

2,1946 44893

UNIVERSITY OF LONDON
W.C.1.

26 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

No. 2 of 1940.

In the Privy Council

ON APPEAL FROM THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF A REFERENCE AS TO THE VALIDITY OF PARTS I, II AND III
OF THE CANADA TEMPERANCE ACT, R.S.C. 1927, CHAPTER 196.

AND IN THE MATTER OF THE CONSTITUTIONAL QUESTIONS ACT, R.S.O. 1937,
CHAPTER 130.

AND IN THE MATTER OF THE CONSOLIDATED RULES OF PRACTICE.

BETWEEN

THE ATTORNEY-GENERAL OF ONTARIO, THE
MODERATION LEAGUE OF ONTARIO - - *Appellant*

AND

THE CANADIAN TEMPERANCE FEDERATION, THE
ONTARIO TEMPERANCE FEDERATION, THE
TEMPERANCE FEDERATIONS OF THE COUN-
TIES OF PERTH, PEEL, HURON AND MANI-
TOULIN ISLAND, THE UNITED CHURCH OF
CANADA, THE SOCIAL SERVICE COUNCIL OF
THE CHURCH OF ENGLAND AND THE ATTOR-
NEY-GENERAL OF CANADA *Respondents.*

APPENDIX TO CASE FOR THE ATTORNEY-GENERAL OF CANADA

INDEX OF REFERENCE

No.	Description of Document.	Page.
1	Extracts from Provincial Statutes containing Prohibitory or Local Option Clauses in force at the time of the enactment of "The Canada Temperance Act," Statutes of Canada, 1878, 41 Victoria, Chapter 16.	4
2	Extract from House of Commons Debates, 1878, pp. 2394-2408 - -	7
3	Extract from House of Commons Debates, 1878, pp. 2485-2486 - -	25
4	Extract from Senate Debates, 1878, pp. 160-164 . . . -	26
5	Extract from Senate Debates, 1878, pp. 338-380 - -	31
6	Extract from Senate Debates, 1878, pp. 552-558 . . . -	93

In the Privy Council.

No. 2 of 1940.

ON APPEAL FROM THE SUPREME COURT OF
ONTARIO.

IN THE MATTER OF A REFERENCE AS TO THE VALIDITY OF PARTS I, II AND III
OF THE CANADA TEMPERANCE ACT, R.S.C. 1927, CHAPTER 196.

AND IN THE MATTER OF THE CONSTITUTIONAL QUESTIONS ACT, R.S.O. 1937,
CHAPTER 130.

AND IN THE MATTER OF THE CONSOLIDATED RULES OF PRACTICE.

BETWEEN

THE ATTORNEY-GENERAL OF ONTARIO, THE
MODERATION LEAGUE OF ONTARIO

Appellant

AND

THE CANADIAN TEMPERANCE FEDERATION, THE
ONTARIO TEMPERANCE FEDERATION, THE
TEMPERANCE FEDERATIONS OF THE COUN-
TIES OF PERTH, PEEL, HURON AND MANI-
TOULIN ISLAND, THE UNITED CHURCH OF
CANADA, THE SOCIAL SERVICE COUNCIL OF
THE CHURCH OF ENGLAND AND THE ATTOR-
NEY-GENERAL OF CANADA

Respondents.

APPENDIX TO CASE FOR THE
ATTORNEY-GENERAL OF CANADA

No. 1.
Extracts
from
Provincial
Statutes
concerning
sale of in-
toxicating
liquors.

No. 1.

Extracts from Provincial Statutes Containing Prohibitory or Local Option Clauses in Force at the time of the Enactment of "The Canada Temperance Act," Statutes of Canada, 1878, 41 Victoria, Chapter 16.

ONTARIO.

R.S.O., 1877, chap. 182—"An Act respecting Municipal Prohibition of the Sale of Intoxicating Liquors," sections 3, 4, 5, 6 (1):—

"3. The Municipal Council of every County, City, Town, Township, or incorporated Village, besides the powers at present conferred on it by law, shall have power at any time to pass a by-law for prohibiting the sale of intoxicating liquors and the issue of licenses therefor within such County, City, Town, Township, or incorporated Village, under authority and for enforcement of this Act, and subject to the provisions and limitations hereby enacted. 27-8 V. c. 18, s. 1. 10

"4. Such by-law shall be drawn up and passed in ordinary form, and shall not have embodied therein any other provision than the simple declaration, that the sale of intoxicating liquors and the issue of licenses therefor is by such by-law prohibited within such County, City, Town, Township, or incorporated Village, under authority and for enforcement of this Act. 27-8 V. c. 18, s. 2. 20

"5. Any Municipal Council, when passing such by-law, may order that the same be submitted for approval to the municipal electors of the Municipality; and in that case, the same shall not take effect, unless approved.

(2) Any thirty or more duly qualified municipal electors of any Municipality, or if the by-law is for a County, then of each Municipality in the County, may at any time by a requisition in the form of Schedule A, hereto appended, or to the like effect, signed by them and delivered on their behalf to the Clerk of the Municipality, require that any by-law which the Municipal Council thereof may pass under authority and for enforcement of this Act, at any time within one year from the date of such requisition, be submitted for the like approval; and in that case such by-law shall not take effect unless approved. 27-8 V. c. 18, s. 3. 30

"6. Any thirty or more duly qualified municipal electors of any City, Town, Township or incorporated Village, the Council whereof has not passed a by-law under authority and for enforcement of this Act, or after passing has repealed the same, or wherein such by-law, having been submitted for approval, or for adoption (as the case may be), to the electors, either has not been approved or adopted, or after approval or adoption has been repealed, may at any time (not being, in the latter case, less than two full years after such vote of non-approval or non-adoption, or after such repeal), by a requisition in the form of Schedule B, hereto appended, or to the like effect, signed by them and delivered on their behalf to the 40

Clerk of the Municipality, propose a by-law to that end, for adoption by the electors thereof, and require that a poll be taken to determine whether or not they will adopt the same."

No. 1.
Extracts
from
Provincial
Statutes
concerning
sale of in-
toxicating
liquors—
continued.

BRITISH COLUMBIA

R.S.B.C., 1877, chap. 106—"An Ordinance to assimilate and amend the Laws relating to Licenses and direct Taxes on Persons." Section 4:—

"4. No license shall be granted for the sale of wines, spirits, beer, or other fermented or intoxicating liquor in any town, village, or settlement, unless a petition or requisition for the granting of such licence, signed by
10 at least two-thirds of the residents, other than Chinese or Indians, over twenty-one years of age of such town, village, or settlement, shall be presented to the Magistrate or Magistrates to whom the application shall be made for the granting of such license. (No. 20 of 1874, sec. 1)"

NOVA SCOTIA

R.S.N.S., 1873, chap. 75—"Of Licenses for the Sale of Intoxicating Liquors," Section 1 (3):—

"1. (3) Licenses for the sale of intoxicating liquors shall only be granted by the sessions upon the recommendation of the grand jury, concurred in by two-thirds of the members of the grand jury present,
20 accompanied by a petition from two-thirds of the ratepayers of the polling district in which the tavern is intended to be established, praying for such license. The genuineness of the signatures of such petitioners shall be established to the satisfaction of the court, and such petition and recommendation from the grand jury may be rejected in whole or in part by the sessions."

Statutes of Nova Scotia, 37 Vict., 1874, chap. 14: "An Act to amend the chapter of the Revised Statutes, 'Of Licenses for the Sale of Intoxicating Liquors,' " sections 5, 6 and 7:—

"5. Licenses for the sale of intoxicating liquors shall only be granted
30 within the City of Halifax by the City Council upon the recommendation of the License Committee, concurred in by two-thirds of such committee, and accompanied by a petition from a majority of the ratepayers of the licensing district, in which the license is proposed to be granted, praying for such license. The genuineness of the signatures of such petitioners shall be established by affidavit to the satisfaction of the City Council.

"6. Such City Council shall have power to divide the wards of the City into licensing districts containing not less than one hundred ratepayers each, and shall, each year, have prepared, from the assessment rolls, lists of the rate-payers in each licensing district, which, when approved,
40 shall be regarded as authoritative lists of the rate-payers in such districts; and, until the City Council shall define such licensing districts, each polling district in the City shall be considered a licensing district.

"7. So much of the Chapter hereby amended, or of any other existing enactment as in inconsistent, with this Act, is repealed."

No. 1.
Extracts
from
Provincial
Statutes
concerning
sale of in-
toxicating
liquors—
continued.

Statutes of Nova Scotia, 39 Vict., 1876, Chap. 1—"An Act to alter and amend Chapter 75 of the Revised Statutes, 'Of Licenses for the sale of Intoxicating Liquors,' and the Acts in amendment thereof," Sections 2 and 13 :

"2. Within any town now incorporated, or hereafter to be incorporated, no license for the sale of intoxicating liquors shall be granted by the Town Council, except upon the presentation of a petition, signed by two-thirds of the rate-payers of the ward in which such license is proposed to be granted, praying for the same. The genuineness of the signatures to such petition shall be established by affidavit to the satisfaction of the Council. 10
No license shall be granted for a longer period than one year.

"13. So much of Chapter 75 of the Revised Statutes, 'Of Licenses for the Sale of Intoxicating Liquors,' or of any other enactment as is inconsistent with this Act is repealed."

NEW BRUNSWICK

Consolidated Statutes of New Brunswick, 1877, Chap. 105, section 30 :

"30. No license shall be granted or issued within any Parish or Municipality in this Province when a majority of the ratepayers resident in such Parish or Municipality shall petition the Municipal Council against issuing any license within such Parish or Municipality." 20

QUEBEC

Consolidated Statutes of Lower Canada, 1861, Chap. 24, as amended by Chapter 32 of the Statutes of 1866, section 26, (10) (11); section 27 (16) :—

"26. (10) Every county council shall also have power to make, in the month of March of every year, by-laws (not being inconsistent with the provisions of chapter six of these Consolidated Statutes) for the following objects :

(11) For prohibiting and preventing the sale of all spirituous, vinous, alcoholic, and intoxicating liquors, or to permit such sale subject to such 30
limitations as they shall consider expedient; "

"27. (16) Before the second Wednesday in March of each year, any Local Council may pass a By-law for preventing and prohibiting the sale of any spirituous, vinous, alcoholic or intoxicating liquors."

No. 2.

Extract from House of Commons Debates, 1878. pp. 2394-2408.

TRAFFIC IN INTOXICATING LIQUORS BILL.—[BILL No. 75.]

(Mr. Mackenzie.)

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408.

CONSIDERED IN COMMITTEE.

Order for the House to resolve itself into Committee of the Whole on said Bill, *read*.

Mr. MACKENZIE said that last night, on the motion for the second reading of the Bill respecting the traffic in intoxicating liquors, he had not had an opportunity of making any remarks in reference to the provisions of the Bill, and in moving that the House do now go into Committee on the Bill, he desired to say a few words upon the measure. It was a Bill which was intended to apply to the whole Dominion. The operation of the Temperance Act of 1861, was applicable only to the two Provinces comprising the late Province of Canada, namely, Ontario and Quebec. Various difficulties had been found in working out the Act of 1864, although it had been attempted in many places, and, in some few municipalities, was in operation at the present time. One of the chief difficulties connected with the enforcement of that Act had been the one of obtaining a vote upon it in the usual way. The measure had been submitted, for instance, to the electors of Toronto, and it took several weeks in determining whether the by-law should be sustained or not by the electors of that city. He would not to-night enter into any exact or careful criticism of the defects of that measure further than to say that it was practically a local Bill, and that there was an amount of dissatisfaction with its operation throughout the country which brought it to the notice of the Government of the Dominion on various occasions and under many circumstances. Deputations from all parts of the country had waited on the Government during the last few years, petitioning them to make such amendments as might be consistent with the principle of prohibition of the sale of intoxicating liquors. He had always felt that while the people had an absolute right to such legislation as would practically prohibit the sale and manufacture of intoxicating liquors, yet it was one of those moral questions which must ultimately be determined by the general voice of the people, by the general sympathies of the population; and that however righteous such an Act might be, however beneficial in its general results to the nation, yet it was one that interfered in a certain manner—in the opinion of some, to a great extent—with the liberties of the people in reference to the trade in, and use of, intoxicating liquors of all kinds. But a very large proportion of the people of this country—a large majority of them, indeed—believed that the limitation of this traffic was almost essentially necessary for the prosperity of the country. A very large proportion of our people believed

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408
—continued.

that the greatest amount of crime was stimulated by the use of intoxicating liquors, and that their banishment from general use was followed by a great improvement in the health and the morals of the people by a great improvement in everything that ministered to the social, and even to the political welfare of the people. But, in a measure of such vast importance, effecting as it did a sort of social revolution, it was essential that the voice of the people should be strongly and well pronounced in its favour. He had, therefore, on various occasions within the last two or three years, in speaking to those who were instrumental in forwarding the temperance movement, pointed out to them that it was essential that they should use the machinery which they had, in order to manifest, in a practical way, their belief in the statements they made as to the prevalence of public opinion in favour of such a measure. He had said to them that he conceived it was much better to have a stringent license law than any general prohibitory law, until the voice of the people had unmistakably pronounced in favour of a stronger measure—until society and the temperance advocates and their friends showed, by bringing the permissive law they had at their disposal into effect, that they were faithfully and truly representing the wishes of the people in the assertions made respecting the tendency of public opinion. He had been met on these occasions with the statement that it was extremely difficult to get a true expression of public opinion with the law as it stood, and that it could only be partial in any case, as it applied merely to the two Provinces, when they demanded that the law should be extended to the whole Dominion. There was, of course, a question of jurisdiction, as to whether this question rested properly with this Parliament or with the Local Parliaments, and, although a recent decision of the Supreme Court had some effect in settling this question, it could scarcely be said to have been fully determined by that decision. The Government, however, felt that, in a matter of so much importance, when it was evident that the eyes of the country were looking to this Government and this Parliament for some action, it was clear to them that it was desirable to take some step at the present time; and this Bill had been prepared with a view of having an effective permissive measure placed in the hands of the people of all the Provinces, with its machinery adapted to a quick and prompt response to public opinion, where it should declare itself by a majority in favour of this measure. It had been said that during the few contests that had occurred in several counties of Ontario during the last year, and notably in one or two counties in Quebec, it was doubtful whether public opinion had reached the stage when even such a Bill as this might fairly be committed to their hands with a view of putting it in operation. And the fact that the law established, under the Temperance Act of 1864, in two or three of the municipalities had since been repealed was pointed to as an evidence that the carrying of the by-law in the first instance, was only a proof of the excitement existing for a moment and soon passing away. He did not believe that himself, to the extent, at all events, that was asserted by some. He had no doubt whatever, he had never had any doubt, but that moral reforms of this

kind must necessarily proceed as a general rule by slow steps. But no one could doubt who had felt the public pulse, who had read the public newspapers, who had followed, in short, the general course of the agitation in favour of a Temperance Bill—no one could have failed to observe with gratification that there had been a vast progress in public opinion in this matter during the last few years. The Government had endeavoured in this Bill, by repeating some of the sections of the Temperance Act of 1864 of a general character, and providing in it the means by which the public opinion of the country could be readily ascertained to place at the disposal of the temperance community—at the disposal of the general public he should perhaps rather say—the means of testing the prevalence of the view in the existence of which he had just expressed his faith. The provisions of the former Act, which had been prepared by a former gentleman who now graced the Judicial Bench of Lower Canada, were generally of a very stringent character in relation to the carrying out of the law after it was enacted; but there had been serious difficulties encountered, as he had mentioned in the earlier part of his remarks, in obtaining the sanction of the people to the law. It was now provided under this Bill that the measure should only apply to counties and cities—cities being considered as

10
20
30
40

counties in this as in the municipal Acts. The Dunkin Act was made applicable to townships and the smaller municipalities—to every municipality in fact, whether village, township, town, or city. In the present Bill the by-law must be passed to cover a whole county—not an electoral division—but a county which perhaps might include several electoral divisions. The reason for this was obvious. It was quite clear, from the operation of the Act of 1864 that it was practically useless to pass a by-law in a township perhaps ten miles square, when all the townships around that particular one were without the operation of the law—and he had been informed that in some of the townships in which the Dunkin Act was carried, and where there was, of course, an utter absence of all licensing, the sale of intoxicating liquors had, in some instances, reached a higher ratio than under the license system. That was quite natural; but when the law was made applicable over a larger area, and covered an entire county, with an efficient inspection, with efficient means of suppressing the sale of the liquor and punishing those who engaged in the traffic illegally, he ventured to hope that the law might fairly be carried into operation. It was provided, however, in order to ensure that there would be no trifling with the public in endeavouring to put the law into operation, that until 25 per cent. of the entire number of electors in any county should petition the Governor in Council, there should be no proclamation issued for having a vote taken in order to ascertain whether the Bill should be carried out. But if one-fourth of the electors made such a petition, then it should be the duty of the Government to have a proclamation issued naming the time when a poll would be taken, appointing a returning-officer, and committing to him all the machinery necessary to carry the law into effect as to the taking of the votes. If a majority of those voting should decide in favour of the application of the law to the country, then a proclamation should

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394–2408
—continued.

No. 2.
 Extracts
 from House
 of Commons
 Debates,
 1878, pp.
 2394-2408
 —continued.

issue within 90 days after the time when the then existing laws expired. It was also provided in the Bill that if the by-law were once carried it should not be repealed within three years; but that at any time after that period if one-fourth of the electors should petition for its repeal the same process would be gone through as when the law was enacted in the first place. The hon. gentleman then described the provisions of the Bill respecting the taking of votes, the repression of bribery and other corrupt practices, remarking that they were substantially those of the General Election Act. After stating *seriatim* a number of other clauses of the Bill, he said that one part of the measure provided for the kind of prohibition and the tariff in intoxicating liquors which would be enforced under the Bill when it became law. The intention was absolutely to prohibit the sale of intoxicating liquors in any county or city in which the by-law might be carried, except in the case of wholesale dealers or manufacturers of liquors within the municipality, who might sell in quantities not less than ten gallons for exportation from that particular municipality to any other part of the Province or Dominion or out of it. But he should not be at liberty to sell within the municipality any portion of the liquor so held or manufactured. The 99th section provided very fully the extent to which this prohibition should be carried as regarded the nature of the liquors which might be sold, and it might be described generally as providing that no liquor of any kind whatever which contained either wholly or in part intoxicating qualities should be allowed to be sold under the law. It was tolerably evident from the practice and the experience observed in other countries that it would be impossible to carry out a prohibitory liquor law, even in a permissible shape as this was proposed to be, unless there was a total prohibition of all liquors which might colourably be denominated intoxicating liquors. Some people pointed out, no doubt, that certain kinds of liquor were comparatively innocuous, and probably they were so; but they could only serve as a disguise under which to shield and sell the baser kinds of intoxicating liquors, which would be sold under cover of the names of less offensive liquors. It had therefore been deemed necessary to make a total prohibition except as to liquors required for medicinal use and sacramental purposes, and special provisions were made for such exceptions by the licensing of a certain number of individuals, according to the population, to sell for such special purposes. After referring briefly to other clauses of the Bill, he said the Bill was one which the hon. gentlemen were aware had been introduced in the Senate, and had received from that body an early and a very thorough discussion; and he ventured to hope, from a careful perusal of the measure since it had been amended by that body, this House would not have much difficulty in agreeing to the Bill as it now stood. He trusted that every member of the House would approach the discussion of the subject in Committee with a single and a sincere desire to promote the object which the promoters of the Bill had in view. It was a matter of serious import to this country—it was one of the greatest possible importance in its social and political aspects; and there could be no doubt whatever, apart from questions of taxation and other questions

10

20

30

40

which arose, that it was one of the greatest possible importance to this country that we should be able in some way or other to check the torrent of intoxication which for many years had been increasing and pouring in an unlimited stream over the land. It might have been observed by those who had given some attention to statistics in connection with this question, that there had been a steady increase in the consumption of strong intoxicating liquors up, at least, to last year. He had not observed the increase within the last year, but he judged from the returns of excise revenue that there must have been, to a greater or less extent, a reduction. A part of this might, however, fairly be attributed to the comparative poverty of certain classes of our population during the last few years. Since the commercial disasters that had passed over the country, a part of our population had not been so well paid or so fully employed as formerly, these being generally leaseholders or small possessors of property, and there could be no doubt that a reduction in the domestic expenditures of such persons ought to be sought for in this item rather than in other items. He did not, therefore, venture to hope that there had been an increase in the number of abstainers from the use of intoxicating liquors, but the extent of the reduction which the revenue showed, although there would perhaps be an increased consumption in more prosperous times, was assigned undoubtedly to some extent, to the effect that the temperance agitation had produced throughout the country. No one, he thought, could doubt that, and any one who had observed the course of proceedings at great public gatherings must have been satisfied, that the temperance agitation had already resulted, even without the enactment of any law, in materially producing the desire to abstain from the excessive use of stimulants in the shape of spirits. It was the duty of every one who loved his country, and who wished well to all our institutions and to our churches, to endeavour to aid those who had been devoting their voluntary efforts to the accomplishment of this end, and he was sure this House, in common with the other branch of the Legislature, would cordially respond to the invitation which the Government had given by the introduction of this Bill, in aiding to the extent of their power in repressing a traffic which had produced so much disaster of every kind, and which threatened, if left uncontrolled, to exercise a still more disastrous and permanent evil influence on the destinies of this country.

Mr. Ross (West Middlesex) said that before leaving the Chair, he wished to make a remark or two, and he would promise the House that his remarks would be very brief at this hour of the evening and period of the Session. Had this Bill been introduced at an earlier stage, it would have given him very great pleasure to have reviewed, at some length, the progress the temperance sentiment had made in the Dominion of Canada since the first beginning of their agitation in 1873. However, the Session had so far progressed and hon. members were, no doubt, so anxious to return to their homes, that it would be exceedingly out of place for him, he presumed, to occupy much of the time of the House. He would just content himself, however, with saying that, perhaps to no other member of the House did it afford

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408
—continued.

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408
—continued.

more pleasure than to himself to find the Government introducing a Bill containing so many provisions to which he could give his most cordial assent, as to the Bill which had been introduced by the hon. the First Minister. The temperance men in the Dominion of Canada had long been agitating for some efficient legislative restriction upon the liquor traffic. The license system which had prevailed in this country ever since we had municipal institutions, had, in their opinion, not been effective in restricting, to a sufficient degree, the evils resulting from that traffic, and it was felt by all of them—and he was now speaking, perhaps, more particularly for the temperance men—that more effective legislation than any previously offered them, was required to restrain the injurious effects of this traffic, and to diminish, if such were possible, the baneful effects of intemperance. Such legislation, they thought, had, to certain extent, been secured by the passage of the Temperance Act of 1864. He was not now going to speak of the good or ill points of that Act, or to criticise its provisions, either in whole or in detail. 10

Mr. BUNSTER : What are they ?

Mr. ROSS : It did not apply to British Columbia, he was sorry to say. He was just going to say that, as an objective point for the agitation connected with this question, he considered that the Temperance Act of 1864, carried through the House by Judge Dunkin, was, in itself, a very valuable concession to the temperance men. It gave them, at least, the assurance that the Parliament of Canada was amenable, not only to public opinion on this point, but was prepared to accept the reasonable demands, and to consider any reasonable demands made on it by the temperance men with regard to the restriction to be imposed on this traffic. It further gave them, at least, this other advantage that they had placed on the Statute Book an acknowledgment that Parliament was prepared and was willing to deal, from a legal standpoint, with this evil with which they were grappling from a moral standpoint, and that whatever strength the temperance sentiment received in the country from the agitation of temperance men, would be guaranteed to them, so far as the Legislature could guarantee it, by Acts placed on the Statute Book. These were some of the advantages of the Temperance Act of 1874* ; but good as that law was in many respects, as a means for stemming, as far as it could, the evils of intemperance, they felt that something more could be done. In the first place, the provisions of that Act were limited in their application. They only applied to the Provinces of Ontario and Quebec. Temperance men having that national sentiment, in which they trusted every Canadian shared, and anxious, as far as they could, to cover the whole country with the broad ægis of temperance legislation, sought for a wider and more comprehensive measure. They said, not only are these restrictions good so far as the Provinces of Ontario and Quebec are concerned, but they would be equally beneficial if applied to the whole Dominion. The temperance men from Prince Edward Island and the Maritime Provinces petitioned the House to that effect. They also did so from Manitoba and 30 40

*sic

British Columbia. Ontario was almost unanimous in its demands for more extended restrictions on the liquor traffic. These demands had received, he was happy to say—should he say he was pleased and proud to say—the consideration of the Government; and they had now in their possession a Bill co-extensive in its application with the whole of the Dominion, and embodying, in almost every particular, the matured views of the leading temperance men of this country. This Bill had received, at the hands of the Senate, the most careful consideration. Hon. gentlemen on both sides of politics, had given it, in many of its most important principles, their most cordial support. Temperance men on both sides of politics, outside of the House, had given this Bill their most cordial support, and he trusted that in its passage through this House they would be prepared, from both sides, to give it that cordial support which had been asked for it by the Hon. the First Minister of the House in its introduction. He had no doubt that, regarding some of the details of the Bill, there might, and would be, legitimate criticism, but in regard to the main principles, and the method of taking the vote, and the general prohibitory clauses of the Bill, the penalty it imposed, and above all, with regard to the purpose which this Bill had in view, he thought that there was not an hon. gentleman on the floor of the House who could not cordially and heartily approve of its design. We were making strong efforts as a country to build up all our institutions; we were expending largely, year after year, money for the encouragement of immigration; for widening our canals, for the construction of our railroads, and for the increase of our educational facilities; and with all this, if we neglected that moral element, without which any nation could not be prosperous, all our other expenditures and efforts would be comparatively vain; and he trusted that in the broad sense of the word, with a view to the advancement of the moral interests of the country and with a view to securing, for our young men, the protection which the law could secure for them, and which the law was calculated to secure for them, and which they had a right to expect from the protection of the law, that this Bill would receive the cordial assent of the House, and that this year, which we were entering on, an era of prosperity as he trusted, we would have to add to our financial progress this one great evidence that the Dominion of Canada was prepared to assert in the most unmistakable terms that it approved of every measure which had for its advancement the moral prosperity of the country and the protection of our people against the inroads of intemperance and the traffic in intoxicating liquors.

