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In the Privy Council.

ON APPEAL FROM THE SUPREME COURT  
OF ONTARIO.

IN THE MATTER of a Reference as to the validity of Parts I, II and III of  
The Canada Temperance Act, R.S.C. 1927, Chapter 196

AND IN THE MATTER of the Constitutional Questions Act, R.S.O. 1937,  
Chapter 130

AND IN THE MATTER of the Consolidated Rules of Practice.

BETWEEN

THE ATTORNEY-GENERAL OF ONTARIO .. .. *Appellant,*

AND

THE MODERATION LEAGUE OF ONTARIO, THE  
CANADIAN TEMPERANCE FEDERATION, THE  
ONTARIO TEMPERANCE FEDERATION, THE  
TEMPERANCE FEDERATIONS OF THE COUNTIES  
OF PERTH, PEEL, HURON AND MANITOULIN  
ISLAND, THE UNITED CHURCH OF CANADA,  
THE SOCIAL SERVICE COUNCIL OF THE CHURCH  
OF ENGLAND AND THE ATTORNEY-GENERAL  
OF CANADA .. .. . *Respondents.*

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**Memorandum of law and fact of the Attorney-General of Ontario.**

In the Supreme Court of Ontario.

I. The Canada Temperance Act was originally passed in the year 1878. Its constitutional validity has been considered by the Judicial Committee of the Privy Council in two cases, namely, *Russell v. The Queen*, 7 A.C. 829, and *Attorney-General for Ontario v. Attorney-General for the Dominion* [1896] A.C. 348.

II. In the last mentioned case it was held—

10      1. The Act could not be supported under section 91, subsection 2, of the British North America Act as a regulation of trade and commerce, and

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2. The power of passing the Act is to be found in the authority of the Dominion to pass laws for the "peace, order and good government of Canada" within the meaning of the introductory portion of section 91 of the Act.

In the last mentioned case the Board did not consider the constitutional validity of the Act afresh, holding that the decision in *Russell's case* had relieved the Board "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." (1896 A.C. at 362.) 10

III. It is submitted, with regard to the decision in *Russell v. The Queen*, 7 A.C. 829 :—

1. The decision is merely a decision on facts assumed to exist at that date and the Attorney-Generals for the Dominion or the Provinces were not represented.

2. The decision does not lay down that for all time and under all circumstances the Canada Temperance Act remains within the enacting powers of Parliament.

3. The decision can only be supported, not on the footing of having laid down an interpretation of the general words at the beginning of 20 section 91 of the British North America Act, but on the assumption of the Board made at the time of deciding the *Russell case* that the evil of intemperance at that time was so great in Canada that for the period it was a menace to the national life so serious that Parliament was called on to intervene to protect the nation from disaster.

4. Neither the Attorney-General for the Dominion nor the Attorney-Generals for any of the provinces were represented on the hearing.

5. The facts assumed to exist at the time of the decision in *Russell's case* are not to be assumed to exist at the present date.

6. If an emergency were assumed to exist in 1882 justifying the 30 passing of the Act of 1878, it is submitted it is plain that such emergency passed away in view of the following facts :—

(a) The Canada Temperance Act never went into force throughout Canada and was never in actual operation in more than a comparatively few of the many local municipalities throughout the Dominion.

(b) The operation of the Canada Temperance Act was subsequently abrogated with respect to many of the said local municipalities, but in the case of three of these the decision of the Supreme Court of Canada, reported in 1935 S.C.R. 494, holds that the Canada 40 Temperance Act again came into effect in 1927 as a result of a change in the provincial liquor legislation at that time. This decision (1935 S.C.R. 494) did not involve any consideration as to the constitutional validity of the Act.

7. In all provinces of Canada there now exists either prohibition or else the control of the distribution of liquor is in the hands of the local Provincial Government supplemented by Parts IV and V of the Canada Temperance Act passed in 1916, 1917 and 1919 as well as by 18-19 Geo. V, chapter 31, Canada, 1928, by virtue of which the importation of intoxicating liquor into the several provinces has been either restricted or prohibited.

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IV. Before considering the authorities in support of the foregoing it will be of advantage to refer to the powers of a province to legislate with regard to the traffic in intoxicating liquor :—

1. *In Hodge v. The Queen*, 9 A.C. 117, the litigation concerned a conviction for an infraction of a regulation of the License Commissioners passed under the provisions of the Ontario Liquor License Act, R.S.O. 1877, chapter 181. It was contended in that case that the Legislature of Ontario had no power to pass any Act to regulate the liquor traffic ; that the whole power to pass such an Act was conferred on the Dominion and consequently taken from the Provincial Legislature by section 91 of the British North America Act ; that it did not come within any of the enumerated classes assigned exclusively to the provinces by section 92 ; and that the decision in *Russell's case* was conclusive that the whole subject of the liquor traffic was given to the Dominion Parliament and consequently taken away from the Provincial Legislatures. This view of *Russell's case* was negatived in the judgment of the Board and it was held that the Ontario Liquor License Act providing for the appointment of Licence Commissioners for each municipality with power to pass resolutions defining the conditions and qualifications for obtaining tavern or shop licences for the sale of intoxicating liquor, and for limiting the number of licences, was valid as being matters of a merely local nature in the province. It was held the Act came within Heads Nos. 8, 15 and 16 of section 92 of the British North America Act.

2. In *Attorney-General for Ontario v. Attorney-General for the Dominion* [1896] A.C. 348, provincial powers with regard to the regulation of the liquor traffic were considered, the case being a reference by the Governor-General-in-Council as to the jurisdiction of the Province of Ontario to enact legislation dealing with local option in the regulation of the liquor traffic. It was held in that case at page 360 :—

(a) That in legislating under the general words at the beginning of section 91 the Dominion has no authority to encroach upon any class of subjects exclusively assigned to a province by section 92 ;

(b) That the exercise of legislative power by Parliament in regard to all matters not enumerated in section 91 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 ;

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(c) That the Province had authority to regulate the traffic in intoxicating liquor from the provincial point of view and the power to so regulate is to be found in section 92, Head No. 16, and 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 prima facie within No. 16. In that state of matters it is conceded that the Parliament of Canada could not imperatively enact the prohibitory law adapted and confined to the requirements of localities within the province where pro-<sup>10</sup>hibition was urgently needed.”

V. In *Attorney-General for Manitoba v. Manitoba Licence Holders' Association* [1902] A.C. 73, the validity of the Manitoba Liquor Act of 1900 prohibiting provincial transactions in liquor was in question. It was held—

(a) That the Act was within the power of the Legislature of the Province, and

(b) That the provincial power falls within Head 16 of section 92.

VI. The authorities as to what was decided in *Russell's case* are as follows :—

1. In *Attorney-General for the Dominion v. Attorney-General for Alberta* [1916] 1 A.C. 588, it was held at pages 595 and 596 that the decision in *Russell's case* was not based on the ground that the Canada Temperance Act was considered to be authorised as legislation for the regulation of trade and commerce but that the Act was to be supported on the ground that its subject matter did not fall within any of the enumerated classes of section 92 but dealt with the subject from a national point of view.

2. In *Re The Liquor Licence Act, 1883-1884* (the McCarthy Act not reported), the Privy Council without reasons held that that Act which sought to establish a local licensing system for the liquor traffic<sup>30</sup> throughout Canada was beyond the powers of Parliament conferred by section 91. (See *Attorney-General for Canada v. Attorney-General for Alberta* [1916] 1 A.C. 588 at 596.)

3. In *Re The Board of Commerce Act* [1922] 1 A.C. 191, the Board considered the constitutional validity of an order made by the Board of Commerce established under Dominion legislation prohibiting certain retail clothing dealers from charging more than a certain percentage of profit. The legislation in question was attempted to be supported under the initial general words of section 91 of the British North America Act. It was held that the subject matter of the legislation might conceivably in special circumstances, such as those of a great war, become<sup>40</sup> of such paramount and overriding importance as to amount to what lies outside the heads in section 92, but in the absence of such special circumstances the Dominion did not have the necessary legislative authority. *Russell's case* was referred to at page 197 as an illustration of the Dominion acquiring such legislative jurisdiction by reason of special circumstances.

In giving the judgment of the Board Lord Haldane at page 200 stated :

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“ It has already been observed that circumstances are conceivable, such as those of war or famine, when the peace, order and good government of the Dominion might be imperilled under conditions so exceptional that they require legislation of a character in reality beyond anything provided for by the enumerated heads in either section 92 or section 91 itself. Such a case, if it were to arise, would have to be considered closely before the conclusion could properly be reached that it was one which could not be treated as falling under any of the heads enumerated. Still, it is a conceivable case and although great caution is required in referring to it, even in general terms, it ought not, in the view their Lordships take of the British North America Act, read as a whole, to be excluded from what is possible. For throughout the provisions of that Act there is apparent the recognition that subjects which would normally belong exclusively to a specifically assigned class of subject may, under different circumstances and in another aspect, assume a further significance. Such an aspect may conceivably become of paramount importance and of dimensions that give rise to other aspects. This is a principle which although recognised in earlier decisions, such as that of *Russell v. The Queen*, both here and in the Courts of Canada, has always been applied with reluctance and its recognition as relevant can be justified only after scrutiny sufficient to render it clear that the circumstances are abnormal.”

20

It is submitted that it is apparent that in the *Board of Commerce case* the Privy Council took the view that the onus of establishing the existence of abnormal circumstances justifying the exercise of the Dominion legislative power with regard to a subject matter, which, apart from the existence of such abnormal circumstances, is comprised within the enumerated heads of section 92, lay upon those supporting the Dominion legislation. Reference is made to the language of Lord Haldane in the *Board of Commerce case* at page 200 :—

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“ In the case before them, however important it may seem to the Parliament of Canada that some such policy as that adopted in the two Acts in question should be made general throughout Canada, their Lordships do not find any evidence that the standard of necessity referred to has been reached, or that the attainment of the end sought is practicable, in view of the distribution of legislative powers enacted by the Constitution Act, without the co-operation of the Provincial Legislatures.”

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4. In *Attorney-General for Ontario v. Attorney-General for the Dominion* [1896] A.C. 348, Lord Watson at 360 dealt with the authority of Parliament to legislate under the power given in the initial general words of section 91. His Lordship states :—

“ The general authority given to the Canadian Parliament by the introductory enactments of section 91 is ‘ to make laws for the

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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 <sup>10</sup> 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 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon <sup>20</sup> 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 Lordship's 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 of the 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 <sup>30</sup> 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."

At page 361 his Lordship continues :—

" 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 <sup>40</sup> 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."

Reference is also made to the judgment of the present Chief Justice of Canada in the *Board of Commerce case* in the Supreme Court, 60 S.C.R. 456 at 506 and 512. At page 507 His Lordship says :—



“ But it must be remembered that *Russell's case* was in great part an unargued case. Mr. Benjamin, who appeared for the appellant—the provinces were not represented upon the argument—conceded the authority of Parliament to enact legislation containing the provisions of the Canada Temperance Act to come into force at the same time throughout the whole of Canada and this Lord Herschell said in a subsequent case was a ‘ very large admission.’ ”

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10 5. In *Fort Frances Pulp & Power Company v. Manitoba Free Press* [1923] A.C. 695, the subject matter of the decision was certain orders made by an official under the Canadian War Measures Act and Orders-in-Council made thereunder with relation to the control of the supply of newspaper by manufacturers and its price and also a Dominion Act passed after the cessation of hostilities for continuing the control until the proclamation of peace. It was held by the Privy Council at page 703 that in normal circumstances Parliament would have no authority to pass the legislation.

It was held that in circumstances such as the event of war the overriding powers of Parliament enumerated in section 91 as well as the general words at the commencement of the section may then become applicable to new and 20 special aspects of subjects otherwise exclusively assigned to the provinces.

Their Lordships considered the question as to whether or not, granted the existence of abnormal circumstances which gave rise to the power of legislation in the Dominion, such abnormal circumstances must be taken to have continued so as to support the continued exercise of authority under the Dominion legislation passed under admittedly abnormal circumstances. At page 705 Viscount Haldane says :—

30 “ The other point which arises is whether such exceptional necessity as must be taken to have existed when the war broke out, and almost of necessity for some period subsequent to its outbreak, continued through the whole of the time within which the questions in the present case arose.”

At page 706 His Lordship holds that where it has become clear that the crisis which arose is wholly at an end and that there is no justification for the continued exercise of an exceptional interference in such a case the Dominion authority ceases. *Hamilton v. Kentucky*, 251 U.S. 146 is approved of.

40 It is submitted that the exceptional circumstances which were assumed to exist by the Privy Council at the time of the passing of the Canada Temperance Act in 1878 cannot now be assumed to have continued to the present, something over fifty years, and that the altered circumstances in the control or prohibition by the provinces of the traffic in intoxicating liquors and the limited and almost negligible extent to which the Canada Temperance Act is now invoked throughout Canada, as disclosed by the Order of Reference, makes it clear that the assumed crisis of 1878 has entirely passed away.

6. In *Toronto Electric Commissioners v. Snider* [1925] A.C. 396, The Industrial Disputes Investigation Act, 1907, of Canada was under consideration. In delivering the judgment of the Board in that case,

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Viscount Haldane at page 410 states that it is not easy to reconcile the decision in *Russell's case* with the subsequent decision in *Hodge v. The Queen*, 9 A.C. 117, and still more difficult is it to reconcile *Russell's case* with the decision of the Privy Council on the McCarthy Act. In referring to the decision of the Board on the McCarthy Act, His Lordship states at page 411 :—

“ They did not in terms dissent from the reasons given in *Russell v. The Queen*. They may have thought that the case was binding on them as deciding that the particular Canada Temperance Act of 1886 had been conclusively held valid, on the ground of fact 10 that at the period of the passing of the Act the circumstances of the time required it in an emergency affecting Canada as a whole.”

At page 412 His Lordship states :—

“ It appears to their Lordships that it is not now open to them to treat *Russell v. The Queen* as having established the general principle that the mere fact that Dominion legislation is for the general advantage of Canada, or is such that it will meet a mere want which is felt throughout the Dominion, renders it competent if it cannot be brought within the heads enumerated specifically in section 91. Unless this is so, if the subject matter falls within any of the 20 enumerated heads in section 92, such legislation belongs exclusively to Provincial competency. No doubt there may be cases arising out of some extraordinary peril to the national life of Canada, as a whole, such as the cases arising out of a war, where legislation is required of an order that passes beyond the heads of exclusive Provincial competency. Such cases may be dealt with under the words at the commencement of section 91, conferring general powers in relation to peace, order and good government, simply because such cases are not otherwise provided for. But instances of this, as was pointed out in the judgment in *Fort Francis v. Manitoba Free Press*, 30 are highly exceptional. Their Lordships think that the decision in *Russell v. The Queen* can only be supported to-day, not on the footing of having laid down an interpretation, such as has sometimes been invoked of the general words at the beginning of section 91, but on the assumption of the Board, apparently made at the time of deciding the case of *Russell v. The Queen*, that the evil of intemperance at that time amounted in Canada to one so great and so general that at least for the period it was a menace to the national life of Canada so serious and pressing that the National Parliament was called on to intervene to protect the nation from disaster. An 40 epidemic of pestilence might conceivably have been regarded as analogous. It is plain from the decision in the *Board of Commerce case* that the evil of profiteering could not have been so invoked, for Provincial powers, if exercised, were adequate to it. Their Lordships find it difficult to explain the decision in *Russell v. The Queen* as more than a decision of this order upon facts, considered to have been established at its date rather than upon general law.”

7. It is submitted on the authority of the *Fort Frances case* and the *Board of Commerce case* that it cannot be contended that such exceptional facts assumed to exist at the time of the decision of *Russell's case* have continued throughout the intervening fifty years.

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8. In *Attorney-General for Canada v. Attorney-General for Ontario* (Reference *Re Natural Products Act*) [1937] A.C. 326 at 352, Lord Atkin refers to the judgment of the Chief Justice of Canada in the same case in the Supreme Court reported in 1936 S.C.R. 398 at 416 et seq. in these words :—

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10 “ They consider that the law is finally settled by the current of cases cited by the Chief Justice on the principles declared by him and it is only necessary to call attention to the phrases in the various cases, ‘ abnormal circumstances,’ ‘ exceptional conditions,’ ‘ standard of necessity ’ (*Board of Commerce case*), ‘ some extraordinary peril to the national life of Canada,’ ‘ highly exceptional,’ ‘ epidemic of pestilence ’ (*Snider's case*), to show how far the present case is from the conditions which may override the normal distribution of powers in section 91 and 92. The few pages of the Chief Justice's judgment will, it is to be hoped, form the locus classicus of the law on this point and preclude further disputes.”

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9. In a portion of the judgment of the Chief Justice in the Supreme Court, 1936, S.C.R. at 420, His Lordship says with regard to the legislative basis of the Canada Temperance Act and the decision in *Russell's case* :—

“ Unfortunately on this point the case was unargued, Mr. Benjamin conceding that the enactment would have fallen within the general authority of the Dominion had it been brought into force immediately throughout every part of the Dominion.”

30 10. In *Rex v. Jones* (1936) 67 C.C.C. 228, the Appeal Division of the New Brunswick Supreme Court held that the Canada Temperance Act was ultra vires. At page 237 the Chief Justice states :—

“ The validity of the Act depends upon the continuation of existence of an assumed fact, namely, that there is in Canada such an appalling state of drunkenness that it is a menace to the national life. This was vigorously repelled by Anglin C.J.C. in *The King v. Eastern Terminal Elevator Company* (1925) 3 D.L.R. at pages 3 and 4. As every rational man knows no such condition exists in Canada to-day.

40 “ The basis for the exercise of the legislative power of the Dominion depends upon the inadequacy of the Provincial Legislatures to grapple successfully with the evil, whatever may be its extent. The Court has obtained from the Secretary of State for Canada the information that to-day the Canada Temperance Act is actually in operation only in the District of Manitoulin and the Counties of Perth, Huron and Peel, in the Province of Ontario ; in the City of Ford Mines, in the Province of Quebec, and in the Counties

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of Lisgar and Marquette, in the Province of Manitoba—in all, seven districts in the whole of the Dominion, and these situated in three only out of the nine provinces. Evidently some adequate means other than the Canada Temperance Act must have been found to dissipate throughout Canada at large the national peril which was the basis of fact supporting *Russell v. The Queen*. Once it is admitted that there is no emergency or that the Provincial Legislatures are competent to deal with the circumstances which exist, the Dominion legislation falls to the ground. The emergency must, as has been pointed out, affect Canada as a whole. Consequently if one Province is admitted to be competent to deal with the situation, the legislative power of the Dominion is at an end. The suspension of the Act by the Governor-in-Council is such an admission, in the plainest terms. From that moment the Canada Temperance Act was no longer necessary 'for the safety of the Dominion as a whole,' and thereupon became unconstitutional and void.

"I may also point out that the burden is to-day upon those who seek to uphold the Act to show that such an emergency exists as will justify its provisions. It might be assumed since *Russell v. The Queen*, that the terrible condition suggested in *Snider's case* still remained and that it is for the opponents of the Canada Temperance Act to disprove the assumed basis of fact. The operation of that Act was suspended by an Order-in-Council which had the force of a statute and must be considered as such. 27 Hals., page 124. Once you have the Canada Temperance Act not in force, to justify again bringing it into operation there must be shown the present existence of such an emergency as is supposed to have justified its original enactment. The suspension is, in effect, a repeal and the burden is on those who seek to reimpose the Act upon the County of Westmorland to show that such enactment is now within the constitutional authority of the Dominion Parliament.

"The evidence before the Police Magistrate does not disclose the present existence of any national or even provincial peril from drunkenness and I am confident that it is impossible that any credible evidence of that character can be produced.

"For these reasons I am of opinion that the Canada Temperance Act is not now in force in the County of Westmorland, and that the conviction made under the Liquor Control Act must be sustained and the appeal dismissed."

*Grimmer, J., concurs with Baxter, C.J.*

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Harrison, J., at page 239 says:—

"I agree, however, that this appeal should be dismissed on the ground that the Canada Temperance Act is not now in force because it is ultra vires the Dominion Parliament for the reasons so ably set forth by the learned Chief Justice."

11. The paucity of restrictive legislation with regard to the control of intoxicating liquor existing down to 1886 as set out in *Attorney-General for Ontario v. The Attorney-General for the Dominion* (1896) A.C. 348 at pages 355 and 356, and the difference between this situation and the existing situation as disclosed in the present reference establishes, it is submitted, the impossibility of contending that the emergency assumed to exist at the time of the decision in *Russell's case* continues to the present day. Not only is there the provincial legislation referred to in the order of reference but the Dominion has passed legislation implementing this provincial legislation. Thus, in 1916 Parliament passed 6-7 Geo. V, chapter 19, declaredly in aid of provincial legislation and making it an offence to send intoxicating liquors into any Province to be dealt in contrary to the law of that province. In 1917 by 7-8 Geo. V, chapter 30, Parliament passed the present section 175 of the Canada Temperance Act, again stating that the Act was in aid of provincial legislation, and in 1919 by 10 Geo. V (Second Session), chapter 8, further legislation was passed to implement and aid provincial laws. Again in 1928 by 18-19 Geo. V, chapter 31, Parliament passed "An Act Respecting Inter-provincial and International Traffic in Intoxicating Liquors" further restricting importation into the provinces.

12. It was held by the Supreme Court *In The Matter of a Reference as to the operation of the Canada Temperance Act in the Counties of Huron, Perth and Peel*, 1935 S.C.R. 494, that the constitutional validity of the Canada Temperance Act was not involved in that reference.

13. *In Rex v. Varley*, 65 C.C.C. 192, a decision of the County Court of the County of Peel, it was held that the Canada Temperance Act, while at the time of its enactment intra vires the Dominion in view of the national emergency then assumed to be existing, became ultra vires with the passing of that emergency and was superseded by the provincial legislation on the subject.

It is submitted that the court is entitled to take into consideration legislation of the Dominion and the Provinces passed subsequently to the Canada Temperance Act in considering the question as to whether or not the Act is now ultra vires.

Can it be argued that the provinces having jurisdiction to prohibit or restrict the manufacture and sale of intoxicating liquor within their respective bounds (*Hodge v. The Queen*, 9 A.C. 117; *Attorney-General for Ontario v. Attorney-General for the Dominion* [1896] A.C. 348; *Attorney-General of Manitoba v. Manitoba Licence Holders' Association* [1902] A.C. 73) and having severally either prohibited or placed control of the traffic in the hands of the respective provincial governments, there continues to exist such abnormal circumstances as to support the present Canada Temperance Act as valid legislation although the Act is in operation in only seven out of all the many local municipalities in Canada and confined to three out of the nine provinces?

It is submitted that "the true nature and character" (*Russell v. The Queen*, 7 A.C. at 839-840) of the Act of 1927 must be determined in order to

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ascertain within which particular legislative field it lies when enacted. It is submitted the history of the present Act and its predecessors in the extremely limited extent to which it has ever been brought into force clearly indicates that in its pith and substance it is an Act dealing with local evils and therefore peculiarly within the legislative field exclusively assigned to the provinces by section 92 (16) of the British North America Act and therefore a field not open to Parliament.

Respectfully submitted.

GORDON D. CONANT,  
Attorney-General for the Province of 10  
Ontario.

R. L. KELLOCK AND W. B. COMMON,  
Of Counsel for the Attorney-General for  
the Province of Ontario.

## SCHEDULE OF VARIOUS PROVINCIAL STATUTES.

### ONTARIO.

I. R.S.O. 1877, chapter 181, "An Act Respecting the Sale of Fermented or Spirituous Liquors."

Sec. 3.—Provides for a Board of Licence Commissioners for each city, county or electoral district. 20

Sec. 4.—Board may pass resolutions as to

- (1) Defining conditions for obtaining licences for retail sale in the municipality in taverns, shops, and places other than taverns, inns, alehouses, beer houses or places of public entertainment;
- (2) for limiting the number of licences;
- (3) for regulating the places to be licensed.

Sec. 5.—Board may impose penalties for infractions of the resolutions.

Sec. 7.—Licences are to be annual.

Sec. 8.—Deals with licences to vessels.

Sec. 15.—1. Licences for taverns in cities, towns and incorporated 30  
villages limited to

- (a) one for each 250 of the first 1,000 of the population, and
- (b) one for each 400 over 1,000.

2. In County towns 5 only.

Sec. 17.—The Municipal Council may limit the number of tavern licences.

Sec. 24.—The Council may limit the number of shop licences.

Sec. 25.—Licences for sale by wholesale.

Sec. 27.—No licence required for sale of native wines sold in minimum 40  
quantities.

Sec. 104.—No licences to be issued in any municipality where sale prohibited by by-law passed under Temperance Act (Canada) 1864 or The Temperance Act of Ontario (R.S.O. 1877, chapter 182).

II. R.S.O. 1877, chapter 182.—“ An Act Respecting Municipal Prohibition of Intoxicating Liquors.” (Re-enacts provisions of Temperance Act 1864, relating to Upper Canada.)

Sec. 3.—The municipal council of any county, city, town, township or incorporated village may pass a prohibitory by-law.

Sec. 13.—No licences to be issued while such by-law remains in force.

(3) Licensed brewers and distillers may still sell in minimum quantities notwithstanding by-law.

(4) Licensed wholesalers may similarly sell.

10 III. 1927.—Liquor Control Act, 17 Geo. V, chapter 70.

Sec. 4.—Liquor Control Board appointed by Lieutenant-Governor-in-Council.

Sec. 10.—Powers and duties of Board as to purchase, and sale of liquor.

Sec. 30.—Establishment of stores by Board for sale.

Sec. 32.—Sales to be to persons holding permits.

Sec. 33.—Sales to be in sealed packages.

Sec. 37.—Board may issue permits for purchase of liquor.

Sec. 42.—Liquor purchased to be kept in residence of purchaser.

Sec. 45.—Board may grant licences to brewers

20 (a) to keep for sale and sell beer to the Board ;

(b) to deliver beer on order of Board or of a vendor who holds a permit to sell beer ;

(c) Brewer may not sell otherwise.

Sec. 51.—Board may grant licences to distillers to sell to Board or as Board may direct.

(b) Distiller may not sell otherwise.

Sec. 69.—No store to be established where a by-law prohibiting sale exists.

30 (2) Provision for submission to electors in such municipality of question to permit sale therein under the Act or discontinuance of sale in the municipality.

Sec. 70.—Board may grant permits for sale of “ light beer.”

Sec. 72.—No person may sell or keep for sale liquor except as permitted by the Act.

Sec. 80.—No liquor may be kept by any person except as permitted by the section.

Sec. 92 (3).—Advertising of liquor restricted.

Sec. 94.—Native wine may be sold by manufacturers subject to regulations of the Board.

40 IV. 1934.—24 Geo. V, chapter 26. Liquor Control Act 1934.

Provides for sale of beer by the glass in beverage rooms, clubs, military messes, trains and steamboats.

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I. The Licences Act, Revised Statutes of B.C. 1877, chapter 106. This statute is based on the Licences Ordinance of 1867, with such amendments as had been made by the Legislature after British Columbia became a province of Canada.

1. The Act provided for the licensing of a large number of businesses, of which the retail selling of liquor was one.

2. No licence to be granted save on petition of at least two-thirds of the inhabitants (excluding Chinese and Indians) except in Victoria, New Westminster and (later) Nanaimo. 10

3. Licences granted on application to two justices, constituting a licensing court.

4. It appears from section 16 that municipalities could regulate by licence saloons and taverns.

II. Retail Liquor Licences Amendment Act, 1878, 42 Vict., chapter 27. Provides for obtaining renewal of licences from the Superintendent of Police.

III. The Government Liquor Act, 1921, chapter 30.

Sets up Liquor Control Board, government liquor stores, and permit system. 20

The scheme is much the same as that in the other provinces adopting such an Act.

As originally passed, no provision for local option.

No beer sold except through government stores.

By an amendment in 1923, club licences were authorised. In the same year provision was made for the taking of plebescites in any polling division, by the Liquor Control Plebescites Act, 1923, chapter 39, which provided for a plebescite for or against sale of beer by the glass.

IV. The present Act is the Liquor Control Act, R.S.B.C. 1936, chapter 160, together with the Liquor-Control Plebescites Act, chapter 161. 30

Beer is sold by the glass in licensed premises.

## ALBERTA.

I. Prohibition against importation or manufacture.

See 36 Vict. (Canada) chapter 39, section 1 (2) and 37 Vict. (Canada) chapter 7, section 2.

