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CURRENT TOPICS AND CASES.

The *London Law Journal* directs attention to a defect in the English legislation with reference to extradition. Adolf London, a furrier of Leipsic, was arrested in Canada for offences against the bankruptcy law of Germany, and was extradited under the Canadian Extradition Act. But he was sent from Canada in a vessel bound for England, and on his arrival there it was necessary to go through the extradition papers a second time, as the Canadian warrant did not run on English soil. An amendment is needed to the Imperial Act, which will make a surrender in a British possession hold good while the fugitive is being taken over other British territory, or is being carried in British ships.

Some amusement seems to have been caused by an offence inadvertently committed by the Lord Chief Justice of England, Lord Russell of Killowen. Lords as well as commoners have to be sworn in at the opening of a new Parliament. Under a statute passed in 1866, members of the House of Lords sitting or joining in debate before taking the oath are subject to a penalty of £500 for each offence. Lord Russell not only sat in the House of Lords

but moved an amendment to a bill introduced by the Lord Chancellor, and got it carried. The last occasion when a similar oversight occurred was in the case of Lord Plunket, archbishop of Dublin, who, shortly after the Act of 1866 became law, made a speech in the House of Lords without having taken the oath. An act of indemnity was passed to relieve his Grace from the apprehension of a suit for the penalty.

Auditors may now breathe freely, says the *London Law Journal*, the Court of Appeal having unanimously reversed the judgment of Mr. Justice Williams in *In re The Kingston Cotton Mills Company*. "The general duty of auditors," the *Law Journal* observes, "was carefully defined by the Court of Appeal in *In re The London and General Bank* (*No.* 2), and that is reaffirmed. The auditor has nothing to do with whether the business of the company is being conducted prudently or imprudently. He has only to ascertain and state the true financial position of the company by examining its books and by bringing to bear on such examination a reasonable degree of care and skill. The question in *In re The Kingston Cotton Mills Company* was, What *is* a reasonable degree of care and skill? Is it want of reasonable care—actionable negligence—on the part of auditors to fail to discover a fraud, possibly a cunningly devised fraud, merely because they ought, had their suspicions been aroused, to have discovered the fraud by an elaborate process of checking and calculation? The Court of Appeal said emphatically, 'No,' and it is clear that any Guildhall jury would have said the same."

The following question, which was recently argued by the Gray's Inn Moot Society, is a curious example of the problems appointed for sharpening the wits of the rising generation of advocates:—"A Queen's Counsel, whilst reading a brief on behalf of a co-respondent to a

divorce petition, discovers that his client is the man who is engaged to be married to his wife's sister, a young widow of large fortune, then staying in his house, and whose trustee he is. The "observations" set out a copy of a letter from the co-respondent to his solicitor practically admitting his guilt, and they state that he absolutely declines to go into the witness-box. The only defence which they suggest is a preliminary objection of a highly technical and doubtful character. The marriage has been fixed for the end of the week, and some 100 guests have already been invited. On the evening of the day that the copy of the letter is read by the Q.C. he imparts its contents to his wife. She repeats them to her sister, who breaks off the engagement and goes abroad. A month later the petition is heard, and is dismissed on the preliminary objection, the merits not being gone into. The client then brings an action for slander against the Q.C. and his wife, and claims 1,000*l.* damages. The defendants plead privilege, but do not justify. Ought the action to succeed to any and what extent?"

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, March, 1896.

Present:—LORD WATSON, LORD HOBHOUSE, LORD DAVEY, and SIR RICHARD COUCH.

ROSS v. THE QUEEN.

Appeal to Privy Council from Supreme Court of Canada—Grounds for granting special leave to appeal.

This was a petition for special leave to appeal from a judgment of the Supreme Court of Canada, affirming a judgment of Mr. Justice Burbidge, in the Exchequer Court, on January 26th, 1895. The petitioners were John Theodore Ross, Frances Ella Ross, John Vesey Foster, Vesey Fitzgerald, and Annie Ross.

Mr. *Vesey Fitzgerald, Q.C.*, and Mr. *Macarness* appeared for the appellants, Ross and others; the Dominion Government was unrepresented.

