

the Throne ought to be adopted by Parliament; and in answer to the position which I then took, not in detail, because I pointed out that the judgment had not then been circulated, the hon. gentleman made some remarks. I had charged the Government with a centralizing tendency. I had charged them then, as I charge them now, with a desire to draw in here whatever they can of power and jurisdiction, and of diminishing so far as in them lies, the power and jurisdiction awarded by the constitution to the Provinces. In answer to me the hon. gentleman said:

"That subject was not willingly undertaken by the present Government. They were quite satisfied that the law as it obtains in the different Provinces should be continued. They were quite satisfied that each Province should, so far as the law would allow it to enact such statutes, deal with the subject of shop, tavern and saloon licenses. Neither the Government nor the Parliament of Canada, I take it, wished to interfere; and it was only when the decision which was given in June last on the Scott Act, a Dominion Act, and the subject was forced upon them, that they thought it their duty to bring it before Parliament. I never had any doubt that when the question was brought before the courts, it would be decided that the different Provincial Legislatures had no right whatever to deal with that subject except for revenue purposes—for the purpose of imposing taxation for Provincial or municipal purposes. I expressed the opinion in Parliament years ago, and last year I expressed it at a public meeting in Toronto or its vicinity. But while that opinion was strongly impressed upon my mind I took no steps, nor did the Government of which I was a member take any steps, for the purpose of interfering with the legislation of the different Provinces, or forcing Dominion legislation on the country, or trying to centralize such powers in this Parliament. On the contrary, the only centralization on that subject—the only time in which that question was in any way dealt with by the Dominion Parliament—was when the late Government was in power, and when they introduced the Scott Act."

Then the hon. gentleman proceeded to say, with reference to *Russell vs. The Queen*:

"It is quite clear to every lawyer, and any man who is not a lawyer, who reads that judgment, will see that the very reasons on which the Privy Council decided that this Parliament had the right to deal with the Scott Act, are the reasons showing that the Provincial Legislature of Ontario had not a right to deal with that subject under the Crooks Act, except as a matter of revenue for municipal or Provincial purposes. The hon. gentleman says that we should have allowed the matter to stand over until it was finally decided. Sir, if there be any value in that decision, and there is every value in it, because it is the law of the land, there is no check at this moment in the Province of Ontario against the unlimited, unrestrained sale of intoxicating liquors. This is not a matter we can play with. It is not a matter of policy; it is a matter of necessity. If we wish to prevent the unrestrained sale of intoxicating liquors we must legislate immediately; for I take it, that any man in this city or in any other part of Ontario can open his saloon and sell liquors, and there is not a court in the world can prevent his doing so."

In answer to these views, I took leave to say:

"He said that any lawyer, or any other man who is not a lawyer, who chose to read that judgment must see plainly from it, that the unavoidable result was no power was left with the Local Legislatures to restrict the number of licenses. Now, I do not draw that conclusion from the decision in *Russell vs. The Queen*. In the first place, that judgment does not deal in the slightest degree with, does not touch in any way upon, that very large part of Provincial rights which is comprised in the subject of municipal institutions. The decision is expressly stated to be upon the consideration of whether the power to pass the particular law which was before the Privy Council, viz.: the Scott Act, was vested in a Local Legislature in either of the then headings: the heading of property and civil rights, the heading of shop, tavern and saloon licenses, or the heading of local and private matters. The Judges expressly say that these were the points which were raised before them, and upon which they judged. They do not say a word about municipal institutions having been suggested or argued. Now, Sir, if hon. gentlemen sitting in this Parliament, if Ministers of the Crown, chosen from all the different Provinces, do not know what are the local laws touching the sale of liquor, what powers have been given to the different municipal bodies in that regard; if we require to-day to take the first step in order to inform our minds upon the mixed question of law and fact as to what are the laws and what mean the laws; can we suppose that the Judicial Committee of the Privy Council was inspired to know all about those municipal institutions and local laws which were not even alluded to in the argument and the judgment? Can it be seriously argued before a Canadian Parliament, that the single decision of four or five men—when the great question of municipal institutions was never even raised or discussed—has so finally concluded this question that it is no further arguable? It is absurd to say so. I maintain, that in the absence of a decision in which the whole question of municipal institutions shall have been brought up expressly, in which that mass of statutory learning which is required in order to know what the position of the municipal institutions of each Province was at the time of Confederation was not called for, in which the true construction of this phrase 'municipal institutions' was not fully debated and decided—no man, in the absence of such a decision,

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can say that this question, which, in the largest of the Provinces, in the next largest of the Provinces and in two or three more of them, was dealt with before Confederation, and for years after, as a subject of municipal institutions, is not to be found in the Confederation Act."