Mr. BUNSTER said that this farce was perpetrated on the House year after year. Last Session the hon. member for Lisgar had introduced a temperance resolution against which he as well as the Government voted; and why the time of the House should now be taken up with a Bill, and a voluminous Bill, which neither the Government nor the country wanted, and which the Government had seemed to ignore, he could not understand. The Government had stated that it could not continue if they had not the benefit of the Excise duty in the several departments; and still the Canadian Pacific Railway propositions were not brought down. The hon. member for

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408
—continued.

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408
—continued

West Middlesex said that this Bill, at this late period of the Session, might have some consideration from the House though the Canadian Pacific Railway discussion was that day promised them. This was monstrous. He was amazed to see it. If this Bill passed to-morrow, it would be a dead letter throughout the country. It could not be passed anywhere except in a few hide-bound counties.

Sir JOHN A. MACDONALD said he thought two years would be a better period than three. After two years' experience of the Bill people would have an opportunity of making up their minds whether to continue it or not.

Mr. LANGEVIN said he was afraid this Bill would not work; it was too cumbrous. It required all the machinery and cost of a parliamentary election to put it in operation. 10

Mr. DYMOND said he believed the Bill met the views of the temperance men, and he trusted it would be adopted.

Mr. FORBES said, according to his own feelings, he would much prefer that the Bill should go a great deal further. It seemed to be the general wish and opinion of those gentlemen who were assumed to approve of this measure, that it was impossible, in the present state of affairs, to carry out a measure which would go as far as many people wished. The people of Province of Nova Scotia were better educated, as far as the question of temperance was concerned, than those of almost any other Province. The hon. the leader of the Opposition was in favour of a stringent licence law. There was not a more stringent licence law in operation anywhere than in Nova Scotia, and there it was found to be inoperative. Under these considerations, it was considered by the temperance body that the people of Nova Scotia would be willing to accept a prohibitory measure; but, under the existing circumstances of the country, the other Provinces not having taken the same interest, or not being as well educated in temperance as Nova Scotia, it would be impossible to carry a law throughout the whole country which would be acceptable to that Province. He (Mr. Forbes) had sent copies of the measure to the different temperance organizations in his country, and not having heard from them, presumed they accepted it; if not, no doubt, they would have communicated with him. A general consultation had been held of the leading temperance people from the surrounding districts, and their views on the question were laid before the committee, who concluded that nothing better could be produced than the Bill now before the House. Furthermore, it carried out the intentions of the commission on the temperance convention held in Montreal some time ago, and which embraced gentlemen from every part of the Dominion except Manitoba and British Columbia, at which convention it was decided that an Act of this kind was the only one which could be enforced in the Dominion, in the present state of temperance education. He knew this measure would not be looked on as favourably in Nova Scotia as a more stringent one would, for he and they believed in prohibition; but it was one nail in the coffin, and by following this up with others of a more stringent character, we might hope to bind the giant and eventually kill him. 20 30 40

Mr. FLESHER said this Bill lessened some of the difficulties under the Dunkin Act. There should be a definition as to what constituted intoxicating liquors, that no doubt might exist. The fact of twenty-five per cent. of the electors being required to demand the Act before a vote could be taken, would deter parties from going into the matter, unless they were satisfied they had public sentiment with them.

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408
—continued.

Mr. CAMERON said the question to be considered was whether the principle of the Bill was right or wrong; whether the bare majority of the people of any county had the absolute right to prohibit the use of intoxicating
10 liquors by the minority. He could not argue with that principle, but he knew it would be useless to attempt to resist a Bill of this kind on the second reading. The temperance organization wielded so much influence in so many constituencies, that hon. members of this House were not prepared to vote according to their deliberate convictions. If that were the true construction of this Bill, the true opinion as to its probable operation, it ought not to be passed. But it would be perfectly useless in this House to propose any amendment. All that could be done was to guard against any unreasonable or improper proposal in matters of detail. He yielded to the opinion of the
20 hon. member for West Middlesex (Mr. Ross) as to the strong desire in the country to put down the evils of intemperance. He agreed with him that if that were the object of the Bill, it was a good and useful one. If he thought this Bill or the Dunkin Bill would attain that object, he would be prepared to yield the principle which he held as to the minority being controlled by a majority in consequence of the good which would result from the restriction of the evils of intemperance. He did not believe that object would be attained, and his view was therefore opposed to the Bill. He did not propose to move the rejection of the measure *in toto*, but he believed he would be wanting in his duty if he did not give utterance to the principles he held. A good many members of this House were afraid to express their candid
30 opinion on this point. The power of the temperance organization was very great, and their strength arose from the good object which they had in view, though he did not believe that the means they were taking would result in the attainment of that object. It was also a question of discussion whether it was within the constitutional functions of this Parliament to pass a Bill of this kind, at all events in regard to many of its details. The question had been before the Supreme Court, but had not been disposed of there to any material degree; and a very great doubt would arise as to the constitutional power of this Parliament, and whether it was not within the power of the Local Legislatures to pass upon some of those questions. He had
40 had to discuss this matter before the Courts. The Ontario Legislature had been trying to amend the Dunkin Act, and the Courts had in some cases pronounced their amendments within, and in others beyond their powers. It was a matter which required very grave consideration. It would be for the Courts hereafter to say whether it was within the functions of this House or not. Another point in which it was open to very grave objection in a constitutional point of view, was that it virtually forfeited and sacrificed and destroyed a large business interest in which money had been invested on the

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408
—continued.

faith of the existing legislation, namely, the brewing and the distillery interests, while it contained no provision whatever for compensation. He ventured to say that if this were attempted in regard to any other article except liquor, it would be scouted as an outrage. That, however, might be remedied by some amendments in Committee.

Mr. GOUDGE said the right hon. member for Kingston had stated his preference for rigid license law. In the Province of Nova Scotia they had a stringent license law; but although that was the case, yet, in three-fourths of the counties of that Province, they had prohibition in consequence of the Sessions and the grand juries having refused to grant licenses. There was still, he regretted to say, an amount of liquor drunk in that Province, but to show that the people generally respected the law he would call attention to the returns of the Inland Revenue Department. In the Province of Nova Scotia the average per head of liquor drunk from 1868 to 1877 was 1.74 gallons; in the Province of New Brunswick, it was 1.908 gallons; in the Province of Quebec, 3.849 gallons; in the Province of Ontario, 4.353 gallons; and in the Province of British Columbia, 4.905 gallons; showing distinctly that where a prohibitory law, as it practically was in Nova Scotia, existed, the sale of liquor was very materially lessened. The Act now proposed did not go as far as they would desire, but they would accept it as a first instalment, and the whole Province of Nova Scotia was looking to this Parliament for the passage of such an Act. It was a long step in advance, and they might in the future so amend it as to make it a very effective Bill. It would very materially assist in deciding the question of jurisdiction, and that would be a great advantage.

Mr. PLUMB said he fancied no one would underrate the evils of intemperance; but there was, and would be, a very marked difference in the views of gentlemen who were equally sincere as to the manner in which intemperance should be dealt with. He had no doubt that the gentleman who introduced this Bill had done so in all sincerity. It was a foregone conclusion that it would be passed, but it would be the duty of hon. gentlemen to scrutinise it carefully and not to accept it simply because it had been passed by the other side of the Legislature. He had always been of opinion that a stringent license law rigidly enforced, would be the true means of meeting this evil. He had always been of opinion, and in that opinion he was not alone, that there were certain interests which would be sacrificed by legislation of this kind, which should not be sacrificed in this way. The hon. member for Hants said Nova Scotia was a paradise of temperance. He (Mr. Plumb) should like to know if the statistics which he had brought forward showing that only $1\frac{3}{4}$ gallons *per capita* was drunk in that Province had made it a model Eden, and whether crime was less rife there, so that they might compare what was claimed by gentlemen who were in favour of such acts as these? He should like to know whether there had been a diminution of crime in the proportion of at least 3 to 1 as compared with the benighted Province of Ontario, of which he was one of the representatives. In the State of Maine very deceptive statements had been made. In the

city of Bangor, before the passage of the Prohibition Law, there had been a much larger population than now, there was less taxation and fewer arrests for drunkenness than now. A gentleman who, until lately, had been a sincere advocate for legislation of this kind, said that the drunkenness there had largely increased, though it was more secret.

Mr. ROSS (West Middlesex): Who says that?

Mr. PLUMB: The Mayor of Bangor. On behalf of all people who were not in the habit of using stimulating beverages to excess, he objected that it was claimed in a most pharisaical way by gentlemen advocating prohibitory
 10 measures, that they were temperance men. Any one who used stimulating beverages might have just as good a right to call himself a temperance man. There were many gentlemen on both sides of this House who used those beverages whom none would dare to call intemperate men, and it was a misnomer to call prohibitionists temperance men. In endeavouring by the force of a majority to compel the minority to adopt their views, they were intemperate. This Bill was a Government measure. It would be passed as such, but the Opposition did not propose to transfer the legislation or to do anything which would prevent its having a trial. They all agreed
 20 that there was a great deal to be remedied. They only differed as to the means. He believed the abuse of intoxicating liquors could only be remedied by the limitation of the sale. The question as to how this would effect the revenue, was of course, in the hands of the Government. In the State of New York in 1855, a Bill, as stringent in its provision as this one, was passed in the State of New York by an overwhelming majority. The Governor himself had been elected on that issue. The Bill was to take effect in July. It was violated the very night it came into operation in almost every town and village and cross road in the State. It was a dead letter from the first, and was repealed the following year.

The House then *resolved* itself into Committee of the Whole on the
 30 said Bill.

(IN THE COMMITTEE.)

Mr. SPEAKER: I feel it my duty, as one of the representatives of the people, to say a few words on this Bill. I protest most solemnly against legislation of this kind. I regard it as of the most pernicious and injurious character than can possibly be conceived, and also of the most tyrannical character. It is a declaration that it is the right of the majority in any portion of this Dominion to dictate to the minority of the people what they shall eat and what they shall drink, and what opinions they shall profess, or even what they shall wear. Tyranny more gross than this it is impossible
 40 for man to conceive, and, therefore, do I most solemnly protest against this Bill and against the principle upon which it is based. More than that, I not only protest against the Bill, but I will oppose it as far as my single voice can oppose it, because I believe it will, if not absolutely inoperative, be productive of results of the worst kind, and evils of the grossest character. I speak from experience. In our own little Province, more than twenty years ago, a measure of this kind was introduced into our Legislature, but

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408
—continued.

going much further than this Bill; it was a system of prohibition of the manufacture and sale, and consequently of the use of all alcoholic liquors. It passed very much as I presume this Bill will pass. There was an agitation out of doors. There was a temperance organization formed out of doors, powerful, because it worked systematically at all elections, and made itself felt and feared by every representative of the people in the House of Assembly. And yet that organization never did include more than one-fifth of the male adult population of the Province. Here, as there, there is not more than one-fifth of the male population of the Dominion in any organization working for a law of this kind. If we pass this law, we must pass it not at the desire of a majority of the people, but in obedience to the dictation of an organization working outside and in this House, and through this House, unjustly to the best interests of the population. The hon. member for Niagara (Mr. Plumb) has stated the result of the passage of such a law in the State of New York. It was the same in our Province; the measure was passed, and the very moment it went into operation, the very day it went into operation, in every part of New Brunswick, in places where the habit of drinking had almost been forgotten, that law was violated. Instead of establishing in our little Province a state of harmony, peace, and order, it brought with it riot, tumult, and disorder, and bitter feelings of the most deplorable character. That state of things continued from day to day, until the Governor of the Province, finding that a state of disorder had arisen from it, called upon the Government of the day either to enforce the law, and restore peace and order, or to call the Legislature together for its repeal. When the Government refused to act upon that advice, he dismissed them. The Legislature was dissolved, new elections were held, and I think only two gentlemen, of all those who were returned, went back to that House not pledged to vote for the repeal of the liquor law. Now, we had that experience there. I, at that time, opposed the passing of the Bill. I was not a member of the Legislature, but whatever influence I possessed I used to prevent the passage of the Bill. I foretold exactly the consequences that would flow from the passage of that Bill. As I predicted those consequences then, I predict now, Mr. Chairman, that if this Bill pass, and if it be not inoperative in nine-tenths of this Dominion, it will lead again to an amount of riot, tumult, and confusion which this Parliament must suffer, and from which I tell the Government, at this day, they will suffer.

Mr. MACKENZIE said the hon. member for Gloucester had said this measure might be characterized an act of tyranny, because it enabled a majority to decide what a minority should eat and drink; it did not say anything about eating nor about drinking, but simply that certain liquors, which were believed to be injurious, should be prevented from being sold. The law which enabled a community to do that was just of the same kind as the law which permitted a person, if a house was on fire, to pull down another next it in order to prevent the fire from spreading in the neighbourhood. His mind had always been that the community had a perfect right to protect itself by a law of this kind. On the other hand, he quite admitted

that there was almost an absolute necessity that there should be a strong, if not almost universal opinion in favour of the enactment of such a measure as this, which even apparently restricted the liberties and the rights of any portion of the community on general grounds, affecting the whole community, and for this reason he would never favour the enactment of a prohibitory law which was not subjected to the test of the vote of the people, until he was satisfied that there was an overwhelming majority of the whole country in favour of such a measure. On the other hand, he had, no doubt whatever, but what an entire prohibitory law might, could and should be passed when there was a perfectly overwhelming public opinion in its favour. The hon. member for Gloucester would observe that a stringent license law, meant a law to restrict the sale and abridge the right to buy and sell as any person pleased, quite as much as the other. It was one of degree and not of mind; and the same argument that was used against a permissive prohibitory law, might be used with the same effect against a stringent or any license law, and to use the hon. gentleman's argument why should they compel a person to pay a license of \$100 to sell certain articles of drink, when they did not impose any license for the sale of a certain quantity of bread or meat. It was upon the ground that the sale of such articles involved the happiness and peace and prosperity of the community. It was because the sale of these articles was believed to produce a state of society which caused the innocent to suffer for the crimes of the guilty, and because the excessive use, at all events, of intoxicating liquors was an evil which extended to every member of the community in its results. These were the reasons why there was any interference in the shape of a license law, and it was because the community believed that the license law was ineffectual in suppressing the dangers and evils complained of that a step further was advocated as necessary in the general interests of society. The hon. member for Victoria had ventured, on very strong assertions, and on the statement that very few members save himself, and, perhaps none at all, were sincere in their expression of their views in this matter, and he alone had had the manliness to stand up and express his true opinions. It was scarcely, he thought, creditable to the hon. gentleman to make that statement, and scarcely courteous to the House to affirm that he alone was the only man in the House who gave real expression to his own opinions. It was not necessary at all that every member of the House should be satisfied that this measure was one which would be effectual in order to advocate a trial of it, at all events, for a time. Even gentlemen who had spoken without exception had acknowledged the evils which resulted from the excessive use of intoxicating liquors.

Mr. BUNSTER : What are they ?

Mr. MACKENZIE said he thought that the hon. member for Vancouver need hardly ask what they were. Whether this measure would be effectual in restoring another state of matters in the country or not, he admitted, might be questioned. It was, however, an experiment which might fairly be tried, and which the general sense of the community seemed to

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408
—continued.

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408
—continued.

demand should be tried; and while he was by no means satisfied that the country at present would approve generally of a complete national prohibitory law, he would resist any attempt to legislate in that direction; but that there could be nothing more fair than to afford an opportunity, by a permissive Bill, to the people, to manage their own affairs in this particular measure; and it was in that sense, and in this spirit, that the Government had introduced this Act, and, certainly, not with the idea of trampling upon any person's rights, or doing anything which would be injurious to the general interests of society, or to individuals. It was quite time that the existence of a certain class would be more or less affected by this law; but the interests of all classes were affected, more or less, by all their legislation. This was inevitable, and all they could do was to consult the experience history of this country, and of other countries, and to endeavour to do that which would produce the greatest possible benefit, or do the least possible harm.

10

Mr. SPEAKER said he had no intention of arguing this question at any great length, and, he must say, he thought that the argument used by the hon. the First Minister, to prove that the House would be justified in an act of this kind, was rather fallacious. A license, it was true, was given to authorise the sale of spirituous liquors, but that was a mere matter of revenue.

20

An Hon. MEMBER: No.

Mr. SPEAKER: Entirely. Restriction was another thing. It was found desirable to restrict the sale of liquors, from the simple fact that the excessive use was in itself a crime. But, if the mere use of them was a crime, then they would be justified in prohibiting the manufacture and sale and use of these drinks. Very few, indeed, said that the mere touching of a glass of wine was an offence against morality. He did not think that the hon. the Premier took this ground. He did not know that any hon. member of the House did so; and this was really the only ground on which a prohibitory liquor law could be justified. If the mere use of alcoholic drinks was in itself an offence against morality, and the law of the Almighty, or if the interests of society were at stake in the matter, it might be reason for absolute prohibition, but the license laws proceeded on the basis that the use of alcoholic liquors as a beverage, and, in reason and moderation, was not an offence; and that in order to prevent abuse it was necessary to restrict and regulate the sale, all license laws had this effect and this effect only. The imposition of a fee was simply a mode of collecting additional revenue from the use of an article that all agreed should bear as much taxation as possible.

30

40

Mr. MILLS said he thought that the fallacy rather lay in the line of argument adopted by the hon. member for Gloucester, than the hon. the First Minister. If the view of the former were sound they ought not to have any law prohibiting the sale of intoxicating liquors within two miles of any public work. This was certainly interference with the liberty of the subjects, as this Bill would occasion when given effect to, and yet it was

not opposed to the theory that the use of intoxicating liquors to any extent at all was a sin. Then they had the law prohibiting the sale of liquors to Indians, which was the law of old Canada, and in force, he thought, in every part of the Dominion. So far as the moral feature of the question was concerned he supposed that it was no greater sin for an Indian to drink a glass of whiskey than for a white man or any other member of the community. It was not based upon the theory of its being sinful to drink in the case of the Indian. This was police legislation designed for the general well-being of the community; and also the use of any particular article served to disturb society and produce disorder and misery and suffering on the part of any portion of the population, and increased the burdens of the population which was sober and industrious, he thought that the sober and industrious had some rights as well as the others. The carrying of offensive weapons was not wrong in itself, but they knew the use to which these arms were sometimes put. When they looked about the community and considered the large amount of taxation which was imposed to meet the wants of a large portion of the population that were in a somewhat destitute condition, when they saw families reduced to beggary, in consequence of the misconduct of the heads of these families, and when they saw the community at large called upon to support them, and contribute, by taxation upon property, to relieve their wants, the community which was held morally responsible for this condition of things, and called upon to contribute from the products of their industry to support those who ought to have been provided for by others, had a right to interfere. Where responsibility began, right also began. They were commensurate, in this matter, with each other. There was one feature in which no analogy existed between this law and the one that was passed in New Brunswick. The latter was absolute, and public opinion did not sustain it; but this was a permissive Bill. It was left with the community everywhere to support it, if they thought proper. No step had been taken against the Dunkin Act, because it was a permissive measure, and adapted itself to public opinion. Nevertheless, that law was defective, and they now proposed a better and more matured Bill, from which were eliminated the defects which experience had pointed out as existing in the Dunkin Act. He did not see that any person's liberties were interfered with by this Bill. Our whole law and the common law of England proceeded on the principle that such a right did not exist; the whole theory of the law was that no one had the right to sell intoxicating liquors.

An Hon. MEMBER : No.

40 Mr. MILLS : Yes. The law said that one person out of 250 of the population could sell, but denied this right to the other 249. People, however, might drink as much as they pleased if they could get it. There was no reason why this one should not be placed on the same footing with the other 249. A prohibitory liquor law would not fill prisons with criminals, or poorhouses with orphans, or asylums with lunatics, or do any of these things; and those who used their voices against the liquor traffic did so

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408.
—continued.

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408
—continued.

in consequence of the mischief it occasioned, and because it interfered with the means of livelihood in certain cases, resulting in nothing but mischief to the community. He heard no one say that prohibition was a bad thing. The hon. member for Gloucester said this Bill would interfere with individual rights, and hon. members who opposed it stated that it was not practical, would be inoperative, and if tried would fail. Very well; let it be tried, and if it failed the community would be satisfied. This measure would merely enable the people, if they chose, to protect themselves against the mischief which the liquor traffic had occasioned.

Mr. MITCHELL said that he did not agree with the statement of the hon. member for Gloucester, or in the entirety with the statement of the hon. members of the Government who had spoken, but he would support and vote for this Bill, not because he believed it would effect all that its promoters and advisers claimed, but because a large and respectable body of people in every portion of the Dominion—and he spoke more particularly with reference to his county and his Province—entertained a deep conviction that a Bill of this character was necessary for the security of the morals and habits of our young men, and our young women, too, he presumed. He did not believe that it would accomplish what the people desired. A Bill of a similar nature was passed in New Brunswick, he thought, in 1856, but it was not in operation long enough to enable the people to judge of its merits. He believed that only one week after the Bill was passed, His Excellency the Governor called upon the Government to recall the Legislature and take into consideration the repeal of this measure. He did not agree with Mr. Speaker that the repeal of this legislation was caused by the tumults, riots and disturbances that were created by the operation of this Bill. It was scarcely then got into operation; but he believed that a plot existed to unseat the Government, and that this was the object of this attempt. The Temperance Bill was made the pretext by which persons then in opposition were enabled to carry out their scheme of unseating the Government of which his hon. friend (Sir Albert J. Smith) was a member. He did not approve of that Bill; and if he had been in the Legislature he would have voted against it; and when the appeal was made to the country, he had the honour of being returned for the county which he now represented. A large proportion of the people in his county, and he believed in his Province, had a deep-seated conviction that such a law was necessary to check the growing evils that arose out of the use of drink. He was not a prohibitionist himself. He would not to-day vote for an absolute prohibitory law, but this measure gave to the people an opportunity to test among themselves whether a majority or not was in favour of putting certain restrictions on the sale and use of liquor; and more particularly on its sale. While he thought that some hardships might be inflicted in carrying out the law, and that some people who indulged to a moderate extent in the use of spirituous liquors, might have some difficulty in doing so under it, nevertheless, he was of opinion that where the large majority of the people in any community desired to put an end to what they considered a positive evil, the right to

have an opportunity of testing the efficacy of a law in the way now proposed by the passage of this Bill. Mr. Speaker had stated, he believed, that a very great deal of injustice and turmoil and heart-burning would result from the carrying of this measure into effect; but he (Mr. Mitchell) did not fear this. If it were an absolute prohibitory law, and people thought that their rights were infringed upon by it, and if a majority, perhaps, were against it, or if, as in the case of the New Brunswick Bill, such verdict was obtained without consulting the country, it would be a different matter, but here opportunity was given to them of going to the polls and ascertaining on a fair test the sentiment of the community. He did not think the people could fairly complain of any hardship incurred in carrying it out. At all events it was only reasonable and just to afford to the people an opportunity in this respect in order to put an end to the agitation which had grown up in the country with relation to this question, and the only way to do so was to test this Bill. If successful it would be a positive benefit to the community, and if a failure it would be the means, at all events, of terminating the agitation which was now rife in almost every part of the Dominion, and, therefore, on these grounds he intended to support the Bill. At the same time he must frankly state that he did not think it would accomplish all its supporters believed it would accomplish, although he trusted that this might be the result.

Mr. BUNSTER said he had asked the hon. the Premier what he meant, and the hon. gentleman had given him an evasive answer, which did not become the hon. gentleman.

Mr. MACKENZIE: Well, I will tell the hon. gentleman what I meant and said. It was that the hon. gentleman ought to know from his own experience in the world what the evils were. I said nothing more and meant nothing more. The hon. gentleman, no doubt, has seen the effects of the excessive use of intoxicating liquors; and should desire, or ought to desire, to remove these evils if he could do so without doing any harm to any parties.

Mr. BUNSTER said that the explanation so far was so good. He did not intend to allow that statement to go unchallenged. One of the ablest judges in Canada had said that there was not nearly so much crime committed by men who took a glass of liquor once in a while as by the scheming cold-blooded, cold-water and cold-hearted, and calculating persons, who carefully laid their plots and plans. They all knew that the Bill was unworthy of their consideration. An hon. and high-minded member, the hon. member for Gloucester, had denounced this measure, three or four years ago, with regard to a similar temperance humbug. The Speaker had placed him in the Chair in Committee, thus closing his mouth on the subject. He had since then entertained hard feelings against Mr. Speaker for that trick, but as the hon. gentleman had that evening acted in a straight-forward, honorable and impartial way, he begged to apologize to the hon. gentleman who, he hoped, would move a three months' hoist to this measure. He would be only too glad to second such a motion.

No. 2.
Extracts
from House
of Commons
Debates,
1878, pp.
2394-2408
—continued.

Mr. MACKAY (Cape Breton) said he approved of the general principle of the Bill. It was wise that the majority of the different districts should have an opportunity of passing an opinion as to whether they would prohibit the sale of intoxicating liquors or not. But the Government should go further and take to itself the whole control of the traffic in intoxicating liquors, and make all the regulations necessary either for prohibiting the sale or granting licenses.

On the 77th clause,

Mr. BUNSTER moved, in amendment, that the word "drink" be struck out, and replaced by the words "spirituous liquors," as the former might include tea, coffee, or other such refreshment. 10

Amendment *negatived*.

Mr. MACKAY (Cape Breton) said that any person who should give to any one a glass of wine in his house might be committed for six months and fined under this measure.

Mr. MACKENZIE: That is precisely the language of the Dominion Election Law.

Mr. MACKAY: Is that the intention of the Act?

Mr. MACKENZIE: Yes.

Clause *agreed to*. 20

On clause 124,

Sir JOHN A. MACDONALD said that if this by-law was adopted, all the expenses of this polling would have to be paid by the Dominion. This might be right enough, but, if so, the penalties collected should also go to the Dominion. There was no reason why they should go to the different Provinces; and this would always be a means of recouping the whole of the expenses to which the country would be put by means of this Act.

Mr. BUNSTER said that compensation should be given by the Government for the abolition of vested rights. There were 131 breweries in the Dominion; they represented considerable capital, and if they were to be destroyed by the operation of this obnoxious Act, it was only just and fair to allow compensation. 30

Mr. MACKENZIE said that the 124th section had better be struck out. He would consider, in the meantime, a section regarding penalties. He proposed that the fines should go to the Dominion.