No importation or manufacture without consent of Lieutenant-Governor-in-Council; seizure by officer of Customs. This applied to all the North West Territories.

II. The North West Territories Acts of 1875 and 1877. (See 38 Vict. (Canada) chapter 49.) 40

Sec. 74.—Prohibition except with permission of Governor-in-Council as to manufacture, and prohibition as to sale save with permission of Lieutenant-Governor of Territories.



## III. Prohibition.

*The Liquor Act*, 1916 (Alberta) chapter 4.

4. Appointment of vendors to sell for medicinal, mechanical, scientific and sacramental purposes only.

12. Sale to druggists.

13. and physicians

14. and dentists

15. and for sacramental purposes.

23. No sale of liquor except as authorised by the Act.

10 IV. Government Liquor Control Act of Alberta—1924, Chapter 14.

Sec. 3 describes the six parts of the Act.

Part I. The Liquor Control Board.

„ II. Government Liquor Stores.

„ III. Local Option Areas.

„ IV. Prohibition and Prosecutions.

„ V. The Board's property and finances.

„ VI. General.

Sec. 150.—Wherever any inconsistency between this Act and the Liquor Act, R.S.A. 1922, chapter 226, this Act shall prevail.

20 This Act, although amended on a number of occasions, is still in force.

## SASKATCHEWAN.

I. Part of North West Territories until 1905.

II. *The Liquor Act*, 1924-25 Saskatchewan, chapter 53.

3. “Liquor Board” established, to administer this Act under the direction of the Executive Council.

14. Province divided into districts, city districts and “numbered districts” (rural).

15. Board may establish liquor stores to sell liquor and/or beer, in city districts, without any submission to electors.

30 (3) May establish stores for sale of beer in numbered districts.

16-25. Petitions against establishment of or continuance of a liquor store.

69. Permits to societies, associations and clubs for liquor.

Part V.—Submission to the electors. 166-211.

168. Majority vote governs.

Applies to both city and rural districts.

NOTE.—Many of the provisions of this Act are taken from the Sales of Liquor Act of 1915 (repealed in 1917).

40 231. Saskatchewan Temperance Act repealed. The Act is apparently enforced by the local police and Crown officers.

This Act became chapter 232 of R.S.S. 1930, and is still in force, although minor amendments have been made every year since 1930.

By 1934-35 Saskatchewan, chapter 71, sale of beer by the glass or bottle in licensed hotels, clubs and canteens was authorised. Part IX was added to the Act.

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- Sec. 235 (b). Sale of beer in closed packages by hotel-keepers.  
Secs. 236-248. provided for petitions against establishment or con-  
tinuance of hotel licences.  
Sec. 251. Regulations as to standard hotels.  
Sec. 260. Issue of permits to serve beer to women.  
Secs. 264-273. Club licences.  
Sec. 274. Canteen licences.  
Sec. 280. Licences for summer hotels.

The following year, by 1936, chapter 109, the sale of wine came under  
the Board's jurisdiction. 10

#### MANITOBA.

I. 1878—41 Vict., chapter 14, "An Act to Regulate the Sale of In-  
toxicating Liquors and to Control the Sale within the Province."

Sec. 2.—No licence for sale to be granted except under the Act.

Sec. 3.—Provision for licences for sale by hotels, taverns, grocers and  
wholesalers.

Sec. 6.—Commissions to be appointed by Lieutenant-Governor-in-  
Council.

Sec. 39.—In Winnipeg the number of licensed hotels to be limited to one  
for every three hundred of population. 20

II. 1879—42 Vict., chapter 3. Town Corporations General Clauses  
Act.

Sec. 246.—Municipal Councils may fix licence fees for granting of  
licences for sale and to grant tavern and grocery licences.

Sec. 248.—Council may limit the number of licences.

Sec. 249.—Council may prohibit sale by retail in any inn, shop or house  
of entertainment.

III. 1923—Chapter 1, "The Government Liquor Control Act."

Sec. 3.—Government stores for sale to be established.

Sec. 4.—The administration of the Act placed in the hands of the 30  
Government Liquor Control Commission.

Sec. 12.—Sales by the Government are to be to permit holders.

Sec. 14.—Brewers may sell to permit holders.

Sec. 17.—Spirits and wine to be sold in sealed packages only.

Sec. 22.—Commission to issue permits entitling holders to purchase.

Sec. 50.—No government store to be established in local option munici-  
palities.

Sec. 51.—Provision for submitting local option by-laws.

IV. 1928—The above Act was repealed by 1928, chapter 31, "An Act  
to Provide for Government Control and Sale of Liquor." 40

Sec. 3.—Commission established.

Sec. 4.—Commission to buy and sell and to control the possession, sale,  
transportation and delivery of liquor in accordance with the Act.

The Act provides generally for the sale of liquor under the administration of the Commission and for local option by-laws. The Act may be said to be similar to the existing Ontario Liquor Control Act.

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I. The Quebec Licence Law, 1878, 41 Vict., chapter 3.

Licences for inns obtained from the collector of provincial revenue.

In Quebec and Montreal the application was confirmed by the police court.

In Hull and Three Rivers—by three commissioners.

10 Where a municipal by-law prohibits the sale of liquor within its jurisdiction, the collector shall not issue any licences.

37. II. At 1927. The Alcoholic Liquor Act, Revised Statutes, 1925, chapter 37.

Sec. 5. Commission of 5 (The Quebec Liquor Commission) set up.

Sec. 21. No branch warehouses in any city or town where there is a prohibition by-law, or where a by-law has been enacted that no branch may be erected therein.

Secs. 22-24. Commission sells liquor.

Sec. 25. Commission and brewers sell beer from warehouses.

20 Sec. 30. Following may also sell :

trading posts in Northern Quebec .. ..	liquor and beer.
hotels, restaurants, steamboats, dining cars, clubs or other recognised establish- ments .. ..	beer and wine with meals.
grocery stores .. ..	beer.
in taverns .. ..	beer by the glass.
banquets .. ..	beer and wine.

30 Sec. 34 (2). Commission must refuse to grant a permit where a prohibition law is in force. Such laws may be revoked at any time as to wine and beer, or beer only.

Sec. 79. Enforcement by the Commission or by the local municipalities.

Sec. 82. The prohibition municipalities must prosecute all infractions of the Act.

40 Sec. 146. Since the 21st of March, 1922, the date of the coming into force of the Act, 12 Geo. V, chapter 31, every vendor authorised to sell intoxicating liquors under the Canada Temperance Act, in the year preceding its repeal in any municipality where it was in force, must, within the 30 days following such repeal, make known to the Commission all the alcoholic liquor belonging to him or in his possession or control, and place it under the control of the Commission.

III. This Act is still in force with but minor amendments.

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#### NEW BRUNSWICK.

I. Revised Statutes, 1877, chapter 105, "Licences for the Sale of Spirituous Liquors."

2. County Councils of the Counties may grant wholesale and tavern licences.

29. In all incorporated Cities and towns heretofore enjoying the power of granting licences, the power under this Act shall be vested in the local authorities.

30. No licences in any parish or municipality when a majority of the ratepayers petition the municipal council against it. 10

II. 1927—The Intoxicating Liquor Act, R.S.N.B. 1927, chapter 28 (passed 1927, chapter 3, section 1).

This set up a system much like Ontario's with a Liquor Control Board of three members, and government stores, together with direct delivery from Brewers' warehouses.

III. This Act is still in force. There is no provision for sale of beer or wine by the glass in hotels or restaurants.

#### NOVA SCOTIA.

I. In 1878. The Act in force was an Act "Of Licences for the Sale of Intoxicating Liquors." R.S.N.S. 1873, chapter 75. 20

1. Sessions in each county, on the recommendation of the grand jury, appointed licensing clerks for the district.

3. Licences only granted on recommendation of two-thirds of grand jury, supported by a petition of two-thirds of the ratepayers of the polling district.

7. No licences, save tavern and shop licences, shall hereafter be granted.

41. Sale for medicinal purposes in counties or townships where licences not granted.

By amendment in 1876, chapter 1, in any towns, no licences except on presentation of petition of two-thirds of the ratepayers of the ward in which 30 the licence is to be granted.

A similar provision applying to the City of Halifax was passed in 1874, chapter 14, section 5.

II. In 1927. The Nova Scotia Temperance Act, R.S.N.S. 1923, chapter 158, was in force, having been passed in 1918. This provided for prohibition subject to the usual exceptions as medicinal, sacramental or manufacturing purposes.

A Board of Vendor Commissioners was set up (section 25) to sell liquor to doctors, druggists, etc.

III. The present statute is The Nova Scotia Liquor Control Act, 1930, 40 chapter 2.

This is similar to the other provincial Acts, providing for a commission. Sec. 30 (1) No Liquor to be sold in any municipality which in 1929 voted under The Plebescite Act against government sale of liquor.

- (3) Beer and wine by the glass or bottle in hotels during meals (but no sale in municipalities which voted against government sale). In any event no sale under this subsection until a vote taken in favour of it.

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Individual permits necessary (section 37 (2)) Brewers' Warehouses : Secs. 46, 47.

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PRINCE EDWARD ISLAND.

- I. 39 Vict. (1876) Chapter II.
- 10 1. Except in Charlottetown and Summerside, taverns must have four beds, and stabling for 6 horses.
4. Licence obtained by giving public notice of a meeting, presided over by the Magistrate, obtaining certificate that the meeting approved.
8. Cannot sell except on the licensed premises.
9. "Licensed tavern" sign on door.
10. Licences to be renewed annually.  
Must furnish certificate of two magistrates that the house has been conducted in orderly manner.
13. No licence for less than one pint to be hereafter granted.
15. Renewal may be refused by petition of two-thirds of male inhabitants of any school district.
- 20 19. Unlawful to pay part wages in liquor.
20. Unlawful to take pawn or pledge as security for liquor bill.
43. Lieutenant-Governor-in-Council to appoint an inspector, who can prosecute offenders, with fines paid to the Treasury.
52. List of tavern keepers to be submitted to the grand jury at each sittings.
64. 34 Vict., chapter 10, repealed save as to Charlottetown and Summerside.
- II. 40 Vict. (1877), chapter 14. An Act to amend an Act to incorporate the Town of Charlottetown.
- 30 IX. That from and after the passing of this Act, the powers now vested in the City Council respecting the granting of Licences for the sale of spirituous or fermented liquors of all kinds and descriptions, and regulating the sale of the same, shall cease and determine; and all and every such powers shall, upon the election of the Licensing Board hereinafter constituted, be vested in and belong to such Licensing Board who shall also have full power to provide for the inspection of Liquors and the testing and analysis thereof.
- XII. Board to consist of three persons, elected by those entitled to vote for City Councillors.
- 40 XXI. If Board approves of licence, then application submitted to rate-payers in that block and block across the street.
- 40 Vict. chapter 15. An Act to incorporate the Town of Summerside.
- LVII. Exclusive power over liquor licences vested in a Licence Board of three.

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LVIII. Board to pass resolutions as to licences, conditions of issue, number of tavern or shop licences, and general supervision over all shops, taverns and places where liquor sold.

III. Prohibition Act, 1937. 1937, chapter 27.

3. Vendor's licences issued by Order-in-Council and signed by Attorney-General.

19. One wholesale vendor, appointed by Lieutenant-Governor-in-Council.

24. Attorney-General fixes prices to be charged by vendors.

75 et seq. Enforcement by chief inspector and local inspectors, under the Attorney-General (section 164). 10

174. This Act not to derogate from force of any proceedings enactments or proclamations made by the Parliament of Canada or by the Governor-General-in-Council in pursuance of a resolution for plebescite passed April 24, 1922.

175. Prohibition Act of 1918 repealed.

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#### **Memorandum of law and fact of The Moderation League of Ontario.**

In the Supreme Court of Ontario.

In the matter of a reference as to the validity of Parts I, II and III of the Canada Temperance Act, Revised Statutes of Canada, 1927, Chapter 196, 20

#### STATEMENT OF FACT AND LAW SUBMITTED ON BEHALF OF THE MODERATION LEAGUE OF ONTARIO.

The Moderation League of Ontario submits that the questions in this case must be considered with reference to the conditions prevailing prior to the enactment of the Canada Temperance Act insofar as the same may be ascertained.

1866 :

*The Municipal Act of Upper Canada* consolidated in 1866 contained also the Licence Law. This licensing law preserved the right to municipalities to prohibit the sale of liquor, if a majority of the electors within the municipality so declared. That is, the principle of local option had been initiated in the Province of Ontario. 29-30 *Vic. Cap. 51, Secs. 249 to 267.*

1869 :

The licensing law was separated from the Municipal Act by the enactment of the *Tavern and Shop Licence Act 32 Victoria Chap. 32.*

1874 :

The Tavern and Shop Licence Act was consolidated in the *Sale of Spirituous Liquor Act 37 Victoria Chap. 32.* In this Act the local option provisions were repealed and not re-enacted.

1874-1878 :

*The Temperance Act of 1864*, known as the Dunkin Act, was in force in Ontario in this period but contemporary opinion is in agreement that the provisions and machinery of that Act were quite ineffective. As a result, during this period the electors of a municipality in Ontario had practically no right of self-determination as to the issuance or non-issuance of licences for sale of alcoholic beverages in that municipality.

In the years 1873 to 1876 many petitions for the enactment of a prohibitory law were presented to both Houses of Parliament and the debates and proceedings from time to time show that the legislators recognised the strength of this demand and the importance of the questions therein raised. In this connection Counsel for the Moderation League of Ontario will refer to the following documents :

*Debates of the House of Commons*—1873, 1874, 1875, 1878.

*Debates of the Senate*—1873, 1874, 1875, 1878.

*Journals of the House of Commons*—1873, 1874, 1875, 1876, 1878.

*Journals of the Senate*—1873, 1874, 1875, 1878.

In the year 1873 the number of such petitions was very great. In the House of Commons that year, on motion of Sir John A. Macdonald, a committee was appointed to consider such petitions. The committee subsequently requested a grant of money, to be expended in analysing liquors with a view to ascertaining the extent to which adulterations were practised. The grant was made. Later, the same committee presented a report, which was printed, containing a strong declaration in favour of total prohibition.

In 1873 the Legislative Assembly of Ontario by resolution authorised a memorial to the Parliament of Canada praying for legislative action regarding the traffic in intoxicating liquors and in the following year the Legislative Assembly of New Brunswick presented a similar petition. Copies of these documents are included in the appendix to this memorandum as schedules A and B.

In 1874 many more petitions were presented. The House of Commons again appointed a committee to consider the question. This committee reported, recommending that steps be taken to obtain information about the working of prohibitory laws in the United States. The recommendation was adopted by the House of Commons, and after the close of the session a royal commission was appointed, which made an investigation of the subject committed to it and presented a careful and comprehensive report.

The agitation was kept up. In 1875 the number of petitions presented was very great. Mr. G. W. Ross moved to have the House of Commons resolve itself into a committee of the whole to consider a resolution in favour of the enactment of prohibition as far as was within the competence of Parliament, as soon as public opinion would efficiently sustain such legislation. Dr. Schultz moved an amendment declaring that it was the duty of the Government to introduce a prohibitory measure at the earliest moment practicable. Mr. Oliver moved in amendment to the amendment, that the House go into committee of the whole to consider means to diminish the evils of intemperance. This amendment was adopted. In committee of the whole, Mr. Ross moved a resolution declaring that the most effective remedy for the evils of in-

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temperance would be a law of total prohibition. An amendment was offered by Mr. Bowell, declaring it to be the duty of the Government to propose such a measure. The committee decided in favour of the motion offered by Mr. Ross, and reported the same to the House. No action seems to have been taken upon this report.

The following are extracts from the Reports of the Select Committees of the House of Commons referred to above :

Your Committee, to whom were referred the petitions presented in favour of a Prohibitory Liquor Law, beg leave, in presenting their Second Report, to call the attention of Your Honourable House to the following 10 considerations, the result of their most careful deliberations, and based upon the facts to which they have had access so far :

1. That the traffic in intoxicating liquors is an unmitigated evil—widespread in its effects—reaching with more or less virulence every class of the community, destroying and blighting with its baneful influence the existence of many of the most useful and promising members of society—producing untold domestic misery and destitution, and leading to the formation of habits alike opposed to the moral and intellectual advancement and prosperity of the country.

2. That the petitions (384 in number) presented to your Honour- 20 able House and signed by 39,223 individuals, as well as the petitions from 82 municipalities, and the Legislature of the Province of Ontario praying for a Prohibitory Liquor Law show that the people of this Dominion are very strongly impressed with the enormity of the evils alluded to, and that, in view of this strong and unequivocal demand, Your Committee feel bound to urge the necessity of some action on the part of Your Honourable House to meet the wishes of the Petitioners and, if possible, remove the evils complained of.

3. That in examining the answers received from the Sheriffs, Prison Inspectors, Coroners and Police Magistrates, one hundred and 30 fourteen of whom have voluntarily given evidence, Your Committee find that four-fifths of the crime committed in the Province of Ontario (answers have not yet been received from the other Provinces) are directly or indirectly connected with the manufacture sale and consumption of intoxicating liquors.

4. Your Committee further find, on examining the reports of the Prison Inspectors for the Provinces of Ontario and Quebec, that out of 28,289 commitments to the jails for the three previous years, 21,236 were committed either for drunkenness or for crimes perpetrated under the influence of drink, thus corroborating the state- 40 ment of the magistrates and others above alluded to.

5. Your Committee find also from the reports of one hundred and fifty-three medical men, as well as from statements made by medical practitioners in the United States and Great Britain, that the use of intoxicating liquors as a beverage is not essential to the



health or well-being of the community, but that, on the contrary, it often leads to disease and premature death.

6. Your Committee have also to report that they have made, as far as time would permit, enquiry into the operation and effect of the Prohibitory Liquor Law in the State of Maine, accepting its operations there as the fairest test of its success, and find that although there are violations of the law, in many cases flagrant and glaring, yet from the evidence received and subjoined to this Report, Your Committee is convinced that a Prohibitory Liquor Law would mitigate if not entirely remove the evils complained of.

7. In considering the immediate effect which the passage of a Prohibitory Liquor Law would have upon the revenue of the country, Your Committee are bound to admit that for some time, at least, there might be a falling off, yet in the face of the evils arising from the liquor traffic, alluded to in the first paragraph of this report, they cannot recommend any other course to your Honourable House than a ready compliance with the prayer of the petitioners. The reasons upon which Your Committee base this recommendation are the following :

(1) Although the revenue arising from the traffic is now very large, amounting last year to \$5,034,543.58, yet the expense of the administration of justice, the maintenance of asylums, hospitals and penitentiaries consequent upon the habitual use of intoxicating liquors would be largely diminished, thus furnishing a very considerable offset to the amount lost to the revenue.

(2) That the capital now invested in the traffic, large as Your Committee believe it to be, would, if diverted to other purposes of trade, add largely, in a very short time, to the general wealth of the country, and open up new and even more profitable sources of industry which in their turn would contribute to the revenue without those baneful associations which vitiate the returns accruing from the Liquor Traffic.

(3) That the effect upon the industrial prosperity of thousands who are now impoverished by their dissipated habits would be such as to enable them to consume other dutiable goods—the laws of supply and demand being such that wherever there is a surplus of capital it will find for itself some field for investment.

(4) That it is clearly the duty of Government, when the social, moral and civil standing of the subject is imperilled by the existence of any traffic or trade, that, apart from all considerations of gain or profit, the interests of the subject should not be sacrificed even to the expansion or maintenance of the revenue.

(5) That the principle of protection to the subject against evils which may be and which are sources of revenue is already

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conceded in Acts passed on former occasions by the Legislature of Canada, such as the Dunkin Act, Sanitary Laws, and other laws of a similar nature.

8. In view of these facts, Your Committee would most respectfully submit to your Honourable House the importance of speedily removing the evils complained of by the enactment of a Prohibitory Liquor Law—that is a law prohibiting the importation, manufacture and sale of all intoxicating liquors, except for medicinal and mechanical purposes, regulated by proper safeguards and checks.

All of which is respectfully submitted.

E. V. Bodwell,  
Chairman.

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Your Committee in submitting their Second Report beg leave to call the attention of your Honourable House to the following :

1. That the Petitions presented this and the preceding Parliament praying for the passage of a Prohibitory Liquor Law, indicate a state of public feeling that demands the serious attention of the House.

2. That the intimate connection between the Liquor Traffic and Crime of all kinds, show that the existing Laws restricting said 20 traffic are entirely inadequate to remove the evils complained of.

3. Whereas the attempts of previous Committees to obtain full and reliable information from documentary evidence, with regard to the operation of Prohibitory Liquor Laws have not been entirely satisfactory, Your Committee is of the opinion that it would be expedient to take such steps as would put the House in possession of full and reliable information as to the operation and result of such laws in those States of the American Union, where they are now or have been in force, with the view of showing the probable working and effect of such laws in Canada. 30

In 1878 the petitioning continued. Requests were made for total prohibition, for the amendment of the Dunkin Act, and for other legislative measures. In that year Parliament dealt with the question by the enactment of the Canada Temperance Act.

1878 :

In 1878 The Canada Temperance Act was introduced into the Senate.

It is submitted that the records of the debates and proceedings clearly show the conditions existing prior to the Canada Temperance Act. As an example of this, Hansard reports that on March 15th, 1875, Members of the House, speaking on a resolution in favour of the enactment of prohibition, 40 said in part :

Mr. G. W. Ross said :

that when he had the pleasure of addressing the House last session he called attention to the petitions presented from year to year—to the numerical strength of those petitions—the responsibility and influential position of many of those who appended their signatures to them—and

argued from these facts that the moral and social force represented by those petitions demanded at the hands of the House some consideration—whether the intrinsic merits of the question to which the attention of the House was called, deserved that attention or not. He also endeavoured to show that the ground taken by those petitioners was a true and legitimate one; that the charges which they made against the liquor traffic were real and not imaginary. He endeavoured to prove, by statistics gathered with very considerable care from different sources that, as the petitioners alleged, the liquor traffic was responsible for a large proportion of the crime committed in this Dominion. He showed that while the population of Ontario increased one and a half per cent. per annum, crime increased in that Province at the rate of five per cent. per annum. He also showed that while in the United Provinces of Ontario and Quebec, population increased at the rate of one per cent., crime increased eight and three-quarter per cent.; and that while the increase of crime in these two Provinces was eight and three-quarter per cent. per annum, by a strange coincidence the increase in the sale of intoxicating liquors was eight and one-half per cent. He also showed that the largest proportion of that increase came from amongst the temperate classes; that according to the reports of the Inspectors of Prisons and Asylums in Ontario the increase in commitments to our jails from among the temperate classes was only seven per cent., while among the intemperate classes it was thirty-three and one-third per cent., and among the drunks and disorderly forty and one-half per cent. These facts justifies him in the assertion that the charges made against the liquor traffic were real and not imaginary as he had already stated.

Mr. Smith (Peel) said :

“ I am not in possession of statistics to show the quantity of liquor drunk in this country in former years. But we do know something of the drinking usages that prevailed, and the lamentable consequences that followed the too free use of the poison. At logging bees, raisings, quilting bees, births, marriages, dances, deaths and funerals, all alike whiskey was indispensable. But perhaps on no occasions were the disastrous effects of this curse of our race so clearly seen as at annual trainings and township meetings. On such occasions whiskey flowed in abundance. Old spites, personal or family feuds, or imaginary insults had to be settled. Brute force was generally resorted to, and in not a few instances valuable lives sacrificed to the fury of men maddened by strong drink. The report of the Minister of Inland Revenue of the past year informs us that for the twelve months 5,500,000 gallons of whiskey were manufactured. In addition to this the large quantity, over 11,000,000 gallons of beer was made, making in all 16,500,000 gallons; or in round numbers 42 gallons to each man, woman and child in the Dominion. For the manufacture of this large quantity of liquor 4,000,000 bushels of grain were consumed, a quantity that would furnish bread for nearly one-fifth of the inhabitants of the Dominion.”

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On March 28th, 1878, the Honourable R. W. Scott moved the second reading of the Bill and is quoted in Hansard at that date as saying: "I shall give the House the Reasons for this legislation." The Honourable Mr. Scott then read the reports of the Committees of 1874 and 1875, which in part state:

"The Petitions which have been referred to your Committee number 993, and have attached to them 349,294 signatures, being ten times the number of those of last year; 147 of the petitions are from Municipal Councils, and 9 from other representative bodies, each acting for a considerable number of persons; it is therefore obvious that the aggregate 10 number of signatures mentioned would have to be largely increased, probably to 500,000, in order to convey an approximate idea of the vast number of individuals who plead for a prohibitory law. Among the representative petitions there is one from the Legislative Assembly of New Brunswick, signed by 33 members, and one from the General Assembly of the Canada Presbyterian Church, which claims a constituency of 226,000 church members, and it must not be forgotten that the Legislative Assembly of Ontario joined last year in the prayer of these petitions.

"That the desire for legislative prohibition is not merely of a local 20 or even Provincial character, is shown by the petitions coming from all the Provinces of the Dominion: there are from Ontario, 633 petitions, with 302,090 signatures; from Quebec, 103 petitions, with 14,038 signatures; from New Brunswick, 92 petitions, with 16,335 signatures; from Nova Scotia, 119 petitions, with 13,622 signatures; from Prince Edward Island, 43 petitions, with 3,174 signatures; from British Columbia, 2 petitions (municipal), with 34 signatures; and from Manitoba, 1 petition (Presbyterian Church), with 1 signature.

"Your Committee regard the vast and annually increasing number of petitioners, and their unanimity in the statements and prayer of their 30 several petitions, as indicating the immense and pressing importance of the subject to which they call the attention of the Senate, and the profound and widespread feeling of the need of such legislation as shall at once check, and eventually extirpate from our land, the vice of intemperance which has so long been, and still is, a prolific source of crime and misery, disease and death, and a blight upon the fair prospects of our young Dominion.

"The whole of the petitioners join in asserting that the vice of intemperance is fearfully prevalent and increasing, and that it results mainly from the facilities afforded by law to the traffic in intoxicating 40 liquors. Your Committee have no means of testing the accuracy of the statement, but their own personal observation, and the facts brought to view in the official Returns of Customs and Excise, showing an enormous quantity consumed in the Dominion, lead them to place full reliance on the assertion.

"The Petitioners further assert that the traffic in intoxicating liquors is shown, by the most careful enquiries, to be the cause of probably not

less than three-fourths of the pauperism, immorality and crime found in this country ; the evidence gathered by the Committee of the House of Commons and reported last year, is strongly corroborative of this assertion ; but your Committee are of opinion that more full and extended official information on this very important branch of the subject than can possibly be procured by Parliamentary Committees during the time the Houses are in Session, should be obtained by the Government and laid before Parliament.

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10     “. . . Your Committee consider that the time has arrived when the earnest attention of the Government and of the Legislature should be given to this important subject with a view of discovering and applying the best remedy for the gigantic evil that affects so seriously the peace and prosperity of the Dominion.”

Mr. Scott then read the report of the Committee of 1875, which in part said :

20     “ That the number and character of the petition for prohibition of the traffic in intoxicating liquors already presented to the Senate, clearly indicate that there is no diminution of the desire for a prohibitory law expressed by the petitions to Parliament in the session of 1873 and 1874 ; but on the contrary, a growing conviction of its necessity, as the only effective remedy for intemperance, and the crime and misery resulting from it.

30     “ That the simple fact, that so very large a number of petitioners, estimated in the aggregate to be not less than 500,000, allege that vice and pauperism are largely caused by the liquor traffic, and that the system of regulating it by licence laws has proved ineffectual to check intemperance,—and unite in praying for the enactment of a prohibitory law,—is sufficient to prove the vast importance of the subject, and to entitle the prayer to the earliest consideration of the Senate. On no other political or social question, ever submitted to Parliament in this country or in Great Britain, has there been so large a number of petitioners in proportion to the population affording so marked an expression of public opinion in its favour.”

On May 3rd, 1878, the Prime Minister, Mr. Mackenzie, speaking on the Canada Temperance Act in Committee, said in part :

40     that it was a matter of the greatest possible importance to this country that we should be able in some way or other to check the torrent of intoxication which for many years has been increasing and pouring in an unlimited stream over the land.

