

## The Legal News.

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We publish this week the text of the opinion delivered by their lordships of the Judicial Committee, in the case which so deeply affects the Province of Quebec - the validity of the provincial Act imposing taxes on commercial corporations doing business within the province. Their lordships affirm the decision of Justices Ramsay, Tessier and Baby, of our Court of Queen's Bench, reported in *M. L. R.*, 1 *Q. B.* 122-199. The case was one which the late Mr. Justice Ramsay examined with the most profound attention, and he never entertained the slightest doubt as to the soundness of the conclusion arrived at by the majority of the Court, though he freely admitted that it was possible to construct a very plausible argument against it. The Judicial Committee, having probably examined the case before the hearing, did not think it necessary to call upon counsel for the respondent.

The *Law Journal* (London) criticizes one portion of the judgment, as follows:—"The citation by the Judicial Committee of the Privy Council of John Stuart Mill for a definition of indirect taxation in an Act of Parliament was not happy. For purposes of legislation and political economy Mill's distinction that indirect taxes are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another, was sufficient. His point of view was that of the statesman; but, when the powers of a Legislature are concerned, it is necessary to look, not at the intention of the Legislature, but at the effect of its Act. Is a tax on the paid-up capital of companies carrying on business within the province a direct tax, which form of tax the Legislature of Quebec had, under the British America Act, 1867, power to impose, or was it an indirect tax? The Judicial Committee appear properly to have decided that it was a direct tax. It is true that it

would reduce the amount available for shareholders' dividends, and thereby perhaps increase the amount extracted from the customers of the company; but if the fact that the taxpayer endeavours to make more income because he has to pay more tax, is to turn a direct tax into an indirect tax, it is difficult to see how there can be a direct tax, except perhaps a tax on fixed incomes. The Committee appear also properly to have declined to scrutinise closely the possibility of the Act of the Provincial Legislature affecting persons outside the province, as, for example, passengers on a line of railway outside the province belonging to a railway within it. It would seem enough if the legislation substantially acts within the province. We do not know what Lord Cairns would have said to the confession at the end of the opinion delivered by Lord Hobhouse that 'the result was not wholly for the same reasons.' This is no technical breach of the order that 'how the particular voices go' is not to be divulged; but to reveal that there was any difference of opinion even as to reasons is to break the spirit of the rule. It is an indication, however, of the impossibility of attempting to produce a seeming unanimity among half a dozen lawyers on a question of law. We hope some day to see the Judicial Committee give their reasons *seriatim* in the good old common-law fashion."

Whatever may be the merits of their lordships' decision, and however unfortunate it may be as regards the peculiar position of the Province of Quebec, this criticism does not appear to us to be a "happy" one. In the first place their lordships expressly repudiate Mills' explanation as a legal definition, and only refer to it as the one preferred by the appellants' counsel, and are only disposed to make use of it so far as it may be assumed to throw light upon the intention of the Imperial Parliament (not of the provincial legislature) in using terms, the vagueness of which has often been criticized. The concluding observations of the *Law Journal* are based upon a misconception of the observation of Lord Hobhouse. It is clear from the report that what his lordship meant to say, and did