

cases, and to make sales of liquors in violation of the prohibition and regulations contained in the Act criminal offences, punishable by fine, and for the third or subsequent offence by imprisonment.

It was in the first place contended, though not very strongly relied on, by the appellant's counsel, that assuming the Parliament of Canada had authority to pass a law for prohibiting and regulating the sale of intoxicating liquors, it could not delegate its powers, and that it had done so by delegating the power to bring into force the prohibitory and penal provisions of the Act to a majority of the electors of counties and cities. The short answer to this objection is that the Act does not delegate any legislative powers whatever. It contains within itself the whole legislation on the matters with which it deals. The provision that certain parts of the Act shall come into operation only on the petition of a majority of electors does not confer on these persons power to legislate. Parliament itself enacts the condition and everything which is to follow upon the condition being fulfilled. Conditional legislation of this kind is in many cases convenient, and is certainly not unusual, and the power so to legislate cannot be denied to the Parliament of Canada, when the subject of legislation is within its competency. Their Lordships entirely agree with the opinion of Chief Justice Ritchie on this objection. If authority on the point were necessary, it will be found in the case of the *Queen v. Burah*, lately before this Board (L. R. 3 Appeal Cases, 889).

The general question of the competency of the Dominion Parliament to pass the Act depends on the construction of the 91st and 92nd sections of the British North America Act, 1867, which are found in part VI. of the statute under the heading "Distribution of Legislative Powers."

The 91st section enacts, "It shall be lawful for the Queen by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby de-

clared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated;" then after the enumeration of 29 classes of subjects, the section contains the following words:—"And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislature of the Province."

The general scheme of the British North America Act with regard to the distribution of legislative powers, and the general scope and effect of Sections 91 and 92, and their relation to each other, were fully considered and commented on by this Board in the case of the *Citizens' Insurance Co. v. Parsons* (7 L. R. Appeal Cases, 96; 5 L. N. 25.) According to the principle of construction there pointed out, the first question to be determined is, whether the Act now in question falls within any of the classes of subjects enumerated in section 92, and assigned exclusively to the Legislatures of the Provinces. If it does, then the further question would arise, viz., whether the subject of the Act does not also fall within one of the enumerated classes of subjects in section 91, and so does not still belong to the Dominion Parliament. But if the Act does not fall within any of the classes of subjects in section 92, no further question will remain, for it cannot be contended, and indeed was not contended at their Lordships' bar, that, if the Act does not come within one of the classes of subjects assigned to the Provincial Legislatures, the Parliament of Canada had not, by its general power "to make laws for the peace, order, and good government of Canada," full legislative authority to pass it.

Three classes of subjects enumerated in section 92 were referred to, under each of which, it was contended by the appellant's counsel, the present legislation fell. These were:—

9. Shop, saloon, tavern, auctioneer, and other licenses in order to the raising of a revenue for provincial, local, or municipal purposes.

13. Property and civil rights in the province.

16. Generally all matters of a merely local or private nature in the province.