Bill, as amended, *ordered* to be reported.

House *resumed*.

Bill *reported*.

No. 3.

Extract from House of Commons Debates, 1878, pp. 2485-2486.

TRAFFIC IN INTOXICATING LIQUORS BILL.—[BILL No. 75.]

(*Mr. Mackenzie.*)

THIRD READING.

No. 3.
Extract
from House
of Commons
Debates,
1878, pp.
2485-2486.

The said Bill was again considered in Committee of the Whole, *amended and reported.*

Mr. MACKENZIE moved the second reading of the amendments.

Mr. ORTON said it was true that the temperance sentiment of this
10 country was very strong, and that it was highly important that our people
should become a sober and temperate people. Those who were honestly and
earnestly endeavouring to produce that good effect in this country deserved
commendation. They were doubtless patriotic and noble men, and he
who would, from selfish, sordid or unworthy motives, put any obstacle in
the way of abolishing the evils which arose from the immoderate use of in-
toxicating liquors, deserve the reprobation of the community. However,
he (Mr. Orton) could not help feeling that in a temperance point of view,
this Bill would be utterly useless; and, further, that it was an outrage upon
the civil rights of a large portion of the people of this country. As a
20 temperance measure, he felt that it would be quite as useless as the Dunkin
Act had been proved to be. In regard to that Act the universal opinion on
the counties where it had been passed was that, instead of decreasing the evil
effects of drinking, it had rather increased them, and, along with that, it
had brought other and worse evils of a different description in those counties
in which it had been in operation. In the Inland Revenue Department the
deputy, the other day, had stated that in those countries where the Dunkin
Act had been in operation the consumptions of whiskey had enormously
increased. The tendency of the Dunkin Act was to do away with the
consumption of malt beverages and to increase the consumption of whiskey.
30 On behalf of the brewers he protested strongly against this Bill.

Amendments read the second time and agreed to.

Mr. MACKENZIE moved the third reading of the Bill.

Mr. WHITE (North Renfrew) said one of the great defects of the Dunkin
Act was the five gallon clause. In this Bill the clause providing that a
merchant might sell ten gallons of liquor was also a serious offence. Why
should a merchant be permitted to sell an article within the limits of a
particular locality which no person was permitted to be purchased? He
moved that the said Bill be not now read a third time, but be recommitted to
a Committee of the Whole, with instructions that they have power to amend
40 the same by striking out sub-section 8 of clause 99.

No. 3.
Extract
from House
of Commons
Debates,
1878, pp.
2485-2486
—continued.

Mr. BERTRAM said this Bill granted power to a county to prosecute the sale of intoxicating liquors within its own midst. This sub-section went against that power, and if the principle of the Bill were to be agreed to, the amendment of the hon. member for Renfrew that this sub-section should be struck out was correct.

Motion in amendment *negatived* on a division.

Bill read *the third time* and *passed*.

No. 4.
Extract
from Senate
Debates,
1878, pp.
160-164.

No. 4.

Extract from Senate Debates, 1878, pp. 160-164.

THE LIQUOR TRAFFIC REGULATION BILL.

10

FIRST READING.

Hon. Mr. SCOTT introduced a Bill intituled "An Act respecting the Traffic in Intoxicating Liquors."

Hon. Mr. MILLER asked for information as to the nature of the Bill.

Hon. Mr. SCOTT said the Bill would be printed and distributed to-morrow, when hon. gentlemen could read it for themselves. However, if the House desired it, he would explain the provisions of the measure.

After a brief discussion as to whether the explanation should be deferred until the second reading,

Hon. Mr. SCOTT said :—I do not propose to go into a discussion of the objects of the Bill, or the reasons for its introduction, on the present occasion, as I think it would not be an opportune time to do so. It is an enlargement, so to speak, of the Dunkin Act of 1864. It supplies a law which may be made applicable to all parts of the Dominion, the Dunkin Act being one which is peculiar to the two provinces of old Canada. In that Act, the machinery for ascertaining the opinions of the people on the question of prohibiting the traffic in intoxicating liquors, was controlled by the municipal authorities, and I was at first inclined to adopt it in this Bill, but, finding that the municipal machinery was the creature of the legislative bodies of the several provinces, and could at any time be changed, I thought it was inadvisable and injudicious that a principle of this kind, to which there might possibly be considerable objection in trying to bring the Act into force, should be adopted. I have, therefore, made provision in this Bill, whereby a plebiscite might be obtained without any interference on the part of the municipal organizations. In carrying out that idea, one of the plans of action is indicated in this Bill—that is, by presenting a petition signed by twenty-five per cent. of the electors qualified to vote in the county or city, as the case may be, to His Excellency in Council, asking that the subject be

referred to a vote of the people in that particular city or county. It will then be competent for the Governor-in-Council, on proof being furnished that the signature of at least twenty-five per cent. of the electors qualified to vote for a member for the Dominion Parliament is attached to this petition, and that those signatures are genuine, by a proclamation in the ordinary official *Gazette*, to name a day on which the voice of the people will be taken at the polls by ballot. That proclamation will also be published in the official *Gazette* of the particular Province from which the petition emanates. The proclamation, I may add, will convey to the people of
 10 the county or city as full particulars as it is possible to place in a document of that kind, in order that the people may be apprized at the earliest possible moment of the action of the twenty-five per cent. of the electoral vote, and in order, also, that the expense may be saved of any further proclamations and notices to the people. It provides that it shall be competent to name a returning officer. The Sheriff and Registrar are named but need not necessarily be appointed. It will be the duty of the person so appointed, on receiving intimation of this fact in the usual way, to mark the day and date of the reception of the notice, and it is his duty at the time fixed, which is provided to be upwards of a month at least, to name the
 20 deputy returning officers of the several polling districts of the county or city, those districts to be the polling districts that have been defined under the Parliamentary Election Law; and where no such division has been defined, it will be his duty to do so in the ordinary way, limiting it to 200 voters. It will also be his duty to provide ballot-boxes and voters' lists, which are provided in the ordinary way.

Hon. Mr. MILLER—Will you leave it possible to have this ballot taken at a general election.

Hon. Mr. SCOTT—No, that would apply to the whole Dominion, which is not contemplated at all. It is provided it shall only be a permissive law,
 30 where the people ask for it, and it will only apply to that section.

Hon. Mr. MILLER—Would it be possible, on the petition of twenty-five per cent. of the ratepayers of a county, before a general election, to combine the two elections?

Hon. Mr. SCOTT—I see no objection to it if so thought advisable.

Hon. Mr. MILLER—I see great objection to it.

Hon. Mr. SCOTT—It would not necessarily be the case, but it is for the people to say whether it should be so or not. I need not describe the details of the machinery of voting. It is a vote by ballot, and the one day principle. The Bill provides that at the expiration of sixty days from the day of
 40 voting, if the vote has been carried, and the Governor-in-Council is so advised by certificate of the returning officer that the majority of votes cast in the election has been in favor of the petition, it is then the duty of the Governor-in-Council to issue a proclamation putting in force the prohibitory law in that particular county or city. The interval of sixty days is allowed in order that the parties either promoting the petition or

No. 4.
 Extract
 from Senate
 Debates,
 1878, pp.
 160-164—
continued.

No. 4.
 Extract
 from Senate
 Debates,
 1878, pp.
 160-164—
continued.

opposing it may, if they think fit, appeal to the proper judicial channel, which is the judges of the inferior courts in most of the provinces—the county court in Ontario, and the district court in Quebec—to have a scrutiny of the ballots. If the vote, as I said before, has been in the affirmative, the law is put in force on the day which has been originally named in the proclamation, that being a day that is made to correspond with the date on which the licenses issued by the provincial authorities expires, in order that there may be no clashing with the jurisdiction of those authorities. I believe in most of the provinces that date is uniform. It may be in some of the provinces that licenses are issued for parts of the year or broken 10 periods, but in Ontario all licenses terminate at a particular day. The machinery for bringing in force the Act, is sufficiently elastic to enable the Act to come in force only at the expiration of the existing licenses. Now I come to the important prohibition clauses. I am not now discussing the points of the Dunkin Act other than to say they were thought not equal to the necessities of those who urged the value and advantage of prohibition. Very great objection was urged against what was known as the five gallon clause. I may say shortly, without going further into detail, the prohibition clause is for the absolute prohibition of the sale of intoxicating liquors in the particular county or city, subject to those conditions or qualifications—that 20 is, when sold for a medicine or for sacramental purposes, in those cases it being incumbent on the party, who is defined as a druggist or licensed vendor, who has authority to sell for those special purposes on receiving a certificate, if from a doctor, that the liquor is specially required for the person named in the certificate, if for sacramental purposes, on the certificate of a clergyman, affirming it is required for such purposes. If the liquor is required for any scientific or manufacturing purposes, then it must be on the certificate of the applicant with an affirmation, and corroborated by the testimony of two justices of the peace. I thought in those particular cases it was only 30 proper and right that if sold under those special circumstances, there should be no evasion on the part of those who might claim to come within the provisions of the Bill. In reference to the manufacturer and the wholesale dealer, there is this provision, that they may sell in quantities of not less than ten gallons, provided it is sold for purposes of consumption outside the municipality where the law exists. In other words, it will be their duty to see it is bonded outside the locality in which the law is in force. In that way there is no real violation of the principles of trade beyond the district which has carried the prohibitory law. Those are the main features. Of course there is a good deal more. The Bill is necessarily a long one, as I desired to make it as perfect as possible. There are provisions for the 40 punishment of parties who commit any infraction of the law. I may say, with the view of having more uniformity on that subject, I have applied what is known as the Criminal Procedure, as administered by justices all over the Dominion, to this Bill. There are some two or three clauses in addition to that which are perhaps more germane to a subject of this kind than any clauses making provision for the punishment of offences in the Criminal Law. I am quite prepared to answer any questions that hon. gentlemen may ask

in reference to any parts of the Bill wherein I have failed to give the proper explanations, but I hope the measure will be in the hands of hon. gentlemen to-morrow.

No. 4.
Extract
from Senate
Debates,
1878, pp.
160-164—
continued.

Hon. Mr. KAULBACH—Did I understand the hon. gentleman to say that the twenty-five per cent. was to be that percentage of the electoral vote of the division.

Hon. Mr. SCOTT—Yes; twenty-five per cent. of the electors qualified to vote for a member of the House of Commons. It is not on a municipal basis. The petition must be signed by at least that proportion of the electors in the county or city. The law cannot be repealed for a period of three years, unless at the expiration of one year a majority of the whole electors in the particular county petition for its repeal. It can then be submitted again to the people, but unless a majority is secured, the law remains in force for the three years. If the petition fails in any particular county, the parties in support of it are precluded from bringing up the question for a period of three years again, unless at the expiration of one year a majority of the whole electors ask that the petition be again submitted.

Hon. Mr. READ—Who is to be at the expense of submitting the petition to a vote of the people?

Hon. Mr. SCOTT—That is a question that will come up at a future stage. I do not propose in this Bill that either the parties opposing or supporting, so far as the mere machinery goes, will be obliged to contribute. I have made a calculation what the bare expense will be, and it will not entail a serious charge on the revenue. It is with that view I have provided, as much as possible, for mentioning the returning officer and deputies in the first proclamation which is required to be published in the official *Gazette*. The parties who are promoting and opposing are sufficiently interested to contribute anything required to supplement this expense. They will have to provide their own agents, scrutineers and the various details, so that the bare charge on the revenue will simply be the expense of the machinery itself.

Hon. Dr. CARRALL—Is the machinery which the Government propose to put in motion by this Bill, limited by electoral divisions?

Hon. Mr. SCOTT—Not electoral divisions, but counties and cities. Sometimes there are three constituencies in one county. I thought the electoral district was too small.

Hon. Mr. MACFARLANE—The principle of the Bill is simply that the majority govern.

Hon. Mr. SCOTT—When it is submitted to the popular vote, it does not require a majority of the whole vote, but a majority of those who desire to cast their votes.

Hon. Mr. CAMPBELL—The hon. Secretary of State has been exceedingly courteous in his explanations, but if he can state the difference between

No. 4.
Extract
from Senate
Debates,
1878, pp.
160-164—
continued.

his Bill and the Dunkin Act, it will be exceedingly interesting to the House.

Hon. Mr. SCOTT—The Dunkin Act was put in force entirely through municipal machinery. A municipal council, of a very much smaller municipality than I provide for in this Bill, might submit a by-law, if they so thought fit. If they did not think fit, it was competent for a petition, signed by thirty persons, to be sent in, and it was then their duty to submit a by-law. Then, voting was on the old system, and was open. One inconvenience was, voting might be protracted, as it was in the City of Toronto, where it lasted thirteen or fourteen days, keeping the city in a state of ferment during all that period. The Act was defective in many particulars. If the municipal officials who had charge of the machinery for the moment, wished to throw any obstacles, they could do so, as we know from the cases that have been before the courts. The prohibitory clauses are also different. Under the Dunkin Act it was allowable for any dealer to sell five gallons or more, for consumption in the locality. This Bill provides that no person shall sell less than ten gallons, and only then for consumption outside of the locality. 10

Hon. Mr. KAULBACH—Do license acts, as in Nova Scotia, remain in force after this passes? 20

Hon. Mr. SCOTT—This is a permissive Bill. It is only brought into existence on proclamation of the Governor-in-Council, and that is predicated on its being carried in the particular locality, and where it goes into existence it goes only in that particular locality and no other. It in no way conflicts with the license law, because it cannot go into force until the licenses in the locality expire.

Hon. Mr. READ—Does this repeal the Dunkin Act where it is in force now?

Hon. Mr. SCOTT—No; it makes provision wherever the Dunkin Act is in existence now, it shall continue in existence, and can only be repealed by the machinery provided for in the Dunkin Act. The Dunkin Act only remains in force where it is now in operation. When this Bill becomes law it would not be competent for a city or municipality to apply the Dunkin Act. It is repealed except as far as the particular county or municipality in which it is now the law is concerned. 30

Hon. Mr. DICKEY—I fear that will cause conflict. In Provinces where there are stringent regulations respecting licenses, they are allowed to run, *pari passu*, with this Bill, and I am afraid, there will be a conflict of jurisdiction in carrying out the law. I merely mention this now to call the hon. gentleman's attention to it before the second reading. 40

Hon. Mr. SCOTT—I have endeavored to explain that the law could not be put in operation while the licenses were in force; therefore there could be no conflict. If the Act were carried, say in January, and the licences did not expire till the 30th of April, it would not go into operation until the first of May. It would then be no longer competent for the

provincial authorities to issue licenses, inasmuch as it would be a direct violation of the principles of this law.

Hon. Mr. READ—How would that affect manufacturers' licenses, which may not end the same time as the others, their licenses being derived from the Dominion Government?

No. 4.
Extract
from Senate
Debates,
1878, pp.
160-164—
continued.

Hon. Mr. AIKINS—It does not affect them at all.

Hon. Mr. READ—It affects them because they are not allowed to sell within the municipality where this Act goes into operation.

Hon. Mr. HOWLAN—These details can be arranged when the Bill
10 comes before the House.

Hon. Mr. SCOTT—This Bill cannot be called a novelty in any sense, inasmuch as hon. gentlemen who have read the discussions in the papers on this question, will find that the various temperance organizations in the country have been applying for legislation in this direction.

The Bill was read the first time.

No. 5.

Extract from Senate Debates, 1878, pp. 338-380.

THE LIQUOR TRAFFIC REGULATION BILL.

SECOND READING.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380.

20 Hon. Mr. SCOTT moved the second reading of Bill "J" intituled,
"An Act respecting the traffic in intoxicating liquor." He said:—In
bringing this matter before the notice of hon. Senators a few days ago, I
went very fully into the details of the Bill, and therefore, I assume the
House would not desire I should repeat what I then gave utterance to, and
more particularly as my observations seemed to be generally understood,
as I notice by articles in the press throughout the country, and as I have
had evidence in the shape of voluminous correspondence from parties
criticising the measure. Although the issue of the Bill was, in the first
place, so limited, it has been copied *in extenso* in several newspapers, and
30 from the communications I have already received, I am led to believe
the provisions are fully understood in the country, with some few exeptions;
and therefore it is unnecessary that I should discuss the details to which I
adverted when introducing the measure for the first time in this Chamber.
I shall, however, give the House the reasons for this legislation. It will
be within the recollection of hon. gentlemen, that in the sessions of 1874
and 1875, more particularly the latter, petitions from all parts of the
Dominion were addressed to both Houses of Parliament, asking for a
prohibitory liquor law. Those petitions were referred to a Committee of

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

this Chamber, whose report I will read to the House. The report of the Committee of 1874 was as follows:—

“The Select Committee, to whom were referred the several petitions presented to the Senate, praying for the enactment of a law to prohibit the traffic in intoxicating liquors in the Dominion,—beg leave to submit the following as their report thereon.

The Petitions which have been referred to your Committee number 993, and have attached to them 349,294 signatures, being ten times the number of those of last year; 147 of the petitions are from Municipal Councils, and 9 from other representative bodies, each acting for a considerable number of persons; it is therefore obvious that the aggregate number of signatures mentioned would have to be largely increased, probably to 500,000, in order to convey an approximate idea of the vast number of individuals who plead for a prohibitory law. Among the representative petitions there is one from the Legislative Assembly of New Brunswick, signed by 33 members, and one from the General Assembly of the Canada Presbyterian Church, which claims a constituency of 226,000 church members, and it must not be forgotten that the Legislative Assembly of Ontario joined last year in the prayer of these petitions. 10

That the desire for legislative prohibition is not merely of a local or even Provincial character, is shown by the petitions coming from all the Provinces of the Dominion: there are from Ontario, 633 petitions, with 302,090 signatures; from Quebec, 103 petitions with 14,038 signatures; from New Brunswick, 92 petitions, with 16,335 signatures; from Nova Scotia, 119 petitions, with 13,622 signatures; from Prince Edward Island, 43 petitions, with 3,174 signatures; from British Columbia, 2 petitions, (municipal) with 34 signatures; and from Manitoba, 1 petition (Presbyterian Church), with 1 signature. 20

Your Committee regard the vast and annually increasing number of petitioners, and their unanimity in the statements and prayer of their several petitions, as indicating the immense and pressing importance of the subject to which they call the attention of the Senate, and the profound and wide spread feeling of the need of such legislation as shall at once check, and eventually extirpate from our land, the vice of intemperance which has so long been, and still is, a prolific source of crime and misery, disease and death and a blight upon the fair prospects of our young Dominion. 30

The whole of the petitioners join in asserting that the vice of intemperance is fearfully prevalent and increasing, and that it results mainly from the facilities afforded by law to the traffic in intoxicating liquors. Your Committee have no means of testing the accuracy of the statement but their own personal observation, and the facts brought to view in the official Returns of Customs and Excise, shewing an enormous quantity consumed in the Dominion, lead them to place full reliance on the assertion. 40

These Returns shew that for the year ending 30th June, 1873, the quantity of Intoxicating Liquors imported into Canada and entered for home consumption was 2,910,304 gallons, valued at \$2,075,089, and the quantity manufactured in addition thereto, after deducting exports, was 16,308,625 gallons, valued at \$9,785,154. They also shew that 121,762,347 lbs. of valuable grain, principally Indian corn, wheat, barley, and rye, were used in this manufacture : these quantities and values are in excess of those of the preceding year.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

10 The petitioners further assert that the traffic in intoxicating liquors is shewn, by the most careful enquiries, to be the cause of probably not less than three-fourths of the pauperism, immorality and crime found in this country; the evidence gathered by the Committee of the House of Commons and reported last year, is strongly corroborative of this assertion; but your Committee are of opinion that more full and extended official information on this very important branch of the subject than can possibly be procured by Parliamentary Committees during the time the Houses are in
20 Session, should be obtained by the Government and laid before Parliament.

A third assertion is made by the petitioners, viz., that the history of legislation upon the liquor traffic shows conclusively that the evils resulting from intemperance cannot be suppressed so long as the traffic is licensed and protected by law; this statement is proved by reference to the Statutes, both Imperial and Provincial, and the unquestionable increase of intemperance while license laws have been in force; these laws have indeed signally failed in their professed object of so curtailing and regulating the traffic as to repress that vice.

30 The petitioners, with one accord, pray for a law to prohibit the manufacture and sale of intoxicating liquors, evidently believing that such entire prohibition, and nothing short of it, will prove effective in removing, or in materially lessening the evils of which they complain; they do not assign their reasons for this belief, but they are doubtless based upon the failure of the licensing system, and on the experience of other countries where prohibitory laws have been enacted, as shown by the testimony to the beneficial effects which have resulted from such legislation, which was obtained and appended to their report last year, by the Committee of the
40 House of Commons.

As it has already been officially announced in Parliament that the prayer of these petitions cannot be granted at this present Session, your Committee refrain from submitting any opinion or recommendation as to immediate legislative action; but they consider that the time has arrived when the earnest attention of the Government and of the Legislature should be given to this important

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

subject, with the view of discovering and applying the best remedy for the gigantic evil, that affects so seriously the peace and prosperity of the Dominion.

Your Committee, therefore, recommend that steps should be taken, without delay, to test by official investigation, the several statements of the petitions, and also to ascertain, authoratively, how far the attempts to remove the evils of intemperance by legislative prohibition of the traffic in intoxicating liquors in other countries or states, have resulted either in success or failure, in order that Parliament at its next Session may be in possession of all the information necessary for its guidance in determining whether the legislation prayed for should be granted or withheld; and as this cannot, at this Session, be done by your Committee, they recommend that an humble address be presented to His Excellency the Governor-General, respectfully requesting him to procure the required information without unnecessary delay, and to cause the same to be printed, and if practicable, copies thereof furnished to each member of the Senate and of the House of Commons, not later than one month before the next annual Session of Parliament.”

“ All of which is respectfully submitted.

ALEXANDER VIDAL, Chairman.

BILLA FLINT.

J. FERRIER.

J. O. BUREAU.

J. C. AIKENS.

A. R. McCLELAN.

DAVID WARK.

DONALD MONTGOMERY.

D. M. DONALD.

M. A. GERARD.

JAMES R. BENSON.

A. W. McLELAN.

D. LACOSTE.

R. J. MACDONALD.

GEORGE ALEXANDER.”

In the following year the subject was again brought under the notice of the Senate, and a very large number of petitions were presented praying that legislations should take place which would give the people a right to prohibit the sale of intoxicating liquors, and asking for powers considerably wider than those in the Bill now presented to the House. The report of the Committee of this House to whom those petitions were referred, was as follows :—

“ First Report of the Committee to whom were referred the several petitions for a law to prohibit the traffic in intoxicating liquors, and the Report of the Commissioners sent by the Government

to enquire into the working of a prohibitory law in the United States, respectfully report,—

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

That the number and character of the petition for prohibition of the traffic in intoxicating liquors already presented to the Senate, clearly indicate that there is no diminution of the desire for a prohibitory law expressed by the petitions to Parliament in the session of 1873 and 1874; but on the contrary, a growing conviction of its necessity, as the only effective remedy for intemperance, and the crime and misery resulting from it.

10 That the simple fact, that so very large a number of petitioners, estimated in the aggregate to be not less than 500,000, allege that vice and pauperism are largely caused by the liquor traffic, and that the system of regulating it by license laws has proved ineffectual to check intemperance,—and unite in praying for the enactment of a prohibitory law,—is sufficient to prove the vast importance of the subject, and to entitle the prayer to the earliest consideration of the Senate. On no other political or social question, ever submitted to Parliament in this country or in Great Britain, has there been so large a number of petitioners, in proportion to the population
20 affording so marked an expression of public opinion in its favor.

 That the report of the Government Commissioners shews clearly that the Prohibitory Law of the States of Maine and Vermont, has been well enforced, and has largely diminished crime and pauperism, and that its beneficial effects upon the community have been so fully proved by the experience of over twenty years, that there is now no attempt made to repeal it; while in the other States visited—
30 although the law was not so generally enforced—wherever it was brought into full operation, the same result of diminution of crime invariably followed. In the cases where the prohibitory law was for a short time repealed, intemperance and crime immediately increased in so marked a degree that prohibition was soon re-enacted.

 That the enforcement of a prohibitory law in Canada would be less difficult than in any of the States to which referred has been made, on account of our having the power to forbid the importation of liquors from abroad, from which power they are, by their Federal constitution, debarred.

40 That the constitutionality of such a law, and its necessity for the protection of life and property, and preservation of the peace, has not only been recognized by the legislation of former years, prohibiting the sale of intoxicating liquors at certain times and places, but has been fully affirmed by this Parliament at its last Session, in the enactment of the stringent Prohibitory law now in force over our vast North-west Territory, and by the Act of the present Session, “to consolidate the laws respecting the Northwest Territories.”

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

That in view of all these facts and considerations, it appears just and expedient that the prayer of the petitioners should be granted; and that the time has now arrived when the attention of the Government should be given on this important question, with a view to the introduction of a Bill to prohibit the manufacture, importation and sale of intoxicating liquors; except for mechanical and medicinal purposes, throughout the Dominion, at the earliest date compatible with the public interests.

That should the Government not feel satisfied that the indication of public opinion afforded by the numerous petitions presented to Parliament, is sufficient to justify the early introduction of such a law, it would be desirable to submit the question to the decision of the people, by taking a vote of the electors thereon, as soon as practicable. 10

All which is respectfully submitted.

ALEXANDER VIDAL,"
Chairman."

Senate Committee Room,
March 27th, 1875.

