

Cooley on Taxation (chap. 3, p. 62), referring to the power of the Federal Congress in the United States to regulate commerce with foreign nations, observes: "The constitution and the laws made in pursuance thereof, being supreme over the several States, the power of regulation cannot be interfered with, limited or restrained by an exercise of State authority. When, therefore, it is held that a power to tax is at the discretion of the authority which wields it, a power which may be carried to the extent of an annihilation of that which it taxes, and, therefore, may defeat and nullify any authority which may elsewhere exist for the purpose of protection and preservation, it follows as a corollary that the several States cannot tax the commerce which is regulated under the supremacy of Congress;" citing *McCulloch vs. Maryland*, 4 Wheaton. p. 316, 425, per Marshall, C.J.

In the case of *Regina vs. Taylor* (36 Queen's Bench Reports, Ontario, p. 183) the same points were much discussed, both on the argument on the demurrer in the Queen's Bench and subsequently in the Court of Error and Appeal. Though the latter court reversed the decision of the former court as to the application of the principles to the particular case in hand, yet it did not differ as to those principles themselves, that is, that if the Local Act was an interference with the regulation of trade and commerce, not specially allowed by the 92nd section, it would be *ultra vires*. With the greatest deference, however, for the distinguished Chief Justice who delivered the judgment of the latter court, it is difficult to see the foundation for the conclusion at which he arrived, that the term "exclusive legislative authority" given to the Dominion Parliament, on the subjects enumerated in section 91, was to be construed as exclusive of Imperial, not of Provincial legislation.

The British North America Act, 1867, was framed, not as altering or defining the changed or relative positions of the Provinces towards the Imperial Government, but solely as between themselves. It was the written compact by which for the future their mutual relations were to be governed. In consideration of the concessions of the Provinces to the General Government, and for the purpose of enabling the latter to carry out the responsibilities assumed on behalf of the former, each restricted itself as to what for the future it would do. And it is to be observed that the expressions used in the 92nd section, though not identical in words, are identical in meaning with those used in section 91. In section 91 the Dominion Parliament has "exclusive legislative authority;" in section 92 the Provincial Legislature "may exclusively make laws" touching the matters assigned to each. The exclusiveness in the matter could certainly have no reference to legislation by the Imperial Parliament, because it would be incongruous, and if in the former it was intended as restricted to Imperial legislation, then the mutuality in the compact was gone, and the Provinces were obtaining nothing for the concessions they gave. Moreover, with reference to the Imperial Parliament as the paramount or sovereign authority, the term would have no legal bearing. Such a construction weakens the authority of the General Government of the Dominion. The British North America Act, 1867, was intended to make legal an agreement which the Provinces desired to enter into as between themselves, but which not being sovereign states they had no power to make. It was not intended as a declaration that the Imperial Government renounced any part of its authority. It is submitted, with deference to that great and good Canadian, Chief Justice Draper, that the original framers of Confederation meant that act to be the rule of guidance as between the Dominion and Provincial Governments. It is the charter of their relative rights; if not, the Act is a great bungle.

In the case of *Regina vs. the Justices of King's County*, in New Brunswick (Pugsley's Reports, vol. II., p. 535), it was held that a Local Legislature has no power, since the "British North America Act, 1867," to pass a law directly or indirectly prohibiting the manufacture or sale, or limiting the use of spirituous liquors. And an Act passed with this object in view was *ultra vires* and void. The Court there clearly decided that the power of regulating trade and commerce, given exclusively to the Dominion Parliament by the 91st section, was not limited to trade and commerce with foreign countries, or even between the separate Provinces, but extended to the internal trade and traffic of