

**ATTORNEY-GENERAL FOR QUEBEC v. WILLIAMS (sub nom. Procureur
Général du Québec v. Williams)**

[1944] 4 D.L.R. 488 (also reported: 82 C.C.C. 166, [1944] R.L. 347)

Quebec Sessions of the Peace, Guerin J. Sess., 15 March 1944

Taxes / D--Indians--Retailer tobacconist's registration--"Tax"--"License Fee"--Whether payable by Indian.

A "tax" is a pecuniary contribution levied by competent authority in order to provide funds to insure the service of the State. A "license" is a permission to perform a certain act, exacted in order that the performance of the act may be regulated, and the fee therefor, if only accessory to the license and not primarily imposed to provide funds for the services of the State, is not a tax even though it may go to provide such funds. The money exigible from a retailer for a license or registration permitting him to sell tobacco or moveable goods is a license fee and not a tax and is payable by an Indian who, with certain exceptions, is exempt from taxation under the *Indian Act*, R.S.C. 1927, c. 98.

TRIALS of charges of selling tobacco without a licence contrary to the provisions of the *Tobacco Tax Act* (Que.) and of selling moveable property without registration under the *Retail Sales Tax Act* (Que.).

F. O'Reilly, for plaintiff.

R. E. C. Werry, K.C., and J. Helal, for defendants.

GUERIN J. SESS. (translation (1) Approved translation of reasons for judgment which were originally rendered in French.):--The complaint in this case is worded as follows: "I am credibly informed and I believe that in the village Caughnawaga, District of Montreal, on the 13th day of December 1943, Peter Williams, residing and carrying on business in the Village of Caughnawaga, District of Montreal, did sell tobacco in the Province without a license, contravening the provisions of Division II, s. 3 of the *Tobacco Tax Act*, R.S.Q. 1941, c. 87."

The parties to the case have consented that the evidence and admissions made in case No. 19973 be used in the present case.

Division II of the *Tobacco Tax Act* upon which the present charge is based enacts that:

"3. No person may sell tobacco in the Province unless a license therefor has been, upon his application, issued to him under authority of this act, and unless such license be in force at the time of sale.

"Such license shall remain in force until revoked for cause by the Minister.

"4. The application for the license shall be filed with the Comptroller.

"5. Such license shall be granted by the Minister or by such officer as he may appoint, upon payment by the vendor of a fee of one dollar to His Majesty in the rights of the Province, and shall be kept in the place where the license[e] sells tobacco, or at his chief place of business in the Province."

The defendant pleads that he is not subject to the Act because it comes in conflict with s. 102 of the *Indian Act*, R.S.C. 1927, c. 98:

"102. No Indian or non-treaty Indian shall be liable to be taxed for any real or personal property, unless he holds, in his individual right, real estate under a lease or in fee simple, or personal property outside of the reserve or special reserve, in which case he shall be liable to be taxed for such real or personal property at the same rate as other persons in the locality in which it is situate."

Is the fee of one dollar required by the Government a license or a tax? I have consulted various authors who define the words "taxes" and "license".

Webster, 13th ed.:--

Tax: "A charge, especially a pecuniary burden imposed by authority; specifically a charge or burden, usually pecuniary, laid upon persons or property for public purposes; a forced contribution of wealth to meet the proper needs of a Government. (2) A sum imposed or levied upon the members of a society to defray its expenses. (Syn.) Impost, tribute, contribution, duty, toll, rate, assessment, demand exaction, custom."

License: "Authority or liberty given to do or forbear any act; permission to do something specified; especially formal permission from the proper authority to perform certain acts or to carry on a certain business which, without such permission would be illegal; also the document embodying such permission; as, a license to preach, to practise medicine, to sell gun powder or intoxicating liquors."

Winston's Encyclopedia:--

Tax: "Contribution levied by authority from people to defray the expenses of Government. A tax may be a charge made by the national or state rulers on the income or property of individuals or on the products consumed by them."

License: "The grant of a permission to do some lawful act, also the document conferring such authority. All civilized countries require that persons should not carry on certain trades or professions or do certain acts without previous grant of license and may be imposed for the sake of regulating traffic by raising revenue. More numerous are licenses issued to persons to sell certain articles."