It was the duty of every one who loved his country, and who wished well to all our institutions and to our churches, to endeavour to aid those who had been devoting their voluntary efforts to the accomplishment of this end, and he was sure this House, in common with the other branch of the Legislature, would cordially respond to the invitation which the Government had given by the introduction of this Bill, in aiding to the extent of their power in repressing a traffic which had produced so much

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disaster of every kind, and which threatened, if left uncontrolled, to exercise a still more disastrous and permanent evil influence on the destinies of this country.

The constitutional validity of the Canada Temperance Act was considered by the Judicial Committee of the Privy Council in *Russell v. The Queen*, 7 A.C. 829, and its validity was upheld on the ground that it was legislation passed for the peace, order and good government of Canada. Sir Montague E. Smith, who delivered the judgment of the Privy Council, says at page 838: "What Parliament is dealing with in legislation of this kind is not a matter in relation to property and its rights, but one relating to public order and safety. That is the primary matter dealt with . . ." and further at page 842: "The present legislation is clearly meant to apply a remedy to an evil which is assumed to exist throughout the Dominion."

It is submitted that there can be no doubt, in view of the description of conditions existing prior to the passing of the Act as contained in the records above referred to, that such an evil was assumed to exist and that the legislation was passed by the Parliament of Canada to meet what Parliament considered to be a national emergency which threatened the peace, order and good government of Canada.

The Act was again considered by the Privy Council in the case of *Attorney-General for Ontario v. Attorney-General for the Dominion* [1896], A.C. 348.<sup>20</sup> In this case the Board did not again consider the constitutional validity of the Act, holding that the decision in *Russell's case* had made such a review by the Board unnecessary, and deciding that the power of passing the Act is to be found in the authority of the Dominion to pass laws for the peace order and good government of Canada.

The view that *Russell v. The Queen* decided that the Canada Temperance Act was *intra vires* legislation only because of an emergency existing at the time that it was enacted, receives very strong support in the judgment of Viscount Haldane in *Toronto Electric Commissioners v. Snider* [1925]<sup>30</sup> A.C. 396, where His Lordship said in part:

"Their Lordships think that the decision in *Russell v. The Queen* can only be supported to-day, not on the footing of having laid down an interpretation, such as has sometimes been invoked, of the general words at the beginning of Sec. 91, but on the assumption of the Board, apparently made at the time of deciding the case of *Russell v. The Queen*, that the evil of intemperance at that time amounted in Canada to one so great and so general that at least for the period it was a menace to the national life of Canada, so serious and pressing that the National Parliament was called on to intervene to protect the nation from disaster. An epidemic<sup>40</sup> of pestilence might conceivably have been regarded as analogous. It is plain, from the decision in the *Board of Commerce case*, that the evil of profiteering could not have been so invoked, for Provincial powers, if exercised, were adequate to it. Their Lordships find it difficult to explain the decision in *Russell v. The Queen* as more than a decision of

this order upon facts, considered to have been established at its date rather than upon general law. . . .”

And later in the same judgment :

“ Their Lordships have examined the evidence produced at the trial. They concur in the view taken of it by Hodgins, J.A. They are of opinion that it does not prove any emergency putting the national life of Canada in unanticipated peril such as the Board which decided *Russell v. The Queen* may be considered to have had before their minds. . . .”

10 Reference is also made to *Attorney-General for Canada v. Attorney-General for Alberta* [1916] 1 A.C. 588, and to *in re the Board of Commerce Act 1919* [1922] 1 A.C. 191, where similar views as to *Russell v. The Queen* are expressed.

1890 :

In response to agitation for a Provincial law, which would provide for local option in a given area, the Ontario Government in 1890 re-enacted the prohibitory clauses of the Municipal Act which had been repealed in 1874. By its terms a Municipal Council might pass a by-law that no licence to sell liquor could be issued in the Municipality. Approval of the law by a three-  
20 fifths majority of the electors was necessary and it could not be repealed for three years ; and then only by a three-fifths majority of the electors. With the exception of the period when the Ontario Temperance Act was in force, Ontario has, since 1890, always had legislation of this character in operation under which any Municipality having a municipal entity can prohibit the sale of liquor within its boundaries.

The success of the Provincial local option laws is evidenced by the number of Municipalities in the Province of Ontario which have voted to come under their provisions since 1890. At the present time there are 363  
30 Municipalities in the Province of Ontario in which the sale of liquor is prohibited under provincial law. A list of these Municipalities is hereto attached, as Schedule C, and for better illustration a map showing such Municipalities has been prepared and is also appended.

Similarly, in all other Provinces of Canada there now exists either prohibition or else the control of liquor is firmly in the hands of the local Provincial Governments, supplemented by Parts IV and V of the Canada Temperance Act, by virtue of which the importation of intoxicating liquor into the various Provinces has been either restricted or prohibited.

It is submitted that when Parliament enacted the Canada Temperance Act it assumed exceptional circumstances in existence which amounted to a  
40 national emergency threatening the life of the Dominion. It is further submitted that this state of affairs cannot now be assumed to have continued to the present throughout the intervening fifty years and that the altered circumstances in the control of prohibition by the Provinces of intoxicating liquors, makes it clear that the crisis of 1878 has entirely passed away. It is further submitted that since the Canada Temperance Act was enacted to meet a national emergency existing at the time and that emergency having

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passed, the Act is at present ultra vires of the Parliament of Canada. Authority for this proposition will be found in *Fort Frances Pulp & Paper Company v. Manitoba Free Press* [1923] A.C. 695, and *Toronto Electric Commissioners v. Snider* [1925] A.C. 396.

In *Rex v. Varley* (1936) 1 D.L.R. 771, a decision of the County Court of the County of Peel, it was decided that the Canada Temperance Act while at the time of its enactment intra vires the Parliament of Canada, because of a national emergency then assumed by Parliament to be existing, became ultra vires with the passing of that emergency, and was superseded by the Provincial Legislation on the subject, 10

In *Rex v. Jones* (1937) 1 D.L.R. 193, the Appellate Division of the New Brunswick Supreme Court held that the Canada Temperance Act was ultra vires. At page 201 the Chief Justice states :

“ The validity of the Act depends upon the continuation of existence of an assumed fact, namely, that there is in Canada such an appalling state of drunkenness that it is a menace to the national life. This was vigorously repelled by Anglin, C.J.C., in *The King v. Eastern Terminal Elevator Company* (1925) 3 D.L.R. at pages 3 and 4. As every rational man knows no such condition exists in Canada to-day.

“ The basis for the exercise of the legislative power of the Dominion 20 depends upon the inadequacy of the Provincial Legislatures to grapple successfully with the evil, whatever may be its extent. The Court has obtained from the Secretary of State for Canada the information that to-day the Canada Temperance Act is actually in operation only in the District of Manitoulin and the Counties of Perth, Huron and Peel, in the Province of Ontario ; in the City of Thetford Mines, in the Province of Quebec, and in the Counties of Lisgar and Marquette, in the Province of Manitoba—in all, seven districts in the whole of the Dominion, and these situated in three only out of the nine provinces. Evidently some adequate means other than the Canada Temperance Act must have been 30 found to dissipate throughout Canada at large the national peril which was the basis of fact supporting *Russell v. The Queen*. Once it is admitted that there is no emergency, or that the Provincial Legislatures are competent to deal with the circumstances which exist, the Dominion Legislation falls to the ground. The emergency must, as has been pointed out, affect Canada as a whole. Consequently, if one Province is admitted to be competent to deal with the situation, the legislative power of the Dominion is at an end. The suspension of the Act by the Governor-in-Council is such an admission, in the plainest terms. From that moment the Canada Temperance Act was no longer necessary ‘ for 40 the safety of the Dominion as a whole,’ and thereupon became unconstitutional and void.

“ I may also point out that the burden is to-day upon those who seek to uphold the Act to show that such an emergency exists as will justify its provisions. It might be assumed since *Russell v. The Queen*, that the terrible condition suggested in *Snider's case* still remained and that it is for the opponents of the Canada Temperance Act to disprove



the assumed basis of fact. The operation of that Act was suspended by an Order-in-Council which had the force of a statute and must be considered as such. 27 Hals. page 124. Once you have the Canada Temperance Act not in force, to justify again bringing it into operation there must be shown the present existence of such an emergency as is supposed to have justified its original enactment. The suspension is, in effect, a repeal and the burden is on those who seek to reimpose the Act upon the County of Westmorland to show that such enactment is now within the constitutional authority of the Dominion Parliament.

10

“The evidence before the Police Magistrate does not disclose the present existence of any national or even provincial peril from drunkenness and I am confident that it is impossible that any credible evidence of that character can be produced.

“For these reasons I am of opinion that the Canada Temperance Act is not now in force in the County of Westmorland, and that the conviction made under the Liquor Control Act must be sustained and the appeal dismissed.”

Grimmer, J., concurs with Baxter, C.J.

Harrison, J., at page 203, says :

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“I agree, however, that this appeal should be dismissed on the ground that the Canada Temperance Act is not now in force because it is ultra vires the Dominion Parliament for the reasons so ably set forth by the learned Chief Justice.”

As to the powers of a Province to legislate with regard to intoxicating liquor, reference is made to *Hodge v. The Queen*, 9 A.C. 117. *Attorney-General for Ontario v. Attorney-General for the Dominion* [1896] A.C. 348. *Attorney-General for Manitoba v. Manitoba Licence Holders' Association* [1902] A.C. 73.

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Reference is also made to the decision of the Privy Council on the *McCarthy Act* Reference declaring the Dominion Statute, 46 *Vict. Cap 30* (1883) invalid. The decision was regarded as of importance in *Attorney-General for Ontario v. Attorney-General for Canada* [1916] 1 A.C. 588, at 596 : In *re Board of Commerce Act* (1920) 60 S.C.R. 456 at 497 and 510. *Toronto Electric Commissioners v. Snider* [1925] A.C. 396, at 410.

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When considering the validity of Legislation by the Dominion or by a Province, regard must always be had to the pith and substance, the effect and the true object or purpose of the particular Statute. Recent cases illustrating this are *Shannon v. Lower Maitland Dairy Products Board* [1938] A.C. 708 ; *Attorney-General for Alberta v. Attorney-General for Canada et al* [1939] A.C. 117.

It is submitted that when Parliament enacted the Canada Temperance Act in 1878, it assumed the existence of a great national peril. There can be no suggestion that any such peril exists to-day or that Parliament made a similar assumption when in 1927 it enacted Chapter 196 of the Revised Statutes of Canada. It is submitted that Parliament therefore had no power to enact the Canada Temperance Act in 1927 and that to-day the Act must be

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regarded as constitutionally invalid. The original broad general purpose of the Act is no longer its true purpose. Its application to a few scattered municipalities throughout Canada shows that it is definitely local in character, object and purpose.

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Attention of the Court is respectfully directed to the fact that between the years 1900 and 1916 total prohibition was introduced by Provincial Legislation into all the Provinces of Canada, with the exception of Quebec. In 1917 by 7-8 Geo. V. Cap. 30, the Dominion Parliament enacted what is now Section 175 of the Canada Temperance Act. This Section was not part of the Canada Temperance Act as originally enacted. This Section provides 10 for the suspension of the Canada Temperance Act "if the Governor-in-Council is of opinion that the laws of the Province . . . are as restrictive as the provisions of the said Canada Temperance Act." It is submitted that by the enactment of this Section Parliament recognised the fact that the Canada Temperance Act was no longer necessary for the safety of the Dominion as a whole and that the Provincial Legislatures are competent to deal with the circumstances.

The Moderation League of Ontario respectfully submits that the question referred to the Court on this reference should be answered by a finding that Parts 1, 2 and 3 of the Canada Temperance Act, R.S.C. 1927, Chapter 196, 20 are constitutionally invalid.

All of which is respectfully submitted.

W. N. TILLEY,  
J. R. CARTWRIGHT,  
BETHUNE L. SMITH,  
Of Counsel for the Moderation  
League of Ontario.

#### SCHEDULE A.

*Journal and Appendix Legislative Assembly of Ontario 1873, Vol. 6, p.327,  
Committee on Memorials reported.* 30

(1) Memorial to His Excellency the Governor-General

"To His Excellency, etc. . . .

"May it please Your Excellency

"We, Her Majesty's dutiful and loyal subjects, the Legislative Assembly of the Province of Ontario in Parliament assembled beg leave to inform Your Excellency

\*Sic. 28,000.

"That three hundred and sixty-nine Petitions from upwards of \*2,800 inhabitants of this Province have been presented to this Assembly praying for the passage of an act prohibiting the manufacture and sale of intoxicating liquors as beverages within this Province. 40

"That thirty-nine similar Petitions have been presented to this Assembly from municipal corporations within this Province.

"That it has been held and ruled by the Speaker of this Assembly that this Assembly has not, under the provisions of the Confederation Act, power to grant the prayer of the said Petitioners.

“ And that it is the opinion of this Assembly that a Prohibitory Liquor Law such as prayed for by the said Petitioners, would be most beneficial in its results to this Province.

We would therefore humbly pray Your Excellency that you will be pleased to cause a measure to be submitted to the Parliament of Canada for the purpose of carrying out the wishes of the said Petitioners.”

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### SCHEDULE B.

*Journal of the Assembly of New Brunswick 1874, page 191.*

On motion of Mr. Hibbard,

10 Whereas the use of intoxicating drinks in this Province as well as throughout the Dominion of Canada, is a great and constantly increasing evil producing the most direful results among all classes of the people; therefore

Resolved that this legislative do urge upon the Parliament of the Dominion of Canada the propriety of enacting a law prohibiting the importation, manufacture and sale of intoxicating liquors within the Dominion

To which the Honourable Mr. Stevenson moved the previous question—  
That the question on the said Resolution be now put.

Upon the question, the House divided :

20 Yeas 20 Nays 12

And it was thereupon carried in the affirmative.

### SCHEDULE C

#### CITY—TOWN AND VILLAGE MUNICIPALITIES.

<i>Municipality.</i>	<i>Status.</i>	<i>County.</i>	
Ailsa Craig	Village	Middlesex	L.O. 1910
Alliston	Town	Simcoe	L.O. 1910
Arkona	Village	Lambton	L.O. 1935
Athens	Village	Leeds	L.O. 1912
Aurora	Town	York	L.O. 1916
30 Bancroft	Village	Hastings	L.O. 1938
Bath	Village	Lennox	L.O. 1916
Beamsville	Village	Lincoln	L.O. 1934
Beaverton	Village	Ontario	L.O. 1936
Beeton	Village	Simcoe	L.O. 1935
Blenheim	Town	Kent	L.O. 1938
Bloomfield	Village	Prince Edward	Duncan Act 1866
Bobcaygeon	Village	Victoria	L.O. 1939
Bowmanville	Town	Durham	L.O. 1909
Braeside	Village	Renfrew	L.O. 1909
40 Brampton	Town	Peel	L.O. 1935
Brighton	Village	Northumberland	L.O. 1908
Campbellford	Town	Northumberland	L.O. 1937
Cannington	Village	Ontario	L.O. 1912

		CITY—TOWN AND VILLAGE MUNICIPALITIES ( <i>contd.</i> ).		
<i>In the Supreme Court of Ontario.</i>	<i>Municipality.</i>	<i>Status.</i>	<i>County.</i>	
<i>No. 8. Memoran- dum of law and fact of the Moderation League of Ontario— continued.</i>	Carlton Place	Town	Lanark	L.O. 1934
	Chesley	Town	Bruce	L.O. 1934
	Cobden	Village	Renfrew	L.O. 1910
	Colborne	Village	Northumberland	L.O. 1912
	Coldwater	Village	Simcoe	L.O. 1912
	Creemore	Village	Simcoe	L.O. 1911
	Delora	Village	Hastings	L.O. 1914
	Drayton	Village	Wellington	L.O. 1936 10
	Dundalk	Village	Grey	L.O. 1913
	Durham	Town	Grey	L.O. 1912
	Dutton	Village	Elgin	L.O. 1938
	Embro	Village	Oxford	L.O. 1913
	Erie Beach	Village	Kent	L.O. 1907
	Fenelon Falls	Village	Victoria	L.O. 1936
	Fergus	Village	Wellington	L.O. 1935
	Finch	Village	Stormont	L.O. 1916
	Flesherton	Village	Grey	L.O. 1906
	Fonthill	Village	Welland	L.O. 1913 20
	Forest	Town	Lambton	L.O. 1913
	Frankford	Village	Hastings	L.O. 1909
	Grand Valley	Village	Dufferin	L.O. 1910
	Harrow	Town	Essex	L.O. 1934
	Havelock	Village	Peterborough	L.O. 1909
	Highgate	Village	Kent	L.O. 1938
	Holland Landing	Village	York	L.O. 1915
	Ingersoll	Town	Oxford	L.O. 1936
	Iroquois	Village	Dundas	L.O. 1913
	Jarvis	Village	Haldimand	L.O. 1935 30
	Kemptville	Village	Grenville	L.O. 1914
	Kincardine	Town	Bruce	L.O. 1913
Kingsville	Town	Essex	L.O. 1934	
Lakefield	Village	Peterborough	L.O. 1936	
Lanark	Village	Lanark	L.O. 1914	
Lion's Head	Village	Bruce	L.O. 1910	
Lucan	Village	Middlesex	L.O. 1916	
Lucknow	Village	Bruce	L.O. 1912	
Markdale	Village	Grey	L.O. 1935	
Markham	Village	York	L.O. 1935 40	
Matheson	Town	Cochrane	L.O. 1938	
Maxville	Village	Glengarry	L.O. 1934	
Meaford	Town	Grey	L.O. 1914	
Midland	Town	Simcoe	L.O. 1915	
Millbrook	Village	Durham	L.O. 1908	
Newboro	Village	Leeds	L.O. 1916	
Newburgh	Village	Addington	L.O. 1914	

CITY—TOWN AND VILLAGE MUNICIPALITIES (*contd.*).

<i>Municipality.</i>	<i>Status.</i>	<i>County.</i>		<i>In the Supreme Court of Ontario.</i>
Newbury	Village	Middlesex	L.O. 1936	
Newmarket	Town	York	L.O. 1936	
Norwich	Village	Oxford	L.O. 1935	No. 8.
Norwood	Village	Peterborough	L.O. 1908	Memoran- dum of law
Oil Springs	Village	Lambton	L.O. 1938	and fact
Omeme	Village	Victoria	L.O. 1939	of the
Orangeville	Town	Dufferin	L.O. 1914	Moderation
10 Orillia	Town	Simcoe	L.O. 1910	League of
Owen Sound	City	Grey	L.O. 1913	Ontario—
Paisley	Village	Bruce	L.O. 1911	<i>continued.</i>
Parkhill	Town	Middlesex	L.O. 1937	
Petrolia	Town	Lambton	L.O. 1938	
Port Carling	Village	Muskoka	L.O. 1910	
Port Perry	Village	Ontario	L.O. 1935	
Renfrew	Town	Renfrew	L.O. 1913	
Richmond Hill	Village	York	L.O. 1935	
Ripley	Village	Bruce	L.O. 1907	
20 Rodney	Village	Elgin	L.O. 1934	
Shallow Lake	Village	Grey	L.O. 1915	
Shelburne	Village	Dufferin	L.O. 1910	
Stayner	Town	Simcoe	L.O. 1910	
Stirling	Village	Hastings	L.O. 1908	
Stouffville	Village	York	L.O. 1909	
Strathroy	Town	Middlesex	L.O. 1934	
Sturgeon Point	Village	Victoria	L.O. 1914	
Tara	Village	Bruce	L.O. 1915	
Teeswater	Village	Bruce	L.O. 1915	
30 Thornbury	Town	Grey	L.O. 1915	
Tiverton	Village	Bruce	L.O. 1913	
Toronto Junction Town (Now Toronto)		York	L.O. 1904	
Toronto North Town (Now Toronto)		York	L.O. 1905	
Tottenham	Village	Simcoe	L.O. 1938	
Tweed	Village	Hastings	L.O. 1935	
Uxbridge	Town	Ontario	L.O. 1916	
Victoria Harbour	Village	Simcoe	L.O. 1913	
40 Wardsville	Village	Middlesex	L.O. 1939	
Waterford	Village	Norfolk	L.O. 1912	
Wellington	Village	Prince Edward	L.O. 1913	
West Lorne	Village	Elgin	L.O. 1915	
Weston	Town	York	L.O. 1935	
Winchester	Village	Dundas	L.O. 1907	
Woodville	Village	Victoria	L.O. 1908	
Wyoming	Village	Lambton	L.O. 1912	

## TOWNSHIP MUNICIPALITIES.

<i>In the Supreme Court of Ontario.</i>	<i>Municipality.</i>	<i>County.</i>	
	Adelaide	Middlesex	L.O. 1913
	Albemarle	Bruce	L.O. 1914
No. 8.	Aldborough	Elgin	L.O. 1935
Memoran-	Amabel	Bruce	L.O. 1909
dum of law	Amaranth	Dufferin	L.O. 1894
and fact	Ameliasburg	Prince Edward	L.O. 1906
of the	Amherst Island	Lennox	L.O. 1916
Moderation	Ancaster	Wentworth	L.O. 1908 10
League of	Anstruther	Peterboro	L.O. 1939
Ontario—	Arran	Bruce	L.O. 1907
<i>continued.</i>	Arthmesia	Grey	L.O. 1906
	Asphodel	Peterboro	L.O. 1908
	Athol	Prince Edward	L.O. 1897
	Augusta	Grenville	L.O. 1910
	Bagot and Blyfd	Renfrew	L.O. 1912
	Bastard & Br. S.	Leeds	L.O. 1914
	Bayham	Elgin	L.O. 1937
	Beckwith	Lanark	L.O. 1910 20
	Bedford	Frontenac	L.O. 1913
	Bentinck	Grey	L.O. 1913
	Beverley	Wentworth	L.O. 1911
	Biddulph	Middlesex	L.O. 1916
	Binbrook	Wentworth	L.O. 1899
	Blenheim	Oxford	L.O. 1910
	Bosanquet	Lambton	L.O. 1912
	Brantford	Brant	L.O. 1910
	Brock	Ontario	L.O. 1913
	Brooke	Lambton	L.O. 1910 30
	Brougham	Renfrew	L.O. 1909
	Bruce	Bruce	L.O. 1910
	Brunel	Muskoka	L.O. 1908
	Burford	Brant	L.O. 1910
	Burleigh & A. (See Anstruther)	Peterboro	L.O. 1939
	Caistor	Lincoln	L.O. 1908
	Camden	Kent	L.O. 1905
	Camden East	Addington	L.O. 1911
	Caradoc	Middlesex	L.O. 1909
	Cartwright	Durham	L.O. 1904 40
	Cashel	Hastings	L.O. 1909
	Cavan	Durham	L.O. 1905
	Chandos	Peterboro	L.O. 1912
	Chapleau	Sudbury	L.O. 1934
	Charlottenburg	Glengarry	L.O. 1938
	Charlotteville	Norfolk	L.O. 1912
	Clarke	Durham	L.O. 1905

TOWNSHIP MUNICIPALITIES (*contd.*).

<i>Municipality.</i>	<i>County.</i>		<i>In the Supreme Court of Ontario.</i>
Clinton	Lincoln	L.O. 1909	
Colchester North	Essex	Duncan Act 1866	
Colchester South	Essex	L.O. 1910	No. 8.
Collingwood	Grey	L.O. 1912	Memoran- dum of law and fact
Cramahe	Northumberland	L.O. 1907	of the
Dalhousie & Sherbrooke North	Lanark	L.O. 1906	Moderation
Darlington	Durham	L.O. 1900	League of
10 Dawn	Lambton	L.O. 1905	Ontario—
Delaware	Middlesex	L.O. 1913	<i>continued.</i>
Derby	Grey	L.O. 1906	
Dorchester North	Middlesex	L.O. 1910	
Downie	Perth	L.O. 1910	
Drummond	Lanark	L.O. 1913	
Dumfries North	Waterloo	L.O. 1907	
Dumfries South	Brant	L.O. 1910	
Dummer	Peterboro	L.O. 1906	
Dungannon	Hastings	L.O. 1910	
20 Dunwich	Elgin	L.O. 1913	
Dymond	Temiskaming	L.O. 1907	
Dysart, etc.	Haliburton	L.O. 1914	
Eastnor	Bruce	L.O. 1913	
Egremont	Grey	L.O. 1909	
Ekfrid	Middlesex	L.O. 1912	
Eldon	Victoria	L.O. 1908	
Elizabethtown	Leeds	L.O. 1911	
Elma	Perth	L.O. 1913	
Enniskillen	Lambton	L.O. 1906	
30 Eramosa	Wellington	L.O. 1910	
Erin	Wellington	L.O. 1908	
Ernesttown	Lennox	L.O. 1910	
Escott, Rear of Twp.	Leeds	L.O. 1909	
Essa	Simcoe	L.O. 1910	
Euphania	Lambton	L.O. 1909	
Euphrasia	Grey	L.O. 1905	
Faraday	Hastings	L.O. 1910	
Fenelon	Victoria	L.O. 1914	
Fitzroy	Carlton	L.O. 1916	
40 Flamboro East	Wentworth	L.O. 1911	
Flamboro West	Wentworth	L.O. 1936	
Fullerton	Perth	L.O. 1913	
Gainsborough	Lincoln	L.O. 1909	
Garafraxa E.	Dufferin	L.O. 1907	
Garafraxa W.	Wellington	L.O. 1905	
Glamorgan	Haliburton	L.O. 1912	
Glanford	Wentworth	L.O. 1910	

TOWNSHIP MUNICIPALITIES (*contd.*).

<i>In the Supreme Court of Ontario.</i>	<i>Municipality.</i>	<i>County.</i>	
	Gosfield South	Essex	L.O. 1907
	Goulburn	Carlton	L.O. 1911
No. 8.	Gower N.	Carlton	L.O. 1916
Memoran-	Grimsby N.	Lincoln	L.O. 1935
dum of law	Grimsby S.	Lincoln	L.O. 1934
and fact	Gwillimbury E.	York	L.O. 1910
of the	Gwillimbury N.	York	L.O. 1911
Moderation	Gwillimbury W.	Simcoe	L.O. 1907 10
League of	Haldimand	Northumberland	L.O. 1906
Ontario—	Hallowell	Prince Edward	Duncan Act 1866
<i>continued.</i>	Hamilton	Northumberland	L.O. 1908
	Harley	Temiskaming	L.O. 1907
	Harvey	Peterboro	L.O. 1908
	Harwich	Kent	L.O. 1915
	Hawkesbury West	Prescott	L.O. 1898
	Hillier	Prince Edward	L.O. 1909
	Hichinbrooke	Frontenac	L.O. 1911
	Holland	Grey	L.O. 1910 20
	Hope	Durham	L.O. 1909
	Howard	Kent	L.O. 1912
	Huntingdon	Hastings	L.O. 1907
	Huntley	Carlton	L.O. 1907
	Huron	Bruce	L.O. 1907
	Innisfil	Simcoe	L.O. 1910
	Jocelyn	Algoma	L.O. 1907
	Johnson	Algoma	L.O. 1905
	Kennebec	Frontenac	L.O. 1909
	Kenyon	Glengarry	L.O. 1934 30
	Keppel	Grey	L.O. 1906
	Kincardine	Bruce	L.O. 1910
	King	York	L.O. 1913
	Kingston	Frontenac	L.O. 1906
	Kinloss	Bruce	L.O. 1912
	Korah	Algoma	L.O. 1905
	Lanark	Lanark	L.O. 1907
	Lancaster	Glengarry	L.O. 1938
	Lansdowne F.	Leeds	L.O. 1907
	Lansdowne R.	Leeds	L.O. 1910 40
	Lavallee	Rainy River	L.O. 1912
	Leeds and Lansdowne F.	Leeds	L.O. 1907
	Leeds and Lansdowne R.	Leeds	L.O. 1910
	Limerick	Hastings	L.O. 1909
	Lindsay	Bruce	L.O. 1910
	Lobo	Middlesex	L.O. 1910
	Lochiel	Glengarry	L.O. 1914



TOWNSHIP MUNICIPALITIES (*contd.*).

