
BETWEEN:

THE GOVERNORS OF THE UNIVERSITY OF TORONTO, ... } APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE, ... } RESPONDENT.

1949
Dec. 15

1950
Feb. 1

Revenue—Succession duty—Dominion Succession Duty Act, S. of C. 1940-41, c. 14, ss. 2(m), 7(1) (d) (e)—"Succession"—"Successor"—Exemption from duty "where the successor is the Dominion of Canada or any province or political subdivision thereof"—Devise to the governors of the University of Toronto is not one within s. 7(1) (e) of Dominion Succession Duty Act—Appeal dismissed.

Held: That a bequest to the governors of the University of Toronto is not one to the Province of Ontario or a political subdivision thereof and consequently does not come within the exemption from succession duty provided for in s. 7(1) (e) of the Dominion Succession Duty Act, Statutes of Canada 1940-41, c. 14; the governors are not agents or servants of the Crown.

APPEAL under the Dominion Succession Duty Act.

The appeal was heard before the Honourable Mr. Justice Cameron at Toronto.

Hamilton Cassels, K.C. and *Donald Guthrie, K.C.* for appellant.

Joseph Singer, K.C. and *I. G. Ross* for respondent.

1949

GOVERNORS OF THE UNIVERSITY OF TORONTO v. MINISTER OF NATIONAL REVENUE

Cameron J.

The facts and questions of law raised are stated in the reasons for judgment.

CAMERON J. now (February 1, 1950) delivered the following judgment:

This is an appeal from assessment to succesion duties under the Dominion Sucession Duty Act, Statutes of Canada, 1940-41, c. 14, and dated March 4, 1947. The appellant is a beneficiary under the last will and testament of John S. Chisholm, late of Prince Albert, Saskatchewan, retired physician, who died on September 2, 1945. By the terms of his will, the trustees thereof after providing for payment of his debts, funeral and testamentary expenses, were directed to invest the whole of the net estate, to pay one-half the net income arising therefrom to his sister, Mrs. Collison, during her lifetime, and subject thereto the will then provided as follows:

I WILL, DEVISE AND BEQUEATH the rest and residue of my estate, both real and personal, wheresoever situate, of which I may die possessed or entitled to, or over which I may have power of appointment, unto the Governors of the University of Toronto, of the said City of Toronto for the use of the Faculty of Medicine of the said University. One-half of the said net income of my estate shall be paid by my trustees to the said Governors of the University of Toronto for the said purpose during the lifetime of my said sister; and upon the death of my said sister the surviving trustees shall pay over to the said Governors for the said purpose the rest and residue of my estate, including any undistributed income thereof.

The aggregate net value of the estate, as shown by the assessment, was $495,568.06. Of this amount $90,181.43 was attributed to the life interest of the deceased's sister and the balance of $405,286.63 was determined as the value of the gifts to the appellant.

As of September 2, 1945—the date of Dr. Chisholm's death—the Dominion Succession Duty Act contained the following provisions:

7.(1) From the dutiable value of any property included in a succession the following exemptions shall be deducted and no duty shall be leviable in respect thereof:—

(*d*) where the successor is a charitable organization in Canada operated exclusively as such and not for the benefit, gain or profit of any person, member or shareholder thereof, provided this exemption shall apply only to an amount not exceeding fifty per centum of the value of all the property included in the aggregate net value; and provided further that where more than one charitable organization is entitled to exemption here-

under each such organization shall be entitled to that proportion of the total exemption applicable in the case of the total number of charitable organizations entitled as the value of the property included in its succession bears to the total value of the dutiable property divisible amongst the organizations,

(*e*) where the successor is the Dominion of Canada or any province or political subdivision thereof.

The respondent, in assessing the estate to duty, considered that the gifts to the appellant came within the provisions of section 7(1) (*d*) and therefore deducted $247,734.03 (being fifty per centum of the value of all property included in the aggregate net value) from $405,286.63 (the dutiable value of the property included in the succession to the appellant), and assessed the balance of $157,552.60 to tax, such tax amounting to $29,068.46.

Pending the issue of the formal assessment, the trustees of the estate, without the knowledge or approval of the appellant, paid almost the entire amount as now claimed in the assessment; and following the notice of assessment they paid the balance, apparently under protest, and without prejudice to the rights of the appellant. No difficulty now arises in that connection, it being agreed by the respondent that if the appeal herein should be allowed, the payments so made in reference to the benefits of the appellant would be refunded to the trustees.

The appellant, considering that the benefits to it came within the provisions of section 7(1) (*e*) (*supra*), and were therefore totally exempt, launched an appeal from the assessment. The respondent affirmed the assessment; notice of dissatisfaction was given by the appellant and by his reply the respondent affirmed the assessment as levied. By order of the Court, pleadings were delivered.

