Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Attorney-General for Ontario v. *the Attorney-General for the Dominion of Canada, and the Distillers and Brewers' Association of Ontario, from the Supreme Court of Canada; delivered 9th May* 1896.

Present:

THE LORD CHANCELLOR.
LORD HERSCHELL.
LORD WATSON.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

Their Lordships think it expedient to deal, in the first instance, with the seventh question, because it raises a practical issue, to which the able arguments of Counsel on both sides of the Bar were chiefly directed, and also because it involves considerations which have a material bearing upon the answers to be given to the other six questions submitted in this appeal. In order to appreciate the merits of the controversy, it is necessary to refer to certain laws for the restriction or suppression of the liquor traffic, which were passed by the legislature of the old province of Canada before the Union, or have since been enacted by the Parliament of the Dominion, and by the legislature of Ontario, respectively.

At the time when the British North America Act of 1867 came into operation, the statute book of the old province contained two sets of enactments applicable to Upper Canada, which,

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though differing in expression, were in substance very similar.

The most recent of these enactments were embodied in the Temperance Act 1864 (27 & 28 Vict. c. 18), which conferred upon the municipal council of every county, town, township, or incorporated village, "besides the "powers at present conferred on it by law," power at any time to pass a by-law prohibiting the sale of intoxicating liquors, and the issue of licenses therefor, within the limits of the municipality. Such by-law was not to take effect until submitted to and approved by a majority of the qualified electors; and provision was made for its subsequent repeal, in deference to an adverse vote of the electors.

The previous enactments relating to the same subject, which were in force at the time of the Union, were contained in the Consolidated Municipal Act, 29 & 30 Vict. c. 51. They empowered the Council of every township, town, and incorporated village, and the Commissioners of Police in cities, to make by-laws for prohibiting the sale by retail of spirituous, fermented or other manufactured liquors, in any inn or other house of public entertainment; and for prohibiting totally the sale thereof in shops and places other than houses of public entertainment; provided the by-law, before the final passing thereof, had been duly approved by the electors of the municipality in the manner prescribed by the Act. After the Union, the Legislature of Ontario inserted these enactments in the Tavern and Shop License Act, 32 Vict. c. 32. They were purposely omitted from subsequent consolidations of the Municipal and Liquor License Acts; and, in the year 1886, when the Canada Temperance Act was passed by the Parliament of Canada, there was no provincial law authorising the prohibition

of liquor sales in Ontario, save the Temperance Act 1864.

The Canada Temperance Act of 1886 (Revised Statutes of Canada 49 Vict. c. 106) is applicable to all the provinces of the Dominion. Its general scheme is to give to the electors of every county or city the option of adopting, or declining to adopt, the provisions of the second part of the Act, which make it unlawful for any person "by himself, his "clerk, servant or agent, to expose or keep "for sale, or directly or indirectly, on any "pretence or upon any device, to sell or barter, "or in consideration of the purchase of any "other property, give to any other person "any intoxicating liquor." It expressly declares that no violation of these enactments shall be made lawful by reason of any license of any description whatsoever. Certain relaxations are made in the case of sales of liquor for sacramental or medicinal purposes, or for exclusive use in some art, trade, or manufacture. The prohibition does not extend to manufacturers, importers or wholesale traders who sell liquors in quantities above a specified limit, when they have good reason to believe that the purchasers, will forthwith carry their purchase beyond the limits of the county or city, or of any adjoining county or city in which the provisions of the Act are in force.

For the purpose of bringing the second part of the Act into operation, an order of the Governor-General of Canada in Council is required. The order must be made on the petition of a county or city, which cannot be granted until it has been put to the vote of the electors of such county or city. When a majority of the votes polled are adverse to the petition, it must be dismissed; and no similar application can be made within the period of three years from the day on

which the poll was taken. When the vote is in favour of the petition, and is followed by an order in Council, one fourth of the qualified electors of the county or city may apply to the Governor-General in Council for a recall of the order, which is to be granted, in the event of a majority of the electors voting in favour of the application. Power is given to the Governor-General in Council to issue in the like manner, and after similar procedure, an order repealing any by-law passed by any Municipal Council for the application of the Temperance Act of 1864.