<i>Municipality.</i>	<i>County.</i>		<i>In the Supreme Court of Ontario.</i>
London	Middlesex	L.O. 1916	
Loughboro	Frontenac	L.O. 1911	
Luther East	Dufferin	L.O. 1893	No. 8.
Luther West	Wellington	L.O. 1910	Memoran- dum of law and fact of the
McDougall	Parry Sound	L.O. 1907	Moderation
McKellar	Parry Sound	L.O. 1908	League of
McLean	Muskoka	L.O. 1913	Ontario— <i>continued.</i>
10 McNab	Renfrew	L.O. 1909	
MacDonald and Meredith	Algoma	L.O. 1905	
Madoc	Hastings	L.O. 1902	
Malahide	Elgin	L.O. 1909	
Manvers	Durham	L.O. 1907	
March	Carleton	L.O. 1910	
Mariposa	Victoria	L.O. 1902	
Markham	York	L.O. 1913	
Marmoa and Lake	Hastings	L.O. 1914	
Maryborough	Wellington	L.O. 1905	
20 Marysburgh South	Prince Edward	L.O. 1897	
Matilda	Dundas	L.O. 1914	
Medonte	Simcoe	L.O. 1908	
Melancthon	Dufferin	L.O. 1898	
Mersea	Essex	L.O. 1907	
Monaghan North	Peterboro	L.O. 1913	
Monaghan South	Northumberland	L.O. 1906	
Mono	Dufferin	L.O. 1910	
Moore	Lambton	L.O. 1909	
Morrison	Muskoka	L.O. 1906	
30 Mountain	Dundas	L.O. 1909	
Mulmur	Dufferin	L.O. 1908	
Murray	Northumberland	L.O. 1908	
Nassagaweya	Halton	L.O. 1906	
Nepean	Carlton	L.O. 1910	
Niagara	Lincoln	L.O. 1910	
Nichol	Wellington	L.O. 1913	
Nissouri East	Oxford	L.O. 1906	
Nissouri West	Middlesex	L.O. 1907	
Norwich S.	Oxford	L.O. 1907	
40 Nottawasaga	Simcoe	L.O. 1909	
Oakland	Brant	L.O. 1910	
Oliver	Thunder Bay	L.O. 1935	
Onondaga	Brant	L.O. 1910	
Orford	Kent	L.O. 1910	
Orillia	Simcoe	L.O. 1912	
Oro	Simcoe	L.O. 1906	
Osgoode	Carleton	L.O. 1906	

TOWNSHIP MUNICIPALITIES (*contd.*).

<i>In the Supreme Court of Ontario.</i>	<i>Municipality.</i>	<i>County.</i>	
	Osnabruck	Stormont	L.O. 1934
	Oso	Frontenac	L.O. 1912
No. 8.	Osprey	Grey	L.O. 1906
Memoran-	Otonabee	Peterborough	L.O. 1906
dum of law	Oxford	Grenville	L.O. 1914
and fact	Oxford E.	Oxford	L.O. 1905
of the	Oxford N.	Oxford	L.O. 1906
Moderation	Pakenham	Lanark	L.O. 1910 <sup>10</sup>
League of	Palmerston and Cananto	Frontenac	L.O. 1915
Ontario—	Peel	Wellington	L.O. 1912
<i>continued.</i>	Pelham	Welland	Duncan Act 1866
	Percy	Northumberland	L.O. 1915
	Pickering	Ontario	L.O. 1909
	Pittsburgh	Frontenac	L.O. 1908
	Plymton	Lambton	L.O. 1911
	Portland	Frontenac	L.O. 1910
	Proton	Grey	L.O. 1907
	Puslinch	Wellington	L.O. 1914 <sup>20</sup>
	Raleigh	Kent	L.O. 1935
	Ramsay	Lanark	L.O. 1910
	Rawdon	Hastings	L.O. 1902
	Reach	Ontario	L.O. 1913
	Richmond	Lennox	L.O. 1907
	Ridout	Muskoka	L.O. 1904
	Ross	Renfrew	L.O. 1914
	Roxborough	Stormont	L.O. 1935
	Sandwich South	Essex	L.O. 1935
	Sarawak	Grey	Duncan Act 1866 <sup>30</sup>
	Sarnia	Lambton	L.O. 1906
	Saugeen	Bruce	L.O. 1907
	Schreiber	Thunder Bay	L.O. 1936
	Scott	Ontario	L.O. 1906
	Seneca	Haldimand	L.O. 1909
	Seymour	Northumberland	L.O. 1908
	Sherbourne, McClintock, etc.	Haliburton	L.O. 1916
	Sherbrooke South	Lanark	L.O. 1907
	Sydney	Hastings	L.O. 1909
	Smith	Peterboro	L.O. 1905 <sup>40</sup>
	Sombra	Lambton	L.O. 1935
	Somerville	Victoria	L.O. 1936
	Sophiasburgh	Prince Edward	L.O. 1906
	Southwold	Elgin	L.O. 1906
	Storrington	Frontenac	L.O. 1892
	Sunnidale	Simcoe	L.O. 1910
	Sydenham	Grey	L.O. 1916

TOWNSHIP MUNICIPALITIES (*contd.*).

<i>Municipality.</i>	<i>County.</i>		<i>In the Supreme Court of Ontario.</i>
Tarbutt and Tarbutt Add'l.	Algoma	L.O. 1905	
Tay	Simcoe	L.O. 1914	—
Tecumseh	Simcoe	L.O. 1907	No. 8.
Thessalon and Lefroy	Algoma	L.O. 1906	Memoran- dum of law
Thorold	Welland	L.O. 1935	and fact
Thurlow	Hastings	L.O. 1909	of the
Tilbury East	Kent	L.O. 1891	Moderation
10 Tilbury West	Essex	L.O. 1934	League of
Torbolton	Carleton	L.O. 1910	Ontario—
Tossoronto	Simcoe	L.O. 1910	<i>continued.</i>
Trafalgar	Halton	L.O. 1909	
Tudor and Cashel	Hastings	L.O. 1909	
Uxbridge	Ontario	L.O. 1910	
Vaughan	York	L.O. 1909	
Wainfleet	Welland	L.O. 1910	
Walpole	Haldimand	L.O. 1912	
Walsingham North	Norfolk	L.O. 1907	
20 Walsingham South	Norfolk	L.O. 1914	
Warwick	Lambton	L.O. 1906	
Westmeath	Renfrew	L.O. 1910	
Westminster	Middlesex	L.O. 1938	
Whitby	Ontario	L.O. 1910	
Whitby East	Ontario	L.O. 1913	
Whitchurch	York	L.O. 1909	
Williams East	Middlesex	L.O. 1905	
Windham	Norfolk	L.O. 1905	
Wolford	Grenville	L.O. 1911	
30 Wollaston	Hastings	L.O. 1909	
Yarmouth	Elgin	L.O. 1908	
Yonge, Front	Leeds	L.O. 1916	
Yonge and Escott (Rear)	Leeds	L.O. 1909	

## No. 9.

*In the  
Supreme  
Court of  
Ontario.*

**Memorandum of law and fact of The Canadian Temperance Federation, The Ontario Temperance Federation and The Huron County Temperance Federation, Manitoulin Temperance Federation and Peel Temperance Federation.**

No. 9.

Memorandum of law and fact of The Canadian Temperance Federation, The Ontario Temperance Federation and The Huron County Temperance Federation, Manitoulin Temperance Federation and Peel Temperance Federation

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1. This is a reference made by the Lieutenant-Governor in Council under the Constitutional Questions Act, R.S.O. 1937, Chapter 130, by Order-in-Council dated the 1st of June, 1939, referring the question—

“ Are Parts I, II and III of The Canada Temperance Act, R.S.C. 1927, Chapter 196, constitutionally valid in whole or in part, and if in 30 part, in what respect ? ”

At the same time a motion for judgment giving the opinion of the Court on the same question is pending by notice dated the 14th day of June, 1939.

2. The Canada Temperance Act, originally known as “ The Scott Act,” was passed by the Parliament of the Dominion of Canada in 1878 as 41 Victoria, Chapter 16. It was amended by acts of the Parliament of Canada in 1879, 1884, 1886, 1888, 1892, 1898, 1904, 1906, 1908, 1910, 1914, 1916, 1917, 1919, 1921 and 1922, a list of which statutes is appended hereto. In its original form it was divided into three parts : the first being proceedings for bringing the second part into force by petition and subsequent vote in 40 any county or city in Canada ; the second being prohibitory provisions with regard to the traffic in intoxicating liquors ; and the third prescribing offences in connection with the second part. Although changes have been made in

the Act by the amending statutes referred to, Parts I, II and III are substantially the same in the Revised Statutes of Canada, 1927, Chapter 196, as they were in 1878. Substantial changes have been made in the Act by adding thereto Parts IV and V dealing respectively with the importation, exportation and manufacture of intoxicating liquor and legislation in aid of provincial legislation prohibiting or restricting the sale or use of intoxicating liquors, and these last parts are tied into Parts I, II and III and form, in the result, one Act.

*In the  
Supreme  
Court of  
Ontario.*

No. 9.  
Memorandum of law  
and fact  
of The  
Canadian  
Temper-  
ance Feder-  
ation, The  
Ontario  
Temper-  
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ation and  
The Huron  
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perance  
Federation  
—continued

3. The procedure laid down in Part I of The Canada Temperance Act  
10 provides for a petition signed by one-fourth of the electors of a county or  
city addressed to the Governor-in-Council. After deposit for public ex-  
amination the petition is laid before the Secretary of State of Canada and, if  
it is in order, the Governor-in-Council may issue a proclamation providing for  
a vote under that Part. There are elaborate provisions with regard to the  
returning officers and their duties, the poll, proceedings after the close of the  
poll, the summing up of the votes and returns, scrutiny of the ballots, secrecy  
of voting, preservation of order at the polls, and offences or penalties in con-  
nection with the voting procedure. Provision is made by Section 110 for an  
Order-in-Council bringing Part II of the Act into force and by the following  
20 sections for a petition leading to the revocation of any such order-in-council.

4. Part II of the Act, by Section 118, prohibits the sale, shipping or  
delivery of intoxicating liquor in any county or city in which the Part is in  
force, subject to certain exceptions. Sections 119, 120, 121, 122, 123 and 124  
permit certain specified sales to be made for sacramental, medicinal and other  
purposes, and Section 127 provides a penalty for a false medical certificate  
with regard to medicinal purposes.

5. Part III imposes penalties for offences in violation of Part II and  
provides for prosecution and for the onus in connection with questions arising  
thereunder. Section 150 deals with the offence of compounding offences  
30 under this and other Acts, and Section 151 with tampering with witnesses.

6. Contrary to the recitals of the Order-in-Council referring the question  
herein, the Canada Temperance Act was brought into force in a great number  
of cities and counties in the Dominion of Canada, in the Provinces of Ontario,  
Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Manitoba.  
The Orders-in-Council have in many cases been revoked or suspended under  
the pertinent provisions of The Canada Temperance Act, but in some areas  
they have remained continuously in force since their making :

Electoral District of Marquette, Manitoba, December 3, 1880 ;  
Electoral District of Lisgar, Manitoba, June 13, 1881 ;  
40 District of Manitoulin, Ontario, April 4, 1913 ;  
City of Thetford Mines, Quebec, May 10, 1913 ;

By virtue of the answers of the Supreme Court of Canada in The Canada  
Temperance Act Reference 1935, S.C.R. 494, and the Order-in-Council dis-  
missing the appeal, Part II of The Canada Temperance Act is also in force  
in the Counties of Huron, Perth and Peel in the Province of Ontario. Copies  
of these Orders-in-Council are included in the appendix to this memorandum.

*In the  
Supreme  
Court of  
Ontario.*

No. 9.  
Memoran-  
dum of law  
and fact  
of The  
Canadian  
Temper-  
ance Feder-  
ation, The  
Ontario  
Temper-  
ance Feder-  
ation and  
The Huron  
County  
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Peel Tem-  
perance  
Federation  
—continued

7. The constitutional validity of The Canada Temperance Act has on several notable occasions been upheld by Courts of the highest authority in cases where it was directly in question :

*City of Fredericton v. The Queen* (1880) 3 S.C.R. 505 ;

*Russell v. The Queen* [1882] 7 App. Cas. 829 ;

*Hodge v. The Queen* [1883] 9 App. Cas. 117 at p. 130 ;

*Attorney-General for Ontario v. Attorney-General for Dominion* [1896] A.C. 348 at p. 362 ;

and these decisions have been repeatedly referred to as authorities in judgments of the highest Courts. 10

*Attorney-General for Canada v. Attorney-General for Alberta* [1916] 1 A.C. 588 at p. 595 ;

*Rex v. Hill* (1908) 15 O.L.R. 406 at p. 412 (C.A.) ;

*Attorney-General for Ontario v. Reciprocal Insurers* [1924] A.C. 328 at p. 338 ;

*Rex v. Miller* (1909) 19 O.L.R. 288 at p. 289 ;

*Gallagher v. Lynn* [1937] A.C. 863 at p. 870 ;

and cited by Lord Atkin in *Shannon v. Lower Mainland Dairy Products Board* [1938] A.C. 708 at p. 713.

8. In the *City of Fredericton v. The Queen* (1880) S.C.R. 505, appeal was taken from the judgment of the Supreme Court of New Brunswick ordering a peremptory mandamus against the Mayor, Aldermen and Commonalty of the City of Fredericton commanding them to issue a licence to sell spirituous liquors by retail. The City of Fredericton refused to grant such licences on the grounds that The Canada Temperance Act was in force in the City and the Supreme Court of New Brunswick had held The Canada Temperance Act (1878) was void as being ultra vires the Dominion of Canada, Palmer J. dissenting. The Supreme Court of Canada (Ritchie J.A., Fournier, Henry, Taschereau and Gwynne, J.J.) found the Act intra vires, Henry J. dissenting.

9. In *Russell v. The Queen* [1882] 7 App. Cas. 829, a citizen of Fredericton, not satisfied with the decision in the previous case, took an appeal to the Judicial Committee against his conviction under The Canada Temperance Act, alleging that it was not competent for the Parliament of Canada to pass it. The judgment of the Board (Sir Barnes Peacock, Sir Montague E. Smith, Sir Robert P. Collier, Sir James Hannen and Sir Richard Couch) was delivered by Sir Montague E. Smith and sustained the constitutional validity of the Act on the ground that the Act did not fall within any of the classes of subjects assigned exclusively to the Provincial Legislatures. Their Lordships did not therefore discuss whether the provisions of the Act also fell within any of the classes of subjects enumerated in Section 91, although they indicated that the Act might be sustained under Section 91 (27) The Criminal Law (pp. 838-839) and Section 91 (2) the Regulation of Trade and Commerce (p. 842). 40

10. In *Hodge v. The Queen* [1883] 9 App. Cas. 117, an appeal from a conviction under the Ontario Liquor Licence Act was carried to the Judicial

Committee. It was contended that the whole subject of the liquor traffic was given to the Dominion Parliament. The judgment of the Board (Lord Fitzgerald, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch and Sir Arthur Hobhouse) was delivered by Lord Fitzgerald and held that the Ontario Liquor Licence Act dealt with the subject of the liquor traffic in another aspect and for another purpose which was within heads 8, 15 and 16 of Section 92. They dealt carefully with the previous judgment of *Russell v. The Queen* [1882] 7 App. Cas. 829, in which three of their number had sat, and stated that they did not "intend to vary or depart from the reasons expressed for their judgment in that case" (p. 130).

11. In *Attorney-General for Ontario v. Attorney-General for the Dominion* [1896] A.C. 348, an appeal from the judgment of the Supreme Court of Canada ((1894) 24 S.C.R. 170) on a reference with regard to the powers of Provincial Legislatures in relation to the prohibition of intoxicating liquors was taken to the Judicial Committee. The questions referred included one (the seventh) with regard to a Provincial Local Option section, being section 18 of 53 Victoria, cap. 56, and the Judicial Committee (Lord Halsbury L.C., Lord Herschell, Lord Watson, Lord Davey and Sir Richard Couch) in the judgment delivered by Lord Watson deals primarily with this question. It was contended by the counsel for the Attorney-General of Ontario and for the Distillers' and Brewers' Association that the Dominion had occupied fully the field left to it of liquor legislation. The judgment reviews the Canada Temperance Act of 1886 (R.S.C. cap. 106) with care (pp. 356-358) and comes to the conclusion that in order to determine the issue raised by the seventh question "it becomes necessary to consider, in the first place, whether the Parliament of Canada had jurisdiction to enact the Canada Temperance Act" (p. 358) and then to consider the provincial power to enact the section in question. After discussing the general principles applicable to the Dominion's general powers of legislation (pp. 360-362) the judgment turns to the judgment in *Russell v. The Queen* [1882] 7 App. Cas. 829 finding the Act of 1886 similar in all material respects to the Act of 1878 and accepting the decision in *Russell v. The Queen* "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." The judgment then proceeds to reject the view that the Act of 1886 is a valid regulation of trade and commerce (pp. 362-3) and finds that the Ontario section 18 in question is legislation under heads 13 or 16 of Section 92 of the British North America Act (pp. 363-365). After a discussion of the repeal of the 1864 Act the judgment raises the question of conflict between the prohibitory provisions of the Canada Temperance Act and provincial legislation concluding in that event that the Dominion must prevail but that until actual conflict arises the field is open to the provincial legislation (pp. 367-370). Their Lordships therefore answer the seventh question in the affirmative being of the 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 in the

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Province which has already adopted or may subsequently adopt, the second part of the Canada Temperance Act" (p. 370).

12. In *Attorney-General of Manitoba v. Manitoba Licence Holders' Association* [1902] A.C. 73, the Judicial Committee (Lords Hobhouse, Macnaghten, Davey, Robertson and Lindley) discusses in the judgment delivered by Lord Macnaghten *Russell v. The Queen* [1882] App. Cas. 829, and *Attorney-General for Ontario v. Attorney-General for Canada* [1896] A.C. 348 concluding that provincial local option is justified under head 16 rather than head 13 of Section 92.

13. In *Attorney-General for Canada v. Attorney-General for Alberta* [1916] 10 A.C. 588 (Lords Buckmaster, Haldane, Parker and Sumner) in a judgment of Viscount Haldane's, *Russell v. The Queen* [1882] 7 App. Cas. 829, is again discussed and recognised as a binding authority. At pages 595-6 of the judgment, Viscount Haldane says :

"There is only one case, outside the heads enumerated in s. 91, in which the Dominion Parliament can legislate effectively as regards a province, and that is where the subject-matter lies outside all of the subject-matters enumeratively entrusted to the province under s. 92. *Russell v. The Queen* is an instance of such a case. There the Court considered that the particular subject-matter in question lay outside 20 the provincial powers. What has been said in subsequent cases before this Board makes it clear that it was on this ground alone, and not on the ground that the Canada Temperance Act was considered to be authorised as legislation for the regulation of trade and commerce, that the Judicial Committee thought that it should be held that there was constitutional authority for Dominion legislation which imposed conditions of a prohibitory character on the liquor traffic throughout the Dominion. No doubt the Canada Temperance Act contemplated in certain events the use of different licensing boards and regulations in different districts and to this extent legislated in relation to local institu- 30 tions. But the Judicial Committee appear to have thought that this purpose was subordinate to a still wider and legitimate purpose of establishing a uniform system of legislation for prohibiting the liquor traffic throughout Canada excepting under restrictive conditions. The case must therefore be regarded as illustrating the principle which is now well established, but none the less ought to be applied only with great caution, that subjects which in one aspect and for one purpose fall within the jurisdiction of the provincial legislatures may in another aspect and for another purpose fall within Dominion legislative jurisdiction."

A similar reference was made by Viscount Haldane in *Re Board of Commerce* 40 [1922] 1 A.C. 191 at p. 197-8.

14. In 1935 a reference was made by the Governor-in-Council to the Supreme Court of Canada with regard to the effect of suspensions under Section 175 of The Canada Temperance Act and the Court was asked to determine whether the Canada Temperance Act was in force in the Counties of Peel, Huron and Perth in the Province of Ontario. Counsel for the



Attorney-General for Ontario and the Moderation League in their facts and before the Court attempted to raise the issue that the Canada Temperance Act was beyond the powers of the Dominion Parliament. The Supreme Court of Canada refused to hear argument on this point and by order dated 16th May 1935 ordered the deletion of all portions "raising relating to or discussing the question of the constitutional validity of the Canada Temperance Act, the said question not being before the Court." In their reasons for judgment of the majority delivered by Duff C.J. (1935) S.C.R. 494 the matter is referred to as follows at pages 505-6 :

10 "On the argument counsel on behalf of the provinces of Ontario and Quebec raised the question of the constitutional validity of the Canada Temperance Act. Reading the Order of Reference in light of the decision in *Russell v. The Queen* and of the judgment of the Judicial Committee on the *Local Option Reference* in 1896, we have no doubt that the interrogatories addressed to us ought not to be construed as involving any such question. At the request of counsel, we stated, however, that we should mention, in the judgment, the fact of the argument having been advanced; we now do so accordingly."

The Attorney-General for Ontario and the Moderation League of Ontario 20 petitioned for special leave to appeal from the said Order of 16th May 1935 and such leave was refused by Order-in-Council dated 28th December 1935.

Copies of the said Order of 16th May 1935 and the said Order-in-Council of 20th December 1935 are included in the appendix hereto.

15. Since 1878 prosecutions under the Canada Temperance Act and interpretations of its terms have proceeded in the Courts on the basis so often expressed that the Canada Temperance Act was and is *intra vires* the Dominion Parliament.

*Attorney-General for Ontario v. Attorney-General for Canada* [1912] A.C. 571 at pp. 586-9.

30 *Re Richard* (1907) 38 S.C.R. 394.

*Murdock v. Kilgour* (1914) 33 O.L.R. 412 (C.A.).

*Rex v. Armstrong* (1916) 36 O.L.R. 2 Boyd C.

*Rex v. Swarts* (1916) 37 O.L.R. 103 Riddell J.

*Rex v. Bedford* (1916) 37 O.L.R. 108 (Riddell J.).

*Rex v. Scott* (1916) 37 O.L.R. 453 (Sutherland J. & C.A.).

*Rex v. Cantin* (1917) 39 O.L.R. 20 (C.A.).

*Rex v. Thorburn* (1917) 41 O.L.R. 39 (Masten J.).

*Gold Seal Limited v. Attorney-General of Alberta* (1921) 62 S.C.R. 424.

*Smith v. Attorney-General of Ontario* (1924) S.C.R. 331

40 *Nadan v. The King* [1926] A.C. 482.

*Rex v. Ruddick* (1928) 62 O.L.R. 248 (Wright J.).

*Rex v. Graham* (1930) 39 O.W.N. 80 (Fisher J.A.).

*Rex v. Solomon* (1938) Judgment of Currey Co. Ct. J. 30th April 1938, Appeal abandoned by A. G. Ont. Reasons for Judgment, Notice of Appeal and Notice of Abandonment are included in the appendix hereto.

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The Liquor Acts of some of the Provinces of Canada contain a distinct declaration of the Legislatures, that their provisions are to recede before those of the Canada Temperance Act which constitute an acknowledgment proper to be considered in cases of doubt and dispute.

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*Citizens Insurance v. Parsons* [1881] 7 App. Cas. 96.

Quebec Alcoholic Liquor Act R.S.Q. (1925) cap. 37 section 21 ss. 2 (a).

Nova Scotia Temperance Act R.S.N.S. (1923) cap. 158 s. (3).

Ontario Liquor Control Act R.S.O. (1927) cap. 257 section 68, amended in 1934 by 24 Geo. V. cap. 26 s. 13 and repealed in 1936 by 1 Edward VIII cap. 34 section 6. 10

16. In the face of these authorities and the maintenance of the Canada Temperance Act for sixty-one years, two pronouncements worthy of attention have been made casting doubt on the constitutional validity of the Canada Temperance Act. The first was the dictum of Viscount Haldane in *Toronto Electric Commissioners v. Snider* [1925] A.C. 396 at pp. 410-412 and the second was the decision of the Appellate Division of the Supreme Court of New Brunswick (1936) 11 M.P.R. 240.

17. In *Toronto Electric Commissioners v. Snider* [1925] A.C. 396, the Industrial Disputes Investigation Act 1907 of the Parliament of Canada was in question. Viscount Haldane in dealing with the problem takes occasion to discuss the initial words of Section 91 reviewing *Russell v. The Queen* and some of the cases in connection with it (pp. 410-413). He then proceeds to make a statement not, it is respectfully submitted, in accordance with the cases which he has reviewed, that *Russell v. The Queen* can only be supported to-day “not on the footing of having laid down an interpretation such as has sometimes been invoked of the general words of Section 91, but on the assumption of the Board apparently made at the time of deciding the case of *Russell v. The Queen* that the evil of intemperance at that time amounted in Canada to one so great and so general that at least for the period it was a menace to the national life of Canada so serious and so pressing that the national Parliament was called on to intervene to protect the nation from disaster. An epidemic of pestilence might conceivably have been regarded as analogous” (p. 412). Somewhat similar references are made at pages 413, 414 and 416 of the judgment. 30

18. In *The King v. Jones* (1936) 11 M.P.R. 240 a conviction under the provincial Intoxicating Liquor Act came before the Appellate Division of the Supreme Court of New Brunswick. It was contended that by reason of the answers in the Canada Temperance Act Reference (1935) S.C.R. 494, The Canada Temperance Act was in force in the City of Moncton and in reply it was argued that the Canada Temperance Act should now be considered *intra vires* the Dominion Parliament, reliance being placed upon *Toronto Electric Commissioners v. Snider* [1925] A.C. 396. As to the first question, the Court, Mr. Justice Harrison dissenting, decided that *re* Canada Temperance Act (1935) S.C.R. 494 had not over-ruled its own judgment in *Sheehan v. Shaw* (1927) 54 N.B.R. 192. As to the second the Court unanimously held the Canada Temperance Act *ultra vires*. 40

19. With regard to these pronouncements we wish to submit the following :

(i) The remarks of Viscount Haldane were not necessary for the decision and are mere obiter dicta.

(ii) *Russell v. The Queen* [1882] 7 App. Cas. 829, gives no support to the view quoted by Viscount Haldane that it was emergency legislation, nor do the intervening cases which follow and discuss it. It is simply a case of a statute not falling within the enumerated heads of Section 92 of the B. N. A. Act.

*Hodge v. The Queen* [1883] 9 A.C. 117.

*Attorney-General for Ontario v. Attorney-General for Canada* [1896] A.C. 348.

*Attorney-General for Manitoba v. Manitoba Licence Holders* [1902] A.C. 73.

*Attorney-General for Canada v. Attorney-General for Alberta* [1916] A.C. 588.

*The King v. Eastern Terminals* (1925) S.C.R. 434 at 438.

(iii) The Canada Temperance Act having been found to be validly enacted, it can only be repealed by an Act of Parliament :

31 Halsbury (2nd) 511.

*Attorney-General for Ontario v. Attorney-General for Canada* [1912] A.C. 571 at p. 583.

*Hamilton v. Attorney-General for Ontario* [1916] 2 A.C. 583.

No power of legislation by enactment or repeal or otherwise is given by the British North America Act to any Court or other bodies than the Parliament of Canada and the Legislatures of the Provinces.

B. N. A. Act 1867, Sections 91 and 92.

*Bank of Toronto v. Lambe* [1887] 12 App. Cas. 575 at p. 587.

*Attorney-General for Ontario v. Attorney-General for Canada* [1912] A.C. 571 at pp. 581 and 583-4.

*Liquidators of Maritime Bank v. Receiver-General of New Brunswick* [1892] A.C. 437 at pp. 441-2.

*Union Colliery v. Bryden* [1899] A.C. 580 at pp. 584-5.

(iv) For the Courts to permit themselves on this reference to review the matter determined by their decisions on the British North America Act in the light of new events and new theories would result in practice in the Courts enacting and repealing legislation, contrary to the rule of law and our basic democratic principles.

(v) The conditions and problems with regard to the traffic in intoxicating liquors and the evil of intemperance are to-day substantially the same as they have been since prior to 1867.

(vi) *Rex v. Jones* (1936) 11 M.P.R. 240 is not binding on this Court and should not be followed. In any event the conditions to which the decision in that case is addressed do not obtain in the rest of Canada and do not obtain in that Province by reason of *Reference re Operation of The Canada Temperance Act* (1935) S.C.R. 494.

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20. (i) The power of the Dominion Parliament to enact legislation under the opening words of Section 91 includes power to enact legislation with regard to classes of matters which do not fall within the enumerated classes 91 and Section 92.

*Citizens Insurance v. Parsons* [1881] 7 App. Cas. 96 at p. 109 (Sir Montague E. Smith).

*Dobie v. Temporalities Board* [1882] 7 App. Cas. 136 at p. 149 (Lord Watson).

