

MR. GEORGE H. SHINK: Mr. Chairman, I want to thank you very much for your very kind introduction. The only correction to your statement I desire to make is one concerning the province to which I belong. Though we are not greedy and we like a lot, we have not 36 taxes in the Province of Quebec. (Laughter).

MR. ILIFFE: Mr. Shink, I obtained that information from our Secretary and I shall have to ask you to take him to task some time.

MR. SHINK: I'd reduce that by ten. Mr. Detwiller, I desire, though I'm asked to put to you a few questions—I desire first to congratulate you on the very clear explanation of the sales tax laws of British Columbia and more especially on the very clear exposition you have made of the distribution of powers in Canada. I cannot say that I have a working knowledge of your law; I have read it three times and at the conclusion or at the end of every reading, I have come to the conclusion that you have done far better than we have done in Quebec. Therefore, I imagine your task must be all the easier. There are, however, a few points upon which I would like to obtain from you more explanation, and I would mention, first, railway companies; how you tax them with your Sales Tax Act? What things do you tax which are purchased by railway companies? Secondly, I would ask you how do you deal with contractors that have contracted with what is called in law a "lump

sum contract" ? And thirdly, how do you deal with a contractor who has signed a contract, where his remuneration is cost-plus? When you will have dealt with these three subjects, if you are patient enough, I'll have a few more, if time permits.

MR. DETWILLER: The first point was the railways. I think that that problem was probably solved by you people some years ago for us, because when the representatives of the railway companies came to British Columbia when it was apparent that this tax was going into force, they submitted to the Department a proposal whereby all purchases made by these companies across the Dominion, and destined for British Columbia, would have tax paid on their purchases and this would be remitted by the railway companies themselves. Under the Act, it is provided that the railways and all companies engaged in inter-provincial trade be provided with a special prefix which allows them to purchase tangible personal property free of tax, regardless of the fact that some of it may be resold or some of it might be used or consumed by the companies themselves. For example, if in British Columbia, a railway purchased two million dollars worth of ties, which are taxable under our Act, it is very likely that the company would send one and a half million dollars worth of these ties out of the Province. If four hundred thousand dollars worth of ties were to be delivered just inside the Alberta border, lie there for three months, and then one hundred dollars worth of them were moved back to British Columbia, it would be an impossible situation for any taxing authority to try and keep track of the tax on such shipments and what amount was used within this Province. To overcome this problem, the railway companies and certain other corporations engaged in inter-provincial commerce have been provided with this special prefix, and obtain all goods which they purchase in the Province free of tax. The companies then submit the tax on all property which is used or consumed in the Province and on which they have not paid tax from their own central accounting department, under an arrangement very similar to your own.

With reference to the query concerning contractors, first let me deal with those contracts which are let on a fixed fee or lump sum basis. Under the Act, in the case of a contractor operating on a lump sum basis, he is deemed to be the consumer of all merchandise used in executing such work. In view of the fact that when a

person purchases a house under a lump sum contract, he enters into an agreement with his contractor to improve real property to the specifications of the house, he does not buy any tangible personal property, for his contract concerns real property. Therefore, somewhere between the supply yards and the owner who finally purchases the house, the tangible personal property which is used in constructing the house is used or consumed and is taxable under the Act. For example, as long as a shingler holds a shingle in his hand, that is tangible personal property; however, when it is placed on the roof and a nail is driven through it, it becomes attached to the house, which is considered real property and the shingle itself becomes real property. A contractor, then, is deemed to be a consumer of all materials used in a lump sum contract and pays tax on the same when he obtains them from his suppliers.

In the case of a cost plus or time and material contract, the purchaser enters into a contract for the construction of the house, and as he receives a billing which separates the charges for the house into labour and materials, then in this case the contractor is actually selling tangible personal property to a purchaser in the same way as he is charging him separately for the labour involved in constructing the house. In this case the contractor is operating as a vendor selling property, and therefore must register under the Social Security and Municipal Aid Tax Act, apply the tax on materials sold to the purchaser and remit the tax collected to the Government. In either case the same amount of tax is collected, but on the one hand the consumer of the materials is deemed to be the contractor and on the other hand, in the case of the time and material contract, it is the person who purchases or receives the house.

Were there any more questions?

MR. SHINK: Ready for more?

MR. DETWILLER: Certainly, I will do my best.

MR. SHINK: I must correct an impression under which you are with regards the situation in Quebec. We do tax railways in Quebec under the Sales Tax. We tax them in the ratio of ton mileage within the province to total ton mileage.

How do you tax, in British Columbia, under the same Act, lumber companies, for the purchase of tangible property which they use and consume?

MR. DETWILLER: In my paper I mentioned that under the British Columbia statute the tax is applied to manufacturing and industrial concerns slightly differently to the way in which it is applied in the other Provinces having this revenue measure in Canada. In British Columbia, if a large lumbering concern purchases a bulldozer or logging equipment, the company must pay a tax of 3% of the purchase price to the supplier of such property, who collects it and remits the tax to the Government. The full amount of tax is paid in every case on the full amount of the purchase price under the British Columbia statute. I believe that in Quebec, if a lumber company made a purchase of similar equipment and the tax which was due on the whole purchase price amounted to five thousand dollars and the lumber company's domestic sales were 50% of the total sales made by the company, then tax would only be 50% of the total tax applicable on the full purchase price, or, in other words, such a company would only pay \$2,500 to the Government. Is that right?

MR. SHINK: Yes.

MR. DETWILLER: Therefore MR. SHINK: There's a minimum of 33%.

MR. DETWILLER: I see.

MR. SHINK: A minimum of the tax, the tax will always be paid at least in the proportion of one-third.

