

of a company already registered in the province. So that we have the case of a company empowered by the Dominion to transact business throughout Canada under a certain name, and yet prohibited by one of the provinces from transacting its business within that province and from using its Courts unless it changed that name (and paid fees, etc.). Here, then, was undoubted interference of the province with the powers given by the Dominion.

The gist of the Judicial Committee's decision is to be found in the following words: "The province cannot legislate so as to deprive a Dominion company of its status and powers." It is to be carefully noted that all the Acts of the type of the British Columbia Act provide, in effect, that obtaining a license is a condition precedent to the right of the company to carry on business within the province, or to sue in the provincial Courts. Obviously this deprived Dominion companies both of their status and their powers, and the Judicial Committee, accordingly, proceeds to find all such legislation beyond the power of the provinces.

The case is the first one in which the Judicial Committee has given its opinion respecting the power of the Dominion over the incorporation of companies, and it finds in a very clear and logical manner that the Dominion has full power to incorporate companies with objects other than provincial, and with power to trade throughout the Dominion. The second point in the decision is that no province can impose upon such companies any conditions, restrictions, or taxes *as a condition precedent* to trading within the province.

But it is submitted that the judgment does not go so far as to hold that it is beyond the power of the province to impose a tax upon Dominion companies as such. The legislation under consideration was a prohibition to Dominion companies from trading in the province until they complied with the provincial requirements, and the payment of a fee was only one of those requirements. The provinces have express and exclusive power under sec. 92(2) of the B.N.A. Act to make laws in relation to "direct taxation within the province in order to the raising of a revenue for provincial purposes," and it is submitted that it is competent to the provinces under this decision to impose a tax for revenue purposes upon Dominion companies. But that tax must be clearly for revenue purposes and not for the purpose of requiring Dominion companies to obtain provincial sanction for the exercise of their corporate powers. This was the view of Mr. Justice Anglin in *Re Companies*, 48 Can. S.C.R. 331 at 460, 15 D.L.R. 332 at 340, 341. And it is submitted that the ordinary methods of recovering payment of the tax such as by suit or distress can be adopted. But payment of the tax must not be a condition upon which the company is allowed to trade within the province.

It is to be noted that the Judicial Committee again expresses disapproval of the consideration of any abstract questions under sections 91 and 92 of the B.N.A. Act. Appreciation is expressed of the careful judgments delivered by the Supreme Court in the *Companies Case*, 48 Can. S.C.R. 331,