

solutely nothing in the British North America Act which gives any ground for the exemption claimed on behalf of the appellant.

**Mr. Justice Duff.**

It is no longer open to dispute that by the combined operation of clauses numbered 2 and 8 of section 92 of the British North America Act, 1867, a province may confer upon a municipality the power to tax the incomes of persons resident within the territory subject to its control.

Any question which might have been raised concerning that point was finally put at rest by the decision of the Judicial Committee in *The Attorney-General of Canada v. The Attorney-General of Ontario* (1).

The question presented by this appeal, therefore, is the question whether any of the enactments of section 91 of that Act have the effect of creating an exception in favour of officers of the Dominion Government in respect of the allowance paid to them by that government.

The appellant argues that the authority to tax incomes vested in the province does not extend to such allowances and salaries because the whole of the authority to legislate in respect to them (as subjects of taxation or otherwise) is exclusively conferred upon the Dominion by sub-section 8 of section 91, which assigns to the Dominion as a subject of legislation the fixing and providing for the salaries and allowances of civil and other officers of the Government of Canada.

It is said that the attempt by a province to impose taxes in respect of such salaries and allowances is an intrusion of the field defined by this sub-section. I am quite unable to perceive any necessary conflict between the power thus conferred and the power of taxation committed to the province. The fixing and providing for salaries seems to be, as a subject of legislation, quite distinct from the power to levy taxes in respect of

income. I do not think I can make the matter plainer by multiplying words. The fixing of salaries and allowances for service is one thing; the assessment of the persons in receipt of them (along with the other inhabitants of the community in which they live), is a wholly different thing; and the principle upon which the fiscal contributions exacted by a municipality or a province from persons subject to its fiscal jurisdiction shall be distributed among those persons seems to be a subject as far removed as possible from that dealt with in sub-section 8 of section 91. If one were to speculate upon the intentions of the framers of the Act, I should suppose nothing further from their intentions than the exemption of federal office holders as a class from the common burdens of citizenship.

I do not think it would be profitable to examine in detail the decisions of the provincial courts to the opposite effect. Those decisions were largely founded upon reasoning of the Ontario Court of Appeal in *Leprohon v. The City of Ottawa* (1), which was decided in 1877. Judicial opinion upon the construction of the British North America Act has swept a wide curve since that date; and, to mention a single instance only, it would not be a light task to reconcile the views upon which *Leprohon v. The City of Ottawa* proceeded with the views expressed by the Judicial Committee in the later case of *The Bank of Toronto v. Lambe* (2). Indeed, although *Leprohon v. The City of Ottawa* has not been expressly overruled, the grounds of it have been too thoroughly undermined by subsequent decisions of the Judicial Committee for it to afford any support to the appellant.

I should add, with great respect to the court below, I cannot agree that a decision upon the construction of the Australian Constitution Act can afford a governing rule for the construction of the British North America Act.