MR. DETWILLER: I am afraid that in British Columbia as we have so many concerns engaged in the export business, that if we allowed consideration such as that given in Quebec, our revenue would be very seriously affected. For example, I should imagine that close to 90% of the production of the pulp and paper industry is exported from the Province. This would mean that only 10% of the tax which could be levied on the purchase price of equipment paid by such a concern would be payable to the Government in British Columbia. The tax is paid on the total purchase price and the full amount of tax is remitted in every case.

MR. SHINK: Mr. Chairman, I would suggest that we hear the other speakers on the programme before we ask further questions.

MR. ILIEFE: Gentlemen, the next address, or commentary upon Mr. Detwiller's address, will be that of Dr. Richards Petrie,

Professor of Economics and Political Science of the University of New Brunswick. Dr. Petrie was born and raised in the Province which he now serves. He obtained his B.A. and Master's Degrees at Acadia and studied law at Dalhousie—pardon me, but I seem to have made a detour in my notes and to be well into Nova Scotia at the present time. (Laughter).

MR. C. S. RICHARDSON, MONTREAL: Acadia has acquired a very distinguished alumnus. (Laughter).

MR. ILIFFE: They have, that's quite true. Dr. Petrie graduated from the University of New Brunswick and did post-graduate work at Chicago and McGill Universities. I apologize sincerely for my error.

I assume that Dr. Petrie will approach the Sales Tax problem from the point of view of the economist. So far we have heard the opinions of administrators of the taxing Acts; I personally shall be pleased to hear an economist's reaction. Dr. Petrie, please.

DR. J. RICHARDS PETRIE: Mr. Chairman, gentlemen—first of all I want to thank the Programme Committee very much indeed for asking me to come here to this lovely city of Quebec and take part in discussions on this particular topic. There are one or two things I'd like to get clear, however, before I get into it. The Chairman referred to this panel as "gentlemen" once or twice, and called us experts. Well, I want to speak for myself—I am not an expert and many of my acquaintances, I think, doubt whether I am a gentleman. (Laughter). I am a Maritimer, and we Maritimers have a reputation of being dour. I think that dourness is a direct derivative of our poverty, and I am going to be dour today.

I am filled with admiration for Mr. Detwiller's paper; I think it is an excellent paper. I don't agree with it, and I hope he won't take anything personal that I may say about it.

Before I come to specific points, I think it is well to put any audience on notice as to a person's particular prejudices. I didn't want to say anything this morning because there were other people better equipped to discuss this business of education than I am, but I have a very profound belief in what we should be doing in our educational programme for public administration and for citizenship. We should be attacking the problems of our society from a philosophical viewpoint. Nobody used the word "phil-

osophy" this morning, as such, but it was talked around. I have come to the state of my existence where I believe that we all should know in what we believe and why we believe it and then, be prepared to fight for it, having told other people in what we believe. I am going to tell you now in what I believe about sales taxes. And, as I say, it springs from a certain fundamental philosophy, social philosophy, if you want to call it that.

I approach taxation not as a science but rather as an art, and usually when I sit down to think about taxation, I reach to the shelf nearest to my desk in my university where I have a favourite book: it's called "Alice in Wonderland". When we think in terms of the scramble for revenues in this country among the Federal, Provincial and Municipal taxing authorities, I am always reminded of Lewis Carroll's little jingle:

"He thought he saw a banker's clerk descending from the bus,
He looked again and saw it was a hippopotamus;
If this should stay to dine with us, he said,
There won't be much for us!"

Now that's what the provinces feel, I think, and in turn, the municipalities feel it.

Taxes of course are paid by consumers in one way or another, because we are all consumers. I approach the problem of taxation in accordance with an almost indefinable concept of social justice and it leads me as an academician and a person engaged in theoretical pondering to some sort of an ideal that we should tax in accordance with ability to pay taxes. And that leads one almost automatically to what most students would agree is the best yardstick of ability, that is income, not expenditure. The trouble is with income is that it is a hard thing to define and it is a hard thing to measure, and I am fond of using this old cliché now that we have a yardstick but we can't read the scale on it when we try to measure income.

Well, with that fundamental approach that we should tax in accordance with ability, we should as far as possible levy our taxes in accordance with income, net income, not in accordance with what is spent. You find somewhere along the line, I am afraid, that your ideals have to get compromised because of the necessity of being practical. It is quite apparent that the public of this country didn't

want any higher income taxes; that's why they were reduced. It is quite apparent that we need more and more money, as governmental expenditures rise and keep rising with the ever-expanding services that government is expected to give. So that somewhere along the line you find yourself, or I find myself, driven into a corner. I say repeatedly, I don't like sales taxes because sales taxes are regressive.

Then, somebody says: But we have to have so much money for the Province of Quebec, the Province of Ontario or Prince Edward Island. We can't get it from the income tax because that is all fixed up—now what do we do?

I put the sales tax at the very bottom of the list in terms of any discussion of equity. I admire Mr. Detwiller's attempt to rationalize his sales tax by saying that indeed it might not even be regressive after these exemptions have been made; it might have some degree of progressivity to it, but I don't believe it. It is a good effort, though. (Laughter).

I think there is only one rational approach, only one reason for imposing a retail sales tax at the provincial and/or municipal level and that is because it really gets money. It's one of the splendid sources of revenue. So that, I suppose I have to go along: I have only one vote in my province; and I'll vote against the sales tax, if they want to put one on, but I'll lose probably. And the gossip in New Brunswick currently is that there may be, indeed, be the kind of a tax that B.C. has and that Quebec has imposed there, because revenue requirements are rising there as they are elsewhere. But I don't know, being outside the administration.

