

the consumer and not the importer, usually bears the burthen. But if the consumer imports his own boots, the tax is as direct as it can be. Again, if this rule were dogmatically true, it would include a license to shoot game, which might very well be accorded by a stamp.

It is very true that the term *direct taxation* being used in a statute in a positive sense, it is the particular function of Courts, by their decisions, to give it a positive meaning. In dealing with this term the operation is one of considerable difficulty, and we must take care in performing it not to out-ride our commission inadvertently. We have to decide what *direct taxation* is within the meaning of the Act, but there is absolutely no warrant in the B. N. A. Act for our deciding, that the local governments are prohibited from collecting direct taxes by one form or another. As to licenses it is different; the *form* there is material. It therefore appears to me to be indubitable, that we have authority to say that *direct taxation* in the Act, means a poll or a property and income tax and no more, but we have no authority to say how it shall be levied.

While generally admitting the utility of reference to writers on political economy, judgments, dictionaries and cyclopædias for such enlightenment as they may furnish, it seems to me that there are other guides to interpretation quite as safe. As an example, I may quote from a still more recent decision of their Lordships the following sentence: "It becomes obvious as soon as an attempt is made to construe the general terms in which the classes of subjects in sections 91 and 92 are described, that both sections and the other parts of the Act must be looked at to ascertain whether language of a general nature must not by necessary implication or reasonable intendment be modified and limited." *The Citizens Ins. Co. & Parsons*, (5 Legal News, p. 28.)

I do not think it necessary to pursue the criticism further on this point, for the power of the local legislature to enact the 43 & 44 Vic. appears to me to be beyond question, even if we were to hold that the tax under consideration was indirect taxation. We have, therefore, happily nothing to limit or to modify. Sub sections 14 and 16 give the right to the legislature of the Province to pass the law in question. In proceeding to explain this proposition, it is

proper to make two preliminary remarks: First, that the power of the local governments to tax is nowhere confined to licenses and to direct taxation, as has been assumed. They are specially permitted to impose these taxes, that is all; but this differs essentially from a prohibition to impose any other taxes. Secondly, the sub-sections of section 92 must be read with the general heading to avoid misconception. Thus read, sub-section 14 enables the local governments to make laws in relation to "The administration of Justice in the Province, including the constitution, *maintenance*, and organization of Provincial Courts, both of civil and criminal jurisdiction," &c.

Is not the law impugned a law for the maintenance of justice in the Province, nay more a law modeled on the law existing at Confederation for its maintenance? We have held in *Sutle & Three Rivers*, that municipal powers were to be delimited by what then existed. Is it not a similar principle we now invoke?

Again, I would ask is this tax for the performance of a duty by a local functionary not a matter of a merely local nature in this Province? Does it conflict with any Dominion power? Can it be contended for an instant that the power to raise money by any mode or system of taxation can be held to signify that the Dominion Parliament could raise money on the duties to be performed by local officers?

I have said that it has been assumed that the local legislatures had only power to impose taxes by way of direct taxation, by license, I mean assumed in discussion, for the practice, as is frequently the case, is more logical than the didactic utterances regarding it. As an example, a turn-pike on a local road is a tax precisely of the same kind as this. It is an exaction for a service rendered. So, when the Government exacted passage money on the North Shore Railroad it was a tax of a like kind; and I may add, moreover, it was levied by a stamp.

I am to reverse.

DORION, C. J., delivered a dissenting opinion, in which the case of *Angers v. The Queen Ins. Co.*, (cited above), was relied on in support of the judgment.

Judgment reversed.

Hon. A. Lacoste, Q. C., for the Appellant.
Maclaren, for the Respondent.*

* An appeal has been taken to the Privy Council.