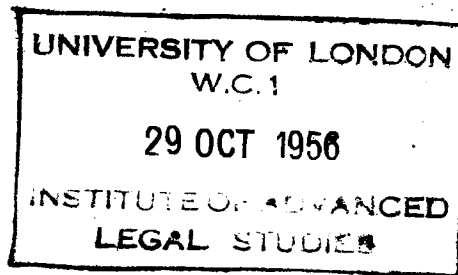


In the Privy Council.

No. 37 of 1895.



FROM THE SUPREME COURT OF CANADA.

BETWEEN THE ATTORNEY GENERAL FOR
ONTARIO - - - - *Appellant,*

AND

(1) THE ATTORNEY GENERAL FOR
THE DOMINION OF CANADA,
and (2) THE DISTILLERS AND
BREWERS' ASSOCIATION OF
ONTARIO - - - - *Respondents.*

IN THE MATTER OF certain questions referred to the Supreme Court of Canada
by His Excellency the Governor-General of Canada.

SUBJECT:

PROVINCIAL JURISDICTION.
PROHIBITORY LIQUOR LAWS.

Case of the Dominion of Canada.

ONE OF THE RESPONDENTS.

1. This is an Appeal from the judgment of the Supreme Court of Canada, rendered on the 15th day of January, 1895, upon certain questions referred by the Governor-General in Council to the Supreme Court of Canada for hearing and consideration, pursuant to "The Supreme and Exchequer Courts Act," (Revised Statutes of Canada, Chap. 135) as amended by an Act of the Parliament of Canada passed in 1891 (54-55 Vic., Chap. 25, Sec. 4).

[34797]

RESPONDENTS' CASES.

2. The questions referred are as follows :—

(i.) Has a Provincial Legislature jurisdiction to prohibit the sale within the Province of spirituous, fermented or other intoxicating liquors ?

(ii.) Or has the Legislature such jurisdiction regarding such portions of the Province as to which the Canada Temperance Act is not in operation ?

(iii.) Has a Provincial Legislature jurisdiction to prohibit the manufacture of such liquors within the Province ?

(iv.) Has a Provincial Legislature jurisdiction to prohibit the importation of such liquors into the Province ?

(v.) If a Provincial Legislature has not jurisdiction to prohibit sales of such liquors, irrespective of quantity, has such Legislature jurisdiction to prohibit the sale, by retail, according to the definition of a sale by retail, either in Statutes in force in the Province at the time of Confederation or any other definition thereof ?

(vi.) If a Provincial Legislature has a limited jurisdiction only as regards the prohibition of sales, has the Legislature jurisdiction to prohibit sales subject to the limits provided by the several sub-sections of the 99th Section of "The Canada Temperance Act" or any of them (Revised Statutes of Canada, Chap. 106, Sec. 99) ?

(vii.) Had the Ontario Legislature jurisdiction to enact the 18th Section of the Act passed by the Legislature of Ontario in the 53rd year of Her Majesty's reign, and intituled "An Act to improve the Liquor License Acts," as said section is explained by the Act passed by the said Legislature in the 54th year of Her Majesty's reign, and intituled "An Act respecting Local Option in the matter of liquor selling ?

3. At the hearing of the Case before the Supreme Court of Canada, constituted of the Chief Justice Sir Henry Strong, and Justices Fournier, Gwynne, Sedgwick and King, Counsel appeared for the Dominion and for the respective Provinces of Ontario, Quebec and Manitoba. Counsel also appeared on behalf of The Distillers and Brewers' Association of Ontario, that Association being represented under the authority of Sub-Sec. 4 of Sec. 37 of The Supreme and Exchequer Courts' Act. Afterwards written opinions were delivered by each of the five Judges who heard the case in the result of which questions numbered 3 and 4 were unanimously answered in the negative, while as to each of the remaining questions, a majority of the Judges gave a negative answer, the Chief Justice and Mr. Justice Fournier holding, however, that they should be answered in the affirmative.

4. From this decision the Attorney General of Ontario obtained special leave to appeal. The Respondents on the Appeal are The Dominion of Canada, and the Distillers and Brewers' Association of Ontario.

5. It is submitted on behalf of the Dominion that a Provincial Legislature has no authority to prohibit the sale, manufacture or importation of spirituous, fermented or other intoxicating liquors, and that it has no authority to prohibit the sale of such liquors either by wholesale or retail or subject to the exemptions established by the 99th Section of the Canada Temperance Act, and that the several questions contained in the case submitted have therefore been properly answered in the negative. In support of this view the Dominion will rely upon the grounds stated in the opinions of the Judges of the Supreme Court, and upon the following among other—

REASONS.

