

RAMSAY, J. This appeal gives rise to some embarrassment, to my mind, however, to little difficulty. There is a technical point to which I may at once refer. The action is taken against the Prothonotary by way of a proceeding for contempt, and the judgment condemns the Prothonotary to go to gaol. This is evidently irregular. If it be a question of contempt the way to bring it up before this Court is by Writ of Error. Our Statutes give in express terms this remedy. However, without the condemnation as for a contempt, it is an order in a case, from which there might be leave to appeal granted on special application. It has not come up to us in that shape. We might, therefore, perhaps dismiss the appeal without adjudicating on the important subject on which it was evidently the intention of the parties, including the Attorney-General of the Province of Quebec, to have a decision.

Although I think it is a wise policy on the part of Courts, generally, to abstain from going further in delivering judgment than is absolutely necessary to settle the differences between the parties, still there are cases where the nature of the question is such as to require a more ample treatment. This occurs when the question involved is of public interest, and where both parties have acquiesced in the proceedings and over-looked the technical difficulty. To the people of this country the settlement of questions arising on our statutory constitution is of the utmost moment, and the delay of litigation, even for a year, may have the most disastrous results. I think, therefore, we should be neglecting our duty if we failed to deal with this case on its intrinsic merits.

The Legislature of the Province of Quebec passed an Act (43 & 44 Vict., Cap. 9), by the 9th section of which it is enacted: "There shall be imposed, levied and collected a duty of ten cents on every writ of summons, issued out of any County Court, Circuit Court, Magistrates' Court, or Commissioners' Court in the Province; and a duty of ten cents shall be imposed, levied and collected on each promissory note, receipt, bill of particulars and exhibit whatsoever, produced and filed before the Superior Court, the Circuit Court or the Magistrates' Court, such duties payable in stamps." This Act is declared to be an amendment and extension of an Act of the

old Province of Canada, 27 & 28 Vict., Cap. 5, "An Act for the collection by means of stamps, of fees of office, dues and duties payable to the Crown upon law proceedings and registrations." (Sec. 20.)

The duties levied under this Act are to be "deemed to be payable to the Crown." (Sec. 3, sub. sec. 2.) These last words might perhaps give rise to verbal criticism. It would seem by the terms of the B. N. A. Act that the Queen forms no part of the Provincial Governments. Indirectly the Sovereign nominates the Lt.-Governor, but he is not the representative of Her Majesty. He acts by virtue of his office, and not by virtue of his commission, in this respect unlike the Governor General or other officer administering the Government of Canada. But although I think this criticism well-founded, as a fact the old language has been continued both in sanctioning legislation, and in carrying on those branches of administration which have devolved on the local Governments.

I take it, therefore, that this legislation intended and did, in effect, so far as it could, declare that in addition to the duties hitherto authorized to be levied by stamps on judicial proceedings in the Province of Quebec, ten cents should be charged for each promissory note produced and filed in the Superior Court, and that this duty should be collected by stamps and should form part of the general revenues of the Province.

It appears that by the 27 & 28 Victoria, fees collected in this way for judicial purposes were credited to a particular fund; but they were declared to be fees payable to the Crown, and I cannot see that this statutory rule of accountability, it is really no more, can have any bearing on the question before us, except to show that they were fees collected for a local object.

Subsequent to the passing of this Act of the 43 & 44 Vic. by the Legislature of the Province of Quebec, the respondent produced, and attempted to file a promissory note, without any stamp of ten cents being affixed. The prothonotary refused to take it without the stamp, and the respondent refused to pay the duty on the ground that the statute was beyond the powers of a local Legislature.

It is not contended that the revenues to be collected in the Province of Quebec under the