

to the regulation of wholesale trades, and not to the regulation of retail trades, is a distinction which does not find any warrant in the legislation of this section 91, and which would be impracticable in its working throughout the Dominion." And Mr. Horace Davey in the same argument says:—"I agree that no logical distinction whatever can be drawn between wholesale and retail licenses, that there is no logical distinction between regulating the power of a shop-keeper to sell a dozen bottles at a time and regulating the power of a tavern keeper to sell one bottle at a time, or half a bottle, or a pint. Wholesale licenses may be a convenient expression in the Act, but it is merely retail trade." Whereupon Sir Montague Smith, sitting as a member of the Board, observes: "Whether he sells one bottle or twelve it is selling by retail," and Mr. Davey replies: "Yes, there is no logical distinction between the two. It is a different kind of retail trade." And Sir Montague Smith rejoins: "It is a convenient phrase to express the meaning instead of repeating every time the number of bottles." Their lordships evidently supported the above view, and their decision justifies the dictum of Townshend, J., in the *Queen v. McDougall*,² that the distinction between wholesale and retail so far as making it a test of the respective powers of the two Legislatures of the British North America Act has been abandoned.³

It must be remembered that in the cases upon the British North America Act heretofore, the distinction between wholesale trade and retail trade has been generally treated as one depending upon the amount sold. What would seem to be the essential difference between wholesale and retail trade, namely, that the wholesale merchants supply the trade, whereas the retailers deal directly with the general public, and whether any line of severance of legislative power can be founded on this distinction, does not seem to have been discussed in any of the cases except so far as the wholesale

¹ At p. 137.

² 22 N.S. at p. 491.

³ See also per Sedgwick, J., in *In re Prohibitory Liquor Laws*, 24 S.C.R. at pp. 251-2; per King, J. S.C., at p. 262; and per MacLaren, Q.C., arguendo, s. c. 24 S.C.R., at p. 180.