The sole matter for consideration, therefore, is the claim of the appellant that the gifts to it fell within the ambit of section 7(1) (*e*) and that, therefore, they are totally exempt from duty.

To be successful in its appeal, the appellant must establish that the "successor" is the Dominion of Canada or any province or political subdivision thereof. "Successor" is defined by section 2(*n*) as "the person entitled under a succession." "Succession" is defined by section 2(*m*) as follows:

"Succession" means every past or future disposition of property by reason whereof any person has or shall become beneficially entitled to

1949

GOVERNORS OF THE UNIVERSITY OF TORONTO v. MINISTER OF NATIONAL REVENUE

Cameron J.

any property or the income thereof upon the death of any deceased person, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any such deceased person, to any other person in possession or expectancy, and also includes any disposition of property deemed by this Act to be included in a succession.

Bearing in mind the definition of "successor", it seems abundantly clear that the successor to these benefits under Dr. Chisholm's will is "the Governors of the University of Toronto" (hereafter to be referred to as the Board). The Board alone is entitled thereto. It alone could enforce payment of its benefits by the trustees of the will and it alone is beneficially entitled thereto. Now, that being so, if the appellant is to succeed it must establish that it, i.e., the Governors of the University of Toronto, is the Province of Ontario, or a political subdivision thereof. To put the problem in that way is to supply the answer thereto. Whatever the relationship between the Board and the Province of Ontario may be—and that will be considered later—the Board is not the Province of Ontario and the Province of Ontario is not the Board.

Nor in the view that I have taken as to the meaning of the words "political subdivision" can it be said that the appellant, i.e., the Governors of the University of Toronto —is "a political subdivision thereof." I do not think it is necessary for the purposes of this case to determine whether the "political subdivision" must be a political subdivision of the Dominion or of a province thereof.

In the Shorter Oxford English Dictionary, 2nd Ed., "political" is defined as "of, belonging or pertaining to, the state, its government and policy" and "concerned or dealing with politics or the science of government."

In the same volume, "subdivision" is defined as "one of the parts into which a whole is subdivided; part of a part; a section resulting from a further division."

In vol. 49, Corpus Juris, at pp. 1074 and 1077, the expressions "political division" and "political subdivisions" are defined as follows:

Political Division of a State.—A division formed for the more effectual or convenient exercise of political power within the political localities.

Political Subdivision:

1. In General. A term implying a division of a parent entity for some governmental purpose.

2. Of a County. A subdivision of a county exercising some function of government.

3. Of a State. A subdivision of a state to which has been delegated certain functions of local government.

It is further stated therein that the distinctive marks of a division or subdivision of a state are that such divisions embrace each a certain territory and its inhabitants, organized for the public advantage and not in the interests of particular individuals or classes, that their chief design is the exercise of governmental functions, and that to the electors residing within each is to some extent committed the powers of local government, to be wielded either mediately or immediately, for the benefit of the people there residing.

In my opinion, the term "political subdivision" as used in section 7(1) (*e*) refers to a geographical part of the larger entities—the Dominion or any of its provinces—set aside for the purposes of local government by the inhabitants thereof. The Board—set up by provincial statute to manage the affairs of a provincial university—and which university was established to carry out part of the educational programme of the Province of Ontario—does not fall within that description of a political subdivision.

The word "is" in ss. 7(1) (*e*) would seem clearly to indicate that the successor must be identical with one or other of the specified entities. That identity does not exist in the case at bar.

My conclusion, therefore, is that the Board is not the Dominion of Canada or any province or political subdivision thereof.

That finding, in my opinion, is sufficient in itself to dispose of the appeal. However, as I have intimated above, counsel for the appellant relied strongly on the relationship existing between the Board and the Province of Ontario which he submitted was of such a nature that the Board was, in fact, the agent of the Crown. His submission, I think, can best be put in his own words. He said:

The question involved is a comparatively narrow one. It is as to whether or not we fall within the provisions of Section 7(1) (*e*). In other words the Governors of the University of Toronto, in my submission, are the "province" or a "political subdivision thereof." Our submission is that their status is that of the Crown in the right of the Province of Ontario—the Governors, who, by the Act, are incorporated, being the

1949

GOVERNORS OF THE UNIVERSITY OF TORONTO v. MINISTER OF NATIONAL REVENUE

Cameron J.

agents of the Crown to administer the affairs of the Provincial University and I think, my lord, perhaps I should say that in my opinion, from a consideration of the University Act, it is made abundantly clear that the control of the University is a function of the government—the work of the University being an integral part of the public educational system of the province—the University being actually an extension of the Department of Education of the province and/or a political subdivision of the province within the meaning of section 7, subsection 1(*e*) of the Succession Duty Act.

