

the learned judges sitting in that tribunal frequently sit in the House of Lords; see *Dulieu v. White* (4). The Commissioners of Taxation thereupon applied for special leave to appeal from that judgment of the High Court, but the Privy Council refused to interfere upon the ground that since the decision in *Webb v. Outrim*, the Commonwealth had passed a statute especially authorizing the states to impose taxation of the kind in question, so that the controversy was at an end.

If in the above cases the decisions of the Privy Council upon the Constitution of Australia were not binding upon all the courts of that Commonwealth, *a fortiori*, it cannot be binding upon us, unless clearly applicable to our constitution; and that is exactly the point which, with due deference, I cannot agree with the court below.

Section 91 of the British North America Act, 1867, declares that "the

exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:—

"Par. 8. The fixing of and providing for the salaries and allowances of the civil and other officers of the Government of Canada."

And the same clause of the Act adds:—"Any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the provinces."

The power of a province to impose this tax must be found in section 92 of the British North America Act, 1867, which enumerates all the powers given to the provinces under our system, which, in that respect, differs entirely from the Australian system.

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