In obedience to the expressed wish of the House as evidenced by the report of the gentlemen to whom the consideration of this subject was delegated, a commission was issued to the Rev. J. W. Manning and Mr. F. Davis to enquire into the working of the prohibitory laws of the United States. They visited those States where such laws were in force and collected a mass of information which was in the following Session brought down and distributed to Parliament and the country. In reading the information afforded by their report, one is led to the conclusion that the gentlemen who gave information and their opinions to the Commissioners in the various States where prohibitory laws were in force, believed that the effect of prohibition was to put down vice and crime. I do not propose to weary the House by quoting the statistics there given. The Report is in the hands of members and no doubt they have read it for themselves. The opinion seems to be, that a large amount of crime and immorality is due to the drinking customs of society, and that the restriction of the liquor traffic is conducive to morality; this report asks for a more stringent law than the Bill before the House. It recommends the absolute prohibition of the sale or importation or manufacture of intoxicating liquors. My own opinion is, and I believe it is the opinion of a large number of the people of Canada that the country is not in such a position as to render it possible to prohibit arbitrarily the sale, manufacture or importation of intoxicating liquors. 20
The views of the temperance people can be more readily met by a permissive law, applicable to the several areas of the Dominion, either smaller or larger, in which there may be a divided opinion. The right to impose restriction on the liquor traffic is one that has been recognized in this country, in the United States and in England. It has been made more frequently 30
40

the subject of legislation than any other article of trade and commerce. We know the traffic has been frequently the subject of restrictive laws in the Imperial Parliament from time to time, all more or less severe, limiting the hours within which liquor may be sold; limiting the sale to particular days of the week, and preventing the sale on certain occasions, manifestly on Sundays. Therefore, it is not peculiar legislation, inasmuch as it has formed the subject of legislation in other legislatures akin to our own. In the several provinces of the Dominion they also have laws that are in a great measure restrictive. In Ontario and Quebec, it is very well known, the Temperance Act of 1864, known as the Dunkin Act, was in force at the time of Confederation, and in the Province of Ontario it has continued to be in force with a very slight change. In the Province of Quebec the greater part of the Act was repealed, but re-enacted in another shape in the Civil Code of Lower Canada. Practically, it is in force in a very considerable part of Quebec under the Civil Code. In New Brunswick there are very strong restrictions on the granting of licences. In Nova Scotia they are still stronger; in that Province it requires the consent of two-thirds or three-fourths of the people, a majority of the Grand Jury and of the Court of Quarter Sessions in any district, before even a license can be issued. How far those laws are legal or otherwise, it is not for me to discuss. In view of the conclusions arrived at by the Judges of the Supreme Court lately, I am inclined to think some of the restrictive laws of the provinces are *ultra vires*. The tendency of the several decisions in the courts of law, of the Supreme Court especially, is to show that the control of the trade in intoxicating liquors rests with the Federal Parliament.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Hon. Mr. BOTSFORD—Will the hon. gentleman give us his experience as to the working of the Dunkin Act?

Hon. Mr. SCOTT—Does the hon. gentleman refer to the mechanical working of the Dunkin Act?

Hon. Mr. BOTSFORD—I mean its advantages.

Hon. Mr. SCOTT—The hon. gentleman asks me to tread on very delicate ground. Of course the conclusions reached are entirely dependent on one's views, whether prohibition will keep men sober or not. My own impression is, you cannot entirely control the drinking usages of society by prohibitory laws. I think that is impossible. People must be educated to correct views on the subject before they can be kept sober.

Hon. Gentlemen—Hear, Hear.

Hon. Mr. SCOTT—But you can remove temptation from a considerable number of people who will not yield to vice unless tempted. If those premises are sound, then the law would be extremely useful where a considerable portion of the people were favorable to prohibition, for the removal of temptation would of itself save many from the vice of drinking, whose moral tone had been injured by the great facilities now existing for indulging in the vice. That is my own individual view. There are hon. gentlemen in this Chamber who are much more competent to give an opinion than I

No. 5.
 Extract
 from Senate
 Debates,
 1878, pp.
 338-380—
continued.

am, inasmuch as I have never lived in a county where it has been in force. It has been adopted in several counties in Ontario, and has been very generally observed in some of those municipalities. In others it has not proved so satisfactory, and has been repealed. It all depends upon the people in the locality, and whether they are educated up to an appreciation of the benefits to flow from total abstinence. Drunkenness is one of those evils that cannot be prevented by legislation, any more than you can prevent the use of opium among the Chinese. They will get it some way; but a great many can be saved from the degrading taste by being deprived of the facilities for obtaining opium. My own views on that subject are rather peculiar, and it is not necessary I should give them to the House other than what I have said, that I think with regard to intoxicating liquors, where so large a proportion of the people, not only of this country, but of others also, have come to the conclusion that the human family would be very much better morally and physically without its use, their representations are entitled to some consideration, and under our system of the minority yielding to the majority, to have their views carried out wherever it can be made reasonably to appear we can enforce the law. I should consider it a farce to pass a prohibitory law in Canada at present, or to prohibit the importation of liquor, because it could not be enforced. The people would not be impressed with the moral sense that the law ought to be observed, and therefore, it would be violated; but there are considerable sections of the country where a large majority of the people are impressed with the belief that society would be very much better without the use of intoxicating liquors; that if it were banished from their precincts, crime would decrease, and they and their neighbours would enjoy better health, and morally and physically would be superior if deprived of the use of that stimulant. In such sections I believe the people are entitled to have prohibition if the majority desire it, because the traffic in intoxicating liquors is not like trade in any other article. We all know that a very considerable number—I think I am safe in saying a large proportion—of our people have come to the conclusion, that the human family would be very much better without stimulants of any kind. I, myself, believe we would be very much better without many stimulants I could name—opium and tobacco are very little less injurious than intoxicating liquors—but unless that view is shared by the majority, it would be idle to attempt to enforce laws against the palate and taste, until people are educated up to a standard, to appreciate their value and importance. But the opinions with regard to intoxicating liquors are most decided, and we have the judgment of men whose opinions are entitled to very great respect, that their use is injurious to the human family. I do not hesitate to say I concur entirely in that view—that there is no condition of the human body in which alcoholic drinks have any but injurious effects. That is the conclusion I have arrived at, and I have given the subject some considerable attention and study. Medicinally, I think it is absurd to prescribe it. My views on that point, probably, are strong, and therefore I do not desire to discuss what might be considered a hobby of mine. Happily it is a hobby shared in by many very distinguished men.

10

20

30

40

My conclusion is that the use of stimulants is bad; that under no possible condition of the human body can they be of the slightest use, otherwise than to weaken the vital tissue and lower vitality. However, this is scarcely germane to the subject; but my hon. friend rather invited an expression of my views, and they can go for what they are worth.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Hon. Mr. BOTSFORD—They are very interesting.

Hon. Mr. SCOTT—With regard to the right of the Federal Parliament to legislate on this subject, I do not know that it is necessary I should say very much. The decisions in the courts, and the publicity given to them are
10 entirely of too recent date to warrant my enlarging on that subject, other than to express my own conviction that the general result of all the cases that have been before the courts, high and low, especially in the *Queen vs. Taylor* and the *Queen vs. Severn*, lately decided in the Supreme Court, is to prove that, although there is a licensing power under the Confederation Act, in the Provincial Legislature, yet, as a branch of trade and commerce, the Federal Parliament has absolute control over the liquor question—that is, it may prohibit its importation or manufacture. The greater includes the less. If it can do that it can restrict or prohibit it in localities, if thought wise and proper. The licensing power is entirely subservient and subordinate to
20 the powers of the Federal Parliament to exclude either its manufacture or importation as an article of trade and commerce. Even the judges who held that the local legislatures had the right to insist upon license from manufacturers and brewers, yet, as an element of trade and commerce, the licensing power was subordinate to the larger one which was exclusively possessed by the Dominion. In the case of the *Queen vs. Taylor*, the Appeal Court of Ontario held that it was not *ultra vires* to insist upon a license from the brewer or wholesale dealer (the brewer particularly in this case) under the licensing power of the local legislatures. In giving judgment, the late Chief Justice Draper reversed the decision of the Court of Queen's Bench,
30 that the local authorities had not the power to impose a license upon brewers. When the case was appealed to the Supreme Court, Judge Strong sustained the view of the late Chief Justice Draper, that it was competent for the Local Legislature to exact a license from a brewer, but if the license was in excess of what was reasonable and legitimate, then it was infringing on trade and commerce, in which case it would be void. That was making a very nice distinction. That diction would lead to the conclusion the local authorities had jurisdiction up to a certain point, and if the license were exorbitant, then it would be *ultra vires*. I will quote his remarks on that point :—

40 “ Strong, J.—I entirely concur in the judgment just pronounced by His Lordship, the Chief Justice. I only desire to add that I am of opinion that a license which would amount to prohibition would be an undue interference with the exclusive powers of the Dominion Parliament as to trade and commerce, as has been, in effect, lately decided by the Supreme Court of New Brunswick, in the case of

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Regina vs. the Justices of the Peace of the County of Kings, ex parte McManus, 11 c. L. J. 249, 2 Rugsley 525. Burton, J., and Patterson, J., concurred. *Appeal allowed.*”

Hon. Mr. MILLER—Have you the opinions of the Judges of the Supreme Court on the Bill before the House?

Hon. Mr. SCOTT—I have not consulted them. In conversation I may have spoken of it in a general way, but I have taken no regular opinion on it from anyone.

Hon. Mr. DICKEY—Was not the case you have cited that of a brewer’s license, not a license to sell under the ordinary sense of the term? 10

Hon. Mr. SCOTT—Yes.

Hon. Mr. DICKEY—That is a very different thing.

Hon. Mr. SCOTT—In the case of the *Queen vs. Severn* the decision was the same way.

Hon. Mr. DICKEY—Was that a brewer’s license?

Hon. Mr. SCOTT—Yes. I will quote from the decision of the Chief Justice, who was supported by three of the other Judges. He said :—

“ I feel bound, therefore, on principle and as the result of all the cases to construe the words in question, as controlled by the other portions of the Act, and therefore not to include licenses to brewers or distillers to sell by wholesale. I am of opinion, for the reasons that the Act of Ontario in question was *ultra vires*. I will not, however, say that where the terms used are exhaustive of the particular class or subject named, that we are bound to apply the principle of construction just stated, and it may possibly be argued that such is here the case in respect of the words, ‘ and other licenses.’ In such a case where there are no controlling conditions, the words might be sufficient to give the right claimed for the local Legislature; but when considering the object and premises of the whole Act and the mode adopted for providing for effecting them, I can come to no other conclusion than one founded on the duty I feel incumbent upon me to read the whole Act together, and therein and thereby, and not from the technical reading of a few words in a sub-section, however otherwise important, seek for the intention and meaning of the Legislature. By this mode the Act is made to harmonize in all its parts, and the feasibility of working it out is established. By the other construction, and not, in my view, the proper one, the evident intention of the Legislature is frustrated and the legislation itself made absurd and inconsistent; and the working out of the details made most difficult, and it may be found totally impossible, and that the appeal should be allowed with costs and judgment entered for the appellants.” 20 30 40

The conclusion reached in those several decisions is, I think, that the power to deal with this subject rests with the Federal Parliament.

Hon. Mr. DICKEY—Who gave that judgment?

Hon. Mr. SCOTT—Chief Justice Ritchie.

Hon. Mr. DICKEY—The same Judge who was in a minority in the other case before the Supreme Court.

Hon. Mr. SCOTT—Yes, he differing, I believe, on the question of licenses. I now come down more particularly to the Bill itself, and, as I said before, I do not think it would be proper for me to go seriatim over the details, as I explained them so fully on the introduction. I propose rather to listen to the observations made on it and give explanations to hon. gentlemen
 10 who may desire them with reference to the contents of the Bill. I may say here there is some misconception in the country as to the provision respecting the area in which the measure could be adopted—that a county was not supposed to include a town where the town was a distinct municipality. The Bill was drawn to include minor municipalities, and to apply solely to cities and counties. Then, in reference to the number of the signatures required to put in force the machinery for taking a vote of the people, that has been fixed at 25 per cent. of the electors. I have received strong appeals from different parties on that point, many contending that unless the sentiment of the municipality can be more strongly evidenced
 20 than by the signatures of 25 per cent. of the electors, the Act should not be submitted to the popular vote; others maintaining that the proportion is too large—that a much smaller proportion ought to be sufficient to allow of a plebiscite being taken. My own impression is 25 per cent. is a fair proportion, and as it is equally vigorously opposed on both sides, I may fairly regard it as a reasonable proportion. The Bill itself provides that it shall not be in force wherever the Dunkin Act now prevails, but that it shall be competent for parties to repeal that Act, and afterwards if they please, adopt this measure in that county or city. I propose suggesting an amendment, that it might be competent for them to invite the opinion of
 30 the county on the adoption of this law, without repealing the Dunkin Act, but if the law putting in force the Act of 1878 carry, then, *ipso facto*, the Dunkin Act shall cease. Many advocates of the Temperance Act of 1864 have expressed the opinion, that when this law comes in force it should supplant that Act in those localities where it prevails. I do not think that is a fair proposition, because this measure is so entirely different from the Dunkin Act, and such an enlargement of that law, it would be *ex-post facto* legislation. It has been again pressed upon my attention that the machinery for repealing the Dunkin Act is defective. They ask that machinery may be introduced in this Act, that will enable them to test whether the people
 40 think the Dunkin Act should be repealed or not. I do not, myself, see that the proposition is an unreasonable one, although I have not prepared any suggestion with a view to introducing that in the Bill. There are many minor details in the Bill that I propose to submit to the House when we go into committee, that it might not be proper to discuss now. I can explain them at a future stage of the Bill. One clause, to which I did not draw attention at the first reading, was that which provides for the confiscation

No. 5.
 Extract
 from Senate
 Debates,
 1878, pp.
 338-380—
continued.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

and destruction of liquor, which forms the subject of a breach of the law. The suggestion has been made that where counties are united for municipal purposes the vote should be taken in the united counties. My own opinion is it would be better to have the vote taken in the individual counties. Northumberland and Durham were the counties to which my attention was specially directed. I believe they have the Dunkin Act in force there, not including the towns of Cobourg and Port Hope. It could in such a case be asked for in both counties simultaneously, and the vote taken on the one day. This law being of a peculiar character, it ought not to be enforced in localities where the people are not prepared to accept it. I shall now move the second reading, and, at a future stage I will make some further observations relating to the details of the Bill. 10

Hon. MR. CORNWALL—I rise for the purpose of opposing the second reading of the Bill which is now before the House, and which was so elaborately explained when introduced by the hon. the Secretary of State. I must commence by expressing my surprise that the Government has taken up this measure at length and brought down a Bill which seems unreasonable and impracticable to an extreme degree. From what I have been able to observe of the policy of the Government during the past five years as to this question, I had certainly come to the conclusion that they were altogether opposed to any legislation upon the subject. And yet, here we find, at the last moment in which they are likely to have an opportunity of introducing any Bill on this subject in this or any other Parliament, they come before us with a Bill of such a character as this is. There must be some reason for this extraordinary change of policy on their part, and I do not think we need go very far to find what that reason most probably is. It must be that they remember that a general election is drawing near. They must remember that individual drops of water eventually fill the bucket; and they feel that they must, by any and every means in their power, strive to obtain that ultimate majority of votes which may replace them in this House in the same position they occupy at the present time. I intend to oppose this Bill on the two special grounds: that it is neither a wise nor a practical measure. I do not consider it a wise Bill, because it tends to prevent us, who have been surrounded by Providence with certain articles for our use and advantage, of the use of those things. In ancient times, a country, which was considered as one in which it was desirable to live, was spoken of as a land abounding in corn and wine and oil, but this Bill, ignoring the experience of ages, proposes to deprive us of two of these gifts of God. If it is urged that such gifts are of a hurtful and injurious nature, exactly the same may be said of all chemicals, medicines, gunpowder, and other articles which enter into the daily use of man, and are of infinite value to him, but which, nevertheless, are restricted in being sold and in being used by certain laws, in the same way that the sale and use of intoxicating liquors are restricted by regulations upon the subject. If a man is in the habit of so using intoxicating liquors as to become drunk and injure or annoy his neighbors, the law wisely steps in, and restrains and punishes that man; but that is a very different thing 20 30 40

to allowing the majority of the electors of any particular district to lay down the law on such a subject as this to the rest of the inhabitants of that district, who probably outnumber them ten to one. If, in any particular district, one man, or twenty men, are in the habit of making an intemperate use of liquor, is that any reason why you or I, or any other inhabitant of the district, who never exceed the moderate use of it, and from such use derive not only pleasure but benefit, the deprivation of which we should much feel—is it in reason, under such circumstances, that a majority of the inhabitants of that district should lay down the law to the rest of us as to what we should drink, or rather what we should not drink? I contend that such a law as this would be an interference with the private rights of the people which would be unjustifiable in the highest degree, and would be of no practical value, because it could never be practically carried out. Then again, think of the continual disturbance to which it would give rise, if such a law as this were enforced—the continual strife and agitation which it would occasion! Think of having one-half of the population spying out the private life of the other half, to see whether they complied with or evaded the terms of this law! I really think, if such regulations were to come into force in any particular part of the country, there would be such continual strife and disturbance in that district, that it would be shown at once that this was not a wise law in any particular. I consider, in addition, the law is not a practical law, because if it were enforced in one district, the result would simply be this: in surrounding districts the number of public houses and other places where liquor would be sold, would be doubled in number, and those who were in the habit of intemperately or temperately using liquors would go to those places and supply themselves with all they needed. This Bill would throw difficulties in their way, it is true, but there would be, nevertheless, as great a consumption of liquor in the prescribed district, as before the enforcement of the law. And if you were to go further and say, if that is the case we will extend the provisions of this law over the whole country, why, I say, it would simply give rise to a revolt and rebellion, which would speedily upset the law, and restore matters to the basis on which they now stand. I must say, I regret the introduction of such a bill as this in the Senate, because I am quite sure it places many hon. gentlemen in the same position in which I find myself, of having to stand up and oppose a bill which has—presumedly—for its object the mitigation of the evils which are attendant on the intemperate consumption of alcoholic liquors. We must, all of us, recognize the evils of intemperance. There can be no difference of opinion on that point. We all know that the intemperate use of alcoholic stimulants is prejudicial, not only to the health of the person who so uses them, but also to his family, and frequently leads to the commission of crime. I think there are no statistics in Canada on those points; and even in England where statistics are so elaborate and copious on all matters it is difficult to arrive at a definite conclusion. Nevertheless, there is evidence to be got at, and I have been interested during the past few days in looking over a report of a committee of the House of Lords on intemperance, which sat during the

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

No. 5.
 Extract
 from Senate
 Debates,
 1878, pp.
 338-380—
continued.

last year. It was pleasant to notice the assiduity with which the members of that committee attended to their labors, and the intelligence and knowledge they manifested in the examination of the witnesses brought before them. But after all the result was more or less unsatisfactory, because as many diverse opinions were given on every branch of the subject they were investigating as there were witnesses examined. One witness would say he did not consider intemperance on the increase. Another, who had equally good opportunities of coming to a proper conclusion on the subject, would say intemperance was rapidly on the increase. And so it was throughout the examination, and the result of the matter was, that there were so many diverse opinions as to how the evils of intemperance should be met, that no one can come to any definite opinion upon the subject. One thing, however, was clear—that the consumption of alcoholic liquors in England during the last decade had increased to a very large extent. But that is explained, and very reasonably explained, by the fact that during that time there were many years of unexampled prosperity, and the people were more in the position to spend money on the luxuries of life than they were before. That is proved by the fact that during those same years the consumption of tea, sugar, of even beef, and other necessaries, was increased in like proportion; and, to put it in the words of a witness, “the consumption of the temperate had increased during that time in proportion to the general prosperity of the people.” Then there was another interesting point brought out, which was, that four-fifths of the consumption of alcoholic liquor was the consumption of the temperate, and that less than one-fifth of the whole amount was the consumption of the intemperate. The word “intemperate” in this case, does not mean only those who habitually drink to the extent of drunkenness, but includes that very large class who, as a matter of course, in daily life, make use of more spirits than is good, either for their health or their pockets. Then there was another point which was well established, and that was, that in England intemperance was a local and not a national evil. It was in certain localities only that intemperance prevailed to any extent. In those certain localities the people seem to have got into a habit of intemperance, which did not exist in other places. Of the total number of committals for drunkenness during the year 1876, seventy-five per cent. took place in seven counties only of England, and those counties were situated in the North. They were counties where the inhabitants were engaged in mining, and in the large towns. But, after all, I do not know that these considerations are necessary. We must all recognize the evils of intemperance, and must all regret that the Government, when they took this matter in hand, did not bring down some sensible and practical bill which might be of practical value, and be carried out in a manner beneficial to the country. I believe they might have framed such a measure, though I have no intention of pointing out to the House what course, in my opinion, should be adopted; yet, I will say, there is no point to which the Government might well pay greater attention than to the moral education of the people. There is no doubt that one of the most potent causes of intemperance is the want

of self control, arising from lack of early training and from generally imperfect education. There can be no doubt about that, and the energies and means of the Government might well be employed to bring about some change in these particulars. Every step they might take in that direction would be repaid ten-fold. But it is not only for them to see to this matter, it is also incumbent upon every member of this House, and every citizen of the country, to show, by his example, how he values and exercises self-control; not by depriving himself altogether of the use of the gifts with which a bountiful Providence has surrounded him, but by simply using those gifts in

10 a temperate and a moderate manner.

Hon. Mr. VIDAL—I do not propose to reply, at the present stage, to the statements made by the hon. gentleman who has just sat down, with but one exception. He has certainly clearly intimated to us that he has in his mind some scheme by which the frightful vice of intemperance and its dreadful results in our country can be lessened or removed. I hold that if he has any ideas on this subject worthy to be submitted to this House, it is his bounden duty, while occupying the position he does, to let us know what they are. For a long term of years the greatest philanthropists of the time, anxious to

20 promote the best interests of humanity, have been giving their earnest attention to any and every scheme which has been suggested as likely to stay the ravages of intemperance; and I unhesitatingly say, that if any member of this House can devise a scheme by which this result may be more readily attained, or which he considers more in harmony with the dictates of reason than the one now submitted to the House, he is bound, by his unquestionable duty to the country, to make known what the measure is, and should not leave us in our ignorance to go on with a bill which he declares to be unwise and impractical, while he holds the key by which the great problem can be solved. I consider that we are indebted to the Government and especially

30 to the hon. Secretary of State, for the measure which is now brought before Parliament. I recognize with the greatest satisfaction and delight to bear my testimony to, the readiness to meet the wishes of temperance men, which the hon. Secretary of State has shown in adopting their suggestions, and the trouble he has taken in drawing up the Bill which he has now submitted for our consideration. What may have led the Government to take up this subject I do not stay now to inquire into; I think it would be unworthy on my part were I, occupying the position I do in relation to this subject, to suggest that any unworthy or improper motive has influenced them in submitting this measure to Parliament.

Hon. Gentlemen—Hear, hear.

40 Hon. Mr. VIDAL—I must confess, while I think, upon the whole, it is a good Bill, and while I would take it as it is rather than lose it, I have objections to some sections, which I will, at the proper time, propose to amend. I rejoice in the fact that this Bill is so generally recognized as a measure which is above all party feeling; that we find members who usually oppose the Government willing to unite with those who support them in endeavoring to perfect the measure. That is undoubtedly the right course

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

to pursue, for the interests of the whole country are affected by it. No political party has any special claim to call this their Bill: no party can, as such, be particularly affected by its passage or its rejection, but the whole country will be benefitted by its becoming law, and we are bound to give our best efforts to aid the Government in perfecting it. The hon. Secretary of State has told us very correctly that it is no new legislation. There is certainly nothing novel in legislating with a view to limiting and restricting the liquor traffic. If we look at the Statute Book of England, what do we find? On its pages I believe there have been over three hundred different enactments on this particular subject. Does any hon. gentleman venture to assert that those enactments have been placed there in the interests of commerce, for the purpose of developing any branch of industry? No, every one of those statutes has for its object the restriction of the sale and the lessening of its resulting evils, and is a continually repeated testimony to the fact to which I have frequently called the attention of this House, that the traffic in intoxicating liquors is productive only of evil, and requires to be suppressed or curtailed in every direction. We have been for three centuries lopping off the twigs and branches of the upas tree which is growing in our midst. Why do we not cut it down at once? destroy it root and branch; then we should not find it necessary, year after year, to enact statutes for diminishing its baneful effects. The hon. Secretary of State has spoken of the legal or constitutional aspect of the question. I must confess in this I am still in the dark. I have perused with the greatest attention the judgments given by the Supreme Court of the Dominion, and of the other courts referred to by him, and at this hour I contend that we have little more light upon this question as to the *ultra vires* of our action upon it, than we had when I directed the attention of this House to the matter in 1875, when petitions for a prohibitory law were pouring in upon us from all parts of the country. We were not then met with the objection that it was beyond our jurisdiction, but with doubts as to the usefulness or efficiency of a prohibitory law, such as was petitioned for. It has been already related to us what took place—that a commission, at the instigation of Parliament, was appointed to go to those states where prohibition was in force, and report upon the effect of it in those states. Two were appointed; one of them, when they set out from this country, was an anti-prohibitionist. He had no sympathy with the prohibitory movement. What was the result of that Commission? A report which was certainly enough to satisfy every candid man that wherever prohibitory laws had been enacted and in any degree enforced, the greatest benefit had resulted. The report was printed and circulated very largely. Almost every hon. gentleman in this House must have had an opportunity of seeing it, and of weighing and judging of its contents. Their testimony is corroborated in every direction. The hon. gentleman who preceded me remarked that prohibition is not likely to produce good results.

Hon. Mr. CORNWALL—Not if attempted to be brought about in this way.

Hon. Mr. VIDAL—I wish the hon. gentleman to understand that no matter in what way it is brought about, where a prohibitory law exists, and

is enforced, it is invariably accompanied by good results. In the ecclesiastical Province of Canterbury, England, prohibition has been fairly tested on a somewhat extensive scale, and with what result? Let me answer by reading a brief extract from the published report of its committee to the House of Convocation :

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

10 “ There are, at this time, within the Province of Canterbury,
“ upwards of one thousand parishes, in which there is neither public
“ house nor beer shop. and where, in consequence of the absence
“ of these inducements to crime and pauperism, according to the
“ evidence now before the committee, the intelligence, morality, and
“ comfort of the people, are such as the friends of temperance would
“ have anticipated.”

With permission of this House, I will read two or three short extracts from other papers corroborating this view. A writer in the *Edinburgh Review* says :—

“ We have seen a list of eighty-nine estates in England and
“ Scotland where the drink traffic has been altogether suppressed
“ with the happiest results.”

20 In Ireland the experiment has been tried in the county of Tyrone, which
contains sixty-one square miles, and has a population of ten thousand
people, and in which no public house is allowed. Of this county, the Right
Honorable, Lord Claude Hamilton, M.P., said :—

“ At present there is not a single policeman in that district. The
“ poor rates are half what they were before, and the magistrates
“ testify to the great absence of crime.”