Briefly, the submission of the appellant is that the control exercised by the Province of Ontario over the Board and the affairs of the University is such that the Board is, in fact, the agent of the Crown and that the status of the appellant is that of the Crown in right of the Province of Ontario. Reliance is placed on the provisions of The University Act, R.S.O., 1937, c. 372, Exhibit I (originally enacted as c. 55 of the Statutes of 1906), hereinafter to be referred to as The University Act.

It is of interest to note that by the Act of 1906—which for the first time set up the Board as the governing body of the University—very substantial changes were brought about. Reference to c. 298, R.S.O. 1897, indicates that a large measure of control over the affairs of the University was then in the Crown. The Lieutenant-Governor was the Visitor with commission powers to be exercised under the Great Seal. The President, professors, lecturers, teachers, officers and servants were appointed by the Lieutenant-Governor and held office during his pleasure. The Lieutenant-Governor in Council appointed nine members to the Senate and all statutes enacted by that body and all regulations passed by the Council were invalid until approved by the Visitor. The Lieutenant-Governor in Council determined the fees to be paid by students in attendance. All endowments were vested in the Crown. The Lieutenant-Governor in Council was empowered to make regulations respecting the retirement of the teaching staff and the officers and servants of the University, subject to the approval of the Legislative Assembly.

Following a report of the Royal Commission in 1906, which recommended the propriety of divorcing the affairs of the University from the direct superintendence of political powers and which suggested a proposal "to delegate the powers of the Crown to a Board of Governors dictated

by the desire to impart strength, continuity and freedom of action to the supreme governing body", The University Act was enacted in 1906. By that Act there was constituted a Board of Governors of the University and University College, declared to be a body corporate with all the rights, privileges and powers mentioned in subsection (25) of section 8 of The Interpretation Act, and with the power to hold real property for the purposes of the University without licence-in-mortmain, and the Board was declared to be the successor of the former "Trustees of the University of Toronto," with the enlarged rights, powers and privileges conferred by the Act. It is not necessary to state all the powers thus conferred on the Board, many of which were similar to the powers contained in The University Act, R.S.O. 1937, c. 372, which will be considered later. It is sufficient to say that in addition to a great many specified powers it contained (s. 37) the section which now appears as s. 29 of the 1937 Act, which is as follows:

> 29. The government, conduct, management and control of the University and of University College, and of the property, revenues, business and affairs thereof, shall be vested in the Board.

Exhibit I is The University Act, R.S.O. 1937, c. 372. By that Act the Board is made the supreme governing body of the University. By s. 10, all property of the University and University College, and all property conveyed, devised or bequeathed to them or any faculty or department thereof, is vested in the Board, subject always to any trust affecting the same. In addition to the general management and control provided for in s. 29 (*supra*), the following powers are conferred on the Board. In the field of management it has power to appoint the president, officers, employees and servants of the University, and upon the recommendation of the president to appoint the deans and all members of the teaching staff, to remove all members of the teaching staff, employees and servants, to establish faculties and departments, to provide for federation and affiliation of the University with any other college in Ontario, to fix the student fees, to regulate and manage the residence and dining halls, to enter into arrangements with secondary and primary schools.

1949

GOVERNORS OF THE UNIVERSITY OF TORONTO v. MINISTER OF NATIONAL REVENUE

Cameron J.

In the field of property it is given power to invest all moneys coming into its hands, subject to the limitations of any trust, to acquire and hold real and personal property, however acquired, to purchase and acquire all such property as it deems necessary for the University, to sell all real property of the Board, and to lease the same for a period not exceeding twenty-one years.

In the field of finance it has power to expend such sums as it considers necessary for the support and maintenance of the buildings and for their betterment, and for the erection of new buildings and for the equipping of all such buildings; to erect and equip and maintain residences and dining-halls; and to borrow from banks up to $250,000.

All of the powers of the Board which I have above enumerated are absolute and not subject to any control by any outside authority.

By sections 41 to 50, provision is made for the composition of the Senate and substantial powers are allocated to it, including power to provide for the granting of degrees (except in Theology), the establishment of faculties, chairs, departments and courses of instruction, scholarships and prizes, and the consideration and determination of the courses of study. Many of the enactments of the Senate are made subject to the approval of the Board.

In addition to the above, certain other privileges and exemptions are conferred on the Board. It has power to expropriate such real property as the Board deems necessary; to acquire and hold land without license-in-mortmain. Its real property, so far as the application of any Statute of Limitations is concerned, is deemed to be real property of the Crown. Its property is not subject to expropriation and is exempt from taxation except in certain special cases. The consent of the Attorney-General is required before any action can be brought against the Board.