Black's Law Dictionary:--

Tax: "In a general way a tax is any contribution imposed by Government upon individuals for the use and service of the State, whether under the name of toll, tribute, tollage, gabel, impose, duty, custom, excise, subsidy aid, supply or other revenue. Taxes are the enforced proportional contribution of persons and property, levied by the authority of the State, for the support of the Government and for all public needs. As the term is generally used taxes are public burdens imposed generally upon the inhabitants of the whole State."

License: "A permission accorded by a competent authority, conferring the right to do some act without which such authorization would be illegal."

Rapalge-Lawrence:--

Tax: "In public law, taxation signifies the system of raising money for public purposes by compelling the payment by individuals of sums of money, called taxes."

Corpus Juris:--

Tax: "Sum of money assessed on the person or property of a citizen by Government for the use of the nation or State. Burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes."

Capitant (Legal Vocabulary):--

License: "Autorisation administrative, avec ou sans incidence fiscale, necessaire pour permettre un commerce, qui n'est pas libre."

Byrne's Law Dictionary:--

License: "In its general sense a license is an authority to do something which would otherwise be inoperative, wrongful or illegal."

Abbott's:--

License: "In its general sense, permission, consent that a person may do some act which without such consent he might not lawfully do. A license is a right granted by some competent authority to do an act which without such license would be illegal."

Tax: "A tax is a rate or sum of money assessed on the person, property, etc., of the citizen."

According to Words and Phrases licenses are of two characters:--

"Licenses are of two characters, one for revenue and the second conferring authority to engage in vocations which need special surveillance. A license fee is a tax when imposed mainly for the purposes of revenue."

In the light of these texts, I must come to the conclusion that tax is a general word which includes any contribution imposed by a competent authority to assure the services of the State. License would be a permission to do any act whatsoever. Although demanded with a view to regulation, it could nevertheless incidentally comprise an amount of money capable of assuring the services of the State. From this it may be realized that if a license seems to be imposed solely to assure revenue for the State, such permit is no longer a license but a tax, whatever may be the word used in the text of the Act.

In the present case, I am of the opinion that the sum of one dollar imposed by the Government for acquiring a license for the sale of tobacco, which remains in force until it is rescinded, can represent only the cost of acquisition of a license, and does not constitute a tax within the legal and constitutional meaning of the word.

The defendant is found guilty.

Case No. 19973.

The charge is that the defendant, a resident of and doing business in Caughnawaga, District of Montreal, on December 13, 1943, did sell moveable property without conforming to the provisions of s. 3 of the *Retail Sales Tax Act*, R.S.Q. 1941, c. 88. This section enacts:

"3(1). No vendor shall sell any movable property in the Province, at a retail sale, unless a registration certificate has been, upon his application, granted to him under the authority of this act, and unless such certificate be in force at the time of the sale."

The admissions set out in the record and at the hearing reveal that on December 13th last, at Caughnawaga, the defendant, an Indian who operated a restaurant, sold movable property without having previously obtained a certificate of registration. Is the defendant subject to the *Retail Sales Tax Act*?

Indians are subject to the general laws of the Province unless these laws legislate on "Indians, and lands reserved for the Indians." (B.N.A. Act, s. 91(24)) or they come in conflict with the *Indian Act*, R.S.C. 1927, c. 98. See *Re Cane*, [1940] 1 D.L.R. 390; *R. v. GrosLouis*, 81 Can. C.C. 167, [1944] Rev. Leg. 12; *Crepin v. Delorimier* (1929), 68 Que. S.C. 36; *Feldman v. Jocks* (1935), 74 Que. S.C. 56; *Delisle v. Shawinigan Water & Power Co.*, [1941] 4 D.L.R. 556, 79 Que. S.C. 353.

These principles are recognized in an unchanging jurisprudence.

The Act upon which the charge is based was not declared to affect the Indians; on the contrary, it has a general scope and affects all citizens of this Province who wish to do business. It does not come into conflict with the *Indian Act* since that Act permits them to do business with all races living in the country.

If the defendant sells moveable property to Indians, who are perhaps exempt from paying taxes (*Indian Act*, s. 102)--which need not be decided in this case--, he will perhaps not claim the tax from them, since he need not claim it from anyone purchasing certain commodities specified in s. 12 of the Act. But for all that, he does not remain less subject to the preliminary obligation of procuring a certificate of registration for himself before effecting any sale.

The defendant is therefore found guilty.