But if we do it, if we have to put it on, I hope that very great care will be given to the range of exemptions. Mr. Detwiller was talking about the exempting of necessities of life, making the tax less regressive, but I can't define a necessity. Everything is necessary if you get used to it; and the trouble is that we people who, in the class rooms and in the ivory towers, start talking about these things as necessities and those things as luxuries soon lose the thread. What we're doing, when we exempt necessities and tax luxuries, is imposing taxes on commodities that the poor shouldn't buy but do, such as electric ice refrigerators, radios, and even automobiles. I am always baffled as to where you draw the line. But I think as a

starting point you must exempt all foodstuffs. The trouble is that the broader your exemption base, the less revenue you get.

The tax not only is regressive, despite whatever you do in terms of basic exemptions, because the dollars spent by the man in the lowest income bracket represents a great deal more sacrifice, maybe, than ten times that dollar spent by the fellows in the higher brackets, and I'll argue that with anybody. But when the tax is imposed upon capital goods that are used in industry it becomes a tax on costs, and I don't like taxes on costs either; that ties in with my fundamental philosophy.

I don't want to take up too much time, but I do want to get at this constitutionality one. I am not a lawyer, although I was exposed to several years of legal training so that I could understand what the tax law was about. One of the worst things that ever happened to this country was the use of direct and indirect taxation as read into our B.N.A. Act, and the second worst thing, I think, that happened, I say that's the worst thing from the point of view of revenue and finance; the second worst thing that happened was when the judicial committee lifted poor old John Stuart Mill's definition and read it into the record. If the old man had known what was going to happen to that one, I'll bet you he wouldn't have put it in his text book, because it has cluttered up the whole area, in my view, of taxation and the power to tax in this country.

I was aghast when I came home to Canada from the United States knowing nothing about Canadian taxation, but determined to learn something about it. I was aghast, when I started to get into the constitutional muddle. And the quickest way for me to have learned it, I suppose, was to study the death duties. So I studied the death duties and I studied the legislation as well as the judicial interpretation of that legislation, and the Quebec legislation was the one I started with. I found out that they'd pass an Act, and it would get knocked out, so they'd rewrite it and then part of it would get knocked out, then they'd keep rewriting it, until finally they'd get one that stood up to do via the back door what they couldn't through the front door, and when the back door was locked, they went in through the cellar windows, and then all the provinces did the same thing. In other words, when you have a tax within the province, you tax property under an estates tax. You couldn't get the property if it was outside the province so then

you had to get a tax on transmissions, successions, so you could get everything. All the provinces did it and we had a fine mess. The legal profession got rich on it. (Laughter).

Now having got through all that and hoping that we had it over with, with the death duties being put up at the federal level, now I find that we are going through the same sort of a business in connection with sales taxation. Now we need a reconciliation, it seems to me, of the economic and the legal viewpoints. The legal viewpoint on what is a direct tax is abundantly clear, made clear by the judiciary of this country and of the United Kingdom. I still think, as an economist, I know when a tax is direct and when it isn't. But my definitions won't tie in with the definitions of the courts. So what we do now is employ a tax and we get best counsel we can buy and if we can only word the statute in the right way, we can almost tax anything in the province. Now I am speaking as a layman, and the legal profession will probably take me apart on that. But, after all, when I read the wording, the very careful wording, of these statutes, I come to the conclusion that the limit to provincial taxation is only the natural limit to the ingenuity of the legal profession to draft an act which will stand up in the courts. I don't believe—this is my view as a layman—that the New Brunswick Tobacco Tax Act, in entirety, is *intra vires*. And one time, I was in pretty good company, because the Chief Justice of the Canadian Supreme Court and one of his colleagues dissented in the Atlantic Smoke Shop Case and said that the whole Act was *ultra vires*. Of course, theirs were the minority viewpoint.

I don't mind so much; I suppose you have to get reconciled to revenue requirements. I don't mind so much if we have to tax retail sales. But let's not say, "Oh well, it isn't a sales tax—made a mistake, shouldn't have said retail sales, we tax the consumer". We are always worrying about the phraseology; it is a sales tax whatever you call it, surely.

I think we should have a constitutional amendment and get rid of all this nonsense, legal fiction, and the provinces should be given the right to tax in all respects, save that kind of taxation that interferes with inter-provincial trade and commerce and which would tend to impose Customs duties on goods imported. Everything else we should have the right to tax. That would clean the decks at least, in my view, and we'd stop all this nonsense about worrying about a word.

Again I don't want to be critical of Mr. Detwiller, but once he called it a sales tax and then he got around that and it became a tax on a consumption or a tax on a person consuming. I feel sorry that he has to do that. (Laughter).

But there is one thing, Mr. Chairman, before I leave, that I want to make abundantly clear. It is this devious thing we call a Use Tax. The situs of a sale outside the province is outside the province. You wouldn't get to first base with the judicial committee trying to impose a tax on that sale. So what do you do? You call it a Use Tax, and when a poor fellow brings a commodity into the province, then you hit him; you say "this is not a tax on the sale at all, this is a tax on the use".

Again, I'm probably just a country boy and too naive to be in this league, but I still don't see any sense to it. Furthermore, I think it has serious economic implications for the nation if we come to the point, as well we may, where all ten provinces are levying sales taxes on top of an 8% Federal sales tax. And we have this Use Tax business so that the fellow who buys an automobile in Oshawa and pays, let's say, a provincial sales tax of 2 or 3% in Ontario and he lives in Montreal and drives it down, and then they catch him there; it becomes a pretty heavy burden. The worst feature of it, apart from that, is the inequity, because you administrative fellows can only catch the stuff that's registered—just try to stop me from bringing in cigarettes. You don't try anyway, because it would cost you too much. I wonder how many people in the Province of Alberta or the Province of British Columbia or Saskatchewan or Quebec who have brought a radio in from another province have declared that purchase and paid the Use Tax. I suspect that the avoidance is very high. In respect of New Brunswick's effort in section 5 of the New Brunswick Tobacco Tax Act, I never heard of them collecting a tax on anybody who brought in cigarettes to smoke in New Brunswick; they don't attempt it. So that you discriminate against that unfortunate type of durable consumer goods which happens to have to have a licence and the whole range of other commodities are likely to escape. I can't speak with authority because again I'm not an administrator, I'm a poor professor. But I suspect, that there is wide scale avoidance and there's a basic inequity there that I don't like, again going back to my philosophy of justice.

