

B. N. A. Act, and this does not give them the power to effect such legislation.

It would seem that if they could not pass the Canada Temperance Act of 1878, they could not have passed that of 1864, and Mr. Justice Ramsay says in the *Three Rivers & Sulte* case, "I do not see how a Legislature has power to *repeal* what it cannot *re-enact*."

In the present instance they have repealed portions of the Act of 1864, "in so far as relate to matters within this Province and matters within the control of the Legislature of Quebec," and have made new provisions, increasing the penalty.

Does this come within either sub-sections 8 or 9 of Sec. 92 of the B. N. A. Act?

The legislation is certainly not municipal, because it merely says that for a violation of the By-law prohibiting altogether the sale, the penalty shall be for selling without a license, \$75, instead of \$50.

It cannot be contended that this is given for the purposes of municipal institutions, as the only way in which it could be so construed would be if the prosecution had been in the name of the municipality, but here it is by a private individual.

Again, it cannot be said to come under sub-sec. 9, as fines and penalties cannot be imposed "for the purpose of raising a revenue for provincial, local or municipal purposes."

It is not a matter of police regulation. See *Poulin v. The Corporation of Quebec*. Ch. Justice Meredith says (and his judgment was sustained in appeal, Q. L. Reports, vol. 7, p. 339) "Considering that the Parliament of Canada, under the power given to it to regulate trade and commerce, alone has the power to prohibit the trade in intoxicating liquors, yet that the provincial legislatures, under the power given to them, may, for the preservation of good order, in the municipalities which they are empowered to establish, and which are under their control, make reasonable police regulations, although such regulations may, to some extent, interfere with the sale of spirituous liquors."

Ramsay, J., said: "It seems to me that this is purely a matter of police regulation, and consequently it is within the powers of municipal corporations, and that the exercise of such power cannot be considered as a restriction of trade and commerce."

Caron, J., held in *Hart v. The Corporation of the County of Missisquoi*, 3 Q. L. R., p. 170: "Que les pouvoirs accordés aux conseils des comtés, par l'Acte de Tempérance de 1864, ne pouvaient être ni modifiés, ni abrogés par la législature de Québec, parce que ces pouvoirs concernent l'industrie et le commerce, qu'ils sont de contrôle exclusif du Parlement du Canada."

Upon this point there would seem to be little doubt. Sec. 91 of B. N. A. Act, s. sec. 2, confers exclusively the regulation of trade and commerce upon Parliament.

The Supreme Court of Canada decided, in the case of the *City of Fredericton*—Supreme Court Reports, vol. 3, page 505—that under sub-sec. 2 of sec. 91 of B. N. A. Act, 1867, in regulation of trade and commerce, the Parliament of Canada alone has the power of prohibiting the traffic in intoxicating liquors in the Dominion or in any part of it.

In *Russell & The Queen*—Privy Council appeal cases, 1882, page 842—the Privy Council, in declaring the Temperance Act of 1878 within the power of Parliament, say: "Their Lordships have come to the conclusion that the Act in question does not fall within any of the classes of subjects assigned exclusively to the Provincial Legislatures, it becomes unnecessary to discuss the further question, whether its provisions also fall within any of the classes of subjects enumerated in Sec. 91. In abstaining from this discussion, they must not be understood as intimating any dissent from the opinion of the Chief Justice of the Supreme Court of Canada and the other Judges who held that the Act, as a general regulation of the traffic in intoxicating liquors throughout the Dominion, fell within the class of subjects, "the regulation of trade and commerce," enumerated in that section, and was, on that ground, a valid exercise of the legislative power of Canada."

The Provincial Legislatures have only such powers as have been conferred upon them by the B. N. A. Act, and the whole of the balance or residuum is in the Parliament of Canada.

The Privy Council has declared that Parliament has the right to legislate for the whole Dominion on the subject.

The Supreme Court of Canada has declared that Parliament has not only the right but the sole right to prohibit the sale of intoxicating liquors in the Dominion or in any part of it.