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SUPREME COURT OF CANADA.

OTTAWA, 18 May, 1896.

Exchequer Court.]

MOSS v. THE QUEEN.

Constitutional law—Navigable waters—Title to soil in bed of—Crown—Dedication of public lands by—Presumption of dedication—User—Obstruction to navigation—Public nuisance—Balance of convenience.

The title to soil in the beds of navigable rivers is in the Crown in right of the Provinces not in right of the Dominion. *Dixon* v. *Snetsinger* (23 U. C. C. P. 235) discussed.

The property of the Crown may be dedicated to the public, and a presumption of dedication will arise from facts sufficient to warrant such an inference in the case of a subject.

Under 23 Vict., c. 2, s. 35 (Province of Canada) power was given to the Crown to dispose of and grant water lots in rivers and other navigable waters in Upper Canada, and under it the power to grant the soil carried with it the power to dedicate it to public use.

The user of a bridge over a navigable river for thirty-five years is sufficient to raise a presumption of dedication.

If a Province before Confederation had so dedicated the bed of a navigable river for the purposes of a bridge, that it could not object to it as an obstruction to navigation, the Crown as repre-

senting the Dominion on assuming control of the navigation, was bound to permit the maintenance of the bridge.

An obstruction to navigation cannot be justified on the ground that the public benefit to be derived from it outweighs the inconvenience it causes. It is a public nuisance though of very great public benefit, and the obstruction of the slightest possible degree.

Appeal dismissed with costs.

Robinson, Q.C., for appellant.
Leitch, Q.C., for respondent.

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18 May, 1896.

Prince Edward Island.]

OWEN v. OUTERBRIDGE.

Ships and shipping—Chartered ship—Perishable goods—Ship disabled by excepted perils—Transhipment—Obligation to tranship—Repairs—Reasonable time—Carrier—Bailee.

If a chartered ship be disabled by excepted perils from completing the voyage the owner does not necessarily lose the benefit of his contract, but may forward the goods by other means to the place of destination and earn the freight.

The option to tranship must be exercised within a reasonable time, and if repairs are decided upon they must be effected with reasonable despatch, or otherwise the owner of the cargo becomes entitled to his goods.

Quære. Is the ship owner obliged to tranship?

If the goods are such as would perish before repairs could be made, the shipowner should either tranship or deliver them up, or sell if the cargo owner does not object, and his duty is the same if a portion of the cargo, severable from the rest, is perishable. And if in such a case the goods are sold without the consent of their owner, the latter is entitled to recover from the ship owner the amount they would have been worth to him if he had received them either at the port of shipment or at their destination at the time of the breach of duty.

Appeal dismissed with costs.

Davies, Q.C., for appellant.
Peters, Q.C., Atty. Gen. P. E. I., for respondent.

18 May, 1896.

New Brunswick.]

NEW BRUNSWICK RAILWAY CO. v. KELLY.

Registry law—Registered deed—Priority over earlier unregistered conveyance—Notice—Suit to postpone.

In 1868 N. conveyed a parcel of land to a Railway Company who did not register their deed. In 1872 he made a deed in favour of K. of land which the company claimed was comprised in their conveyance, and a suit in equity was brought praying for a decree postponing the later deed, which was registered, to that of the company. To prove notice to K. of the earlier conveyance, two witnesses swore that, in conversation with them, K. had admitted knowledge that the company owned the land.

Held, affirming the decision of the Supreme Court of New Brunswick (33 N. B. Rep. 110) that it was necessary for the company to prove actual notice that would have made the conduct of K. in taking and registering her deed fraudulent; that the witnesses as to the admissions were not connected with the property, and their evidence would not prove even constructive notice; and that giving them entire credit their evidence was not sufficient.

Appeal dismissed with costs.

Blair, Atty. Gen. of N. B., for the appellants.

Pugsley, for the respondent.

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18 May, 1896.

Ontario.]

COWAN v. ALLEN.

Will—Construction of — Executory devise over — Contingencies — "Dying without issue"—"Revert"—Dower—Annuity—Election by widow—Devolution of Estates Act, 49 *Vict.* (*P*) *ch.* 22 *—Conditions in restraint of marriage—Added parties—Orders* 46 *and* 48 *Ontario Judicature Act—Practice—R. S. O.* (1887) *ch.* 109, *s.* 30.

