the same time called the respondent's attention to a scrape on respondent's arm; the constable in his evidence said as to this

* * * There was a scrape on his arm here about one-half inch wide and I would say about two or three inches long as if it had been pushed against something.

(1) [1927] 1 W.W.R. 471.

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Q. Was it recent?—A. Yes. I drew his attention to it and he said that was an old mark, that it had been there a long time, but as a matter of fact it was fresh. It was wet, and there was blood oozing through; it was not cut far enough to let the blood come freely but it was a fresh bruise.

The judgments of the Court of Appeal were delivered orally. In his judgment Macdonald C.J.A. said:

I found my judgment entirely upon the wrongful admission of the evidence which appears at page 99 in the appeal book, where it appears that while the police sergeant said that he warned this man at the time of his arrest yet it further appears that later on, apparently, he called the accused's attention to his hat and to the condition it was in, eliciting a statement with regard to it, but the most serious thing of all was his calling attention to a mark or wound in accused's arm. He says this, "there was a scrape on his arm here about one-half an inch wide and I would say about two or three inches long, as if it had been pushed against something." The accused, according to the Crown's case, had been in a fracas in the rooming house and naturally one would look for wounds and the sergeant did look for wounds and found this "scrape on his arm." And then he says, "Yes, I drew his attention to it and he said it was an old mark that had been there a long time but as a matter of fact it was fresh." What was the probable effect of that? It was practically intimating to the jury that the man had told a direct falsehood to him when he had questioned him at the time of his arrest. That would affect the prisoner's testimony in the witness box, it would affect the credence to be attached to it and it might very well have influenced the jury in finding the verdict which they did find. Therefore, in my opinion, there was a substantial wrong which amounts to a miscarriage of justice and the conviction must be set aside and a new trial ordered.

Martin J.A. agreed upon the ground that what the constable did at the time of the arrest amounted to improper extraction of information, by questions, from the accused, which tended to destroy his defence, which was an alibi. Galliher, McPhillips and Macdonald J.J.A. agreed that there should be a new trial.

Application was made for leave to appeal to the Supreme Court of Canada, on the ground that the judgment of the Court of Appeal conflicted with the judgments of other courts of appeal in like cases. Leave to appeal was granted by Newcombe J. under s. 1024A of the *Criminal Code*.

J. A. Ritchie K.C. for the appellant.

No one appeared for the respondent.

Without hearing argument by Mr. Ritchie, the Chief Justice orally delivered the judgment of the court as follows:

"We have all had an opportunity of considering this case, and we are satisfied that the order appealed from is wrong. The evidence in question was properly received at

the trial. The matter was fully considered here in *Prosko* v. *The King* (1). The Crown discharged its burden of establishing the voluntary character of the statements made by the accused who had been given the customary warning. The mere asking of a question by the officer subsequently, or his directing the accused's attention to the subject of one of such statements, did not amount to an inducement or persuasion such as would render the statements inadmissible. The appeal is allowed and the conviction is reinstated."

Appeal allowed.

Solicitor for the appellant: *W. D. Carter.*

Solicitor for the respondent: *H. Castillon.*