

19 OCT 1956

INSTITUTE OF ADVANCED
STUDIES

29455

No. 32 of 1896.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

BETWEEN THE BREWERS' AND MALTSTERS' ASSOCIATION OF
ONTARIO *Appellants*

AND

THE ATTORNEY-GENERAL FOR ONTARIO . *Respondent.*

IN THE MATTER of certain questions referred to the Court of Appeal for
Ontario by His Honor the Lieutenant-Governor of Ontario.

SUBJECT :

PROVINCIAL JURISDICTION.

BREWERS' AND DISTILLERS' LICENSES.

CASE FOR THE RESPONDENT.

1. This is an Appeal from the judgment of the Court of Appeal for the
Province of Ontario, dated the 14th January, 1896, upon certain questions
referred by the Lieutenant-Governor in Council to the said Court for hearing
and consideration, pursuant to the provisions of the Ontario Act, 53 Victoria,
chapter 13, being an Act for expediting the decision of constitutional and other
provincial questions. The questions referred were as follow :—

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- 2. (1) Is sub-section 2 of section 51 of the Liquor License Act, Revised
Statutes of Ontario, chapter 194, requiring every brewer, distiller,
or other person duly licensed by the Government of Canada, as
mentioned in sub-section 1, to first obtain a license under the
Act to sell by wholesale the liquor manufactured by him when
sold for consumption within the Province, a valid enactment ?
- (2) Has the Legislature of Ontario power either in order to raise a
revenue for provincial purposes or for any other object within
provincial jurisdiction to require brewers, distillers, and other
persons duly licensed by the Government of Canada for the

RESPONDENTS' CASE.

manufacture and sale of fermented, spirituous, or other liquors, to take out licenses to sell the liquors manufactured by them and to pay a license fee therefor?

(3) If so must one and the same fee be exacted from all such brewers, distillers, and persons?

3. Section 51 of the Liquor License Act, Revised Statutes of Ontario, chapter 194, referred to in the first of the said questions, is as follows:—

51. (1) Sections 49 and 50 shall not prevent any brewer, distiller, or other person duly licensed by the Government of Canada for the manufacture of fermented, spirituous, or other liquors, 10
from keeping, having, or selling any liquor manufactured by him in any building wherein such manufacture is carried on, provided such building forms no part of and does not communicate by any entrance with any shop or premises wherein any article authorised to be manufactured under such license is sold by retail, or wherein is kept any broken package of such articles.

(2) Every such brewer, distiller, or other person shall also first obtain a license to sell by wholesale under this Act the liquor so manufactured by him, when sold for consumption within this Province, under which license the said liquor may be sold by 20
sample, or in original packages, in any municipality as well as in that in which it is manufactured; but no such sales shall be in quantities less than those prescribed in sub-section 4 of section 2 of this Act.

For convenience of reference sub-section 4 of section 2 of the Liquor License Act, and sections 49 and 50 above-mentioned, are appended to this case.

4. The Court at the said hearing was composed of four judges (Hagarty, C. J., and Burton, Osler, and Maclellan, J. J.) and on the 14th January, 1896, judgment was given answering the two first questions in the affirmative and the third in the negative. The judgment followed a previous decision of 30
the said Court in the case of the Queen *versus* Halliday (21 Ontario Reports, 42).

5. The Respondent humbly submits that the decision of the Court of Appeal was right and should be confirmed, for the reasons stated in the judgment in the above-mentioned case of the Queen *versus* Halliday, and, among others, for the following

REASON.

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 sub-sections 2, 9, and 16 of the said section, and do not come 40
within any of the classes enumerated in section 91 of the said Act.

J. R. CARTWRIGHT.
R. B. HALDANE.

APPENDIX

REFERRED TO IN PARAGRAPH 3 OF THE CASE FOR THE RESPONDENT.

Sub-section 4 of section 2 of the Liquor License Act, Revised Statutes of Ontario, 1887, chapter 194, is as follows :—

10 (4) “License by wholesale,” or “Wholesale license,” shall mean a license for selling, bartering, or trafficking, by wholesale only, in such liquors in warehouses, stores, shops, or places other than inns, ale, or beerhouses, or other houses of public entertainment, in quantities not less than five gallons in each cask or vessel at any one time; and in any case where such selling by wholesale is in respect of bottled ale, porter, beer, wine or other fermented or spirituous liquor, each such sale shall be in quantities not less than one dozen bottles, of at least three half-pints each, or two dozen bottles of at least three-fourths of one pint each, at any one time.

Sections 49 and 50 of the said Liquor License Act are as follow :—

- 20 49. (1) No person shall sell by wholesale or retail any spirituous, fermented, or other manufactured liquors without having first obtained a license under this Act authorising him so to do; but this section shall not apply to sales under legal process or for distress, or sales by assignees in insolvency.
- (2) No person, unless duly licensed, shall by any sign or notice hold himself out to the public as so licensed; and the use of any sign or notice for this purpose is hereby prohibited.
- 30 50. No person shall keep or have in any house, building, shop, eating-house, saloon, or house of public entertainment, or in any room or place whatsoever, any spirituous, fermented, or other manufactured liquors for the purpose of selling, bartering, or trading therein, unless duly licensed thereto under the provisions of this Act; nor shall the occupant of any such shop, eating-house, saloon, or house of public entertainment, unless duly licensed, permit any liquors, whether sold by him or not, to be consumed upon the premises by any person other than members of his family or employees, or guests not being customers.

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FRESHFIELDS & WILLIAMS,

SOLICITORS FOR THE RESPONDENT.

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