

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

respondent. The Court of Queen's Bench, by a majority of three judges to two, took the contrary view, and gave the then appellant, the present respondent, a decree, the case comes on appeal from that decree of the Court of Queen's Bench.

The principal grounds on which the Superior Court rested this judgment are as follows: That the tax was an indirect one; that it was not imposed within the limits of the Province; that the Parliament had exclusive power to regulate Banks; that the Provincial Legislature could tax only that which existed by their authority, or was introduced by their permission; and that if the power to tax such banks as this existed, they would be crushed by it; and so the power of the Parliament to create them would be nullified.

The grounds stated in the decree of the Court of Queen's Bench are two, viz., that the tax was direct, and that it was also a matter of a merely local or private nature in the Province, and so fell within clause sixteen of provincial legislature.

It was contended at the Bar that the Provincial Legislature would tax only that which existed on their authority or permission, and when the appellants' counsel were proceeding to argue that the tax did not fall within clause 16, their Lordships intimated that they would prefer to hear first what could be said in favor of the opposite view. All the other grounds had been argued very fully and very ably at the Bar. To ascertain whether or not the tax was lawfully imposed, it will be best to follow the method of inquiry adapted in other cases. First, does it fall within the description of taxation allowed by class 2 of section 42 of the Federation Act, viz.: Direct taxation within the Province in order to the raising of a revenue for Provincial purposes. Secondly, if it does, are we compelled by anything in section 91, or in the other parts of the Act so to cut down the full meaning of the words of Section 92 that they should not cover this tax.

First is the tax a direct tax? For the argument of this question the opinions of a great many writers on political economy were cited, and it is quite proper, or rather necessary, to have careful regard to such opinions. But it must not be forgotten that the question is a legal one, viz., what the words mean as used in this statute, whereas economists were always seeking to trace the effect of taxation throughout the community, and were apt to use the words "direct" and "indirect," according as they found the burden of a tax abided more or less with the person who first paid it. This distinction was illustrated very clearly by quotations from a very able and clear thinker, the late Mr. Fawcett, who after giving this test of direct and indirect taxation made remarks to the effect that a tax may be made direct, or indirect by the position of the tax payers or by private bargains about its payment. Doubtless such remarks have their value in an economical discussion, probably it is true of every indirect tax that some persons are both the first and final payors of it, and of every tax that it affects persons other than the final payers, and the excellence of an economist's defini-