

Common carriers are under obligation to receive and transport only such goods as they profess to carry; and the second point urged by the defendants and by the License Board is that, since the passing of the Ontario Temperance Act, the company, even though considered common carriers of liquor, have professed to carry it only when such carriage was authorised or licensed by the Board of License Commissioners for Ontario; and that, the transportation of liquor having been interdicted by that Board, the gallon of whisky which the plaintiffs sought to compel the defendants to carry was not a commodity of the description which the defendants professed to carry. The defendants are common carriers of liquor, they cannot at their own option refuse to carry it for any single individual or for a class of persons selected by themselves, nor for a class of persons selected for them by some one else, nor do they cease to be common carriers for such a class because they have for a period of time declined to carry for that class.

The broad general contention of the plaintiffs was that, if the prohibition of the Board of License Commissioners was not warranted by the Ontario Temperance Act, it was beyond the powers of the Commissioners and nugatory; and, if warranted by the Act, the Act itself was in that respect unconstitutional.

The powers of a Provincial Legislature respecting intoxicating liquors are derived from the words of sec. 92 (16) of the British North America Act—"generally all matters of a merely local or private nature in the Province:" *Attorney-General for Ontario v. Attorney-General for the Dominion*, [1896] A.C. 348; *Attorney-General of Manitoba v. Manitoba Licence Holders' Association*, [1902] A.C. 73; *Re Hudson's Bay Co. and Heffernan*, [1917] 3 W.W.R. 167.

The purpose and effect of the action of the Board of License Commissioners is not anything local to Ontario; it is rather to prevent the export of intoxicating liquors into Manitoba and the other Western Provinces, thus interfering with trade and commerce, which are not within the jurisdiction of the Legislature of Ontario, and therefore not within the competence of its agent, the License Board. See sec. 139 of the Ontario Temperance Act, which must be construed as an overriding section, to which other provisions of the Act must be interpreted as subsidiary if they appear to conflict with it.

Sections 41 and 46 of the Ontario Temperance Act were not intended to interfere by an indirect method with trade and commerce, but rather to afford means of insuring that export warehouses should not operate so as to defeat or evade the provisions against local traffic and use within the Province.