

vince upon each exhibit, produced or offered in the Superior Court, &c., and that all dispositions of law applicable to former duties or taxes such as this should apply to the tax or duties imposed by this act of 39 Vic.; that by the Act of Quebec, 44 Vict. c. 9, all these stamp acts have been amended and recast, and a tax of ten cents imposed upon each exhibit offered to the Superior Court, and order made that no exhibit shall be received unless stamped.

Then a proclamation by the Lieutenant-Governor of Quebec is vaguely set forth, by which it was ordered by him and the Council that all exhibits should be stamped (when this was published is not stated; nor is it stated from what day the order was to take effect.) That they (the Prothonotary) are only doing their duty in asking a ten cent stamp to be put upon the promissory note offered as an exhibit by the plaintiff; that the plaintiff has no right to get the order he seeks against them, and they conclude for the discharge of the rule.

There is answer by the plaintiff that the Quebec Legislature statute law, by which the Prothonotary would justify the claim of a ten cent stamp from plaintiff, was and is *ultra vires* of the Legislature, not warranted, seeing the B. N. A. Act of 1867, that the ten cent tax or stamp duty is not authorized by that Act, and is not direct but indirect taxation, and therefore, illegal, and so the rule taken must be made absolute.

The Attorney General of Quebec has intervened in the case to support the Prothonotary, and his claim to have that ten cent stamp before filing the promissory note referred to. For reasons of intervention he repeats very much the arguments of the Prothonotary, but commences by alleging formally that the administration of justice is left to the charge and under the control of the Provincial Legislatures; that this administration causes great expense, and necessitates the employment of officers and servants, all of whom have to be paid by the Provincial Governments; that particularly the Government is obliged to employ persons to have care of all documents produced before the different courts of law, and that by law these persons are paid out of the consolidated revenue fund of the Province.

The plaintiff answers the Attorney-General very much as he does the Prothonotary; he adds

some allegations, for instance, this one, that the ten cent tax upon exhibits demanded from plaintiff has no connection with the fees or salaries of the Prothonotaries or others employed in the courts.

Having thus fully stated the pleadings, I observe that the tax of ten cents on exhibits was first imposed by the 39th Vict. cap. 8 of Quebec, entitled "An Act to aid the grant for the purposes of the administration of justice." Its first section imposes a duty of ten cents, payable to the Crown, for the uses of the Province, to be levied on each receipt, bill of particulars, and exhibits whatsoever, produced before the courts. By its second section the duty is ordered to form part of the consolidated revenue fund of the province. These two sections of the 39 Vic. have been repealed by the 43-44 Vic. c. 9 of Quebec, entitled, "An Act to amend and consolidate the different acts therein mentioned, in reference to stamps." Its section 9 again enacts the duty of ten cents on bills of particulars, and exhibits, produced before the courts. The moneys levied fall by the 31 Vic. cap 9, to the consolidated revenue fund. The 43-44 Vic. c. 9 orders that it and the 27-28 Vic. c. 5 of the late Province of Canada as thereby amended shall be read together as one act. This 27-28 Vic. authorized stamps to be issued by order of the Governor-in-Council, and the provisions of it are ordered to extend to taxes and duty imposed by the 32 sect. of chap. 109 Cons. Stat. L. Ca., "so long as such fees continue to form part of the building and jury fund, or the officers of justice fee fund." Under the Constitutional Act, the British North America Act of 1867, the provinces may not tax, or raise revenue, just as they please. Subsection two of sect. 92 of it only permits direct taxation in order to the raising of a revenue for provincial purposes; a later subsection allows also shop, saloon, tavern, auctioneer, and other licences in order to the raising of a revenue for provincial, local, or municipal purposes. The Imperial Parliament has designedly laid specific restrictions upon the taxing power of the local legislatures. It has not abandoned the taxing power to their mere will. So the question: what is lawful taxation? may always be brought before the courts and will fall to be decided ultimately by the judiciary. It has been argued that the ten cents stamp duty is "direct taxation." If it be *that* it has been well enough imposed. What is