A testator divided his real estate among his three sons, the portion of A. C., the eldest son, being charged with the payment of $1000 to each of his brothers and its proportion of the widow's dower. The will also provided that "should any of my three

sons die without lawful issue and leave a widow, she shall have the sum of fifty dollars per annum out of his estate so long as she remains unmarried, and the balance of the estate shall revert to his brothers with the said fifty dollars on her marriage." A. C. died after the testator, leaving a widow but no issue.

Held, reversing the judgment of the Court of Appeal, that the gift over in the last mentioned clause was intended by the testator to take effect on the death of the devisee without issue at any time and not in the lifetime of the testator only; that it was no fit ground for departing from this *primâ facie* meaning of the terms of the gift that very burdensome conditions were imposed upon the devisee; and that no such conditions would be imposed on the devise to A. C. by this construction as the two sums of $1,000 each charged in favour of his brothers were charged upon the whole fee, and if paid by him, his personal representatives on his death could enforce re-payment to his estate.

Held, also, that the widow of A. C. was entitled to dower out of the lands devised to him, notwithstanding the defeasible character of his estate; that she was also entitled to the annuity of $50 per annum given her by the will, it not being inconsistent with her right to dower, and she was therefore not put to her election; that the limitation of the annuity to widowhood was not invalid as being in undue restraint of marriage; and that she could not claim a distributive share of the devised lands under the Devolution of Estates Act which applies only to the descent of inheritable lands.

The mortgagee of the reversionary interest of one of his brothers in the lands devised to A. C. was improperly added, in the master's office, as a party to an administration action and could take objection at any time to the proceeding either by way of appeal from the report or on further directions; she was not limited to the time mentioned in Order 48 which refers only to a motion to discharge or vary the decree.

Appeal allowed with costs.

Moss, Q.C., & *Hall*, for appellants.

Shepley, Q.C., & *Simpson*, for respondent Allen.

Riddell, Q.C., for respondent Jeanne Cowan.

18 May, 1896.

North West Territories.]

DINNER v. HUMBERSTONE.

Constitutional law—Municipal corporation—Powers of legislature—Monopoly—License—Highways and ferries—Navigable streams—By-laws and resolutions—Inter-municipal ferry—Tolls—Disturbance of licensee—Damages—North-west Territories Act, R. S. C. ch. 50, secs. 13 and 24—B. N. A. Act (1867) *s. 92, ss. 8, 10 and 16—Rev. Ord. N. W. T.* (1888) *ch. 23—N. W. Ter. Ord. No. 7 of* 1891–92, *sec. 4.*

The legislative assembly of the North West Territories has power to legislate upon the subject of ferries within its territorial jurisdiction, by authority of the "North West Territories Act" R. S. C. ch. 50, and the orders in council passed under the provisions of the said Act respecting the jurisdiction of the legislative assembly as to municipal institutions and matters of a local and private nature within the North West Territories, and can properly delegate such power to a municipality incorporated by special ordinance.

Semble, that such powers may also result from the authority thereby granted in respect to the issuing of licenses for raising revenues for territorial or municipal purposes.

The municipality of the Town of Edmonton has under the fourth section of its charter of incorporation (N. W. Ter. Ord. No. 7 of 1891–92) and of "The Ferries Ordinance" (Rev. Ord. N. W. Ter. ch. 28) which is incorporated with the town charter, power to grant licenses of exclusive rights to ferry across the Saskatchewan river, a navigable stream within the North West Territories, having a terminal point upon the boundary of the municipality, and may exercise such powers, prescribe the limits of the ferry and establish tolls thereon subject to the conditions imposed upon the Lieutenant-Governor-in-Council by "The Ferries Ordinance," by the issuing of a license to such effect and without the necessity of passing a by-law in the same manner as might have been done by the Lieutenant-Governor-in-Council under "The Ferries Ordinance."

