

of criminal jurisdiction," renders it more clear, if anything were necessary to render it more clear, that with that exception the criminal law, in its widest sense, is reserved for the exclusive authority of the Dominion Parliament. *Attorney-General v. Hamilton Railway* (1903), 7 Can. Cr. Cas. 326 [1903] A.C. 524.

It is competent also for the Parliament of Canada to declare that what previously has constituted a criminal offence shall no longer do so, although a procedure in form criminal was kept alive. *Toronto Ry. Co. v. The King* (1917) 29 Can. Cr. Cas., 29 at 34, [1917], A. C. 630, reversing 25 Can. Cr. Cas. 183, 34 O.L.R. 589.

The Canada Temperance Act was, by decision of the Privy Council, upheld on the ground that it might be referred to the general powers of the Dominion Parliament in respect of "the peace, order and good government of Canada." That legislation does not rest upon the execution of Dominion powers with regard to criminal law, although having direct relation thereto. *Russell v. The Queen*, 7 A.C. 829, 840; *Hodge v. The Queen*, 9 A.C. 117, 129; and see *McNutt*, 21 Can. Cr. Cas. 157; 47 Can. S.C.R. 259; 10 D.L.R. 834.

In *Russell v. The Queen*, 7 App. Cas. 829, at page 838, Sir Montague Smith, referring to the Temperance Act there in question, there says:—

"Their Lordships cannot think that the Temperance Act in question properly belongs to the class of subjects 'property and civil rights.' It has in its legal aspect an obvious and close similarity to laws which place restrictions on the sale or custody of poisonous drugs, or of dangerously explosive substances. These things as well as intoxicating liquors can, of course, be held as property, but a law placing restrictions on their sale, custody or removal, on the ground that the free sale or use of them is dangerous to public safety, and making it a criminal offence punishable by fine or imprisonment to violate these restrictions, cannot properly be deemed a law in relation to property in the sense in which those words are used in the 92nd section. What Parliament is dealing with in legislation of this kind is not a matter in relation to property and its rights, but one relating to public order and safety. That is the primary matter dealt with, and though incidentally the free use of things in which men may have property is interfered with, that incidental interference does not alter the character of the law. Upon the same consideration the Act in question cannot be regarded as legislation in relation to civil rights. In however large a sense these words are used, it could not have been intended to prevent the Parliament of Canada from declaring and enacting certain uses of property, and certain acts in relation to property, to be criminal and wrongful. Laws which make it a criminal offence for a man wilfully to set fire to his own house on the ground that such an act endangers the public safety, or to overwork his horse on the ground of cruelty to the animal, though affecting in some sense property and the right of a man to do