But with respect to the power of the provinces to raise revenues we must turn to section 92 which provides that each provincial legislature:

... may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say,—

2. Direct taxation within the province in order to the raising of a revenue for provincial purposes.

It will thus be apparent that when this act was enacted by the parliament at Westminster there was a clear-cut division as to the methods to be pursued by the new dominion on the one hand and the provinces on the other for the purpose of raising their revenues. While the widest power was conferred upon this parliament to raise revenues by any scheme or plan, direct or indirect, the limitation imposed upon the right of provincial legislatures to raise money by direct taxation within the provinces only was one that was thought to be in the interests of the general scheme of confederation as a whole. In that regard it is important to bear in mind an observation made in a case to which reference was made this afternoon by my hon. friend from St. Lawrence-St. George (Mr. Cahan). I need not refer to the fact that in the very earliest days the problem of dividing direct from indirect taxation became important. We had a case from Quebec with respect to stamps to be placed upon policies of insurance, a case from Quebec with respect to stamps to be placed upon exhibits in the courts, cases with respect to taxing the banks upon their paid-up capital, and cases with respect to succession duties and matters of that kind, and it became necessary from time to time for the court of last resort to define what was meant by direct taxation. But in the earliest cases it was pointed out that it was no longer possible to define direct and indirect taxation with that finality of definition which may be attributable to works on political economy, but rather that these terms must be construed in the light of ordinary understanding. So, when a case, known as the Fairbanks case, came up from Halifax, in connection with the imposition of a business tax, it became necessary to restate the position, and that was done by the Lord Chancellor of the day, Lord Cave, in the following words, dealing with the question of the distinction between direct and indirect taxation:

The framers of that act—

The British North America Act.

—evidently regarded taxes as divisible into two separate and distinct categories, namely, those that are direct and those which cannot be so described, and it is to taxation of the former character only that the powers of a provincial government are made to extend. From this it is to be inferred that the distinction between direct and indirect taxes was well known before the passing of the act; and it is undoubtedly the fact that before that date the classification was familiar to statesmen as well as to economists, and that certain taxes were then universally recognized as falling within one or the other category. Thus, taxes on property or income were everywhere treated as direct taxes.... On the other hand, duties of customs and excise were regarded by everyone as typical instances of indirect taxation. When therefore the Act of Union allocated the power of direct taxation for provincial purposes to the province, it must surely have intended that the taxation, for those purposes, of property and income should belong exclusively to the provincial legislatures, and that without regard to any theory as to the ultimate incidence of such taxation. To hold otherwise would be to suppose that the framers of the act intended to impose on the provincial legislature the task of speculating as to the probable ultimate incidence of each particular tax which it might desire to impose, at the risk of having such tax held invalid if the conclusion reached should afterwards be held to be wrong.

What then is the effect to be given to Mill's formula above quoted?

References were made to the definition of John Stuart Mill, and when that definition was accepted by the privy council, references at that time and later were made to the opinions of Mill, Ricardo, Adam Smith and others. But counsel representing the appellants in the case came to the conclusion that Mill's definition of direct and indirect taxation was better suited for his argumentative purposes, and the court at least adopted that view in the judgment which was delivered, and these are the words repeated again in 1933 by the court in respect to the Fairbanks case from Halifax. In dealing with that definition, or, as he called it, formula, His Lordship said:

No doubt it is valuable as providing a logical basis for the distinction already established between direct and indirect taxes, and perhaps also as a guide for determining as to any new or unfamiliar tax which may be imposed in which of the two categories it is to be placed; but it cannot have the effect of disturbing the established classification of the old and well-known species of taxation, and making it necessary to apply a new test to every particular member to those species. The imposition of taxes on property and income, of death duties and of municipal and local rates is, according to the common understanding of the term, direct taxation, just as the exaction of the customs or excise duty on commodities or of a percentage duty on services would ordinarily be regarded as indirect taxation; and although new forms of taxation may from time to time be added to one category or the other in accordance with Mill's formula, it