CIVIL SERVANTS AND THE INCOME TAX.

Judgment of the Supreme Court of Canada in the St. John Case and the Reasons Therefor.

THE CIVILIAN is enabled, by the courtesy of Lt.-Col. Coutlee, K.C., to furnish its readers with a full report of the judgment of the Supreme Court in the appeal of Abbott vs. The City of St. John, N.B., by which it is held (Mr. Justice Girouard dissenting) that a civil or other officer of the Government of Canada may be lawfully taxed in respect to his income as such by the municipality in which he resides.

The findings of the judges are as follows:

Mr. Justice Girouard.

The appeal involves a very important question of constitutional law which has already received attention of the provincial courts of the Dominion on several occasions and has obtained the same solution, almost unanimously, so much so that the counsel of the City of St. John in this case relies only upon the judgment appealed from and also upon the recent decision of the Privy Council in Webb v. Outrim, an appeal from Australia, reported in Appeal Cases for 1907, at page 81. None of these cases has ever reached our own court. For at least twenty years the decisions of the provincial courts were accepted throughout the whole Dominion as being settled law. It is high time that the point involved should be carried to the Privy Council in order to set at rest what is becoming now the unsettled condition of the courts. I do not intend to review all those decisions. They number about twelve or fifteen. I will merely indicate some of them:—Ex parte Owen (1); Ackman v. Moncton (2); Coates v. Moncton (3); Ex parte Burke (4); Evans v. Hudon (5); Crevier v. DeGranpre (6); Leprohon v. City of Ottawa (7); Bucke vs. City of London (8); Reg. v. Bowell (9).

I am not prepared to say that all these decisions, rendered by the most eminent judges of our country and accepted by the whole community, are wrong. I will wait till the Privy Council so declares under our own constitution. The New Brunswick judges in this case, without, however, offering any reasoning, express the view that the rule laid down in this very long array of decisions has been disapproved by the judicial committee in Webb v. Outrim (10). There the Privy Council held that the respondent, an officer of the Australian Commonwealth, resident in Victoria, and receiving his official salary in that state, is liable to be assessed in respect thereof for income taxes imposed by an Act of the Victorian Legislature. This decision has been severely criticized in the Law Quarterly Review (vol. 23, pages 129, 373), and has given very little satisfaction in Australia, especially in the High Court of that Commonwealth whose former decisions in D'Emden v. Pedder and Deakin v. Webb (1) were disapproved. On a subsequent occasion, in Commissioners of Taxation v. Baxter (2), and Commissioners of Income v. Cooper (3), the High Court of Australia refused to follow Webb v. Outrim. This may be strictly correct as it was not rendered on appeal from that court. On more than one occasion the courts of appeal in England refused to follow the rules laid down by the Privy Council, as that tribunal does not form part of the judicial hierarchy of the kingdom, although some, if not the majority of