

"Dominion Parliament in certain possible contingencies; it suffices for this case to say that the Temperance Act of 1864 must be considered as belonging to the latter class of subjects coming within the description of local or police regulations; and this I believe is the opinion of all the members of this Court.

"From the best consideration I have been able to give to the question now under review, I have come to the conclusion that the legislature of the Province of Quebec had full power to deal with the Temperance Act of 1864, and to alter and repeal any of its provisions conferring on Municipal Councils the right to prohibit the sale of intoxicating liquors within their municipality."

Mr. Justice Ramsay said: "Fortunately we are not called upon to reconsider sub sec. 9 of sec. 92 of the B. N. A. Act, for a prohibition to sell intoxicating liquors is certainly not a license, and it cannot assist in raising a revenue. Then, is a prohibition to sell intoxicating liquors within the limits of a local municipality, a matter of a merely local or private nature in the Province, and furthermore does it interfere with the regulation of trade and commerce? I cannot think that the exclusive power to regulate trade and commerce can be interpreted in an absolute manner; and we must therefore constantly enquire whether the matter does not more exclusively belong to some local power. Here it is contended that a prohibitory by-law is not dependant on the municipal institutions of the province. But, as it has already been observed, the Act of 1864 evidently treats it as a municipal matter, and to attempt to treat these local prohibitions as a regulation of trade and commerce appears to me to be ridiculous exaggeration. I therefore think that the local legislature has the right to deal with the prohibition."

Mr. Justice Cross said: "Municipal government may include much that concerns the regulation of trade, and laws affecting trade may interfere largely with municipal regulations. When special trading operations become prejudicial to public health and morals, the higher law of the public

"good would seem to require the supremacy of the local municipal control to restrain the mischief of laws of the class to regulate trade which should be general, not local or special in their application. To prevent abuses resulting from the sale of intoxicating liquors on Sunday, or at inopportune places, might be held to be reasonable exercise of local municipal power, although it might affect the volume of trade in these articles. We find the power to prohibit the sale of intoxicating liquors distinctly attributed to, and exercised by, our municipal institutions before Confederation; and, being already invested with that power, we have no warrant for divesting them of it, and must, therefore, leave them in possession of it."

I have quoted thus largely from the views of the learned Judges of the Provincial Court of Appeal in the *Cooley* case—which, so far as I know, are not reported—in order to show how the opinions expressed thus early (1878) by them were afterwards, in the main, adopted by the higher appellate Courts, which were subsequently called upon to judicially interpret sects. 91 and 92 of the Union Act, regarding the respective powers of Parliament and Legislature to deal with the vexed questions of license and prohibition. I ought to say, to correct a false impression, that the judgment of the Court of Appeal in the *Cooley* case was set aside by the Supreme Court by consent,—the petitioner not caring to proceed further.

In 1877 the legislature of Ontario adopted the "Liquor License Act" which contained stringent provisions respecting the regulation of the sale of spirituous liquors, and gave rise to what is known as the *Hodge* case, which was adjudicated upon by the Privy Council the 13th Dec. 1883.

In 1878 Parliament passed "The Canada Temperance Act," which permitted the electors of any municipality to declare in favor of the prohibition of the traffic in intoxicating liquors within the limits of that municipality. The *Russell* case resulted from this legislation and was pronounced upon by the Privy Council on the 23rd June, 1882.