

its operation it does not conflict with "the Temperance Act of 1878."

It is only necessary to quote a few words of the opinion to establish this. Their Lordships declare that the true meaning of the Act is to grant power to Commissioners in each municipality to "make regulations in the nature of police or municipal regulations of a merely local character for the good government of taverns, &c., licensed for the sale of liquors by retail, and such as are calculated to preserve, in the municipality, peace and public decency, and repress drunkenness and disorderly and riotous conduct. As such they cannot be said to interfere with the general regulation of trade and commerce which belongs to the Dominion Parliament, and do not conflict with the provisions of the Canada Temperance Act, which does not appear to have as yet been locally adopted."

Two observations at once suggest themselves—first, the question of "municipal institutions in the province" was not discussed in the case of *Russell*, and consequently the decision in *Hodge's* case is not formally in contradiction with that of *Russell*; and 2nd, that the principles on which they rest lead to no confusion, for the general right of the Dominion to make laws relating to public order and safety, does not restrain the power of the local legislatures to regulate these matters which have always been made the subject of municipal control, although their object may be similar. We have in practice an illustration of this constantly before our eyes. The police force in towns subsists on a local law, as part of municipal institutions, and alongside of it we have Dominion Police Forces organized under Dominion laws.

There seems, then, to be no need of alarm that the Privy Council has unconsciously given contradictory decisions in these two cases, nor was there any reason to presume from the *Russell* case, that a different decision than that given would be arrived at in the *Hodge* case. In support of this, it may be said that the Court of Queen's Bench sitting at Quebec, suspended its decision for a considerable time, in the case of the *Corporation of Three Rivers & Sulte*, in the expectation that the decision in *Russell*

v. *The Queen*, might perhaps serve as some sort of guide on the point. After the decision in *Russell's* case was known, the Court held precisely in principle what the Privy Council has since held in *Hodge's* case. (See 5 Legal News, p. 330.)

When the operation of laws clashes, other questions will arise, and then we shall have to go back to the doctrine laid down in *Belisle v. L'Union St. Jacques*, to the effect that, legislation may be circumscribed by the exercise of a higher legislative authority. We take it this is the idea conveyed by Lord Selborne's argument in that case. (20 L. C. J. p. 20 and specially p. 47.)

Notwithstanding the reiteration of the recommendation that "in performing the difficult duty of determining such questions, it will be a wise course for those on whom it is thrown to decide each case which arises as best they can, without entering more largely upon the interpretation of the statute than is necessary for the decision of the particular question in hand," their Lordships lay down a general principle of some value. They say: "that subjects which in one aspect and for one purpose fall within Sect. 92, may in another aspect, and for another purpose, fall within Sect. 91."

We regret their Lordships should have passed upon the point as to the power to impose hard labour, which they admit, "was not raised on the rule *nisi* for the *certiorari*, nor is it to be found amongst the reasons against the appeal to the Appellate Court in Ontario." In another number we purpose to examine this *obiter dictum*.

R.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, December 31, 1883.

Before RAINVILLE, J.

LA CITÉ DE MONTRÉAL v. WYLIE et vir.

Taxes—Exemption—Educational Institution—
41 Vic., c. 6, s. 26.

A school for the education of young ladies, kept by private persons, and not under public control, is not an "educational institution" within the exemption of 41 Vict. (Que.) cap. 6, s. 26.