*Russell v. The Queen* [1882] 7 App. Cas. 829 at pp. 836-842 (Sir Montague E. Smith).

*Hodge v. The Queen* [1883] 9 App. Cas. 117 at p. 129 (Lord Fitzgerald).<sup>10</sup>

*John Deere Plow Co. v. Wharton* [1915] A.C. 330 at pp. 337 and 340 (Viscount Haldane).

*Attorney-General for Canada v. Attorney-General for Alberta* [1916] 1 A.C. 588 at pp. 595-6 (Viscount Haldane).

*Great West Saddlery Co. Ltd. v. The King* [1921] 2 A.C. 91 at pp. 114-5 (Viscount Dunedin).

*Re Regulation of Radio* [1932] A.C. 304.

*Attorney-General for Canada v. Attorney-General for Ontario* [1937] 20 A.C. 326 at p. 351 (Lord Atkin).

And it is under this power that the Dominion, with regard to subjects not enumerated in Section 91 must now exercise that full power to make laws having extra territorial operation given to it by Section 3 of the Statute of Westminster 1931 (22 Geo. V, Cap. 4).

(ii) The Canada Temperance Act has repeatedly been held to be legislation coming within this power.

*Russell v. The Queen* [1882] 7 App. Cas. 829 at p. 842.

*Hodge v. The Queen* [1883] 9 App. Cas. 117.

*Attorney-General for Ontario v. Attorney-General for Canada* [1896] 30 A.C. 348.

*Attorney-General for Manitoba v. Manitoba Licence Holders* [1902] A.C. 73.

*Attorney-General for Canada v. Attorney-General for Alberta* [1916] 1 A.C. 588 at pp. 595-6.

(iii) The double aspect principle, although to be applied with great caution, is well established and has been applied to the provisions of The Canada Temperance Act.

*Hodge v. The Queen* [1883] 9 App. Cas. 117 at p. 130.

*Attorney-General for Canada v. Attorney-General for Alberta* [1916] 40 1 A.C. 588 at pp. 595-6.

21. Were it necessary to consider the Canada Temperance Act without the assistance of binding authority, it is submitted that it could in the light of its terms, the British North America Act 1867 and subsequent decisions, also be justified under heads 2 and 27 of Section 91, relating to Trade and Commerce and the Criminal Law respectively.

22. It is submitted that Parts I, II and III of The Canada Temperance Act are constitutionally valid by reason of binding authority directly on their provisions and by reason generally of the principles of Canadian Constitutional Law.

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23. The form of the reference raises at once the problem of severability. The question referred deals with Parts I, II and III of The Canada Temperance Act, but the Act is a legislative whole and the Parts are inextricably interwoven. It is respectfully submitted that it is not possible to divorce Parts I, II and III from Parts IV and V. It is apparent that the Attorney-General and Government of the Province of Ontario admit that Parts IV and V of the Canada Temperance Act are intra vires the Parliament of Canada and accept the cases which have established this.

*Gold Seal Limited v. Dominion Express Company* (1921) 62 S.C.R. 424, and similar cases.

It is further submitted that it is not possible for Parts IV and V of the Canada Temperance Act to operate without Parts I, II and III. See particularly Sections 155, 157, 158, 162 and 175. In addition to the foregoing it is submitted that Parts I, II and III are necessarily ancillary to Parts IV and V of the Act and that the whole Act is intra vires the Parliament of Canada.

20 *Attorney-General for British Columbia v. Attorney-General for Canada* [1937] A.C. 377.

24. In addition to the statutes, Orders-in-Council and other documentary material referred to in this memorandum, a reference list of statutes, Orders-in-Council and other documentary material is attached hereto as an appendix, copies having been furnished to the parties in accordance with the Order of the Chief Justice of Ontario made the 2nd day of June, 1939. This list and the authorities cited herein are without prejudice to the right of the undersigned to refer to such further and other authorities and material as may be necessary on the hearing of the appeal.

30 All of which is respectfully submitted.

H. E. LANGFORD.  
PETER WRIGHT.  
W. G. C. HOWLAND.

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## APPENDIX.

P.C. 1899.

Privy Council.  
(Coat of Arms)

Canada.

Government House, Ottawa.

Friday, 3rd day of December, 1880.

Present :

His Excellency

The Governor-General in Council :

10

On a Report, dated 30th November, 1880, from the Honourable the Secretary of State, in the matter of the petition under "The Canada Temperance Act, 1878," of certain electors of the County of Marquette, in the Province of Manitoba, stating that the proceedings had by the Returning Officer appear to be conformable to the Act, and that the petition has been declared adopted by the electors of the said County.

His Excellency, on the recommendation of the Honourable the Secretary of State, has been pleased to declare, and it is hereby declared, that the second part of "The Canada Temperance Act, 1878" shall be in force and take effect in the said County of Marquette upon, from and after the day on which<sup>20</sup> the annual or semi-annual licences for the sale of spirituous liquors now in force in the said County will expire, provided such day be not less than ninety days from the day of the date hereof, and if it be less, then on the like day in the following year.

Certified to be a true copy.

"E. J. LEMAIRE."

Clerk of the Privy Council.

(Seal)

P.C. 911.

Privy Council.  
(Coat of Arms)

30

Canada.

Government House, Ottawa.

Monday, 13th day of June, 1881.

Present :

His Excellency

The Governor-General in Council :

On a Report, dated 7th June, 1881, from the Honourable the Secretary of State, in the matter of the petition under "The Canada Temperance Act,

1878," of certain electors of the County of Lisgar, in the Province of Manitoba, stating that the proceedings had by the Returning Officer appear to be conformable to the Act, and that the petition has been declared adopted by the electors of the said County.

His Excellency, on the recommendation of the Honourable the Secretary of State, has been pleased to declare, and it is hereby declared, that the second part of "The Canada Temperance Act, 1878" shall be in force and take effect in the said County of Lisgar upon, from and after the day on which the annual or semi-annual licences for the sale of spirituous liquors now in force in the said County will expire, provided such day be not less than ninety days from the day of the date hereof, and if it be less, then on the like day in the following year.

Certified to be a true copy.

" E. J. LEMAIRE."

Clerk of the Privy Council.

(Seal)

P.C. 737.

Privy Council.

(Coat of Arms)

Canada.

20

At the Government House at Ottawa.

Friday, the 4th day of April, 1913.

Present :

His Excellency

The Administrator in Council :

Whereas the Returning Officer appointed to take the votes of the Electors of the Provisional Judicial District of Manitoulin in the Province of Ontario, upon the petition of certain electors of the said District for the bringing into force therein of the Second Part of the Canada Temperance Act, has reported that such petition has been adopted ;

30 Therefore His Excellency in Council, in virtue of the provisions of Section 109 of the Canada Temperance Act, is, hereby, pleased to declare as follows :—

Part II of the Canada Temperance Act shall be in force and take effect in the Provisional Judicial District of Manitoulin, in the Province of Ontario, from and after the day on which the annual or semi-annual licences for the sale of spirituous liquors then in force in such District will expire, if such day is not less than ninety days from the day of the date hereof, and, if it is less, then on the like day in the then following year.

40 If there were no licences in force when the said petition was adopted, Part II of the Canada Temperance Act, shall become and be in force in

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the said Provisional Judicial District of Manitoulin after the expiration of thirty days from the day of the date hereof.

Certified to be a true copy.

“ E. J. LEMAIRE.”

Clerk of the Privy Council.

(Seal)

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P.C. 1047  
Privy Council.  
(Coat of Arms)  
Canada.

At the Government House at Ottawa.

10

Saturday, the 10th day of May, 1913.

Present :

His Excellency

The Administrator in Council :

Whereas the Returning Officer appointed to take the votes of the Electors of the City of Thetford Mines in the Province of Quebec, upon the petition of certain Electors of the said city for the bringing into force therein of the second part of the Canada Temperance Act, has reported that such petition has been adopted.

Therefore His Excellency in Council is pleased—under the provisions of 20 Section 109 of the Canada Temperance Act—to declare that Part II of the said Act shall be in force and take effect in the said city from and after the day on which the annual or semi-annual licences for the sale of spirituous liquors then in force in such city will expire, if such day is not less than ninety days from the day of the date of this Order in Council ; and if (it) is less, then on the like day in the then following year.

His Excellency in Council is further pleased to Order that,—if there were no licences in force when the said petition was adopted,—Part II of the said Act shall become and be in force and take effect in the said city after the expiration of thirty days from the day of the date of this Order in Council. 30

Certified to be a true copy.

“ E. J. LEMAIRE .”

Clerk of the Privy Council.

(Seal)



Order-in-Council bringing Part IV of The Canada Temperance Act into force  
in Ontario.

(Dominion)

P.C. 2115.

At the Government House at Ottawa.

Saturday, the 18th day of June, 1921.

Present :

His Excellency

The Governor-General in Council :

10 Whereas by proclamation issued under Part IV of The Canada Temperance Act on the 4th day of June, 1920, a vote of the electors of the Province of Ontario was directed to be taken for and against the prohibition the said proclamation specified, and the said vote was taken accordingly on the 18th day of April, 1921 ;

And Whereas the Chief Electoral Officer, pursuant to subsection 5 of section 72 of The Dominion Elections Act, as modified pursuant to section 101 of the said Act by notice published in the Canada Gazette on the 12th day of March, 1921, made a statement of the number of votes cast in the affirmative and the negative respectively in each electoral district and of  
20 the total number of votes cast in each sense in the said Province, which said statement was published in the Canada Gazette on the 28th day of May, 1921 ;

And Whereas it appears from the said statement that the total number of votes cast in the affirmative was 540,773, and the total number of votes cast in the negative was 373,938 ;

And Whereas it was set out in the proclamation before mentioned that in the event of the votes of the electors of the said Province being in favour of the said prohibition, such prohibition would go into force on such day and date as should by Order-in-Council under section 109 of The Canada Temperance Act be declared ;

30 Now Therefore His Excellency, The Governor-General in Council, has been pleased to direct and hereby directs that the prohibition which, under the provisions of Part IV of The Canada Temperance Act is by Order-in-Council to be declared in force, shall, in respect to the Province of Ontario, go into force by virtue of this Order on the thirty-first day next following the day of the date thereof, and has been pleased to declare and it is hereby declared that the said prohibition be thereafter in force accordingly.

(Sgd.) RODOLPHE BOUDREAU,

Clerk of the Privy Council.

*In the  
Supreme  
Court of  
Ontario.*

No. 9.  
Memorandum of law and fact of The Canadian Temperance Federation, The Ontario Temperance Federation and The Huron County Temperance Federation, Manitoulin Temperance Federation and Peel Temperance Federation  
—continued

*In the  
Supreme  
Court of  
Ontario.*

In the Supreme Court of Canada.  
Thursday the Sixteenth day of May, 1935.

Present :

The Right Honourable the Chief Justice of Canada.  
The Honourable Mr. Justice Lamont.  
The Honourable Mr. Justice Cannon.  
The Honourable Mr. Justice Crocket.  
The Honourable Mr. Justice Davis.

No. 9.  
Memorandum of law and fact of The Canadian Temperance Federation, The Ontario Temperance Federation and The Huron County Temperance Federation, Manitoulin Temperance Federation and Peel Temperance Federation  
—continued

In the Matter of a Reference as to whether Part II of the Canada Temperance Act is in operation in the counties of Perth, Huron and Peel in the Province of Ontario and, if not, the procedure to be adopted to bring the said part into operation in the said counties. 10

Upon Motion made unto this Court this day by Counsel for the Huron County Temperance Federation, the Perth Branch of the Ontario Temperance Federation and the Peel Temperance Federation for an order striking out the Factum filed on behalf of the Moderation League of Ontario and amending Schedule " B " to the Factum filed on behalf of the Attorney-General of Ontario and upon motion made unto this Court at the same time by Counsel for the Attorney-General of Canada for an order striking out all portions of the said Factums, filed on behalf of the Moderation League and of the Attorney-General of Ontario, raising or relating to the question of the constitutional validity of the above mentioned Canada Temperance Act and upon hearing read the Order-in-Council dated the 12th day of February, 1935, directing this Reference and upon hearing what was alleged by Counsel aforesaid and by Counsel for the Attorney-General of Ontario, for the Attorney-General of Quebec, and for the Moderation League of Ontario, and this Court being of opinion that the question of the constitutional validity of the said Canada Temperance Act was not raised by the questions referred to this Court by the said Order-in-Council and was not before this Court. 20

This Court did Order and Adjudge that the Factum filed on behalf of the Moderation League of Ontario be and the same was amended by deleting therefrom all allegations and statements of fact which were not part of the printed case as filed and by deleting therefrom all reference to or discussion of such allegations and statements of fact. 30

And this Court did further Order and Adjudge that Schedule " B " appended to the said Factum filed on behalf of the Attorney-General of Ontario, be amended so that it may be a complete and accurate chronological reference to the provincial and federal legislation bearing on the questions raised by this Reference, the form thereof to be agreed upon by Counsel for the Attorney-General of Ontario and for the Huron County Temperance Federation, the Perth Branch of the Ontario Temperance Federation and the Peel Temperance Federation. 40

And this Court did further Order and Adjudge that the said Factums filed on behalf of the Attorney-General of Ontario and the Moderation League

of Ontario and the Schedules thereto, be and the same were amended by deleting therefrom all portions raising, relating to, or discussing the question of the constitutional validity of the Canada Temperance Act, the said question not being before the Court.

(Sgd.) J. F. SMELLIE,  
Registrar.

*In the  
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—continued

(Order-in-Council granting Special Leave to Appeal to His Majesty in Council.)

At the Court at Buckingham Palace.

The 20th day of December, 1935.

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Present :

• The King's Most Excellent Majesty.

Lord President.

Sir Lancelot Sanderson.

Lord Colebrooke.

Sir Kingsley Wood.

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 5th day of December 1935 in the words following viz. :—

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“ Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Attorney-General of Ontario and the Moderation League of Ontario in the matter of an Appeal from the Supreme Court of Canada in the matter of a Reference as to whether Part II of the Canada Temperance Act is in operation in the Counties of Perth, Huron and Peel, in the Province of Ontario, and, if not, the procedure to be adopted to bring the said Part into operation in the said counties between the Petitioners Appellants and the Attorney-General of Canada, the Huron County Temperance Federation Perth Branch of the Ontario Temperance Federation and Peel Temperance Federation and the Attorney-General of the Province of Quebec Respondents setting forth (amongst other matters) that the Petitioners desire to obtain special leave to appeal from the determination of the Supreme Court in the matter of a reference to the Supreme Court by the Governor-General in Council pursuant to section 55 of the Supreme Court Act, being Chapter 35 of the Revised Statutes of Canada, 1927, concerning the Canada Temperance Act : that by subsection (6) of this section it is enacted—

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‘ (6) The opinion of the Court upon any such reference, although ‘ advisory only, shall, for all purposes of appeal to His Majesty in ‘ Council, be treated as a final judgment of the said Court between ‘ parties ’ ;

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that the questions referred to the Supreme Court for hearing and consideration were :—

Question 1—

Are the provincial laws respecting intoxicating liquor as restric-

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tive since the coming into force of the Liquor Control Act of Ontario, as amended in 1934, as the Canada Temperance Act ?

Question 2—

If the answer to Question 1 is in the negative, is Part II of the Canada Temperance Act in operation in the said Counties of Perth, Huron and Peel ?

Question 3—

If the answer to Question 2 is in the negative what procedure must be adopted to bring the said Part II into operation in the said Counties ? ;

that on the 16th May 1935 the Supreme Court made an Order amending the factums and schedules thereto filed on behalf of the Petitioners by deleting therefrom (inter alia) all portions raising relating to or discussing the question of the constitutional validity of the Canada Temperance Act on the ground that the question was not before the Court ; that on the 28th June 1935 the Supreme Court pronounced judgment answering the questions submitted as follows :—

The Right Honourable the Chief Justice of Canada The Honourable Mr. Justice Lamont and The Honourable Mr. Justice Davis answered Question No. 1 in the negative and Question No. 2 in the 20 affirmative. They did not answer Question No. 3.

The Honourable Mr. Justice Cannon, dissenting from the majority of the Court gave the following answers—

Question 1.—Answer :

‘ Ex facie, according to the wording of the Acts, the Provincial Act, as amended in 1934, is not more restrictive of the sale and traffic of intoxicating liquors qua the consumer ; but it establishes and protects a monopoly and control of such sale and traffic within the Province under very drastic penalties. As to the actual working of the Acts, in the three counties 30 interested, I am not in a position to answer this pure question of fact, having no elements before me to make any comparative study of results.’

Question 2.—Answer :

‘ No.’

Question 3.—Answer :

‘ A proclamation should be issued bringing to the knowledge of these counties the date fixed by Order-in-Council terminating the suspension of the Act.’

The Honourable Mr. Justice Crocket, also dissenting begged 40 to be excused from answering Question No. 1, answered Question No. 2 in the negative and answered Question No. 3 as follows :—

‘ By rescinding the Orders in Council suspending the operation of the Canada Temperance Act in the Counties named, if

' the Governor in Council is satisfied that the provisions of the  
' liquor laws of Ontario are not as restrictive as those of the  
' Canada Temperance Act and promulgating the rescinding  
' orders in the usual manner ' ;

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And humbly praying Your Majesty in Council to order that the Petitioners shall have special leave to appeal from the Order of the Supreme Court of the 16th May 1935 and the Judgment of the Supreme Court of the 28th June 1935 or for such further or other Order as to Your Majesty in Council may appear fit :

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10 " The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Canada dated the 28th day of June 1935 but refused in respect of the Order of the said Supreme Court dated the 16th day of May 1935.

20 " And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

His Majesty having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

30

M. P. A. HANKEY.

(L.S.)

At the Court at Buckingham Palace.

The 18th day of December, 1936.

Present :

The King's Most Excellent Majesty.

Lord President.

Lord Chamberlain.

Lord Privy Seal.

Secretary Sir John Simon.

Marquess of Zetland.

Mr. Secretary Elliott.

40 Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 27th day of November 1936 in the words following viz. :—

" Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred

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—continued

unto this Committee the matter of an Appeal from the Supreme Court of Canada in the matter of a Reference as to whether Part II of the Canada Temperance Act is in operation in the Counties of Perth Huron and Peel in the Province of Ontario and if not the procedure to be adopted to bring the said Part into operation in the said Counties between the Attorney-General of the Province of Ontario and the Moderation League of Ontario Appellants and the Attorney-General of Canada the Huron County Temperance Federation Perth Branch of the Ontario Temperance Federation Peel Temperance Federation and the Attorney-General of the Province of Quebec Respondents (Privy Council Appeal No. 88 of 1935) and likewise a humble Petition of the Appellants setting forth that the above Appeal is pending before Your Majesty in Council from a Judgment of the Supreme Court dated the 28th June 1935: that the parties have agreed to discontinue the proceedings on terms that the Appeal should be dismissed without any Order as to costs: And humbly praying Your Majesty in Council to grant leave that the said Appeal be dismissed without costs:

“The Lords of the Committee in obedience to His late Majesty’s said Order in Council have taken the Appeal and humble Petition into consideration and having heard Counsel on behalf of the Appellants and the Solicitors for the Respondents having signified in writing their consent to the prayer of the Petition Their Lordships do this day agree humbly to report to Your Majesty as their opinion that this Appeal ought to be dismissed without any Order as to costs.”

His Majesty having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

In the District Court of the District of Manitoulin.

In the Matter of the Liquor Control Act, being R.S.O. 1937, ch. 294.

W. F. McRae, K.C., for the Crown.

W. J. Golden, Esq., for the Appellant, Bertha Solomon.

#### Reasons for Judgment.

This is an appeal by the defendant, Bertha Solomon, from the decision given March 3, 1938, by F. W. Major, Esquire, Magistrate for the District of Manitoulin, whereby he found the defendant, Bertha Solomon, guilty of unlawfully selling liquor at the Village of Killarney, in contravention of Section 87 (1) of the Liquor Control Act, and imposed a term of two months’ imprisonment in the common gaol at Gore Bay.

The appeal came before me and was argued by Counsel on April 27, 1938. Pursuant to my summons of March 23, 1938, Notice of Appeal and of the hearing, with proof of service, were duly filed, together with a letter from the Deputy Minister of Justice for Canada, addressed to Mr. McRae, intimating that the Attorney-General of Canada did not intend to be represented on the hearing of this appeal.

After reading the evidence at the trial, and after hearing arguments of Counsel for the accused and for the Crown, I reserved Judgment. The grounds set out in the Notice of Appeal are as follows :—

- 10 (1) The conviction was contrary to the evidence and to the weight of evidence.  
 (2) Proof of an offence under the said section and sub-section was not established.  
 (3) Evidence was improperly admitted.  
 (4) The defendant contends that the Liquor Control Act of Ontario, chapter 294, R.S.O. 1937, does not apply to the said district of Manitoulin ; and that the Canada Temperance Act (R.S.C. C. 196, 1927), is still in full force and effect in the said District of Manitoulin.

A preliminary objection was taken by the Crown upon the ground that 20 the appellant having failed to raise the defence before the Magistrate that the Canada Temperance Act was in force in the District of Manitoulin, she is now precluded on this appeal from setting up this defence, and also referred to Section 156 of the Liquor Control Act s.s. 12, which reads as follows :—

“ The appeal shall be heard and determined upon the evidence and proceedings had and taken before the justice to be called the record, and the judge may, upon such hearing, make such order as he may think fit affirming, reversing or amending the conviction appealed from, and the conviction so made shall have the same effect and be enforced in the same way as if made by the justice whose conviction is appealed from.”

30 Regard shall also be had to the reading of s.s. (b) of Section 8 of the Act, which, I am of the opinion, should be read in conjunction with s.s. 12, and which reads as follows :—

“ The justice shall immediately after such liberation, or if the appellant remains in custody shall immediately after service of the notice of appeal upon the magistrate, deliver or transmit by registered post to the clerk of the county or district court, to be delivered after filing to the judge appealed to, the depositions and all other papers in the case, including notice of appeal and affidavit of the appellant with a certificate 40 signed by the justice in the form hereinafter mentioned, and such certificate shall be deemed to be a part of the record.”

Mr. McRae referred me to the following cases, which I have read with care, namely : *Rex v. Jones*—67 Can.C.C. at pg. 228—*Rex v. Rivoneli*—44 Can.C.C. pg. 354. Daly on Criminal procedure and practice at pg. 230 :—

“ All requirements of a statute providing for taking and perfecting an appeal are deemed jurisdictional and must be strictly complied with.

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Want of jurisdiction, which appears on the face of the proceedings cannot be waived, and the Court from want of jurisdiction so appearing must dismiss the appeal whether the point is raised by counsel for the respondent or not.”

*Rex v. Hewa*—25 Can.C.C. pg. 396—*Rex v. McLeod*—63 Can.C.C. pg. 155—*Rex v. Rodgers*—46 Can.C.C. at 372—*The Queen against Bowman*—2 Can.C.C. pg. 89—*Rex v. Pelissiers Ltd.*—45 Can.C.C. at pg. 161 and *Re Canada Temperance Act*—64 Can.C.C. at pg. 159 :—

“The Provincial laws respecting intoxicating liquor are not as restrictive since the coming into force of the Liquor Control Act as under 10 the Canada Temperance Act, in as much as the Canada Temperance Act has for its object the prevention of commercial dealings in intoxicating liquor within the territory in which it is enforced, and the Liquor Control Act makes provision for enabling the public to procure liquor by the purchase of it through Government stores and other agencies.”

After reading the aforesaid cases and the sections of the Act as referred to, I am of the opinion that the record before this Court, including the Notice of Appeal, is properly before me, and therefore the preliminary objection by the Crown is over-ruled. After reading the proceedings taken before the Magistrate, I am of the opinion there was some evidence which, if believed by 20 the Magistrate, warranted a conviction under the proper Act. The remaining ground, as set forth in paragraph four of the Notice of Appeal, presents some difficulty as it raises a constitutional question, but the cases which have been decided by the Privy Council narrow the point which now falls to be determined.

Before referring to the respective cases, it is necessary to briefly review the history of temperance legislation as applicable to the District of Manitoulin.

The Canada Temperance Act, which is now Revised Statutes of Canada, 1927, ch. 196, sets forth in Sections five and six the preliminary steps necessary to procure the taking of a vote to bring Part II of the Act into operation 30 in any County or District, namely by petition. On December 28, 1912, a petition was duly presented to the Secretary of State, and the following report of the Privy Council was issued, which reads as follows :—

“Upon the application of certain electors of the Provisional Judicial District of Manitoulin in the Province of Ontario, praying that under the provisions of The Canada Temperance Act a vote be taken to put into force Part II of the said Act in the said Provisional Judicial District of Manitoulin, the Secretary of State reports that the petition appears to conform to the requirements of the law and to have appended to it the genuine signatures of over one-fourth of all electors of the said District. 40

“The Minister, therefore, recommends that a Proclamation do issue as provided by The Canada Temperance Act appointing a day for taking the votes of the electors on the Petition.

“The Minister further recommends that he be authorised to fix the day on which the poll for taking the votes of the electors for and against the petition shall be held and to name the Returning Officer for the



purpose of taking on that day the votes of the electors and performing the other duties required by the Statute, and to fix the place where and the day and the hour when such Returning Officer shall appoint persons to attend at the various polling places or stations and at the final summing up provided by the Act and to fix the place where and the day and hour when the votes of the electors shall be summed up and the result of the polling declared.

“The Committee submit the same for approval.”

On January 20, 1913, the residents of Manitoulin voted and passed for approval by the Government of Canada Part II of the Canada Temperance Act, by a majority of two hundred thereby terminating all licences to sell intoxicating liquors. By Order-in-Council, passed on April 4, 1913, and appearing in the Canada Gazette on April 12th, 1913, it was declared as follows:—

Privy Council.

Coat of Arms.

Canada.

At the Government House at Ottawa.

Friday the 4th day of April, 1913.

Present :

“ His Excellency

“ The Administrator

“ In Council :—

“ Whereas the Returning Officer appointed to take the votes of the Electors of the Provisional Judicial District of Manitoulin in the Province of Ontario, upon the petition of certain Electors of the said district for the bringing into force therein of the second part of the Canada Temperance Act, has reported that such petition has been adopted ;

“ Therefore His Excellency in Council, in virtue of the provisions of Section 109 of the Canada Temperance Act, is, hereby, pleased to declare as follows—

“ Part II of the Canada Temperance Act shall be in force and take effect in the Provisional Judicial District of Manitoulin, in the Province of Ontario, from and after the day on which the annual or semi-annual licences for the sale of spirituous liquors then in force in such District will expire, if such day is not less than ninety days from the day of the date hereof, and, if it is less, then on the like day in the then following year.

“ If there were no licences in force when the said petition was adopted, Part II of the Canada Temperance Act shall become and be in force in the said Provisional Judicial District of Manitoulin after the expiration of thirty days from the day of the date hereof.

“ E. S. LEMAIRE

“ Clerk of the Privy Council.”

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The Act actually came into force in the District of Manitoulin on August 1, 1913, and since then no Order-in-Council suspending the operation of the Act has been passed, and the only steps taken to repeal Part II of the Act was in 1934, when a petition was forwarded to the Department at Ottawa, which was followed by an opinion that the petition was not in compliance with the Act. *Rex v. Varley*—65 Can. C.C. pg. 193. Prior to the decision in this case it had been declared by the Supreme Court of Canada that the Canada Temperance Act was in force in the Counties of Peel, Huron and Perth. This case came on for appeal before the late Judge Grout at Brampton. Reading from pg. 202 the late Judge said :

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“ Not without some hesitancy I have therefore come to the conclusion that the Canada Temperance Act in its present form is ultra vires of the Parliament of Canada.”

With respect, I am unable to agree with this finding. While it may be true that the emergency which necessitated the passing of the Canada Temperance Act no longer exists, and while the respective Provinces have passed liquor legislation to deal with the sale of intoxicating liquor in each Province, the fact remains that the Canada Temperance Act has not been repealed, and I am of the opinion my duty is to interpret and apply the law as laid down, and reasonably assume that the Parliaments of Canada and the Province of Ontario are possessed of the necessary jurisdiction to enact respective laws pursuant to the basis of constitution as set forth in Sections 91 and 92 of the B.N.A. Act.