Once again I proceeded to point out what was done in the old Province of Upper Canada, under the heading of municipal institutions, and also in Lower Canada; and I said:

"I deny his construction of the decision in *Russell vs. The Queen*, and the argument in *Russell vs. The Queen*. I have read the stenographer's notes of the whole argument, and it seems to be unfortunate that in a constitutional case of this high consequence, the senior counsel, a man whose knowledge and power and eminence, everybody knows and respects—Mr. Benjamin—should have been absent, and that the brunt of the argument should have been borne by the junior counsel. Mr. Benjamin appears only at the close in delivering a short and a concise argument. I say the argument is not satisfactory; and the judgment is not satisfactory, even as far as it goes. But the question is, how far it goes? We are not to take it as far as the hon. gentleman says it is to be taken. The hon. gentleman says no lawyer reading that judgment will come to any other conclusion; he says no layman would come to any other conclusion. But lawyers have come to a different conclusion; judges have come to a different conclusion; courts have come to a different conclusion; and what the hon. gentleman declares no man would say, some of the highest and most respectable and esteemed judges of this land have already said."

And I pointed out in detail what the judgments were which bore out that proposition. After doing so, I said:

"For myself, I never will consent that one of the greatest powers given to the Provinces, shall be swept away by a court before whom this question of our municipal institutions was not argued or considered, before whom it was not contended that our powers in that respect were in question, and of which they knew no more than the messengers at the Table—I will not consent that the Parliament of this country shall, without my protest, arrogate to itself the power to take away from the Provinces that great right, until we find, on full argument and consideration, that such is the meaning of our Constitution."

Well, Mr. Speaker, making these observations upon the motion of the hon. gentleman to initiate this legislation, which I opposed on this and other grounds, I was answered from the Ministerial benches by an hon. member, who said, speaking for the Government:

"They do not ask this House to consider whether the license question may be dealt with by the Local Legislatures or by the Dominion Parliament. That is a foregone conclusion, and His Excellency says, he is advised upon that question that the Provinces have no right to deal with the question; and, therefore, this House being seized with the case, and being satisfied that the opinion of the hon. the First Minister is the true one, is asked only to assimilate the laws of the several Provinces and to see that an Act is placed on the Statute-book, which shall satisfy the several Provinces."

Again, he said, referring to my point, that the only excuse that the Government had for introducing the measure was the speech the hon. gentleman made in Yorkville:

"Well, what better evidence do's this country want of the great constitutional knowledge of the right hon. gentleman than the fact that he predicted, three weeks before the decision was given, that the jurisdiction lay alone in this Legislature; that the Local Legislatures had no control over that question. That shows his great constitutional knowledge and his opinion of what the law really was, because, a few weeks afterwards, we find the Privy Council endorsing his view."

However, although we voted against the initiation of this legislation, and declared that it ought not to be commenced, at a later day, when the Bill was to be read the third time, we recorded another proposition, to which I desire to refer. That proposition was contained in a motion, moved by the hon. member for Peel (Mr. Fleming) in amendment to the third reading of the Bill, to leave out the words for the third reading, and insert these:

"The Provincial Legislatures have since Confederation exercised Legislative powers in the regulation of the issue of licenses for the sale of intoxicating liquors, and the hours and certain other incidents of the sale.

"That the Appeal Courts of Ontario and Quebec have each decided in favor of the exercise by the Provinces of the Dominion, of the jurisdiction, and this Appeal Court has further determined that the judgment of the Privy Council in *Russell and The Queen* does not decide that the Provincial Legislatures have not this jurisdiction.

"That the questions involved are now under the consideration of the Supreme Court of Canada, and will shortly be brought under the consideration of the Privy Council.

"That the Parliament of Canada should not assume jurisdiction as proposed by the said Bill, until the question has been settled by the Court of last resort."