

The Hon. Samuel Henry Strong, J.
 " " Telesphore Fournier, J.
 " " William Alexander Henry, J.
 " " Henri Elzear Taschereau, J.

A special case containing the following questions having been referred by His Excellency the Governor-General in Council to the Supreme Court of Canada for hearing and determination, in pursuance of the provisions of the 26th section of 47th Victoria, chapter 32, intituled, "An Act to Amend the Liquor License Act, 1883."

I.—Question—Are the following Acts in whole or in part within the legislative authority of the Parliament of Canada, namely:—

- (1) The Liquor License Act, 1883.
- (2) An Act to Amend the Liquor License Act, 1883.

II.—Question—If the Court is of opinion that a part or parts only of the said Acts are within the legislative authority of the Parliament of Canada, what part or parts of said Acts are so within such legislative authority?

And the said case having come before the Court for hearing on the 23rd day of September last, whereupon, and upon application of Mr. Bethune, Q.C., one of the counsel representing the Dominion of Canada, the said case so referred was amended by stating that in pursuance of section 26, sub-section 3, of the said Act, 47th Victoria, chapter 32, "An Act to Amend the Liquor License Act, 1883," the Provinces of Ontario, Quebec, New Brunswick, and British Columbia had become parties to the said case, and the said case having been subsequently further amended by stating that the Province of Nova Scotia had also become a party thereto.

And the said case, so amended, having come on for hearing before this Court in presence of counsel for the said Dominion of Canada and the said Provinces on the 23rd, 24th, 25th, 26th, and 27th days of September last past, whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to reserve the said case for consideration, and the Court, having duly considered the same, do now certify to His Excellency the Governor-General in Council, in answer to the questions submitted for the determination of the said Court in the said

case, that, in the opinion of the said Court, the Acts referred to in the said case, namely, "The Liquor License Act, 1883," and "An Act to Amend the Liquor License Act, 1883," are, and each of them is, *ultra vires* of the legislative authority of the Parliament of Canada, except in so far as the said Acts respectively purport to legislate respecting those licenses mentioned in section seven of the said "The Liquor License Act, 1883," which are there denominated vessel licenses and wholesale licenses, except also in so far as the said Acts respectively relate to the carrying into effect of the provisions of the Canada Temperance Act, 1878.

The Honourable Mr. Justice Henry being of opinion that the said Acts are *ultra vires* in whole.

NOTE.—The clauses of the McCarthy Act which provide for the enforcement of the Canada Temperance Act, are the 142nd, 143rd, and 144th of the Act of 1883, as follows:—

142. A Board of Commissioners may, notwithstanding that such Act (the Canada Temperance Act) affects the whole of any county, be nominated therefor; and the said Board and the Inspectors shall have, discharge, and exercise all such powers and duties respectively for preventing the sale, disposal of, or traffic in liquor contrary to the said Acts or this Act, as they respectively have, or should exercise or perform under this Act.

143. The Board and Inspectors (appointed under the Dominion License Act) shall exercise and discharge all their respective powers and duties for the enforcement of "The Canada Temperance Act, 1878," and "The Temperance Act of 1864," as well as of this Act, so far as the same apply, within the limits of any county, city, incorporated village, or township, or parish in which the first mentioned Act or any by-law under the said secondly mentioned Act is in force.

144. A wholesale license to be obtained under and subject to the provisions of this Act, shall be necessary in order to authorise or make lawful any sale of liquor in quantities allowed under the provisions of the Canada Temperance Act, 1878.