Mr. *Fitzgerald*, in asking for special leave to appeal, said he did so on four grounds; first, that the amount of the claim was something between £46,000 and £47,000; secondly, that it was to some extent a test case; thirdly, because of the peculiar constitution of the court appealed from. He did not know whether their lordships' attention had ever been directed to the constitution of the Canadian Exchequer Court. It was created by the same act as the Supreme Court.

Lord Hobhouse: You cannot appeal from the Exchequer Court to the Crown, as you can from the Supreme Court.

Mr. *Fitzgerald:* No. The Supreme Court and the Exchequer Court were established by a Canadian Act of 1875, the fourth section of which provided that the Chief Justice and judges of the former Court shall respectively be Chief Justice and judges of the latter; therefore, the Exchequer Court was only another name for the Supreme Court. The petitioners, however, were bound to appeal from the one court to the other; they had no option, and their right to appeal was quite different from that in ordinary cases.

Lord Hobhouse: The case has not gone through so many sieves as in the ordinary course of appeal.

Mr. *Fitzgerald* said his fourth reason for asking for leave to appeal was because of the bearing of the case of *McGreevy* v. *The Queen* on the present action. That case was a very similar one to this. The decision of Mr. Justice Fournier, sitting in the Exchequer Court, was in favor of Mr. McGreevy, but was reversed by the Supreme Court by a majority judgment. That judgment was, however, really in favor of the suppliant, because, out of the five judges, two were for confirming the judgment of Mr. Justice Fournier, two were against, while the fifth agreed with the Exchequer Court on one point, and not on another. He turned the balance for reasons not agreed to by any of the other judges. That was an unsatisfactory state of the law, and one which he thought ought to be, if possible, reviewed. The Dominion Government had instructed its solicitors not to oppose this application.

Lord Hobhouse—What is it all about?

Mr. *Fitzgerald* said he might briefly state the facts. The case arose out of the construction of the Intercolonial Railway. Messrs. Bertrand & Co. made contracts with the Railway Commissioners

for sections 9 and 15. They assigned to Mr. John Ross in 1876. The work was practically done, but settlement of the claim was not discharged in 1879. Mr. John Ross filed a petition of right in the Exchequer Court. His claim then was for a sum of $576,904. The contracts provided, as was usual in such cases, that the work was to be done to the satisfaction of the chief engineer of the line, who would give his certificate on approving of it. The engineer of the line at that time was Mr. Sanford Fleming. Mr. Fleming, about 1874, ceased to discharge his duties on being appointed engineer of the Canadian Pacific Railway, and the adjustment of the various claims under the contracts remained in abeyance. In 1880, a Dominion Order-in-Council was passed, re-appointing Mr. Sanford Fleming to deal with the claims, but he declined to act, and, thereupon, Mr. Frank Shanly was appointed for the purpose of investigating and reporting upon them. He reported that there was properly payable to Mr. John Ross, as representing Messrs. Bertrand, a sum of $231,806, which sum was now claimed. The real point in dispute, to be decided by their Lordships, was whether Mr. Shanly was appointed Chief Engineer, and whether his report was a certificate.

Lord Davey—Do you say he was appointed?

Mr. *Fitzgerald*—Yes, we say he was properly appointed, and could give a certificate. The Government deny it, pointing out informalities. The case of *McGreevy* v. *The Queen* then came on. Mr. Shanly had reported a certain sum as due to McGreevy; and, as the action was considered as a test case, the Ross petition and others were left in abeyance.

Lord Davey—Is this a claim for extra work?

Mr. *Fitzgerald* said it was, to a certain extent. The McGreevy case, like this one, turned on the appointment of Mr. Shanly, and he explained that, on June 1st, 1874, the Intercolonial Railway Commissioners became, by virtue of the Canadian Act, 37 Vic., chap. 15, *functi officio*, and their powers were transferred to the Minister of Public Works. In 1879 the Ministry of Works was divided, and a Minister of Railways appointed. Mr. Shanly's appointment was made by Sir Charles Tupper, then Minister of Railways, and was dated June 21st, 1880. When the Ross petition came up in the Exchequer Court, on January 26th, 1895, Mr. Justice Burbidge dismissed it, saying that he was bound by the Supreme Court judgment in the McGreevy case. On the

matter coming before the Supreme Court, Mr. Justice Taschereau also held, for the same reason, that the appeal must be dismissed. Justices Sedgwick, King and Gwynne were of the same opinion, but Chief Justice Strong was in favor of the suppliant. In view of the facts he had brought to the notice of their Lordships, he asked for leave to appeal.

