

As to how far this decision affects us in Canada is a matter of controversy and will be dealt with at some length further on. It may be well, however, to note here that the contention is made that while the Australian Confederation Act gives the legislatures of the several states power to assess the incomes of officers of the Commonwealth, no such power is conferred upon our provincial legislatures under the terms of the British North America Act. The legal advisors of the cities of St. John, N.B., Ottawa and Toronto and of the Province of British Columbia evidently hold a different view, inasmuch as steps have been taken since the rendering of the decision to compel federal officials resident in the cities and province indicated to pay taxes on their incomes.

Civil Service Employees of St. John, N.B.

The text of the decision of the Privy Council in the Australian case had no sooner reached here than the Board of Assessors of the City of St. John proceeded to levy an assessment on the incomes of civil servants resident in that city. A test was made of the case of Francis C. Abbott, a tide-waiter in the employ of the outside service of the Customs Department.

An appeal to the Supreme Court of New Brunswick resulted in a confirmation of the assessment. The decision of the court was based upon the view that the decision of the Privy Council in the Australian case was contrary to the view hitherto entertained on this question, and that it, in fact, over-ruled a previous decision (favorable to civil servants) of that court and of courts in Ontario and elsewhere. The point to be determined was whether, in imposing the tax, the provincial legislature had exceeded its power, and the court held that there was no real distinction as between the powers conferred, in this respect, upon the legislatures of the Canadian provinces and those of the

several states of the Australian Commonwealth.

It will at once be seen that if the view held by the Supreme Court of New Brunswick is the correct one, the liability of the civil servant, generally, to pay an income tax is beyond question, as the municipalities are proceeding under authority conferred by the provincial legislatures. An appeal was, however, taken to the Supreme Court of Canada, argument being heard in May last and judgment reserved.

The argument of counsel for the appellant, Abbott, for a reversal of the decision of the Supreme Court of New Brunswick was based upon two points:

1st. On the true construction of the British North America Act, the legislature of the province has no power to impose or authorize the imposition of a tax on the salary of any resident of the province of which he is in receipt as an officer of the government of Canada.

2nd. The St. John City Assessment Act does not authorize the imposition of a tax on the salary of any resident of the province of which he is in receipt as an officer of the government of Canada.

In the elaboration of the argument on the first of these contentions it is pointed out that the Victoria legislature possessed the power to tax government officials prior to the passing of the Australian Constitution Act, and that this power was continued inasmuch as the Act did not exclusively confer the right upon the parliament of the Commonwealth or withdraw it from the legislature of the state. On the other hand, it is contended that while our provincial legislatures had the power to tax the salaries of government officials prior to confederation, this power was not continued under the terms of the British North America Act, and is vested solely in the Parliament of Canada. It is therefore urged that conditions in Canada and Australia are not ana-