

a stage in the development of judicial decisions in Canada when there is now no doubt with regard to the division between the acts of the provinces which are *ultra vires* in that they imposed indirect taxation, and those which are *intra vires* by reason of the imposition of direct taxation. Section 92 of the British North America Act provides:

In each province the 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.

If this proposed amendment is sent to the British parliament in the form in which it is now expressed, I do not think it will prove creditable to whatever department drafted it. It proposes the addition of a new paragraph to section 92 of the British North America Act, to be known as paragraph 2A. Where do you add it? Do you add it at the end of section 92? Do you incorporate it with paragraph 2, or is it intended that paragraph 2 shall be divided, one part comprising the present paragraph 2 and the other part comprising the new paragraph 2A? As it is provided in this address, the imposition of indirect taxation within the province is not related to the governing preamble, if I may call it that, of section 92. At least it should read thus:

In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say,—

2A. Indirect taxation within the province in respect of:

(i) retail sales, other than of all alcoholic beverages, spirits, malt, tobacco, cigarettes and cigars which are subject to customs and excise duty or tax in Canada or other than of all goods and articles for delivery without the province;

(ii) the patronage of hotels, restaurants and places of amusement or entertainment; in order to the raising of a revenue for provincial purposes.

I doubt even if one had the enlightenment and perspicacity of the famed Philadelphia lawyer, whether he could decide what is meant by the patronage of hotels, the patronage of restaurants and the patronage of places of amusement or entertainment. In a constitutional amendment of the importance of this one, which tends to undermine and, I think I am safe in saying, to destroy the financial stability of the government of the Dominion of Canada, we should not use the language of ordinary parlance; we should so express ourselves in English or in French as to convey a clear and definite and unambiguous meaning. I suggest, therefore, that

[Mr Cahan.]

the address should set forth the exact words and form of the proposed amendment. I suggest that the end would best be obtained by repealing the existing clause 2 of section 92 of the British North America Act and substituting therefor a new clause to cover the old clause and the proposed amendment. If we were amending an act of the parliament of Canada we would deal with it with a certain degree of circumspection so as to have it appear properly upon the statute books.

What does this clause imply? There is only one exception with regard to indirect taxation within the province. You can impose indirect taxation with respect to all commodities except alcoholic beverages, spirits, malt, tobacco, cigarettes and cigars. On the other vast range of commodities which enter into the ordinary consumption of the people of Canada, the provinces are left free to impose such indirect taxation as they may be disposed to enact.

The hon. gentleman referred to certain decisions which have been given with respect to what is direct or indirect in connection with the imposition of taxes by provincial legislatures. He referred to several decisions and I intend to refer briefly to two or three in an effort to show that there is no real inconsistency or confusion between those decisions; that there exist clear and express definitions of the indirect taxation which it has been sought unlawfully to impose and of the direct taxes which may be lawfully imposed under the British North America Act as it exists at the present time. I quote from the case of the Attorney General for Manitoba v. the Attorney General for Canada, 1925 Appeal Cases, page 561. The question here was in connection with sales of grain on the exchange in Manitoba. Viscount Haldane says at page 566:

As to the test to be applied in answering this question, there is now no room for doubt. By successive decisions of this board—

The judicial committee of the privy council.

—the principle as laid down by Mill and other political economists has been judicially adopted as the test for determining whether a tax is or is not direct within the meaning of s. 92, head 2, of the British North America Act. The principle is that a direct tax is one that is demanded from the very person who it is intended or desired should pay it. An indirect tax is that which is demanded from one person in the expectation and with the intention that he shall indemnify himself at the expense of another. Of such taxes excise and customs are given as examples.

A clear definition was also given in 1925 by the judicial committee of the privy council. The only difficulty was that the provinces