

with the provisions of the Ontario Act, 37th Vict. ch. 32, in respect of the point in question, we must be bound by the judgment of this Court in *Severn v. The Queen* which is no more at variance with the judgments rendered in *Russell v. The Queen*, *Hodge v. The Queen*, in the matter of the Acts of the Dominion Parliament, 46th Vict. ch. 30, & 47th Vict. ch. 32, and *Sulte v. The Corporation of Three Rivers*, than were those judgments at variance, as they were at one time erroneously supposed to be, with the judgment in the *City of Fredericton v. The Queen*. All of those judgments rest upon the foundation that laws which make or which empower municipal institutions to make regulations for granting licenses for the sale of intoxicating liquors in taverns, shops &c., and for the good government of the taverns and shops so licensed, and for the preservation of peace and public decency in the municipalities, and for the repression of drunkenness and disorderly and riotous conduct, and imposing penalties for the infraction of such regulations, are laws which, as dealing with subjects of a purely local, municipal, private and domestic character, are *intra vires* of the Provincial Legislatures. But *Severn v. The Queen* proceeded wholly upon the construction of item 9 of sec. 92 of the British North America Act, and in that case the late learned chief justice of this Court, Sir William Buell Richards, held, and a majority of this Court concurred with him, that the obligation imposed by the Ontario Act, 37 Vict., ch. 32, upon brewers to take out a Provincial license to enable them to dispose of the beer manufactured by them, was, in effect, an obligation in restraint of the manufacturing by them of the article of their trade, which in virtue of a license from the Dominion Government, issued upon the authority of an Act of the Dominion Parliament, they were authorised to carry on, and that the item 9 of sec. 92 of the B. N. A. Act, did not authorise the Provincial Legislatures to impose any such obligation upon brewers. That the words "and other licenses" in that item in connection with the preceding words "Shop, Saloon, Tavern and Auctioneers," must be construed, having regard to the general scope of the scheme of confederation, as referring

to licenses "*ejusdem generis*" with the preceding licenses spoken of in the item such as—Licenses on Billiard Tables, victualling licenses, houses where fruit, etc., etc., are sold, Hawkers, Pedlers, Livery Stables, Intelligence offices, and such like matters of purely municipal character, and that those words could not consistently with a due regard to the intent of the framers of the scheme of confederation as appearing in the B. N. A. Act, be construed as giving to the Provincial Legislatures power to put a restraint upon the manufacture of an article of a trade authorised to be carried on by an Act of the Dominion Parliament. So understanding the judgment in *Severn v. The Queen*, whether it be a point of law sound or otherwise, it may well stand consistently with, and is not shaken by *Russell v. The Queen*, or any other of the above cases, and it is still a judgment binding upon this Court and all courts in this Dominion. But the question still remains to be considered, namely whether the provisions of the Quebec License Act of 1878 are, upon the point under consideration, so identical with the provisions of the Ontario Act, as to make the judgment in *Severn v. The Queen* applicable in the determination of the present case. The two Acts when compared, appear to be very different, and so great is this difference as regards the point under consideration, as to convey to my mind the idea that the draftsman of the Quebec Act of 1878, framed it with the object of complying with the judgment in *Severn v. The Queen*, which had been rendered five or six weeks before the passing of the Act, and to avoid its being open to the objection of *ultra vires*, which that judgment had pronounced the Ontario Act to be open to. The Ontario Act while professing to have no intention to interfere with any brewer, distiller or other person duly licensed by the Government of Canada, for the manufacture of spirituous liquors, in the manufacturing such liquors, did, nevertheless, in effect do so, by enacting that to enable any such brewer, distiller, etc., to sell the liquor manufactured for consumption within the Province of Ontario, he should first obtain a license to sell by wholesale under section 4 of the Act. The "license by