In Saltaire, in the county of Yorkshire, England, there is not a single
beer shop, and prohibition has prevailed for many years. Of this place, in an
article on this subject the *Daily Telegraph* says :

30 “ The stage of experiment has long been passed ; the scheme
“ has survived open hostility, envy, and detraction, and is now a
“ brilliant success.”

The report of our commissioners, to which I have already referred,
contains many such certificates from Governors of States, Judges, Sheriffs,
and other public authorities, showing the effect of prohibition to have been
the same in the United States. I will give one more extract, showing what
good effects have accompanied the partial prohibition of the liquor traffic
in our own country, where the Temperance Act of 1864 has been in force.
The Mayor of the town of Napanee writes :—

40 “ The Dunkin Bill is a success in this town and county. We
“ have no prisoners in our gaol except one, a lunatic. We have no
“ fights, no quarrels, no arrests, no paupers. All is peace and
“ harmony and good will. The trade of the town has not suffered
“ in the least. We have no municipal law better kept than this.”

No. 5.
 Extract
 from Senate
 Debates,
 1878, pp.
 338-380—
continued.

I might go on and multiply to an inconvenient length, the testimony I could bring to this House to show that wherever the traffic in liquor has been prohibited, it has invariably been followed by those satisfactory results—absence of crime and pauperism, and general prosperity. Reverting again to this question of jurisdiction, I repeat that in my opinion, it remains in the same position as when our attention was first called to the difficulty. I may remind the House that the following year, after receiving the report of the Commission, and having, as we thought, our way clear for legislation, we ventured to broach the subject of a bill, and then we were met with the statement that it was doubtful if this Parliament had jurisdiction over the traffic. Finding it was too late in the Session of 1876 to do anything that year, I ventured to draw up and submit for the approval of the House, four questions, and moved for an address to the Governor-General in Council, requesting that they should be submitted to the Judges of the Supreme Court for their opinion thereon, so that when this House met the following year, it should be in a position to deal with this subject intelligently, and with a clear understanding of the extent of our jurisdiction. I daresay the House will remember that when requested by hon. gentlemen on both sides to withdraw the motion, I refused to do so, until I received from the hon. Mr. Letellier,—then leading the Government in this House,—the assurance that if I would withdraw the motion, which was rather inconvenient, the question should be settled and information given to the House when we met the next session. I hardly need remind hon. gentlemen that this promise was not fulfilled, and that when we next met, the hon. Minister who had made the promise for the Government was not amenable to our interrogation, and the difficulty remained in the same position as before. The question of jurisdiction, so far as it affects the measure now before the House, was not settled by the case recently decided by the Supreme Court. The decision was confined simply and solely to the question of the right of the Province of Ontario to impose a license fee on a brewer already holding a license from the Dominion Government for making beer. That is the sole point which has been settled. The decision does not touch the constitutional question, and there is no further light thrown on this subject to-day than there was two years ago. What rather surprises me is that the hon. Secretary of State has now come to the conclusion that the Dominion Government has the power which two or three years ago he claimed there were grave doubts about, when there has been no authoritative settlement of the question. So far from its being settled, in my opinion the question is now more complicated and in a far worse position than ever before. As a loyal subject of her Majesty, and as a loyal citizen of the Province of Ontario, I am bound to receive as law that which a Royal Proclamation, duly attested by the Lieutenant Governor of the Province declares to be such. Such a proclamation was issued last year, announcing that a code of laws called “The revised Statutes of Ontario” came into full force and effect on the first of January of this year in that Province. Among these Statutes is one in which is embodied the greater part of the “Canada Temperance Act of 1864” commonly known as “the Dunkin Act;” clearly showing that the law

10

20

30

40

officers of the Crown in Ontario, and its Legislature, claimed and exercised control of the matters which are dealt with in the Bill now before the House, and the power to amend and repeal the Dunkin Act.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

By turning to page 2270 of the Revised Statutes, I find, in the regular table annexed to them for our guidance, a schedule of Acts which are wholly or partly to be repealed, and among them the Temperance Act of 1864. I observe in the margin that the whole of it is repealed.

Hon. Mr. SCOTT—I think the only change is the word “ parish ” left out.

Hon. Mr. VIDAL—I am not speaking of the dissimilarity or the resemblance of the Acts. I speak of this fact, that to me it appears the Temperance Act of 1864 has been repealed by the Ontario Legislature as to that Province; and yet I find in section 3 of this Bill provision made for the repeal of the same Act, which the high authority to which I have referred informs me does not exist. This indicates to me that the question of jurisdiction in this matter has not been really decided. Again, I find, on page 2317, a list of the Statutes of 1864 which are affected by these revised Statutes, and among them, chapter 18, “ Respecting the sale of intoxicating liquors and the issue of licenses,” consolidated into the Statutes of Ontario. Again, in Appendix “ B,” the same Act is inserted in a carefully prepared table, where every section is dealt with separately. Among others, it tells us that a few sections belong to the Province of Quebec,—one is marked “ Effeté,” and another “ Dominion.”

Now I call attention to this to show how thoroughly the Act was considered, and how carefully the framers of the new law, in the Legislature of Ontario, eliminated from the Temperance Act of 1864 anything which in their judgment belonged to the jurisdiction of the Dominion, and by this to prove my assertion that so far from the question of jurisdiction being satisfactorily settled, we have no guarantee and no certainty that this measure can be enforced by authority of this Legislature. The first thing we may expect after it goes into operation is, that cases arising under it will be brought into the courts with a probability that the Act will be declared *ultra vires*. I am so anxious that such a serious difficulty should be avoided, and that a measure passed by this House shall not be placed in such a position, that I have been continually urging the necessity of getting a decision or an opinion from the Supreme Court, in order to avoid this trouble. But the hon. Secretary of State says this has not been done. I contend that even at the eleventh hour, and after the Bill is passed, it should be submitted to the Judges of the Supreme Court, before the Governor General’s signature is attached to it, for their opinion as to its constitutionality. I might remark, in addition to what I have said has been done in Ontario, that the decisions which have been given on this question in other courts, are worth considering. In Nova Scotia the Supreme Court, seven judges concurring—gave a very elaborate and able judgment on a case which came before them. I will read a paragraph or two from it :—

“ The sole object of the Legislature was unquestionably the promotion of temperance, and the protection of the health and

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

morals of the people, and the preservation of the peace and of good order of the community, matters of police. The Provincial Parliament is in my opinion entitled to legislate with a view to regulate, within the Province, the sale of whatever may injuriously effect the lives, health, morals or well-being of the community, whether it be intoxicating liquors, poisons, or unwholesome provisions, if such legislation is made *bona fide* with that object alone, even though to a certain limited extent it should affect trade and commerce.”

Such is the opinion of the Supreme Court of Nova Scotia, and no other court, superior in power, has given us any decision opposed to that; so I consider that, in that province at all events, this Act will not be considered binding. With regard to the Bill itself, there are many things which, in my judgment, require explanation and amendment. In the 3rd section there is provision made that the Temperance Act of 1864. 10

“ Shall continue in force as to each and every municipality in which a by-law passed and approved, or adopted and passed under its authority and for its enforcement is in force at the time of the passing of this Act, until such by-law has been repealed under and in pursuance of of the said Act, when the said Act itself shall *ipso facto* become and be repealed as to such municipality; and as to every municipality within the limits of the said late Province of Canada in which no such by-law is in force at the time of the passing of this Act, the said Act is hereby repealed.” 20

That is, a repeal of the Temperance Act of 1864, which has already been repealed by the Province of Ontario. However, I must presume that the Secretary of State, himself a lawyer, and having had the opportunity of conversing with the Minister of Justice, and perhaps with the Judges of the Supreme Court, ought to know whether this Bill is constitutional or not, and I therefore accept it, for the present, as coming within our jurisdiction.

Hon. Mr. SCOTT—I did not state I had consulted any of the Judges on the subject. 30

Hon. Mr. VIDAL—I did not say that it had been done, I only say that, having had the opportunity of conversing with them, such an opportunity might have been embraced. However, I do not insist upon that supposition. The Government introducing this Bill knows or ought to know what it is doing, and, therefore, we should not reject the measure because some doubts may, not unreasonably, be entertained as to some of its provisions being an encroachment upon provincial jurisdiction. I have placed my views on record, and will now accept and deal with the Bill as one within our jurisdiction. 40

Hon. Mr. SCOTT—Is my hon. friend prepared to suggest any other Bill which would be preferable to this?

Hon. Mr. VIDAL—I am not; I believe it is a question of such importance that the Government alone should undertake to manage it. I am not by any

means opposing the Bill, I am only mentioning my doubt as to our jurisdiction, and explaining why I suggest that it should be sent to the Supreme Court for their opinion before it is finally passed into law. I would like to ask the hon. Secretary of State something about this third clause. He says Cap. 18, of 27 and 28 Vic., shall *ipso facto* be repealed. Has his attention been directed to the fact that there are certain provisions of that law which have no connection at all with local prohibition, and are clearly within the exclusive jurisdiction of the Provincial Legislatures?

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Hon. Mr. SCOTT—I am aware of that.

10 Hon. Mr. VIDAL—Does the hon. gentleman intend to repeal them?

Hon. Mr. SCOTT—I did not think it necessary to go into detail in print. I think there are 12 or 15 clauses which this Bill does not repeal.

Hon. Mr. VIDAL—It appears to me that should be clearly stated. I have already said that the Bill in general meets my approval, but there is one point, in my opinion a very essential point, in which I consider it defective, and with reference to which it is my intention to submit the following amendment when the Order of the Day is read for the House to go into Committee of the Whole, and before the Speaker leaves the Chair:—

20 “On page 1, after line 34, insert: ‘The Legislature of any province of the Dominion may, by Address to the Governor-General in Council, duly certified and transmitted by the Lieutenant-Governor, ask that the second part of this Act may be brought into force in that Province, and the Governor-General in Council, on receiving such Address, shall, by Order in Council, published in the *Canada Gazette*, and in the Official Gazette of the Province, declare that the second part of the Act shall come into force and take effect in such Province, at such date as may be consistent with the provisions of the 93rd Section of this Act, in the case of a City or County with respect to existing annual licenses for the sale of spirituous liquors.’”

30 I shall also offer the following amendments at the same time:—

“On page 20, after line 7 insert: ‘No Order in Council, issued under the provisions of this Act, to bring its second part into force in any Province, shall be revoked until after the expiration of two years from the day of its coming into force; nor unless, and until the Legislature of such Province shall, by Address to the Governor-General in Council, duly certified and transmitted by the Lieutenant-Governor, have asked for such revocation.’”

40 On page 20, after the word “Act,” in the ninth line, insert, “to bring its second part into force and effect in any County or City.”

On page 24, between Clauses 105 and 106, to insert a clause authorizing the arrest and detention of any person found in a state of intoxication, and compelling such person, on conviction, to disclose where the liquor was obtained.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

On page 19, to strike out all that part of Section 92, after the word "years" in line 37.

On page 20, to strike out that part of Section 94 from the word "Council" in the 22nd line to the word "and" in the 38th line.

I propose to move these amendments when the Speaker is in the chair, in order that they may be discussed on their own merits, and, if approved by the House, that the Committee may be instructed to carry out the views. The first amendment is to extend to the provinces the privilege given by the Bill to cities and counties. I do not see why it should be limited to those smaller areas.

10

Hon. Mr. SCOTT—The hon. gentleman puts that on a different basis. He does not invoke the voice of the people, but of the Legislature. I could understand the parallel if the Bill were submitted to a vote of the whole Province.

Hon. Mr. VIDAL—I am quite under the impression that, by the process which I propose to follow with respect to provinces, I am acting more in harmony with true British principles of giving expression to the will of the people, than if I proposed a popular vote on the question. In cities and counties the latter system is unavoidable, as there is no other way of getting at the views of the people, but for a province you have the British system of the people speaking and acting by elected representatives. Is it likely that the Legislatures will move in advance of public opinion? The greater probability is that, so far from taking the lead and educating public sentiment up to this point by legislation, they will not run the risk of adopting such an address unless they are compelled to do so by their constituents. Although my proposed amendment may appear to be at variance with the principle of the Bill, which bases its adoption on the popular vote, it is not so in reality, the difference being only in the mode of ascertaining the will of the electors, in counties and cities by the mode prescribed in the Bill, and in a Province by the vote of its representatives in the Legislature. I think this plan more suitable for provinces as to take the vote of the electors of a province would entail a large and unnecessary expense equal to that of a general election. But this matter can be better discussed when the amendment comes up on the motion to go into Committee on the Bill, and it can then be either adopted or rejected without interfering with the general provisions of the Bill, or jeopardizing its passage.

Hon. Mr. KAULBACH—What is the proposed alteration of the 92nd section?

Hon. Mr. VIDAL—That section, as it stands, provides that when the period of one year has elapsed, after the second part of this Act coming into force, a majority of the electors may petition for the question again to be submitted to the people, with a view to its repeal. Now, I hold that is a most unwise provision. It would keep the country in a state of constant agitation. No sooner would the Act go into operation than there would be an agitation to repeal it. I contend that by making the law unrepealable for three years, the people would be more cautious in adopting it, and

40

would not bring the law into force unless they were prepared to keep it. I think that the Bill, as it stands, offers an inducement to people to vote without full consideration.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Hon. Mr. SCOTT—Does the hon. gentleman give notice that he will move an amendment that where the law is defeated there shall be no attempt to test the views of the people again for three years?

Hon. Mr. VIDAL—Certainly. I have made provision for both. I desire to act with perfect fairness, and if I take a privilege away from those opposed to me, I am willing to surrender the same privilege myself; consequently, I have proposed this amendment to both sections, 92 and 94, and I believe it will meet the wishes of the temperance people, and I trust will commend itself to the approval of the House. There are several other amendments which I think should be made to the Bill, and which I presume can be submitted with propriety in Committee. I think, for instance, in Sections 6 and 7 there should be some definition of the kind of evidence that should be considered “satisfactory.”

Hon. Mr. SCOTT—It was based on the law under which boards of trade are established. It requires that a certain number of electors shall petition for it in any locality, and the Secretary of State must be satisfied of the genuineness of the signatures.

Hon. Mr. VIDAL—The voter’s lists often contain the name of one person six, eight, or ten times; a man who owned property in every ward of a town, besides land in the townships around it, would have his name appear five or six times on the voters’ lists of the county, and it should be provided that 25 per cent. of the voters and not of names on the voters’ lists should be taken. In the 93rd Section which provides for the issuing of the Order-in-Council, I think the word “may” should be struck out, and “shall” substituted.

Hon. Mr. SCOTT—“May” is always used where anything is to be done by the Governor-in-Council. It is used by courtesy.

Hon. Mr. VIDAL—Then it is understood to mean “shall.”

Hon. Mr. SCOTT—Yes.

Hon. Mr. VIDAL—Would it not be necessary to insert the word “third” in the 8th line of section 93, where it provides that the second part of the Act shall be in force and take effect?

Hon. Mr. SCOTT—Yes, that may be added.

Hon. Mr. VIDAL—I think the clause which provides that vendors of liquor shall be licensed by the municipal council of the county or city, should be amended by substituting “The Lieut.-Governor,” for the council, as there are some places in the Dominion where there are no municipal councils. It appears to me that the provisions in the 5th sub-section of section 95, respecting registration, should have a penalty attached for neglect, so as to secure compliance with the Act. I have already noticed what I consider the conflicting jurisdiction in the third part of the Act.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

The Province of Ontario, for instance, may grant a license to a man to keep a saloon or tavern, and this Act may be brought into operation in that municipality while that license is in force.

Hon. Mr. SCOTT—The Act cannot go into operation while any licenses are running. Of course, if a license were issued after the law were put in force, there would be a conflict of authority, and there would be litigation at once. We having legislated to restrict that particular article of trade and commerce, our law would prevail over the local law.

Hon. Mr. VIDAL—I have endeavored to present the principal features in which I wish to see the Bill amended, and I feel confident in approaching the discussion of the subject, hon. gentlemen will do so with an earnest desire to advance that great and good cause, the efforts of whose advocates have already been recognized; and to meet whose wishes and second whose efforts, the Government have introduced this measure. I do trust that no personal or party political considerations will influence us in a matter of such momentous consequences. I regret exceedingly, I am unable to present to the House the facts and arguments, based upon statistics of crime in the Dominion, which I feel I ought to have in my possession, but which, unfortunately, I have not. Two years ago it was announced in the Speech from the Throne,—and I took occasion to express my very great pleasure at the announcement that a law was to be passed for taking the criminal statistics of the country. I have been watching for those criminal statistics from that time to this, because it is upon the criminal statistics of the country, the advocates for the restriction of the liquor traffic, build their strongest and most convincing arguments. I find in the report of the Minister of Agriculture, for 1876, in a paragraph on this subject, the following words:—

“ As these statistics are to begin each year on the first of October,
“ and as a part of the year 1876 had lapsed when the Act was
“ sanctioned, the first collection and publication of the said statistics
“ will of necessity appear for the first time in the next departmental
“ report.”

I hold in my hand the next departmental report, and I will be very much obliged to the Minister of Agriculture to show me where to find those statistics. I cannot discover them. I ask the hon. Minister of Agriculture if they are here.

Hon. Mr. PELLETIER—They are not, because I could not get them in a satisfactory way from the different quarters we expected them from. We have taken steps to enforce the measure.

Hon. Mr. VIDAL—I am very glad to hear the explanation, but how much better it would have been to have found it in this report. Upon these statistics I rest my whole case, because it may be said the statistics of other countries do not apply to ours. From what prevails in England and the United States, whose inhabitants have tastes and habits like our own, I am persuaded the statistics of crime in our country, would be found to harmonize with theirs. I hope we are getting in advance of them on this

subject, and it is with no little satisfaction I see a diminution of revenue from the Excise. I hope we shall go on increasing that deficiency, until the time comes when strong drink shall no longer be looked upon as a source of revenue. It is to my mind an incongruous thing, that we should derive a revenue from the crime, wretchedness, and pauperism of our country, or, rather, from that which produces it. It is, to me, an anomaly which ought not to exist in a Christian land, and it is our duty to do what we can to remove every obstacle to the peace, happiness, and prosperity of our country, and there is none so great as intemperance. In giving my cordial support to this measure, let it be understood that I do not recede in the slightest degree from what I have always advocated, and shall continue to strive for—complete and effective prohibition of the liquor traffic throughout the length and breadth of the Dominion.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Hon. Mr. DICKEY—The introduction of this measure is a fitting tribute to the earnest exertions of the hon. member from Sarnia, and those who have acted with him. However much we may differ from him and them in one opinion, of the measures they have from time to time proposed, I think we cannot fail to recognise their earnest desire to alleviate the great evils which we all acknowledge to flow from intemperance. On the general question I desire to say very little, but I may say a word upon it after what the hon. gentleman has stated in his concluding remarks. My hon. friend remarked with his usual frankness, that he rests his whole case upon the effect of prohibition and drunkenness, upon the increase or diminution of crime. That is a very fair issue. The hon. gentleman regrets he has not the statistics promised him last year. He has not given us statistics of the case to which he alludes, but I will endeavour to assist him in that enquiry, and I am quite sure, while the hon. gentleman has stated truly that the consumption of liquors has been on the increase in the Mother Country, it will be a great comfort to him to learn that crime and pauperism have decreased with the increased consumption of those liquors. My hon. friend will allow me to give him proof of that assertion. I have it under my hand. It is an official abstract return from the year 1862 to 1877. And what do I find, taking the first question, of paupers? I find that the total number of paupers, including all able-bodied or otherwise, not exactly vagrants, in door and out door, amounted in 1862 in the United Kingdom to 946,166, and that number slightly increased for a term of years, but it happily began to decrease, and it has been steadily decreasing for the last seven years, and now it is reduced from 946,166, in the year 1862, to 728,350 in the year 1877.

Hon. Gentlemen—Hear, hear.

Hon. Mr. DICKEY—That is a decrease of something like 200,000 in number. But my hon. friend will say, “what about crime?” I will give him the statistics on that point also. I will give him the number of convictions for crime in the same period to which I have just referred, namely, from 1862 to 1877, only dropping the latter year because the return comes up only to the end of 1876. I find that the total number of convictions in

No. 5.
 Extract
 from Senate
 Debates,
 1878, pp.
 338-380—
continued.

England and Wales in the year 1862 was 20,000. The numbers, as above, began to recede, and continued receding during the last seven years, until in 1876 they were reduced to 16,078; a decrease of something like 4,000 in that short period of fourteen or fifteen years, with an increasing population.

Hon. Gentlemen—Hear, hear.

Hon. Mr. DICKEY—I mention those statistics because they will afford comfort to my hon. friend. He will find it does not necessarily follow that crime and pauperism should increase with the increase of the consumption of ardent spirits.

Hon. Mr. KAULBACH—Do those figures refer to England only? 10

Hon. Mr. DICKEY—The return includes England and Wales, and is official. The Secretary of State has assumed in his usual way that in the United States, wherever prohibition has been the rule, not only crime, but drinking has decreased.

Hon. Mr. SCOTT—I stated that was the conclusion reached from reading the report of the Commissioners. I spoke subject to that.

Hon. Mr. DICKEY—My hon. friend did make that qualification, it is true, but the hon. gentleman well knows that, in a recent publication, with respect to the State of Massachusetts, the official returns from the mayors and other official bodies of the State, show conclusively that drunkenness and crime had increased during the operations of the prohibitory law. This might have been only a coincidence, but the same result is observable in England, where drinking has increased, and yet, crime and poverty have diminished. It is singular that this should be the case in view of the report to which the hon. gentleman refers. The Bill before us is extraordinary in character in many particulars. I will allude to the question of expense, and endeavor to show in what way it might be obviated. The Bill imposes all its cumbrous machinery upon the various counties and cities of this wide Dominion; and must result in very heavy expense to the country. In one of its clauses there is a provision that, if at any time within a certain period, one half the electors of a county or district sign a requisition stating that they require this measure to be again submitted to the people, with a view to its repeal, the Governor-in-Council may, upon being satisfied that these constitute a majority of the electors, order that reference to the people. I mention this with the view of showing what appears to me the absurdity of the provision, and the unnecessary character of it. You have got first the fact certified to by the Governor-in-Council that more than one-half of the electors desire the repeal of the Act. And what do you do then? Instead of passing an order repealing the Act, you put the country to the expense of a vote upon it. Look at the absurdity of the thing! You offer a premium to a few individuals who may, in the honesty of their hearts, believe that total abstinence is above temperance, and that temperance is above all the other Christian virtues, to set the machinery of this Act in motion, and put the country to the expense of it. That is practically the effect of it. The Dunkin Act required that the expense of those elections shall be borne in 20 30 40

the municipalities in which they take place. That is a check upon calling into action the enormously expensive machinery of the Act. But in this Act the Dominion Treasury is put to the expense of an election contest, merely upon the suggestion of, it may be, a few enthusiastic individuals who have thus an opportunity afforded them of testing the popularity of their views at the expense of the country. It does not become me to suggest the machinery by which this should be provided against. I have found out that the Bill, in its repealing clauses, is based upon the principle that, if the majority wish to have the Act repealed, they must satisfy the Governor-in-Council that the majority do wish it, and then the country is put to the expense of having a contest to decide what has already been proved. I am not one of those who advocate that sort of bureaucratic Government which would give the Administration of the day power to repeal an act.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Hon. Mr. SCOTT—That provision is intended to meet the possibility of a catch vote where a majority were satisfied the vote had not been a fair one.

Hon. Mr. DICKEY—The 94th section proceeds upon the assumption that a majority of the electors are desirous to repeal the existing prohibition. Whether it should be done in that way, or whether it should be a sort of adjunct to a general election, or a particular election, is another question. Whether it should be done in the simple form I have pointed out, that is to say, by application in writing, signed by a majority of the electors, and the fact of their being electors verified, it is not for me to suggest; but I can understand there are various ways of doing it without resorting to the enormous expenses provided for in this Bill. This Act is proposed as a substitute for the Dunkin Act in the Provinces of Ontario and Quebec, and extending it throughout the Dominion. However stringent the provisions of that Act may be, I must tell my hon. friend opposite, the provisions of the law of Nova Scotia have been, and were before 1864, much more stringent than even those of the Dunkin Act; because, before a person could get a license in Nova Scotia, as far back as 1864, it was necessary, not merely to get the sanction of a majority of the Municipal Council, or the body that represented it, the Grand Jury, (for we have no analagous body exactly in Nova Scotia), but also to get the consent of the Court of Sessions. We have now a much stricter law than any existing in the Dominion. Since then the law I have referred to has been very considerably changed. We have, at the present moment, an Act, the very statement of which, although it has been adverted to by the hon. the Secretary of State, may astonish some gentlemen here. One of the principles of this Bill is—and the hon. the Secretary of State has alluded to it very properly—that the majority shall rule. My hon. friend assents to that. That is an intelligible principle, and one which I am not, at the present time, prepared to controvert. But what do we find in Nova Scotia? No man can get a license to sell liquors without first having the written consent of two-thirds of the ratepayers in the district where he applies to get that license. But he must do more than that. By the late law, after running the gauntlet of getting this two-thirds majority of the ratepayers, he has to get a majority of the Grand

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Jury and a majority of the Court of Quarter Sessions. But, by a late law, he is still further restricted, because he must get two-thirds of the Grand Jury as well. The principle of this Bill is, as I have already stated, the majority shall rule; but, in Nova Scotia, the minority rule—the temperance minority. But my hon. friend says, on the face of this Bill, in the preamble:—
“Whereas it is very desirable that there should be uniform legislation
“in all the Provinces, respecting the traffic in intoxicating liquors.” That is embodied in the Speech of His Excellency the Governor-General, delivered at the opening of the Session. We were told we were going to have a uniform law applicable to all the Provinces. And what do we find now? The hon. the Secretary of State tells us he is not going to repeal the law in Nova Scotia. I will show he has no power to do so, though on the face of this Bill, he undertakes to repeal that law in Ontario and Quebec, with all its provisions affecting civil rights. We have very much the same provisions in the laws of Nova Scotia—those provisions which afford a civil remedy to the widow or child or a person who is assaulted in any case in connection with a person who has been drinking, against the party who has given him liquor. Those provisions are swept away in Ontario and Quebec, and left in Nova Scotia.

