HIS MAJESTY THE KING.....PLAINTIFF;

AND

H. E. IRWIN.....DEFENDANT.

1926

April 12.

Crown—Constitutional Law—B.N.A. Act—Naturalization Act—Presumption that all formalities re passing of an act have been observed.

Under the Naturalization Act defendant was required to perform certain duties and collect certain fees and account therefor to the Secretary of State for Canada. He collected the fees, retained from the same what he thought he was entitled to personally, and paid the balance to the Ontario Provincial Treasurer instead of so accounting, as required by the Act and Regulations made thereunder. Hence this action. The defence claimed that the said Act was in the nature of a money bill and was not properly introduced into the House and was void; and that, moreover, the Federal Authorities after having appointed the clerk of the Court of General Sessions, this clerk being a provincial officer, was subject to the provincial laws, and by subsec. 14 of sec. 92 of the B.N.A. Act he was bound to apply the moneys or fees so collected for maintenance of the provincial courts.

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Held, that when a statute appears on its face to have been duly passed by a competent legislature, the courts must assume that all things have been rightly done in respect of its passage, and cannot entertain any argument that there is a defect of parliamentary procedure lying behind the Act.

2. That the Dominion Parliament had a clear right to give to the Court of Sessions of the Peace the jurisdiction in question and to assign to the clerk thereof the duties conferred by the Naturalization Act, and to utilize existing provincial officers. That the power of legislation given to the provincial legislatures by sub-sec. 14 of sec. 92 of the B.N.A. Act covers matters within the powers of the provincial legislatures and no more, and does not let in the right to trench upon the federal power and authority. That the act of the federal authority in no way invaded the rights of the local legislature.

Information exhibited by the Attorney-General of Canada to recover certain moneys collected by the defendant in his capacity of clerk of the Court of General Sessions, under the Naturalization Act.

Toronto, March 26th, 1926.

Case now tried before the Honourable Mr. Justice Audette.

G. Wilkie K.C. and *T. Delamere* for plaintiff.

E. Bailey K.C. for defendant.

The facts are stated in the reasons for judgment.

AUDETTE J. now this 12th April, 1926, delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it is sought to recover from the defendant the sum of $11,092.50, as representing monies collected by him, in his capacity of Clerk of the Court of General Sessions of the Peace, Ontario, while acting under the authority and provisions of the Naturalization Act.

Beyond all doubt, the question of naturalization falls under one of the heads of the exclusive legislative authority of the Parliament of Canada, under the provisions of sub-sec. 25 of sec. 92 of The British North America Act, 1867.

Both under the Naturlaization Act and the Regulations made thereunder, the defendant as Clerk of the Court of General Sessions is required to perform certain duties, and

to collect fees and account for the same to the Secretary of State of Canada.

The defendant collected these fees, retained from the same what he thought he was personally entitled to and paid the balance thereof, without beforehand advising the Federal authorities, to the Ontario Provincial Treasurer, instead of accounting for the same, as required by the Act and Regulations made thereunder, to the Secretary of State of Canada. Hence the present controversy.

Stated in a summary way, without going into unnecessary details, the position taken by the defendant is that while granting that the Parliament of Canada has exclusive legislative authority over all matters of naturalization, in as much as sec. 25 of the Act enacts that a *fee* is to be paid to an officer of a Provincial Court, it is dealing with subject-matter that is in the nature of taxation, and as such becomes a money bill which should be introduced in the manner provided by sec. 54 of the B.N.A. Act, that is upon the recommendation of the Governor General.

Now there is not a tittle of evidence showing whether or not such recommendation was made before the passing of the Act. But that is of no importance in disposing of this case, because it is no part of the business of the Court in construing a statute to enquire as to whether the legislature in passing it did or did not proceed according to the *lex parliamenti*.

It is a matter of elementary law that when a statute appears on its face to have been duly passed by a competent legislature, the courts must assume that all things have been rightly done in respect of its passage through the legislature, and cannot entertain any argument that there is a defect of parliamentary procedure lying behind the Act as a matter of fact. It is a case where the maxim *Omnia praesumuntur rite esse acta* applies with great force and rigour. It is for Parliament to decide how they will proceed to legislate and it is only the concrete embodiment of such legislation—the statute itself—that the Court is called upon to construe. The doctrine is well expressed by the learned judges in the following excerpts from pertinent cases:—

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In the case of *Commissioners for Income Tax* v. *Pemsel* (1) Lord Halsbury L.C. says:

> But I do not think it is competent to any Court to proceed upon the assumption that the legislature has made a mistake. Whatever the real fact may be, I think a Court of Law is bound to proceed upon the assumption that the legislature is an ideal person that does not make mistakes.

In the case of *Richards* v. *McBride* (2), Grove J. says:

> But we cannot assume a mistake in an Act of Parliament. If we did so, we should render many Acts uncertain, by putting different construction on them according to our individual conjectures. The draftsman of this Act may have made a mistake. If so, the remedy is for the legislature to amend it. But we must construe Acts of Parliament as they are, without regard to consequences, except in those cases where the words used are so ambiguous that they may be construed in two senses, *and even then we must not regard what happened in Parliament,* but look to what is within the four corners of the Act, and to the grievance intended to be remedied, or, in penal statutes, to the offence intended to be corrected.