The Dominion Act also contains an express repeal of the prohibitory clauses of the provincial Act of 1864, and of the machinery thereby provided for bringing them into operation, (1) as to every municipality within the limits of Ontario in which, at the passing of the Act of 1886, there was no municipal by-law in force, (2) as to every municipality within these limits in which a prohibitive by-law then in force shall be subsequently repealed under the provisions of either Act, and (3) as to every municipality, having a municipal by-law, which is included in the limits of, or has the same limits with, any county or city in which the second part of the Canada Temperance Act is brought into force before the repeal of the by-law, which by-law, in that event, is declared to be null and void.

With the view of restoring to municipalities within the province, whose powers were affected by that repeal, the right to make by-laws which they had possessed under the law of the old province, the legislature of Ontario passed Section 18 of 53 Vict. c. 56 to which the seventh question in this case relates. The enacting words of the clause are introduced by a preamble which recites the previous course of legislation, and the repeal by the Canada

Temperance Act of the Upper Canada Act of 1864 in municipalities where not in force, and concludes thus,—" it is expedient that munici- " palities should have the powers by them " formerly possessed." The enacting words of the clause, with the exception of one or two changes of expression which do not affect its substance, are a mere reproduction of the provisions, not of the Temperance Act of 1864, but of the kindred provisions of the Municipal Act 29 & 30 Vict., c. 51, which had been omitted from the consolidated statutes of the province. A new proviso is added, to the effect that, " nothing in this section contained shall be " construed into an exercise of Jurisdiction " by the Province of Ontario beyond the " revival of provisions of law which were in " force at the date of the passing of the British " North America Act, and which the subsequent " legislation of this province purported to " repeal." The legislature of Ontario subsequently passed an Act (54 Vict. c. 46), for the purpose of explaining that Section 18 was not meant to repeal by implication certain provisions of the Municipal Act 29 & 30 Vict. c. 51, which limit its application to retail dealings.

The seventh question raises the issue,—whether, in the circumstances which have just been detailed, the provincial legislature had authority to enact Section 18? In order to determine that issue, it becomes necessary to consider, in the first place, whether the Parliament of Canada had jurisdiction to enact the Canada Temperance Act; and, if so, to consider in the second place, whether, after that Act became the law of each province of the Dominion, there yet remained power with the legislature of Ontario to enact the provisions of Section 18.

The authority of the Dominion Parliament to make laws for the suppression of liquor traffic

in the provinces is maintained, in the first place, upon the ground that such legislation deals with matters affecting "the peace, order, and good "government of Canada," within the meaning of the introductory and general enactments of Section 91 of the British North America Act; and, in the second place, upon the ground, that it concerns "the regulation of trade and commerce," being No. 2 of the enumerated classes of subjects which are placed under the exclusive jurisdiction of the federal Parliament by that section. These sources of jurisdiction are in themselves distinct; and are to be found in different enactments.

It was apparently contemplated by the framers of the Imperial Act of 1867, that the due exercise of the enumerated powers conferred upon the Parliament of Canada by Section 91 might, occasionally and incidentally, involve legislation upon matters which are *primâ facie* committed exclusively to the provincial legislatures by Section 92. In order to provide against that contingency, the concluding part of Section 91 enacts that "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 exclu-"sively to the legislatures of the provinces." It was observed by this Board in *Citizens Insurance Company of Canada* v. *Parsons* (7, Ap. Ca. 108), that the paragraph just quoted "applies in its grammatical construction only to "No. 16 of Section 92." The observation was not material to the question arising in that case, and it does not appear to their Lordships to be strictly accurate. It appears to them, that the language of the exception in Section 91 was meant to include, and correctly describes, all the matters