LORD WATSON, after consultation with the other members of the Committee, said their Lordships were of opinion that this was a case in which leave to appeal should be allowed. Leave was, therefore, given.

SUPREME COURT OF CANADA.

OTTAWA, 20 May, 1896.

GUEVREMONT v. DUFRESNE.

Appeal from judgment of Court of Review to Supreme Court of Canada —54-55 Vict. (D.) c. 25, section 3, sub section 3—Amount in dispute.

Held:—An appeal does not lie to the Supreme Court of Canada from a judgment of the Court of Review, P. Q., where no appeal would lie from the Court of Review to the Judicial Committee of the Privy Council.

In determining what is the amount in dispute the Court is bound by art. 2311, R.S.Q., which enacts that such amount shall be understood to be that demanded, and not that recovered, and therefore interest accrued during the pendency of the suit cannot be added to the original demand in order to make the case appealable.

TASCHEREAU, J., in rendering judgment, said:—This case comes up on a motion to quash. It brings up a question upon which this Court has not yet passed, though it was noticed by some of the judges in *Couture* v. *Bouchard* (21 Can. S.C.R. 281). The point to be determined is whether, under sub-section 3 of section 3, 54-55 Vict., c. 25, an appeal lies to this Court from the Court of Review in cases were no appeal lies from the Court of Review to the Privy Council. We find no difficulty in holding that it is impossible to construe that sub-section otherwise than it has been done in the case referred to of *Couture* v. *Bouchard*, by Gwynne and Patterson, JJ. If the party aggrieved by the

judgment has no right of appeal to the Privy Council, he has no right to appeal to this Court. But the appellant, who is condemned by this judgment of the Court of Review to pay a sum exceeding £500 sterling, by adding to the amount claimed in first instance the interest accrued before the judgment, contends that, under the decisions of the Privy Council, such interest given by the judgment as part of the demand should be taken into consideration, when the right to appeal depends upon the amount in controversy. That would appear to be so as a general rule, when the right to appeal depends upon the amount in controversy on the appeal. *Goorospersad* v. *Juggutchunder* (8 Moo. Ind. App. 166; 13 Moo. 472); *Anderson* v. *The Quebec Fire Assur. Co.* (13 Moo. 477) *Barker* v. *Ownston* (4 App. Cas. 270); *Mathieu* v. *The Montmorency* (Cass. Dig. 451). But does this apply to appeals to the Privy Council in the Province of Quebec, wherein it is enacted in express terms (Art. 2311, Rev. Stat. Q.), that "whenever the right to appeal is dependent upon the amount in dispute, such amount shall be understood to be that demanded and not that recovered, if they are different." These are plain words, susceptible, it seems to me, of but one construction, that given to it by the Court of Appeal in *Stanton* v. *The Home Insurance Company*, (2 *Legal News*, 314). There the amount claimed was the very same amount of $2,150 claimed in the present case, and the appellant, as here, to support his right of appeal to the Privy Council, contended that the interest accrued since the institution of the action gave him the statutory right of appeal. But the Court held that under the statute (now Art. 2311 R.S.Q.) that contention could not prevail. Here are the *considérants* of the judgment refusing leave to appeal:—

"Considering that it is provided by Sect. 25 of Chap. 77, C.S. L.C., that whenever the right to appeal from any judgment of any Court is dependent on the amount in dispute, such amount shall be understood to be that demanded, and not that recovered, if they are different;

"And considering that the amount which the appellant demanded in and by his declaration in this cause, was less than £500 sterling, to wit, a sum of $2,150, and that according to law and the practice of this Court, the interest accrued since the action was served and returned into Court, cannot be added to

the principal sum demanded in order to determine the right of appellant to appeal from the judgment rendered in this cause; the Court doth reject the motion of the appellant, for leave to appeal to Her Majesty in Her Privy Council, with costs."