The Act refers to the University as "the Provincial University." The Board consists of the Chancellor (elected by the graduates), the President (appointed by the Board), and twenty-two persons all appointed by the Lieutenant-Governor in Council. Eight of the twenty-two members so appointed are first nominated by the Alumni Federation of the University. Any of the twenty-two

appointed members may be removed by the Lieutenant-Governor in Council, apparently without cause assigned. The Lieutenant-Governor in Council appoints one of the members of the Board to be its Chairman. The Board may not incur any expenditure which would impair the endowments, nor may it expend moneys for the purchase of lands or erection of buildings, the cost of which cannot be met out of the year's income, without the approval of the Lieutenant-Governor in Council. The Board is given power to borrow up to the sum of $4,000,000 for the purchase of land and the erection of buildings, but only with the approval of the Lieutenant-Governor in Council, who may prescribe the terms and conditions thereof and the nature of the securities to be given therefor, and may provide for the guarantee of such securities by the Province. For general purposes the Board may not borrow a sum in excess of $250,000 without the approval of the Lieutenant-Governor in Council. The accounts of the Board must be audited annually by the provincial auditor or by some person appointed by the Lieutenant-Governor in Council. The Board is required to make an annual report of its transactions to the Lieutenant-Governor in Council with details of its receipts and expenditures and of its investments and such other particulars as may be required, and such report is laid before the Assembly. Provision is made for an annual grant to the Board of 50 per centum of the average yearly gross receipts in the Province from succession duties, up to a maximum of $500,000 in any one year.

One of the affiliated colleges of the University is the Ontario College of Education. It is a training college for all high school teachers in the province. Appointments to its staff are made by the Board on the recommendation of the Minister of Education. The College recommends the granting of teaching certificates which are actually granted by the Minister. The College is administered by the Board and its courses are prescribed by the Senate, subject to the approval of the Minister of Education. It has a separate budget which is subject to the approval of the Minister and of the Board of Governors before it is submitted to the Legislature.

In addition to the statutory grant by the Province to the Board, special and supplementary grants are made from

1949

GOVERNORS OF THE UNIVERSITY OF TORONTO v. MINISTER OF NATIONAL REVENUE

Cameron J.

time to time as needed. These amount to very substantial sums as shown by a number of the Board's annual reports filed as Exhibit 4. In 1945-46 the grants totalled $1,817,000 and in 1948-49 slightly over $3,000,000. The Board's report for the year ending June 30, 1946, indicated that it had assets under its control as follows: General Funds, including properties—in excess of seventeen million dollars; and Trust Funds—in excess of fourteen million dollars.

The status of boards, commissions and corporations which have been established by the Crown has been frequently considered in the Courts, many of such cases having to do with liability to taxation and to actions in tort or in contract. It seems to me—after a study of all the cases cited—that each case must necessarily depend upon the wording of the relevant statute and the legislative intention to be inferred therefrom.

In *City of Halifax* v. *Halifax Harbour Commissioners* (1), the question for determination was the liability of the Commissioners—who occupied Crown property—to assessment for business tax, as an "occupier." In the Court en banc, three of the Judges came to the conclusion that the Commissioners "are to be considered agents of the Government," and the other member of the Court held that the Commissioners were "exempt from business tax as agents and servants of the Crown occupying the property on behalf of the Crown."

In dismissing the appeal Duff, C.J., summarized the powers and duties of the Commissioners as follows:

> Their occupation is for the purpose of managing and administering the public harbour of Halifax and the properties belonging thereto which are the property of the Crown; their powers are derived from a statute of the Parliament of Canada; but they are subject at every turn in executing those powers to the control of the Governor representing His Majesty and acting on the advice of His Majesty's Privy Council for Canada, or of the Minister of Marine and Fisheries; they cannot take possession of any property belonging to the harbour property without the consent of, and only upon such terms as may be imposed by, the Government; they cannot acquire property or dispose of property without the same consent; they can only acquire capital funds by measures taken under the control of the Government; they can only apply capital funds in constructing works and facilities under a supervision and control, the character of which has been explained; the tolls and charges which are the sources of their revenue they can only impose under the authority of the Government; the expenditure of revenues in the maintenance of services is under the control and supervision of a Government Depart-

(1) (1935) S.C.R. 215.

ment; the salaries and compensation payable to officers and servants are determined under the authority of the Government; the regulations necessary for the control of the harbour, the harbour works, officers and servants, the proceedings of the Corporation, can only take effect under the same authority; the surplus of revenue after providing for costs of services and the interest on the debenture debt goes into a sinking fund under the direction of the Minister; finally, they are appointed by the Crown and hold office during pleasure.

At p. 227 he added:

I cannot doubt that the services contemplated by this legislation are, not only public services in the broad sense, but also, in the strictest sense, Government services; or that the occupation of the Government property with which we are concerned is, in the meaning with which Lord Cairns used the words in the passage cited (and in the sense in which those words were interpreted by Lord Blackburn and Lord Watson), an occupation by persons "using" that property "exclusively in and for the service of the Crown."