enumerated in the 16 heads of Section 92, as being, from a provincial point of view, of a local or private nature. It also appears to their Lordships that the exception was not meant to derogate from the legislative authority given to provincial legislatures by these 16 sub-sections, save to the extent of enabling the Parliament of Canada to deal with matters local or private, in those cases where such legislation is necessarily incidental to the exercise of the powers conferred upon it by the enumerative heads of Clause 91. That view was stated and illustrated by Sir Montague Smith in *Citizens Insurance Company of Canada* v. *Parsons* (7, Ap. Ca. pp. 108, 109), and in *Cushing* v. *Dupuy* (5, Ap. Ca. 415); and it has been recognised by this Board in *Tennant* v. *Union Bank of Canada* (1894, Ap. Ca. 46) and in *Attorney-General of Ontario* v. *Attorney-General of the Dominion* (1894, Ap. Ca. 200).

The general authority given to the Canadian Parliament, by the introductory enactments of Section 91, is, "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 assigned exclusively to "the Legislatures of the Provinces;" and it is declared, but not so as to restrict the generality of these words, that the exclusive authority of the Canadian Parliament extends to all matters coming within the classes of subjects which are enumerated in the clause. There may, therefore, be matters not included in the enumeration, upon which the Parliament of Canada has power to legislate, because they concern the peace, order and good government of the Dominion. But to those matters which are not specified among the enumerated subjects of legislation, the exception from Section 92, which is enacted by the concluding words of Section 91, has no application;

and, in legislating with regard to such matters, the Dominion Parliament has no authority to encroach upon any class of subjects which is exclusively assigned to provincial legislatures by Section 92. These enactments appear to their Lordships to indicate, that the exercise of legislative power by the Parliament of Canada, in regard to all matters not enumerated in Section 92, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation, with respect to any of the classes of subjects enumerated in Section 92. To attach any other construction to the general power which, in supplement of its enumerated powers, is conferred upon the Parliament of Canada by Section 91, would, in their Lordships' opinion, not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the provinces. If it were once conceded that the Parliament of Canada has authority to make laws applicable to the whole Dominion, in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order and good government of the Dominion, there is hardly a subject enumerated in Section 92 upon which it might not legislate, to the exclusion of the provincial legislatures.

In construing the introductory enactments of Section 91, with respect to matters other than those enumerated, which concern the peace, order and good government of Canada, it must be kept in view that Section 94, which empowers the Parliament of Canada to make provision for the uniformity of the laws relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick, does not extend to the province of Quebec; and also that the Dominion legis-

lation thereby authorised is expressly declared to be of no effect, unless and until it has been adopted and enacted by the provincial legislature. These enactments would be idle and abortive, if it were held that the Parliament of Canada derives jurisdiction from the introductory provisions of Section 91, to deal with any matter which is in substance local or provincial, and does not truly affect the interest of the Dominion as a whole. Their Lordships do not doubt that some matters, in their origin local and provincial, might attain such dimensions as to affect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for their regulation or abolition, in the interest of the Dominion. But great caution must be observed, in distinguishing between that which is local and provincial, and therefore within the jurisdiction of the provincial legislatures, and that which has ceased to be merely local or provincial, and has become matter of national concern, in such sense as to bring it within the jurisdiction of the Parliament of Canada. An Act restricting the right to carry weapons of offence, or their sale to young persons, within the province, would be within the authority of the provincial legislature. But traffic in arms, or the possession of them under such circumstances as to raise a suspicion that they were to be used for seditious purposes, or against a foreign State, are matters which, their Lordships conceive, might be competently dealt with by the Parliament of the Dominion.

The judgment of this Board in *Russell* v. *The Queen* (7 Ap. Ca. 829), has relieved their Lordships from the difficult duty of considering whether the Canada Temperance Act of 1886 relates to the peace, order, and good government of Canada, in such sense as to bring its provisions within the competency of the Canadian Parliament. In that case the controversy related to the validity

of the Canada Temperance Act of 1878; and neither the Dominion nor the Provinces were represented in the argument. It arose between a private prosecutor and a person who had been convicted, at his instance, of violating the provisions of the Canadian Act, within a district of New Brunswick in which the prohibitory clauses of the Act had been adopted. But the provisions of the Act of 1878 were, in all material respects, the same with those which are now embodied in the Canada Temperance Act of 1886; and the reasons which were assigned for sustaining the validity of the earlier, are, in their Lordships' opinion, equally applicable to the later Act. It therefore appears to them that the decision in *Russell* v. *The Queen* must be accepted as an authority to the extent to which it goes, namely, that the restrictive provisions of the Act of 1886, when they have been duly brought into operation in any provincial area within the Dominion, must receive effect as valid enactments, relating to the peace, order, and good government of Canada.