The complications of the definition of "retail sale" have been admirably discussed and many of the technicalities have been well covered. I am not going to take any more time because I am certain that many of these technical phases will come out. I thought it might be useful if I came up here and just started to talk about a little philosophy and see if I couldn't get somebody angry enough to want to do something about it. Thanks very much. (Laughter and applause).

MR. ILIFPE: Gentlemen, I think that at this point I should ask Mr. Shink if he wishes, immediately, to file any rebuttal to the last submission, because I believe Mr. Shink reserved the right to take the floor again.

MR. SHINK: With due respect to Dr. Petrie, the reply is very easy. His statements are all against the taxes, especially the sales taxes. We are all against taxation; in the bottom of our hearts, we are all against taxation, but if you give some deep thought to the amount of taxes you pay to a state, you will realize that you are simply doing your duty in allowing that state to fulfil its aims and objects.

If you belong to a club and your membership fee is only a \$2.00 annual membership fee, surely that club can not do very much for its members. But if you do pay a membership fee that is a substantial one, surely the treasurer of that club and the executives can certainly do something in return for the members. Alike for the states: in this country, in this province, for instance, the province, if I look at its past, I find that the province has not taxed its subjects sufficiently, in order to improve matters. The province now is taxing much more than it did in the past. With the amount of revenue which these taxes produce, the province is now able to aid its population in all fields of activity: education, roads, etc.

Now, Dr. Petrie, with force and with talent, has decried the way provinces have to do certain things in order to obtain, justly and legally, a certain amount of revenue. That is due to our constitution, and we do not decry our constitution; we stand by our constitution. Our constitution has been brought about freely, after free discussions. The provinces have, themselves, agreed that they would only impose a direct tax. Now, would it be just that, having that right of imposing direct taxes, we tax an inhabitant of this province when he buys an automobile within the province, and we

would not tax his neighbor if he went to the state of Maine and bought an automobile there? Would it be just? I think that the answer is "No". What do we do? We follow the decisions of the Privy Council, for after all, they set down the last word in the construction of laws. The Privy Council has said, as the courts in the United States have declared, that you cannot interfere in intra-commerce. We cannot interfere in the commerce and trade of the other provinces. But the Privy Council has declared as far back as 1887 that the provinces can tax directly, any man who is legally present in the province of Quebec. Therefore, if your neighbor in the province of Quebec goes to the State of Maine and buys an automobile there, brings his automobile into the Province of Quebec, this province has the right, according to this decision of 1887, confirmed several times since, this province has the right to state to that man: "You intend using an automobile in this province; you will pay the same tax as your neighbor who has bought within the province an automobile upon which he has paid the sales tax." That is why, in the U.S., in most of the states that have a sales tax, they have two taxes: one to complement the other. We, in Canada, I don't know about Saskatchewan, but I heard the speaker of this afternoon state that they have embodied that right of the State within the one law, as we have done in the Province of Quebec. I think I have given you my views on the subject.

Now, the Fathers of Confederation, having decided about our Constitution, have determined the rights of the Dominion and determined the rights of the Provinces. These rights do not override one another; they spring from the same source and that is a sovereign authority. Both jurisdictions are supreme in their sphere. And it has been decided in a case where the Province of Quebec, not purposely, but was really overriding the Dominion in a certain sphere, the Privy Council has decided that though the Province of Quebec had the right to tax directly, that it could not tax directly to such an extent that it would push away the other jurisdiction. In other words, the Privy Council, the highest authority, has construed the Constitution to the effect that each jurisdiction must have regard to the rights of the other. If I've got a right with you to occupy a certain building I must allow you to occupy that building, jointly and together with me. I can't occupy all of it and push you away. If you have rights in that building, I must respect your

rights: the same, with regards the two jurisdictions, provincial and federal. (Applause).

MR. ILIFFE: Thank you very much, Mr. Shink. Gentlemen, it seems that with the interjection of another school of thought we now have a marked difference of opinion as to whether or not individual incomes should be exposed to taxation both when they are received and when they are spent, or, once only. When we who are financially minded find that differences of opinion exist, it is customary to seek legal advice. We now have the happy opportunity to turn to Mr. C. S. Richardson, K.C., of the firm of Montgomery, McMichael and Company, of Montreal. Mr. Richardson was born in Sydney, Nova Scotia. He received his academic training at Acadia, and studied law at Dalhousie University. He first practised law in Nova Scotia and was ultimately counsel to the Duncan Coal Commission. Following that, in 1926, he moved to Montreal as a partner in his present firm, and now specializes in corporation and other tax law. Perhaps Mr. Richardson can help us to reconcile the two points of view which have been expressed by our previous speakers. Mr. Richardson.

MR. C. S. RICHARDSON: Mr. Chairman, I wonder whether with your permission, even at this late hour, and as I don't expect to speak for any extended period, the gentlemen might like to rise, stretch themselves and have some fresh air.

— Intermission —

MR. ILIFFE: If you are ready, gentlemen, I think we should proceed; time is slipping on.

MR. RICHARDSON: Thank you very much, Mr. Chairman. The reason I suggested, with the Chairman's permission, that the air be somewhat cleared was not with respect to my good friend, Dr. Petrie, who has graduated into the ranks of Acadia alumni, or the preceding speakers for, knowing myself better than any of them, even though I like them all, I realize with what degree of hot air the room can now be filled for the next few minutes. (Laughter). First of all, Mr. Chairman, and I want to take only five or six minutes because I guess that is about all I can stand under the barrage of Dr. Petrie over here, may I say how delighted I am, speaking not as a taxpayer, which is my role in a minute or two, but as

a member of the legal profession, in being with you at this first Annual Conference of the Institute of Public Administration.