The application for leave to appeal was made, it is true, in that case by the plaintiff, whilst here the appeal is taken by the defendant, but there is no reason that I can see for the contention that the statute does not apply to both cases. *Laberge* v. *The Equitable* (24 Can. S.C.R. 59), and in *Grand Trunk Railway Company* v. *Godbout* (3 Q. L. R. 346), the Court of Appeal applied the rule to an appeal by the defendant. See also *Richer* v. *Voyer* (2 Rev. Lég. 244).

It might perhaps be argued here, as we are not bound by those decisions, that this enactment does not apply to appeals to the Privy Council. But, as said by Dorion, C.J., in that same case of *Grand Trunk Railway Company* v. *Godbout* (3 Q. L. R. 346), the words of the enactment do not admit of such a contention. They apply to all appeals in the Province, and in the Consolidated Statutes of 1860 they are to be found in the same statute that provides for the appeal to the Privy Council. And that statutory right of appeal to the Privy Council, over which the Province has a legislative control, not only never questioned by the Privy Council itself, but expressly recognized in all the cases from the Province wherein the question came up before their Lordships, (without, of course, interfering with Her Majesty's prerogative rights on the subject) cannot, by any rule of construction that I know of, be excluded from it. That being so, this appeal must be quashed, as the appellant has no right of appeal to the Privy Council.

It is needless to say that we do not lose sight of the ruling of the Privy Council in *Allan* v. *Pratt* (13 App. Cas. 780), and that line of cases, but, as remarked by Dorion, C.J., in the case of *Stanton* v. *The Home Insurance Company*, the attention of the Privy Council does not appear to have been drawn to this particular enactment.

As for *Monette* v. *Lefebvre* (16 Can. S.C.R. 387) in this court, and our decisions in the same sense, they have no application. The Quebec Statute (art. 2311 R.S.Q.), though applying to the the appeals to the Privy Council, does not apply to appeals to this court, though now we have sub-sec. 4 of 54–55 V., c. 25, in the same sense.

The appeal should be quashed, but without costs, as the point is a new one, and the judgment is not founded upon precisely the same grounds as were urged by the respondent at the argument of the motion.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, 9 May, 1896.

Present:—LORD WATSON, LORD HOBHOUSE, LORD MORRIS AND SIR RICHARD COUCH.

THE ATTORNEY-GENERAL FOR ONTARIO v. THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA AND THE DISTILLERS' AND BREWERS' ASSOCIATION OF ONTARIO.

Constitutional law—Provincial and Dominion powers—Manufacture, importation and sale of intoxicating liquors—Prohibitory liquor laws.

This was an appeal brought by special leave of Her Majesty-in-Council against a judgment of the Supreme Court of Canada of January 15, 1895, in the matter of certain questions referred to that Court by the Governor-General of Canada. The judgment of the Supreme Court of Canada will be found in 24 Can. S. C. R. 170.

Mr. *John J. Maclaren, Q.C.* (of the Canadian Bar), and Mr. *Haldane, Q.C.*, appeared for the appellant; Mr. *E. L. Newcombe, Q.C.* (of the Canadian Bar), and Mr *H. W. Loehnis* for the respondent, the Attorney-General of the Dominion of Canada; and the Hon. *Edward Blake, Q.C.* (of the Canadian Bar), and Mr. *Wallace Nesbitt, Q.C.* (of the Canadian Bar), for the respondents, the Distillers' and Brewers' Association of Ontario.

The arguments, which lasted four days, were heard in August, 1895, before a Board, consisting of the Lord Chancellor, Lord Herschell, Lord Watson, Lord Davey, and Sir Richard Couch, when judgment was reserved.

The Governor-General of Canada had submitted to the Supreme Court of Canada for hearing and consideration the following questions, viz.:—

1. Has a Provincial Legislature jurisdiction to prohibit the sale within the Province of spirituous, fermented, or other intoxicating liquors?

2. Or has the Legislature such jurisdiction regarding such portions of the Province as to which the Canada Temperance Act is not in operation?

3. Has a Provincial Legislature jurisdiction to prohibit the manufacture of such liquors within the Province?

4. Has a Provincial Legislature jurisdiction to prohibit the importation of such liquors into the Province?

5. If a Provincial Legislature has not jurisdiction to prohibit sales of such liquors, irrespective of quantity, has such Legislature jurisdiction to prohibit the sale by retail according to the definition of a sale by retail, either in statutes in force in the Province at the time of Confederation or any other definition thereof?

