

legislation whatever without affecting some of the subjects included in s. 92, and *vice versa*. In order, therefore, to pass any legislation dealing with such subjects, it would be absolutely necessary, if the rigid rule of construction were adopted, to have recourse to concurrent legislation by the Dominion and the Province, which would be, to say the least, an extremely inconvenient mode of dealing with any subject, and would, in effect, be depriving both the Dominion and the Provinces of the plenary power of legislation on the subjects assigned to them respectively which it was intended to confer on them. How, then, have the Judicial Committee solved the difficulty? Before proceeding to state the principle of construction adopted, we may observe, in the first place, that three of the Judicial Committee which decided *Russell v. The Queen* were also members of the Board which decided *Hodge v. The Queen*, and, in the judgment in the latter case, it is expressly stated that their lordships do not intend to vary or depart from the reasons expressed for the judgment in the *Russell* case, and the key to the decision in this and kindred cases is the principle which the *Russell* case and the case of *Citizens' Insurance Company v. Parsons*, 7 App. Cas. 96, illustrate, viz., that subjects which, in one aspect and for one purpose, fall within s. 92 may, in another aspect and for another purpose, fall within s. 91.

This is a perfectly comprehensible and legitimate principle. There may in some cases be difficulties in its application, but its proper and judicious application is the only means whereby the British North America Act can be saved from completely defeating the very object for which it was enacted. It is said, "To hold that the Dominion may prohibit the sale of intoxicating liquor, or permit its sale under highly restrictive regulations, and at the same time to hold that the Provinces may license its sale, and so restrict and regulate it, is surely inconsistent." And this is assumed to be the effect of these two cases; but, as a matter of fact, they have decided no such thing. They have not, as seems to be assumed, declared that at the same time there may be in force an Act of the Dominion prohibiting the sale of liquor *in toto*, and also an Act of the Provincial Legislature authorizing and regulating its sale. There was no question of conflict between Dominion and Provincial legislation involved in either the *Russell* or the *Hodge* case. The court has simply held that the