10

Hon. Mr. SCOTT—If we have no control over the municipal clauses of the Dunkin Act, it is immaterial whether we mention them or not. We only repeal such parts of the Dunkin Act as we have jurisdiction over. So far as the Nova Scotia License Act is concerned, it stands the same as the Ontario and Quebec License Act, because after this law goes in force in any district, no license can be issued in that district.

20

Hon. Mr. DICKEY—The hon. gentleman cannot put me off the track in that way. The first section expressly repeals the Dunkin Act, including the very provisions which the hon. gentleman says he has no power to repeal in Nova Scotia.

Hon. Mr. SCOTT—We cannot repeal what we have no power over.

30

Hon. Mr. DICKEY—But the hon. gentleman's bill does repeal it.

Hon. Mr. SCOTT—I think I spoke very plainly in my observation, and especially on that very point.

Hon. Mr. DICKEY—I am speaking of the Bill as I find it. It is somewhat extraordinary in a great many of its provisions, apart from the utter absence of uniformity. My hon. friend from Sarnia has adverted to some of them, but there is a curious provision in the measure, and there are some very harsh clauses. Going back to the question of this general election all over the Dominion, on this measure, whether there shall be traffic or no traffic in liquors, this Bill makes a man liable to a penalty of \$500, or six months' imprisonment, for supplying ballot papers without authority.

40

Hon. Mr. SCOTT—It becomes fraud when a man supplies ballot papers without authority.

Hon. Mr. DICKEY—It does not say supplying with a view to fraud. I will call the attention of my hon. friend from Sarnia to the very alarming clause in this measure, which imposes a very heavy fine or imprisonment at hard labor upon anyone who shall wear a badge or furnish a badge to any person to wear within eight days before an election. I come from a county where, I am happy to say, I meet with the greatest pleasure gentlemen who are not ashamed to sport the blue ribbon on their breasts, and yet we find the Bill here making it penal for a man to show his colors within eight days before an election. I have heard of people who were deprived of their liquor looking blue, but I never heard of a temperance man who was ashamed of his badge, and I never expected to see the time when the Government would impose a penalty upon a man for showing his colors. The whole system of this Act is founded apparently upon a desire to make it as odious and as difficult to carry into execution as possible. There are several other features of the Bill to which I would like to advert. I do not propose to go into the question of how it differs from the Dunkin Act, because that is a very wide subject. I come now to a very important matter—the power of this House to deal with this question. My hon. friend the Secretary of State undertook to say, after quoting his authorities, (of which I shall speak presently) that in the provinces they had no power to impose restrictions upon the sale of liquors—that these restrictions would be *ultra vires*. I have the misfortune of differing from him on that point, and have grave doubts indeed as to the power of this House to deal with the question in the manner in which it is dealt with in this Bill. The 9th subsection of the 92nd Section of the British North America Act is as follows :

“ In each province the Provincial Legislature may exclusively make laws in relation to (amongst other subjects) Shop, Saloon, Tavern, Auctioneer and other licenses in order to the raising of a revenue for Provincial, local or municipal purposes.”

Before I go a step further, I wish to show the case just now quoted—the *Queen vs. Severn*—is entirely inapplicable. That was a question as to the right of the provincial authorities to impose a license on brewers. These brewers deriving their authority from the Dominion and manufacturing an article subject to an Excise duty, it was on that ground that the Supreme Court decided the Provincial Government could not step in where the Dominion Government authorized those parties to manufacture beer, &c., by payment of duty. They had no power to step in and impose a duty also for the benefit of the Local Government. The power of the Local Legislature is restricted to the raising of revenue for local and provincial purposes, and these are the purposes for which those licenses are given in almost all the Provinces, except brewers' licenses, which have nothing to do with those matters at all, because they refer to manufactured articles which are excepted from the operation of this Bill itself. This measure proposes, when the Act is passed in a district, at the expiration of the licenses then existing, *ipso facto* all licenses become void, and no more shall be issued. The effect of this Bill is to interfere with the right of the local legislatures to issue licenses.

No. 5.
 Extract
 from Senate
 Debates,
 1878, pp.
 338-380—
continued.

Hon. Mr. SCOTT—Hear, hear.

Hon. Mr. DICKEY—In that way it does interfere with the Local Legislatures, and I stand here to defend the right of the Local Legislatures to reserve to themselves the jurisdiction given them by the British North America Act, of granting licenses; and I contend, if they have power to grant licenses and the Dominion Government has power to take them away by this Bill, it is a perfect mockery, and the conflict of jurisdiction is complete. My hon. friend had better keep to the decision of the Supreme Court, which is in all cases where revenue is raised for Dominion purposes, the Provincial authorities had no power to impose a duty on them when they had to pay Excise duty to the Dominion. The hon. gentleman has cited a case which was decided in New Brunswick. I took the opportunity of asking the hon. Secretary of State whether that decision was not given by the very Judge who dissented from the views of the majority of the Supreme Court here the other day. 10

Hon. Mr. SCOTT—Yes, but it was not on that point.

Hon. Mr. DICKEY—I deem it my duty, as these constitutional questions come up, to submit them in all candor and fairness to the House.

Hon. Mr. SCOTT—My hon. friend heard my explanation of that. I stated that was subordinate to the power to regulate trade and commerce, and I stated that the Federal Parliament could prohibit the importation of liquors, as it could of opium, or any other article or manufacture. I do not think any one can challenge that statement. 20

Hon. Mr. DICKEY—That has no effect whatever on my argument. I say until the manufacture and importation are prohibited, the Provincial Legislatures have power to grant licenses. I would ask my hon. friend if he can contradict that. He says licenses can only be given for the sale of those things which can legally be sold. I say while my hon. friend will not yield to the demands of the temperance body to give them prohibition, and while he allows liquors to be brought into the country and manufactured in the Dominion, how can he turn around and say that the local authorities shall not issue licenses to sell them? When he prohibits the importation and manufacture they can have no power in the matter at all. That is my contention, and I may say, from information I have received, I have very good reason to believe this measure has excited the greatest consternation in the Lower Provinces, because it takes away from the Local Legislatures the power to deal with this question. If my hon. friend has the power he claims in this Bill, and if he has the power to repeal the whole of the Dunkin Act, he has power also to repeal the existing license law in Nova Scotia. 30

Hon. Mr. SCOTT—Certainly; wherever this law is adopted. 40

Hon. Mr. DICKEY—My hon. friend repeals the Dunkin Act; why has he not power to repeal the license Acts in the other provinces?

Hon. Mr. SCOTT—I do.

Hon. Mr. DICKEY—Then the apprehensions of those people are well founded. The feeling in Nova Scotia (I speak of that province because I know it better than the others) is that this measure is an interference with the temperance legislation of that Province, and they desire to be free and uncontrolled.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Hon. Mr. SCOTT—Nova Scotia, either in its cities or counties, need not adopt it. Unless a majority choose to supplant the present very excellent law of that province, it cannot go in force.

Hon. Mr. DICKEY—But it is not to be adopted by the Province as a
10 whole; any county may adopt it. What is the effect? You have a conflict
of jurisdiction. You have on the one side this Act, saying you shall not
have licenses, and on the other, the Province, saying for the purpose of
revenue, we must issue licenses. In so grave a matter as this, my hon.
friend should proceed cautiously and step by step. His attention has been
called to-day to the fact, that two years ago the House was promised a
reference to the Supreme Court on this very question, and my hon. friend
knows but for the fact that this is not a private bill, and this Senate has
no power to make that reference, we should have a motion to obtain the
20 opinion of the Judges on this measure; because it is admitted there is a
doubt as to its constitutionality. The very fact of my hon. friend and
myself discussing this question across the floor of the House, is quite
sufficient to show there is a conflict of opinion upon this point, and is it
desirable this country should be torn from end to end, and this costly
machinery set in motion, if it is to go for naught? Is it not desirable that
we should know whether we have the power to pass this Bill or not? My
hon. friend must know that there is a section of the Supreme Court Act
which specially provides for such a case as this. It is as follows:

30 “S. 52. It shall be lawful for the Governor in Council to refer
to the Supreme Court, for hearing or consideration, any matter
whatsoever, as he may think fit, and the Court shall thereupon
hear and consider the same, and certify their opinion thereon
to the Governor in Council.”

I can only say, whatever that opinion should be, I am quite satisfied
a majority of this House would yield to it. All we want is to see our way
clear. If it is shown that we have the power to pass this Act, why, let
it go. Personally, I have no disposition to oppose the passage of this
measure, but I do feel myself justified in rising to protest against the course
that has been taken, in order to protect the rights of the different Provinces,
and to point out to my hon. friend and the House, the discrepancies which
40 occur in this Act, and the very singular provisions in it.

Hon. Mr. SCOTT—That is not a discrepancy. It was deliberately done.
I did that on the assumption we had the power.

Hon. Mr. DICKEY—Yet the hon. gentleman has not cited a single case
which justifies him in that assumption, except the one case in New

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Brunswick, in which the Judge who rendered the decision is now in a minority in the Supreme Court.

Hon. Mr. SCOTT—I quoted Judge Strong. Although the point did not come up, the inference was, as a branch of trade and commerce the Federal Parliament had the prerogative.

Hon. Mr. DICKEY—We are not talking about the propriety or impropriety of prohibiting the importation and manufacture. The question is when the manufacture is sanctioned and the entry of these articles into the country is admitted and duty paid upon them, whether the Provincial Legislature has not the power to make regulations for giving licenses for the sale of those articles. We believe and contend that according to the British North America Act they have that power and we say if you pass an act declaring that after a certain date their licenses shall have no effect in the province or county where it is in force, it is practically a repeal of the License Act and an interference with the powers of the Local Legislature. I do not desire in any way to offer any factious opposition to the Bill. My desire is that the House should be put in possession of the deliberate opinion of the Supreme Court as to our jurisdiction. I have not given a very decided opinion—not a dogmatic opinion—on that point, but I have given a very frank and open expression of my doubts upon it. At the same time I may be wrong and the hon. Secretary of State may be right, but it is a case where there should be a reference to the highest tribunal in the land. 10

Hon. Mr. SCOTT—Does my hon. friend, as a lawyer having large experience, suppose, without a living case to refer to the Supreme Court, he would like to be bound by the dictum of the Judges, on the bare naked question whether this law was *ultra vires*?

Hon. Mr. DICKEY—I do not think it requires any actual pending case at all. The words of the Supreme Court Act are sufficiently comprehensive to provide for a decision on a constitutional question like this coming up.

Hon. Mr. VIDAL—When I brought the matter up two years ago, I stated a fact which should be borne in mind, touching upon this point—that is, that the decisions of the courts, as recorded in the books, are so full that they themselves constitute the very best argument to submit to the Judges. Moreover, I suggested that such was the importance of the question, it would be well for the Government to employ two of the most eminent counsel in the Dominion to argue the two sides of the question before the Judges. 30

Hon. Mr. SCOTT—When this last case of the *Queen vs. Severn* was brought up, we thought it would raise the very point we wished to have decided, but, as those who have taken the trouble to read the dictum of the Judges know, they avoided all but the naked question. They have not given us very much light, I confess. 40

Hon. Mr. DICKEY—That is the reason why I think this Bill should be submitted to the Supreme Court, and the Bill itself contains all the facts necessary for adjudication.

At six o'clock the House rose for recess.

AFTER RECESS.

No. 5.
 Extract
 from Senate
 Debates,
 1878, pp.
 338-380—
continued.

Hon. Mr. MILLER resumed the debate. He said :—I do not purpose engaging the attention of the House in discussing the principle or policy of the measure now under consideration. I am satisfied to leave the management of this question on its merits, in the very able hands of its friends, so many of whom I see around me. The policy of the measure, I may, however say, has my entire approval and I shall be happy to give the Government my humble assistance in either placing this or some other measure within the scope and jurisdiction of this Parliament, on our statute
 10 books, if the friends of the temperance cause in this House consider it advisable to do so. My object in rising, is to call the attention of the House to the very unfortunate position in which this question is placed, and the wisdom of hesitating before proceeding further in the course we are now called upon to pursue. Without any desire to censure the Government I cannot help on the present occasion expressing my sincere regret that the Administration has not seen proper, before submitting this Bill to Parliament, to exercise the right and power which they possess of having the opinion of the Judges of the Supreme Court as to the constitutionality of the measure.

20 Hon. Gentlemen—Hear, hear.

Hon. Mr. MILLER—I think if the Government were really desirous to promote the cause of temperance and meet the views of the very large, influential and respectable body in this country who have demanded legislation in this direction, long before the meeting of Parliament they should have matured a measure which they could submit to the House as one within its scope and authority—under the sanction of the Judges of the Supreme Court. Instead of that, not until the Parliament had met; not until the representatives of the people who expect shortly to go before their constituents, had assembled in caucus at Ottawa, and urged on the Govern-
 30 ment how much assistance this Bill was expected to be to supporters of the Ministry, did they set about the preparation of this measure. I believe—indeed, it is a matter of notoriety—that it was since the opening of the Session that the Bill has been framed. If ever there was a case of unjustifiable neglect on the part of a Government in such a matter, that case is the present one. We all know that an organized agitation has been going on for years past, in favor of prohibition in this country, which has made itself felt in Parliament, and especially in this House. A Committee of this Senate sat on two occasions to consider the representations made to us by the friends of temperance. We all know the persistent perseverance
 40 of the hon. gentleman from Sarnia on this question (Mr. Vidal). His advocacy of the temperance cause has done more to popularize it in this House than anything else, and I have no hesitation in saying if we are in a position to give it a fairer consideration than perhaps it will get elsewhere, it is due to the able, honest, and earnest efforts of that hon. gentleman, on all occasions, to promote his views and the views of those with whom he is associated, in this branch of the Legislature. On both occasions to

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

which I have alluded, when Committees of this House were appointed to consider this question, they recommended legislation in this direction, but the Government allowed the subject to drop out of sight. More than that, this question has been before the law courts. It has been a vexed question, involving constitutional points. It has been a question how far the authority of the Local Legislature extended on this subject, and how far the jurisdiction of this Parliament extended; and therefore, in view of the large and important interests affected in the controversy, and especially with regard to the constitutional issues which were to be decided, it was the imperative duty of the Government to have submitted to the Supreme Court any such legislation as this which they now ask Parliament to endorse. 10
If the Government had been sincere from the beginning in their treatment of this question, one would suppose their first desire in placing a law upon the Statute books would be to make it one which, beyond doubt, was within our jurisdiction, and not one to give rise to all the vexation, litigation and injury to the temperance cause, which would flow from putting on the Statute books a law which we had no right—or only a doubtful right—to place there. They would, before the meeting of Parliament, have carefully matured a measure, and submitted it to the Supreme Court, as they have the power to do, under the following section of the Supreme Court Act, 20 already quoted in this debate :—

“ It shall be lawful for the Governor in Council to refer to the
“ Supreme Court for hearing or consideration any matters what-
“ soever, as he may think fit, and the Court shall thereupon hear,
“ and consider the same, and certify their opinion thereon to the
“ Governor-in-Council; provided that any Judge or Judges of the
“ said Court, who may differ from the opinion of the majority,
“ may, in like manner, certify his, or their opinion or opinions to
“ the Governor-in-Council. (38 Vic., cap. 11, sec. 52.) ”

Why, I ask, was not such a reference of this Bill ordered during the recess, or, at any rate, before it was submitted to Parliament? It will be difficult for the Government to give a satisfactory answer to this question either to the friends or to the enemies of the measure. This is just such a case as was contemplated by Parliament and the framers of that law, the hon. gentlemen now on the Treasury benches. Why was not this wise course taken during the recess? I believe this measure and the wishes of the temperance people of this country received very little attention from the Government until after Parliament met. I believe I am correct in stating not a line of the Bill was prepared until after the opening of the Session, and then it was drawn up with the assistance of an officer of this House. That is not a course which the Government should have pursued, 40 and they are highly censurable for their neglect in this respect. The hon. Secretary of State, in reply to some remarks which fell from my hon. friend (Mr. Dickey), asked him if he considered it would be a desirable thing, without a given case, to submit to the Judges the Bill as it stood for their opinion. I cannot understand what objection there could be to such a

course because that is very different from submitting a case for the consideration of the Court. In any case that might be supposed half a dozen different questions might arise outside of the constitutionality of the law, that it would not be desirable to discuss, but a reference of the Bill itself would cover all the cases that might arise under that law, and it would be much more convenient and easy for the Court to pass generally upon the constitutionality of the measure, than by a number of special references. A hundred cases might arise under that law, and the reference of the whole of those cases together might not decide every constitutional point that

10 might arise under the provisions of the measure; whereas, if you submit the law itself, every part of it would undergo revision, and receive the stamp of the best authority. Therefore, it would have been wise, as well as imperatively obligatory on the part of the Government, to have submitted this Bill to the Supreme Court for their opinion before bringing it down to the House. Let us suppose this Bill to be passed and become law, and it is found unconstitutional in any of its provisions. We know the temperance organizations are powerful and wealthy, but their opponents are perhaps equally so. With the means to test every inch of ground, there

20 would be a certainty—in the event of the passage of a law in any respect of doubtful constitutionality—that endless controversy and litigation would arise. Would that be beneficial to the country, or to any one outside of the legal profession? Is it desirable in the interests of the temperance cause, that we should put on the Statute books a law of the constitutionality of which any portion of the people might not be certain? On the contrary, is it not the greatest injury you could inflict upon that cause?

Hon. Gentlemen—Hear, hear.

Hon. Mr. MILLER—I think this must appear so self-evident to the House, that even yet there could be but one course open to the Government, and that is, to yet ask the opinion of the Supreme Court on the Bill before

30 it leaves the Senate. If it were a private Bill on any other subject involved in similar doubt and difficulty, I would support a motion to refer it to the Judges for their decision; but, as this is a measure which cannot be referred by Parliament, and which must be referred by the Governor-in-Council, if referred at all, I hope, therefore, the Government will see their way clear to obtaining the opinion of the Supreme Court as to its constitutionality, even now. It may be said this will delay the measure and prevent it becoming law this Session. I do not think it should have that result—I am certain it cannot have that result. It should not cause a greater delay than three or four days, or a week at the outside, and, with the friendly disposition

40 which prevails in this House towards the measure, I do not see that there would be the slightest difficulty in getting it through the Senate in time to go to the other Chamber, and, if it should receive the sanction of that House, it could pass there and become law. In the interest of the temperance people, this is the most desirable course to pursue.

Hon. Gentlemen—Hear, hear.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Hon. Mr. MILLER—With regard to the constitutionality of the law, I have some hesitation in expressing an opinion, in view of all the controversy that has arisen on the subject. Although I do not go to the length of my hon. friend on my right (Mr. Dickey) as to the unconstitutional character of this legislation, still, I do think to some extent, the Bill, in its provisions, is *ultra vires*. I refer now especially to the clause repealing the Dunkin Act. I think it is exceedingly doubtful, in fact it is almost certain that, we have not the power to repeal some provisions of the Dunkin Act, which create civil rights, and which are beyond the authority of this Parliament. When I first perused the Bill, not being acquainted with the provisions of the Dunkin Act, it did not strike me, until subsequent consideration turned my thoughts in that direction, that the Bill was *ultra vires* in regard to its repealing provisions. With regard to the enacting provisions, I can see nothing wrong. It is perfectly competent for this Legislature to pass a law to prohibit the manufacture or importation of intoxicating liquors, or any other article of trade or commerce in this country, and if it is competent for this Legislature to do so, it is certainly competent for it to interfere with the alleged rights of the local legislatures, to give licenses for the sale of those articles, because, though the power of granting licenses rests with them, it cannot be construed into a right to license the sale of anything which the proper authority declares to be illicit and contraband. 10 20

Hon. Mr. SCOTT—Hear, hear.

Hon. Mr. MILLER—There can be little doubt, if the Dominion Parliament declare the importation or manufacture of intoxicating liquors to be illegal, then it is impossible for the Local Legislatures to grant licenses for the sale of that which a competent authority, in matters of trade, declares to be contraband of law. If, then, the Dominion Parliament has power to absolutely and directly prohibit the manufacture or importation of alcoholic liquors, it certainly has power also to prohibit the trade, through a popular vote. It can delegate its powers to a municipality to do that which it has the power to do itself, and the moment this law is accepted by any municipality, it amounts, within that municipality, to a limited prohibition, within the terms of the Statute. Therefore, I conceive that in its enacting clauses, we have power to pass this Bill. 30

Hon. Mr. SCOTT—Hear, hear.

Hon. Mr. MILLER—But, with regard to our power to repeal the Dunkin Act, I must repeat I find that it gives civil rights which the Local Legislature alone has power to deal with, and therefore it is *ultra vires* for us to attempt to repeal those provisions of that Act. This is my opinion of the Bill. Seeing however that gentlemen belonging to the legal profession on both sides of the House, have different opinions on the question, it must be obvious there is but one course out of this difficulty, and that course it is not too late to take. I say it is no unfriendly spirit to this legislation, though I believe, so far as the temperance people are concerned, this Bill should not be nearly so acceptable to them as the license law of Nova Scotia, which is the very best temperance law in the Dominion. 40

Hon. Gentlemen—Hear, hear.

Hon. Mr. MILLER—I do hope in view of all I and others have said, the Government will now submit this Bill to the Supreme Court for their opinion. If they do that and place this measure on the Statute book with judicial approval as to its legality, I say they will be doing a service to the country, but not otherwise. If they wait for a decision to be obtained on a case growing out of the legislation itself, which must be a year or two at the earliest, the country will in the meantime be kept in a state of doubt and uncertainty about it.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

10 Hon. Gentlemen—Hear, hear.

Hon. Mr. MILLER—There is only one reason I have heard hinted why the Government should not pursue this course, and it is one which I do not feel disposed to entertain. I have heard it said that the Government know and have been forcibly assured by their supporters of the value of a piece of legislation of this kind on the eve of a general election. If they succeed in carrying this Bill, it is thought by their party they may go to the country with the merit of having attempted legislation—whether sound or unsound—desired by a large portion of the electorate, and get the benefit of it at the polls. If the law prove unsound, the elections must take place before any
20 decision of the Supreme Court can open the eyes of the temperance people as to the delusion they have been labouring under, respecting the constitutionality of the measure. They will thus reap the reward in a political sense of their services to the temperance cause, although that service may be of a very injurious character.

Hon. Gentlemen—Hear, hear.

Hon. Mr. MILLER—I have been told that members of the Government informed their temperance friends at the commencement of this Session, when they proposed drafting a measure at the last moment, and after promising such legislation in the Speech from the Throne, they had discovered they had not power to enact such a law as was desired from them,
30 but that it was imperatively considered a matter of policy, looking forward to the elections, to bring down some measure, put it upon the Statute book whether it was within the scope of our authority or not, and get the credit of it before the elections, no matter whether the friends of temperance had their eyes opened afterwards, not only as to its inutility, but as to the mischievousness of such legislation. I do not, myself, endorse that view of the case, or charge the Government with such duplicity in the absence of better evidence.

Hon. Mr. SCOTT—Hear, Hear.

40 Hon. Mr. MILLER—I am now willing to do the Government the justice of believing that they were not influenced by such unworthy motives in bringing this measure before the House, but if they are desirous of placing on the Statute books a law which will be of any value to the temperance cause; which will not be a source of endless turmoil and trouble in the country, there is but one course open to them,—to submit this measure to

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

the Supreme Court for their opinion as to its constitutionality, before proceeding any further with it. If they will not do this, there will be good reason to doubt their motives and their sincerity. I do not propose to go into the details of the Bill, many of which are objectionable, and which, I presume, will not go through the House in their present shape, but as those can be disposed of in committee, I shall reserve any observations I have to make on them until the proper time arrives. I again appeal to the Government to consider well the wisdom of pushing this measure further before obtaining the opinion of the Judges of the Supreme Court as to its constitutionality. A few days delay cannot endanger the passage of the Bill during the present Session, but it would be better to wait till next year than place a law on this great subject, of doubtful validity on the Statute book. We may be only taking a new departure in a course of expensive litigation and vexatious turmoil by passing the Bill in its present shape; producing bitter irritation and controversy all over this wide Dominion, and ending, perhaps, in results disastrous to a cause that has so many sincere advocates. I therefore, contend, in justice to all parties, in justice to the opponents as well as the friends of this measure, before proceeding further with it, the Government should obtain the opinion of the Supreme Court on the constitutionality of this Bill.

Hon. Mr. PENNY—I think it is a great mistake to suppose this Bill must be unconstitutional because it interferes with the power of the local legislatures to grant licenses. It seems to me, that the power given to the local legislatures is not the power, properly, to permit; but the power to prohibit, except on certain conditions, the sale of liquors, the chief condition being the payment of a tax. There is a natural right in all men to sell anything without license, except where the sale of any article is prohibited, and the object of giving the local Legislatures power to issue licenses is to enable them not to grant, but to prohibit—in other words, to impose taxation in that form. I do not agree with what has been said as to the propriety of referring this Bill to the Supreme Court. I believe courts are only intended for settling contentious questions. I know there is a clause in the Supreme Court Act which provides for the submission of bills to the Supreme Court, but I have always thought that was a blot on the Act. I believe it is impossible for a court to do justice to any question submitted to them in that manner. There must be a case for them to consider. I think it was unwise to put that clause in the Bill, and that it would now be equally unwise to use it. Courts of justice are not constituted for giving opinions of that sort and can only give opinions properly on matters of fact, and matters argued before them by counsel for persons interested in the facts. I believe an attempt has been made to use the Supreme Court of the United States for a similar purpose—to obtain an opinion from them on the constitutionality of measures in advance—and I think that they held that they could not do so, and declined to give the decision desired. I do not mean to say they are bound by their constitution, as our Supreme Court perhaps is by our Act, to give opinions on bills referred to them, but they have taken what I believe to be the proper ground upon the question of the propriety of such references.

10

20

30

40

My hon. friend who spoke last, appeared to think if we obtained an opinion from the Supreme Court on this measure it would settle the whole difficulty. I am afraid he would be very much mistaken in that.

Hon. Mr. DICKEY—I think not.

