

*the Act 45 Vict. (Q.) ch. 22, are direct taxes, and such as are authorized by sect. 92, sub-sect. 2 of the B.N.A. Act, 1867.*

2. *A corporation doing business in the Province is subject to taxation under sect. 92, sub-sect. 2, though all the shareholders are domiciled or resident out of the Province.*

LORD HOBHOUSE:—These appeals raise one of the many difficult questions which have come up for judicial decision under those provisions of the British North America Act 1867, which apportion legislative powers between the Parliament of the Dominion and the Legislatures of the Provinces. It is undoubtedly a case of great constitutional importance, as the appellants' counsel have earnestly impressed upon their Lordships. But questions of this class have been left for the decision of the ordinary courts of law, who must treat the provisions of the Act in question by the same methods of construction and exposition which they apply to other statutes. A number of incorporated Companies are resisting payment of a tax imposed by the Legislature of Quebec, and four of them are the present appellants. It will be convenient first to deal with the case of the Bank of Toronto, which was argued first.

In the year 1882 the Quebec Legislature passed a statute entitled "An Act to impose certain direct taxes on certain commercial Corporations." It is thereby enacted that every Bank carrying on the business of banking in this province; every Insurance Company accepting risks and transacting the business of insurance in this province; every incorporated Company carrying on any labour, trade, or business in this province; and a number of other specified Companies, shall annually pay the several taxes thereby imposed upon them. In the case of banks the tax imposed is a sum varying with the paid up capital, and an additional sum for each office or place of business.

The appellant Bank was incorporated in the year 1855 by an Act of the then Parliament of Canada. Its principal place of business is at Toronto, but it has an agency at Montreal. Its capital is said to be kept at Toronto, from whence are transmitted

the funds necessary to carry on the business at Montreal. The amount of its capital at present belonging to persons resident in the province of Quebec, and the amount disposable for the Montreal agency, are respectively much less than the amount belonging to other persons and the amount disposable elsewhere.

The Bank resists payment of the tax in question on the ground that the Quebec Legislature had no power to pass the statute which imposes it. Mr. Justice Rainville sitting in the Superior Court took that view, and dismissed an action brought by the Government Officer, who is the respondent. The Court of Queen's Bench, by a majority of three Judges to two, took the contrary view, and gave the plaintiff a decree. The case comes here on appeal from that decree of the Court of Queen's Bench.

The principal grounds on which the Superior Court rested its judgment were as follows:—That the tax is an indirect one; that it is not imposed within the limits of the province; that the Parliament has exclusive power to regulate banks; that the Provincial Legislature can tax only that which exists by their authority or is introduced by their permission; and that if the power to tax such banks as this exists, they may be crushed out by it, and so the power of the Parliament to create them may be nullified. The grounds stated in the decree of the Queen's Bench are two, viz., that the tax is a direct tax, and that it is also a matter of a merely local or private nature in the province, and so falls within Class 16 of the matters of provincial legislation. It has not been contended at the bar that the Provincial Legislature can tax only that which exists on their authority or permission. And when the appellants' counsel were proceeding to argue that the tax did not fall within Class 16, their Lordships intimated that they would prefer to hear first what could be said in favour of the opposite view. All the other grounds have been argued very fully, and their Lordships must add very ably, at the bar.

To ascertain whether or no the tax is lawfully imposed, it will be best to follow the method of inquiry adopted in other cases.