The Bank of Toronto, et al and W. B. Lambe, es qual.

by the consumer, and even those who did not accept the conclusion of the economists maintained that it was paid intended to be paid by the foreign producer, nobody thought or intended that it should be paid by the importer from whom it was demanded.

But the tax in question was demanded directly from the bank, apparently for the reasonable purpose of getting contributions for provincial purposes, from those who were making profits by provincial business. It was not a tax on its several transactions; it was a direct lump sum to be assessed by simple reference to its paid up capital and its place of business. It might possibly happen that in the intricacies of mercantile dealings, the bank might find a way to recoup itself out of the pockets of its Quebec customers, but the way must be an obscure and circuitous one; the amount of recoupment could not bear any direct relation to the amount of tax paid, and if the bank did manage it, the result would not probably disappoint the intention and desire of the Quebec Government.

For these reasons their Lordships hold the tax to be direct taxation within class 2 of section 92 of the Federation Act. There is nothing in the previous decision on the questions of direct taxation adverse to this view. In the case of the Attorney General for Quebec *pro regina*, and The Queen Insurance Company, 3 app. cases 1090, the disputed tax was imposed under course of a license to be taken out by the insurers, but nothing was to be paid directly on the license, nor was any penalty imposed upon failure to take one. The price of the license was to be a percentage on the premium received for insurances, each of which was stamped accordingly.

Such a tax would fall within any definition of indirect taxation, and the form given to it was apparently with the view of bringing it under class 9 of section 92, which related to licenses. In the Attorney General for Quebec, and Reid, 10 appeal cases 141, the tax was a stamp duty on Exhibits produced in Courts of law, which in a great many, perhaps most instances, would certainly not be paid by the person first chargeable with it. In Severn and the Queen, 2 Supreme Court of Canada, page 70, the tax in question was one for licenses, which by a law of the legislature of Ontario were required to be taken for dealing in liquors, and the Supreme Court held the law to be *ultra vires*, mainly on the ground that such licenses did not fall within class 9 of section 92, and that they were in conflict with the powers of partiality under class 2 of section 91. It is true that all the judges expressed opinions that the tax being a license duty was not a direct tax. Their reason did not easily appear, but, as the tax now in question is not either in substance or in form a license duty, further examination on that point is unnecessary.

The next question is whether the tax was taxation within the Province. It was urged that the bank was a Toronto corporation, having its domicile there, and having its capital placed there, that the tax was on the capital of the bank, that it must therefore fall on a person or persons, or property, not within Quebec.