

ada. As plain as words could convey it, they there intimate that subjects which, in one view and for one purpose, may fall within the jurisdiction of a Provincial Legislature, may, in another view and for another purpose, fall within the jurisdiction of this Parliament. And if there was a difficulty upon the matter which I have previously discussed, it enables us to come to a conclusion, and to see how, notwithstanding that the Privy Council found that sections 4 and 5 in the Hodge case, were within the jurisdiction of the Legislature of Ontario, the whole of the Canada License Act of 1883 may be, notwithstanding, within the jurisdiction of this Parliament. We are as yet, in the interpretation of our Constitution, only groping. During my practice at the Bar, and during my intercourse with gentlemen on both sides of politics belonging to the legal profession, I have heard many adverse criticisms upon the terms of our Constitutional Act. Sir, I have never shared in these adverse criticisms. The study I have been able to give to the distribution of legislative powers under the British North America Act, has convinced me that that distribution has been most skilfully made; that the sections 92 and 91 are pieces of the most skilful mechanism, and show the care that has been employed in framing these words so as to preserve our Constitution in such form as should be for the public interests of this country. The men who designed that Constitution were the leading men in this country at the time, and some of them are happily now surviving with us to give the aid of their skill and experience to interpret it. Some of them have passed away, but whether they have passed away or whether they remain with us, I think there is but one sentiment among the people of this country, and that is, that these men were the ablest men of our country at the time, and that they faithfully and patriotically gave their best exertions in order to frame for us, at a time when political rancour was quiet, a Constitution that would survive the attacks of partizanship, and that it would be our guide for many years, if not centuries, to come. Until a short time ago it was the view prevailing in the courts of this country that if the Legislature of a Province had power to do a certain thing, to pass a certain Act, as, for instance, the incorporation of building societies, the Dominion Legislature had not that power. An opinion to that effect was expressed quite recently, within a year or two, in the Court of Appeal in the Province of Quebec, and an appeal was taken from that decision. It was a case in which the hon. member for Jacques Cartier was one of the counsel before the Privy Council in England, and in that case their Lordships decided explicitly that this Parliament could give to a corporation the lineaments or essentials necessary to its incorporation, to enable it to carry its operations as a building or construction society, even to the extent of acquiring land throughout the Dominion, in order to fulfil its purposes; but that when it went to the several Provinces, then it became subject to the laws of Mortmain in the several Provinces, and to such other laws as might prevail with regard to the tenure of land. Until quite recently, this view prevailed. In the case of Loranger and the Colonial Investment and Building Society, decided in the Privy Council on the 1st of December last, their Lordships said:

"Chief Justice Dorion appears to be of opinion that inasmuch as the Legislature of the Province had passed Acts relating to such societies defining and limiting their operations, the Dominion Parliament was incompetent to incorporate the present association, having for one of its objects the erection of buildings throughout the Dominion, their Lordships at present fail to see how the existence of these Provincial Acts, if competently passed for local objects, can interfere with the power of the Dominion Parliament to incorporate the association in question."

And by analogy of reasoning, perhaps we might, for the sake of argument, grant the premises laid down by the hon. member for Queen's, P.E.I. (Mr. Davies) that the Legislature of a Province might pass an Act regulating the sale of intoxicating liquors or providing for the licensing of taverns,

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but it does not follow—the contrary is established by this decision—that a power may not be vested in the General Parliament whenever the object of the incorporation is matter of general concern. For a moment or two I desire to call attention to sections 91 and 92 of the British North America Act, under the provisions of which the constitutionality of this Act must be decided, and under which the constitutionality of the Crooks Act was decided in the case of Hodge. Section 91 is as follows:—

"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 peace, order and good government of Canada, in relation to 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."

And twenty-eight subjects are enumerated, among which is "The regulation of Trade and Commerce." The section concludes:

"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."

Section 92 contains the subjects exclusively agreed to be legislated on by the Provinces, and the conclusion of sub-section 16 says:

"Generally all matters of a merely local or private nature in the Province."

The hon. member for Bellechasse (Mr. Amyot) addressed a plausible argument to this House and pressed it very strongly, that if the Local Legislatures had jurisdiction in the matter of the liquor traffic, they had it exclusively, because, under section 92, their powers are assigned to them exclusively. That was a very plausible argument; but the hon. gentleman must remember this, that though sub-section 16 of section 92 assigns all matters of a merely local or private nature in the Province to the jurisdiction of the Province exclusively; yet, notwithstanding that, when any of those matters come under any of the twenty-eight classes of subjects enumerated in Section 91, then the subject matter is taken out of the jurisdiction of the Province by the express terms of the British North America Act, and is placed under section 91 within the jurisdiction of the Dominion Parliament. That may be a conclusion which is fatal to the hon. gentleman's contention; that may be a view much more in keeping with the view of the hon. member for Maskinongé (Mr. Houde); but whether it may be in accordance with his view or not, such is the proper interpretation of the Act, as pronounced in several decisions rendered by the Privy Council in England. I will read a few words from their Lordships' decision in the case of Russell vs. The Queen, with respect to sections 91 and 92. Their Lordships say in that case:

"The general question of the competency of the Dominion Parliament to pass the Act depends on the construction of the 91st and 92nd sections of the 'British North America Act, 1867,' which are found in Part VI. of the Statute, under the heading 'Distribution of Legislative Powers.'"

"The 91st section enacts (I have read the section.)"

"The general scheme of the 'British North America Act,' with regard to the distribution of legislative powers, and the general scope and effect of sections 91 and 92, and their relation to each other, were fully considered and commented on by this Board in the case of the Citizens' Insurance Company v. Parsons (7 L. R. Appeal Cases 96). According to the principle of construction there pointed out, and the first question to be determined is, whether the Act now in question falls within any of the classes of subjects enumerated in section 92, and assigned exclusively to the Legislatures of the Provinces. If it does then the further question would arise, viz., whether the subject of the Act does not fall within one of the enumerated classes of subjects in section 91, and so does not still belong to the Dominion Parliament. But if the Act does not fall within any of the classes of subjects in section 92, no further question will remain, for it cannot be contended, and indeed was not contended at their Lordships' Bar, that if the Act does not come within one of the classes of subjects assigned to the Provincial Legislatures