THE SOLDIER SETTLEMENT ACT (1932) AND THE CONSTITUTION.

An amendment of an unusual nature was passed at the last session of the Dominion Parliament which if given effect to will present the extraordinary spectacle of the Dominion Parliament proffering to the provincial legislatures and municipalities the privilege of levying taxation upon property owned by the Dominion. Such a contribution to the already vexed problem of the relation of the provincial and dominion legislatures in regard to taxation certainly seems to merit some review.

The amending Act in question (1932) 22-23 Geo. V. ch. 53, is known as "an Act to amend the Soldier Settlement Act R.S.C. 1927, ch. 188." Section 3 of the amendment reads as follows:

"The said Act is further amended by inserting the following section immediately after section sixty-six thereof:—‘66A. Notwithstanding anything to the contrary in this Act the Director of Soldier Settlement may pay any lawful rates, taxes, or assessments imposed in respect of any land held by the Director of Soldier Settlement not the subject of a contract of sale at the date of such imposition.’"

A reference to section 66 of the Soldier Settlement Act, R.S.O. 1927, ch. 188, reveals that section 66 gives to the Soldier Settlement Board while any amount is owing in case of failure to pay taxes or insurance on land under contract by the Soldier Settler the right to pay out the sums owing for taxes or insurance, and to add the amount of such payments to the principal outstanding, and collect interest thereon. This section deals quite properly with land which is the subject of a contract of sale between the soldier settler and the Board and such a provision is of course only similar to the rights of the ordinary mortgagee to protect his security on the land.

The amendment however as passed in section 66A gives to the Board the power to pay all lawful rates, taxes, and assessments imposed in respect of any land held by the Director of Soldier Settlement which is not the subject of a contract of sale at the date of the imposition. If the amendment is to have any effect at all the word "lawful" as used in this section must be interpreted to mean rates, etc., which are properly imposed by the various provinces and municipalities under their provincial legislation. Any other interpretation of the word would make the section of no meaning whatever.

The position created by the section therefore is that the Dominion Parliament of its own volition has impliedly if not directly assented to the levying of taxation by the province and the municipalities on
land held by the Soldier Settlement Board, a creation of the Dominion to hold land owned by the Crown in the right of the Dominion, and has directly authorized the Board to pay such rates.

Referring to the British North America Act it is set out in section 125 of that famous statute as follows: "No lands or property belonging to Canada or to any province shall be liable to taxation." This section quite definitely prohibits taxation of any lands or property owned by the Crown either in the right of the Dominion or of the province. As has been said by several writers the section was perhaps unnecessary because of the general rule establishing the exemption of Crown property from taxation, but owing to the distribution of powers of taxation between the dominion and the provincial jurisdictions it was inserted by way of abundant caution to prevent the Dominion from levying taxes for federal purposes upon property held by the Crown for provincial purposes, and vice versa.

Can the Dominion by the expedient of legislation permissive in nature indirectly empower the provinces to enact taxing legislation and impose taxes on Dominion lands thereby in effect setting up an amendment in fact at least, if not in law, of the British North America Act?

The field of taxation has proved a fruitful one for dispute ever since the passing of the British North America Act but the stream of litigation has made it perfectly plain in all the many cases decided that section 125 of the Act is to be interpreted as establishing a definite prohibition to both Dominion and provincial legislatures in regard to taxation of the property or land of each other. This is set out clearly in the case of Whelan v. Ryan where Strong, J., at p. 68 said: "The lands of the Dominion are by the British North America Act expressly exempted from provincial taxation." Similarly in Ruddell v. Georgeson Killam, J., at p. 414 says: "The Confederation Act positively exempts from taxation all the property of the Dominion Government." More recently the principle was reaffirmed in the case of Calgary and Edmonton Land Co. v. The Attorney-General for Alberta where Anglin, J., at 192 says:

"The exemption under section 125 of the British North America Act of 1867 must always be read into any Dominion or Provincial taxing Act which does not expressly include it.

