

THE FIRST CANADIAN WAR-TIME PROHIBITION
MEASURE

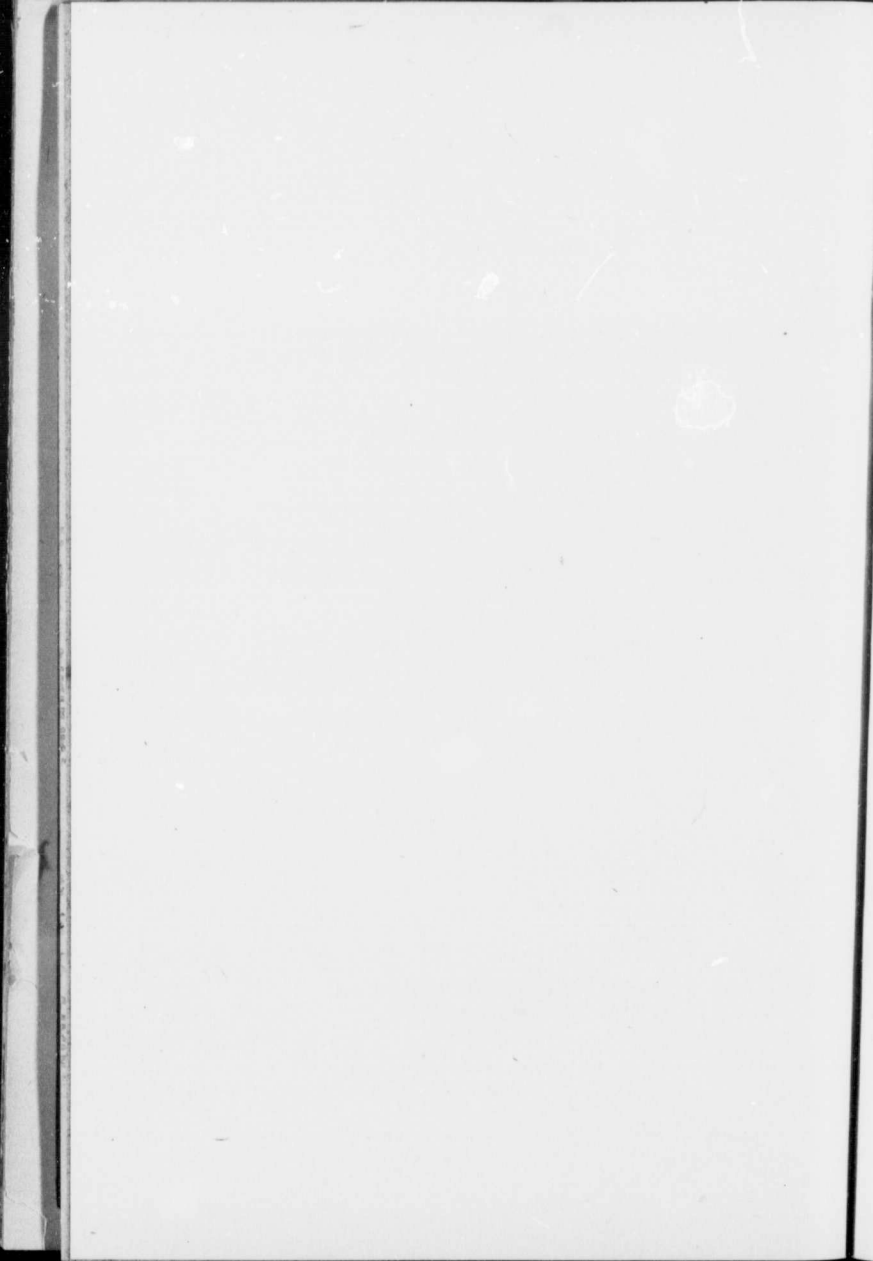
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THE FIRST CANADIAN WAR-TIME PROHIBITION MEASURE

WHEN the United States declared war on Great Britain in 1812, many of the farming class in Canada were called to the colours in the militia to defend their country—with the result that the production of grain in the colony was diminished in 1813 and 1814. The scarcity was to a certain extent counterbalanced by the flight to the United States of traitors, a large proportion of whom had come from that place, and also of some American citizens. When in 1813 a portion of the Niagara frontier was taken possession of by the enemy, many of the inhabitants of that district, disaffected to the Crown, joined the American forces, and some of these left crops of grain almost ready for harvesting. John Beverley Robinson,¹ the acting attorney-