Since the Parliament of Canada cannot competently enact a prohibitory liquor law for a single Province, it cannot directly repeal any liquor legislation passed by a Province, but its legislation competently enacted under its general power to make laws for the peace, order and good government of Canada, will override such provincial legislation in case of conflict, and in that way Dominion legislation can indirectly repeal such provincial law. The jurisdiction of a Provincial Legislature to enact prohibitory legislation is therefore subject to the qualification, that such legislation is or will become inoperative in any district which has already adopted, or may subsequently adopt Part II of the Canada Temperance Act. The Liquor Control Act of Ontario expressly provides, under Section 69, that no Government store shall be established by the Board for the sale of liquor, and beer and wine shall not be sold in any Municipality or portion of a Municipality in which at the time of the coming into force of the Ontario Temperance Act, a by-law passed under the Liquor Licence Act, or under any other Act was in force prohibiting the sale of liquor by retail, unless and until a vote has been taken to establish Government stores, or for the sale of beer and wine under the provisions of said Act and the regulations in the manner herein provided 6 C.E.D. at pg. 328.

*Rex v. Thorburn*—41 O.L.R. pg. 39. This case appears to be somewhat in point, as the alleged offence occurred in the District of Manitoulin subsequent to the Canada Temperance Act being declared in force. The conviction in question was that the defendant, on or about the 26th day of April,

1917, at the Township of Billings in the District of Manitoulin, did have and give liquor at the Havelock Hotel, being a place other than the private dwelling-house in which he resided, contrary to the provisions of the Ontario Temperance Act. Referring to the Judgment of Mr. Justice Masten at pg. 40—he says in part as follows:—

“ It is admitted that, at the time when the act in question was committed, Part II of the Canada Temperance Act, R.S.C. 1906, ch. 152 was in force in the District of Manitoulin.”

And again at pg. 41:—

10 “ It has also been clearly and frequently determined and is conceded in the present case that, where a given field of legislation is within the competence both of the Parliament of Canada and of the Provincial Legislature, and both have legislated, the enactment of the Dominion Parliament must prevail over that of the Province if the two are in conflict.”

*John Deere Plow Co. Ltd. v. Wharton*—[1915] A.C. at pg. 330 18 D.L.R. at 353.

20 It will be observed that Section 87 of the Liquor Control Act deals with the offence of selling, and the same offence under the Canada Temperance Act is contained in Section 128. It would therefore appear that the purpose of each Act is to limit the use of liquor in the territory to which it is applied. Neither Act prohibits absolutely, such use. The Canada Temperance Act seeks to achieve the common purpose by prohibiting the traffic in the territory where it is brought in force. It would, therefore, further appear that the provisions respecting traffic and sale under the liquor Control Act do not apply in such territory where the Canada Temperance Act is in force.

30 For the reasons above stated, I am of the opinion that the Canada Temperance Act, Part II, being properly voted upon, declared to be in force and not having been suspended or repealed, is therefore still valid and enforceable as the temperance legislation in the Provisional Judicial District of Manitoulin. That being so, I Find

The Liquor Control Act is not in force or effect in the said District.

The appeal will therefore be allowed, and the conviction quashed without costs.

In the event of no further appeal being taken within fifteen days from the date hereof, pursuant to Section 157 of The Liquor Control Act, I Direct that the deposit as security for costs shall be returned to the appellant.

The usual order will go protecting the Magistrate.

Dated at Gore Bay, Ontario, April 30, 1938.

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(Sgd.) A. B. CURREY,  
Judge, District of Manitoulin.

*In the  
Supreme  
Court of  
Ontario.*

In the Supreme Court of Ontario.

Between :

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—continued

His Majesty The King .. .. . *Appellant,*  
and  
Bertha Solomon .. .. . *Respondent.*

Take Notice that pursuant to the certificate of the Honourable the Attorney-General of the Province of Ontario, dated the 5th day of May, A.D. 1938, His Majesty the King appeals to the Court of Appeal of Ontario from the judgment herein of His Honour Judge Currey, Judge of the District Court of the District of Manitoulin, dated the 30th day of April, 1938, upon 10 the following grounds :—

1. That the learned District Judge erred in holding that the conviction by Magistrate S. W. Major, dated the 3rd day of March, 1938, upon the charge that the said Bertha Solomon on or about the 16th day of February, 1938, at Killarney in the District of Manitoulin unlawfully did sell liquor contrary to the Liquor Control Act (Ontario) Section 87, subsection 1, was bad for the reason that the Canada Temperance Act Part II is in force in the said District of Manitoulin and that the provisions of the Liquor Control Act (Ontario) respecting the traffic and sale of liquor do not apply in such territory where the Canada Temperance 20 Act is in force.
2. That the learned District Judge erred in holding that the Liquor Control Act (Ontario) does not apply in such territory in the Province of Ontario where the Canada Temperance Act being properly voted upon has been declared to be in force.
3. Upon such other grounds that may be advanced by Counsel.

Dated at Toronto this 5th day of May, A.D. 1938.

C. R. MAGONE,  
Parliament Buildings, Toronto,  
Solicitor for the Appellant. 30

To—W. J. Golden, Esq.,  
Little Current, Ontario.

And to—Bertha Solomon,  
Killarney, Ontario.

## In the Supreme Court of Ontario.

Between :

The King .. .. .

and

Bertha Solomon .. .. .

*Appellant,**Respondent.*

## Notice of Abandonment.

Take Notice that the Attorney-General for Ontario hereby abandons his appeal to the Court of Appeal for Ontario in the above case.

Dated at Toronto this 15th day of December, A.D. 1938.

10

C. R. MAGONE,

Solicitor for the Attorney-General  
for Ontario.

To :

Messrs. Wright & McMillan,  
Barristers, &c.,  
Solicitors for the Respondent.

List of Statutes, Orders-in-Council and Documentary Material appended to Memorandum of Law submitted on behalf of the Temperance Federations.

## I. Chronological List of Legislation Relating to the Liquor Traffic :

20 Prior to 1850 there were over forty Acts passed in Upper Canada and Canada from time to time providing, inter alia, for the licensing of taverns, distilleries, public houses and retail and wholesale stores, and generally relating to the consumption and sale of intoxicating liquors.

(1) 1850—13 and 14 Vic. Chap. 27 An Act for the more effectual suppression of Intemperance.

(2) 1850—13 and 14 Vic. Chap. 65 An Act to amend the law relating to Tavern Licences in Upper Canada.

(3) 1850—14 and 15 Vic. Chap. 120 An Act to explain and amend 13 and 14 Vic. Chap. 65.

30 (4) 1853—16 Vic. Chap. 164 An Act to prohibit the sale of intoxicating liquors on or near the line of public works in this Province.

(5) 1857—20 Vic. Chap. 70 An Act to amend 13 and 14 Vic. Chap. 65.

(6) 1858—22 Vic. Chap. 99 Secs. 245 to 253 An Act respecting the Municipal Institutions of Upper Canada.

(7) 1859—22 Vic. Chap. 6 An Act to restrain the sale of intoxicating liquors from Saturday night until Monday morning.

40 (8) 1860—23 Vic. Chap. 6 An Act to prevent the unlicensed sale of intoxicating liquors in the unorganised tracts in this province.

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Court of  
Ontario.*

No. 9.  
Memoran-  
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Memorandum of law and fact of The Canadian Temperance Federation, The Ontario Temperance Federation and The Huron County Temperance Federation, Manitoulin Temperance Federation and Peel Temperance Federation  
—*continued*
- (9) 1860—23 Vic. Chap. 53 An Act to diminish the number of licences issued for the sale of intoxicating liquors by retail.
- (10) 1862—25 Vic. Chap. 23 An Act to amend Chap. 54 of the Consolidated Statutes for Upper Canada.
- (11) 1864—27 and 28 Vic. Chap. 18 The Temperance Act of 1864 (The Dunkin Act).
- (12) 1865—28 Vic. Chap. 22 An Act for the Punishment of persons selling liquor without licences, etc.
- (13) 1866—29 and 30 Vic. Chap. 51 Secs. 249 to 264 An Act respecting the Municipal Institutions of 10 Upper Canada.
- There were consolidations of the Statutes of Canada and of Upper Canada in 1859, see S.C. Chapters 277 and 341 and see S.U.C. Chapters 54 and 127.
- Ontario Legislation.
- (1) 1867—31 Vic. Chap. 5 An Act to repeal Chapter 20 of the Consolidated Statutes of Canada—an Act respecting the Provincial duty of Tavern Keepers.
- (2) 1868—9—32 Vic. Chap. 32 An Act respecting Tavern and Shop licences. 20
- (3) 1869—33 Vic. Chap. 28 An Act to amend the Act entitled “An Act respecting Tavern and Shop Licences.”
- (4) 1873—36 Vic. Chap. 35 An Act to amend the Acts respecting Tavern and Shop Licences.
- (5) 36 Vic. Chap. 48 Sec. 372, Subsec. 14, Sec. 390, Subsec. 6 An Act respecting Municipal Institutions in the Province of Ontario.
- (6) 1874—37 Vic. Chap. 32 An Act to amend and consolidate the Law for the Sale of Fermented or Spirituous Liquors. 30
- (7) 1876—39 Vic. Chap. 26 An Act to amend the Law for the Sale of Fermented or Spirituous Liquors.
- (8) 1877—R.S.O. Chap. 181 The Liquor Licence Act.
- (9) R.S.O. Chap. 182 The Temperance Act of Ontario.
- (10) 40 Vic. Chap. 8 Sec. 72 An Act to provide for certain amendments of the Law.
- (11) 40 Vic. Chap. 18 An Act to amend the Acts respecting the Sale of Fermented and Spirituous Liquors. 40
- (12) 1878—41 Vic. Chap. 14 An Act to amend The Licence Act and for other purposes.
- (13) 1881—44 Vic. Chap. 27 An Act to give increased efficiency to the laws against illicit liquor selling.
- (14) 1882—3—46 Vic. Chap. 25 An Act to amend the Act respecting the Sale of Fermented and Spirituous Liquors.

	(15)	46 Vic. Chap. 18 Sec. 482 (23)	An Act to consolidate the Acts respecting municipal institutions.	<i>In the Supreme Court of Ontario.</i>  No. 9. Memorandum of law and fact of The Canadian Temperance Federation, The Ontario Temperance Federation and The Huron County Temperance Federation, Manitoulin Temperance Federation and Peel Temperance Federation <i>—continued</i>
	(16)	1884—47 Vic. Chap. 34	An Act to improve the Liquor Licence Laws.	
	(17)	Chap 35	An Act respecting Licence Duties.	
	(18)	1885—48 Vic. Chap. 43	An Act to amend the Liquor Licence Act.	
	(19)	1886—49 Vic. Chap. 39	An Act respecting Liquor Licences.	
	(20)	1887—50 Vic. Chap. 33	An Act better to provide for the enforcement of the Temperance Laws.	
	(21)	R.S.O. Chap. 194	An Act respecting the Sale of Fermented or Spirituous Liquors.	
10	(22)	1888—51 Vic. Chap. 30	The Liquor Licence Act, 1888.	
	(23)	1889—52 Vic. Chap. 41	An Act to amend the Liquor Licence Act.	
	(24)	1890—53 Vic. Chap. 56	An Act to improve the Liquor Licence Laws.	
	(25)	1891—54 Vic. Chap. 46	An Act respecting Local Option in the matter of Liquor Selling.	
	(26)	1892—55 Vic. Chap. 51	An Act to amend the Liquor Licence Act.	
	(27)	56 Vic. Chap. 40	An Act to amend the Liquor Licence Act.	
	(28)	1893—Chap. 41	An Act to enable the Electors of the Province to pronounce upon the desirability of prohibiting the Importation, Manufacture and Sale, as a Beverage, of Intoxicating Liquors.	
20	(29)	1897—60 Vic. Chap. 50	An Act to improve the License Laws.	
	(30)	R.S.O. Chap. 245	An Act respecting the Sale of Fermented or Spirituous Liquors.	
	(31)	1899—62 Vic. Chap. 31	An Act respecting Brewers and Distillers and other Licenses.	
	(32)	1900—63 Vic. Chap. 42	An Act to amend an Act respecting Brewers and Distillers and other Licenses.	
	(33)	1901—1 Edw. VII. Chap. 12, Sec. 26	An Act to amend the Statute Law.	
30	(34)	1902—2 Edw. VII. Chap. 33	An Act respecting the Sale of Intoxicating Liquors in the Province of Ontario.	
	(35)	1905—4 Edw. VII. Chap. 30	An Act to amend The Liquor License Act.	
	(36)	1905—Chap. 31	An Act to amend The Act respecting Brewers' and Distillers' and other Licences.	
	(37)	1906—5 Edw. VII. Chap. 47	An Act to amend The Liquor License Laws.	
	(38)	1907—6 Edw. VII. Chap 46	An Act to amend The Liquor License Laws.	
40	(39)	1908—7 Edw. VII. Chap. 33, Sec. 22	The Statute Law Amendment Act, 1908.	
	(40)	Chap. 54	An Act to Amend the Liquor License Act.	
	(41)	1909—8 Edw. VII. Chap. 82	An Act to Amend the Liquor License Act.	
	(42)	1910—9 Edw. VII. Chap. 22, Sec. 17	An Act to establish the Algonquin National Park of Ontario.	

<i>In the Supreme Court of Ontario.</i>	(43)	Chap. 23, Sec. 8	An Act to establish a Provincial Park at Rondeau.
	(44)	Chap. 94	An Act to Amend The Liquor License Act.
	(45)	1911—1 Geo. V.	An Act to Amend The Liquor License Act.
No. 9.		Chap. 64	
Memorandum of law and fact of The Canadian Temperance Federation, The Ontario Temperance Federation and The Huron County Temperance Federation, Manitoulin	(46)	Chap. 65	An Act to further Regulate Sale of Alcohol by Chemists.
	(47)	1912—2 Geo. V.	An Act to Amend the Liquor License Act.
	(48)	1914—R.S.O.	An Act respecting the Sale of Fermented or 10 Spirituous Liquors.
	(49)	4 Geo. V.	An Act to Amend The Liquor License Act.
	(50)	1915—5 Geo. V.	An Act to improve the Administration of The Liquor License Laws.
	(51)	1916—6 Geo. V.	An Act intituled "The Ontario Temperance Act."
	(52)	1917—7 Geo. V.	An Act to Amend The Ontario Temperance Act.
	(53)	1918—8 Geo. V.	An Act to Amend The Ontario Temperance 20 Act.
	(54)	1919—9 Geo. V.	An Act to Amend The Ontario Temperance Act.
Peel Tem- perance Federation —continued	(55)	Chap. 61	An Act to Provide for a Referendum upon certain questions.
	(56)	1920—10 Geo. V.	An Act to Amend The Ontario Temperance Act.
	(57)	Chap. 80	An Act respecting the Transportation of In- toxicating Liquors.
	(58)	1921—11 Geo. V.	An Act to Amend The Ontario Temperance 30 Act.
	(59)	1922—12 Geo. V.	An Act respecting the Carriage of Liquor on Highways.
	(60)	Chap. 87	An Act to Amend The Ontario Temperance Act.
	(61)	1924—14 Geo. V.	An Act to Amend The Ontario Temperance Act.
	(62)	1925—15 Geo. V.	An Act to Amend The Ontario Temperance Act.
	(63)	1927—17 Geo. V.	An Act to Regulate and Control the Sale of 40 Liquor in Ontario.
	(64)	R.S.O.	The Liquor Control Act (Ontario).
	(65)	1928—18 Geo. V.	An Act to Amend The Liquor Control Act (Ontario).
	(66)	1929—19 Geo. V.	An Act to Amend The Liquor Control Act (Ontario).
		Chap. 69	



	(67) 1930—20 Geo. V. Chap. 51	An Act to Amend The Liquor Control Act (Ontario).	<i>In the Supreme Court of Ontario.</i>  No. 9. Memorandum of law and fact of The Canadian Temperance Federation, The Ontario Temperance Federation and The Huron County Temperance Federation, Manitoulin <i>—continued</i>
	(68) 1932—22 Geo. V. Chap. 33	An Act to Amend The Liquor Control Act (Ontario).	
	(69) 1933—23 Geo. V. Chap. 25	An Act to Amend The Liquor Control Act (Ontario).	
	(70) 1934—24 Geo. V. Chap. 26	An Act to Amend The Liquor Control Act (Ontario).	
	(71) 1935—25 Geo. V. Chap. 35	An Act to Amend The Liquor Control Act (Ontario)	
10	(72) 1936—1 Edw. VIII Chap. 34	An Act to Amend The Liquor Control Act (Ontario).	
	(73) 1937—R.S.O. Chap. 294	The Liquor Control Act (Ontario).	
	(74) 1939—3 Geo. VI. Cap. 26	An Act to Amend The Liquor Control Act.	
Dominion Legislation.			
(The following list excludes Revenue Acts, certain Acts prohibiting Importation or Manufacture of Spirits in the North West Territories and 20 Acts relating to the Supplying of Intoxicating Liquors to Indians.)			
	1878—41 Vic. Chap. 16	An Act respecting the Traffic in Intoxicating Liquors.—The Canada Temperance Act.	
	1879—42 Vic. Chap. 50	An Act to remove doubts as to the true intent and meaning of certain provisions of The Canada Temperance Act 1878 and to make certain amendments thereto in so far as the said Act relates to The Canada Temperance Act, Manitoba.	
	1884—47 Vic. Chap. 31	An Act to amend The Canada Temperance Act, 1878.	
30	1886—R.S.C. Chap. 106	An Act respecting the Traffic in Intoxicating Liquors 1886.	
	1888—51 Vic. Chap. 34	An Act to Amend The Canada Temperance Act.	
	1892—55-56 Vic. Chap. 26	An Act to amend The Canada Temperance Amendment Act 1888.	
	1898—61 Vic. Chap. 51	An Act respecting the Prohibition of the Importation, Manufacture and Sale of Intoxicating Liquors.	
	1904—4 Edw. VII. Chap. 41	An Act to amend The Canada Temperance Act.	
40	1906—R.S.C. Chap. 152	An Act respecting the Traffic in Intoxicating Liquors.	
	1908—7-8 Edw. VII Chap. 58	An Act to amend The Canada Temperance Act.	
	1910—9-10 Edw. VII. Chap. 58	An Act to amend The Canada Temperance Act.	
	1914—4-5 Geo. V. Chap. 53	An Act to amend The Canada Temperance Act.	

<i>In the Supreme Court of Ontario.</i>	1916—6-7 Geo. V. Chap. 14 Chap. 19	An Act to amend The Canada Temperance Act. An Act in aid of Provincial Legislation prohibiting or restricting the sale or use of Intoxicating Liquors.
No. 9.	1917—7-8 Geo. V. Chap. 30	An Act to amend an Act in aid of Provincial Legislation prohibiting or restricting the sale or use of Intoxicating Liquors.
Memorandum of law and fact of The Canadian Temperance Federation, The Ontario Temperance Federation and The Huron County Temperance Federation, Manitoulin	1919—10 Geo. V. (2nd Sess.) Chap. 21	An Act to amend an Act in aid of Provincial Legislation prohibiting or restricting the sale or use of Intoxicating Liquors. 10
Temperance Federation, The Ontario Temperance Federation and The Huron County Temperance Federation, Manitoulin	1921—11-12 Geo. V. Chap. 11	An Act with regard to certain Proceedings under Part IV of The Canada Temperance Act.
	1922—12-13 Geo. V. Chap. 11	An Act to amend The Canada Temperance Act.
	1927—R.S.C. Chap. 196	An Act respecting the Traffic in Intoxicating Liquors. (The Canada Temperance Act.)
	1886—49 Vic. Chap. 4	An Act respecting the Revised Statutes of Canada.
	1886—R.S.C. Chap. 1	An Act respecting the Form and Interpretation of Statutes. 20
	1903—3 Edw. VII. Chap. 61	An Act respecting the Revised Statutes.
	1906—6-7 Edw. VII. Chap. 43	An Act respecting the Revised Statutes 1906.
	1906—R.S.C. Chap. 1	An Act respecting the Form and Interpretation of Statutes.
—continued	1924—14-15 Geo. V. Chap. 65	An Act respecting the Revised Statutes of Canada.
	1927—R.S.C. Chap. 1	An Act respecting the Form and Interpretation of Statutes.

The Statutes and Ordinances of other Canadian Provinces and Territories relating to intoxicating liquor. 30

## II. Orders in Council.

### (a) Imperial.

Order in Council dated 20th December, 1935, granting special leave to Appeal to His Majesty in Council.

Order in Council dated 18th December, 1936, dismissing Appeal to His Majesty in Council.

### (b) Canadian.

All Orders in Council relating to The Canada Temperance Act and particularly :— 40

- (1) Order in Council, P.C. 1899, dated 3rd December, 1880, bringing into force Part II of The Canada Temperance Act in the Electoral District of Marquette.

- (2) Order in Council, P.C. 911, dated 13th June, 1881, bringing into force Part II of The Canada Temperance Act in the Electoral District of Lisgar.
- (3) Order in Council, P.C. 737, dated 4th April, 1913, bringing into force Part II of The Canada Temperance Act in the District of Manitoulin.
- (4) Order in Council, P.C. 1047, dated 10th May, 1913, bringing into force Part II of The Canada Temperance Act in the City of Thetford Mines.
- 10 (5) Order in Council, P.C. 1066, dated 18th April, 1914, bringing into force Part II of The Canada Temperance Act in the County of Peel.
- (6) Order in Council, P.C. 1136, dated 28th April, 1914, bringing into force Part II of The Canada Temperance Act in the County of Huron.
- (7) Order in Council, P.C. 2033, dated 1st September, 1915, bringing into force Part II of The Canada Temperance Act in the County of Perth.
- 20 (8) Order in Council, P.C. 2115, dated 18th June, 1921, bringing Part IV of The Canada Temperance Act into force in Ontario.

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### III. Documentary Material.

Reports of Special Committees of the Senate and House of Commons, 1873.

Petition of Legislative Assembly of Ontario, 1872-3.

Reports of Royal Commissions on The Liquor Traffic—

Dominion, 1874, 1895.

New Brunswick, 1907.

Quebec, 1912.

Saskatchewan, 1915.

30 Resolution of Nova Scotia Legislature, 1876.

Canadian Statistical abstracts and records and The Canada Year Books for the years 1868-1938.

Reports of The Nova Scotia Liquor Commission—1931-1939.

Reports of The New Brunswick Liquor Control Board—1927-1938.

Reports of The Quebec Liquor Commission, 1922-1938.

Reports of The Inspector of Liquor Licenses.

Reports concerning the Liquor License Acts (Ontario) (including the Tavern and Shop Licenses Acts) and particularly 1883, 1885, 1887, 1889, 1892-6, 1899, 1900-1926).

40 Reports of the Liquor Control Board of Ontario, 1927-1938.

Reports of The Government Liquor Control Commission (Manitoba), 1924-1938.

- In the Supreme Court of Ontario.*
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Memorandum of law and fact of The Canadian Temperance Federation, The Ontario Temperance Federation and The Huron County Temperance Federation, Manitoulin Temperance Federation and Peel Temperance Federation  
—*continued*
- Annual Reports and Financial Statements of the Liquor Board, Saskatchewan—1926-1938.
- Annual Reports of the Alberta Liquor Control Board—1925-1939.
- Annual Reports of the Liquor Control Board of British Columbia, 1920-1938.
- Reports on the Distilled Liquor Industry (Ottawa), particularly 1925-1937.
- Reports on the Brewing Industry in Canada (Ottawa), particularly 1919-1937.
- Reports on the Wine Industry in Canada (Ottawa), particularly 1921-1937.
- The Control and Sale of Liquor in Canada (Ottawa), 1929-1938.
- Annual Reports of Statistics of Criminal and other offices, and particularly 10  
1909-1936.
- Report of The Royal Canadian Mounted Police for the year ending March 31st, 1938.
- Annual Reports of the Inspector of Prisons and Public Charities upon the Hospitals and Charitable Institutions of the Province of Ontario and particularly 1918, 1920, 1922, 1926-1930.
- Annual Report of the Chief Constable of the City of Toronto, particularly 1924-1936.
- Annual Reports upon the Prisons and Reformatories, Ontario, particularly 20  
1915-1938.
- Annual Reports upon the Ontario Hospitals for the Insane, Feeble-Minded and Epileptics and also for the Mentally Ill (Ontario), particularly 1921-1938.
- Annual Reports of the Department of Health, Ontario, particularly 1926—1935.
- Reports of the Department of Health, Dominion of Canada, particularly 1925.
- Reports relating to the Registration of Births, Marriages and Deaths in Ontario, particularly 1936.
- Reports of Superintendent on Neglected and Dependent Children of Ontario, 30  
particularly 1926-7.
- The Highway and Motor Vehicle in Canada (Ottawa), particularly 1933-1937.
- Canada's Tourist Trade (Ottawa), 1937.
- Report of the Hotel and Tourist Investigation Committee, Ontario, 1923.
- Joint Pastoral Letter issued by His Eminence, The Cardinal Archbishop of Quebec and Their Excellencies The Archbishops and Bishops of the Civil Province of Quebec on Temperance, 1938.
- Resolutions of the other Christian Churches, 1938-9.
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## No. 10.

## Memorandum of law and fact of The United Church of Canada.

In the  
Supreme  
Court of  
Ontario.

No. 10.  
Memoran-  
dum of law  
and fact  
of The  
United  
Church of  
Canada.

The United Church of Canada, a body incorporated by The United Church of Canada Act, 1924, Statutes of Canada 14-15 George V, Chapter 100, begs to submit the following memoranda of law relating to a Reference as to the validity of Parts I, II and III of The Canada Temperance Act, R.S.C. Chapter 196 :—

1. That the enactment of The Canada Temperance Act is within the legislative competence of the Dominion Parliament under The British North America Act, Section 91 ; under the general provision of that Section—

“ 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.”

(a) In a case of *Russell v. The Queen* [1882] 7 A.C. 829, the law is clearly stated by Sir Montague E. Smith in referring to The Canada Temperance Act—

“ It has in its legal aspect an obvious and close similarity to laws which place restrictions on the sale or custody of poisonous drugs or of dangerously explosive substances. These things, as well as intoxicating liquors, can, of course, be held as property, but a law placing restrictions on their sale, custody or removal, on the ground that the free sale or use of them is dangerous to public safety, and making it a criminal offence punishable by a fine or imprisonment to violate these restrictions, cannot properly be deemed a law in relation to property, in the sense in which those words are used in the 92nd section.”

At page 839—

“ Laws of this nature designed for the promotion of public order, safety, or morals, and which subject those who contravene them to criminal procedure and punishment, belong to the subject of public wrongs rather than to that of civil rights. They are of a nature which fall within the general authority of Parliament to make laws for the order and good government of Canada and have direct relation to criminal law, which is one of the enumerated classes of subjects assigned exclusively to the Parliament of Canada.”

At page 841—

“ The declared object of Parliament in passing the Act is that there should be uniform legislation in all the provinces respecting the traffic in intoxicating liquors, with a view to promote temperance in the Dominion. Parliament does not treat the promotion of temperance in the Dominion as desirable in one province more than in another, but as desirable everywhere throughout the Dominion.”

On the same page—

“ The objects and scope of the legislation are still general, viz., to promote temperance by means of a uniform law throughout the Dominion.”

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Court of  
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dum of law  
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of The  
United  
Church of  
Canada—  
*continued.*

At page 841—

“There is no ground or pretence for saying that the evil or vice struck at by the Act in question is local or exists only in one province, and that Parliament under colour of general legislation, is dealing with a provincial matter only.”

At page 842—

“The present legislation is clearly meant to apply a remedy to an evil which is assumed to exist throughout the Dominion.”

(b) That the principles of law enunciated in *Russell v. The Queen* were approved in *Hodge v. The Queen* [1883] 9 A.C. 117— 10

Lord Fitzgerald in his judgment stated in referring to *Russell v. The Queen*—

“The sole question there was, whether it was competent to the Dominion Parliament, under its general powers to make laws for the peace, order and good government of the Dominion, to pass the Canada Temperance Act, 1878, which was intended to be applicable to the several provinces of the Dominion, or to such parts of the provinces as should locally adopt it. It was not doubted that the Dominion Parliament had such authority, under section 91, unless the subject fell within some one or more of the classes of subjects which, by section 92 were 20 assigned exclusively to the legislatures of the provinces.”

(c) In a case of *Attorney-General for Ontario v. Attorney-General for Canada* [1896] A.C. 348, page 361, Lord Watson stated—

“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.”