Hon. Mr. PENNY—Well, I will give my reasons for saying so. We may properly imagine that if the Supreme Court declared this Bill constitutional, the inferior courts would give their decisions in that sense. Suppose a brewer, for instance, comes into court to try the constitutionality of the Act. He will, it is probable, have the case decided against him. Then he seeks to set this
 10 law aside because it is unconstitutional. But where will he carry his appeal? Certainly not to the Supreme Court, for that will have decided in advance, but to England. By one of the clauses of our Supreme Court Act, which I also think was a mistake, we have the possibility of litigation still, notwithstanding the decision in advance of the Supreme Court. I mention this, not because I do not desire to see everything settled as far as possible before the Bill shall become law, but because I think too much importance is attached to the decision in advance, of the Supreme Court. My hon. friend opposite spoke about the elections. I think in a dignified body like this, we hear rather more about elections than is consistent with the dignity we
 20 affect; but in any case, I can see nothing to warrant the insinuation in which he indulged. My hon. friend from Sarnia, who has interested himself so much, and worked so energetically and so wisely (from his point of view) to promote the cause of temperance, is quite capable of judging whether it is desirable to have this Bill or not, and I believe he and his friends wish it to become law. He has expressed some desire that in certain particulars it may be altered, and, as he thinks, improved, and he would have been glad to have the opinion of the Supreme Court on it before it became law. I do not say that he is right or wrong; but, at all events, I imagine if he
 30 thought the Bill was going to throw all the temperance people in the country into confusion and involve them in expense and litigation, he would be the last to support it.

Hon. Mr. MILLER—He wants a reference.

Hon. Mr. DICKEY—I thought I made my position perfectly clear, when I explained that as far as I was concerned, I was not disposed to offer any opposition to this Bill; all I wanted was to be satisfied of its constitutionality, and I understood that was the position taken by my hon. friend from Sarnia.

Hon. Mr. KAULBACH—I have always been consistent on this matter. I am willing to assist in remedying any abuse, but yet I do not believe you
 40 can make people sober by Act of Parliament, and, even if we could, I look upon this measure as a delusion—a weak, puny, and inefficient effort of the Government to legislate in that direction. It is not such legislation as is asked for by the temperance people, and I doubt the sincerity of this Government, which has heretofore evaded every attempt at legislation on this matter. As far as Nova Scotia is concerned, this hasty and crude

No. 5.
 Extract
 from Senate
 Debates,
 1878, pp.
 338-380—
continued.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

effort of legislation is a blow at the temperance organizations of that Province, and will keep the country in a continued scene of turmoil and hot water, with no good results to the friends or cause of temperance. In Nova Scotia, I am pleased to be able to say, there is everywhere, among all classes, not only a growing feeling in favor of temperance, but it exists, not by coercive legislation, but by reasoning and moral suasion. They had previously asked for legislation, but not such an absurd measure as this Bill. The petitions presented here in such numbers in former Sessions, some of which I had the honor to present, asked for the total prohibition of the manufacture and importation of liquors. It is impossible, whilst we look 10 for revenue from this source, and whilst the manufacture and importation of liquors is legalized in the country and by this Government, to attempt by such a puny effort as this to prevent its sale and consumption, and to strike down the merchants engaged in the manufacture and sale, as well as the importers, without proper notice. It is rather an incentive to the use of liquor. The moment you attempt in an imperfect way like this, without the consent of the majority of the electoral vote; by force of law, without the moral support of the people at the back of it, not to regulate and restrain against the excess and abuse, but forcibly to suppress the liquor traffic, you not only increase intemperance, but demoralize the 20 people. My hon. friend from Sarnia, whose sincerity of purpose no man questions, said they had been long lopping off the twigs and branches of the upas tree of intemperance, and he now wants it cut down. Such a measure everybody could understand, but surely, this Bill is not what he has so long been looking for and advocating with such zeal and force that he has almost convinced people against their will. His own expressions to-day made me feel that it was not such a measure as he, at the head of the large temperance organization of this country, had a right to expect, or, without important amendments, believed should be passed. I am very much of the same opinion as the hon. Senator from Amherst, as regards the 30 constitutionality of this Bill. Under the British North America Act, the Local Legislature may exclusively make laws on certain subjects, including licenses for municipal, local and provincial purposes, and this comes within the scope of that power. I contend, while the Federal Government legalizes the importation and manufacture of liquors, it rests with the Local Legislature to say whether, and in what manner, they shall regulate and restrain and the sale shall be legalized, and it is questionable whether we can take away that power. This question of jurisdiction on which the Secretary of State has not even offered a decided opinion, should have been settled by the Supreme Court before the introduction of the Bill in this House, 40 unless the Government is bent on provoking litigation, and giving employment to the lawyers. Those of them who have given an opinion, here have expressed grave doubts as to the extent of our powers. It will not be denied that we find a conflict of opinion among able lawyers in this House, and that conflict, I fear, will continue in the country. No government should propose a measure of doubtful authority. When the Supreme Court was established, we were told that one of its most important duties would be to

settle matters of this kind, in which conflict of authority might arise. It was one of the strongest arguments used for the creation of that Court, that bills of doubtful constitutionality, or bills raising a question as to Local or Federal powers to legislate, before becoming law could be referred to the Judges for their opinion. Session after Session, my hon. friend from Sarnia urged that the Government get the decision of the Judges of the Supreme Court. Yet, it has not been done; but we are asked hurriedly to legislate, just on the eve of a general election, and if improper motives are inferred the Government have themselves to blame. As far as this imperfect Bill is

10 concerned, it appears to me to be one which, as I have said, will throw the whole country into turmoil and hot water, unless many of its provisions are amended. Fancy prohibition in a county surrounded by other counties where there is no prohibition; Liquor will be used, and to greater excess, and in a manner more discreditable, in that county than in the others; and if not so, the excess would certainly be in the surrounding counties which this Bill does not provide against. The man of means, by travelling a few miles, just by crossing the county lines, can get as much as he wishes, and possibly more than he ought to have, while the poor man whose time is his money, is deprived of what may be a benefit to him, for I believe the

20 temperate and proper use of liquor is beneficial, for which I have the authority of many eminent physicians. When we find people so very extreme, if even sincere, in their temperance notions, we also generally find them frail enough in other respects. I do not believe this Bill deserves the proper respect of the temperance body or of this Senate. It strikes at the vigorous law we have in Nova Scotia; a law which cannot with impunity be evaded, and which is thoroughly carried out, and substitutes despotic power, without public approval to back it up. We all know how petitions can be got up, and how easily thereby public opinion may be misrepresented; how easy it might be to get the signature of 25 per cent. of the electors in

30 many counties. Some might easily sign any paper without reading, or having it read, and the only enquiry made, whether signing it will cost them anything. In that way a whole county can be set in an uproar, and year after year, if this Bill becomes law, this trouble, cost and turmoil may be continued. It seems to me the Government anticipate this, because they make provisions in the Bill against the carrying of firearms and the wearing of badges and party colors. In Lunenburg every total abstainer is proud constantly to wear the little blue ribbon, but under this law they must, not only for eight days take off their colors and tear this little blue ribbon from their breasts, but dare not give even a temperance friend and

40 elector, a glass of cold water. I believe this sort of legislation is a mistake. It seems absurd in the face of it. Go down to the State of Maine and see how it works. In Bangor it is a farce, and has only a demoralizing tendency. The moment you pass a law which cannot be carried out, and which has not the moral backing of the people, you are only inflicting an injury on the country. My hon. friend from Amherst showed us to-day, from unquestionable authority by the statistics of the United Kingdom, that during the last 20 years pauperism and crime have decreased in England

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

and Wales, and I shall show that, during the same time and in the same places, the consumption of liquor has increased. I have read the report of the Select Committee of the House of Lords on Temperance, that the increased use does not necessarily cause abuse. Among the witnesses examined before the committee was the well-known Professor Leone Levi, F.S.S., who, last year, gave the following evidence as to the general condition of the people as affected by intemperance, and respecting the possible working of a permissive bill. I shall not weary this House with long extracts, but hon. gentlemen can read the report, which is very long and full of interesting information on this subject. Among other things, he says :—

“ I have made some calculation of the relation of intemperance
“ to consumption. Comparing 1856 with 1875, and taking the
“ quantities of British, foreign, and colonial spirits, and malt and
“ wine respectively, I find that, in England and Wales, there was an
“ increase in the consumption per head of 37 per cent. upon the
“ consumption of spirits, taking British, foreign and colonial together ;
“ of 15 per cent. in the consumption of malt, and of 88 per cent.
“ in the consumption of wine.”

My hon. friend from Amherst showed conclusively, from the report of the British Board of Trade statistics for 1877, that there was an increase of about 50 per cent. in England and Wales in the use of liquor. If he did not show that, the above quotation does show it. But this he did show ; that paupers in England and Wales in 1862 numbered 946,166, whilst in 1877 there were only 728,350—being a reduction of about 220,000 ; and further, that in 1862, there were 20,000 convictions for crimes, whilst in 1876 there were only 16,078—showing a reduction of about 4,000. Thus, the facts show that, whilst there was the large increase of consumption of liquors, pauperism and crime decreased ; and that, notwithstanding the large increase of population. My hon. friends may draw what deductions they please from these facts, but this is clearly shown that, whilst pauperism and crime are largely on the decrease, the consumption of liquor has increased. I will now read from the report of the British Consul in Maine, an extract which will give an idea of how the prohibitory liquor law works in that State. The report is dated 1877, and contains the following opinion of that Consul, in 1873. He says the law is evaded, and is utterly fallacious and powerless :—

“ That a long residence of nearly fourteen years in this State,
“ has given me unusual opportunity for studying this question, and
“ I have no hesitation in reaffirming that, with the exception of
“ some isolated villages, the Maine prohibition law has been a failure
“ in the larger towns and cities ; that the actual good it may have
“ produced has been more than counterbalanced by the hypocrisy
“ and consequent demoralization of a very large class, who, though
“ nominally and politically prohibitionists, are not consistent in
“ their own conduct, and of which I have daily proofs.”

I have shown some of the absurdities of this Bill—there are many others. A sick man, or any man before he can get liquor for medicine,

10

20

30

40

must employ a doctor, and then he cannot be ordered less than a pint at a time. The doctor cannot furnish that medicine from his shelf, and if there is no drug shop within reach, the poor fellow must suffer and possibly die for want of the medicine, which is well-known in many cases of sickness or accident, requires quickly to be used. I make these objections, so that, if possible, my friend from Sarnia, who will likely take charge of the Bill, may advise the amendments, and if properly amended, I have no doubt many hon. gentlemen on this side of the House, will yield up their own opinions, and allow this experiment, in which I have little faith, to be

10 made. The Government must already see that it largely rests with the Opposition, whether this Bill shall carry. It is a measure which, I think, will be divested of all party feeling, in its discussion. I have endeavored to show the great difference between temperance and total abstinence, and that abstinence by compulsion was not reasonable, but injurious to the cause of temperance. I have shown that drunkenness in England had not increased with the increase of population, or the increased use of liquors as a beverage, but, on the contrary, that with the increased use, crime and pauperism had decreased. Of course I do not say that the increased consumption had the effect of keeping men sober, but I place

20 the facts plainly before my hon. friend from Sarnia, who will see that the figures and authority I have given, do not accord with his premises. I have shown that moral suasion, through the active work of the temperance body in Nova Scotia, did more for temperance in six months, than the work of legislation for many years; and I yet believe only in moral suasion doing the work, and that legislation when it attempts to go farther than regulate and restrain against excess, does infinitely more harm than good. It is very strange that this Bill should come before us now for discussion in such a crude condition at the last stage of the Session, and with the pretence that it is a measure in the direction which the temperance bodies

30 of this country ask for. If I stood in the same position as my hon. friend from Sarnia, with the same promptings, advocating prohibition, and nothing but prohibition, it is the last bill I should take from the Government. Time will tell whether my views are right, and they are honestly intended in the interest of the cause of temperance.

Hon. Mr. ALLAN—I do not propose to help the Government in the elections, but I do propose to assist them with this Bill, though I hope when it leaves this House it will be in better shape than it is at present. When I say I will support this Bill I do so from a different standpoint from my hon. friend from Sarnia. I am not a teetotaler myself, nor do I believe

40 in total abstinence, or in endeavoring to enforce it as a positive moral and religious duty on others. Indeed, I venture to say the cause of true temperance has suffered not a little from the intolerance of its advocates on that point. I think the assertion they make, that entire abstinence from intoxicating liquors is the positive duty of a Christian, has done great harm. Many of our temperance friends too, have, I think, injured the cause very often, by standing aloof, and not heartily assisting to carry

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

out practical measures such as the laws respecting licenses, and the regulation of taverns, saloons, and other places where liquor is sold, on the principle that it would be merely temporizing with the evil, and therefore they could not conscientiously countenance what they considered half measures. I do intend to give my humble support to any measure which may, by any possibility, decrease the terrible evils, the crime and misery which intemperance and strong drink have brought on so very many of the population of this country.

Hon. Gentlemen—Hear, Hear.

Hon. Mr. ALLAN—Though I do not consider the Bill, in its present shape, a perfect one, and though I consider the results of the measure, if carried, as likely to be very doubtful in some parts of the country, especially in large cities, still I should be very unwilling to throw obstacles in the way of the passage of the Bill, and, if it is properly amended, I am willing it should have a fair trial. 10

Hon. Mr. SCOTT—Hear, hear.

Hon. Mr. ALLAN—I think the hon. Secretary of State has pointed out one of the strongest grounds for supporting a bill of this kind, when he says one of the great advantages which the adoption of this measure would confer, would be the removal of temptation from a very large number who, but for temptation being placed in their way, would remain to the end of their days perfectly sober, temperate persons. There is no doubt, the multiplication, in all our cities and towns and villages, of places where strong drink can be obtained, is the cause of many evils. There are many men who would be temperate but for the temptations by which they are everywhere beset, and from which they can hardly escape; presenting themselves, as they probably do, at almost every turn in the place in which they reside. If this Bill will do away with some of these evils, and will, more particularly in rural municipalities, prevent the multiplication of places where strong drink can be sold, something will be achieved by its passage. At the same time, I quite agree with what has been said by several gentlemen who have spoken before me, with reference to the doubt as to the power of this Legislature to pass a Bill of this kind. Therefore I should be glad to see some such reference made before it passes its final stage, as has been suggested, not only on the ground that it would be very desirable so far as the temperance cause is concerned, to avoid all uncertainty as to the legality of the measure, but also that we should carefully avoid placing this Parliament in the position of enacting laws, which, after all, may be decided to be *ultra vires*, and not within the scope of the Dominion Parliament. It would be unfortunate if we should deliberately pass an Act like this, which would afterwards be found beyond our powers. I think it would be far better in every way that we should endeavor to ascertain, whether that is the case or not before the Bill passes its third reading, or is assented to by the Governor-General. It seems to me the reference can be made very conveniently, and without imperilling its passage in this House, or in the other branch of the Legislature during this Session. 20 30 40

Hon. Mr. AIKINS—I am very much pleased, as a temperance man, to find the Government have introduced a measure of this kind, and if there is anything to be regretted at all, it is that it was not introduced two Sessions ago. It will be in the remembrance of hon. gentlemen that petitions were presented to this House and the other Chamber, very largely signed, three Sessions ago, and that a Committee was appointed, to which these petitions were referred; that we had a report, and a very strong report, which this House at that time endorsed and adopted, and I think the temperance people have something to complain of in action not having
 10 been sooner taken in the direction of this Bill. In the Province of Nova Scotia, where they have such an excellent license law, I can understand they have not the same strong feeling for a temperance measure the people of Ontario have. When the temperance body asked for an option law, a practical one which could be carried out, the answer was that we had the Dunkin Act, and until the temperance people showed by its adoption that the sentiment of the country was favorable to it, no legislation might be expected at the hands of the Government. The temperance people were forced to pronounce upon that Act, which is but a miserable excuse for an option law. In counties where a majority are in its favor, it is, in a measure,
 20 inoperative. I say, therefore, that the temperance people have a good cause of complaint against the Government for not having introduced a measure of this kind sooner. It has been very well said here, to-night, that the temperance people will have very grave cause to complain if hereafter it should be discovered that this Act is unconstitutional in any particular. I was very much surprised to find that the Government were not prepared to announce to the House that they had consulted the Supreme Court, and that the measure was pronounced by that august body constitutional in all its parts. If this Act should be adopted in some counties, and hereafter be found to be *ultra vires*, all the difficulties that have sprung
 30 up under the Dunkin Act would be more than doubled, and the temperance cause would be manifestly damaged. I quite agree with the hon. gentlemen who have spoken on this subject, with regard to the desirability of getting the opinion of the Supreme Court upon the Bill, even at this stage of the Session. I desire to see this measure passed, yet, strongly as I feel in favor of a temperance Act, I would rather wait until next Session than have unconstitutional legislation now. I was very much astonished to hear the hon. Senator from Lunenburg announcing a new theory in this House—that just in proportion as the consumption of liquor increases crime and pauperism diminish. Certainly, if that theory is a correct one, and if the
 40 facts sustain it, then the Government have made a great mistake in the introduction of this Bill, and the House would make a great mistake in passing it, for the only way to put a stop to crime and poverty would be to make drinking universal.

Hon. Mr. KAULBACH—I gave my authority for what I said.

Hon. Mr. AIKINS—I suppose the hon. gentleman, in giving the authority, meant to endorse it. At first, I thought the hon. gentleman was strongly

No. 5.
 Extract
 from Senate
 Debates,
 1878, pp.
 338-380—
continued.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

favorable to prohibition, because he condemned the Government for not giving prohibition when petitions were presented in favor of it. I supposed he was in favor of that principle, and I was very much surprised to find he was not a temperance man.

Hon. Mr. KAULBACH—I did not mean to say I was not a temperance man. I consider I am the quintessence of temperance, though not a total abstainer.

Hon. Mr. AIKINS—The hon. gentleman likes to take just as much as he wants, and tells us with any amount of gravity that in the State of Maine the law is inoperative. He says he made that discovery at Bangor. How did he make that discovery? I would be surprised if any hon. gentleman in this House would admit that he went to the State of Maine and violated the law there. 10

Hon. Mr. KAULBACH—I mentioned that the information was furnished by the British Consul at Maine. I was referring to his statement.

Hon. Mr. AIKINS—Then, I withdraw what I have said on that point. With reference to the Bill, it contains some most ill-digested provisions, and it shows it has been drawn with a very great amount of haste. It makes provision that a clergyman can only get wine for sacramental purposes, when he furnishes a certificate to a druggist, which is an affirmation that the wine is to be used in that way. That may be all right, so when the doctor makes out a prescription for his patient, if liquor is required there has to be a certificate and an affirmation, but any person may go to a distillery and buy ten gallons of whiskey and no affirmation is required from him. The only condition imposed is, that the person who sells has good reason to believe it is going to be taken out of the limits of the prohibited district. We can imagine how easily the distiller could be satisfied the liquor was to be taken beyond the municipality. Then two districts contiguous to each other may adopt this law. Anyone can purchase in either of them and take it in to the other for consumption. For instance, if the law were in force in Ottawa City and Carleton County, liquor could be purchased in the city, not for use within the limits, but it could be used in the county, and in the county it could be purchased for use in the city. These are some of the defects which I have noticed in the measure, and I hope it will be scrutinized very closely. It would be a cruel thing to pass an Act of the importance of this, in such a shape that it could not be worked out successfully. It is not considered a party measure in any sense. 20 30

Hon. Mr. SCOTT—Hear, hear.

Hon. Mr. AIKINS—I believe when the vote comes to be taken upon it, there will be as many, perhaps more, opponents as friends of the Government found voting for it. Before it passes this House it will have to be amended in very many particulars, to make it a complete measure. 40

Hon. Mr. HOWLAN—I have listened with considerable attention to the remarks of hon. gentlemen, but as I have learned the value of legal opinion when it is given for nothing, I have not the same respect for the opinions

that have been given as if they had been paid for. This Bill is not a prohibitory measure but a permissive law, the principles of which we have in operation in almost every district of Prince Edward Island where the majority in every school district can prohibit the issuing of licenses for any year, so that I cannot see that it interferes with the existing law on that point. There is no denying the fact that a very large and influential class of the community has petitioned this Parliament, and have advocated through the public press and on the public platform a measure of this kind, and I for one am glad to see that the Government have thought fit to bring in this

10 Bill which has been demanded by such a large portion of the community. I can perfectly understand the difficulties in bringing in legislation of this kind, but when it goes to committee we can make whatever amendments may be deemed necessary to perfect it before it comes before the House for the third reading. I was surprised to hear an hon. gentleman say that the moral suasion of the country is not in favor of this Bill, but if the hon. gentleman will only reflect a little, he will find that even down in Lunenburg this moral suasion exists. There is scarcely a village or town in the Maritime Provinces in which this question has not been advocated by some of the leading minds in every community, and I am surprised that the hon.

20 gentleman should state that the moral suasion of the country is not in favor of it.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Hon. Mr. KAULBACH—They are in favor of moral suasion, but not of a legal enactment Bill.

Hon. Mr. HOWLAN—We are merely attempting here to give effect to that moral suasion, by giving to the majority the power to regulate, as far as they are concerned, the sale of intoxicating liquors. I think it will be in the recollection of the hon. gentleman himself, that there has been a community in his own Province who recently took the law into their own hands and spilled every barrel of liquor in the town, and closed every

30 saloon in it. I speak of the town of Yarmouth. Surely, the people who did that, did not engage in such work for the mere fun of it; there must have been a strong feeling of moral suasion prevailing.

Hon. Mr. KAULBACH—No, but coercion.

Hon. Mr. HOWLAN—This Bill is not coercive, but permissive. I will point the hon. gentleman to another town in Nova Scotia, Amherst, where the people took the law into their own hands, and informed all the tavern and saloon keepers of the place, that if they did not close up their establishments at the expiration of their licenses, they would be closed up for them.

Hon. Mr. KAULBACH—My hon. friend would make temperance men

40 outlaws instead of law-abiding citizens.

Hon. Mr. HOWLAN—Another hon. gentleman says it is necessary for man to use intoxicating liquors. The hon. gentleman will find in the report of the Committee of the House of Lords, the evidence of Sir William Gull, Physician to Her Majesty the Queen, who says, so far from intoxicating

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

liquor being necessary to man, it is the contrary. I will quote from his remarks :—

“ I have had ample opportunities of judging for 35 years past ;
“ I should say from my experience that alcohol is the most
“ destructive agent that we are aware of in this country. I think
“ there is a great deal of injury being done by the use of alcohol in
“ what is supposed by the consumer to be a most moderate quantity
“ to people who are not in the least intemperate, to people supposed
“ to be fairly well ; it spoils the health and spoils the intellect.”

Hon. Mr. KAULBACH—I would ask my hon. friend if he had read that 10
quotation from Sir William Gull before he put on the blue ribbon ?

Hon. Mr. HOWLAN—I do not think that a gentleman of the high
standing of Sir William Gull would have given an opinion of this kind before
the House of Lords' Committee, without he had considered it very carefully.
But I could give the opinion of another eminent man, nearer home,
Dr. William Parker, a well-known professor, in the State of Massachusetts,
who, in the State Conference, made remarks of a similar nature. But I will
go further and I will give him the experience of Dr. Blanchard, of his own
Province. As to the “ causes of insanity,” Dr. Blanchard remarks as
follows :—

“ From the reports of different hospitals in America and Great 20
Britain, which reach us annually, intemperance would seem to play a
leading part ; intemperance, not only as regards spirituous liquors,
but also as to the mode of living, excess in the indulgence of the
various appetites and passions, etc., etc., and this excess is due in
many cases to an ignorance of the laws which should govern our lives.
The consequences of intemperance, as respects alcoholic liquors, are
not, unfortunately, confined to the first sufferers alone. They are
entailed upon the children and grandchildren. It is especially true of
those who indulge in this vice, that the sins of the fathers are visited 30
upon the children, for it is an established fact that the children of
habitual drinkers—I do not say drunkards—are far more liable to fall
victims to the various neurotic diseases, such as insanity, epilepsy,
chorea, neuralgia, etc., than are the children of total abstainers. As
has been observed by some writer, ‘ The brain cannot be kept for
years in a constant, though it may be slight, abnormal condition,
without altering its organic character, and rendering it liable to at
least functional disturbance, which constitutes insanity. Many of
the cases of the softening of the brain and epilepsy result directly 40
from the use of intoxicating drinks. The habitual use of alcohol is
felt through more than one generation, and though the father may
not become insane, his children will have an additional tendency to
insanity, especially if they pursue the same course, as they are likely
to, for the habit itself is almost transmissible.’

“ A large part of the idiot and imbecile children are born of
intemperate parents. If we would have a hardy, intelligent race,
alcohol, as a beverage, must be abandoned.”

I think that will dispose of the question raised by my hon. friend that it is necessary for man to have some stimulant. I was very much struck, indeed, by the very ingenious manner in which he worked up his argument, to prove from statistics that crime had materially increased in England under a prohibitory system. It is a most extraordinary thing that the British House of Lords should have taken up their time in discussing this question of temperance if they considered its tendency was to increase crime. The same question has also occupied the attention of the statesmen of the neighboring Republic. I contend that it is a farce to attempt to

10 prove before this House, by statistics, that the State of Maine has suffered from the working of the Maine Liquor Law. I am somewhat acquainted with the State of Maine for the last ten years, and I say, of my own knowledge, that crime has materially decreased in that State since that law came into operation. At one time there was a great deal of excitement in England over what was called the bread law, and it was proved at that time that while the consumption of liquor decreased, crime decreased in the same ratio. I happened, not long ago, to visit the Kingston Penitentiary, and during the time I stood there watching some seven hundred convicts fyle past me, I thought to myself I would just like to have the record of the life of each

20 of those men, showing the temptations and inducements that had been thrown in their way, until they had finally been brought to that place. The history of one, at all events, I did learn, through the kindness of the Warden. I can say to my hon. friend opposite that, at one time of his life, that convict occupied as high and distinguished a position as any hon. gentlemen in this House do now, but, maddened with drink one night, he committed an act that placed him in the penitentiary for ten years, and brought his wife and family to disgrace. But, to show the hon. gentleman that a community can do without intoxicating liquors, and that, by its abolition, crime decreases, I will refer him to Garden Island, only a short distance from the

30 Capital, where there has been no liquor sold for many years. A large portion of that community, at certain seasons of the year, are employed at loading vessels, and there has not been a case of conviction for crime amongst that population for twenty years, and there is not a constable on the Island. If the hon. gentleman is right in his conclusions, the great majority of the people of this Dominion must be wrong, as the great question of temperance has been brought home to every village, town and settlement in the country, and there has been a favorable response from every one of them. I am glad that political necessity has given us this Bill. I, for one, shall be pleased to give the Government every assistance in my power to pass it, and put it

40 before the country, and then we shall have an opportunity, at all events, of finding out what is unconstitutional in it. I am somewhat strengthened in my convictions on that particular point, from the fact that the hon. gentleman from Sarnia, who stands at the head of the Temperance Alliance in this Dominion, has agreed with me that it is better to have the Bill passed, and let it go before the country, than have none at all. I consider that the hon. Secretary of State is entitled to the thanks of the people of this country. He has not only brought forward this Bill, but he has shown, as a practical

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

No. 5.
 Extract
 from Senate
 Debates,
 1878, pp.
 338-380—
continued.

temperance man himself, that he has faith in the workings of temperance in Canada. The Bill, I think, will be welcomed by a large majority of the temperance men of the country, and its workings, I have no doubt, will prove so beneficial that I would not be at all surprised, when I come back here next Session, to find that the hon. gentleman from Lunenburg has been enrolled, as I am enrolled myself, amongst the temperance men of Canada, and will be standing up here advocating, as I am now doing, the great and noble cause of temperance.

