

desirable, the boon must be sought from the Parliament of Canada ; and no advantage can be obtained by the Legislature assuming responsibilities which it is not called upon to assume or exercising functions which it does not possess.

It must be borne in mind that with us the Government of the Province is one of enumerated powers, which are specified in the B. N. A. Act, and in this respect differs from the constitution of the Dominion Parliament, which is authorized " to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces ;" and that " any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces." Therefore " the regulation of trade and commerce," being one of the classes of subjects enumerated in section 91, is not to be deemed to come within any of the classes of a local or private nature assigned to the Legislatures of the Provinces. In a word there are two powers which may be exercised by the Provincial Legislatures : the one legitimate, to regulate ; the other unconstitutional, to prohibit. As the truth of this proposition is obviously most important, it is advisable to state at some length the decisions on which the Government rely.

The question first arose in New Brunswick in 1875. The Legislature of that Province, by an Act subsequent to Confederation, declared that " no license for the sale of spirituous liquors should be granted or issued within any parish or municipality in the Province, when a majority of the rate-payers resident in such parish or municipality should petition the sessions or Municipal Council against issuing any license within such parish or municipality." The Supreme Court of New Brunswick, then presided over by Chief Justice Ritchie, now Chief Justice of the Supreme Court of Canada, unanimously held the act *ultra vires*, being clearly of opinion that in passing it the Legislature "assumed to exercise a legislative power which belonged exclusively to the Parliament of Canada."

In 1878 the Federal Statute known as the Canada Temperance Act and above referred to became law, and soon after was declared in force in the city of Fredericton. The question of the competence of Parliament to pass an act virtually establishing local option throughout the Dominion was raised at once in the New Brunswick Courts and ultimately in appeal before the Supreme Court of Canada, in the well known case of the City of Fredericton vs The Queen, in which the constitutionality of the Act was upheld. A few extracts from the opinions of the judge may be given. 3 Can. S. C. R. 505.