

The Advocate.

LOUIS P. KRIBS

Editor and Proprietor

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AN "ENABLING ACT" NOT POSSIBLE.

It has been argued in certain quarters that assuming the Provinces have no legal right to enact prohibitory liquor legislation it is still competent for the Federal Parliament to pass what is called an Enabling Act permitting the Provincial Legislatures to exercise the prohibitory power. We have referred this matter to one of the most eminent legal authorities in Ontario with the following result. He says: "I submit, with a good deal of confidence, that this proposition cannot be supported. It must not be supposed that because the Dominion Parliament can pass a general Act authorizing any municipal council to do certain things, it can also delegate powers to a provincial legislature.

"The notion that the Federal Parliament occupies the same relations toward the local legislatures as it does to municipal councils, may at once be abandoned as a serious error. The provincial legislatures, equally with the Dominion Parliament itself, are the creations of the Imperial Parliament, both are *Sovereign* within their respective spheres, and one has no power to delegate to the other. No one would contend that Parliament could authorize provincial legislatures to deal with criminal matters which are specially assigned by the B.N.A. Act to the Dominion, and the same doctrine must apply to Prohibition.

"With regard to certain subjects it is admitted that the provinces may legislate, in the absence of Dominion legislation, of which a good example is the Insolvency Legislation of the Provinces, which is held good conditionally, although insolvency as a subject of legislation is specially assigned to the Dominion.

"In the same way, no doubt, the 'Local Option' law of Ontario would have been upheld as a matter of municipal regulation had not the Federal Parliament already dealt expressly with the same subject matter; but according to the decisions of the Judicial Committee of the Privy Council when a subject which properly belongs to the Federal Jurisdiction (such as Local Option Prohibition provided for by the Scott Act) has been dealt with by the Dominion Parliament,

the local legislatures are precluded from interfering. It is hardly necessary to say, that this right of the Legislature to deal with certain subjects, in the absence of Dominion Legislation, is a very different thing from the proposition we are considering, viz., that one legislature can delegate to another. When the subject is carefully examined there does not appear anything to support this contention. When the B.N.A. Act was first passed much discussion took place as to the position the provinces occupied in Confederation. This question has now been finally settled by authoritative decisions of the Privy Council, securing to the provinces the fullest autonomy and independence.

The only way, therefore, to add to or take from the powers of the provinces is to obtain legislation from the Imperial Parliament amending the B.N.A. Act, which will be searched to vain for any authority to support the doctrine of the 'powers of delegation.'

THE COMMISSIONERS RULE.

In an article contained in the *Templar's* issue of the 25th January there appears the following: "We are receiving enquiries whether the by-law of the council fixing the hour of closing at seven p.m. would compel the commissioners to so require. The law would seem to be clear upon the subject. In Re Arkel vs. the Town of St. Thomas, 38 U.C.R., 594, it was decided that a municipal law prohibiting the sale of liquor between seven p.m. and a.m. was valid." In a former issue of the same paper a similar statement was made. The *Templar* is either woefully ignorant of, or wilfully misrepresenting, the law in this particular for its own purposes, as reference to the case as reported will show that the decision of the Court was exactly the opposite of that stated in the *Templar*. Section 3 of the by-law in question was: "That in all taverns or inns where intoxicating liquors are or may be sold, no sale or other disposal of the said liquors shall take place therein or on the premises thereof from after the hour of ten of the clock p.m. till seven a.m. thereafter, V.C. The judgment of the Court with reference to this section of the by-law will be found on page 597. "Section 3; Mr. Ouder admits this section cannot be supported against the recent decision of Harrison C. J. in Brodie and the Municipality of Bowmanville, 38 U.C.R., 580. So long as this decision stand it is conceded we should follow it. Section 3 must, therefore, be quashed."

We cannot understand why the *Templar* should make statements of such a character; they cannot serve the cause it seeks to advance, and such methods are not used by respectable and enlightened journals. For a statement of the law in reference to early closing we would refer our readers to our issue of 18th October last in which it is fully set forth, and the conclusion reached that the commissioners and not the municipal council control

the hours of closing hotels. And this conclusion is practically admitted by Ald. Lamb and his advisers, who, in his historic resolution, submitted for the consideration of the Toronto Council admits the conclusion contended for by this journal.

MINNEAPOLIS EXAMPLE.