The Canadian Bar Association, of one of whose committees I happen to be the Chairman, has just had its Convention out West, after a history relatively short, certainly compared with the American Bar Association—from about 1917. Those who are older than I in the profession have told me with what feelings of misgiving some members of the Canadian Bar from various provinces had about the future of the Canadian Bar Association when it started, and for a few years there was a great deal of feeling that perhaps the Bar Association might not live in Canada as a national entity. But today, and for the last few years it has become a strong and virile organization and perhaps is one of the most interesting vehicles in Canadian life today for bringing about that great degree of Canadian unity that we, whether in the Maritimes with all the problems or in Central Canada with all the wealth, or in Western Canada with all the virility, wish to hope for this great nation. (Laughter). Therefore, as a taxpayer, as a member of the Bar, I would like to express on behalf of the Bar Association which would wish me so to do, congratulations to your Institute, congratulations to your public administrators, at all levels, Dominion, Provincial and Municipal, for having seen the wisdom of getting together an Institute of this character and with the force that has been so well evidenced at the *meetings today. You are on the way*, I should think, to an exceedingly bright future and to make a significant contribution to the life of Canada.

As I may have little to contribute to a group like this I take some comfort in the fact that my firm has made only recently rather significant contributions to the field in which you gentlemen are particularly interested. One of our senior partners was Warwick Chipman, who is now Ambassador of Canada to India and previously filled similar posts in Chile and the Argentine. Our firm made within the last few years a contribution in the person of Orville S. Tyndale as Chancellor of that great university, McGill, and more recently Bud Drury as the Deputy Minister of Defence. Therefore, if I have added nothing to your deliberations, I do take some consolation in that these distinguished men with whom I was privileged to work in close professional association are now working in fields allied to the Institute of Public Administration. Somebody was

discussing this morning which is the older in the life of the world, public administrators, as such, or members of the legal profession. The discussion waxed somewhat warm. Mr. Chairman, and most of the gentlemen of the group that were discussing it said it was the public administrators because, when the world was evolving, it must have been a public administrator who brought order out of chaos, but I said, "But after all, who do you think brought the chaos?" (Laughter). I suggest still the legal profession is the older. (Laughter).

I can speak, Mr. Chairman, as a member of the legal profession on this topic of Provincial Sales Tax. You have indicated to me, though, you would prefer some discussion from the point of view of the taxpayer. I was glad to hear my good friend, George Shink, in rebuttal to Dr. Petrie, say, essentially, taxpayers don't want any taxes at all, and if you want to start from that premise, that's an excellent one. But, as the chairman of the Board of Directors of the Welfare Federation of Montreal, which has a modest budget, compared to all the figures you gentlemen throw around, of only \$2,500,000, for a relatively small English-speaking community of about 250,000 people, I would wish a great deal of money to come for welfare work, but I know I can't get it except out of the pockets of the citizens, whether they be citizens of a municipality, like Montreal, or the Province of Quebec, or the Dominion of Canada. And, although in British Columbia welfare work is helped by sales taxes, as Mr. Detwiller has so well observed, to whom I would like to pay my own sincere and very humble and genuine tribute to the tremendous amount of research and work evidenced by his excellent paper, I know we are all indebted to him (Applause), I rather got the idea that British Columbia had even made progress upon the Quebec Retail Sales Tax Act which came into force some years ago. Here in the Province of Quebec, they have merely said, "Well, to hang with the taxpayer." Out in British Columbia, they have gone to the modern idea of using complicated recording machines and electrocuting him. (Laughter). As a matter of fact, I can speak as a real taxpayer more than anybody here, I think, not because of the affluence of the profession to which Dr. Petrie referred, but simply because of my domicile being in the City of Montreal. Some-years ago it was my great pleasure to have a Dominion Income Tax, a Provincial Income Tax and a City of Montreal Income Tax, and now it is my extreme happiness to have a Dominion sales tax, a

Provincial sales Tax, City of Montreal sales tax, and since April 1st, most appropriately named, an educational tax of 1% in the City of Montreal. So, therefore, I speak with some sensitivity from a taxpayer's point of view. (Laughter).

Now, Mr. Chairman, you don't expect me to give a learned discussion on the law. I was not offered any fee for coming here this afternoon (laughter) and, frankly, I don't expect to get any, but it would ill become me in the eyes of my senior partners or of my brethren of the law, if I didn't, as perhaps the only one at this Institute, take the book in hand and literally throw it at you. If our institutions of democracy mean what they should mean, that there should be an opportunity for not only Mr. Detwiller, able though his dissertation was, and George Shink and Dr. Petrie, interesting and effective though they have been, and the present speaker and the one who is to follow—but for members on that side of the table to speak, particularly upon a subject like this. So just to put the setting, and I shall have finished, I'd like you to hear a very short part of the judgment of the Privy Council in the Atlantic Smoke Stores case, already referred to, and in which my partner, Warwick Chipman, was one of the leading counsel for the company. I'll read part of Viscount Simon's judgment and then leave with you, Mr. Chairman, and the group here, three questions. And I do so with great respect to the main speaker this afternoon who, quite appropriately enough, from the point of view of his own Act, spoke with a certain degree of dogmatic authority. But the learned Lord said:

