

should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the imperial parliament, but authority as plenary and as ample within the limits prescribed by section 92 as the imperial parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the imperial parliament, or the parliament of the dominion.

Later, in reference to a case from New Brunswick the court said:

The act places the constitutions of all provinces within the dominion on the same level; and what is true with respect to the legislature of Ontario has equal application to the legislature of New Brunswick.

And again:

In 1867 the desire of Canada, for a definite constitution embracing the entire dominion, was embodied in the British North America Act. Now there can be no doubt that under this organic instrument the powers distributed between the dominion on the one hand, and the provinces on the other, cover the whole area of self-government within the whole area. It would be subversive of the entire scheme and policy of the act to assume that any point of internal self-government was withheld from Canada. Numerous points have arisen, and may hereafter arise, upon those provisions of the act which draw the dividing line between what belongs to the dominion or to the province respectively.

In the interpretation of a completely self-governing constitution, founded upon a written organic instrument such as the British North America Act, if the text is explicit the text is conclusive, alike in what it directs and what it forbids. When the text is ambiguous, as, for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the act. Again, if the text says nothing expressly, then it is not to be presumed that the constitution withholds the power altogether. On the contrary, it is to be taken for granted that the power is bestowed in some quarters unless it be extraneous to the statute itself as, for example, a power to make laws for some part of His Majesty's dominions outside of Canada or otherwise is clearly repugnant to its sense. For whatever belongs to self-government in Canada belongs either to the dominion or to the provinces, within the limits of the British North America Act.

And again:

They adhere to the view which has always been taken by this committee that the federation act exhausts the whole range of legislative power and whatever is not thereby given to the provincial legislatures rests with the parliament.

On another occasion the courts made similar observations, notably in the decisions

[Mr. Bennett.]

pronounced by Lord Haldane, who became Lord Chancellor in the early years of the twentieth century and who, until the time of his death, was largely responsible for the construction placed upon our constitutional act. Speaking of the general powers conferred upon the provinces, he said:

The provinces were to have fresh and much restricted constitutions, their governments being entirely remodelled. This plan was carried out by the imperial statute of 1867. By the 91st section a general power was given to the new parliament of Canada to make laws for the peace, order and good government of Canada without restriction to specific subjects, and excepting only the subjects specifically and exclusively assigned to the provincial legislatures by section 92. There followed an enumeration of subjects which were to be dealt with by the dominion parliament, but this enumeration was not to restrict the generality of the power conferred on it. The act, therefore, departs widely from the true federal model adopted in the constitution of the United States, the tenth amendment to which declares that the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to their people. Of the Canadian constitution the true view appears, therefore to be that, although it was founded on the Quebec resolutions and so must be accepted as a treaty of union among the then provinces, yet when once enacted by the imperial parliament it constituted a fresh departure, and established new dominion and provincial governments with defined powers and duties both derived from the act of the imperial parliament which was their legal source.

That, Mr. Speaker, I conceive to be an important statement, having regard to what I shall presently indicate. I have quoted these statements as a foundation for indicating that the powers of the provinces and of the dominion were defined by our constitutional act. In view of the fact that when they dealt with financial problems they did so in the manner indicated by sections 91 and 92 of the act, I think it might be well to read subsection 3 of section 91. It will be recalled that section 91 defines the powers of the federal parliament, and the powers with respect to taxation are indicated under the third heading, which states that the parliament of Canada shall have exclusive jurisdiction over "the raising of money by any mode or system of taxation." That makes it clear that this parliament may and, in fact, has exercised the power of raising revenue both by direct and indirect taxation. With respect to direct taxation the reference given this afternoon, namely the income tax of 1917, affords a clear illustration. With respect to indirect taxation it is only necessary to refer to customs and excise.