¹ Although but just of age, still under articles, and not yet called to the Bar by the Law Society of Upper Canada, John Beverley Robinson was appointed acting Attorney-General of Upper Canada on the death of John Macdonell from wounds received at the Battle of Queenston Heights, October, 1812. He owed this extraordinary promotion to his friend, Mr. Justice Powell, who had been from boyhood a close and intimate friend of the new Administrator, Sir Roger Sheaffe. D'Arcy Boulton, the Solicitor-General, who was entitled to the promotion, was then a prisoner in France. On his return from captivity he became Attorney-General, and Robinson succeeded him as Solicitor-General; when Boulton was elevated to the Bench, Robinson became Attorney-General, and this office he filled until he, too, received promotion and became Chief Justice of Upper Canada. It has not, I think, been noticed that Robinson practised at the Bar for more than two years before he was called to the Bar by the Law Society of Upper Canada. The Law Society Act of 1797 allowed the judges to admit to practice members of the Bar of other British possessions; but prohibited from practice all persons except those so called and those called by the Law Society. In 1812 it had been found impracticable to get together a quorum of the Benchers of the Law Society to call to the Bar those who were entitled. The Court of King's Bench, November 11, 1812, notwithstanding the statute, called upon Dr. William Warren Baldwin, the Treasurer of the Law Society, "being a resident practitioner . . . to produce the Books of the Society and report to the court the names of the students entitled by the time of their admission to be called if there was present a quorum of Benchers and to show cause why they should not respectively be called to the Bar without such presentation." The Books were produced in court, November 14, 1812, and the "following gentlemen were admitted Barristers of this Honourable Court:

general, was directed by the Administrator and Commander of the Forces, General de Rottenburg, to report the facts to Chief Justice Thomas Scott, Chairman of the Committee of the Executive Council; and he did so. The Committee took speedy action. Naturally the General thought the military should take charge, but the Council advised against committing to any military authority the measures proposed, and advised the issue of special commissions to select Justices of the Peace in the Districts in which the lands were situated, "to report cases, make necessary arrangements for the preservation of the grain, to appreciate its value and receive and answer any claims that may arise by reason of the execution of their powers."¹

While the Committee were all agreed on the steps to be taken, it was recognized that there was no common or statute law which could be applied to effect the desired result; and consequently the Administrator of the Government was recommended to act in his capacity of Commander of the Forces in Upper Canada.² He did so; and the several commissioners were instructed that when proof was laid before them of treasonable adhesion to the enemy, the evidence should be preserved and the informants bound over to give testimony to support indictments which it was intended should be laid at the next Court of Oyer and Terminer in the District. These proceedings caused the flight of more traitors, open or veiled, and had some effect in reducing the scarcity of grain. But, of course, the effect was not very marked; another plan much more successful—and to us more interesting—is now to be noted.

Upper Canada until about the middle of the nineteenth century was perhaps the most drunken country in the world; and whiskey made from wheat was the universal beverage. This liquor was much like the *whiskey blanc* of the province of Quebec; it was

Jonas Jones, Esquire, George Ridout, John B. Robinson, Christopher Alexander Hagerman." Of these the first and fourth became justices of the Court of King's Bench, the second Judge of a District Court, and the third Chief Justice of the Province. This proceeding was wholly *ultra vires* and irregular: those thus called afterwards regularized their standing by being called to the Bar by the Law Society in Hilary Term, 1815, when a quorum of Benchers was obtained.

¹ This and other quotations are from the original papers in the Canadian Archives at Ottawa (Sundries, Upper Canada). The quotation is from a letter from Chief Justice Scott to de Rottenburg, from York, July 18, 1813.

² See letter from Chief Justice Scott to Edward McMahon, Secretary to the Administrator, July 22, 1813. Sir Roger Hale Sheaffe had been Administrator from October, 1812, until June 18, 1813, when de Rottenburg succeeded him.

raw, fiery, and potent, and had the great recommendation of being very cheap.¹ Distilleries were planted broadcast over the land, and drove a roaring trade; distillers must needs have grain and they offered high prices for it, thereby increasing the price while they reduced the supply for purposes of food. There was also a little exportation of grain from the Eastern District to Lower Canada—not enough, however, to be a real peril.