The appellants and other defendants formed a "club" or partnership calling themselves "The Edmonton Ferry Company," for the purpose of building, establishing and operating a ferry

within the limits assigned to the plaintiff in the license to him by the municipality granting him exclusive rights to ferry across the river in question, the conditions being that any person could become a member of the Club by signing the list of membership and taking at least one share of $5 therein, which share entitled the signer to 100 tickets that were to be received in payment of ferry service according to a prescribed tariff, and when expended could be renewed by another subscription for a second share, getting by it 100 more tickets to be used in the same manner, and so on *ad infinitum*, the number of shares that might thus be taken being unlimited. The Club supplied their ferryman with a list of membership, and established and operated their ferry without any license, within a short distance of one of the plaintiff's licensed ferries, thereby as he claimed, disturbing him in his exclusive rights.

Held, that the establishment of the defendants' ferry and the use thereof by members and others under their club regulations, was an infringement of the plaintiff's rights under his license, and that he was entitled to recover damages sustained by reason of such infringement.

Appeal dismissed with costs.

Armour, *Q.C.*, for appellants.
Taylor, *Q.C.*, for respondent.

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18 May, 1896.

North West Territories.]

JELLETT v. WILKIE.

Real property Act—Registration—Execution—Unregistered transfers —Equitable rights—Sales under execution—R. S. C. ch. 51 ; 51 *Vict.* (*D*) *ch.* 20.

Notwithstanding the provisions of sec. 94 of the Territories Real Property Act as amended by 51 Vict. (D) ch. 20, an execution creditor can only affect or sell the real estate of his debtor subject to the charges, liens and equities which affected it in the hands of the execution debtor.

Purchasers holding lands subject to the Territories Real Property Act under unregistered transfers are entitled to be protected in their title as equitable owners and chargees.

The provisions in the Territories Real Property Act respecting the registration of executions against lands do not give the

execution creditor any superiority of title over prior unregistered transferees, but merely protect the lands from intermediate sales and dispositions by the execution debtor, though if the sheriff sells, the purchaser by priority of registration of the sheriff's deed would under the act take priority over previous unregistered transfers.

Appeal dismissed with costs.

Taylor, *Q.C.*, for the appellants.

Foy, *Q.C.*, and *Chrysler*, *Q.C.*, for the respondents.

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.

[Concluded from p. 192.]

These enactments would be idle and abortive if it were held that the Parliament of Canada derives jurisdiction from the introductory provisions of section 91 to deal with any matter which is, in substance, local or Provincial and does not truly affect the interest of the Dominion as a whole. Their Lordships do not doubt that some matters, in their origin local and Provincial, might attain such dimensions as to affect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for their regulation or abolition in the interests of the Dominion. But great caution must be observed in distinguishing between that which is local and Provincial, and, therefore, within the jurisdiction of the Provincial Legislatures, and that which has ceased to be merely local or Provincial and has become matter of national concern in such sense as to bring it within the jurisdiction of the Parliament of Canada. An Act restricting the right to carry weapons of offence, or their sale to young persons within the Province, would be within the

authority of the Provincial Legislature, but traffic in arms or the possession of them in such circumstances as to raise a suspicion that they were to be used for seditious purposes or against a foreign State are matters which, their Lordships conceive, might be competently dealt with by the Parliament of the Dominion.

The judgment of this Board in *Russell* v. *The Queen* (7 App. Ca., 829) has relieved their Lordships from the difficult duty of considering whether the Canada Temperance Act, 1886, relates to the peace, order, and good government of Canada in such sense as to bring its provisions within the competency of the Canadian Parliament. In that case the controversy related to the validity of the Canada Temperance Act of 1878, and neither the Dominion nor the provinces were represented in the argument. It arose between a private prosecutor and a person who had been convicted, at his instance, of violating the provisions of the Canadian Act, within a district of New Brunswick in which the prohibitory clauses of the Act had been adopted. But the provisions of the Act of 1878 were, in all material respects, the same with those which are now embodied in the Canada Temperance Act of 1886; and the reasons which were assigned for sustaining the validity of the earlier, are, in their Lordships' opinion, equally applicable to the later Act. It therefore appears to them that the decision in *Russell* v. *The Queen* must be accepted as an authority to the extent to which it goes—namely, that the restrictive provisions of the Act of 1886, when they have been duly brought into operation in any provincial area within the Dominion, must receive effect as valid enactments, relating to the peace, order and good government of Canada. That point being settled by decision, it becomes necessary to consider whether the Parliament of Canada had authority to pass the Temperance Act of 1886, as being an Act for the "regulation of trade and commerce" within the meaning of no. 2 of section 91. If it were so, the Parliament of Canada would, under the exception from section 92, which has already been noticed, be at liberty to exercise its legislative authority, although, in so doing, it should interfere with the jurisdiction of the Provinces. The scope and effect of no. 2 of section 91 were discussed by this Board at some length in *Citizens Insurance Company* v. *Parsons* (7 App. Ca., 96), where it was decided that, in the absence of legislation upon the subject by the Canadian Parliament, the