6. If a Provincial Legislature has a limited jurisdiction only as regards the prohibition of sales, has the Legislature jurisdiction to prohibit sales subject to the limits provided by the several sub-sections of the 99th section of the Canada Temperance Act, or any of them (Revised Statutes of Canada, chapter 106, section 99)?

And 7. Had the Ontario Legislature jurisdiction to enact the 18th section of the Act passed by the Legislature of Ontario in the 53rd year of Her Majesty's reign, and intituled, "An Act to Improve the Liquor License Acts," as said section is explained by the Act passed by the said Legislature in the 54th year of Her Majesty's reign and intituled, "An Act Respecting Local Option in the Matter of Liquor Selling?"

The 18th section of the Ontario Act provided:—"The Council of every township, city, town, and incorporated village may pass by-laws for prohibiting the sale by retail of spirituous, fermented, or other manufactured liquors in any tavern, inn, or other house or place of public entertainment, and for prohibiting altogether the sale thereof in shops and places other than houses of public entertainment. Provided that the by-law before the final passing thereof has been duly approved of by the electors of the municipality in the manner provided by the sections in that behalf of the Municipal Act. Provided, further, that nothing in this section contained shall be construed into an exercise of jurisdiction by the Legislature of the Province of Ontario beyond the revival of provisions of law which were in force at the date of the passing of the British North America Act, and which the

subsequent legislation of this Province purported to repeal." The Ontario Act, 54 Vict., sec. 40, provided that the last mentioned 18th section did not intend to affect the provisions of section 252 of the Consolidated Municipal Act of Canada, 29 and 30 Vic., c. 51, which enacted that "no tavern or shop license shall be necessary for selling any liquors in the original packages in which the same have been received from the importer or manufacturer, provided such packages contain respectively not less than five gallons or one dozen bottles, save in so far as the said section 252 may have been affected by the 9th sub-section of 249 of the same Act, and save in so far as licenses for sales in such quantities are required by the Liquor License Act; and the said section 18 and all by-laws which have heretofore been made or shall hereafter be made under the said section 18, and purporting to prohibit the sale by retail of spirituous, fermented, or other manufactured liquors in any tavern, inn, or other house or place of public entertainment, and prohibiting altogether the sale thereof in shops and places other than houses of public entertainment, are to be construed as not purporting or intended to affect the provisions contained in the said section 252, save as aforesaid and as if the said section and the said by-laws had expressly so declared." The matter was heard before five judges of the Supreme Court, and the questions were all answered in the negative by three of the judges, the other two judges being of opinion that all should be answered in the affirmative except questions 3 and 4. (24 Can. S. C. R. 170).

LORD WATSON:—

Their Lordships think it expedient to deal in the first instance with the seventh question, because it raises a practical issue to which the able arguments of counsel on both sides of the Bar were chiefly directed, and also because it involves considerations which have a material bearing upon the answers to be given to the other six questions submitted in this appeal. In order to appreciate the merits of the controversy, it is necessary to refer to certain laws for the restriction or suppression of the liquor traffic which were passed by the Legislature of the old Province of Canada before the Union, or have since been enacted by the Parliament of the Dominion, and by the Legislature of Ontario respectively. When the British North America Act of 1867

came into operation, the Statute Book of the old Province contained two sets of enactments applicable to Upper Canada, which, though open in expression, were in substance very similar. The most recent of these enactments were embodied in the Temperance Act, 1864 (27 and 28 Vict., c. 18), which conferred upon the Municipal Council of every county, town, township, or incorporated village, "besides the powers at present conferred on it by law," power at any time to pass a by-law prohibiting the sale of intoxicating liquors, and the issue of licenses therefor, within the limits of the municipality. Such by-law was not to take effect until submitted to and approved by a majority of the qualified electors; and provision was made for its subsequent repeal, in deference to an adverse vote of the electors. The previous enactments relating to the same subject, which were in force at the time of the Union, were contained in the Consolidated Municipal Act, 29 and 30 Vict., c. 51. They empowered the Council of every township, town and incorporated village, and the Commissioners of Police in cities, to make by-laws for prohibiting the sale by retail of spirituous, fermented, or other manufactured liquors in any inn or other house of public entertainment, and for prohibiting totally the sale thereof in shops and places other than houses of public entertainment, provided the by-law, before the final passing thereof, had been duly approved by the electors of the municipality in the manner prescribed by the Act. After the Union the Legislature of Ontario inserted these enactments in the Tavern and Shop License Act, 32 Vict., c. 32. They were purposely omitted from subsequent consolidations of the Municipal and Liquor License Acts; and, in the year 1886, when the Canada Temperance Act was passed by the Parliament of Canada, there was no provincial law authorizing the prohibition of liquor sales in Ontario, save the Temperance Act, 1864.