In that case Duff C.J. found from an examination of the statute that the occupation by the respondents of the property and facilities under their jurisdiction was an occupation for the Dominion of Canada; that the property of the respondents was part of the public property of Canada and that the statute treated all of the revenues of the respondents as moneys at the disposal of Parliament and, subject to the specific directions of the statute, gave the control of them to the Government.

In the *Halifax* case, the Court considered and distinguished two judgments of the Judicial Committee of the Privy Council to which I shall now refer. In *Fox* v. *Government of Newfoundland* (1), the question was whether moneys owing to certain Boards of Education in Newfoundland took priority over ordinary debts in the liquidation of a bank, as falling within the description, "debts and claims due to the Crown or to the Government or revenues of the Colony." The Judicial Committee held that these Boards were not the agents of the Government. In that case the moneys in question had been paid by the Government out of public moneys to the banks on behalf of the several Boards of Education. After pointing out that the Government thereafter had no control over the moneys, Sir Richard Couch proceeded:

It was contended by Mr. Asquith, who appeared for the Government before their Lordships, that the Boards of Education were merely distributing agents of the Government, only distributing branches. This appears to be the view of the majority of the learned judges, as expressed in the reasons they have given for their judgment, and indeed is the only

(1) (1898) A.C. 667.

1949

GOVERNORS OF THE UNIVERSITY OF TORONTO v. MINISTER OF NATIONAL REVENUE

Cameron J.

way in which the judgment can be supported. But this view is not consistent with the provisions in the Act. In ss. 1 and 2 a distinction is made between money to be expended by a board of education and money to be expended as the Governor in Council may determine. By s. 34 the boards have power to make by-laws and rules to be approved by the Governor in Council, but are not bound to do so. By s. 37 their accounts are to be audited, and returns of all schools with detailed accounts duly audited are to be transmitted to the superintendent, and these are by s. 72 to be laid before the Legislature. This seems to be for the information of the Government and Legislature, and not in order that any item of expenditure may be disallowed if the Government does not approve of it. The appointment of Boards for each of the three religious denominations, and the constitution of the board, indicate that it is not to be a mere agent of the Government for the distribution of the money, but is to have within the limit of general educational purposes a discretionary power in expending it—a power which is independent of the Government.

In *Metropolitan Meat Industry Board* v. *Sheedy* (1), Lord Haldane, who delivered the judgment of the Committee, explained the *ratio decidendi* of *Fox* v. *Government of Newfoundland,* as follows:

> The reason was that the various boards of education were not mere agents of the Government for the distribution of money entrusted to them, but were to have, within the limits of general educational purposes, uncontrolled discretionary power in expending it. The service, in other words, was not treated as being the service of the Sovereign exclusively within the meaning of the principle, but their own service.

In the *Metropolitan Meat Industry Board* case, the question was whether a debt due to the Board of New South Wales was a debt due to the Crown. In considering the powers of that Board, Lord Haldane said:

> They are a body with discretionary powers of their own. Even if a Minister of the Crown has power to interfere with them, there is nothing in the statute which makes the acts of administration his as distinguished from theirs. That they were incorporated does not matter. It is also true that the Governor appoints their members and can veto certain of their actions. But these provisions, even when taken together, do not outweigh the fact that the Act of 1915 confers on the appellant Board wide powers which are given to it to be exercised at its own discretion and without consulting the direct representatives of the Crown. Such are the powers of acquiring land, constructing abattoirs and works, selling cattle and meat, either on its own behalf or on behalf of other persons, and leasing its property. Nor does the Board pay its receipts into the general revenue of the State, and the charges it levies go into its own fund. Under these circumstances their Lordships think that it ought not to be held that the appellant Board are acting mainly, if at all, as servants of the Crown acting in its service.

It was held that the debt due to the Board was not a debt due to the Crown.

(1) (1927) A.C. 899.

In *Tamlin* v. *Hannaford* (2), the Court of Appeal held that the British Transport Commission was not a servant or agent of the Crown. There the plaintiff, who was the lessee from a railway company of a house to which the Rent Restriction Acts applied, sublet two rooms to the defendant. By the Transport Act, 1947, the house became vested in the British Transport Commission. The plaintiff having brought proceedings for possession of the rooms, the defendant relied on the Rent Restriction Acts.

