

"I hold then that the Canada Temperance Act, 1878, is constitutional."

Gwynne, J.—"Turning to the Act we find it entitled 'An Act respecting the Traffic in Intoxicating Liquors', its object as stated in the preamble is to promote temperance as a thing most desirable to be promoted in the Dominion. The means adopted in the Act for obtaining this end consists in regulating and restraining the exercise of the trade or traffic in intoxicating liquors. Reading therefore the object of the Act to be, as it was read in the Court below, namely, to endeavor to remove from the Dominion the national curse of intemperance, and observing that the means adopted to obtain this end consists in the imposition of restraints upon the mode of carrying on a particular trade, namely, the trade in intoxicating liquors, it cannot admit of a doubt that power to pass such an Act, or any act assuming to impose any restraint upon the traffic in intoxicating liquors, or to impose any rules or regulations, not merely for municipal or police matters, to govern the persons engaged in that trade, and assuming to prohibit the sale of liquors, except under and subject to the conditions imposed by the Act, is not only not given exclusively, but is not at all given to the Provincial Legislatures. The principles of Regina and Justices of King's decided and properly so decided, in the Court from which the appeal comes, is equally applicable to exclude from the jurisdiction of the Local Legislatures all power to pass such an Act.

"The Act then being *ultra vires* of the Provincial Legislatures as dealing with a subject not exclusively assigned to the Provincial Legislatures, can it question, for that point being so determined, it follows by the express provision of the B. N. A. Act that it is within the jurisdiction of the Dominion Parliament.

In 1882, the question came before the Judicial Committee of the Privy Council, in *Russell vs. The Queen*, (Reported 46, L. T. (N. S.), 889), which was virtually an appeal from the judgment of the Supreme Court, in the case first cited. In the result their Lordship held that the Temperance Act was within the jurisdiction of the Dominion Parliament, and not included within the classes of subjects enumerated in section 92 of the B. N. A. Act, 1867, under which it was contended the impugned legislation fell to the Provinces.

Again in the case of *Hodge vs. The Queen*, decided in the Privy Council, in 1882, (Reported 9 Appeal cases 117), their Lordships held that the powers intended to be conferred on Provincial Legislatures by the B. N. A. Act "when properly understood, are to make regulations in the nature of police or municipal regulations of a merely local character for the good government of taverns, etc., licensed for the sale of liquors by retail, and such as are calculated to preserve in