

constitution, maintenance, and organisation of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts; [3] Under a further sub-section as being a matter of a "merely local or private nature" in the province; [4] Under the reservation given by the Act to the Provinces of Ontario and Quebec jointly of the building and jury fund, Lower Canada; [5] Under the provision of the Act as being an alteration of a law in force in the former province of Canada at the union of the provinces into the Dominion; [6] As being the exercise of a power, authority, or function, exercisable in such former province of Canada at such union; or, [7] As an inherent right or power in the provincial legislature of which it had not been deprived by the Imperial Act either by express words or by any necessary implication.

The matter arose out of an action in the Superior Court of Quebec, wherein the respondent, Reed, was plaintiff, and Roy and another were defendants. The respondent tendered a promissory note to be filed as an exhibit in support of his action by the prothonotary of the court, whereon the prothonotary refused to receive or file the note as an exhibit unless there were affixed to it a law stamp of ten cents in payment of the duty imposed on the filing of such exhibit by the Act of Quebec, 44 Vic., c. 9. The respondent obtained from the Superior Court a rule calling upon the prothonotary to show cause why he should not receive and file the exhibit as tendered without having the stamp affixed. The Attorney-General for the province intervened in the matter, and on the 10th of March, 1882, Mr. Justice Mackay, before whom the matter was argued, delivered judgment, making the rule absolute and dismissing the intervention of the Attorney-General with costs. The Attorney-General appealed to the Court of Queen's Bench, who, by a majority of four judges to one (the Chief Justice), reversed the decision of Mr. Justice Mackay and quashed the rule. The respondent took the matter on appeal to the Supreme Court, who, by a majority of four judges to two, set aside the judgment of the Queen's Bench, and restored the original

decision in favour of the respondent. From that judgment the present appeal was preferred.

*Horace Davey, Q.C., Globensky, Q.C.* (of the Montreal Bar), and *Pollard*, for the Appellant.

The Respondent was not represented.

The LORD CHANCELLOR delivered judgment as follows:—

Their Lordships have considered the argument which they have heard, and they have come to the conclusion that the judgment appealed from must be affirmed.

The points to be considered are three: first of all, can this charge upon exhibits used in the courts of justice of the province be justified under the 2nd sub-section of clause 92 of the British North America Act? Is it a case of direct taxation within the province "in order to the raising of a revenue for "provincial purposes?" What is the meaning of the words "direct taxation."

Now it seems to their Lordships that those words must be understood with some reference to the common understanding of them which prevailed among those who had treated more or less scientifically such subjects before the Act was passed. Among those writers we find some divergence of view. The view of Mill, and those who agree with him, is less unfavourable to the appellant's argument than the other view, that of Mr. McCulloch and M. Littré. It is, that you are to look to the ultimate incidence of the taxation as compared with the moment of time at which it is to be paid; that a direct tax is—in the words which are printed here from Mr. Mill's book on political economy—"one "which is demanded from the very persons "who it is intended or desired should pay "it." And then the converse definition of indirect taxes is, "those which are demanded "from one person in the expectation and "intention that he shall indemnify himself "at the expense of another."

Well now, taking the first part of that definition, can it be said that a tax of this nature, a stamp duty in the nature of a fee payable upon a step of a proceeding in the administration of justice, is one which is demanded from the very persons who it is intended or desired should pay it? It must be