That point being settled by decision, it becomes necessary to consider whether the Parliament of Canada had authority to pass the Temperance Act of 1886, as being an Act for the "regulation "of trade and commerce" within the meaning of No. 2 of Section 91. If it were so, the Parliament of Canada would, under the exception from Section 92, which has already been noticed, be at liberty to exercise its legislative authority, although, in so doing, it should interfere with the jurisdiction of the provinces. The scope and effect of No. 2 of Section 91 were discussed by this Board at some length, in *Citizens Insurance Company* v. *Parsons* (7 Ap. Ca. 96), where it was decided that, in the absence of legislation upon the subject by the Canadian Parliament, the legislature of Ontario had authority to impose conditions, as being matters of civil right, upon the business of

fire insurance, which was admitted to be a trade, so long as those conditions only affected provincial trade. Their Lordships do not find it necessary to re-open that discussion in the present case. The object of the Canada Temperance Act of 1886 is, not to regulate retail transactions between those who trade in liquor and their customers, but to abolish all such transactions within every provincial area in which its enactments have been adopted by a majority of the local electors. A power to regulate, naturally, if not necessarily, assumes, unless it is enlarged by the context, the conservation of the thing which is to be made the subject of regulation. In that view, their Lordships are unable to regard the prohibitive enactments of the Canadian statute of 1886 as regulations of trade and commerce. They see no reason to modify the opinion which was recently expressed, on their behalf, by Lord Davey, in *Municipal Corporation of the City of Toronto* v. *Virgo* (1896, Ap. Ca. 93), in these terms:—

"Their Lordships think there is marked dis-
"tinction to be drawn between the prohibition
"or prevention of a trade and the regulation or
"governance of it, and indeed a power to
"regulate and govern seems to imply the
"continued existence of that which is to be
"regulated or governed."

The authority of the legislature of Ontario to enact Section 18 of 53 Vict. c. 56 was asserted by the Appellant on various grounds. The first of these, which was very strongly insisted on, was to the effect that the power given to each province by No. 8, of Section 92, to create municipal institutions in the province, necessarily implies the right to endow these institutions with all the administrative functions which had been ordinarily possessed and exercised by them before the time of the Union. Their Lordships can find nothing to support that contention

in the language of Section 92, No. 8, which, according to its natural meaning, simply gives provincial legislatures the right to create a legal body, for the management of municipal affairs. Until confederation, the legislature of each province as then constituted could, if it chose, and did in some cases, entrust to a municipality the execution of powers which now belong exclusively to the Parliament of Canada. Since its date, a provincial legislature cannot delegate any power which it does not possess; and the extent and nature of the functions which it can commit to a municipal body of its own creation must depend upon the legislative authority which it derives from the provisions of Section 92 other than No. 8.

Their Lordships are likewise of opinion that Section 92, No. 9, does not give provincial legislatures any right to make laws for the abolition of the liquor traffic. It assigns to them "shop, saloon, tavern, auctioneer and "other licenses, in order to the raising of a "revenue for provincial, local or municipal "purposes." It was held by this Board, in *Hodge* v. *The Queen* (9 Ap. Ca. 117), to include the right to impose reasonable conditions upon the licensees, which are in the nature of regulation; but it cannot, with any show of reason, be construed as authorising the abolition of the sources from which revenue is to be raised.

