

provinces entered into Confederation in 1867, they gave up all their rights to the British Government, the British Parliament gave us a new constitution, and that constitution is incorporated in the British North America Act, 1867. Section 92 of that Act deals with the powers of the provincial legislatures, and among the powers which are conceded to the provincial legislatures is the power to deal with:

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

Section 91 of the Act deals with the powers of the Parliament of Canada, and one of the powers which is granted to the Parliament of Canada is that of dealing with "criminal law and all subjects relating to the peace, order and good government of Canada."

I believe that we have power to pass a law in Prince Edward Island to-day that no person living in that province can have liquor in his or her possession without a license. Why could we not pass such a law as well as we could pass a law here that no person should have opium in his possession? As we have power to deal with intoxicating liquors, why could we not pass a law that no person should be allowed to introduce or take into a province intoxicating liquors without a license? Since the Canada Temperance Act was passed—and that was a prohibitory law—several references have been made to the Judicial Committee of the Privy Council. The constitutionality of the Canada Temperance Act came up, and it was decided that the Dominion Parliament had power to deal with prohibition on the ground that it was a matter relating to "the peace, order and good government of Canada," and that the Provincial Legislature had power to deal with licenses because that matter came under the authority conceded to the Provincial Legislatures by section 92 of the British North America Act. The case best known is that of *Russell vs. The Queen*, in which the decision was as follows:

The general scheme of the British North America Act with regard to the distribution of the 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 the board in the case of the *Citizens' Insurance Company vs. Parsons* appeal cases, page 96; 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 fall within one of

the enumerated classes of subjects in section 91 and so does not still belong to the Dominion Parliament. But if this 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 Legislature, the Parliament of Canada had not by its general power "to make laws for the peace, order, and good Government of Canada," full legislative power.

According to this decision, then, although the Provincial Legislatures had power to deal with prohibition, the Dominion Government had also power to deal with the question, and on this ground, namely, under the authority given to them under section 91 of the British North America Act. A few weeks ago a question came before the Privy Council in England, dealing with insurance and on the 24th of February last the Privy Council decided that section 4 of the Insurance Act was ultra vires. That section deals with licensing provincial insurance companies, and foreign companies doing business in Canada. In the course of that case the question of the right of this Parliament to pass a prohibitory law came up, and as the decision has not yet been published it might be of interest to the House if I read it:

It must be taken to be now settled that the general authority to make laws for the peace, order and good Government of Canada, which the initial part of section 91 of the British North America Act confers, does not, unless the subject-matter of legislation falls within some one of the enumerated heads which follow, enable the Dominion Parliament to trench on the subject-matters entrusted to the Provincial legislatures by the enumeration in section 92. There is only one case, outside the heads enumerated in section 91, in which the Dominion Parliament can legislate effectively as regards a province, and that is where the subject-matter lies outside all of the subject-matters enumeratedly entrusted to the province under section 92. *Russell vs. the Queen* (7 A. C. 329) is an instance of such a case. There the court considered that the particular subject matter in question lay outside the provincial powers. What has been said in subsequent cases before this board makes it clear that it was on this ground alone, and not on the ground that the Canada Temperance Act was considered to be authorized as legislation for the regulation of trade and commerce, that the Judicial Committee thought that it should be held that there was constitutional authority for Dominion legislation which imposed conditions of prohibitory character on the liquor traffic throughout the Dominion. No doubt the Canada Temperance Act contemplated in certain events the use of different licensing boards and regulations indifferent districts, and to this extent legislated in relation to local institutions. But the Judicial Committee appear to have thought that this purpose was subordinate to a still wider and legitimate purpose of establishing a uniform system of legislation for prohibiting the liquor traffic