

Act, 1883 (46 Vic., c. 30), and the amending Act (47 Vic., c. 32)—were or were not, in whole or in part, valid.

*Sir Farrer Herschell, Q. C.*, the *Hon. G. Burdidge, Q. C.*, (the Deputy Minister of Justice of Canada), and *Mr. Jeune*, were counsel for the Dominion of Canada; for the Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, there appeared, *Mr. Horace Davey, Q. C.*, and *Mr. Haldane*, with whom were the *Hon. Mr. Church, Q. C.*, for the Province of Quebec, the *Hon. M. W. Tyrwhitt Drake, Q. C.*, for British Columbia, and the *Hon. Mr. Fraser, Q. C.*, for the Province of Ontario.

In the year 1878 the Dominion of Canada passed the Canada Temperance Act, which Act was in the case of *Russell v. the Queen*, on appeal to Her Majesty in Council, held to be within the legislative power of the Dominion of Canada to enact. The Liquor License Act, 1883, was an Act for establishing a system of licenses for the sale, both wholesale and retail, of intoxicating liquors within the Dominion of Canada. The preamble of the Act sets forth that it was desirable to regulate the traffic in the sale of intoxicating liquors, and it was expedient that the law respecting the same should be uniform throughout the Dominion, and that provision should be made in regard thereto for the better preservation of peace and order. By the 26th section of the Act to amend the Liquor License Act the following provision was made:—"Whereas doubts have arisen as to the power of Parliament to pass the Liquor License Act, 1883, and the amendments thereof contained in this Act,—it is therefore enacted that until the question of the competence of the Parliament of Canada to pass the said Act and this Act be determined, as hereafter provided, no prosecution for the infringement or violation of the said Liquor License Acts shall be instituted against any holder of a license for selling liquor granted to him under the authority of any statute passed by any of the provinces, so long as such license under such authority is in force." It was also provided that, for the purpose of having the question determined as soon as possible, the Governor-in-Council might refer to the Supreme Court of Canada for hearing and determination the question as to the

competence of Parliament to pass the acts in question, in whole or in part, and that the Court should hear and determine the same and certify their opinion to the Governor-in-Council; and if, in their opinion, a part or parts of the acts only were within the competence of the Parliament, then they should certify to the Governor-in-Council what part or parts were within such competence. It was further provided that the Lieutenant-Governor of any of the provinces might, with the consent of the Governor-in-Council, on behalf of the province of which he is the Lieutenant-Governor, become a party to the case, and in the event of any province becoming a party, it should be entitled to be heard by counsel on the argument. The case laid before the Supreme Court of Canada consisted of a reference to the acts and of the question, "If the Court is of opinion that a part or parts only of the said acts are within the legislative authority of the Parliament of Canada, what part or parts of the said acts are so within such legislative authority?" The provinces of Ontario, Quebec, New Brunswick, British Columbia, and Nova Scotia became parties to the case, which came on for hearing on September 23, 1884, before the Supreme Court of Canada, constituted by Chief Justice Sir William Ritchie and Justices Strong, Fournier, Henry, and Gwynne. The decision of the Supreme Court was given on January 12, 1885, and was to the effect that both the acts in question were *ultra vires* of the legislative authority of the Parliament of Canada, except so far as these acts respectively purported to legislate respecting the licenses mentioned in section 7 of the Liquor License Act, which were called vessel licenses and wholesale licenses, and except, also, so far as the act respectively related to the carrying into effect of the provisions of the Canada Temperance Act, 1878. Mr. Justice Henry was of opinion that the acts were *ultra vires* in whole. Subsequently the Governor-General petitioned Her Majesty in council to refer the matter to the Judicial committee of the Privy Council to report thereon to Her Majesty, and the case consequently came on for hearing before their Lordships.

*Sir Farrer Herschell* argued the case for the