Legislature of Ontario had authority to impose conditions, as being matters of civil right, upon the business of fire insurance, which was admitted to be a trade, so long as those conditions only affected Provincial trade. Their Lordships do not find it necessary to re-open that discussion in the present case. The object of the Canada Temperance Act, 1886, is not to regulate retail transactions between those who trade in liquor and their customers, but to abolish all such transactions within every provincial area in which the enactments have been adopted by a majority of the local electors. A power to regulate, naturally, if not necessarily, assumes, unless it is enlarged by the context, the conservation of the thing which is to be made the subject of regulation. In that view their lordships are unable to regard the prohibitive enactments of the Canadian statute of 1886 as regulations of trade and commerce. They see no reason to modify the opinion which was recently expressed on their behalf by Lord Davey in *Municipal Corporation of the City of Toronto* v. *Virgo* (1896, App. Ca., 93), in these terms:—"Their Lordships think there is a marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and, indeed, a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed."

The authority of the Legislature of Ontario to enact section 18 of 53 Vict., c. 56, was asserted by the appellant on various grounds. The first of these, which was very strongly insisted on, was to the effect that the power given to each Province by no 8 of section 92 to create municipal institutions in the Province necessarily implies the right to endow these institutions with all the administrative functions which had been ordinarily possessed and exercised by them before the time of the union. Their Lordships can find nothing to support that contention in the language of section 92, no. 8, which, according to its natural meaning, simply gives Provincial Legislatures the right to create a legal body for the management of municipal affairs. Until Confederation, the Legislature of each Province as then constituted could, if it chose, and did in some cases, intrust to a municipality the execution of powers which now belong exclusively to the Parliament of Canada. Since its date, a Provincial Legislature cannot delegate any power which it does not possess; and the extent and nature of the functions which it can commit to a municipal

body of its own creation must depend upon the legislative authority which it derives from the provisions of section 92 other than no. 8. Their Lordships are likewise of opinion that section 92, no. 9, does not give Provincial Legislatures any right to make laws for the abolition of the liquor traffic. It assigns to them "shop, saloon, tavern, auctioneer, and other licenses, in order to the raising of a revenue for Provincial, local or municipal purposes." It was held by this Board, in *Hodge* v. *The Queen* (9 App. Ca., 117), to include the right to impose reasonable conditions upon the licensees, which are in the nature of regulation; but it cannot, with any show of reason, be construed as authorizing the abolition of the sources from which revenue is to be raised. The only enactments of section 92 which appear to their Lordships to have any relation to the authority of provincial Legislatures to make laws for the suppression of the liquor traffic are to be found in nos. 13 and 16, which assign to their exclusive jurisdiction (1) "property and civil rights in the province," and (2) "generally all matter of a merely local or private nature in the Province." A law which prohibits retail transactions, and restricts the consumption of liquor within the ambit of the Province, and does not affect transactions in liquor between persons in the Province and persons in other Provinces or foreign countries, concerns property in the Province which would be the subject matter of the transactions if they were not prohibited, and also the civil rights of persons in the Province. It is not impossible that the vice of intemperance may prevail in particular localities within a province to such an extent as to constitute its cure by restricting or prohibiting the sale of liquor a matter of merely local or private nature, and therefore falling *prima facie* within no. 16. In that state of matters it is conceded that the Parliament of Canada could not imperatively enact a prohibitory law adapted and confined to the requirements of localities within the Province where prohibition was urgently needed. It is not necessary for the purposes of the present appeal to determine whether provincial legislation for the suppression of the liquor traffic, confined to matters which are provincial or local within the meaning of nos. 13 and 16, is authorized by the one or by the other of these heads. It cannot, in their Lordships' opinion, be logically held to fall within both of them.

