

CALEDONIAN COLLIERIES, LIMITED)  
(DEFENDANT) .....

APPELLANT; <sup>1926</sup>  
\*Oct. 13, 14.

**AND**

HIS MAJESTY THE KING, IN THE  
RIGHT OF THE PROVINCE OF ALBERTA, AS  
REPRESENTED HEREIN BY THE PROVINCIAL  
SECRETARY IN AND FOR THE PROVINCE OF  
ALBERTA (PLAINTIFF) .....

RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME  
COURT OF ALBERTA

*Constitutional law—The Mine Owners Tax Act, 1923, c. 33, Alta.—Indirect taxation—Ultra vires.*

The tax imposed by *The Mine Owners Tax Act, 1923*, Alta. (c. 33), upon the gross revenue received by every coal-mine owner from his mine, is an indirect tax, and, therefore, *ultra vires*.

Judgment of the Appellate Division of the Supreme Court of Alberta (22 Alta. L.R. 245) reversed.

APPEAL by the defendant company from the judgment of the Appellate Division of the Supreme Court of Alberta (1) affirming (Clarke J.A. dissenting) the judgment of Simmons C.J. (2) in favour of the plaintiff.

The action was brought to recover from the defendant, under *The Mine Owners Tax Act, 1923*, Alta. (c. 33), and an Order in Council of 14th August, 1925, a tax of 2 per cent. of the gross revenue received by the defendant from its mine. The defendant alleged that the tax imposed was an indirect tax and therefore *ultra vires* of the province, under *The B.N.A. Act*.

S. 3 of *The Mine Owners Tax Act, 1923*, provides that every mine owner shall from the last day of May, 1918, be subject to a tax upon the gross revenue received by him from his mine. S. 4 provides that the tax shall not be more than 2 per cent. of the said revenue and as determined by the Lieutenant-Governor in Council under the provisions of the Act. By s. 2 "mine" is, in effect, defined as a coal

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

(1) 22 Alta. L.R. 245; [1926] 2 W.W.R. 280. (2) [1926] 1 W.W.R. 96.

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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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\*Feb. 24.

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.