The Canada Temperance Act, 1886 (Revised Statutes of Canada, 49 Vic., c. 106), is applicable to all the Provinces of the Dominion. Its general scheme is to give to the electors of every county or city the option of adopting, or declining to adopt the provisions of the second part of the Act, which makes it unlawful for any person "by himself, his clerk, servant or agent, to expose or keep for sale, or directly or indirectly, on any pretence, or upon any device, to sell or barter, or in consideration of the purchase of any other property, give to any other person any

intoxicating liquor." It expressly declares that no violation of these enactments shall be made lawful by reason of any license of any description whatsoever. Certain relaxations are made in the case of sales of liquor for sacramental or medicinal purposes, or for exclusive use in some art, trade or manufacture. The prohibition does not extend to manufacturers, importers or wholesale traders who sell liquors in quantities above a specified limit when they have good reason to believe that the purchasers will forthwith carry their purchase beyond the limits of the county, or city or of any adjoining county or city, in which the provisions of the Act are in force. For the purpose of bringing the second part of the Act into operation an order of the Governor General of Canada in Council is required. The order must be made on the petition of a county or city, which cannot be granted until it has been put to the vote of the electors of such county or city. When a majority of the votes polled are adverse to the petition it must be dismissed, and no similar application can be made within three years from the day on which the poll was taken. When the vote is in favor of the petition, and is followed by an order-in-council, one-fourth of the qualified electors of the county or city may apply to the Governor-General-in-Council for a recall of the order, which is to be granted in the event of a majority of the electors voting in favor of the application. Power is given to the Governor-General in Council to issue in the like manner, and after similar procedure, an order repealing any by-law passed by any municipal council for the application of the Temperance Act of 1864. The Dominion Act also contains an express repeal of the prohibitory clauses of the Provincial Act of 1864, and of the machinery thereby provided for bringing them into operation—(1) as to every municipality within the limits of Ontario in which, at the passing of the Act of 1886, there was no municipal by-law in force; (2) as to every municipality within these limits in which a prohibitive by-law then in force shall be subsequently repealed under the provisions of either Act; and (3) as to every municipality, having a municipal by-law, which is included in the limits of, or has the same limits with, any county or city in which the second part of the Canada Temperance Act is brought into force before the repeal of the by-law, which by-law, in that event, is declared to be null and void.

With the view of restoring to municipalities within the

Province, whose powers were affected by that repeal, the right to make by-laws which they had possessed under the law of the old Province, the Legislature of Ontario passed section 18, of 53 Vict., c. 56, to which the seventh question in this case relates. The enacting words of the clause are introduced by a preamble which recites the previous course of legislation, and the repeal of the Canada Temperance Act of the Upper Canada Act of 1864 in municipalities where not in force, and concludes thus:—"It is expedient that municipalities should have the powers by them formerly possessed." The enacting words of the clause, with the exception of one or two changes of expression which do not affect its substance, are a mere reproduction of the provisions, not of the Temperance Act, 1864, but of the kindred provisions of the Municipal Act (29 and 30 Vict., c. 51), which had been omitted from the consolidated statutes of the Province. A new proviso is added that "nothing in this section contained shall be construed into an exercise of jurisdiction by the Province of Ontario beyond the revival of provisions of law which were in force at the date of the passing of the British North America Act, and which the subsequent legislation of this Province purported to repeal." The Legislature of Ontario subsequently passed an act (54 Vic., c. 46) to explain that section 18 was not meant to repeal, by implication, certain provisions of the Municipal Act (29 and 30 Vic., c. 51), which limit its application to retail dealings.

