

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Attorney-General of the Province of Manitoba v. The Manitoba License Holders' Association, delivered 22nd November 1901.*

Present at the Hearing :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by Lord Macnaghten.*]

In July 1900 an Act was passed by the Legislature of Manitoba for the suppression of the liquor traffic in that Province. The Act which is known by its short title of "The Liquor Act" was to have come into operation on the 1st of June 1901. Before that date on a reference under Chapter 28 of the Revised Statutes of Manitoba the Court of King's Bench pronounced the whole Act to be unconstitutional. From this decision the present Appeal has been brought.

Although the questions submitted to the Court of King's Bench by the Lieutenant-Governor in Council were eleven in number the only one considered in the Court below and the only one argued before this Board was the first "Had the Legislative Assembly of Manitoba jurisdiction to enact the Liquor Act and if not in what particular or respect has it exceeded its power?" To this the answer given was "It

“exceeded its powers in enacting the Liquor “Act as a whole.” The other questions are either of an academical character or such as are material only in the event of the Act being declared partially and not wholly unconstitutional. No answer that could be given to any of those questions would be of any practical value. Their Lordships therefore will confine their attention to the subject to which the judgment of the Court of King’s Bench and the arguments at the Bar were addressed.

The question at issue depends on the meaning and effect of those sections in the British North America Act 1867 which provide for the distribution of legislative powers between the Dominion and the Provinces. The subject has been discussed before this Board very frequently and very fully. Mindful of advice often quoted but not perhaps always followed their Lordships do not propose to travel beyond the particular case before them.

The drink question to use a common expression which is convenient if not altogether accurate is not to be found specifically mentioned either in the classes of subjects enumerated in Section 91 and assigned to the Legislature of the Dominion or in those enumerated in Section 92 and thereby appropriated to Provincial Legislatures. The omission was probably not accidental. The result has been somewhat remarkable. On the one hand according to *Russell v. Reg.* it is competent for the Dominion Legislature to pass an Act for the suppression of intemperance applicable to all parts of the Dominion and when duly brought into operation in any particular district deriving its efficacy from the general authority vested in the Dominion Parliament to make laws for the peace order and good government of Canada. On the other hand according to the decision in *Attorney-General for Ontario*

See *Citizens’ Insurance Company v. Parsons*, 7 A.C. 98, 109.

7 A.C. 829.

A.C. 1896, 348.

v. *Attorney-General for the Dominion* it is not incompetent for a Provincial Legislature to pass a measure for the repression or even for the total abolition of the liquor traffic within the Province provided the subject is dealt with as a matter "of a merely local nature" in the Province and the Act itself is not repugnant to any Act of the Parliament of Canada.

In delivering the judgment of this Board in the case of the *Attorney-General for Ontario v. The Attorney-General for the Dominion* Lord Watson expressed a decided opinion that provincial legislation for the suppression of the liquor traffic could not be supported under either No. 8 or No. 9 of Section 92. His Lordship observed that the only enactments of that Section which appeared to have any relation to such legislation were to be found in Nos. 13 and 16 which assigned to the exclusive jurisdiction of Provincial Legislatures (1) "Property and civil rights in the Province" and (2) "generally all matters of a merely local or private nature in the Province." He added that it was not necessary for the purpose of that Appeal to determine whether such legislation was authorised by the one or by the other of these heads. Although this particular question was thus left apparently undecided a careful perusal of the judgment leads to the conclusion that in the opinion of the Board the case fell under No. 16 rather than under No. 13. And that seems to their Lordships to be the better opinion. In legislating for the suppression of the liquor traffic the object in view is the abatement or prevention of a local evil rather than the regulation of property and civil rights—though of course no such legislation can be carried into effect without interfering more or less with "property and civil rights in the Province." Indeed if the case is to be regarded as dealing

with matters within the class of subjects enumerated in No. 13 it might be questionable whether the Dominion Legislature could have authority to interfere with the exclusive jurisdiction of the Province in the matter.

The controversy therefore seems to be narrowed to this one point:—Is the subject of “the Liquor Act” a matter “of a merely local nature in the Province” of Manitoba and does the Liquor Act deal with it as such? The judgment of this Board in the case of *The Attorney-General for Ontario v. The Attorney-General for the Dominion* has relieved the case from some if not all of the difficulties which appear to have presented themselves to the learned Judges of the Court of King’s Bench. This Board held that a Provincial Legislature has jurisdiction to restrict the sale within the Province of intoxicating liquors so long as its legislation does not conflict with any legislative provision which may be competently made by the Parliament of Canada and which may be in force within the Province or any district thereof. It held further that there might be circumstances in which a Provincial Legislature might have jurisdiction to prohibit the manufacture within the Province of intoxicating liquors and the importation of such liquors into the Province. For the purposes of the present question it is immaterial to inquire what those circumstances may be. The judgment therefore as it stands and the Report to Her late Majesty consequent thereon shew that in the opinion of this tribunal matters which are “substantially of local or of private interest” in a Province—matters which are of a local or private nature “from a provincial point of view”—to use expressions to be found in the judgment are not excluded from the category of “matters of a merely local or private nature” because legislation dealing

See Report to Her Majesty, 9th May 1896.

with them however carefully it may be framed may or must have an effect outside the limits of the Province and may or must interfere with the sources of Dominion revenue and the industrial pursuits of persons licensed under Dominion Statutes to carry on particular trades.

The Liquor Act proceeds upon a recital that "it is expedient to suppress the liquor traffic in Manitoba by prohibiting provincial transactions in liquor." That is the declared object of the Legislature set out at the commencement of the Act. Towards the end of the Act there occurs this section:—"119. While this Act is intended to prohibit and shall prohibit transactions in liquor which take place wholly within the Province of Manitoba except under a license or as otherwise specially provided by this Act and restrict the consumption of liquor within the limits of the Province of Manitoba it shall not affect and is not intended to affect *bonâ fide* transactions in liquor between a person in the Province of Manitoba and a person in another province or in a foreign country and the provisions of this Act shall be construed accordingly." Now that provision is as much part of the Act as any other section contained in it. It must have its full effect in exempting from the operation of the Act all *bonâ fide* transactions in liquor which come within its terms. It is not necessary to go through the provisions of the Act. It is enough to say that they are extremely stringent—more stringent probably than anything that is to be found in any legislation of a similar kind. Unless the Act becomes a dead letter it must interfere with the revenue of the Dominion with licensed trades in the Province of Manitoba and indirectly at least with business operations beyond the limits of the Province. That seems clear. And that was substantially the ground on which the Court of King's Bench declared the

Act unconstitutional. But all objections on that score are in their Lordships' opinion removed by the judgment of this Board in the case of *The Attorney-General for Ontario v. The Attorney-General for the Dominion*. Having attentively considered the very able and elaborate judgments of Killam C.J. and Bain J. in which Richards J. concurred and the arguments of Counsel in support of their view their Lordships are not satisfied that the Legislature of Manitoba has transgressed the limits of its jurisdiction in passing the Liquor Act.

Their Lordships will therefore humbly advise His Majesty that the judgment of the Court of King's Bench of the Province of Manitoba dated the 23rd of February 1901 ought to be discharged and that in lieu thereof there ought to be substituted the following answers to the 11 questions submitted to it:—

1. In answer to the first question:—That the Legislative Assembly of Manitoba had jurisdiction to enact the Liquor Act.
2. In answer to the questions numbered 2 to 11 both inclusive:—That no useful answer can be given to these questions.

There will be no costs of this Appeal.

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