The only enactments of Section 92 which appear to their Lordships to have any relation to the authority of provincial legislatures to make laws for the suppression of the liquor traffic are to be found in Nos. 13 and 16, which assign to their exclusive jurisdiction, (1) "property and civil rights in the province," and (2) "generally all matters of a merely "local or private nature in the province." A law which prohibits retail transactions, and restricts the consumption of liquor within

the ambit of the province, and does not affect transactions in liquor between persons in the province and persons in other provinces or in foreign countries, concerns property in the province which would be the subject matter of the transactions, if they were not prohibited, and also the civil rights of persons in the province. It is not impossible that the vice of intemperance may prevail in particular localities within a province, to such an extent as to constitute its cure by restricting or prohibiting the sale of liquor a matter of a merely local or private nature, and therefore falling *primâ facie* within No. 16. In that state of matters, it is conceded that the Parliament of Canada could not imperatively enact a prohibitory law adapted and confined to the requirements of localities within the province, where prohibition was urgently needed.

It is not necessary, for the purposes of the the present appeal, to determine whether provincial legislation for the suppression of the liquor traffic, confined to matters which are provincial or local within the meaning of Nos. 13 and 16 is authorised by the one or by the other of these heads. It cannot, in their Lordships' opinion, be logically held to fall within both of them. In Section 92, No. 16 appears to them to have the same office which the general enactment, with respect to matters concerning the peace, order, and good government of Canada so far as supplementary of the enumerated subjects, fulfils in Section 91. It assigns to the provincial legislature all matters in a provincial sense local or private, which have been omitted from the preceding enumeration, and, although its terms are wide enough to cover, they were obviously not meant to include provincial legislation in relation to the classes of subjects already enumerated.

In the able and elaborate argument addressed

to their Lordships on behalf of the Respondents, it was practically conceded that a provincial legislature must have power to deal with the restriction of the liquor traffic from a local and provincial point of view, unless it be held that the whole subject of restriction or abolition is exclusively committed to the Parliament of Canada, as being within the regulation of trade and commerce. In that case, the subject, in so far at least as it had been regulated by Canadian legislation, would, by virtue of the concluding enactment of Section 91, be excepted from the matters committed to provincial legislatures by Section 92. Upon the assumption that Section 91 (2) does not embrace the right to suppress a trade, Mr. Blake maintained, that, whilst the restriction of the liquor traffic may be competently made matter of legislation, in a provincial as well as a Canadian aspect, yet the Parliament of Canada has, by enacting the Temperance Act of 1886, occupied the whole possible field of legislation in either aspect, so as completely to exclude legislation by a province. That appears to their Lordships to be the real point of controversy raised by the question with which they are at present dealing; and, before discussing the point, it may be expedient to consider the relation in which Dominion and provincial legislation stand to each other.

It has been frequently recognised by this Board, and it may now be regarded as settled law, that according to the scheme of the British North America Act, the enactments of the Parliament of Canada, in so far as these are within its competency, must over-ride provincial legislation. But the Dominion Parliament has no authority conferred upon it by the Act to repeal directly any provincial Statute whether it does or does not come within the limits of jurisdiction prescribed by Section 92. The

repeal of a provincial Act by the Parliament of Canada can only be effected by repugnancy between its provisions and the enactments of the Dominion; and if the existence of such repugnancy should become matter of dispute, the controversy cannot be settled by the action either of the Dominion or of the provincial legislature, but must be submitted to the judicial tribunals of the country. In their Lordships' opinion, the express repeal of the old provincial Act of 1864 by the Canada Temperance Act of 1886 was not within the authority of the Parliament of Canada. It is true that the Upper Canada Act of 1864 was continued in force within Ontario, by Section 129 of the British North America Act, "until repealed, abolished or altered by "the Parliament of Canada, or by the provincial "legislature," according to the authority of that Parliament, "or of that legislature." It appears to their Lordships that neither the Parliament of Canada, nor the provincial legislatures, have authority to repeal Statutes which they could not directly enact. Their Lordships had occasion, in *Dobie* v. *The Temporalities Board* (7 Ap. Ca. 136) to consider the power of repeal competent to the legislature of a province. In that case, the Legislature of Quebec had repealed a statute continued in force after the Union by Section 129, which had this peculiarity, that its provisions applied both to Quebec and to Ontario, and were incapable of being severed so as to make them applicable to one of these provinces only. Their Lordships held (7 Ap. Ca. 147) that the powers conferred "upon the provincial "legislatures of Ontario and Quebec to repeal "and alter the statutes of the old parlia-"ment of the province of Canada are made "precisely co-extensive with the powers of direct "legislation with which these bodies are invested "by the other clauses of the Act of 1867"; and

