

Ont. Rep.]

LEPROHON V. CITY OF OTTAWA.

[Nisi Prius.]

what is to be said of the repeal of sub-section 25 by the Act of 1871. It cannot admit of serious doubt. I think that the intention of the legislature in repealing the Act was to remove these official salaries from the list of exemptions. On the whole I think that upon the construction of the Ontario Assessment Acts the Legislature of Ontario have not exempted the incomes of officers of the House of Commons from liability to assessment.

The grave question then arises, whether the Provincial Legislature had power to impose a tax upon the salaries of such officers. I need not say that I approach the solution of this question with very grave doubt and very great hesitation. It is a constitutional question involving delicate considerations and affecting very considerable interests. The best conclusion which I have been able to form is, that upon the construction of the powers which are vested in the Legislature of Ontario, the officers in the position of the plaintiff are not liable to be assessed upon their incomes. I look first, as I am bound to look, at the language of the British North America Act. Upon the terms of this statute the defendants relied for finding the power to impose a tax upon these incomes. The 2nd, 8th and 13th sub-section of the 92nd section are the clauses upon which the defendants mainly rely. The object of the 92nd section was to define the matters with which the Provincial Legislature should alone have the power to deal and to describe the subjects which should be withdrawn from the legislative control of the Dominion Parliament. The second sub-section gives the legislature of each province power to legislate in relation to direct taxation in the Province, in order to the raising of the revenue for Provincial purposes. I am of opinion that the assessment in question cannot be said to be a matter of direct taxation in order to the raising of a revenue for Provincial purposes. It is an assessment levied for raising moneys for municipal purposes. Then the Legislature of each Province has also power, by the 8th sub-section, to make laws relating exclusively to matters coming within the class of municipal institutions in the Province. Now, no doubt under this sub-section it belongs to the Provincial Legislature to determine generally the mode of assessment for municipal purposes and on what property taxation should be levied. The power to authorize the mode of assessment and levy of taxes for municipal purposes, it may be conceded, is implicitly contained in the power to legislate generally with respect to municipal institutions. But the extent and limits of this

power are not expressly stated. It arises my implication and necessary contentment, not by express enactment. I do not think that that section of itself contains any express authority to levy such a tax as that in question. The 13th sub-section which gives the exclusive legislative jurisdiction over property, and civil rights does not appear to me to be applicable.

On the whole, I do not find in the British North America Act that there is an express provision, either authorizing or prohibiting any tax on such incomes. * That being the case, there being no express provision, and the instrument which forms the great charter of our constitution being silent on the subject, it appears to me that the Court will have to consider the question in relation to the Federal character of the Dominion.

The question has been frequently considered in that respect in the United States. Numerous decisions of the Supreme Court and of the State Courts were referred to by the learned counsel during the argument. Now, it is quite true as suggested in the argument, that these decisions are not binding upon the humblest judge of this Province, but they are the opinions of eminent jurists, distinguished for learning and deeply versed in the solution of questions of constitutional law. I think, therefore, that their reasoning will probably be found to furnish us with a safe guide in the determination of these questions. This reasoning seems to me cogent and conclusive. It is so entirely applicable to the case in hand that I could not come to any other conclusion than that I have indicated without being prepared to impugn its correctness. I have said that I find no express provision in the British North America Act either authorizing or prohibiting this assessment. Now the Courts of the United States have proceeded directly upon the assumption that there is no express provision which regulates this subject. They do not proceed upon the construction of any particular language in the constitution, but they place their decisions upon the foundation of broad and general principles. They rest them upon the character of the essential relations existing between the Federal Government and the State Governments, and upon the estimate of the powers which must be vested in or removed from each respectively. Now, in the great case of *McCulloch v. Maryland*, 4 Wheaton, in which that eminent jurist Chief Justice Marshall pronounced judgment, he laid down the principle that the States have no power of taxation or otherwise to retard, impede, burden or restrain in any way the powers vested