

subject to the disposal and appropriation of the Canadian Legislature. That Act united into one Dominion, under the name of "Canada," the former Province of Canada (which it subdivided into the two new Provinces of Ontario and Quebec, corresponding with what had been before 1840 Upper and Lower Canada), Nova Scotia, and New Brunswick. It established a Dominion Government and Legislature, and Provincial Governments and Legislatures, making such a division and apportionment between them of powers, responsibilities, and rights as was thought expedient. In particular, it imposed upon the Dominion the charge of the general public debts of the several pre-existing Provinces, and vested in the Dominion (subject to exceptions, on which the present question mainly turns) the general public revenues, as then existing, of those Provinces. This was done by section 102 of the Act, which is in these words:—"All duties and revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick, before and at the Union, had and have power of appropriation, except such portions thereof as are by this Act reserved to the respective Legislatures of the Provinces or are raised by them in accordance with the special powers conferred upon them by this Act, shall form one Consolidated Revenue Fund, to be appropriated for the public service of Canada in manner and subject to the charges in this Act provided." If there had been nothing in the Act leading to a contrary conclusion, their Lordships might have found it difficult to hold that the word "revenues" in this section did not include territorial as well as other revenues, or that a title in the Dominion to the revenues arising from public funds did not carry with it a right of disposal and appropriation over the lands themselves. Unless, therefore, the casual revenue, arising from lands escheated to the Crown after the Union, is excepted and reserved to the Provincial Legislatures within the meaning of this section, it would seem to follow that it belongs to the Consolidated Revenue Fund of the Dominion. If it is so excepted and reserved, it falls within section 126 of the Act, which provides that "such portions of the duties and revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick had before the Union power of appropriation as are

by this Act reserved to the respective Governments or Legislatures of the Provinces, and all duties and revenues raised by them in accordance with the special powers conferred upon them by this Act, shall in each Province form one Consolidated Revenue fund, to be appropriated for the public service of the Province."

Their Lordships, for the reasons above stated, assume the burden of proving that escheats subsequent to the Union are within the sources of revenue excepted and reserved to the Provinces, to rest upon the Provinces. But if all ordinary territorial revenues arising within the Provinces are so excepted and reserved, it is not *a priori* probable that this particular kind of casual territorial revenue (not being expressly provided for) would have been, unless by accident and oversight, transferred to the Dominion. The words of the statute must receive their proper construction, whatever that may be; but if this is doubtful, the more consistent and probable construction ought, in their Lordships' opinion, to be preferred. And it is a circumstance not without weight in the same direction that, while "duties and revenues" only are appropriated to the Dominion, the public property itself, by which territorial revenues are produced (as distinct from the revenues arising from it), is found to be appropriated to the Provinces.

The words of exception in section 102 refer to revenues of two kinds—(1) Such portions of the pre-existing "duties and revenues" as were by the Act "reserved to the respective Legislatures of the Provinces;" and (2) such "duties and revenues" as might be "raised by them in accordance with the special powers conferred on them by the Act." It is with the former only of these two kinds of revenues that their lordships are now concerned, the latter being the produce of that power of "direct taxation within the Provinces, in order to the raising of a revenue for Provincial purposes," which is conferred upon the Provincial Legislatures by section 92 of the Act.

There is only one clause in the Act by which any sources of revenue appear to be distinctly reserved to the Provinces—viz., the 109th section:—"All lands, mines, minerals, and royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick, at the Union, and all sums then due or payable for