

licenses, ¹while ultra vires as to retail licenses,—the Privy Council held them to be ultra vires in respect to all the licensing provisions alike. And so Weatherbe, J., in *Queen v. McDougall*, ²says that the main question determined by the Privy Council in that matter was: "That if the province has the right, as was held, to require licenses for carrying on what is called the retail trade, it has the right, also, to impose a tax by means of license respecting the wholesale trade," and adds: "Though I have paid attention to all that has been said before the Supreme Court of Canada and the Privy Council, I am unable to see that the words 'wholesale and retail' are anything but mere arbitrary terms adopted for convenience." And in the argument before their lordships in this matter of the Dominion License Acts, ³Sir Farrer Herschell, referring to the distinction taken by the Supreme Court between wholesale and retail licenses, observed: "I suppose they have considered for some reason or other that the wholesale trade is more a matter of trade to be regulated than the retail trade. I know it seems a very difficult distinction not only to follow in point of law, but to see the practical effect of it in the wording of this Act. The Act is held valid so far as regards wholesale licenses, and of course all the provisions relate to wholesale licenses. Well, what is wholesale and what is retail? Is the definition of wholesale, which is given by this Dominion Act we are considering, to be taken as determining what is wholesale and what is retail? If so, your lordships have said that, although the Dominion Parliament has no power to legislate with regard to the retail trade, it can determine by its own legislation what is the wholesale and what is the retail trade. If your lordships did not say that, then what is to determine what is the wholesale and what is the retail trade? It certainly strikes me that to say that the legislative power of Canada extends

¹By sec. 7, subs. (d) of the Dominion License Act of 1843, 43 Vict. c. 30, "wholesale licenses" authorized the licensees to sell any quantity of not less than two gallons.

²22 N.S. at p. 477, (1889).

³See transcript from Marten & Meredith's shorthand notes, at pp. 90-1; see also per McDonald, C.J., in *Queen v. McDougall*, 22 N.S., at pp. 472-73, 476; per Weatherbe, J., S.C., at p. 477; per Ritchie, J., S.C., at p. 485; per Townshend J., S.C., at pp. 495-7.