

in the Confederation Act, a Provincial statute could then change or authorize change in the rate of interest; but it did not stop there. The Provincial Legislature, in 1878, passed another Act (41st Vic., c. 27), and under this the second by-law was passed, imposing increase, addition, or penalty, instead of interest as under the previous Act. Sec. 3, then, of the 41st Vic., c. 27, enacted that whereas section 99 of the 37 Vic., c. 51, had intended to continue and retain in force sec. 75 of the 14 and 15 Vic., respecting the penalty of ten per cent, and whereas the wording of it might give rise to erroneous interpretation, it would substitute another section—99, for the sec. 99 of the 37 Vict. It did not proceed to declare that the 14 and 15 Vic. was still in force; it did not repeal the repealing clause. If it had done so, the duty of the Court would, as far as that goes, have been plain; for, if the supreme legislative power in the Province chooses to say that a thing is one way, when it is another, I suppose the courts must say so too, or at all events say that the legislature has said so; but they went further, and they said, not that they declared the 75th section of the 14 and 15 Vic. to be still in force, notwithstanding the express repeal of it; nor yet that they repealed the repealing section of the 37 Vic., c. 51; but they said that, for the 99th Section of the 37 Vic., c. 51, they would substitute another; and what they substituted was this, viz., that the corporation might by a by-law exact an increase, addition, or penalty of 10 per cent. on all arrears not paid within a certain delay. That is to say, this last statute is to be read as if it was in fact Section 99 of the 37 Vict.; and the only difference between the new reading of the 99th Section and the old reading, is that the old reading authorized the exaction of interest, and the new reading authorizes an exaction of an increase, addition or penalty. Therefore, the question is left precisely where it was before, with this exception, viz., that, before the Act of 1878, the question would have been whether the Provincial Legislature could, in 1874, change or authorize any creditor to change the legal rate of interest; and now the question is whether the Provincial Legislature could, in 1878, authorize the exaction of an increase, addition, or penalty of ten per cent. for delay of payment of taxes. I do not enter upon the question whether, if they had even repealed the repeal-

ing section (which on general principles would have restored the first law), such an enactment would at that time—nine years after Confederation—have had the effect of legally changing the rate of interest; I only say that they did not repeal the repealing section; and the 14 and 15 Vic., sec. 75, remained repealed. As to the real nature of the exaction, whether it be called interest, or increase, I must say at once that my judgment and conscience utterly refuse to yield to any attempt at distinction between these two things. The law itself rejects any such distinction. It is old law and finds plain and emphatic expression in the words of a specific article of the code (art. 1077): "The damages resulting from delay in the payment of money, to which the debtor is liable, consist *only of interest* at the rate legally agreed on by the parties, or, in the absence of such agreement, at the rate fixed by law." If any other rate is to be fixed by law since Confederation, it must be by the Parliament of Canada. *Interest*, by par. 19 of section 91 of the British North America Act, 1867, is a subject *exclusively* allotted to the legislative authority of the Dominion. If the Provincial Parliament in 1878 thought themselves competent to deal with the subject of *interest*, it had one of two things to do; it could either declare that the 14th and 15th Vic. was still in force notwithstanding its absolute repeal, or it could repeal the section of the 37 Vic. that had repealed it. What the effect of either course would have been, as I have said before, I give no opinion upon; but it is certain that the Legislature has taken neither the one course nor the other, but it has only said that the 37 Vic. intended to continue the 14th and 15th Vic. in force, (not that it did so, nor yet that they, by their subsequent act of 1878, declared it to be in force); and it has shown that it did not consider it in force by enacting another section 99 for the old one that is supposed to have continued it in force. The Provincial Legislature might, perhaps, have taken a third course—for it can alter our local laws—however fundamental. It might, if it can deal at all with interest since confederation, have repealed the 1077 art. of the code, but it has not attempted to do so. Therefore, by whatever name they call the exaction in