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Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Charles Russell *v.* The Queen, on the information of Woodward, from the Supreme Court of New Brunswick, delivered 22rd June 1882.

Present :

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Sir Barnes Peacock.
Sir Montague E. Smith.
Sir Robert P. Collier.
Sir James Hannen.
Sir Richard Couch.

This is an appeal from an order of the Supreme Court of the Province of New-Brunswick, discharging a rule *nisi* which had been granted on the application of the appellant for a *certiorari* to remove a conviction made by the Police magistrate of the city of Fredericton against him, for unlawfully selling intoxicating liquors, contrary to the provisions of "the Canada Temperance Act, 1878."

No question has been raised as to the sufficiency of the conviction, supposing the above mentioned statute is a valid legislative Act of the Parliament of Canada. The only objection made to the conviction in the Supreme Court of New Brunswick, and in the appeal to Her Majesty in Council, is that, having regard to the provisions of "the British North America Act, 1867" relating to the distribution of legislative powers, it was not competent for the Parliament of Canada to pass the Act in question.

The Supreme Court of New Brunswick made the order now appealed from in deference to a judgment of the Supreme Court of Canada in the case of the City of Fredericton *v.* the Queen. In that case the question of the validity of "the Canada Temperance Act, 1878," though in another shape, directly arose, and the Supreme Court of New Brunswick, consisting of six Judges, then decided, Mr. Justice Palmer dissenting, that the Act was beyond the competency of the Dominion Parliament.

On the appeal of the City of Fredericton, this judgment was reversed by the Supreme Court of Canada, which held, Mr. Justice Henry dissenting, that the Act was valid. (The case is reported in 3rd Supreme Court of Canada Reports, p. 505.) The present appeal to Her Majesty is brought, in effect, to review the last-mentioned decision.