In *Lee* v. *Bude and Torrington Junction Railway Co.* (3), Willes J. says:

> It was once said,—I think in Hobart,—that, if an Act of Parliament were to create a man judge in his own case, the Court might disregard it. That dictum, however, stands as a warning, rather than an authority to be followed. We sit here as servants of the Queen and the legislature. Are we to act as regents over what is done by Parliament with the consent of the Queen, Lords and Commons? I deny that any such authority exists. If an Act of Parliament *has been obtained improperly, it is for the legislature to correct it* by repealing it; but, so long as it exists as law, the Courts *are bound to obey it.* The proceedings here are judicial, not autocratic, which they would be if we could make laws instead of administering them. * * * * Having neglected to take the proper steps at the proper time to prevent the Act from passing into a law, it is too late now to raise any objections to it.

The statute here in question is silent with regard to impost and taxation; but it purports to give the Governor in Council, under sec. 25, the power to make regulations for carrying into effect the objects of the Act and in particular with respect to the imposition and application of fees.

This impugned section does no more than provide reasonable means for the carrying into effect of the Act in question which falls within the exclusive jurisdiction of

(1) [1891] A.C. 531 at p. 549.
(2) [1881-82] 8 Q.B.D. 119 at p. 122.
(3) [1871] L.R. 6 C.P. 576 at p. 582.

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the federal legislature, and there is nothing *ultra vires* in the power conferred by sec. 25 on the Clerk to collect the necessary fees to defray the administration of the Act. *Toronto Corporation* v. *C.P.R.* (1).

Neither is there any occasion to confound the meaning of the word "fee" with that of the words "impost" or "tax." Indeed, the word "fee" as used in the Act, means nothing more than a sum which a public officer is authorized to demand as payment for the execution of his official duty, and it is not in the nature of a charge upon the public—while the word "tax" is a compulsory contribution to the support of a government, levied on persons, property, income, commodities, transactions, etc. So, too, the word "impost" is a tax, one that is more especially used in respect of customs duty levied on merchandise.

Therefore the Naturalization Act is not, within the ambit of sec. 5 of the B.N.A. Act, a money bill either *dans son ensemble* or even approached upon the consideration of sec. 25 thereof, and the plea on that ground fails. See May's Parliamentary Practice, 13th ed. 435. Beauchesne, Parliamentary Rules and Forms, Rule 77, No. 621, pp. 165, 166. Todd, at p. 709, states that the British Practice is the guide for Canada.

The defendant, as a second ground of defence, contends that after the Federal Authorities had appointed the Clerk of the Court of General Sessions, this Clerk, being a provincial officer, became subject—under sub-sec. 14 of sec. 92 of the B.N.A. Act, to the provincial laws and was bound to apply the monies or fees so collected under the Naturalization Act for the "maintenance of the Provincial Courts."

With the law or logic of this contention, I am unable to agree.

The Dominion Parliament had a clear right to give to the Court of Sessions of Peace the jurisdiction and to assign to the Clerk thereof the duties conferred by the Naturalization Act, and in doing so to utilize existing judicial officers. The power of legislation given to Provincial Legislatures by sub-sec. 14 of sec. 92, B.N.A. Act, covers matters and subjects within the powers of the Provincial Legislatures and no more. It does not let in a

(1) [1908] A.C. 54 at 58.

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right to trench, as attempted here, upon the federal powers and authority. See Clement's Can. Constitution, 3rd ed. 511 et seq. See *Valin* v. *Langlois* (1); *In re Henry Vancini* (2); *Bruneau* v. *Massue* (3); Lefroy, Canada's Federal System (1913), 544, 545.

In other words, when once the Parliament of Canada has given certain powers to this judicial provincial officer and has utilized him to perform certain functions and duties in the adjudicating of matters over which such Parliament has exclusive jurisdiction, no provincial legislature can trench upon it; and in doing so the Federal authority in no way invades the rights of the local legislatures.

Moreover, this officer cannot approbate and reprobate the federal authority under which he acted. He cannot deny his power to collect these fees and yet keep some of them for his own purpose. He collects the fees under the Federal Act, puts in his own purse the share which he regards as his own, and then hands the balance to the Province. The attack upon the fees collected under sec. 25 applies as well to his personal fees as to the balance.

Therefore, there will be judgment in favour of the plaintiff against the defendant.

There is no evidence before the Court to enable it to adjust and pass the defendant's account; however, counsel at bar intimated they would, if the case arose, adjust the same among themselves. Failing them to do so, reserve is hereby given to either party to apply, upon notice, to the Court for further direction in respect of the same.

Judgment accordingly.

1 [1879] 3 S.C.R. 1; L.R. 5 A.C. 115.

(2) [1904] 34 S.C.R. 621.

(3) [1878] 23 L.C.J. 60.