The *Western Brewer* truly remarks that the triumph of common sense over fanaticism and unnatural party interference with human nature is abundantly illustrated in the civic administration of Mayor Eastus, of Minneapolis, who on December 31st closed his administration with assurance that, despite the abuse of the prochers, the drinkers and the incompetents, his saloon policy has reduced the number of arrests for drunkenness in 1894 exactly thirty-three and one-third per cent. as compared with the last year of the preceding administration, and each month for fifteen months has shown the same ratio of decrease as compared with the corresponding month of the preceding year.

His policy was to treat the saloon keepers as business men who had some rights. He allowed them to keep open on Sunday and reasonably late at night and did not disturb any places regarding which no complaints were made. But he kept a record showing where every drunken man arrested secured his liquor, and one warning was generally enough to cause the saloon keeper to let no one get drunk here again. Besides this, upon a report that a man had lost money in gaming in any place or that any poor man had spent more money than he ought in any saloon, the mayor called the proprietor of the offending saloon before him and made him refund the money, warning him that a second complaint would lose him his license. Thus he succeeded in making all of the reputable saloon men his allies; and for the year 1894 the total arrests for drunkenness were 1,614, as against 2,356 for the year before Mayor Eastus took hold of the reins.

It is a pity we have not a Eastus in some of our Canadian cities.

THE PUZZLE UNSOLVED.

The *Newcastle (Eng.) Chronicle* has raised the question: How, if the number of teetotallers has increased more rapidly than the population and the Drink Bill has concurrently gone up, can the decrease in the convictions for drunkenness be accounted for; seeing that if so much alcohol resulted in so many convictions when consumed by so many people, so much more alcohol ought to result in so many more convictions when consumed by so many fewer people. Undoubtedly the Drink Bill is ascending. In 1870, the first year of the two decades dealt with by Mr. Hayler, it was £118,736,279; in 1879 it was £128,143,865; in 1889 it was £132,213,276. There have, of course, been fluctuations; but the growth has, nevertheless, taken place. And it continues. In 1892 the amount expended on

alcoholic beverages exceeded £140,000,000. What it was last year we do not know. But this we do know: that it will exhibit a further increase, because, despite additional taxation, the Chancellor of the Exchequer's estimate for the entire year has been realized practically in nine months, and will be considerably exceeded when the remaining three months shall have lapsed. Perhaps if we guess the Bill at £143,000,000 we shall not be far wide of the mark. Thus, the nation has drunk £24,000,000 more than it drank in 1879; and this has occurred in face of what we are told is an enormous increase in the proportion between the abstaining and the non-abstaining sections of the population. By whom, then, has the extra quantity been consumed, and how, if the drinking section has in reality shrunk, are we to explain the decrease in the number of convictions?

"'Tis but the fool that loves excess;
Heed thou a drunken snail;
Tyranny is in thy shallow shell;
Not in thy silver bowl."

The Toronto L.H.P.A. have elected a strong list of officers for this year. Now let them put in a strong year's work.

It is but true that a decapitated snail, if kept in a moist place will grow a new head, a big hint is conveyed to some of our Prohibition friends.

The last issue of the *Western Brewer* contains a very readable illustrated account of the business of the Cograve Brewing Company of Toronto.

DUNLOP, Is., is going to build a \$500,000 brewery. This is one of the results of the doing away with the prohibitory law. Formerly the beer was imported from the adjoining states.

The Brantford *Expositor* says that the news that the Prohibition issue must be dealt with by the Dominion Parliament will be "gratifying information" to Sir Oliver Mowat, and reading this the *Farmer's Sun* opines that another big cat has jumped out of its bag.

THERE was a Yorkshire Bishop once
With an Irish name, McGee;
But Irish or Scotch he always lived,
A credit to his See.

This was the burden of his song.
Wherever he might be;
Give me instead of sober slaves,
A country drunk but free.

In England the Trade, thoroughly organized, is taking a hand in every parliamentary election that is being held. The latest contest was in Evesham, when Col. Lang, Conservative, was opposed by F. Impey, Gladstonian. Mr. Impey declared in favor of the Liberal "veto" policy in the liquor traffic and Col. Lang against it. The Trade supported the latter, sent speakers into the constituency, carried on a vigorous canvass, and increased the Conservative majority by 565 votes.