"A striking difference of opinion has disclosed itself in the Canadian courts as to the validity of the taxing legislation. In the Supreme Court of New Brunswick the Chief Justice and his two colleagues, Grimmer and Richards (the friend of whom Dr. Petrie spoke a few minutes ago) held that the tax was valid. Applying the definition of a direct tax which was used by Lord Hobhouse in *Bank of Toronto vs. Lambe*, and which is derived from John Stuart Mill's 'Principles of Political Economy' as 'one which is demanded from the very persons who it is intended or desired should pay it', they held that the tax in all its forms was a direct tax and within the power of the provincial legislature to impose. On appeal to the Supreme Court of Canada, conflicting views were expressed, and these need to be carefully analyzed. On the first and main form of the

tax, Duff, the Chief Justice, and Davis held that the tax was not direct. The Chief Justice considered that the tax was a tax on tobacco in respect to the commercial dealing between the retail vendor and the purchaser. He says that 'the payment of the tax is not only a condition of legal purchase; it is an integral element in the transaction of sale and purchase passing from the purchaser to the vendor as part of the price to the purchaser'. In effect, the argument is that this is a sales tax and that, being a sales tax, it is necessarily indirect. Rinfret and Crockett of the Canadian Supreme Court maintained the opposite view, and agreed with the judgment of the Supreme Court of New Brunswick that the tax in all its forms was *intra vires*. Kerwin (as if he wasn't to be in one camp or the other) took up an intermediate position. He considered that the tax in the form (a) was valid but that the attempt to impose a tax on an agent failed as being indirect taxation. He further held that the tax in the forms (c) and (d) was also invalid as being an infringement of Section 121 of The British North America Act. Hudson held that the tax was valid, save so far as it imposed a liability on an agent, i.e., that (a) and (c) were valid, but that (b) and (d) were not. (He takes the middle of the road course) and Taschereau J. took the same view. In the result, therefore, the majority of the Supreme Court of Canada (a rather learned body) decided that the tax in the forms (a) and (d) was valid but that it was invalid in the forms (b) and (c), since these latter forms involved taxation of an agent, whereas the burden of the taxation would fall upon his principal."

Now with that, I leave three questions for the consideration of your Institute, probably none, and certainly not all of which will be answered this afternoon. No. 1—In 1949, should Mill's definition of a "direct tax" be upheld and stand? No. 2—In 1949, should Sections 91 and 92 as drafted and promulgated as of July 1st, 1867, still stand? And No. 3—relevant to Dr. Petrie's point—Are we, out of the pockets of the taxpayer, whom I represent, modestly now, going to take all of our taxation as it comes in or as it goes out, or partly in one form or partly in the other? Within the time allotted to me, Mr. Chairman, I cannot answer these questions, I can only leave them for consideration of the members at this and

subsequent meetings of this Institute. And with that, and in keen anticipation, I, as they would say every four years among our great neighbors to the South, yield the floor to California. (Applause).

MR. ILIFFE: May I now call upon the last speaker on this afternoon's programme, Mr. Dixwell L. Pierce, Secretary of the State Board of Equalization of the State of California. Our President, this morning, introduced Mr. Pierce to us and he needs no further introduction at the present time. I would like to mention, however, that the State Board of Equalization of California functions very effectively both in the field of research and in the field of tax administration. Mr. Pierce, please.

MR. DIXWELL L. PIERCE: Mr. Chairman and Members of the Institute. It would be interesting to attempt to answer Mr. Richardson's questions, but, as a mere outlander, I shall not be so brash. Perhaps the last question, however, will permit of some answer by a person from the States. I dare say that it is quite reasonable to forecast that the governments will continue to take money from taxpayers in large quantities through the use of a variety of methods. That is because people expect so much of their governments today, as so ably explained by Mr. Shink at an earlier session.

The same forms of taxation that proved adequate in the past no longer meet the bill today. We must accustom ourselves to the circumstances that here and in the United States governments of all types will continue to demand more and more from us who raise the revenues. They do this in response to increasing demands of the people for governmental services. To the extent that the government can do these things better than they can be done privately, this may not be a bad development, unless we stray too far from the splendid thought that Dr. Walters left with us this morning when he was quoting from Abraham Lincoln. We must, of course, guard against that degree of paternalism that will tend to make the citizen expect the government to solve all of its problems, both fiscal and physical.

If I may borrow from the musical comedy, "Oklahoma", it appears that in California we have gone "about as far as we can go" in the rather remarkable system of old age pensions recently adopted there. There is a proposition on the ballot in California next month which, if adopted, will correct to some degree the indis-

cretions to which we have committed ourselves, financially speaking. Possibly our difficulties may be said to stem from the undesirable effects of the initiative process by which this legislation became a part of our law. In the fiscal field the deliberation which accompanies the normal legislative processes affords protection from extremes that seem to characterize initiative proposals which are drafted by those who have "axes to grind". Without depriving the people of the right to govern themselves, we may well give consideration to the need for caution in the unrestricted use of the initiative in the field of governmental finance.

Mr. Shink has answered Dr. Petrie's criticism of the sales tax far better than I could, but I should like to quote some California statistics to demonstrate why it would not be feasible for us to raise as much money as we do there strictly on a net income basis. As Mr. Richardson has so well pointed out, in your country and mine we have a system of dual sovereignty which is productive of administrative difficulties but affords a sound basis for our democratic institutions. It means, of course, that both the National and State Governments are operating in the same tax fields, with the same taxpayers. What we do in the taxation of our citizens must be done with due regard to what the National Government does.

Since 1913, when the United States Constitution was amended to provide for Federal income taxes, our National Government has come to rely quite heavily upon such taxes, both on corporations and individuals, for its revenues. The amount of money raised in this way has increased with startling rapidity. In the middle '20s and early '30s when we made charts of the California tax dollar it resembled a pie that had been divided into three more-or-less equal pieces. One piece represented the Federal part of the tax dollar, another was the State's and the third was that of local government. Alas! The dollar looks that way no more.

Despite the fact that our State and local expenditures are considerably higher than they used to be, the tax dollar is now about three-quarter Federal and the remaining quarter is shared not quite equally between the State and local governments. Most of this revenue raised by the Federal Government is derived from income taxes. Only in the property tax field, where Constitutional limitations exclude it as a practical matter, has the Federal Government left the tax sources definitely undisturbed. In nearly every other

field we find a rather distressing degree of overlapping which the State must take into account when it levies its taxes.