The seventh question raises the issue whether, in the circumstances which have just been detailed, the Provincial Legislature had authority to enact section 18. In order to determine that issue it becomes necessary to consider (1) Whether the Parliament of Canada had jurisdiction to enact the Canada Temperance Act, and, if so, (2) whether, after that Act became the law of each Province of the Dominion, there yet remained power with the Legislature of Ontario to enact the provisions of section 18. The authority of the Dominion Parliament to make laws for the suppression of liquor traffic in the provinces is maintained, in the first place, upon the ground that such legislation deals with matters affecting "the peace, order, and good government of Canada," within the meaning of the introductory and general enactment of section 91 of the British North America Act; and, in the second place, upon the ground that it concerns

"the regulation of trade and commerce," being No. 2 of the enumerated classes of subjects which are placed under the exclusive jurisdiction of the Federal Parliament by that section. These sources of jurisdiction are in themselves distinct, and are to be found in different enactments. It was apparently contemplated by the framers of the Imperial Act of 1867 that the due exercise of the enumerated powers conferred upon the Parliament of Canada by section 91 might, occasionally and incidentally, involve legislation upon matters which are *prima facie* committed exclusively to the Provincial Legislatures by section 92. In order to provide against that contingency, the concluding part of section 91 enacts 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 Legislatures of the Provinces." It was observed by this Board in *Citizens' Insurance Company of Canada* v. *Parsons*" (7 App. Ca., 108), that the paragraph just quoted "applies in its grammatical construction only to no. 16 of section 92." The observation was not material to the question arising in that case, and it does not appear to their Lordships to be strictly accurate. It appears to them that the language of the exception in section 91 was meant to include, and correctly describes, all the matters enumerated in the 16 heads of section 92 as being, from a provincial point of view, of a local or private nature. It also appears to their Lordships that the exception was not meant to derogate from the legislative authority given to provincial Legislatures by these 16 sub-sections save to the extent of enabling the Parliament of Canada to deal with matters, local or private, in those cases where such legislation is necessarily incidental to the exercise of the powers conferred upon it by the enumerated heads of clause 91. That view was stated and illustrated by Sir Montague Smith in *Citizens' Insurance Company of Canada* v. *Parsons* (7 App. Ca., pp. 108, 109), and in *Cushing* v. *Dupuy* (5 App. Ca., 415), and it has been recognized by this Board in *Tennant* v. *Union Bank of Canada* (1894, App. Ca., 46), and in *Attorney-General of Ontario* v. *Attorney-General of the Dominion* (1894, App. Ca, 200).

The general authority given to the Canadian Parliament by the introductory enactments of section 91 is "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 it is declared, but not so as to restrict the generality of these words, that the exclusive authority of the Canadian Parliament extends to all matters coming within the classes of subjects which are enumerated in the clause. They may, therefore, be matters not included in the enumeration upon which the Parliament of Canada has power to legislate, because they concern the peace, order and good government of the Dominion. But to those matters which are not specified among the enumerated subjects of legislation, the exception from section 92, which is enacted by the concluding words of section 91, has no application, and, in legislating with regard to such matters, the Dominion Parliament has no authority to encroach upon any class of subjects which is exclusively assigned to Provincial Legislatures by section 92. These enactments appear to their Lordships to indicate that the exercise of Legislative power by the Parliament of Canada in regard to all matters not enumerated in section 92 ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon Provincial Legislation with respect to any of the classes of subjects enumerated in section 92. To attach any other construction to the general power which, in supplement of its enumerated powers, is conferred upon the Parliament of Canada by section 91 would, in their Lordships' opinion, not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the Provinces. If it were once conceded that the Parliament of Canada has authority to make laws applicable to the whole Dominion in relation to matters which in each Province are substantially of local or private interest upon the assumption that these matters also concern the peace, order and good government of the Dominion, there is hardly a subject enumerated in section 92 upon which it might not legislate to the exclusion of the Provincial Legislatures. In construing the introductory enactments of section 91 with respect to matters other than those enumerated which concern the peace, order, and good government of Canada, it must be kept in view that section 94, which empowers the Parliament of Canada to make provision for the uniformity of the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, does not extend to the Province of Quebec; and also that the Dominion legislation thereby authorized is expressly declared to be of no effect, unless and until it has been adopted and enacted by the Provincial Legislature.

[Concluded in next issue].