In section 92, no. 16 appears to them to have the same office

which the general enactment, with respect to matters concerning peace, order and good government of Canada, so far as supplementary of the enumerated subjects, fulfils in section 91. It assigns to the Provincial Legislature all matters in a provincial sense local or private which have been omitted from the preceding enumeration, and although its terms are wide enough to cover, they were obviously not meant to include Provincial Legislation in relation to the classes of subjects already enumerated. In the able and elaborate argument addressed to their Lordships on behalf of the respondents, it was practically conceded that a Provincial Legislature must have power to deal with the restriction of the liquor traffic from a local and provincial point of view, unless it be held that the whole subject of restriction or abolition is exclusively committed to the Parliament of Canada as being within the regulation of trade and commerce. In that case the subject, in so far at least as it had been regulated by Canadian legislation, would, by virtue of the concluding enactment of section 91, be excepted from the matters committed to Provincial Legislatures by section 92. Upon the assumption that section 91 (2) does not embrace the right to suppress a trade, Mr. Blake maintained that, whilst the restriction of the liquor traffic may be competently made matter of legislation in a provincial as well as a Canadian aspect, yet the Parliament of Canada has, by enacting the Temperance Act of 1886, occupied the whole possible field of legislation in either aspect so as completely to exclude legislation by a Province. That appears to their Lordships to be the real point of controversy raised by the question with which they are at present dealing, and, before discussing the point, it may be expedient to consider the relation in which Dominion and provincial legislation stand to each other. It has been frequently recognized by this Board—and it may now be regarded as settled law—that, according to the scheme of the British North America Act, the enactments of the Parliament of Canada, in so far as these are within its competency, must override Provincial legislation. But the Dominion Parliament has no authority conferred upon it by the Act to repeal directly any provincial statute, whether it does or does not come within the limits of jurisdiction prescribed by section 92. The repeal of a provincial Act by the Parliament of Canada can only be effected by repugnancy between its provisions and the enactments of the Dominion, and if the existence of such repugnancy should

become matter of dispute the controversy cannot be settled by the action either of the Dominion or of the Provincial Legislature, but must be submitted to the judicial tribunals of the country. In their Lordships' opinion the express repeal of the old Provincial Act of 1864 by the Canada Temperance Act, 1886, was not within the authority of the Parliament of Canada. It is true that the Upper Canada Act of 1364 was continued in force within Ontario by section 129 of the British North America Act "until repealed, abolished, or altered by the Parliament of Canada or by the Provincial Legislature" according to the authority of Parliament "or of that Legislature." It appears to their Lordships that neither the Parliament of Canada nor the Provincial Legislatures have authority to repeal statutes which they could not directly enact. Their Lordships had occasion in *Dobie* v. *The Temporalities Board* (7 App. Ca., 136) to consider the power of repeal competent to the Legislature of a Province. In that case the Legislature of Quebec had repealed a statute continued in force after the Union by section 129, which had this peculiarity, that its provisions applied both to Quebec and to Ontario, and were incapable of being severed so as to make them applicable to one of these Provinces only. Their Lordships held (7 App. Ca., 147) that the powers conferred "upon the Provincial Legislatures of Ontario and Quebec to repeal and alter the statutes of the old Parliament of the Province of Canada are made precisely co-extensive with the powers of direct legislation with which these bodies are invested by the other clauses of the Act of 1867," and that it was beyond the authority of the Legislature of Quebec to repeal statutory enactments which affected both Quebec and Ontario. The same principle ought, in the opinion of their Lordships, to be applied to the present case. The old Temperance Act of 1864 was passed for Upper Canada, or, in other words, for the Province of Ontario; and its provisions being confined to that Province only, could not have been directly enacted by the Parliament of Canada. In the present case, the Parliament of Canada would have no power to pass a prohibitory law for the Province of Ontario; and, could, therefore, have no authority to repeal, in express terms, an Act which is limited in its operation to that Province. In like manner, the express repeal, in the Canada Temperance Act of 1886, of liquor prohibitions adopted by a municipality in the Province of Ontario under the sanction of Provincial legislation does not appear to

their Lordships to be within the authority of the Dominion Parliament.