1. Because the subject of prohibition of the liquor traffic, either as to manufacture, importation or sale, does not fall within any of the matters for Provincial Legislation enumerated in Section 92 of "The British North America Act, 1867."
2. Because the exclusive power of the legislatures with regard to municipal institutions only enables the legislatures to establish regulations for the carrying on within their respective provinces of such institutions, and any authority which the legislatures may validly confer upon them, must be derived through or have relation to the other subjects enumerated in Section 92. These do not include power to prohibit.
3. Because, whilst the legislatures may have power under the Article "Municipal Institutions" or as part of the police power to make regulations for the carrying on within the respective Provinces of any lawful trade, they have no power to declare any trade unlawful or to prohibit the carrying on of the same or to enact prohibitory laws containing as to their respective provinces provisions similar to those of "The Canada Temperance Act."
4. Because to enable a Province to pass a prohibitory law for itself by reason of the authority of class No. 16 of Sec. 92, it would be necessary to construe the words "local or private" as including provincial, which construction is negatived upon a consideration of all the provisions of Section 92. Prohibition for the Province would be rather a public and provincial or public and general matter, than merely local or private. The expression "merely local or private matters in the Province" is intended to describe something less than a matter of equal and general application and interest to the entire Province.

5. Because the subject of prohibition strictly relates to matters within the exclusive authority of the Parliament of Canada, under Section 91 of "The British North America Act."
 - (a.) It affects the peace, order and good government of Canada in relation to matters not coming within the classes of subjects assigned exclusively to the legislatures of the provinces.
 - (b.) It necessarily comes within the scope of Dominion authority in the regulation of trade and commerce. The Supreme Court of Canada so held in the case of *Fredericton v. The Queen*, 3 Supreme Court of Canada Reports, 505, from which *Russell v. The Queen*, was in effect an Appeal.
 - (c.) It affects and has direct relation to Criminal law, which is one of the enumerated classes of subjects assigned exclusively to the Parliament of Canada.
6. Because trade and commerce would be affected by legislation restraining importation and manufacture. As a matter of trade and commerce the right to sell is inseparably connected with the law permitting importation, to which, with equal force, may be added *manufacture*.
7. Because before, at the time, and ever since the Union, a considerable portion of the public revenue has been derived from the customs and excise duties upon alcoholic liquors. The Dominion, under the terms of Union, assumed the public debt and the principal expense of the public service, besides undertaking to pay large subsidies to the Provinces, and became entitled to levy customs and excise duties, which had always been principal sources of revenue.
8. Because the field of legislation with regard to prohibition has been occupied by the enactment of the Canada Temperance Act, which still remains in force, and there is therefore no room for a Provincial Law.
9. Because Parliament having declared that it is desirable that there should be uniform legislation in all the Provinces respecting the traffic in intoxicating liquors, and that it is expedient for the peace, order and good government of Canada that the voters in every County or City in Canada should have the right to elect whether or not prohibition, as defined by the Canada Temperance Act, shall come into effect in such County or City, has given effect to the voluntary principle. If the Provincial Legislatures may, nevertheless, enact a compulsory system, the power of Parliament, which has been hitherto upheld, is denied.

10. Because there is no legal or absolute distinction between wholesale and retail trade, and the distinction between them whatever it may be, cannot be made a dividing line of prohibitive authority as between Parliament and the Legislatures.
11. Because definitions of sale by retail in Provincial Statutes at confederation cannot affect the construction of the Union Act, which makes no reference to retail, nor other reference which renders it necessary to look for a definition of the word. Besides upon the Provincial legislation existing at the Union, it appears that there was no uniformity of statutory definition.
12. Because Parliament and the Provincial legislatures have under the British North America Act, no concurrent authority except as to agriculture and immigration, under the provisions of section 95.
13. Because the fact that particular enactments were in force at the Union cannot enlarge the powers of the Legislature of Ontario under the British North America Act.
14. Because section 18 of the Ontario Act is inconsistent with and in conflict with the provisions of the Canada Temperance Act.

E. L. NEWCOMBE,

H. W. LOEHNIS.

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**FROM THE SUPREME COURT OF
CANADA.**

ATTORNEY-GENERAL FOR ONTARIO,
Appellant.

v.

**ATTORNEY-GENERAL FOR THE
DOMINION OF CANADA & OTHERS,**
Respondents.

Case of the Respondents.

BOMPAS, BISCHOFF, DODGSON, COXE & BOMPAS,
4, GREAT WINCHESTER STREET, E.C.,
Solicitors for the Dominion of Canada.