

were,—I dislike to use the word—endeavouring to filch jurisdiction from the parliament of Canada. I trust I am not using that word improperly. They were endeavouring to increase their jurisdiction with regard to taxation at the expense of the federal taxing authority. Therefore they were not prepared to accept that clear definition as to direct and indirect taxation.

Mr. DUNNING: Is the case the hon. gentleman is quoting that referring to the Manitoba tax on futures?

Mr. CAHAN: It had to do with the sales of grain, but futures are involved to a certain extent.

Mr. DUNNING: They were trying to tax the people of another province, which is a different question.

Mr. CAHAN: That was not the ground of the decision.

Mr. DUNNING: One of the grounds.

Mr. CAHAN: The decision which I have just read was on the question whether it was indirect or direct taxation.

Mr. THORSON: The question whether it was taxation within the province was also involved.

Mr. CAHAN: Quite so, but in citing the decision I am confining myself to the distinction between indirect and direct taxation.

The next decision which I think is important is that of the Attorney General for British Columbia and the Canadian Pacific Railway Company, 1927 Appeal Cases, 934. This case arose out of a statute of the province of British Columbia authorizing taxes to be imposed on sales of fuel oil, and the judgment of the court may, I think, be summarized in this form. If from the terms of the act there appears an expectation and intention that the person required to pay the tax will indemnify himself on resale of the commodity taxed, the act is ultra vires of the provincial legislature. The act in question provided that every person who purchased within the province fuel oil sold for the first time in its manufacture in or importation into the province should pay for provincial purposes a tax equal to $\frac{1}{2}$ cent per gallon on the oil purchased. It was held by the judicial committee of the privy council that under the terms of the provincial statute this tax would apply even if the first purchasers bought and resold the oil they had bought and that therefore the tax became an indirect tax and its imposition was ultra vires of the provincial legislature.

The next case which seems to be of importance is that of the King v. Caledonian Collieries, 1928 Appeal Cases, 358. In this case the provincial legislature sought to impose what they called a direct tax payable by the owner of a mine upon the gross revenue of his mine as received during each preceding month. The tax was imposed upon the gross revenue and it was held by the judicial committee of the privy council to be in reality a tax upon the aggregate of sums received from the sales of coal and equivalent to a tax upon every sum received from the sale of coal and therefore that this tax was ultra vires of the provincial legislature. It was in fact a tax imposed upon the gross retail business of a mining company, compelling the mining company to pay the tax and leaving the company free to collect compensation for the tax from those who purchased and consumed the coal.

The next case, in my opinion a very important one, clarifies the situation; it is the Attorney General for British Columbia v. Kingcome Navigation Company, 1933 Appeal Cases, 45. The material provisions of the act of the British Columbia legislature for 1930, as amended by the act of 1932, which came under investigation in this case, were as follows:

2. For the raising of a revenue for provincial purposes every person who consumes any fuel oil in the province shall pay to the Minister of Finance a tax in respect of that fuel oil at the rate of $\frac{1}{2}$ cent a gallon.

3. The tax imposed by this act shall be paid and collected at such times and in such manner as the regulations may prescribe.

4. The amount of any tax imposed by this act may be recovered by action in any court as for a debt due to the crown in right of the province, and the court may make an order as to the costs of the action in favour of or against the crown. In every action for the recovery of any tax imposed by this act, the burden of proving the quantity of fuel oil consumed by the defendant, and of proving that the tax has been paid in respect of the fuel oil in question, shall be upon the defendant.

The burden of proof was made very clear. Their lordships in their decision quote the previous decisions of the judicial committee to which I have referred, and declare:

These decisions, in their lordships' opinion, make clear that if the tax is demanded from the very persons who it is intended or desired should pay it, the taxation is direct, and that it is none the less direct, even if it might be described as an excise tax, for instance, or is collected as an excise tax.

And at page 59 they continue:

Turning then to the provisions of the Fuel Oil Act here in question, it is clear that the act purports to exact the tax from a person who has consumed fuel oil, the amount of the tax being computed broadly according to the amount consumed. The act does not relate to any commercial transaction in the commodity