

Sir JOHN A. MACDONALD. Yes, he brought up the License Bill.

An hon. MEMBER. Streams Bill.

Sir JOHN A. MACDONALD. We will come to the Streams Bill just now. He brought up the License Bill. Mr. Speaker, we have the decision of *Russell vs. the Queen*; we have the decision of the Queen and Hodge. Unfortunately, in the reference to the Supreme Court here, it was presented to them in such a way that we have not the reasons given by the judges for their decision. They have not decided according to *Russell* and the Queen—that is quite clear. They have not decided according to the case of the Queen *vs. Hodge*—that is quite clear. The only way in which we can judge of the reasons which induced the Supreme Court to decide or give an opinion as they have done is from the remarks of the judges during the course of the argument. During the course of that argument it was said by more than one of the judges that the two decisions in the Queen and *Russell*, and the Queen and Hodge, were antagonistic; that they were contradictory; that one opposed the other, and so apparently the court has split the difference; it has declared that all the wholesale licenses belong to the Dominion, and all the retail and tavern licenses belong to the Provincial Legislatures. Now, Mr. Speaker, I think it is of very great importance that we should get such questions settled. After that decision, not one of the Provincial Governments can issue licenses or receive a dollar for any wholesale licenses or for licenses on any vessel; and it is strange that the words “wholesale” and “retail” have different significations in the different Provinces. In one of the Provinces, a wholesale license covers five gallons and upwards; in another it covers one pint and upwards. We must get these questions settled, and it is, I consider, of the very greatest importance that, so early in the history of Confederation, while we are yet just laying the basis of the Dominion under our present constitution, all possible questions of conflict of jurisdiction should be settled. You see what the consequences of allowing the contrary practice to obtain were in the United States. They culminated in a great war. Now we are, one after the other, settling those questions, and I hope this question will be settled in the same way, finally and for ever. The hon. gentleman says we should have no more legislation about it. How can we help ourselves, Mr. Speaker? Who is to decide what “wholesale” means and what “retail” means? If the Provincial Governments, for a matter of revenue, wish to tax all sellers of spirits and wines, they are cut off from a great branch of the trade. They cannot charge a license fee to any wholesale dealer in wines or spirituous liquors. That must be settled in some way, and can only be settled by the final tribunal. The hon. gentleman then spoke about the boundary question. Mr. Speaker, if the proffer, the repeated proffer, the solemn proffer of the Dominion Government had been accepted, the boundary question would have been settled ten long years ago. He has quoted remarks of mine, and state papers issued by the Government, alleging that the boundary line was due north from the confluence of the Ohio and the Mississippi. The Government were obliged to take that ground, and why? Because there had been a solemn decision of a court of competent jurisdiction, the Queen’s Bench, in the then Province of Lower Canada, which was a court of competent jurisdiction specially charged to deal with the subjects before it. In the Queen and Reinhart, it was a question of the greatest importance, on which the life of a man depended. The man was tried for murder, and the question whether that man could be tried or could be executed depended upon the decision of that court, and it decided that the line was a line drawn due north from the confluence of the two rivers. Until that decision was reversed it was the law of the land, and the hon. gentleman knows that Judge Armour, who

before he was a judge, was selected specially by the Government of which that hon. gentleman was a member, to manage the case for the Dominion in respect to this boundary, in his evidence before the committee, declared that he would feel himself bound by the decision in the Queen against Reinhart. It was the law of the land until it was reversed by a superior tribunal. So the Dominion Government were bound to hold to that decision as a decision of a court of competent jurisdiction, until it was reversed. But the Government had no disinclination to have it reversed if the Supreme Court decided it was erroneous. They offered, in 1872, and repeated the offer again and again, but it was too valuable a political plaything to give up. It was kept to be used at the polls and on the stump, and therefore the plain, straightforward offer of the Dominion Government to go at once with the question and leave it to the Judicial Committee of the Privy Council was set aside and was only at last forced and dragged out of the Provincial Government. The hon. gentleman says: “But that boundary question was handed over to the Province of Manitoba, so that that Province might intervene in the matter.” The Parliament of Canada was enlarging the boundaries of that Province, and it was necessary that there should be no interval between the Province of Manitoba and the Province of Ontario. The piece of land there would be too small to form a Province or to form a territory, and therefore the Government proposed, and Parliament adopted it, and it was declared that the western boundary of Ontario should be the eastern boundary of Manitoba. The reason and common sense were obvious. There was no use in having a small piece of land which was not fit to make into a Province or into a territory, and therefore the Government and Parliament adopted the suggestion made by the Government of which the hon. gentleman was a member, or at least by Mr. Mackenzie’s Government, when they formed the Territory of Keewatin. In the statute forming that territory it is provided that the western boundary of Ontario shall be the eastern boundary of the District of Keewatin. And we did exactly the same thing. We copied the Act of the late Administration, when we made the boundary of the one the boundary of the other. Why the hon. gentleman brought in the Streams Bill I cannot well understand. Why did he bring that in? In order, he said, that he might show that I was not infallible. Well, Mr. Speaker, I had pretty good authority for my opinion on that subject. I know, of course, I had the authority of Mr. Mowat, the Attorney-General of the Province of Ontario, because he was so satisfied that according to law Mr. McLaren could hold those rights and exclusive privileges that he thought it necessary to introduce an Act to take them away. He believed that the law of the land would not take them away, so he introduced that Bill for the purpose of taking them away. It was on account of that course, it was because the Dominion Government held that it was a question of law then in litigation that should be left to the courts, and if the courts decided that Mr. McLaren was right it would be wrong to pass an Act to take that right away; and if the courts decided that Mr. Caldwell was right, then there was no necessity for the legislation at all, and therefore the Government disallowed it, in order that the case might go before the proper tribunals and be settled according to law and not according to the political exigencies of the Ontario Government. But not only was it the opinion of Mr. Mowat, but I believe I am not wrong when I say that the hon. gentleman himself, in his professional capacity as counsel for Mr. McLaren, gave his opinion that Mr. McLaren’s contention was right.

Mr. BLAKE. No, you are not right.

Sir JOHN A. MACDONALD. Then if I am not right I am informed very erroneously, and when another member