that it was beyond the authority of the legislature of Quebec to repeal statutory enactments which affected both Quebec and Ontario. The same principle ought, in the opinion of their Lordships, to be applied to the present case. The old Temperance Act of 1864 was passed for Upper Canada, or in other words for the province of Ontario; and its provisions, being confined to that province only, could not have been directly enacted by the Parliament of Canada. In the present case, the Parliament of Canada would have no power to pass a prohibitory law for the province of Ontario; and could therefore have no authority to repeal, in express terms, an Act which is limited in its operation to that province. In like manner, the express repeal, in the Canada Temperance Act of 1886, of liquor prohibitions adopted by a municipality in the province of Ontario under the sanction of provincial legislation, does not appear to their Lordships to be within the authority of the Dominion Parliament.

The question must next be considered, whether the provincial enactments of Section 18, to any, and if so to what extent, come into collision with the provisions of the Canadian Act of 1886? In so far as they do, provincial must yield to Dominion legislation, and must remain in abeyance unless and until the Act of 1886 is repealed by the parliament which passed it.

The prohibitions of the Dominion Act have in some respects an effect which may extend beyond the limits of a province; and they are all of a very stringent character. They draw an arbitrary line, at 8 gallons in the case of beer, and at 10 gallons in the case of other intoxicating liquors, with the view of discriminating between wholesale and retail transactions. Below the limit, sales within a district which has adopted the Act are absolutely

forbidden, except to the two nominees of the Lieutenant Governor of the province, who are only allowed to dispose of their purchases in small quantities, for medicinal and other specified purposes. In the case of sales above the limit, the rule is different. The manufacturers of pure native wines, from grapes grown in Canada, have special favour shown them. Manufacturers of other liquors within the district, as also merchants duly licensed, who carry on an exclusively wholesale business, may sell for delivery anywhere beyond the district, unless such delivery is to be made in an adjoining district where the Act is in force. If the adjoining district happened to be in a different province, it appears to their Lordships to be doubtful, whether, even in the absence of Dominion legislation, a restriction of that kind could be enacted by a provincial legislature.

On the other hand, the prohibitions which Section 18 authorises municipalities to impose within their respective limits do not appear to their Lordships to affect any transactions in liquor which have not their beginning and their end within the province of Ontario. The first branch of its prohibitory enactments strikes against sales of liquor by retail in any tavern, or other house or other place of public entertainment. The second extends to sales in shops and places other than houses of public entertainment; but the context indicates that it is only meant to apply to retail transactions; and that intention is made clear by the terms of the explanatory Act 54 Vict. c. 46, which fixes the line between wholesale and retail at one dozen of liquor in bottles, and five gallons if sold in other receptacles. The importer or manufacturer can sell any quantity above that limit; and any retail trader may do the same, provided that he sells the liquor in the original

packages in which it was received by him from the importer or manufacturer.

It thus appears that, in their local application within the province of Ontario, there would be considerable difference between the two laws; but it is obvious that their provisions could not be in force within the same district or province at one and the same time. In the opinion of their Lordships, the question of conflict between their provisions which arises in this case does not depend upon their identity or non-identity, but upon a feature which is common to both. Neither statute is imperative, their prohibitions being of no force or effect until they have been voluntarily adopted and applied by the vote of a majority of the electors in a district or municipality. In *Russell* v. *The Queen* (7 Ap. Ca. 841), it was observed by this Board, with reference to the Canada Temperance Act of 1878, "The Act as soon as it was passed became "a law for the whole Dominion, and the "enactments of the first part, relating to the "machinery for bringing the second part into "force, took effect and might be put in motion "at once and everywhere within it." No fault can be found with the accuracy of that statement. *Mutatis mutandis*, it is equally true as a description of the provisions of Section 18. But in neither case can the statement mean more than this, that on the passing of the Act, each district or municipality within the Dominion or the province, as the case might be, became vested with a right to adopt and enforce certain prohibitions, if it thought fit to do so. But the prohibitions of these Acts, which constitute their object and their essence, cannot with the least degree of accuracy be said to be in force anywhere, until they have been locally adopted.