In that case the Court considered the various powers delegated to the Commission and the control retained by the Minister of Transport. At p. 422-3 Denning, L.J., said in part:

The Transport Act, 1947, brings into being the British Transport Commission, which is a statutory corporation of a kind comparatively new to English law. It has many of the qualities which belong to corporations of other kinds to which we have been accustomed. It has, for instance, defined powers which it cannot exceed; and it is directed by a group of men whose duty it is to see that those powers are properly used. It may own property, carry on business, borrow and lend money, just as any other corporation may do, so long as it keeps within the bounds which Parliament has set. But the significant difference in this corporation is that there are no shareholders to subscribe to capital or to have any voice in its affairs. The money which the corporation needs is not raised by the issue of shares but by borrowing; and its borrowing is not secured by debentures but it is guaranteed by the Treasury. If it cannot repay, the loss falls on the Consolidated Fund of the United Kingdom; that is to say, on the taxpayer. There are no shareholders to elect the directors or to fix their remuneration, there are no profits to be made or distributed. The duty of the corporation is to make revenue and expenditure balance one another, taking, of course, one year with another, but not to make profits . . . Indeed, the taxpayer is the universal guarantor of the corporation. But for him it could not have acquired its business at all, nor could it now continue it for a single day . . . The protection of the interests of all these—taxpayer, user and beneficiary—is entrusted by Parliament to the Minister of Transport. He is given powers over this corporation which are as great as those possessed by a man who holds all the shares in a private company, subject, however, as such man is not, to a duty to account to Parliament for his stewardship. It is the Minister who appoints the directors—the members of the commission—and fixes their remuneration. They must give him any information he wants; and lest they should not prove amenable to his suggestions as to the policy which they should adopt, he is given power to give them directions of a general nature in matters which appear to him to affect the national interest—as to which he is the sole judge—and they are then bound to obey.

These are great powers, but still we cannot regard the corporation as being his agent any more than a company is the agent of the shareholders, or even of a sole shareholder. In the eyes of the law the corporation is its own master and is answerable as fully as any other person or

(2) (1949) T.L.R. 422.

1949

GOVERNORS OF THE UNIVERSITY OF TORONTO v. MINISTER OF NATIONAL REVENUE

Cameron J.

corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not Civil servants and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes. But it is not a Government department, nor do its powers fall within the province of Government.

The only fact in this case which can be said to make the British Transport Commission a servant or agent of the Crown is the control over it which the Minister of Transport exercises. But there is ample authority both in this Court and the House of Lords for saying that such control as he exercises is insufficient for the purpose: see *Central Control Board (Liquor Traffic)* v. *Cannon Brewery Company, Limited* (1919) A C. 744, at 757. When Parliament intends that a new corporation should act on behalf of the Crown, it as a rule says so expressly, as it did in the case of the Central Land Board by the Town and Country Planning Act, 1947, which was passed on the very same day as the Transport Act, 1947. In the absence of any such express provision, the proper inference, in the case at any rate of a commercial corporation, is that it acts on its own behalf, even though it is controlled by a Government department.

In our opinion, therefore, the British Transport Commission is not a servant or agent of the Crown, and its property is as much subject to the Rent Restriction Acts as the property of any other person.

In *Scott* v. *Governors of University of Toronto* (1), the appellant here was the defendant. The action was for damages sustained by the plaintiff while at work for the defendant. It was held that the appointment under the authority of a statute by the Lieutenant-Governor in Council of members of the Board of Governors of the University of Toronto does not constitute them Crown officers, nor does it confer on them immunity from civil actions.

After considering the provisions of The University Act, 1906, Meredith, C.J.C.P., said at p. 155:

The contention that the rule that the King can do no wrong applies to the wrongs of "The Governors of the University of Toronto" was ruled against upon the argument. The mere fact that the Lieutenant-Governor in Council of the Province appoints most—not all—of the Governors does not confer upon them the character of Crown officers. Such an appointment, in itself, has no such extraordinary effect; and indeed is not even extremely unusual. I mentioned, during the argument, two other instances: one being the appointment of a member of a municipal hospital board; and the King in council, I believe, appoints the members of a University board in England. There is no reason why the Lieutenant-Governor in Council might not appoint members of a board of directors, or of management, of any concern; I mean there is no legal reason; and, if that were done, the effect in law would be none other than the effect of a like appointment made in any other valid manner.

(1) (1913) 10 D.L.R., 154.

Nor do the other powers, respecting the university, which the Lieutenant-Governor in Council has, under the enactments mentioned, bring to the Governors the character of Crown officers governing Crown property for the use or benefit of the Crown. They are but officers of the University, having power to deal with the property under their control for the uses and benefit of the University only. The case of the Niagara Falls Parks Commission is quite different; there the Commissioners are Crown officers, dealing with Crown lands in the right of the Crown, and in the public interests only. The University of Toronto is a body having its own separate and independent rights and interests, upon which the Crown cannot infringe; and the University press, in the carrying on of the work in which the accident which is the subject-matter of this litigation happened, is one of those things.

