

THE PROVINCIAL TAX ON THE SALE, TRANSFER OR ASSIGNMENT OF SHARES, BONDS, DEBENTURES, OR DEBENTURE STOCK.

IMPORTANT OPINION AS TO ITS VALIDITY. IT IS CONTEDED TO BE AN INDIRECT TAX AND ULTRA VIRES OF THE PROVINCIAL LEGISLATURE.

In our last issue we stated that steps had been taken to obtain the opinion of the Hon. A. W. Atwater, K.C., former treasurer of the Province of Quebec, as to the constitutionality and legality of the recent Act passed by the Provincial Legislature imposing a tax of two cents per \$100 par value on the sale, transfer or assignment of shares, bonds, debentures or debenture stock.

We now have the pleasure of presenting this highly important opinion in full, which holds such a tax to be an indirect one and ultra vires of the Provincial Legislature.

Atwater, Duclos & Chauvin, Advocates.

Montreal, June 1, 1905.

R. Wilson Smith, Esq.,
Montreal.

Dear Sir:—In reply to yours of the 22nd ult., in which you ask for an opinion on the legality or constitutionality of the Act of the Quebec Legislature, which was assented to on the 20th ult., and which imposed a tax on the sale, transfer and assignment of shares, bonds, debentures and debenture stock, I beg to say:—

The Act in question, from the copy which you have put before me, reads, in part, as follows:

Section 1.—“In order to provide for the exigencies of the public service, there shall be levied in accordance with the rules hereinafter set forth, a tax upon every sale, transfer, or assignment of shares, bonds, debentures or debenture stock issued by any corporation or company, made or carried into effect in this Province.

Section 2.—“Such tax shall be paid in adhesive stamps issued according to the laws of this Province, and particularly in accordance with the provisions of the Revised Statute respecting stamps, and with any order-in-council passed or to be passed respecting the same.

Section 3.—“The amount of stamps which shall be affixed shall be two cents for every hundred dollars or fraction thereof, of the par value of such shares, bonds, debentures or debenture stock, sold, transferred, or assigned.

Section 5.—“The stamps shall in all cases be supplied and affixed by the vendor, transferrer, or assignor, unless the sale, transfer or assignment is effected through a broker, in which case, the broker affixes the stamps, and may recover the cost thereof from the vendor, transferrer or assignor.

Section 7.—“No sale, transfer or assignment coming within the preceding provisions, upon which the tax imposed by this act is not paid, shall be legal, valid or binding.

“No corporation or company shall enter or permit the entry, in any book or register under its control, of any such sale, transfer or assignment unless stamps to the required amount be affixed when the entry is made.

“Moreover, the person in default shall be liable to a penalty of five hundred dollars, which shall be recovered with costs by ordinary process of law, in His Majesty's name, before the Superior Court.”

Other sections provide for the manner in which the stamps shall be affixed for means of ascertaining whether it has been paid and that the Act does not apply to bona fide transfers made in good faith as security for a loan.

The principal question here is as to whether the tax thus sought to be imposed by the Quebec Legislature is one which, under the terms of the British North America Act, the Legislature of the Province can impose.

By section 92 of this Act, subsec. 2, the Provinces are given the right to impose direct taxation within the Province, for the raising of the revenue for Provincial purposes.

The powers of the Province are limited by the Confederation Act, as far as taxation is concerned, to impose direct taxation within the Province. The question is, therefore, whether this is a direct or an indirect tax. The question of, What is direct taxation? has been treated by a number of lexicographers, as well as political economists, and these definitions have, in their turn, been the subject of judicial consideration, and have also been considered in cases which have come before the Courts and before the Privy Council, where their meaning in connection with this same section of the British North America Act has been considered.

In the case of Angers, es qual, vs. the Queen Insurance Company, the right of the Provincial Legislature to impose a tax upon Insurance Companies, in the shape of a license to be paid by stamps, which were to be affixed to the policies or premium receipts issued, the meaning of the words, “direct taxation,” was discussed. In this case, the Judicial Committee of the Privy Council confirmed the judgment of the Court of Queen's Bench for the Province of Quebec, and of the Superior Court, and declared the Act unconstitutional. In giving the judgment, their Lordships used the following language:—

“The single point to be decided is whether a Stamp Act,—an Act imposing a Stamp on policies,