If the prohibitions of the Canada Temperance

Act had been made imperative throughout the Dominion, their Lordships might have been constrained by previous authority to hold that the jurisdiction of the legislature of Ontario to pass Section 18, or any similar law, had been superseded. In that case, no provincial prohibitions such as are sanctioned by Section 18, could have been enforced by a municipality, without coming into conflict with the paramount law of Canada. For the same reason, provincial prohibitions in force within a particular district will necessarily become inoperative, whenever the prohibitory clauses of the Act of 1886 have been adopted by that district. But their Lordships can discover no adequate grounds for holding that there exists repugnancy between the two laws in districts of the province of Ontario where the prohibitions of the Canadian Act are not, and may never be in force. In a district which has, by the votes of its electors, rejected the second part of the Canadian Act, the option is abolished for three years from the date of the poll; and it hardly admits of doubt, that there could be no repugnancy whilst the option given by the Canadian Act was suspended. The Parliament of Canada has not, either expressly or by implication, enacted, that so long as any district delays or refuses to accept the prohibitions which it has authorised, the provincial parliament is to be debarred from exercising the legislative authority given it by Section 92, for the suppression of the drink traffic as a local evil. Any such legislation would be unexampled; and it is a grave question whether it would be lawful. Even if the provisions of Section 18 had been imperative, they would not have taken away or impaired the right of any district in Ontario to adopt, and thereby bring into force the prohibitions of the Canadian Act.

Their Lordships, for these reasons, give a general answer to the seventh question in the affirmative. They are of opinion that the Ontario legislature had jurisdiction to enact Section 18, subject to this necessary qualification, that its provisions are, or will become inoperative in any district of the province which has already adopted, or may subsequently adopt the second part of the Canada Temperance Act of 1886.

Their Lordships will now answer briefly, in their order, the other questions submitted by the Governor-General of Canada. So far as they can ascertain from the Record, these differ from the question which has already been answered, in this respect, that they relate to matters which may possibly become litigious in the future, but have not as yet given rise to any real and present controversy. Their Lordships must further observe that these questions, being in their nature academic rather than judicial, are better fitted for the consideration of the officers of the Crown, than of a court of law. The replies to be given to them will necessarily depend upon the circumstances in which they may arise for decision; and these circumstances are in this case left to speculation. It must therefore be understood that the answers which follow are not meant to have, and cannot have, the weight of a judicial determination, except in so far as their Lordships may have occasion to refer to the opinions which they have already expressed in discussing the seventh question.

Answers to Questions I. and II.—Their Lordships think it sufficient to refer to the opinions expressed by them in disposing of the seventh question.

Answer to Question III.—In the absence of conflicting legislation by the Parliament of Canada, their Lordships are of opinion that the provincial legislatures would have jurisdiction to

that effect, if it were shown that the manufacture was carried on under such circumstances and conditions as to make its prohibition a merely local matter in the province.

Answer to Question IV.—Their Lordships answer this question in the negative. It appears to them that the exercise by the provincial legislature of such jurisdiction, in the wide and general terms in which it is expressed, would probably trench upon the exclusive authority of the Dominion Parliament.

Answers to Questions V. and VI.—Their Lordships consider it unnecessary to give a categorical reply to either of these questions. Their opinion upon the points which the questions involve has been sufficiently explained in their answer to the seventh question.

Their Lordships will humbly advise Her Majesty to discharge the Order of the Supreme Court of Canada, dated the 15th January 1895; and to substitute therefor the several Answers to the seven Questions submitted by the Governor General of Canada which have been already indicated. There will be no costs of this Appeal.