

member for Queen's, P. E. I., (Mr. Davies), under which law is a man to act and be licensed? With those two laws in force, standing side by side, and with the matter still unsettled, grave conflicts would arise, which even the submission of the proposed case to the Privy Council would not overcome. But if the necessity has ceased to exist, let us place the matter in the position which it occupied before, and strengthen, if we can, the hands of the Provincial Legislatures to keep the trade within proper bounds, and in so doing we will be guarding provincial rights, which, I fear, there is too much disposition to assail. In that event, no conflict can occur. Under present circumstances, the Act of 1883 is unnecessary, and the ground is covered by the Crooks Act of Ontario, and legislation already passed by the Provinces of Quebec, New Brunswick and Nova Scotia. We will do more. The city of St. John, in the district I have the honour to represent, founded by Royal charter, has itself possessed for nearly a hundred years, the right to regulate licenses, and the Act of 1883 would sweep away that right. That Act, therefore, was not only an interference with provincial rights, but with rights and privileges granted to that city by its charter. It is for that reason, and because I believe the power is vested in the Provincial Legislatures, and that the necessity for the Act has been shown to have passed away, I support the motion. The only argument put forward last year was, that in order to prevent the traffic running riot through the country, a Dominion Act was necessary. Now, we find by the solemn decision of the highest tribunal of the Empire such is not the case, but that the laws of the Province are sufficient. Then, let us avert the conflict which is otherwise inevitable, and let the licensing question remain within provincial jurisdiction, and by doing so we will preserve to every Province its independence and its Provincial rights.

Mr. FAIRBANK. Up to this hour, this discussion has been carried on, I believe, exclusively by gentlemen learned in the law. It may not be amiss, even at this late hour, to devote a few moments to considering how this question presents itself to one not learned in the law—to a layman. The proposition to repeal the Dominion License Act naturally raises the question of the circumstances under which that law was enacted, what evil was to be remedied by it, what good was to be accomplished by it, on what ground did it rest? Fortunately, Sir, we are not left in any doubt upon this matter. The reasons for the law and the necessity for it were recorded, officially recorded, and we have them where they may be referred to at all times. Not to go back to the unofficial records of what occurred near Toronto, as recorded in the *Mail* newspaper, on the 2nd June, 1882, but relying on the records which no man can dispute, which no man can claim to be unfair, we come down, Sir, to a period, not of ancient history, to nothing that is contained in the old books, but a period of only one year ago, and we find a paragraph in the Speech from the Throne claiming that this law was necessary in order to prevent the unrestrained sale of intoxicating liquors. At a very little later period, we are given further information upon this subject; and here, Sir, I am compelled, somewhat reluctantly, to repeat what has been read in parts several times during the debate, but it perhaps is something which will stand repeating two or three times. It occurs to me that some hon. gentlemen do not understand yet. I refer to the statement made by the Prime Minister a year ago, as to the ground upon which this legislation was based. He said:

—“That subject was not willingly undertaken by the present Government. They were quite satisfied that the law, as it obtains in the different Provinces, should be continued. They were quite satisfied that each Province should, so far as the law would allow it to enact such Statutes, deal with the subject of shop, tavern and saloon licenses. Neither the Government nor the Parliament of Canada, I take it, wish to interfere; and it was only when the decision which was given in June last on the Scott Act, a Dominion Act, and when the subject was forced upon

Mr. WELDON.

them, that they thought it their duty to bring it before Parliament. I never had any doubt that when the question was brought before the courts, it would be decided that the Provincial Legislatures had no right whatever to deal with that subject, except for revenue purposes, for the purpose of imposing taxation for provincial or municipal purposes.

Now it is quite clear that if the Dominion Parliament had the right to pass the Scott Act, it had the exclusive right, because there is no current jurisdiction in the British North America Act on that subject; and when the constitutionality of that Act was decided against by the Supreme Court of New Brunswick, the Dominion Government—I being a member of that Government—in order that the question might be settled, in order that we might get the highest final decision on that point, we came to Parliament to get a vote of money for the purpose of paying counsel on both sides. It is quite clear to every lawyer, and any man who is not a lawyer who reads the judgment will see that the very reasons on which the Privy Council decided that this Parliament had the right to deal with the Scott Act are the reasons showing that the Provincial Legislature of Ontario had not a right to deal with that subject under the Crooks Act, except as a matter of revenue for municipal or provincial purposes. The hon. gentleman says that we should have allowed the matter to stand over until it was finally decided. Sir, if there be any value in that decision, and there is every value in it, because it is the law of the land, there is no check at this moment in the Province of Ontario against the unlimited, unrestrained sale of intoxicating liquors. This is not a matter we can play with. It is not a matter of policy; it is a matter of necessity. If we wish to prevent the unrestrained sale of intoxicating liquors we must legislate immediately; for I take it that any man in this city or in any other part of Ontario can open his saloon and sell liquors, and there is not a court in the world can prevent his doing it.”

Here, Sir, we have the ground of the entire legislation and the necessity for it. Now, was that the true ground or was it not? Is there any hon. gentleman on the opposite side prepared to say it was not truth? If it was the true ground thirteen months ago what is the basis to-day? Are they not forced into the position of either acknowledging that the representations made then were not true, or the representations made to-day are not true? From the date of Confederation until that time during a period of sixteen years, the Provinces have exercised this power, and it therefore required strong reasons for changing it. It was contended that the decision did not affect this power, but the Dominion Act which was passed. Before it went into effect another decision was given by the same highest tribunal in the Empire—a decision clear and distinct—that the Provinces have the power to regulate and control the traffic. Therefore, the entire ground was swept from under the Dominion Act. Its entire foundation was destroyed, and I fancy that to-day it might not be improperly designated the balloon Act, because the ground work is all gone. The Crooks Act has been described as not being worth the paper it is written on. Is this true? Is it not decided to be of the same value as the English law, and who can estimate the value of England's laws to the entire Empire, to the world. The question then arises, is there concurrent jurisdiction. The hon. member for Glengarry (Mr. Macmaster) said it was the duty of every member to expound constitutional law. I will not do it, I am not a lawyer, but I will quote a high constitutional lawyer, the right hon. Sir John A. Macdonald. He states that there is no concurrent jurisdiction under the British North America Act on this subject, and I hope hon. gentlemen will accept the authority. The Government of the Dominion and the Provinces have not the same power, he states, and I notice that this view was entertained by a gentleman in Ontario who holds the same political views as hon. gentlemen opposite. Recently the leader of the Opposition in the Ontario Legislature moved an amendment in which he stated that the Provinces had the exclusive jurisdiction and his followers all supported it. Under these circumstances, Sir, should not the Dominion Act be considered as dead? May the present motion be not considered as one to give it a decent burial? The authority of the Province has been thoroughly established; is it wise to press the matter further? When the alleged foundation and necessity of the Act is all gone, ought this to be pressed, in the mere hope of creating confusion by establishing a double power? Is there any pride in this matter? Is there any pride in having given an opinion