Because of the heavy Federal income taxes in California, our State income taxes there must remain relatively low. We have individual taxes up to 6% and corporation taxes of 4%. These rates are low, but in general the states feel that it would be indiscreet to attempt higher ones. In the United States there is what might be described as interstate competition in tax matters, and any attempt to go beyond the rates generally imposed may be expected to react unfavorably on the State's economy. We have a fine climate in California, where we should like to attract and retain people of means who will help in the development of our splendid natural resources. High rates upon their net incomes might influence them, mistakenly of course, to believe that they would like living in Florida better.

Higher tax rates do not always result in proportionately higher public revenues. Taxation is an intensely practical matter. Currently, we are deriving around 60 million dollars annually through State taxes on the net incomes of our residents and possibly another 80 million each year from corporate taxes measured by net income. Our 3% State sales tax will yield some 350 million dollars during the same annual period. If we were to attempt to produce this 350 million dollars from our income taxes it is obvious that the rates would be so excessive as to be confiscatory. Particularly is this true when we take into account the substantial amount already paid by our citizens to the Federal Government in the form of taxes on their net incomes. There is much to be said as to the practical value of a sales tax from the standpoint of raising substantial revenues for State purposes when the Federal Government is already utilizing the income tax field so extensively.

A practical approach suggests that the large sums of money that we seem to require for government today must be raised from various sources. I am inclined to agree with Dr. Petrie that it would be a very bad thing indeed to rely mainly for the revenues in California on a sales tax. The effect of such taxation would be regressive and unfair to the less fortunate members of our community; In contrast, if we should abandon the sales tax entirely the task of raising 350 million dollars annually from net income taxes would be insuperable. It is simply impractical under existing con-

ditions to shift so much load to net income taxation. Nor is it necessary to do so in order to avoid excessive burdens on those least able to pay them.

As Mr. Detwiller has said in his paper, the effect of sales taxes on the economy must be gauged in the light of the entire tax burden on the community. If taxpayers in British Columbia and California made most of their contribution toward the cost of government in the form of sales taxes, we might be justly subject to the strictures that Dr. Petrie has urged against this type of taxation. What actually happens in California is that most of the revenue raised by the Federal Government there is from net income taxes, that there are heavy property taxes and a great variety of special levies, so that, substantial as it is, the amount of money paid by Californians in the form of a general sales tax represents only a relatively small part of their total payments for the cost of government. I submit that any commonwealth which raises no greater part of its total tax dollar by sales taxes than is raised in California is not indulging in a type of public finance that is truly regressive in its effect upon the people.

I am happy to know that Dr. Petrie turns to Lewis Carroll in moments of stress. I find him helpful myself. A few years ago when endeavoring to analyze "value" for tax purposes I recalled that Professor Bonbright in his two-volume work on the valuation of property began with this quotation from Humpty Dumpty: "When I use a word, it means exactly what I want it to mean, nothing more and nothing less." Perhaps you will recall, Dr. Petrie, that Alice responded: "The trouble is, how can one word have so many different meanings?" So, perhaps, it is with the word "regressive".

Another quotation from Lewis Carroll is, I think, appropriate in connection with our revenue situation. You will remember that Alice and the White Queen had been sitting under a tree when all of a sudden the Queen took Alice by the hand and said, "Come, we must run". Alice didn't know why and she didn't have time to ask because they started to run so fast. Finally she managed to get a little breath and asked where they were going, since she saw that the surrounding territory looked much as it had when they had started to run. The Queen replied that they were merely running to stay where they were. Alice observed that in her country if one ran that fast for a while he would get somewhere. To this the

Queen responded, "A queer sort of a country", so finally Alice asked, "Well, if you did want to get somewhere, what would you have to do?" The Queen said, "You would have to run twice as fast." So it is in the revenue situation. Perhaps, instead of inveighing against sales taxes at the rates now imposed, the economists of tomorrow will speak in mournful tones of the times when these taxes were only that little. We must recognize that there are unremitting demands upon government which must be met, and that as these demands increase every effort should be made to improve the efficiency of our tax administration, to the end at least that the tax laws operate as they were intended to operate by those who passed them.

The steps that Mr. Detwiller has described in the checking of the self-assessments made by the retailers in British Columbia are, I believe, the basis for successful sales tax administration. It is essential that the administrator do his best to assure that all retailers respond alike to the tax. We have found in California that, while many of the retailers are extremely careful in their returns, others are not.

It is, I submit, unfair (a) to the retailers who are careful and who have to compete with those who are not, and (b) to the consumers who pay tax reimbursement to the retailers in any event, if the careless ones are not required to pay the full amount of their taxes into the State Treasury. Our objective has been, through the years, to endeavor to develop within our organization an audit force which would be adequate to make a fairly careful check of the retailers to determine whether or not they are paying all that the law expects them to pay with respect to their retail sales. My impression is that here in Canada, while excellent beginnings have been made in the Provinces with respect to audits, you will need to develop your audit staffs and procedures extensively if you are to be assured that you are getting all the revenue that may reasonably be expected from your sales or consumer taxes.

In California, where we have something over 275,000 sales tax accounts, with a total population in excess of 10 million, we employ a field audit staff of more than 900. These auditors completed more than 46,000 reports in the last fiscal year, indicating deficiencies in excess of \$7,950,000. Moreover, the indirect effect of this type of

audit work on the accuracy of the unaudited returns must be substantial indeed.

We are limited normally to making additional determinations that go back over a period not exceeding three years. So far as possible we should like to have our audits sufficiently current to avoid occasion for assessments that represent an accumulation of several years' liability, as the economic impact upon a retailer who may have been under-reporting to a substantial extent may be disastrous. One of the objects of the audit procedure should be to acquaint the retailers with the proper method for reporting so that their entire sales tax obligations may be paid currently.