The question must next be considered whether the Provincial enactments of section 18, to any, and, if so, to what extent, come into collision with the provisions of the Canadian Act of 1886. In so far as they do, Provincial must yield to Dominion legislation, and must remain in abeyance unless and until the act of 1886 is repealed by the Parliament which passed it. The prohibitions of the Dominion Act have in some respects an effect which may extend beyond the limits of a province; and they are all of a very stringent character. They draw an arbitrary line at eight gallons in the case of beer, and at ten gallons in the case of other intoxicating liquors, with the view of discriminating between wholesale and retail transactions. Below the limit, sales within a district which has adopted the act are absolutely forbidden, except to the two nominees of the Lieut.-Governor of the Province, who are only allowed to dispose of their purchases in small quantities for medicinal and other specified purposes. In the case of sales above the limit the rule is different. The manufacturers of pure native wines from grapes grown in Canada have special favor shown them. Manufacturers of other liquors within the district, as also merchants duly licensed, who carry on an exclusively wholesale business, may sell for delivery anywhere beyond the district, unless such delivery is to be made in an adjoining district where the Act is in force. If the adjoining district happened to be in a different Province, it appears to their Lordships to be doubtful whether, even in the absence of Dominion legislation, a restriction of that kind could be enacted by a Provincial Legislature. On the other hand, the prohibitions which section 18 authorizes municipalities to impose within their respective limits do not appear to their Lordships to affect any transactions in liquor which have not their beginning and their end within the Province of Ontario. The first branch of its prohibitory enactments strikes against sales of liquor by retail in any tavern or other house or other place of public entertainment. The second extends to sales in shops and places other than houses of public entertainment, but the context indicates that it is only meant to apply to retail transactions, and that intention is made clear by the terms of the Explanatory Act, 54 Vict., c. 46, which fixes the line between wholesale and retail at one dozen of liquor in bottles, and five gallons if sold in other receptacles. The im-

porter or manufacturer can sell any quantity above that limit, and any retail trader may do the same provided that he sells the liquor in the original packages in which it was received by him from the importer or manufacturer. It thus appears that, in their local application within the Province of Ontario, there would be considerable difference between the two laws; but it is obvious that their provisions could not be in force within the same district or Province at one and the same time. In the opinion of their Lordships, the question of conflict between their provisions which arises in this case does not depend upon their identity or non-identity, but upon a feature which is common to both. Neither statute is imperative, their prohibitions being of no force or effect until they have been voluntarily adopted and applied by the vote of a majority of the electors in a district or municipality. In *Russell* v. *The Queen* (7 App. Ca., 841) it was observed by this Board, with reference to the Canada Temperance Act of 1878—"The Act as soon as it was passed became a law for the whole Dominion, and the enactments of the first part, relating to the machinery for bringing the second part into force, took effect and might be put in motion at once and everywhere within it." No fault can be found with the accuracy of that statement. *Mutatis mutandis*, it is equally true as a description of the provisions of section 18. But in neither case can the statement mean more than this—that on the passing of the Act, each district or municipality within the Dominion or the Province, as the case might be, became vested with a right to adopt and enforce certain prohibitions if it thought fit to do so. But the prohibitions of those Acts, which constitute their object and their essence, cannot with the least degree of accuracy be said to be in force anywhere until they have been locally adopted. If the prohibitions of the Canada Temperance Act had been made imperative throughout the Dominion, their Lordships might have been constrained by previous authority to hold that the jurisdiction of the Legislature of Ontario to pass section 18, or any similar law, had been superseded. In that case no provincial prohibitions such as are sanctioned by section 18 could have been enforced by a municipality without coming into conflict with the paramount law of Canada. For the same reason provincial prohibitions in force within a particular district will necessarily become imperative whenever the prohibitory clauses of the Act of 1886 have been adopted by that district. But their