In *Powlett et al* v. *University of Alberta et al* (1), the Court of Appeal had under consideration the liability of the Board of Governors of the University for damages sustained by a student during initiation proceedings. Three of the five judges agreed with the trial judge that the Board was liable for such damages but reduced the amount awarded by him. The other two judges found no liability and would have allowed the appeal. The powers and duties of the Board of Governors under The University Act, R.S.A. 1922, c. 56, were considered. By that Act the Board of Governors was established as a body corporate. It was composed of the Chancellor (elected by the graduates); the President (appointed by the Lieutenant-Governor in Council)—both of whom were members ex officio—and a Chairman and six other persons appointed by the Lieutenant-Governor in Council, and all such appointed members were subject to removal by the Lieutenant-Governor in Council. Many of the powers and duties of that Board were similar to those of the appellant herein as will be seen from a summary contained in the judgment of McGillivray, J.A., at p. 264-5.

It is to be observed that all University property is vested in the Board of Governors, that the government, conduct, management and control of the University and its affairs are vested in the Board subject only to the reservations in the Act contained. Interference by the Lieutenant-Governor in Council is in some instances contemplated but not so as to make the "acts of administration", resulting from any such interference, acts of the Crown and not those of the Board.

It will also be seen that the Board appoints all deans and professors with the approval of the president and all officers, clerks and servants; that the Board has wide discretionary powers with respect to the investment of money and the acquiring and holding of real estate and the expropriation of lands; that the Board has power to spend money for the maintenance

(1) (1934) 2 W.W.R. 209.

1949

GOVERNORS OF THE UNIVERSITY OF TORONTO v. MINISTER OF NATIONAL REVENUE

Cameron J.

and improvement of the buildings already in existence and the erection of such new buildings as the Board may think necessary and in the furnishing and equipping of the same.

There is also the power before quoted with respect to erecting, furnishing and maintaining residences and dining halls. The Board also has the power of fixing and determining the fees to be paid by students in the University. In addition the Board is given generous borrowing powers and may with the approval of the Lieutenant-Governor in Council issue bonds, debenture stock or securities of a like nature.

It is quite true that the Government of the province, which puts up a goodly share of the moneys necessary to carry on the activities of the University, has seen to it that it has a goodly measure of control in the expenditure of those moneys but I cannot think, having regard to the wide general powers given to the Board and having regard to the fact that it is at liberty to accept endowments and subscriptions from anyone willing to contribute and having regard to the fact that the Board according to the bursar receives large sums of money from sources other than the Government, and having regard to the fact that neither the fees collected by the Board nor any other moneys received by it go into the general revenue fund of the province, that it can be said that the Board is, to use the words of Viscount Haldane, "acting mainly if at all as servants of the Crown acting in its service."

I may add that I am of the further opinion that there is nothing in the Act contained which would justify the inference that the Legislature intended to make the Board immune from actions based upon tortious negligence.

In the result I have come to the conclusion that the Board cannot escape liability.

The case of *re Taxation of University of Manitoba Lands* (1), was a reference to determine whether the provincial Legislature of Manitoba had power to enact legislation rendering lands of the University of Manitoba, not used for educational purposes, subject to taxation by certain municipalities. One of the questions submitted for the opinion of the Court was:

(1) Is the University of Manitoba an emanation or arm or branch of the Government of Manitoba so that any property standing in its name is therefore exempt from taxation?

In answering "no" to that question, Robson, J.A., speaking also for Prendergast, C.J.M., Dennistoun and Richards, JJ.A., said at p. 595:

The other argument advanced on behalf of the University is that it is an emanation from the Crown or an arm of government. I think a perusal of the *University Act* (1936) (Man.), c. 47, repels this argument. In one sense I suppose it is true that every corporation is an emanation from the Crown but that is a different thing from being an arm of the Executive government. It may be quite true that the Crown exercises a prerogative of naming a majority of the board of governors; that it appoints the Chancellor after nomination by the committee on nominations;

(1) (1940) 1 D.L.R. 579.

that it annually makes large financial augmentations and that the main buildings are on Crown property; but nevertheless neither the appointment of authorities nor the grants of funds in aid of education are necessarily inconsistent with the independence of the University as an institution of higher learning. It is not to be imputed to the Crown that any of its acts or subsidies would be actuated by any motive of direction, let alone control, of the University's free scope in its normal sphere of action.

I think the words of Hon. R. M. Meredith in *Scott* v. *Toronto University*, (1913) 10 D.L.R. 154, are applicable here. That was a case wherein the Board set up immunity from liability for injury to an employee. The Board of Governors there were themselves a corporation but the point is the same. The learned Chief Justice said (p. 156): "Nor do the other powers, respecting the university, which the Lieutenant-Governor in council has, under the enactments mentioned, bring to the Governors the character of Crown officers governing Crown property for the use or benefit of the Crown. They are but officers of the University, having power to deal with the property under their control for the uses and benefit of the University only."