Another feature of sales tax administration that involves the necessity for a substantial field staff is the large turnover in accounts. These "close-outs" frequently require attention from the auditors to avoid loss of revenue. Although, generally speaking, the accounts that change so rapidly are not the larger ones, from which most of the sales tax revenue is derived, in the aggregate they represent a substantial part of the tax payments.

Consequently, I would like to urge upon all of you concerned with sales tax administration the desirability of having an adequate audit force to assure that sales or consumer tax returns made by your retailers are reasonably correct. Our experience in California establishes beyond doubt that an audit program will yield much more revenue than it costs. Just how much more will depend, of course, upon a number of variables. If only those accounts are selected that give promise of the most recovery, the rate of return will be high indeed. With a larger staff making a wider coverage the recovery rate will be less, but it will still be substantial. Computations made for the nine months ended March 31, 1949, show an average recovery in California of \$8.68 per audit hour. The costs were, of course, much less, and there are the indirect benefits to which I have alluded.

Our sales tax began in August, 1933. The fact that it has been in effect that long makes a difference in the administrative problems. Our retailers have had an opportunity to become accustomed to the tax. Then, too, there is the educational value of the audit programme. As the audits are conducted the retailers realize that their reports are subject to check. Moreover, they become acquainted with features of the law that they may have overlooked in making

their returns. On the whole, we have had very excellent co-operation from California retailers as a result of our field audits.

This co-operation places upon us a correlative obligation. Although the auditors naturally like to show a high return for their effort, we have endeavored to impress upon them that we are concerned with the accuracy of the self-assessments and do not want to exact additional taxes unless it is clearly established that they are due. This type of administration, I am convinced, will pay the greatest dividends to the State in the long run.

Our administrative expenses in California are by no means the lowest in comparison with the revenue produced, but neither are they excessively high. Our costs have never exceeded 3% of the revenue, and now are barely 2%. It is probably delusive to talk in terms of percentages of costs to total revenue in judging the efficiency of tax administration. What is important is to cover the field with reasonable thoroughness, thus assuring that the taxes do substantially what they are intended to do in spreading the costs of government. Any less thorough administration is, I submit, unfair to retailers who report their tax obligations accurately but are compelled to compete with those who do not. Moreover, it is unfair to the consumers who pay prices calculated to reimburse sellers for the taxes due with respect to the transactions by which property is acquired but who have no assurance that the amounts thus added to the prices of the merchandise actually reach the public treasury.

In several jurisdictions, it has been the practice to reimburse retailers for the expense to which they are put in handling sales taxes. Ordinarily, this is done by permitting them to deduct from the amounts they would owe otherwise to the government a percentage which is often larger than the total administrative cost. Without doubt, sales taxes do involve added expense to retailers, but so do all forms of taxes that they are called upon to pay. It would seem wiser to confine deductions made from the tax proceeds to amounts withdrawn for actual administrative expense to assure that the tax is paid by all who are expected to pay it.

Those of you who were at the National Tax Conference recently in Boston will recall a discussion there in which Mr. Vincent Kennedy, Managing Director of the California Retailers' Association, took part. He expressed a point of view that is, I believe, prevalent among the retailers; they feel that they benefit from the

sales tax through the relief it affords from the pressure for revenues in other forms that might bear more heavily upon retailers than do sales taxes. For example, if we did not rely upon sales taxes in California we should probably have to have higher property taxes than we do now. These would be a substantial item in the tax payments of retailers who occupy valuable real estate and who own large inventories of goods.

In our State, then, retailers have been paying the sales tax without expecting any contribution from the State for whatever expense may be involved in adding sales tax reimbursement to the prices at which they would otherwise sell their goods. This is not altruism; it is an enlightened attitude toward civic duty. California retailers do not enjoy paying taxes. They would enjoy being paid to pay them. But they know that forms of taxation which the sales tax replaces, at least in part, might bear more heavily on them than does the sales tax. Hence, they willingly make their contribution to the success of the sales tax by paying to the State the entire amount thereof passed on to the buying public without deduction for their own expense in connection with the tax.

Possibly we may draw from the wisdom of Gilbert and Sullivan, who, in "The Gondoliers" had the characters sing of a solution to a complicated problem in this way:

"In a contemplative fashion and in a tranquil frame of mind,
Free from every kind of passion, some solution let us find;
Let us grasp the situation, solve the complicated plot;
Quiet, calm deliberation disentangles every knot."

(Applause).

MR. ILIFFE: Thank you very much, Mr. Pierce. Gentlemen, time, like Alice and the Queen, is running away from us very, very fast. Notwithstanding the fact that our speakers said they would be quite prepared to answer any and all questions, and notwithstanding the fact that I passed that information along to you, I think that I shall exercise a Chairman's prerogative by saying "No questions". Each of the participants in this afternoon's discussion listened most attentively to the remarks of the other and each gave us an admirable and thoughtful commentary. I personally have enjoyed the proceedings very much and I am sure that you have, too. Therefore, on behalf of all the members of the Institute, may I

extend to those who have spoken to us this afternoon our sincere and grateful thanks. (Hearty applause).

Thank you very much indeed. Just before you break away, may I remind you that, at six o'clock, there is a reception by the Province of Quebec, the invitation being extended both to the members and to their wives. At seven p.m. there is the Conference Banquet. I have also been asked to say that Mr. K. F. Richardson of Remington Rand Limited would like to show to anyone interested his company's application of mechanical accounting to Sales Tax problems; Mr. Richardson will be available somewhere within the Conference area. That, gentlemen, is all; may I have a motion to adjourn?

MR. SHINK: I move the adjournment.

MR. JLIFFE: Adjournment is in order.