

tion would be measured by the accuracy with which it contemplated and embraced every incident of the thing defined; but that very excellence impairs its value for the purpose of the lawyer.

The legislature could not possibly have meant to give a power of taxation, valid or invalid, according to its actual results in particular cases. It must have contemplated some tangible dividing line referable to and ascertainable by the general tendencies of the tax, and the common understanding of men as to those tendencies. After some consideration Mr. Kerr chose the definition of John Stuart Mill as the one he would prefer to abide by, which was "Taxes are either direct or indirect." A direct tax is one which is demanded from the very person who it is intended or desired should pay it; indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another, such are the excise or customs; and "the producer or importer of a commodity is called upon to pay a tax on it, not with the intention to levy a particular contribution upon him, but to tax through him the consumers of the commodity, from whom it is supposed that he will recover the amount by means of an advance in price."

It was said that Mill added a term that, to be strictly direct a tax must be general; and that condition was much pressed at the bar. Their Lordships have not thought it necessary to examine Mill's works for the purpose of ascertaining precisely what Mill did say on that point, nor will they presume to say whether, for economical purposes, such a condition is sound or unsound; but they have no hesitation in rejecting it for legal purposes. It would deny the character of a direct tax to the income tax of this country, which is always spoken of as such, and is generally looked upon as a direct tax of the most obvious kind; and it would run counter to the common understanding of men on this subject, which is one main clue to the meaning of the legislature.

Their Lordships would take Mill's definition, therefore, as a fair basis for testing the character of the tax in question, not only because it was chosen by the appellant's counsel, nor partly because it was that of an eminent writer, nor because it seemed to them to embody with sufficient accuracy for this purpose the understanding of the most obvious *indicia* of direct and indirect taxation, which was a common understanding, and was likely to have been present to the minds of those who passed the Federation Act.

Now whether the probabilities of the case, or the Quebec Act, be considered, it appears to their Lordships that the Quebec Legislature must have intended and desired that the very Corporation from where the tax was demanded should pay and finally bear it. It was carefully designed for that purpose. It was not like the customs duty, which entered at once into the price of the taxed commodity. There the tax was demanded of the importer, while nobody expected or intended that he should finally bear it, all scientific economists thought that it was paid, and scientific financiers intended that it should be paid

The Bank of
Toronto,
et al.
and
W. B. Lamb,
as equal.