Lordships can discover no adequate grounds for holding that there exists repugnancy between the two laws in districts of the Province of Ontario where the prohibitions of the Canadian Act are not and may never be in force. In a district which has, by the votes of its electors, rejected the second part of the Canadian Act the option is abolished for three years from the date of the poll, and it hardly admits of doubt that there could be no repugnancy whilst the option given by the Canadian Act was suspended. The Parliament of Canada has not either expressly or by implication, enacted that, so long as any district delays or refuses to accept the prohibitions which it has authorized, the Provincial Parliament is to be debarred from exercising the legislative authority given it by section 92 for the suppression of the drink traffic as a local evil. Any such legislation would be unexampled, and it is a grave question whether it would be lawful. Even if the provisions of section 18 had been imperative they could not have taken away or impaired the right of any district in Ontario to adopt and thereby bring into force the prohibitions of the Canadian Act.

Their Lordships, for these reasons, give a general answer to the seventh question, in the affirmative. They are of opinion that the Ontario Legislature had jurisdiction to enact section 18, subject to this necessary qualification—that its provisions are or will become inoperative in any district of the Province which has already adopted, or may subsequently adopt, the second part of the Canada Temperance Act of 1886.

Their Lordships will now answer briefly, in their order, the other questions submitted by the Governor-General of Canada. So far as they can ascertain from the record, these differ from the question which has already been answered in this respect—that they relate to matters which may possibly become litigious in the future, but have not as yet given rise to any real and present controversy. Their Lordships must further observe that these questions, being in their nature academic rather than judicial, are better fitted for the consideration of the officers of the Crown than of a court of law. The replies to be given to them will necessarily depend upon the circumstances in which they may arise for decision, and these circumstances are in this case left to speculation. It must, therefore, be understood that the answers which follow are not meant to have, and cannot have, the weight of a judicial determination,

except in so far as their Lordships may have occasion to refer to the opinions which they have already expressed in discussiag the seventh question.

Answers to Questions I. and II.—Their Lordships think it sufficient to refer to the opinion expressed by them in disposing of the seventh question.

Answer to Question III.—In the absence of conflicting legislation by the Parliament of Canada their Lordships are of opinion that the Provincial Legislatures would have jurisdiction to that effect if it were shown that the manufacture was carried on under such circumstances and conditions as to make its prohibition a merely local matter in the Province.

Answer to Question IV.—Their Lordships answer this question in the negative. It appears to them that the exercise by the Provincial Legislature of such jurisdiction, in the wide and general terms in which it is expressed, would probably trench upon the exclusive authority of the Dominion Parliament.

Answers to Questions V. and VI.—Their Lordships consider it unnecessary to give a categorical reply to either of these questions. Their opinion upon the points which the questions involve has been sufficiently explained in their answer to the seventh question.

Their Lordships will humbly advise Her Majesty to discharge the order of the Supreme Court of Canada, dated January 15, 1895, and to substitute therefor the several answers to the seven questions submitted by the Governor-General of Canada, which have been already indicated. There will be no costs of this appeal.

EXTRADITION CASES.

Some curious points have arisen in recent cases under the Fugitive Offenders and Extradition Acts. On March 18 Andrew Boyd was charged before Sir John Bridge with forgery in Canada. The alleged offence was committed in 1890, and it was contended that the claim of the Crown was settled in 1893 by a fine or forfeiture of 13,000 dollars under the Canadian Customs Acts; and that the sole remedy was under these Acts, and that the matter was already *res judicata*. In the result, Sir John Bridge was of opinion that the incriminated acts did not constitute an indictable offence, but a mere breach of certain regulations, and Boyd was discharged.

On March 12 one O'Brien was committed for extradition to the United States for larceny in Rhode Island. Under the old-fashioned and peculiar procedure of that State, he had been allowed to put in a plea of *nolo contendere* (long since forgotten, if ever used, in England, but equivalent to "Guilty"), and to be at large while awaiting sentence, which he preferred to await in England until returned by magisterial order.—*Law Journal* (*London*).