(d) In *Manitoba v. Liquor Licence Holders* [1902] A.C. 73, the principle is again enunciated by Lord Macnaghten in the words—

“On the one hand, according to *Russell v. Reg.* 7 A.C. 828, it is 30 competent for the Dominion Legislature to pass an Act for the suppression of intemperance applicable to all parts of the Dominion, and when duly brought into operation in any particular district deriving its efficacy from the general authority vested in the Dominion Parliament to make laws for the peace, order and good government of Canada.”

(e) In *Attorney-General for Canada v. Attorney-General for Alberta* [1916] 1 App. Cas. 588, Viscount Haldane is reported as follows—

“There is only one case, outside the heads enumerated in section 91, in which the Dominion Parliament can legislate effectively as regards a province, and that is where the subject matter lies outside all of the 40 subject matters enumeratedly entrusted to the provinces under section 92. *Russell v. The Queen*, 7 App. Cas. 829, is an instance of such a case. There the Court considered that the particular subject matter in question lay outside the provincial powers. What has been said in subsequent

cases before this Board makes it clear that it was on this ground alone, and not on the ground that the Canada Temperance Act was considered to be authorised as legislation for the regulation of trade and commerce, that the Judicial Committee thought that it should be held that there was constitutional authority for Dominion legislation which imposed conditions of a prohibitory character on the liquor traffic throughout the Dominion. No doubt the Canada Temperance Act contemplated in certain events the use of different licensing boards and regulations in different districts and to this extent legislated in relation to local institutions. But the Judicial Committee appear to have thought that this purpose was subordinate to a still wider and legitimate purpose of establishing a uniform system of legislation for prohibiting the liquor traffic throughout Canada excepting under restrictive conditions. The case must therefore be regarded as illustrating the principle which is now well established, but none the less ought to be applied only with great caution, that subjects which in one aspect and for one purpose fall within the jurisdiction of the provincial Legislatures may in another aspect and for another purpose fall within Dominion legislative jurisdiction."

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(f) *Great West Saddlery Company v. The King* [1921] 2 A.C. 91, Viscount Haldane is reported as follows—

"Their Lordships think that what is implied in this decision (referring to *Brewers and Maltsters' Association v. A.-G. for Ontario* [1897] A.C. 231) is that while the Dominion Legislature had power to place restrictions throughout Canada on the traffic in liquor, the powers conferred by section 91 did not in any way conflict with the positive powers of taxation and licensing for Provincial objects, expressly and particularly conferred by section 92."

(g) *Re Board of Commerce Act* [1922] 1 App. Cas. 191, Viscount Haldane is reported as stating in reference to the validity of this Act passed by the Dominion Legislature—

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"No doubt the initial words of section 91 of The British North America Act confer on the Parliament of Canada power to deal with subjects which concern the Dominion generally, provided they are not withheld from the powers of that Parliament to legislate, by any of the express heads of section 92, untrammelled by the enumeration of special heads in section 91. It may well be that the subjects of undue combination and hoarding are matters in which the Dominion has a great practical interest. In special circumstances, such as those of a great war, such an interest might conceivably become of such paramount and overriding importance as to amount to what lies outside the heads in section 92, and is not covered by them. The decision in *Russell v. The Queen* [1882] 7 App. Cas. 829 appears to recognise this as constitutionally possible, even in time of peace; but it is quite another matter to say that under normal circumstances general Canadian policy can justify interference, on such a scale as the statutes in controversy involve, with the property and civil rights of the inhabitants of the provinces."

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dum of law  
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*continued.*

*In the  
Supreme  
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No. 10.  
Memoran-  
dum of law  
and fact  
of The  
United  
Church of  
Canada—  
*continued.*

“ Legislation setting up a Board of Commerce with such powers appears to their Lordships to be beyond the powers conferred by section 91. They find confirmation of this view in section 41 of the Board of Commerce Act, which enables the Dominion Executive to review and alter the decisions of the Board. It has already been observed that circumstances are conceivable, such as those of war or famine, when the peace, order and good government of the Dominion might be imperilled under conditions so exceptional that they require legislation of a character in reality beyond anything provided for by the enumerated heads in either section 92 or section 91 itself. Such a case, if it were to arise, 10 would have to be considered closely before the conclusion could properly be reached that it was one which could not be treated as falling under any of the heads enumerated. Still, it is a conceivable case, and although great caution is required in referring to it, even in general terms, it ought not, in the view of their Lordships take of the British North America Act, read as a whole, to be excluded from what is possible. For throughout the provisions of that Act there is apparent the recognition that subjects which would normally belong exclusively to a specifically assigned class of subject may, under different circumstances and in another aspect, assume a further significance. Such an aspect may conceivably become 20 of paramount importance, and of dimensions that give rise to other aspects. This is a principle which, although recognised in earliest decisions, such as that of *Russell v. The Queen* 7 App. Cas. 829, both here and in the Courts of Canada has always been applied with reluctance, and its recognition as relevant can be justified only after scrutiny sufficient to render it clear that the circumstances are abnormal.”

(h) *Fort Frances Pulp and Paper Company v. Manitoba Free Press Company* [1923] A.C. 695, quoting Viscount Haldane—

“ It is clear that in normal circumstances the Dominion Parliament could not have so legislated as to set up the machinery of control over 30 the paper manufacturers which is now in question. The recent decision of the Judicial Committee in the *Board of Commerce case* [1922] 1 A.C. 191, as well as earlier decisions, show that as the Dominion Parliament cannot ordinarily legislate so as to interfere with the property and civil rights in the Provinces, it could not have done what the two statutes under consideration purport to do had the situation been normal. But it does not follow that in a very different case, such as that of sudden danger to social order arising from the outbreak of a great war, the Parliament of the Dominion cannot act under other powers which may well be implied in the constitution. The reasons given in the *Board of 40 Commerce case* [1922] 1 A.C. 191 recognise exceptional cases where such a power may be implied. It may be, for example, impossible to deal adequately with the new questions which arise without the imposition of special regulations on trade and commerce of a kind that only the situation created by the emergency places within the competency of the Dominion Parliament. For in the solution of the problem regard must be had to the broadened field covered, in case of exceptional necessity,



by the language of section 91, in which the interests of the Dominion generally are protected. As to these interests the Dominion Government, which in its parliament represents the people as a whole, must be deemed to be left with considerable freedom to judge. But very clear evidence that the crisis had wholly passed away would be required to justify the judiciary, even when the question raised was one of ultra vires which it had to decide, in overruling the decision of the Government that exceptional measures were still requisite."

(i) *Toronto Electric Commissioners v. Snider* [1925] A.C. 396, quoting  
10 Viscount Haldane—

“ A more difficult question arises with reference to the initial words of section 91, which enable the Parliament of Canada to make laws for the peace, order and good government of Canada in matters falling outside the provincial powers specifically conferred by section 92. For *Russell v. The Queen* 7 App. Cas. 829 was a decision in which the Judicial Committee said that it was within the competency of the Dominion Parliament to establish a uniform system for prohibiting the liquor traffic throughout Canada excepting under restrictive conditions. It has been observed subsequently by this Committee that it is now clear  
20 that it was on the ground that the subject matter lay outside Provincial powers, and not on the ground that it was authorised as legislation for the regulation of trade and commerce, that the Canada Temperance Act was sustained : see *Attorney-General for Canada v. Attorney-General for Alberta* [1916] 1 A.C. 588, 595. But even on this footing it is not easy to reconcile the decision in *Russell v. The Queen* 7 App. Cas. 829 with the subsequent decision in *Hodge v. The Queen*, 9 App. Cas. 117, that the Ontario Liquor License Act, with the powers of regulation which is entrusted to local authorities in the Province, was intra vires of the Ontario Legislature. Still more difficult is it to reconcile *Russell v. The Queen*, 7 App. Cas. 829, with the decision given later by the Judicial  
30 Committee that the Dominion licensing statute, known as the McCarthy Act, which sought to establish a local licensing system for the liquor traffic throughout the Dominion was ultra vires of the Dominion Parliament. As to this last decision it is not without significance that the strong Board which delivered it abstained from giving any reasons for their conclusion. They did not in terms dissent from the reasons given in *Russell v. The Queen*, 7 App. Cas. 829. They may have thought that the case was binding on them as deciding that the particular Canada Temperance Act of 1886 had been conclusively held valid, on the ground  
40 of fact that at the period of the passing of the Act the circumstances of the time required it in an emergency affecting Canada as a whole. The McCarthy Act already referred to, which was decided to have been ultra vires of the Dominion Parliament was dealt with in the end of 1885. Ten years subsequently another powerful Board decided *Attorney-General for Ontario v. Attorney-General for the Dominion*, known as the Distillers' and Brewers' case [1896] A.C. 348, 362. Lord Herschell and Lord Davey, who had been the leading counsel in the *McCarthy case*, sat on that

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Board, along with Lord Halsbury, who had presided at it. In delivering the judgment, Lord Watson used in the latter case significant language Ibid. 362 : 'The judgment of this Board in *Russell v. The Queen*, 7 App. Cas. 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.' That decision, he said, 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 had been duly brought into operation in any Provincial 10 area within the Dominion must receive effect as valid enactments relating to the peace, order and good government of Canada.'

"It appears to their Lordships that it is not now open to them to treat *Russell v. The Queen*, 7 App. Cas. 829, as having established a general principle that the mere fact that the Dominion legislation is for the general advantage of Canada, or is such that it will meet a mere want which is felt throughout the Dominion, renders it competent if it cannot be brought within the heads enumerated specifically in section 91. Unless this is so, if the subject matter falls within any of the enumerated heads in section 92, such legislation belongs exclusively to Provincial com- 20 petency. No doubt there may be cases arising out of some extraordinary peril to the national life of Canada, as a whole, such as the cases arising out of the war, where legislation is required of an order that passes beyond the heads of exclusive Provincial competency. Such cases may be dealt with under the words at the commencement of section 91, conferring general powers in relation to peace, order and good government, simply because such cases are not otherwise provided for, but instances of this, as was pointed out in the judgment in *Fort Frances Pulp and Paper Company v. Manitoba Free Press* [1923] A.C. 695 are highly exceptional. Their Lordships think that the decision in *Russell* 30 *v. The Queen*, 7 App. Cas. 829, can only be supported to-day, not on the footing of having laid down an interpretation, such as has sometimes been invoked of the general words at the beginning of section 91, but on the assumption of the Board, apparently made at the time of deciding the case of *Russell v. The Queen*, 7 App. Cas. 829, that the evil of intemperance at that time amounted in Canada to one so great and so general that at least for the period it was a menace to the national life of Canada so serious and pressing that the National Parliament was called on to intervene to protect the nation from disaster. An epidemic of pestilence might conceivably have been regarded as analogous. It is 40 plain from the decision in *The Board of Commerce case* [1922] 1 A.C. 191 that the evil of profiteering could not have been so invoked, for Provincial powers, if exercised, were adequate to it. Their Lordships find it difficult to explain the decision in *Russell v. The Queen*, 7 App. Cas. 829, as more than a decision of this order upon facts, considered to have been established at its date rather than upon general law. Their Lordships have examined the evidence produced at the trial. They concur in the

view taken of it by Hodgins, J.A. They are of opinion that it does not prove any emergency putting the national life of Canada in unanticipated peril such as the Board which decided *Russell v. The Queen*, 7 App. Cas. 829, may be considered to have had before their minds."

(j) *Attorney-General for Canada v. Attorney-General for British Columbia* [1929] A.C. 111, quoting Lord Tomlin—

10 "The general power of legislation conferred upon the Parliament of the Dominion by section 91 of the Act in supplement of the power to legislate upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench on any of the subjects enumerated in section 92 as within the scope of provincial legislation, unless these matters have attained such dimensions as to affect the body politic of the Dominion: see *Attorney-General for Ontario v. Attorney-General for the Dominion* [1896] A.C. 348."

(k) In *Re Regulation and Control of Aeronautics in Canada* [1932] A.C. 54, quoting Lord Sankey, L.C.—

20 "It is obvious, therefore, that there may be cases of emergency where the Dominion is empowered to act for the whole. There may also be cases where the Dominion is entitled to speak for the whole, and this not because of any judicial interpretation of sections 91 and 92, but by reason of the plain terms of section 132, where Canada as a whole, having undertaken an obligation, is given the power necessary and proper for performing that obligation."

(l) (*Re Weekly Rest, Minimum Wages and Hours of Labour Acts.*)

*A.-G. for Canada v. A.-G. for Ontario and others* [1937] A.C. 326, quoting Lord Atkin—

30 "But the validity of the legislation under the general words of section 91 was sought to be established not in relation to the treaty-making power alone, but also as being concerned with matters of such general importance as to have 'attained such dimensions as to affect the body politic,' and to have 'ceased to be merely local or provincial and to have become matters of national concern.' It is interesting to notice how often the words used by Lord Watson in *A.-G. for Ontario v. A.-G. for Canada* [1896] A.C. 348, have unsuccessfully been used in attempts to support encroachments on the Provincial legislative powers given by section 92. They laid down no principle of constitutional law, and were cautious words intended to safeguard possible eventualities which no one at the time had any interest or desire to define. The law of Canada on this branch of constitutional law had been stated with such force and clarity by the Chief Justice in his judgment in *the reference concerning the Natural Products Marketing Act*, beginning at p. 65 of the record in that case and dealing with the six Acts there referred to, that their Lordships abstain from stating it afresh. The Chief Justice naturally from his point of view excepted legislation to fulfil treaties. On

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this their Lordships have expressed their opinion. But subject to this they agree with and adopt what was there said. They consider that the law is finally settled by the current of cases cited by the Chief Justice on the principle declared by him. It is only necessary to call attention to the phrases in the various cases, 'abnormal circumstances,' 'exceptional conditions,' 'standard of necessity' (*Board of Commerce case* [1922] 1 A.C. 191), 'some extraordinary peril to the national life of Canada,' 'highly exceptional,' 'epidemic of pestilence' (*Snider's case* [1925] A.C. 396), to show how far the present case is from the conditions which may override the normal distribution of powers in sections 91 and 10 92. The few pages of the Chief Justice's judgment will, it is to be hoped, form the locus classicus of the law on this point, and preclude further disputes."

2. That in accordance with the aforesaid judgments there has been no change in the menace to Canada created by the "evil or vice struck at by the Act in question." It is still an evil which can be assumed to exist throughout the Dominion; that the legislation still bears a similarity to the laws which place restrictions on the sale or custody of poisonous drugs or of dangerously explosive substances and relates to the promotion of public order and safety, or morals, and it is still desirable that there should be uniform legislation in 20 all the Provinces respecting the traffic in intoxicating liquors with a view to promoting temperance in the Dominion.

3. Following the principle laid down by Viscount Haldane in the case of *Fort Frances Pulp and Paper Company v. Manitoba Free Press Company* referred to above in clause 1 (*h*) in the solution of the problem, regard must be had to the broadened field covered, in case of exceptional necessity, by the language of section 91, in which the interests of the Dominion generally are protected. As to these interests the Dominion Government, which in its Parliament represents the people as a whole, must be deemed to be left with considerable freedom to judge. 30

All of which is respectfully submitted.

The United Church of Canada, by its Solicitor,

A. T. WHITEHEAD,  
299 Queen Street West, Toronto.

19th June 1939.

No. 11.  
Statement  
on behalf of  
The Social  
Service  
Council of  
the Church  
of England  
in Canada.

No. 11.

**Statement on behalf of The Social Service Council of the Church of England in Canada.**

1. The Social Service Council of the Church of England in Canada has been served with a notice of the hearing of a Reference to determine the 40 validity of the Canada Temperance Act and invited to make submissions to the Court of Appeal.

2. This Council supports the contentions to be advanced on behalf of the Attorney-General for Canada that Parts I, II and III of the Canada Temperance Act are intra vires the Parliament of Canada for the following reasons :

(1) *Russell v. The Queen* [1882] 7 A.C. 829 ; *Attorney-General for Ontario v. Attorney-General for Dominion* [1896] A.C. 348 have authoritatively determined the validity of this legislation.

10 (2) This legislation is within the competence of the Parliament of Canada either first because as decided in *Russell v. The Queen* it falls within the opening clause of Section 91 of the B.N.A. Act empowering the Parliament of Canada to make laws for the Peace, Order and Good Government of Canada or secondly because it falls within the enumerated Head 27 of Section 91 of the B.N.A. Act namely, "The Criminal Law."

20 3. This Council will support this legislation because without expressing any views on the provisions of the Canada Temperance Act itself, it is of the opinion that legislation to promote temperance is legislation for the promotion of public order, safety and morals and either under Head 29 or the opening clauses of Section 91 should in its national aspect be upheld as affecting the Dominion of Canada as a whole and as a competent subject for legislation by the Parliament of Canada. It is thought by the Council to be of the greatest importance that the power of the Parliament of Canada to legislate in relation to the public order, safety and morals for Canada as a whole should not be restricted by judicial decision.

Respectfully submitted,

" W. W. JUDD."

The Reverend Canon W. W. Judd,  
General Secretary,  
The Council for Social Service,  
Church of England in Canada.

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### No. 12.

#### Memorandum of law and fact on behalf of The Social Service Board of the Baptist Convention of Ontario and Quebec.

1. The Baptist Social Service Board desires to support the contentions advanced by counsel for the Dominion Government, that the Canada Temperance Act, originally known as "the Scott Act," and amendments, is, in its entirety, intra vires of the Dominion Government.

2. The constitutional validity of the Canada Temperance Act has long been established. In the leading case of *Russell v. The Queen* [1882] 7 App. Cas. 829, the Privy Council sustained the Act throughout, chiefly on the  
40 ground that the Act did not fall within any of the classes of subjects assigned exclusively to the Provincial Legislatures. The suggestion was also made that the Act might be sustained under Section 91, subsection (2), of the British North America Act, and Section 91, subsection (27), dealing with the

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Criminal Law. This decision has never been overruled or challenged by any authority binding on this Court.

3. The validity of the Canada Temperance Act has also been upheld in such cases as :

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*City of Fredericton v. The Queen* (1880) 3 S.C.R. 505.

*Hodge v. The Queen* [1883] 9 App. Cas. 117.

*A.-G. for Ontario v. A.-G. for Dominion* [1896] A.C. 348.

*Gold Seal Ltd. v. Dominion Express Co.*, 62 S.C.R. 424.

4. This Court is not bound by the decision of the Appellate Division of the Supreme Court of New Brunswick in *Rex v. Jones* (1936) 11 M.P.R. 240, 10 the only pronouncement casting doubt on the validity of the Canada Temperance Act.

5. The suggestion of Viscount Haldane in *Toronto Electric Commissioners v. Snider* [1925] A.C. 396, that the evil of intemperance at the time of the passing of the Canada Temperance Act was so great as to warrant federal emergency legislation, was obiter only. There is no suggestion to warrant belief that temperance legislation was of greater immediate necessity then than now. There is no basis in the *Russell* decision itself for the view taken by Viscount Haldane.

6. The Social Service Board of the Baptist Convention of Ontario and 20 Quebec contends that, for the above reasons, the Canada Temperance Act is valid Dominion legislation. A decision reaffirming the validity of this legislation is desired by the Baptist Board for two reasons :—

(1) Because from a temperance standpoint the Canada Temperance Act is useful legislation, ancillary and supplementary to the various Provincial liquor enactments now in force.

(2) Because from a wider standpoint it is important in the interests of social and economic reform that the rights of the Dominion to enact certain forms of social legislation, such as Acts dealing with the control and prohibition of the liquor traffic, should be preserved. 30

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dum of the  
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Council of  
the Salva-  
tion Army  
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### No. 13.

#### Memorandum of The Governing Council of The Salvation Army Canada East.

The Governing Council of the Salvation Army Canada East (herein referred to as the Salvation Army) desire to have the Canada Temperance Act upheld but take no part in the argument on this reference.

Dated at Toronto, this 24th day of June A.D. 1939.

BOWLBY, MACDONALD & COMPANY,  
of 330 Bay Street, Toronto,  
Solicitors for the Governing Council of 40  
the Salvation Army Canada East.

To :

The Attorney-General for Canada.  
 The Moderation League of Ontario.  
 The Canadian Temperance Federation.  
 The Ontario Temperance Federation.  
 The Women's Christian Temperance Union.  
 The Social Service Department of the Anglican Church.  
 The Social Service Department of the Baptist Church, in Canada,  
 The Presbyterian Church in Canada,  
 10 The United Church of Canada,  
 The Salvation Army,  
 Sons of Temperance,  
 Huron County Temperance Federation,  
 Manitoulin Island Temperance Federation,  
 Perth County Temperance Federation,  
 Peel County Temperance Federation.

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**No. 14.**

**Statement of fact and law of the Attorney-General of Canada.**

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 Statement  
 of fact and  
 law of the  
 Attorney-  
 General of  
 Canada.

1. This is a reference purporting to be under the provisions of the Con-  
 20 stitutional Questions Act, R.S.O. 1937, chapter 130, and the question for  
 determination of the Court is set out in an Order-in-Council dated the first  
 day of June 1939, and is in the following terms :

“ *Question* : Are Parts I, II and III of the Canada Temperance  
 Act, R.S.C. 1927, Chapter 196, constitutionally valid in whole or in  
 part, and if in part, in what respect ? ”

2. The Attorney-General for Canada will submit that the question should  
 be answered in the affirmative, namely, that the said Parts I, II and III of  
 the Canada Temperance Act are wholly valid.

3. The Canada Temperance Act was first passed on May 10th 1878 by  
 30 Statutes of Canada, 41 Victoria, chapter 16. It contained the following  
 preamble :—

“ Whereas it is very desirable to promote temperance in the Dominion  
 and that there should be uniform legislation in all the Provinces respecting  
 the traffic in intoxicating liquors.”

Parts I, II and III of the Act have remained substantially unchanged since  
 1878. The preamble was dropped in the first revision of the Statutes.

4. Part I of the Act makes detailed provisions for Part II of the Act  
 being brought into force in counties and cities by petition to the Governor-  
 in-Council, signed by one-fourth of the electors in such county or city, followed  
 40 by a vote upon such petition, and after adoption by the electors of the county  
 or city named in the petition, by Order-in-Council published in the Canada

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Gazette. It also provides for revocation of such Order-in-Council by similar means.

5. Part II of the Act prohibits the sale of intoxicating liquor with certain exceptions. It is general in its application but is not brought into force in any county or city except by the means outlined in Part I.

6. Part III of the Act provides penalties for sales of intoxicating liquor in contravention of the prohibitions of Part II, and also contains provisions as to the prosecution of offenders against Part II.

7. The validity of the Canada Temperance Act was upheld by the Judicial Committee in 1882 in *Russell vs. The Queen*, 7 A.C. 829, affirming but for 10 different reasons the decision of the Supreme Court of Canada in *The Queen vs. City of Fredericton*, 3 S.C.R. 505.

The validity of the Act was further upheld by the Judicial Committee in *Attorney-General for Ontario vs. Attorney-General for Canada (Prohibition case)* [1896] A.C. 348.

8. The following are the relevant provisions of the B.N.A. Act, Section 91 :

#### POWERS OF PARLIAMENT.

“ 91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the 20 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 for greater certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say :—

(2) The Regulation of Trade and Commerce.

(27) The Criminal Law, except the Constitution of the Courts 30 of Criminal Jurisdiction, but including the Procedure in Criminal Matters. . . .

And 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 exclusively to the Legislatures of the Provinces.”

#### EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES.

“ 92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein- 40 after enumerated ; that is to say :—

(2) Municipal Institutions in the Province.

(9) Shop, Saloon, Tavern, Auctioneer, and other Licenses in order to the Raising of a Revenue for Provincial, Local, or Municipal Purposes.

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(13) Property and Civil Rights in the Province.

(16) Generally all matters of a merely local or private nature in the Province.”

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9. In deciding whether the legislation is within the competence of the Parliament of Canada it is first necessary to examine the legislation in order to determine its pith and substance or true nature and character of “the nature and scope of the legislative attempt” and to discover whether in the true aspect of the particular legislation it falls prima facie within any of the enumerated heads of section 92. If it does not, then no further question  
10 arises and it is within the legislative competence of Parliament. *Citizens Insurance Company vs. Parsons*, 1881, 7 A.C. 96; *Russell vs. The Queen*, 7 A.C. 829; *John Deere Plow Co. vs. Wharton* [1915] A.C. 330.

10. The true nature and character of this particular legislation, viewed in its proper aspect, has been judicially determined as legislation to promote public order, safety and morals, and to have direct relation to the criminal law. Viewed in that aspect it has been definitely held by the highest judicial authority that it does not fall within any of the heads of Section 92. *Russell vs. The Queen*, 7 A.C. 829.

11. The legislation has been repeatedly discussed in subsequent cases.  
20 In the *McCarthy Act Case*, 1885 (Cameron Canadian Constitution, page 67, and Cartwright Cases on the B.N.A. Act, Volume 4, page 342) it was held that Dominion Liquor licensing legislation was invalid being an encroachment on the field assigned to the provinces by Head 9 of Section 92, adopting the view expressed in *Russell vs. The Queen* (supra) that the Canada Temperance Act did not fall within Section 92, Head 9.

12. Provincial prohibitory legislation in its local aspects has been held to fall within Head 16 of Section 92, but not within Head 13. Viewed in its true nature and character it does not relate to property and civil rights. A fortiori, prohibitory legislation viewed in its national aspects does not fall  
30 within Head 13 of Section 92. *Hodge vs. The Queen* [1883] 9 A.C. 117; *The Attorney-General for Ontario vs. The Attorney-General for Canada* [1896] A.C. 348; *Manitoba vs. Liquor License Holders* [1902] A.C. 73.

13. *Attorney-General for Canada v. Attorney-General for Alberta* [1916] 1 A.C. 588; *Re Board of Commerce Act* [1922] 1 A.C. 191; *Toronto Electric Commissioners v. Snider* [1925] A.C. 396; *The Weekly Rest Act Reference* [1937] A.C. 326; *The Natural Products Marketing Reference*, 1936, S.C.R. 398 should be distinguished from the present case on the ground that in those cases it was held that the subject-matter of the legislation discussed in each of those cases did prima facie fall within Head 13 of Section 92, and therefore  
40 was excepted from the general residuary powers of legislation conferred in the Parliament of Canada by the opening words of Section 91.

14. The only head of Section 92 under which it might be sought to bring the legislation is Head 16, but viewed in its national aspects rather than its local aspects the legislation cannot fall within that head. *Russell v. The Queen* supra; *Hodge v. The Queen* supra; *The Prohibition Case* 1896 supra; and *Manitoba v. Liquor License Holders* supra.

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15. In as much as the Canada Temperance Act scrutinised to determine its true nature and character, has been determined not to be legislation in relation to any of the heads of Section 92, it falls either within the residuary powers conferred upon the Parliament of Canada by the opening clause of Section 91 permitting the Parliament of Canada to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subject by this Act assigned exclusively to the legislatures of the Provinces, or within the enumerated clauses of 91. *Russell v. The Queen* supra ; *Great West Saddlery v. The King* [1921] 2 A.C. 91 ; *Attorney-General for Ontario v. Attorney-General for Canada* [1912] A.C. 571 ; *Canadian Pacific Wine Co. v. Tuley* [1921] 2 A.C. 417 at pp. 422-23 ; *In re Regulation and Control of Radio Communication in Canada* [1932] A.C. 394 ; *In re Regulation and Control of Aeronautics in Canada* [1932] A.C. 54 as interpreted in *Attorney-General for Canada v. Attorney-General for Ontario* (Weekly Rest Act) [1937] A.C. 326 ; *Gold Seal Limited v. Dominion Express Company*, 1921, 62 S.C.R. 424 at p. 465 ; *British Coal Corporation v. The King* [1935] A.C. 500 at 518.

16. There is a distinction between legislation in relation to the subject-matter of property and civil rights, and legislation " in relation to " a subject-matter which falls under Section 91 and " affects " property and civil rights 20 (*P.A.T.A. v. Attorney-General for Canada* [1931] A.C. 310 ; *Re Section 498a Criminal Code* [1937] A.C. 368) and it is no objection that it be passed in the exercise of the residuary authority conferred by the introductory clause of 91. *Russell v. The Queen* supra ; *Gold Seal Limited v. Dominion Express Company*, 1921, 62 S.C.R. at p. 460.

