

According to John Stuart Mill—"Taxes are either direct or indirect. A direct tax is one which is demanded from the very persons who, it is intended, or desired, should pay it. Indirect taxes are those which are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another: such are the excise or customs." Mill also lays down the proposition that to be strictly a direct tax, it must also be general.

Political economists, however, are not altogether agreed on this definition of "direct" and "indirect" taxation, and it is obvious that these definitions, though useful for the purpose of discussions on the subject of political economy, are too often based on principles which can hardly be safely or wisely adopted in the construction of Acts of Parliament.

*Prima facie* all taxes payable by individuals, or corporations, are direct taxes, and it is only an artificial distinction to assign to some taxes the character of direct, and to others the character of indirect taxes. The attempt to determine whether a tax imposed by a Local Legislature is, or is not, a direct tax, by a consideration of the question whether or not the primary payer is actually able to shift the burden of its payment on some other person, though apparently undertaken by the Privy Council in *The Attorney General of Quebec v. Reid*, 10 App. Cas. 141, seems virtually to have been abandoned by their Lordships in the more recent case of *Bank of Toronto v. Lambe*, 57 L. T. N. s. 377. In *Attorney-General v. Reid*, the tax which was contested was a fee of 10c. imposed on exhibits in legal proceedings. This was held to be invalid because it was held to be an indirect tax, and Lord Selborne, C., who delivered the judgment, arrived at that conclusion on the ground that the ultimate incidence of the tax could not be ascertained, that it depended on the result of the proceedings by whom it would be ultimately borne, and that the Legislature in imposing the tax could not have had in contemplation, one way or the other, the ultimate determination of the suit, or the final incidence of the burden. Therefore he said it could not be a tax demanded "from the very person who it is intended or desired should pay it," for, in truth, that is a matter of absolute "indifference to the intention of the Legislature." And it might be well doubted whether any tax whatever could be said to be a direct tax, if that question were to depend on the intention of the Legislature as to the person by whom it should be finally borne.

The absurdity of construing the B. N. A. Act upon any such principle as that seems to have been felt by their Lordships themselves in the later case of *Bank of Toronto v. Lambe*, for Lord Hobhouse justly remarks that the "Legislature (by which he means the Imperial Parliament) cannot possibly have meant to give a power of taxation valid or invalid according to its actual results in particular cases. It must have contemplated some tangible dividing line referable to, and ascertainable by, the general tendencies of the tax and the common understanding of men as to those tendencies." In the latter case, too, their Lordships were emphatically clear that the question of whether a tax is direct or indirect, could not as a matter of law be affected by the fact of its not being general.