

ANGERS VS. THE QUEEN INSURANCE COMPANY.

given by the Imperial Statute, the Legislature of Quebec could pass this Statute, imposing a tax on assurance companies and compelling them to take out a license?

The 91st section of the Imperial Act enacts that "It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects, by this Act, exclusively assigned to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section it is hereby declared that (notwithstanding anything in this Act), 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 (*inter alia*):

2nd. The regulation of trade and commerce. 3rd. The raising of money or system of taxation, and 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 Legislature of the Province." This refers to the Federal Parliament. In dealing with the powers of the Legislatures of the Provinces, the 92nd section declares that "In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated that is to say (*inter alia*):

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"2nd. Direct taxation within the Province in order to the raising of a revenue for Provincial licenses," i. e. sub-sec. 9, shop and saloon purposes, for raising a revenue for provincial, local and municipal purposes.

The other parts of these sections have no bearing upon the present case.

The determination of this question depends entirely on the construction to be put on sub-sections 2 and 9 of the above 92nd section of the Imperial Statute.

The Federal Parliament has the general power to make laws in relation to all matters, excepting only such matters as are by the 92nd sec. specially put under the control of the Local Legislatures. The Local Legislatures, on the contrary, have power to make laws only in relation to matters specifically and nominally put under their control by section 92. In order to ascertain whether any given subject matter is under the jurisdiction of one of the legislative bodies, created by the Imperial Statute, it is sufficient to refer to the 92nd section and see if by that section the subject matter is

or is not put under the control of the Provincial power. If not it comes within the legislative authority of the Federal Parliament, even if not one of the classes of subjects specially enumerated as being specially reserved for that Parliament by the 91st section of the Act.

This proposition was not contested by the learned counsel whose duty it has been to contend, in favour of the constitutionality of this Act, but it is on the 92nd section that he relies, to prove that the Legislature of Quebec had the legislative authority to pass this Statute. He contended that it might be possible to consider the taxes imposed by 39 Vict. c. 7, as a direct tax. Then, under the 2nd sub-section of section 92, which gives the power of direct taxation to the Legislatures of the Provinces this Act is unimpeachable. But should it be declared that the duties imposed were not a direct tax, then the Act is constitutional, he says, because it is authorized by the 9th sub-section which gives to Local Legislatures the control of "Shop, saloon, tavern and other licenses."

As to whether the duties imposed on the Assurance Companies constitute a direct or an indirect tax, I will state without hesitation that, in my opinion, they constitute an indirect tax. It is a stamp duty, which has been imposed by the Legislature on policies of assurance and renewal receipts respecting such policies and nothing else. That it ought to be considered a stamp duty or a license does not make any difference as it is in both cases an indirect tax.

"On peut ranger sous deux chefs principaux (says J. B. Say, an author of great repute on Political Economy) les différentes manières qu'on emploie pour atteindre les revenus des contribuables. Ou bien on leur demande directement une portion du revenu qu'on leur suppose, c'est l'objet des contributions directes; ou bien on leur fait payer une somme quelconque sur certaines consommations qu'ils font avec leur revenu; c'est l'objet de ce qu'on nomme en France les contributions indirectes."

After stating what are direct taxes, the same author says: "Pour asseoir les contributions indirectes et celles dont on veut frapper les consommations, on ne s'informe pas du nom du redevable, on ne s'attache qu'au produit. Tantôt, des l'origine de ce produit, on réclame une part quelconque de sa valeur, comme on fait en France pour le sel. Tantôt cette demande est faite au moment où le produit franchit les frontières (les droits de douanes). Tantôt c'est au moment où le produit passe de la main du dernier producteur dans celle du consommateur qu'on fait contribuer celui-ci (en Angleterre par le stamp duty, en France