17. It has been stated that the general power conferred upon the Parliament of Canada by Section 91 of the Act, in supplement of the power to legislate upon the subjects expressly enumerated, must not trench on any of the subjects enumerated in Section 92 as within the scope of provincial legislation, unless these matters have attained such dimensions as to affect 30 the body politic of Canada. The phrases used by the Judicial Committee to describe circumstances sufficient to justify such trenching upon subjects enumerated in Section 92 are collected by Lord Atkin in the *Weekly Rest Reference*, 1937, A.C. 326, and are " abnormal circumstances," " exceptional conditions," " standard of necessity," " extraordinary peril " " highly exceptional " and " epidemic of pestilence." The only illustration where a subject prima facie falling within one of the enumerated heads of Section 92 assumed an aspect in a national emergency so as to justify Dominion legislation upon it, is *Fort Frances Pulp and Power Company v. Manitoba Free Press* [1923] A.C. 625, a case where the national emergency was caused by 40 the Great War, and where Dominion legislation trenching upon Head 13 of Section 92, property and civil rights, was upheld.

18. It is, however, submitted that the principle laid down in these cases of invoking a national emergency to justify Dominion legislation on a subject-matter normally within Section 92 has no application to the Canada Temperance Act, as the Canada Temperance Act has been held in *Russell v. The*

*Queen* to fall within none of the enumerated heads of Section 92 (*Russell v. The Queen*), and to be an illustration of the application "gap" (*Great West Saddlery case*) or "residuary" functions of the opening words of 91 rather than the "emergency" (*Fort Frances case*) function of those words.

In the  
Supreme  
Court of  
Ontario.

No. 14.  
Statement  
of fact and  
law of the  
Attorney-  
General of  
Canada—  
continued.

19. It is respectfully submitted that the observations of Viscount Haldane in *Toronto Electric Commissioners v. Snider* [1925] A.C. 396, to the effect that *Russell v. The Queen* could only be justified by the assumption that the evil of intemperance in 1878 amounted in Canada to one so great as to menace the national life of Canada, and threaten the nation with disaster were not necessary to that decision, cannot be supported. They find no warrant in the arguments or reasons for judgment of *Russell v. The Queen*, or *City of Fredericton v. The Queen*. Reference will be made to the observations of Anglin C.J.C. in the *King v. Eastern Terminal Elevators*, 1925, S.C.R. 434 at 438. Neither in *Hodge v. The Queen* supra, nor in the *Prohibition case* supra 1896, in which *Russell v. The Queen* was approved and followed, was there any suggestion that the subject-matter of the Canada Temperance Act fell within the opening words of Section 91 because of a national emergency.

20. The form of the legislation itself is clear evidence that it was not designed to meet a national emergency of the character referred to in the *Fort Frances case* and the *Snider case*. It is respectfully submitted that it is unreasonable to assume that the Judicial Committee, in upholding an act of Parliament that would come into force only in those counties in the Dominion where the majority of the electors voted to bring it into force, was assuming as the only basis for their decision that the evil of intemperance at that time amounted in Canada to one so great and so general that at least for the period it was a menace to the national life of Canada so serious and so pressing that the National Parliament was called on to intervene to protect the nation from disaster, or that a condition existed analogous to an epidemic of pestilence.

21. *Russell v. The Queen* was referred to in the *Toronto Electric v. Snider case* as authority for the proposition that a matter prima facie within one of the enumerated heads of Section 92 (in that case, Head 13) might be dealt with by the Parliament of Canada under the opening clause of Section 91, "peace, order and good government," only if the matter assumed a national aspect and a national evil was being dealt with. It is respectfully submitted that this application is not consistent with the decision itself, but in any case the test to be applied in deciding whether a matter in its true aspect falls within the general residuary clause of Section 92 (namely 16), and the general residuary provision of Section 91, namely the opening phrase, is very different to the test to be applied to determine whether some matter specifically enumerated in Section 92, Heads 1 to 15, has assumed such an exceptional aspect as to be within the provisions of Section 91. The only test necessary in the former case is that suggested in *Russell v. The Queen*, i.e., is the matter dealt with in a truly national aspect? *Prohibition Case* [1896] A.C. 348 at p. 365; *Manitoba License Holders' Association* [1902] A.C. 73 at p. 78.

22. The question as to whether the legislation fell within any of the enumerated heads of Section 91 was not decided in *Russell v. The Queen* or

*In the  
Supreme  
Court of  
Ontario.*

No. 14.  
Statement  
of fact and  
law of the  
Attorney-  
General of  
Canada—  
*continued.*

other cases in which the Canada Temperance Act was directly in question, and has been left open. It is submitted that the legislation is legislation in relation to Criminal Law, Head 27 of Section 91.

23. The Canada Temperance Act is analogous to legislation restricting the sale of poisonous or narcotic drugs (Opium and Narcotic Drug Act, R.S.C. 1927, c. 144) or of dangerously explosive substances (Sections 111 to 114 of the Criminal Code), or of the sale of arms (Sections 115 to 129 of the Criminal Code), or of obscene matter (Section 207 of the Criminal Code). *Russell v. The Queen, Hodge v. The Queen* supra. The Canada Temperance Act is designed to promote public order, safety and morals and to subject those who 10 contravene it to criminal procedure and punishment. It comes within the definition of Criminal Law as set out in *Attorney-General of Ontario v. Hamilton Street Railway* [1903] A.C. 524 and belongs to the subject of Public Wrongs, and to the regulation of civil rights as between subject and subject.

24. The power to legislate in relation to criminal law means criminal law in its widest sense, and extends to the making of new crimes. The sole test is, is the Act prohibited with penal consequences? It is not necessary to show that Acts prohibited by the State are disapproved by any moral code to bring them within the field of criminal law. *Attorney-General for Ontario v. Hamilton Street Railway Company* [1903] A.C. 524: "Criminal Law connotes 20 only the quality of such acts or omissions as are prohibited under appropriate penal provisions by authority of the state." *P.A.T.A. v. Attorney-General for Canada* [1931] A.C. 310; and in the Court below, 1929 S.C.R. 409; *Reference re Section 498A of the Criminal Code* [1937] A.C. 368; *Standard Sausage Co. Ltd. v. Lee* (1933) 47 B.C.R. 411; *Rex v. The Perfection Creameries Limited*, Manitoba Court of Appeal, May 15, 1939 (unreported).

25. The legislation does not cease to be legislation in relation to criminal law because of the local option provisions. It is competent for the Parliament of Canada, under its powers to legislate in relation to criminal law, to make these provisions apply in certain localities and not others when adopted 30 by some provinces and not others, and generally upon the condition of acceptance by any local unit. *Gold Seal Limited v. Dominion Express*, 62 S.C.R. 424 at p. 466; *Russell v. The Queen* supra at p. 835; *Lord's Day Alliance v. Manitoba* [1925] A.C. 384.

26. This case is to be distinguished from such cases as *Attorney-General for Canada v. Attorney-General for Alberta* (Insurance) [1916] 1 A.C. 588; *Re Board of Commerce Act* [1922] 1 A.C. 191; *Attorney-General for Ontario v. Reciprocal Insurers* [1924] A.C. 328; and *In re Insurance Act of Canada* [1932] A.C. 41. These are illustrations of colourable legislation in which there are attempts to interfere with Provincial rights sought to be justified 40 under the head of Criminal Law in aid of what is in substance an encroachment.

27. The Attorney-General will also submit that the legislation here in question is legislation in relation to Head 2 of Section 21, "The Regulation of Trade and Commerce."

28. The Attorney-General for Canada will further submit that if it is held that a national emergency is the sole ground for the decision of *Russell*

v. *The Queen* and the basis upon which the Canada Temperance Act was upheld, the Government of the Dominion is the only authority that can determine whether the conditions that gave validity to the legislation have completely and wholly ceased to exist, and in any case it is not open to this Court to try such an issue in proceedings of this character.

29. The Attorney-General for Canada will respectfully submit that this Court is bound by the principle known as *stare decisis* to hold that the Canada Temperance Act is within the legislative competence of the Dominion of Canada. The question here raised has been expressly determined in *Russell v. The Queen*, and in the *Prohibition* case of 1896. The former decision has never been overruled and the latter decision has never been doubted. *Russell v. The Queen* has been recently referred to in the highest courts as an authority. *Gallagher v. Lynn* [1937] A.C. 863 at 869 (Judicial Committee) and the passage in that case referring to *Russell v. The Queen*, is repeated in the judgment of the Judicial Committee in *Shannon v. Lower Mainland Dairy Bd.* [1938] A.C. 708. Furthermore, in the *Social Credit Acts* case, *Attorney-General for Alberta v. Attorney-General for Canada* [1939] A.C. 117 at 129, Lord Maugham refers to the decision of the Judicial Committee in *Russell v. The Queen* as an authority of valid exercise of legislative power by the Dominion. There is nothing to show that the material before the Board in that case differed in any relevant way from the material before the Court in this case. This Court is, therefore, bound to be governed by the conclusion there laid down in *pari materia*. The whole basis of our legal system and of the Common Law depends upon the assurance that Courts are to be bound by the principles laid down in prior decisions.

30. In the *Prohibition Case, Attorney-General for Ontario v. Attorney-General for Canada* [1896] A.C. 348, the doctrine of *stare decisis* is applied. Lord Watson stated there of *Russell v. The Queen*, that it 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, must receive effect as valid enactments relating to the peace, order and good government of Canada. In another passage in his judgment he refers to the decision of *Russell v. Regina* as relieving 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 a sense as to bring its provisions within the competency of the Canadian Parliament. It will be noted that Lord Watson does not find it necessary to consider whether any national emergency existing in 1878 had ceased to exist in 1896, but considers *Russell v. The Queen* as precluding any question as to whether the Canada Temperance Act is within the opening clause of Section 91 and is therefore within the competence of the Parliament of Canada.

Respectfully submitted,

J. C. McRUER

A. F. BREWIN

of Counsel for the Attorney-General for Canada.

*In the  
Supreme  
Court of  
Ontario.*

No. 14.  
Statement  
of fact and  
law of the  
Attorney-  
General of  
Canada—  
*continued.*

## No. 15.

*In the  
Supreme  
Court of  
Ontario.*

**List of all Cities, Counties or Districts wherein The Canada Temperance Act  
has ever been brought into force.**

No. 15. List of all Cities, Counties or Districts wherein The Canada Temper- ance Act has ever been brought into force.	City, County or District.		Order in Council No.	Date.
	Brant,	In force	P.C. 347	23 Feb., 1885
		Suspended	" 1088	15 May, 1889
	Bruce,	In force	" 4	17 Jan., 1885
		Suspended	" 1226	1 June, 1888 10
	Carleton,	In force	" 719	7 Apr., 1885
		Suspended	" 1039	15 May, 1889
	Dufferin,	In force	" 5	23 Jan., 1885
		Suspended	" 1224	1 June, 1888
	Elgin,	In force	" 1042	26 May, 1885
		Suspended	" 1905	12 Aug., 1889
	Frontenac,	In force	" 2435	30 Jan., 1886
		Suspended	" 1036	15 May, 1889
	Guelph,	In force	" 660	4 Apr., 1885
		Suspended	" 1037	15 May, 1889 20
	Halton,	In force	" 970	25 June, 1881
		Suspended	" 1228	1 June, 1888
	Huron,	In force	" 31	20 Jan., 1885
		Suspended	" 1225	1 June, 1888
		In force	" 1136	28 Apr., 1914
		Suspended	" 2730	12 Nov., 1920
	Kent,	In force	" 605	23 Mar., 1885
		Suspended	" 1035	15 May, 1889
	Lambton,	In force	" 1011	12 June, 1880
		Suspended	(?)	30
		In force	" 2111	11 Nov., 1885
		Suspended	" 1376	13 June, 1889
	Lanark,	In force	" 603	23 Mar., 1885
		Suspended	" 1092	15 May, 1889
	Leeds and Grenville,	In force	" 348	2 Mar., 1885
		Suspended	" 1250	30 May, 1889
	Lennox and Addington,	In force	" 604	23 Mar., 1885
		Suspended	" 1093	15 May, 1889
	Lincoln,	In force	" 1614	3 Sept., 1885
		Suspended	" 1095	11 May, 1889 40
	Manitoulin,	In force	" 737	4 Apr., 1913
	Middlesex,	In force	" 1615	3 Sept., 1885
		Suspended	" 1375	13 June, 1889
	Norfolk,	In force	" 71	17 Jan., 1885
		Suspended	" 1222	1 June, 1888

	City, County or District.		Order in Council No.	Date.	<i>In the Supreme Court of Ontario.</i>
	<i>Ontario (continued).</i>				
	Northumberland and Durham,	In force	P.C. 1261	30 June, 1885	No. 15.
		Suspended	" 1038	15 May, 1889	List of all
	Ontario (Co.),	In force	" 1795	25 Sept., 1885	Cities,
		Suspended	" 1096	11 May, 1889	Counties or
10	Oxford,	In force	" 1258	7 June, 1884	Districts
		Suspended	" 1377	13 June, 1889	wherein
	Peel,	In force	" 1060	18 Apr., 1914	The Canada
		Suspended	" 699	24 Mar., 1921	Temper-
	Perth,	In force	" 2033	1 Sept., 1915	ance Act
		Suspended	" 2731	12 Nov., 1920	has ever
	Peterborough,	In force	" 2329	17 Dec., 1885	been
		Suspended	" 1097	15 May, 1889	brought
	Renfrew,	In force	" 30	16 Jan., 1885	into force
		Suspended	" 1221	1 June, 1888	— <i>continued</i>
20	St. Thomas,	In force	" 133	30 Jan., 1886	
		Suspended	" 1091	15 May, 1889	
	Simcoe,	In force	" 2238	12 Dec., 1884	
		Suspended	" 1223	1 June, 1888	
	Stormont, Dundas and Glengarry,	In force	" 2289	3 Jan., 1885	
		Suspended	" 1227	1 June, 1888	
	Victoria,	In force	" 1813	25 Sept., 1885	
		Suspended	" 1094	15 May, 1889	
	Wellington,	In force	" 1140	5 June, 1885	
		Suspended	" 1089	15 May, 1889	
30	<i>Quebec.</i>				
	Arthabaska,	In force	" 1847	30 Sept., 1884	
		Suspended	" 1913	29 Aug., 1888	
	Brome,	In force	" 602	23 Mar., 1885	
		Suspended	" 1694	28 July, 1899	
		In force	" 2724	25 Nov., 1915	
		Suspended	" 2096	28 Nov., 1928	
	Chicoutimi,	In force	" 1222	19 June, 1885	
		Suspended	" 2669	4 Sept., 1894	
40	Compton,	In force	" 2456	5 Sept., 1917	
		Suspended	" 1233	5 June, 1930	
	Drummond,	In force	" 969	8 May, 1885	
		Suspended	" 2546	26 Sept., 1892	
	Mississquoi,	In force	" 3279	27 Nov., 1917	
		Suspended	" 278	2 Mar., 1923	
	Quebec,	In force	" 3352	8 Dec., 1917	
		Suspended	" 3906	18 Oct., 1921	

<i>In the Supreme Court of Ontario.</i>	City, County or District.		Order in Council No.	Date.	
<i>No. 15. List of all Cities, Counties or Districts wherein The Canada Temper- ance Act has ever been brought into force —continued</i>	Quebec ( <i>continued</i> ).				
	Stanstead,	In force	P.C. 2324	30 Dec., 1884	
		Suspended	" 1574	2 July, 1888	
		In force	" 91	13 Jan., 1917	
		Suspended	" 1817	14 Sept., 1923	
		Thetford Mines,	In force	" 1047	10 May, 1913
		Manitoba.			
		Lisgar	In force	" 911	13 June, 1881 <sup>10</sup>
		Marquette	In force	" 1899	3 Dec., 1880
		New Brunswick.			
		Albert,	In force	" 959	28 June, 1879
			Suspended	" 1773	18 July, 1918
		Carleton,	In force	" 958	28 June, 1879
			Suspended	" 3273	23 Nov., 1917
		Charlotte,	In force	" 1082	24 July, 1879
			Suspended	" 2957 <sup>A</sup>	20 Oct., 1917
		Fredericton,	In force	" 1114	3 Jan., 1879
			Suspended	" 2695	3 Oct., 1917 <sup>20</sup>
		Kings,	In force	" 1210	1 Sept., 1879
			Suspended	" 531	7 Mar., 1918
		Northumberland,	In force	" 1757	4 Nov., 1880
			Suspended	" 3272	23 Nov., 1917
		Portland,	In force	" 1304	1 July, 1886
			Suspended	" 1500	30 June, 1890
		Queens,	In force	" 1248	1 Sept., 1879
			Suspended	" 1	4 Jan., 1918
		St. John (City & Co.),	In force	" 1303	1 July, 1886
			Suspended	" 632	21 Mar., 1892 <sup>30</sup>
		Sunbury,	In force	" 610	20 Apr., 1881
			Suspended	" 2694	3 Oct., 1917
		Westmoreland,	In force	" 827	10 May, 1880
			Suspended	" 1253	22 May, 1918
	Nova Scotia.				
	Annapolis,	In force	" 971	25 June, 1881	
		Suspended	" 3042	8 Dec., 1916	
	Cape Breton,	In force	" 1379	15 Oct., 1881	
		Suspended	" 2089	26 Sept., 1907	
	Colchester,	In force	" 2100	17 Nov., 1882 <sup>40</sup>	
		Suspended	" 1090	15 May, 1889	
	Cumberland,	In force	" 121	5 Feb., 1884	
		Suspended	" 1937	1 Aug., 1914	



	City, County or District.		Order in Council No.	Date.	<i>In the Supreme Court of Ontario.</i>
<i>Nova Scotia (continued).</i>					
	Digby,	In force	P.C. 50	10 Jan., 1881	No. 15. List of all Cities, Counties or Districts wherein The Canada Temper- ance Act has ever been brought into force — <i>continued</i>
		Suspended	" 2243	4 Nov., 1922	
	Guysborough,	In force	" 1654	5 Sept., 1885	
		Suspended	" 1056	16 June, 1923	
	Hants,	In force	" 1556	19 Nov., 1881	
		Suspended	" 1939	1 Aug., 1914	
10	Inverness,	In force	" 640	3 Apr., 1882	
		Suspended	" 1243	27 May, 1908	
	Kings,	In force	" 931	17 June, 1881	
		Suspended	" 1938	1 Aug., 1914	
	Pictou,	In force	" 1826	19 Sept., 1882	
		Suspended	" 2077	8 Aug., 1914	
	Queens,	In force	" 367	8 Mar., 1881	
		Suspended	" 848	11 Apr., 1916	
	Shelburne,	In force	" 826	1 June, 1881	
		Suspended	" 976	1 May, 1916	
20	Yarmouth,	In force	" 1087	23 May, 1884	
		Suspended	" 216	5 Feb., 1920	
<i>Prince Edward Island.</i>					
	Charlottetown,	In force	" 1181	30 June, 1880	
		Suspended	" 328	10 Feb., 1891	
		In force	" 1916	27 June, 1894	
		Suspended	" 2553	20 Sept., 1897	
	Kings,	In force	" 1192	22 Aug., 1879	
		Suspended	" 1181	15 June, 1906	
	Prince,	In force	" 560	22 Apr., 1879	
30		Suspended	" 493	28 Mar., 1906	
	Queens,	In force	" 1863	25 Nov., 1880	
		Suspended	" 1430	19 July, 1906	
Ottawa, 16th June, 1939.					

## No. 16.

*In the  
Supreme  
Court of  
Ontario.*

**Copy, Resolution passed by the Legislative Assembly of Ontario on March  
Twenty-sixth, 1873.**

No. 16.  
Copy,  
Resolution  
passed by  
the  
Legislative  
Assembly  
of Ontario  
26th March,  
1873.

“ To His Excellency the Right Honourable Sir Frederick Temple, Earl of Dufferin, Viscount and Baron Claneboyne of Claneboyne in the County Down, in the Peerage of the United Kingdom, Baron Dufferin and Claneboyne, of Ballyesidy and Killeleagh in the County Down, in the Peerage of Ireland, and a Baronet, Knight of the most Illustrious Order of Saint Patrick, and Knight Commander of the most Honourable Order of the Bath, Governor-General of Canada, and Governor and Commander-in-Chief in and over the 10  
Island of Prince Edward, and Vice-Admiral of Canada and Prince Edward, etc.

“ May it Please Your Excellency,

“ We, Her Majesty’s dutiful and loyal subjects, the Legislative Assembly of the Province of Ontario, in Parliament assembled, beg leave to inform your Excellency,

“ That three hundred and sixty-nine Petitions, from upwards of twenty-eight thousand inhabitants of this Province, have been presented to this Assembly, praying for the passage of an Act prohibiting the manufacture and sale of Intoxicating Liquors, as beverages within this Province.

“ That thirty-nine similar Petitions have been presented to this Assembly 20  
from Municipal Corporations within this Province.

“ That it has been held and ruled by the Speaker of this Assembly that this Assembly has not, under the provision of the Confederation Act, power to grant the prayer of the said Petitioners.

“ And that it is the opinion of this Assembly that a Prohibitory Liquor Law such as prayed for, by the said Petitioners, would be most beneficial in its results to this Province.

“ We would therefore humbly pray your Excellency that you will be pleased to cause a measure to be submitted to the Parliament of Canada for the purpose of carrying out the wishes of the said Petitioners.” 30

I Alexander Cameron Lewis, of the City of Toronto, Province of Ontario, Clerk of the Legislative Assembly of Ontario by Royal Warrant duly appointed, hereby certify that the above is a true copy of a Resolution adopted by the said Legislative Assembly on the 26th day of March, 1873.

(Sgd.) ALEX. C. LEWIS,

Clerk,  
Legislative Assembly.

(Seal)

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## No. 17.

**Copy, Resolution passed by the Legislative Assembly of Ontario on March 27th, 1939.**

*In the  
Supreme  
Court of  
Ontario.*

“ That in the opinion of this House The Canada Temperance Act, Revised Statutes of Canada, 1927, Chapter 196, should be repealed as it applies to the Province of Ontario, and this House accordingly requests the Government forthwith to effect such repeal, and directs that a copy of this resolution be forwarded to the Honourable the Prime Minister of Canada.”

No. 17.  
Copy,  
Resolution  
passed by  
the  
Legislative  
Assembly  
of Ontario,  
27th March,  
1939.

I Alexander Cameron Lewis, of the City of Toronto, Province of Ontario,  
10 Clerk of the Legislative Assembly of Ontario by Royal Warrant duly appointed, hereby certify that the above is a true copy of a Resolution adopted by the said Legislative Assembly on the 27th day of March, 1939.

(Sgd.) ALEX. C. LEWIS,

Clerk,  
Legislative Assembly.

(Seal)

**ON APPEAL FROM THE SUPREME COURT  
OF ONTARIO.**

---

**IN THE MATTER** of a Reference as to the validity of Parts  
I, II and III of the Canada Temperance Act, R.S.C.  
1927, Chapter 196.

**AND IN THE MATTER** of The Constitutional Questions Act  
R. S. O. 1937, Chapter 130.

**AND IN THE MATTER** of the Consolidated Rules of Practice.

**BETWEEN**

**THE ATTORNEY-GENERAL OF ONTARIO** *Appellant,*

**AND**

**THE MODERATION LEAGUE OF ONTARIO,  
THE CANADIAN TEMPERANCE FED-  
ERATION, THE ONTARIO TEMPER-  
ANCE FEDERATION, THE TEMPER-  
ANCE FEDERATIONS OF THE  
COUNTIES OF PERTH, PEEL, HURON  
AND MANITOULIN ISLAND, THE  
UNITED CHURCH OF CANADA, THE  
SOCIAL SERVICE COUNCIL OF THE  
CHURCH OF ENGLAND AND THE  
ATTORNEY-GENERAL OF CANADA** ...*Respondents.*

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**APPENDIX TO RECORD OF  
PROCEEDINGS.**

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**BLAKE & REDDEN,**

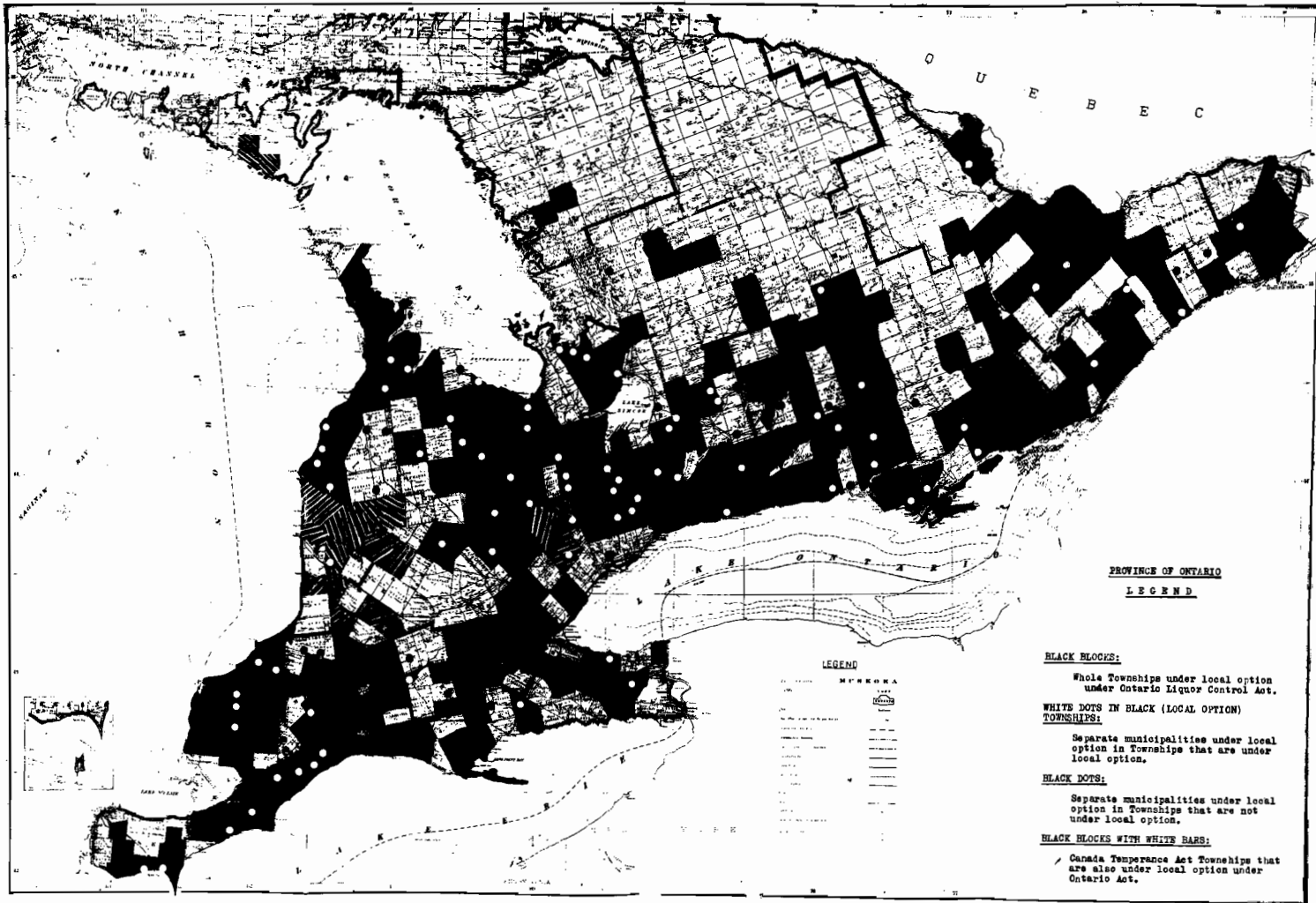
17, Victoria Street, London, S.W.1,

*for Appellant.*

**CHARLES RUSSELL & CO.,**

37, Norfolk Street, London, W.C.2,

*for the Attorney-General of Canada  
and the Temperance Federations.*



PROVINCE OF ONTARIO  
LEGEND

LEGEND

MEMORANDUM



BLACK BLOCKS:

Whole Townships under local option under Ontario Liquor Control Act.

WHITE DOTS IN BLACK (LOCAL OPTION) TOWNSHIPS:

Separate municipalities under local option in Townships that are under local option.

BLACK DOTS:

Separate municipalities under local option in Townships that are not under local option.

BLACK BLOCKS WITH WHITE BARS:

Canada Temperance Act Townships that are also under local option under Ontario Act.