PROVINCE OF QUEBEC v. DOMINION OF CANADA; IN RE INDIAN CLAIMS

(1898), 30 S.C.R. 151

Supreme Court of Canada , Strong C.J., Taschereau, Sedgewick, King and Girouard JJ., 7 October 1898

Treaties with Indians--Contingent annuities--B. N. A. Act. (1867) *sec.* 112--*Debts of late Province of Canada--Res judicata.*

The award complained of by the Province of Quebec determined that certain payments made by the Dominion of Canada in virtue of the Huron and Superior Treaties with the Ojibewa Indians for arrears of augmented annuities and interest from 1867 to 1873, and for increased annuities in excess of the fixed annuities with interest paid subsequently should be taken into account and included in the debt of the late Province of Canada mentioned in the 112 section of the British North America Act, 1867.

Held, affirming the decision of the arbitrators, that the question of these contingent annuities had been considered and decided by Her Majesty's Privy Council in the case of *The Attorney-General of Canada v. The Attorney-General of Ontario* ([1897] A. C. 199), and that the payments so made by the Dominion were recover- able from the Provinces of Ontario and Quebec conjointly in the manner as the original annuities.

APPEAL on behalf of the Province of Quebec from the award of the Arbitrators made on the 7th of January, 1898, in the matter arising out of the Huron and Superior Treaties with the Ojibewa Indians maintaining the claim of the Dominion of Canada against the Provinces of Ontario and Quebec conjointly for $95,200, arrears of augmented annuities, with interest to 31st December, 1892, under the said treaties from the year 1867 to the year 1873, and the further sum of $389,106 80, amount of increased annnuities over the fixed annuities with interest to 31st December, 1892, paid by the Dominion to the said Indians since the year 1874.

The arbitrators found "that in ascertaining, and determining the debt of the Province of Canada mentioned in the 112th section of the British North America Act, 1867, the contingent obligation devolving upon the Dominion of Canada to pay the increased annuities mentioned in the Robinson Treaties of the 7th and 9th of September, 1850, and any increased annuities which have become due to the Indians since the 1st day of July, 1867, up to and including the 31st day of December, 1892, shall be taken into account and included in such debt."

Trenholme Q.C. for the appellant. No such award ought to have been made against the Province of Quebec, which ought not to bear any part of the increased annuities in question.

In the former appeals before this Court and the Privy Council (1) *The Attorney-General of Canada* (1897) A. C. 199 ; 25 Can. S. v. *The Attorney-General of Ontario*; C. R. 434. the question was whether or not Ontario took the lands acquired from the Indians under the Robinson Treaties subject to a trust or interest in favour of the Indians which imposed on Ontario alone the payment of the annuities. See remarks by Lord Watson, in delivering the judgment of the Privy Council, at pages 208-211. The fact that the Dominion claimed against Ontario alone in the previous case, and now claims against both Quebec and Ontario, shews that the present case is not *res adjudicata* in this matter

against Quebec. The previous case was expressly confined to the question of trust or interest in the lands, and the question of the joint liability of Quebec was not argued before the arbitrators, but was reserved for future action by the Dominion. The treaty provided that the Government which was to pay the increased annuities would only be liable to do so from time to time in the event of its receiving increased revenues from the lands. Quebec is now asked to pay increased annuities without receiving any revenue whatsoever, and the position is that the greater the revenue to Ontario the greater is the loss to Quebec. This may continue for an indefinite time and to an indefinite amount. Quebec does not and cannot fall under the conditions of the treaty which imposed the increased annuities, and there was no intention or assent on the part of Quebec at confederation to being placed in that position.

It is consistent with section 91 of The B. N. A. Act that such a contingent and uncertain liability connected with the Indians fell upon the Dominion at confederation, and did not go to increase the surplus debt existing at confederation to be borne by these provinces. Section 111 of the B.N.A. Act in declaring that Canada should be liable, not simply for the "debts," but for the "debts and liabilities" of each province existing at the union had for its object and effect the imposing of such obligations upon the Dominion, and when by sections 11., 114 and 115 the word "debt " alone without "liabilities" is used in dealing with the subject of the public debt something different and more restricted is meant than by the use of the more comprehensive terms "debts and liabilities" in section 111. The term "and liabilities" added after the word "debts" means something and adds something, and should be so interpreted.

The surplus debt which Ontario and Quebec jointly assumed by section 112, is the surplus debt in actual existence at the time of the confederation, not some- thing that may or may not arise in future out of transactions which the provinces previously entered into. See remarks by Mr. Justice Gwynne in the former case(1) 25 Can S.C.R. 434. at pages 520 and 523. As a matter of law the liability to pay these increased annuities for the years since Confederation was not a debt of the Province of Canada at that time. *Pothier*, Obligations No. 218. The award of 1870 dealt with the whole subject and does not support or contemplate imposing such a burthen on Quebec. So far as Quebec's liability for these annuities is concerned, it does not go beyond the inclusion in the debt of the late Province of Canada of the capitalized annuities granted for the Indian lands.

Hogg Q.C. for the respondent, was not called upon.

The judgment of the court was delivered by:

THE CHIEF JUSTICE.--(Oral.) The arbitrators came to a proper conclusion as to the point which is now raised and their award ought not to be interfered with, more especially as in the judgment of the Privy Council in the case of *The Attorney-General for the Dominion of Canada v. The Attorney-General for Ontario* (2) [1897] A.C. 199., their Lordships, though not expressly deciding the question, may, from their interlocutory observations during the course of the argument, be presumed to have had under consideration contingent annuities as well as those presently payable.

We must dismiss the appeal.

GIROUARD J. stated that he did not take part in the judgment as there was a majority without him.

(His Lordship having formerly acted as counsel for the Province of Quebec, sat only by consent of the parties at the hearing of this appeal in order to form a quorum .)

Appeal dismissed.

Solicitor for the appellant: *N. W. Trenholme.*

Solicitor for the respondent: *W. D. Hogg.*