The Legal News.

Vol. VII. JANUARY 26, 1884. No. 4.

HODGE v. *THE QUEEN.*

There has been almost an outcry as to the decision in the case of *Hodge* v. *The Queen.* Generally it seems to have been taken as over-ruling the doctrine laid down in *Russell* v. *The Queen* (5 L. N. 234). This is the more remarkable, as the Judicial Committee took special pains to guard against any misapprehension on this point, and indicated very clearly the distinction between the two decisions. It is hardly necessary to add anything to what their Lordships have said on the matter. In *Russell's* case it was decided that an Act whose object was to "promote temperance in the Dominion," and to make "uniform legislation in all the pro-"vinces respecting the traffic in intoxicating "liquors," and which did not interfere with any of the powers exclusively assigned to the provinces, was not *ultra vires* of the Dominion Parliament, and that the "Canada Temperance Act, 1878," did not interfere with the exclusive rights of Provincial Legislatures to make laws in relation to:

"9. Shop, saloon, tavern, auctioneer, or other licenses in order to the raising of a revenue for provincial, local, or municipal purposes.

"13. Property and civil rights.

"16. Generally, all matters of a merely local or private nature in the province."

This covers all the serious objections suggested by appellant, for raising the question of the absence of power in a legislature to delegate its authority only indicates a temporary paralysis of the reasoning faculties. The decision therefore amounts to this: (1) that a local legislature has still a right to raise money by tavern licenses; (2) that a law regulating taverns to the extent of preventing the sale of alcoholic drinks, is not an interference with property and civil rights within the meaning of sub-section 13, more than would be a law regulating the sale of dynamite. Their Lordships add a reason, which will at once be accepted as an incontrovertible canon of interpretation when dealing with the dispositions of the B. N. A. Act. They say: "The true nature and character of the legislation in the particular instance under discussion must always be determined in order to ascertain the class of subjects to which it really belongs."

On the third ground their Lordships might have contented themselves with saying, under the principle just laid down as to the true nature and character of the legislation, that the Temperance Act did not regulate a matter of a merely local or private nature in the Province. Rightly they hold that the objects and scope of the legislation are still general, viz., to promote temperance by means of a uniform law throughout the Dominion.

A reason drawn from Section 91, might have been urged in support of the Dominion jurisdiction, but their Lordships thought this discussion unnecessary. It was enough to say, the local powers are not interfered with.

Having so completely answered the objections of the respondent, it is unfortunate that the Privy Council should have used expressions which seem, to some extent, to favour the doctrine that the extension of a statute to the whole of Canada, and apart from any other consideration, of itself removes it from the category of matters of a merely local or private nature in the provinces. According to their Lordships' own theory, it is the object and nature of the legislation that has to be looked at, and therefore the Dominion Parliament can no more extend the limits of its jurisdiction by the generality of the application of its law, than the Provincial legislatures can extend their jurisdiction by localising the application of theirs. The exceptional power given to the Parliament of Canada to declare "local works or undertakings" to be for the general advantage of Canada or for the advantage of two or more provinces, seems to sustain this view. Sect. 92, S. S. 10, *c.*

The *Hodge* case simply declares that "The Liquor License Act of 1877, Cap. 181, Revised Statutes of Ontario," is within the powers of the local legislature of Ontario, and that in