\(^2\) 20 S.C.R. 65.
\(^3\) 9 Man. L.R. 407.
\(^*\) (1911), 45 S.C.R. 170.
And even more forcible is the language of the members of the Court in the case of Smith v. The Rural Municipality of Vermilion Hills. Justice Duff, at p. 572, says in part:

But where the Crown in the right of the Dominion retains a substantial beneficial interest as well as a legal title in the lands there a different question entirely arises and I have no manner of doubt that if the effect of the legislation in this case is what the appellant contends for then it is obnoxious to section 125 of the Act.

In the judgment of the Privy Council delivered on the appeal from the decision of the Supreme Court of Canada and reported in Viscount Haldane at p. 572 says:

It is thus clear that the authorities of the province have no power to tax, Crown lands and the real question is whether this restriction prevents them from imposing the tax in controversy upon a tenant of Crown lands.

The law would seem therefore to be settled that there is no right in the provincial legislatures or their subordinate creations to levy any tax upon the interest of the Dominion in lands or property within the province. The cases however also establish that the interest of any person other than the Dominion can be taxed, the ultimate right of the province to seize and sell for taxes affecting solely the interest which the defaulter has in the lands, and being expressly subject to the rights of the Dominion.

It would seem therefore that the only possible ground of justification for the imposition of taxes on land owned by the Soldier Settlement Board, not the subject of a contract of sale, would be to establish that the Board has a separate entity of its own as distinct from the Crown in the right of the Dominion. A consideration of the sections of the Soldiers Settlement Act constituting the Board shows that power is given by the Act to the Governor-in-Council to appoint a Board consisting of three Commissioners to be called The Soldiers Settlement Board who shall hold office during good behaviour. Section 4 of the Act declares that for the purpose of acquiring, holding, conveying and transferring land or agreeing to acquire, hold, convey, transfer; agree to convey or agree to transfer, but for such purposes only the Board shall be and be deemed to be a body corporate, and as such the agent of the Crown in the Right of the Dominion.

Throughout the whole of the statute it appears that actions of the Board are dependent on the approval of the Governor-in-Council. Section 15 specifically confers, not upon the Board, but upon the Minister, the right to make grants of land to any soldier out of lands

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reserved specifically for the Board. Section 51 provides that conveyances by the Board shall have the same and as full effect as grants from the Crown of previously ungranted Crown lands. The whole purport of the Act is essentially different from an Act such as the Canadian National Railway Act,⁶ which specifically incorporates a body corporate with wide general powers. Both from its general wording and effect, the limitation of the general powers of the Board subject to approval of the Governor-in-Council, and from the express declaration in section 4 of the Soldier Settlement Act that the Board is to be a Body Corporate for certain specified purposes only and as such the agent of the Crown in the right of the Dominion, it seems that the only reasonable conclusion to be drawn is that the Board is not to be distinguished as separate and distinct from the Crown in the right of the Dominion, and hence subject to taxation by provincial authorities in respect of its interest in the lands and properties held by it,—but is merely one member of that body known as of the Crown in the right of the Dominion,—the instrument of the Dominion, created for the sole purpose of administering more effectively the lands held by the Crown in the right of the Dominion or acquired by the Board as agent for the Crown in connection with soldier settlement.

Such being the case it would seem that if the amendment in question is to be given any meaning it must in effect authorise the taxation by the provinces or municipalities of land or property really owned by the Crown in the right of the Dominion. It is respectfully submitted however that the imposition of such taxation would not be "lawful" in the sense of constitutional, but would be ultra vires of the provincial or municipal authorities as violating the prohibition of section 125 of the British North America Act, and that the amending section itself is ultra vires of the Dominion on the ground that in effect it alters the provisions of an Imperial Act of Parliament, and as such is legislation beyond the powers of a subordinate legislature.

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