In the second session of the sixth provincial parliament, called by Sir Roger Hale Sheaffe and sitting from February 25 to March 13, 1813, the matter of saving grain was earnestly discussed; and at length an Act was passed authorizing the person administering the government of the province to prohibit the exportation of grain (and other provisions) and to restrain the distillation of spirituous liquors from grain.² The legislation was drastic and, if acted upon, was likely to have an effect which had not been borne in mind by the Administrator and Legislators—it was likely to put an end to distilling altogether, and would thus deprive the troops of their accustomed liquor. No person had yet advanced the proposition that fighting men could get along without alcoholic stimulants, even if some weaklings might be forced, and some hypocrites might pretend to do so. De Rottenburg consulted Robinson,³ telling him of the absolute necessity of distilling whiskey for the soldiers; but Robinson was obliged to advise that “unfortunately the Legislature have put it out of his power, so that he cannot license any particular person to distil for the Government, neither can he do it indirectly in any particular case by remitting the penalty because half of it belongs to the informer.”

On July 24, 1813, Robinson wrote to the General's secretary

¹ My father, the late Walter Riddell, told me that at the first election after his arrival in Upper Canada, the General Election of 1834, at the polling booth at Gore's Landing, Rice Lake, there stood at the door a barrel of whiskey with the head staved in and a tin dipper for all to help themselves. In the late 50's and the early 60's I myself carried a whiskey bottle round to the men in the harvest field, accompanied by a brother with a pail of water in which oatmeal was mixed. It was in the 50's that the part of the province immediately north of Lake Ontario began to feel the effects of the temperance movement, and Lodges of Sons of Temperance and of Good Templars became numerous, with most beneficial effects upon drinking habits.

² The Act is (1813) 53 Geo. III, C. 3 (U.C.). It was temporary, but was renewed for a year by (1814) Geo. III, C. 8 (U.C.), and finally expired March 15, 1815. Another temporary Act prohibiting the sale of spirituous liquor to Indians was passed in 1813, 53 Geo. III, C. 5 (U.C.).

³ John Beverley Robinson to McMahon, York, July 24, 1813.

that, while he had put up proclamations in all the Districts of the province, it was for the General to consider whether it was advisable to continue the prohibition "or whether the quantity of grain in the country will render it prudent to recall it by a subsequent Proclamation which he has it in his power to issue whenever he pleases. . . . Now not a gallon of whiskey or other spirits can be distilled and it becomes important to consider whether the army have other means of supply."

The suggestion contained in this letter was promptly acted upon; a fresh proclamation was issued withdrawing the prohibition—and the former trouble revived at once. On November 1, 1813, Robinson wrote to General de Rottenburg submitting "the expediency whether the state of the army will *now* allow a general prohibition of the distillation of grain. The demand for whiskey enables distillers in this part of the country [Robinson wrote from Toronto, then called York] to offer from 12 to 15 shillings, New York currency¹ [\$1.30 to \$1.87½] per bushel for wheat, the natural effect of which will be to raise very considerably the price of flour, an indispensable article and of greater consumption. I suppose the same evil exists in other parts of the Province and it would be well if, consequently with the supply of the troops, a remedy could be provided by a total prohibition." A full supply having been laid in for the troops, the General issued a proclamation forbidding until March 1, 1814, the distillation of any grain.

On March 5, 1814, Robinson wrote to Captain Loring, secretary to the new Administrator, Sir Gordon Drummond, calling his attention to the fact that the prohibitory proclamation had expired, March 1, and added that if it were intended to continue the prohibition he should be informed of the time to be limited in the new proclamation. But the prohibition was permitted to lapse, and we hear no more of it: there was no government to be assailed or voted against, and the first Canadian war-time prohibition measure passed into the limbo of oblivion.

WILLIAM RENWICK RIDDELL

¹ The New York shilling. "York shilling" or "Yorker" was 12½ cents, the York pound, \$2.50. In my boyhood near Cobourg the ordinary method of estimating prices was by York shillings: there was no coin for the York shilling, but the English sixpence passed as such. The use of this method of counting began to wane about sixty years ago and has now almost completely disappeared.

