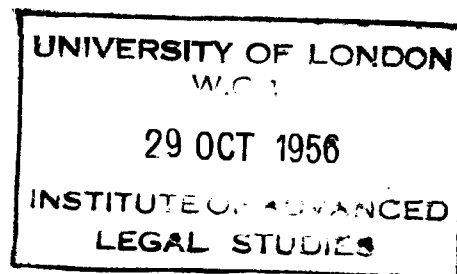


In the Privy Council.

No. 37 of 1895.



FROM THE SUPREME COURT OF CANADA.

BETWEEN THE ATTORNEY-GENERAL FOR ONTARIO . *Appellant*
AND

(1) THE ATTORNEY-GENERAL FOR THE DOMINION OF
CANADA, and (2) THE DISTILLERS' AND BREWERS'
ASSOCIATION OF TORONTO *Respondents.*

IN THE MATTER OF CERTAIN QUESTIONS REFERRED TO THE
SUPREME COURT OF CANADA BY HIS EXCELLENCY THE
GOVERNOR-GENERAL OF CANADA.

SUBJECT :
PROVINCIAL JURISDICTION.
PROHIBITORY LIQUOR LAWS.

APPELLANT'S CASE.

1. This is an appeal brought by special leave of Her Majesty in Council against the judgment of the Supreme Court of Canada given on the 15th January, 1895, in the matter of certain questions referred to that Court by His Excellency the Governor-General of Canada.

2. Under the provisions of the Act of the Parliament of Canada, 54-55 Victoria, chapter 25, section 4, His Excellency the Governor-General of Canada, by Order in Council passed on the 26th October, 1893, submitted to the Supreme Court of Canada for hearing and consideration the following questions, namely :—

- 10 (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 ?

Record.

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APPELLANT'S CASE.

(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 subsections of the 99th section of "The Canada Temperance Act" or any of them (Revised Statutes of Canada, chapter 106, section 99)?

(7) Has 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"?

3. The said 18th section of the Act of the Legislature of Ontario, 53rd Victoria, chapter 56, referred to in the last of the said questions, is as follows:—

" 18. Whereas the following provision of this section was at the date
 " of confederation in force as a part of the Consolidated Municipal Act 20
 " (29th and 30th Victoria, chapter 51, section 249, subsection 9), and was
 " afterwards re-enacted as subsection 7 of section 6 of 32nd Victoria, chapter
 " 32, being The Tavern and Shop License Act of 1868, but was afterwards
 " omitted in subsequent consolidations of The Municipal and The Liquor
 " License Acts, similar provisions as to local prohibition being contained in
 " the Temperance Act of 1864, 27th and 28th Victoria, chapter 18; and
 " the said last-mentioned Act having been repealed in municipalities where
 " not in force by the Canada Temperance Act, it is expedient that
 " municipalities should have the powers by them formerly possessed; it is
 " hereby enacted as follows:—

" 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 40
 " 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."

1. The Act of the Legislature of Ontario, 54 Victoria, chapter 46, also referred to in the said seventh question, is as follows:—

" 1. It is hereby declared that the Legislature of this Province, by

10 “ enacting section 18 of the Act to improve the Liquor License Laws,
 “ passed in the 53rd year of Her Majesty’s reign, chaptered 56, for the
 “ revival of provisions of law which were in force at the date of the
 “ British North America Act, 1867, did not intend to affect the provisions
 “ of section 252 of the Consolidated Municipal Act, being chapter 51 of
 “ the Acts passed in the 29th and 30th years of Her Majesty’s reign by the
 “ late Parliament of Canada, 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 subsection of section 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
 20 “ 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 18 and the said by-laws had expressly so
 “ declared.”

5. The said Court at the said hearing was composed of five judges, and
 the said questions were on the 15th January, 1895, all answered in the negative
 by three of the said judges, the other two judges being of the opinion that all
 the said questions should be answered in the affirmative except questions three
 and four.

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30 6. Previous to the passing of the British North America Act, 1867, the
 Legislatures of the several Provinces which were formed into the Dominion of
 Canada had conferred upon the municipalities within the respective Provinces
 large prohibitory powers with respect to the traffic in intoxicating liquors, and
 ever since the said date the said traffic had been prohibited in a large portion
 of the Dominion under and by virtue of such legislation, and of similar
 legislation by the several Provincial Legislatures.

7. The Appellant humbly submits that the present appeal should be
 allowed, and the said questions answered in the affirmative for, among others,
 the following

REASON.

40 Because the matters mentioned in the said questions come within
 the classes of subjects enumerated in section 92 of the British
 North America Act, 1867, and more particularly subsections
 8, 9, 13, and 16 of the said section, and do not come within
 any of the classes of subjects enumerated in section 91 of
 the said Act.

JOHN J. MACLAREN.
 J. R. CARTWRIGHT.

In the Privy Council.

No. 37 of 1895.

**ON APPEAL FROM THE SUPREME COURT OF
CANADA.**

BETWEEN

**THE ATTORNEY - GENERAL FOR
ONTARIO *Appellant***

AND

**(1) THE ATTORNEY - GENERAL FOR
THE DOMINION OF CANADA, and
(2) THE DISTILLERS' AND BREWERS'
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Respondents.

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**SUBJECT :
PROVINCIAL JURISDICTION.
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APPELLANT'S CASE.

FRESHFIELDS & WILLIAMS,

APPELLANT'S SOLICITORS.