

Attorney-General v Wilts United Dairies Ltd: CA 1921

References: (1921) 37 TLR 884

Coram: Scrutton LJ, Atkin LJ

Ratio: The Food Controller had been given power under the Defence of the Realm Acts to regulate milk sales. In granting the dairy a licence to buy milk in Cornwall, Devon, Dorset and Somerset, the Food Controller required the Dairy to pay 2d. per imperial gallon of milk purchased from those counties. The Attorney-General sued for the recovery of the monies which were not paid. The Dairy's objection was that the method adopted by the Food Controller was in its nature a tax which could only be levied or imposed by Parliament.

Held: Scrutton LJ said: 'It is conceivable that Parliament, which may pass legislation requiring the subject to pay money to the Crown, may also delegate its powers of imposing such payments to the Executive. But in my view the clearest words should be required before the courts hold such an unusual delegation has taken place.' After citing *Gosling v Veley*: 'A great deal of time was occupied in arguing whether the requirement of this payment was a 'tax'. I prefer to use the words of the Bill of Rights which forbids 'levying money for the use of the Crown without grant of Parliament,' and the requirement of this 2d. appears to me clearly to come within these words. It is true that the fear in 1689 was that the King by his prerogative would claim money; but excessive claims by the Executive Government without grant of Parliament are, at the present time, quite as dangerous, and require as careful considerations and restriction from the Court of Justice.'

Atkin LJ: 'Though the attention of our ancestors was directed especially to abuses of the prerogative, there can be no doubt that this statute declares the law that no money shall be levied for or to the use of the Crown except by grant of Parliament. We know how strictly Parliament has maintained this right – and, in particular, how jealously the House of Commons has asserted its predominance in the power of raising money.

In these circumstances, if an officer of the executive seeks to justify a charge upon the subject made for the use of the Crown (which includes all the purposes of the public revenue), he must show, in clear terms, that Parliament has authorized the particular charge.' and 'It makes no difference that the obligation to pay the money is expressed in the form of an agreement. It was illegal for the Food Controller to require such an agreement as a condition of any licence. It was illegal for him to enter into such an agreement. The agreement itself is not enforceable against the other contracting party; and if he had paid under it he could, having paid under protest, recover back the sums paid, as money had and received to his use.'

Statutes: Bill of Rights 1688 4

Jurisdiction: England and Wales

This case is cited by:

- Appeal from – *Attorney-General v Wilts United Dairies Ltd* HL ((1922) 38 TLR 781)
The House heard an appeal by the Attorney-General against a finding that an imposition of duty on milk sales was unlawful.
Held: The appeal failed. The levy was unlawful. Lord Buckmaster said: 'Neither of those two enactments enabled the Food . .
- Cited – *Total Network SI v Customs and Excise Commissioners* CA (Bailii, [2007] EWCA Civ 39, [2007] 2 WLR 1156)
The defendants suspected a carousel VAT fraud. The defendants appealed a finding that there was a viable cause of action alleging a 'conspiracy where the unlawful means alleged is a common law offence of cheating the public revenue'. The defendants . .
- Cited – *O'Brien and others v Independent Assessor* HL (Bailii, [2007] UKHL 10, [2007] 2 All ER 833, [2007] 2 WLR 544)

The claimants had been wrongly imprisoned for a murder they did not commit. The assessor had deducted from their compensation a sum to represent the living costs they would have incurred if living freely. They also appealed differences from a . .

- Cited – Regina v Richmond Upon Thames London Borough Council, ex parte McCarthy and Stone (Developments) Ltd HL (Gazette 22-Jan-92, [1992] 2 AC 48, Bailii, [1989] UKHL 4, [1991] 3 WLR 941)

A Local Authority was not able to impose charge for inquiries as to speculative developments and similar proposals, or for consultations, and pre-planning advice. There was no statutory authority for such a charge, and it was therefore unlawful and . .

- Cited – Total Network SI v Revenue and Customs HL (Bailii, [2008] UKHL 19, HL, [2008] BPIR 699, [2008] 2 WLR 711, [2008] STI 938, [2008] 1 AC 1174, [2008] STC 644, [2008] BVC 340, [2008] BTC 5216)

The House was asked whether an action for unlawful means conspiracy was available against a participant in a missing trader intra-community, or carousel, fraud. The company appealed a finding of liability saying that the VAT Act and Regulations . .

(This list may be incomplete)

Leading Case

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<http://swarb.co.uk/attorney-general-v-wilts-united-dairies-ltd-ca-1921/>