Now the test applied in all the cases to which I have referred above, was the degree of control exercised or retained by the Crown, and counsel for the Board, in submitting that it was but the servant or agent of the Province of Ontario, have stressed all those matters in which the complete independence of the Board may be thought to be curtailed in any way. The main submission is, of course, that as the Lieutenant-Governor in Council appoints twenty-two members of a Board of twenty-four—only eight of whom are appointed following recommendation by the Alumni Federation, and as ten members are required to constitute a quorum—the actions of the Board could at all times be controlled by the Lieutenant-Governor in Council removing members who are not carrying out the will of the Government, and by replacing them by others of a more compliant disposition. Theoretically, it might be possible for the Lieutenant-Governor in Council to appoint only members of the Board who were committed to carry out the instructions and wishes of the Government. It could hardly be suggested, however, that anyone possessed of the knowledge, experience and independence essential to the proper carrying out of the important and difficult duties of a Board such as this would accept the appointment under any such conditions. The Board is a body with wide discretionary powers and there is nothing in the statute which makes the Board's administrative acts the acts of the Crown rather than its own acts. Nothing that the

1949

GOVERNORS OF THE UNIVERSITY OF TORONTO v. MINISTER OF NATIONAL REVENUE

Cameron J.

Board is empowered to do is subject in any way to the control or veto of the Minister of Education or of the Lieutenant-Governor in Council; and in the carrying out of its duties it acts for itself and not as agent to bind the Crown—its alleged principal.

The only other manner in which any degree of control can be said to be reserved to the Lieutenant-Governor in Council is in the field of finance. In considering this aspect of the matter, it is essential to keep in mind that the University of Toronto is a provincial university, established by the province. The province, therefore, has always assumed a degree of financial responsibility for its operations as evidenced by the very substantial grants made each year. The statutory payment of 50 percentum of the annual succession duties collected by the province—up to a maximum of $500,000 in any year—is made without any restrictions as to its expenditure, the Board having complete control thereover. The Board's accounts are audited by the provincial auditor or by some person appointed for that purpose, and the Board each year renders a report of its receipts and expenditures for the preceding year. This, however, appears to be for information purposes only, no doubt being a matter for consideration when additional funds are asked for by the Board from the province. Such receipts and expenditures of the Board cannot be questioned in any way. The Board is master in its own financial house save that it may not without the consent of the Lieutenant-Governor in Council: (*a*) impair its endowments: (*b*) in the purchase of land or erection of buildings expend moneys other than from its income of the year; (*c*) borrow from banks or lenders more than $250,000; and (*d*) borrow on the security of its assets for the purchase of land, the erection of buildings, and the equipping thereof. Any moneys so borrowed become the property of the Board free of any control on the part of the province.

Without attempting to recapitulate all the powers of the Board, the following matters in my opinion are essentially significant. It administers its own property, all the assets both real and personal being vested in it for its own use. It administers its own endowments, receives its income and makes its expenditures entirely on its own behalf and limited only in the manner which I have indicated. Its

members are not civil servants. It appoints and removes all the members of the teaching staff and the officers and servants of the University, none of whom are civil servants. The Province of Ontario has nothing to say as to the departments of the University or the courses of instruction or the fees to be charged. The Board may buy, expropriate, sell and lease lands, erect buildings and borrow money. The statute itself says that the management and control of the revenues, business and affairs of the University are not in the Crown but in the Board. Its very wide powers, in my opinion, indicate that the Act conferred on the Board these powers to be exercised at its own discretion and without consulting in any way the representatives of the Crown. The Board is not a mere agent of the Government for the purposes of distributing such money as may be given annually by way of subsidy or otherwise, but is to have, within the limits of the purposes for which the University was established, a very wide discretionary power in the management and control of the University—a power which I think is quite independent of the Government. In doing what it does it acts on its own behalf and not on behalf of the Government and is not controlled by a department of the Government.

My conclusion is, therefore, that the Board cannot be said to be the agent or servant of the Crown and the contention of the appellant fails on that point.

A consideration of subsection 7(*d*) and (*e*) (*supra*) suggests very strongly that Parliament wished to draw a distinction between two different categories of bequests and to treat them in a different way. In subsection (*e*), gifts to the Dominion or any province or political subdivision thereof, where the benefits would accrue to all the inhabitants of a geographical area, the exemption from tax was complete. But in regard to charitable organizations, such exemption was limited to 50 per centum of all the property included in the aggregate net value. "Charitable organization" is a term well known to the law as including not only institutions directly devoted to charitable purposes, but also to religious and educational purposes. It would seem reasonable to assume that because the beneficiaries of such charitable bequests would be more limited than the inhabitants of a geographical subdivision such as

1949

GOVERNORS OF THE UNIVERSITY OF TORONTO v. MINISTER OF NATIONAL REVENUE

Cameron J.

are specifically named, Parliament intended to confer a larger degree of exemption on the latter than on the former. It may be of interest to note that by the amendment of 1948, the limitations on exemptions to charitable organizations were removed.

For the reasons which I have given, the appeal fails and will be dismissed with costs—if demanded. I have been informed that this is a test case.

Judgment accordingly.