

JUDGMENT OF HON. MR. JUSTICE WEATHERBE.

THE Canada Temperance Act is a Dominion statute for restricting the sale of intoxicating liquors and making it a criminal act, as Sir Montague Smith described it, for any one, except the manufacturer, in certain quantities, and an officer appointed to dispose of it for certain purposes in smaller quantities, to sell or barter the same.

It is not entirely prohibitory. It is an act by which a majority of electors in any county in the Dominion can secure the restrictive sale above mentioned.

One of the objects of the act, recited in the preamble, is that it is very desirable to promote temperance in the Dominion. This, evidently, is the main object of the legislation, to promote temperance in those localities where drunkenness exists.

The right of the Dominion to pass the act was challenged in the Privy Council, (7 App. Ca., 829). Mr. Benjamin argued that this act was a subject of legislation exclusively for the province. He referred to sections 91 and 92 of the B. N. A. Act and especially to sub-sections 9, 13 and 16 of section 92. The act had been held *ultra vires* the Dominion by a majority of the Supreme Court of New Brunswick, and this judgment had been reversed by a majority of the Supreme Court of Canada on appeal.

At the close of Mr. Benjamin's argument in the Privy Council their lordships did not require to hear counsel in reference to the impeached act being within sub-sections 9 and 13, but only in regard to sub-section 16; that is, they were convinced that the act was not an interference with the exclusive power of the province to authorise licenses for the sale of liquor and they did not consider the matter a