HON. MR. McCLELAN—After the able speeches that have been delivered, indicating very distinctly and in a better way than I can, to a very large extent, my own opinions on this question, both as to the necessity and propriety of the introduction of this measure, I can only express my supreme pleasure that the Government have taken this matter in hand, and have brought in so good a Bill. I believe that the temperance men of the country will give them their support on this measure, whatever shade of political opinion they may hold. I am very glad also to hear from the expressions of hon. gentlemen around me, that the discussion of this question is not to be made a political one, and that no obstruction will be given towards the working out of this law. It is well known, as has been very properly remarked by the last speaker, that petitions have been flooding this Parliament for a number of years in favor of a more advanced system of prohibition. That has been followed up by some twenty-five or thirty petitions to this Chamber, very recently, asking that this Bill be allowed to pass. My opinion is, speaking of my own Province, New Brunswick, that the temperance men of all shades of political opinion will concur in the propriety, advisability, and, almost necessity for this very measure. My letters indicate as well as those received by other hon. gentlemen from my Province, that the people of New Brunswick are very much pleased that this step has been taken. We may occupy, perhaps, a somewhat anomolous position with regard to it, because in many of the counties the temperance feeling has been so established by force of public opinion, that it is impossible to grant any license for the sale of liquor. In my own county there have been no licences granted for very many years, but recently—within the last three years—when an attempt was made to fine people who sold without license, the opinion of the Judges was that the law was unconstitutional. Since then we have had an indiscriminate sale of intoxicating liquors without any legal restriction. Therefore, the people have felt the necessity of some steps being taken, as we all know the difficulty of getting a decision from the Supreme Court. Not being a lawyer, I cannot discuss intelligently, the question of jurisdiction, but my opinion is, we should accept this measure as it is, and leave the question of its constitutionality to be decided afterwards, if such question arise, for the necessity for a law of this kind is very great, and the people who advocate temperance—not from any patriotic feeling if the argument of my hon. friend from Lunenburg is of any force—demand it. I scarcely take it that it is necessary to controvert such an argument as that of my hon. friend, that temperance increases crime and pauperism, as the sentiment is not worthy of an hon. gentleman who occupies

the position he does. Public opinion throughout the country will favor the introduction of this Bill, and I trust that every hon. gentleman will give it his support.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Hon. Mr. KAULBACH—I must rise to an explanation, as my name has been so often mentioned in this debate, and in consequence of the manner in which hon. gentlemen, not being above to refute my facts and authorities, have endeavored to pervert what I have said. I merely gave those figures in the first place, as quoting the Committee of the House of Lords, showing the large increase in the use of intoxicating liquors. I have shown, from
10 statistics submitted to the same Parliament at the same time, that crime and pauperism had decreased during the same period. These are facts, and no hon. gentleman has attempted squarely to meet them, much less has any of my honorable friends, the prohibitionists, attempted to dispute them. They deal in generalities and not in facts and figures. In the community from which I come, I believe I have been as good a friend to the temperance organizations there as anyone not belonging to them, but I do not want to deprive those philanthropic gentlemen who are engaged in the temperance cause, of their vocation. I believe the moment they attempt to coerce men by force of law into being temperate, instead of by example, and using moral
20 and religious suasion, they will frustrate their own object. I believe that liquor, like other things created for the use and benefit of man, is a gift of God, and its use violates no law, social or Divine. I regard any man who can look upon evil and avoid it, as being a better man than he who has to be restrained from evil by legislative enactments. I am ready to assist in restraining excess and abuse in this and everything else. I believe there are more men ruined through intemperance in other respects—
30 intemperance in other things, loathsome in their nature, that is more destructive both to the soul and body, than ardent spirits—vices that daily show themselves stamped in posterity. No position is more absurd, no argument more fallacious, than because some few men abuse God's
40 gifts, therefore those gifts should be prohibited from general use. The use would run in the very teeth of it, and as I have already contended, the attempted prohibition would be an incentive to its abuse.

Hon. Mr. REESOR—To discuss the constitutional points of this Bill, would be presumption on my part, when so many professional men have taken part in it. But it did strike me when an hon. gentleman said that a hundred legal questions might arise out of this measure, to be submitted to the Supreme Court for their decision, if it became law, that if such is the case, is it at all likely that all those questions could be anticipated by
40 the judges, if the measure were submitted to them now?

Hon. Mr. MILLER—Of course.

Hon. Mr. REESOR—Without any particular points being raised?

Hon. Mr. MILLER—Yes.

Hon. Mr. REESOR—I venture to say that no such thing could be reasonably expected.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

Hon. Mr. MILLER—That is your opinion.

Hon. Mr. REESOR—I will take the hon. gentleman's own opinion with regard to the constitutionality of the Bill, when he says he thinks only one portion of the Bill would be *ultra vires*, that is the portion repealing the Dunkin Act.

Hon. Mr. MILLER—It does not follow that I am right. There may be a very different opinion as to the whole enacting clause of the Bill.

Hon. Mr. REESOR—Nor does it follow that the hon. gentleman is right that it ought to be referred to the Supreme Court now.

Hon. Mr. CAMPBELL—The hon. gentleman is the only one who is necessarily right. 10

Hon. Mr. REESOR—For my part I always place a great deal of weight on the hon. gentleman's opinion in matters of law. I have great respect for his opinions on this Bill, and I was very glad when he said there was only one part of the measure *ultra vires*. We have all we want in this Bill even if the Dunkin Act should not be repealed, and if this Act is put in force people need not use the Dunkin Act if this one is preferable. Although the Dunkin Act would still remain on the Statute book, as a law it would be a dead letter, as it has been, and is yet, in nearly all portions of Ontario and Quebec except in a very few counties. Then, as to the desirability of having a measure of this kind made permissive, and to apply only to such municipalities as the people themselves think advisable, it is a most excellent feature of it, and one that is likely to give general satisfaction in all the Provinces. I know that in Ontario there is a very good law, known as the Crook's Act, which the people think has had an excellent effect in this Province, so that it is only in a few parts of Ontario this Act will be put into operation for some years to come. My own view is that it should not be enforced except when the great majority of the people are in favor of it, because when you pass a law taking away a man's liberty to eat and drink anything unless it has the approval of a large majority in the community, the law becomes inoperative. 20 30

Hon. Mr. MACFARLANE—I consider, if it be wise that this Act should go into operation, it would also be wise that the course suggested by my hon. friend should be followed, and it would then come before us in a shape that there would be no chance of its provisions being disputed. I am entirely in favor of anything that will promote temperance. Any measures we can take that will benefit our people and suppress intemperance, it is our duty to initiate; but at the same time this is a very serious responsibility, as we must bear in mind that we are interfering with the revenue of the country, and, I take it, it is a question which the Government, in introducing this measure, have seriously considered. If the two questions are brought into juxtaposition, shall crime be suppressed, or must the revenue fail. I believe the decision should be, crime must be suppressed at all hazards. I am happy to say that in this metropolis of our Dominion, after some weeks that I have been in it, I have not seen a man reeling on 40

the streets, or showing any signs of drunkenness. I am pleased to note this. Possibly it is the result of moral suasion, as there is a surprisingly marked difference between the state of affairs that exists here now, and what prevailed here a few years ago. A person can now traverse the streets any hour of the day or night without meeting drunkenness. There may be haunts of vice in this city, as there are in other places, but wherever you go throughout the Dominion the cause of temperance is increasing, the people are becoming more temperate, and intemperance is being considered as a vice to be avoided. Still, there are a large, influential, and intelligent class of people who will never be satisfied until there is a fair test given to a prohibitory liquor law. I have always been of the opinion that prohibition pure and simple, in this country, is an impossibility. I allude more particularly to the Maritime Provinces, where, it is well known, we are almost surrounded by the sea, with no part of a province more distant from a seaport than eighteen or twenty miles. I believe in such a place, if a prohibitory law were enforced, the inducements that would be offered to import liquor into the Provinces by the great gains that were to be made by it, would encourage a large illicit traffic, and the revenue would lose. If this Bill goes to committee, the provisions of it ought to be very carefully examined. We must bear in mind—and I think it is the duty of this Legislature not to forget—that outside of the temperance people there is a very large, influential, moral, and religious class, who have the whole of their means invested in the liquor traffic. We have legalized the business, and for purposes of revenue it is looked upon as one of the legitimate sources of traffic in which people are empowered to invest their money and make their living by. Would it be fair to step in of a sudden on this class of the community, after inducing them to go into the business by legalizing it, and crush it out of existence without warning? Something ought to be done, and probably something will be proposed in the direction of indemnifying those people from whom we propose to take away their means of subsistence. The British people, when they desired to abolish slavery within the limits of the British Empire, did not do so by suddenly destroying the property of the people who made a living by slaves. No, they put their hands in their pockets, and paid a legitimate recompense to the people whose property they were taking away; and had our neighbors across the line done the same thing, they could have put down slavery without the horrors of a fearful war that almost ruined the country. In this proposed legislation we should either extend the time so that liquor dealers would be enabled to dispose of their stock on hand, or they should be recompensed in some other way. Even the temperance men, while they do not wish to do anything that would encourage the liquor traffic, would hardly be willing to crush it out unless it were done in such a way that it would not bring ruin on a large portion of the community.

Hon. Mr. WARK—I think the arguments of the Hon. gentleman who last addressed the House refer more to prohibition than to a permissive bill of this kind. Reference has been made to the working of the Maine Liquor Law. I have been passing through that State for ten or twelve

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

years, and very frequently I have had to stop at various hotels in it. During all that time I never saw a glass of liquor sold there, nor did I see a drunken man. It may be that there are places where liquor can be obtained, but respectable men will not go through back lanes and into low hovels to look for it. It is that class to which my hon. friend from Toronto referred, when he spoke of the great importance of removing temptations out of the way of the lower classes; but the young men of the country who frequent the bars of the fashionable hotels will be equally benefited by this Bill. With regard to the effect of this Bill upon elections, I regret that such a question has been introduced, but we must bear in mind that the liquor interests work harder in elections than the temperance men generally do. We have only to look at the last election in England, where the liquor interests were actually said to have controlled the elections. 10

Hon. Mr. SCOTT—Hear, hear.

Hon. Mr. WARK—If the Government expect support for this Bill, they will find that they will have a vigorous opposition as well, and perhaps the opposition will be stronger in the end than the support. I will only say a few words with regard to the amendment which the hon. gentleman from Sarnia proposes. I have made it a rule under the old Administration, as well as under the present one, when the Government have carefully prepared a measure and have devised all the machinery for carrying it out, that the safest way is to leave the entire responsibility with the Government, and interfere with the Bill as little as possible in the way of amendments. I received letters to-day from two very respectable temperance men in New Brunswick, one filling a very high position in that Province, and the other a judge of one of our courts, both expressing themselves as satisfied with the Bill. So am I. With regard to the constitutionality of the measure, as far as the Local Legislatures are concerned, I believe if there is any difficulty in the way, the Local Legislatures will step in at once and remove it, if it is anything that depends upon their legislation. I have no doubt about New Brunswick, because we had a petition from the Legislature there some years ago, asking for a prohibitory liquor law. I am sure the power rests between the Dominion and Provincial Legislatures to remedy this evil, and if there is any defect in this Bill, it will be supplied by local enactments. 20 30

Hon. Mr. GIRARD—I cannot let this occasion pass without expressing my opinion on the Bill which is now before this hon. House. I am glad that such a measure has been submitted by the Government for our consideration. Last year I applied to have the Dunkin Act extended to Manitoba, but I see that this Bill provides uniform legislation for all the Provinces in the regulation of the sale of intoxicating liquors. The Bill may not be perfect and it is for the Government to see that every precaution is taken to make the measure as perfect as possible as it would be a greater damage to the cause it was intended to promote to enact doubtful legislation, than to have no permissive law at all. I am sure when the bill goes to committee, the Government will be ready to tell us plainly whether any 40

portion of it is unconstitutional or not. I think this measure is a step in the right direction and after it is in operation, and its defects are discovered, it can be improved where improvement is deemed advisable. The introduction of this Bill is a concession on the part of the Government and it shows what progress the cause of temperance has made when they have been able to bring sufficient influence to bear on the Government as to procure this legislation. We have been told that wine is a gift of God and it was given for man's use. There are many other things also which are the gifts of God, but against which we are obliged to legislate in the interests of society.

10 Poisons are gifts of God, but every one will admit that the law to prevent the indiscriminate sale of strychnine is a very wise enactment. I do not say there is the same danger from wine, but it is the duty of the Government to protect the weak, and if there is a strong temptation in the way, it is well to give those who are exposed to it all the protection possible. The law punishes the drunkard for crime, but, in many cases, it punishes an innocent man. To be a crime, the act must be committed with intent. Sometimes unfortunate drunkards are guilty of very grave offences, and expiate their crimes on the scaffold. In many such cases the man is not guilty, as the crime was committed without intent while the poor wretch was under the
20 influence of drink. The parties who should be held responsible in such cases are those who issue licenses for the sale of such dangerous poisons amongst men.

Hon. Mr. REESOR—Hear, hear.

Hon. Mr. GIRARD—I think many of the provisions of this Bill are complicated, and could be made more plain and practical. I think, for instance, we could have done with the system now in force for ascertaining the majority for or against any municipal by-law, without introducing the ballot and a new system of voting. There are many questions of detail which can, no doubt, be improved on a closer examination of the Bill,
30 but the principle of it is sound, and I desire to thank the hon. Secretary of State who has had the courage to submit such a Bill for our consideration as will, I have no doubt, be of very great benefit to the country.

Hon. Mr. CAMPBELL—I fancy there can be no doubt that a majority of this House will be quite willing to join with the Government in enacting any measure likely to result in diminishing intemperance, though there may be differences of opinion as to the best course to be adopted in repressing that evil. But the House will be left in an unfortunate position if the view which the Government take of the power of the Legislature is erroneous. The views which the Government now hold in bringing in
40 this bill are not the views which they held last Session, or the Session before last. I think we may infer from the answers given in this House and elsewhere, with reference to the difficulty of legislating on this subject, that even when this Session began, the view now held by the hon. Secretary of State and the Government, and which the law now before us is predicated upon, was not held by them at that time. Therefore, I think it is putting this House, if there are really doubts as to our power, and will be putting

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

the Legislature, if the Bill becomes law, in a position which Parliament ought not to be placed, and if there is any way of ascertaining safely and surely whether we are right in legislating in the manner in which the Bill contemplates, we ought to resort to it, and have our position established. I desire to speak with every respect of the Government, and of the legal gentlemen in the Government, but I do not think that the Ministry have grown any stronger in legal talent since last Session or the Session before last. On the contrary, we know that the Government was very much stronger in legal ability a Session ago than they are at this moment, and we have reason to believe that the views then held by the Government with reference to the powers of the Legislature on this subject are not the views that are held now, and I think the hon. Secretary of State should listen with very considerable attention to the opinions expressed by the hon. gentleman from Arichat, and the hon. gentleman from Amherst as to the powers of Parliament under the British North America Act. I think the opinions they have given on this question are the highest opinions that could be found in this House on the legislation which it is in our power to enact. The gentlemen who are advocating the temperance cause in this House tell us that if it should result in the legislation of this Session being found afterwards to be beyond the power of this Legislature, it will be an injury to the cause of temperance instead of being advantageous to it. That is not the position in which we should be left by the Government, and if there are any means of settling the point satisfactorily, those means should be resorted to at once. I believe the Government have the power to submit this Bill to the Supreme Court, and to have the opinion of the members of that Court upon the right which we have to enact this law. It is an inconvenient plan, I admit, and cannot deny that there are serious objections to it, but, on the whole, I think that opinion should be asked for, not only because of the previous views which were held by this Government last Session, but because of the doubts that have been expressed in other Legislatures—Ontario for instance—by men who stand exceedingly high in the legal profession, and who doubt which Legislature has the power to deal with this subject. I do not think that asking the opinion of the Supreme Court would delay this measure very long. We had the opinion of the Supreme Court with reference to a Bill, two Sessions ago—the Christian Brothers' Bill. The resolution under which that opinion was asked, was sent to the Supreme Court one day, and, I think, the answer came back the next, or, at any rate, within two or three days. Therefore, the House has no reason to believe that immediate attention will not be given to this Bill, and that any delay, likely to be prejudicial to the passing of the Bill this Session, would ensue. I am of opinion, in view of the previous opinion of the Government, and of the doubts in the minds of professional men in the Dominion; doubts that have been expressed in the Legislatures of the Provinces, and in this House by eminent men in the profession; that the Government would do well to consider the expediency of acting on the suggestion of the hon. gentleman from Amherst, in securing the opinion of the Supreme Court on a measure which may, after all, turn out to be

beyond our powers, and which, if enacted, might initiate a series of law suits that would be against the interests of the temperance cause. I have also a great many objections to the provisions of the Bill, which press with unnecessary hardship on those who manufacture and sell intoxicating drinks. Some persons have allowed themselves to think of the men who are engaged in the liquor traffic as vile people who ought not to be allowed to live, although we have men engaged in that business who are as respectable, and, I will add, as much respected, and entitled to as much consideration as the most strict and righteous temperance advocate in the country. We must also remember that there are large sums of money embarked in the manufacture and sale of those drinks. There are merchants in the towns and cities who have all their means invested in this business which this Bill seeks to abolish. The property of those people must inevitably be sacrificed unless some change is made; and, I think, at least some months before this Bill is carried into operation in any district, notice of the fact should be given.

10

Hon. Mr. SCOTT—A provision is made to that effect.

Hon. Mr. CAMPBELL—It is not clearly put in a direct enacting clause, nor is the time long enough.

20

Hon. Mr. VIDAL—It gives three months from the date of the proclamation announcing that it has been passed.

Hon. Mr. SCOTT—It could not be brought into operation under three months after it is adopted.

30

Hon. Mr. CAMPBELL—Three months' notice is not enough, when we consider the large amounts of money that are embarked in this pursuit. You say to those engaged in the traffic, that in the course of three months all the property they have got on hand will be, to a certain extent, unsaleable. I think it is unfair, unjust, and an arbitrary proceeding which there is no necessity of resorting to, and ought not to be resorted to. There should be the least possible interference with the liberties of the people. If we take from a man his liberty to sell what he pleases in this way, it is because we believe that other and larger interests make it a necessity that he should be deprived of this liberty, in the interests of the rest of the community; but we ought to deal with it cautiously and carefully, and without unnecessarily injuring him. In taking that course, which, I admit, is expedient under certain circumstances, to deprive a person of his natural liberty, so that he shall not be allowed to do or sell this or that, in the interest of the rest of the community, it should be done with every care, so as to avoid unnecessarily doing harm to him. I do not think that this Bill takes those precautions. There are other features of it which I also object to. I think, if the law is once in operation, the machinery can be started at the suggestion of twenty-five per cent. of the electors. That may or may not be a sufficient number; but that a bare majority of the community should decide the question, on the subsequent submission to these electors, strikes me as unreasonable. Ought there not to be a considerable majority in favor of the law? Shall we say to two thousand

40

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

people that because one thousand and one wish such a law, it will be obligatory on all, that the liberties of the other thousand, or nine hundred and ninety-nine, shall be interfered with? I doubt very much if it is wise to do so. I think the case should be made out more strongly than that. I think it is very well worthy the consideration of the Government and of this House, whether the majority should not be two-thirds, or some larger number than one half plus one, in order to bring the prohibitory clauses into operation.

Hon. Mr. KAULBACH—The Permissive Bill in England was never less than two-thirds majority. 10

Hon. Mr. PENNY—It is in the Dunkin Act.

Hon. Mr. CAMPBELL—I believe it is a question whether there should not be a larger majority than this Bill provides, when it is proposed to deprive a portion of Her Majesty's subjects of their liberty. I think the hon. gentleman who has charge of the Bill would act wisely if he were to take the suggestion of my hon. friend from Amherst, and seek the opinion of the Supreme Court, before this Bill should be enacted by the House. If the hon. gentleman does not take that course, then it will be for us on this side of the House, to consider if we cannot in some way shape the Bill so as to make it necessary that it shall be done before it goes into operation. 20

Hon. Mr. MACMASTER—Being a total abstainer, and having been a witness of the evils resulting from the use of intoxicating liquors, it cannot but be a matter of congratulation for me to see this Bill introduced. I cannot apprehend any of the difficulties which some hon. gentlemen predict with reference to the provisions of the Bill being *ultra vires*. We have passed bills which legal gentlemen connected with the Senate seemed to think were not within the jurisdiction of this House, but we passed them, and they are in operation to-day, and the passing of this Bill would be the most ready way to decide its constitutionality. If finally carried, no doubt a case would be made out against it by parties who are aggrieved at this legislation, and the matter would then be placed in the position to be thoroughly tested. I think we ought not to object to the Bill going through on that account. There are some clauses in the Bill which I have no doubt can be improved in committee, and I hope it will be allowed to pass the second reading. 30

Hon. Mr. HAYTHORNE—I wish to offer a few remarks on this Bill. I think it is a subject of congratulation to see the warm interest taken in it by members of this House, as has been proved by the number of gentlemen who have spoken this evening in favor of it. A good deal has been said as to the conduct of the Government in getting the opinion of the Supreme Court on the Bill. I, for one, was in hopes that this question would have been discussed with a total absence of party feeling. It was with some regret that I heard inferences drawn as to the motives of the Government: inferences which I thought might as well be left alone. I can quite understand that gentlemen of the legal profession, whose business it is to take 40

exceptions, may have taken exceptions to the course being pursued with this Bill, but they might also have taken exceptions had another course been pursued. The Bill might have been brought in with the approval of the Supreme Court, and the argument might then have been used, that this House was called on simply to endorse the opinions of the Judges of the Supreme Court, without the right of independent action. I am of opinion that if the advice of the Supreme Court has to be taken, it should be after the opinion of this House is expressed. No doubt it would be well to obtain the opinion of the Supreme Court before the Bill becomes

10 law. I remember two or three Sessions ago, when the hon. member for Sarnia moved a resolution on this temperance question, I happened to follow him in the debate, and I then expressed the extreme reluctance I should feel to give any opposition to a practical statesmanlike measure on the liquor question. I find myself in a position, since this Bill has been introduced, to fulfil my pledge I then gave to the hon. gentleman. I must say that this Bill comes up to my idea as to what is a practical and statesmanlike measure. Its principle I can approve of—it is the permissive principle, and I can give it my support. There are, however, some objections to its

20 details, which occur to me. For example, I regret that the machinery which is to be employed to put this Bill into operation is the same as is used for our elections, and I would rather some other machinery were found. I say this because I consider the frequent recourse to the polls in the rural districts is not attended with good effects to the country. I think the more rarely, within reasonable limits, the electors are called upon to exercise their privileges at the polls, perhaps the better it is for them. In every five years we are aware, that the members of the House of Commons must be elected, and in every four years an election of local members must occur: besides which, we have numerous incidental elections arising out of the vicissitudes of political life, and it sometimes happens that electors

30 become weary of exercising their franchise, and will not go to the polls except on important occasions. There has been another objection alluded to by some gentlemen who preceded me, to which I think a great deal of weight should be attached. The hon. gentleman from Sarnia spoke of himself as a just man, and I believe he is essentially a just man, and, as a just man, he is bound to give full attention to the objection taken, with regard to the injuries which the introduction of this measure may cause to those who are engaged in the manufacture of malt and spirituous liquors. In the town near which I reside, for instance, there are several prosperous breweries. They are not large in comparison with others in older countries,

40 but a very considerable capital has been invested in them, and they manufacture a good, sound, wholesome article, although there may be a difference of opinion on that point.

Hon. Mr. KAULBACH—Hear, hear.

Hon. Mr. HAYTHORNE—These breweries are carried on in large buildings erected specially for the purpose, and the machinery employed in the business was made especially for it. If this Bill should come into operation

No. 5.
 Extract
 from Senate
 Debates,
 1878, pp.
 338-380—
continued.

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

in Charlottetown, and in Queen's County, the principal market for those brewers would be seriously interfered with, because a clause of this Bill stipulates that although spirits and malt liquors may be manufactured in a district, they cannot be sold there, if the people adopt this law. The consequence is, that the market which those brewers find in the immediate neighborhood would be destroyed, and a very material injury would be done to those persons who, in good faith, and under the protection of the laws, erected those breweries and carried on their business under license. These are objections which, I hope, before this Bill leaves the Committee of the Whole, will be looked into. I may say, incidentally to this question, I am very glad to see that the temperance cause has made such very great progress. The Blue Ribbon movement has been very successful in the Province from which I come. If this Bill becomes law, it will likely be adopted in one or two counties in Prince Edward Island. 10

Hon. Mr. TRUDEL—I see with pleasure that the hon. Secretary of State has seen fit to bring in a measure which is calculated to promote the cause of temperance, though, as far as I can judge, it is far from being perfect. Still, it is a step in the right direction, a step that should be encouraged, and if the Bill were defeated at its second reading, it is clear that the cause of temperance would suffer a serious injury. Of course, we cannot expect that this measure will be perfect in its operation at first, but experience will show what amendments are necessary next Session of Parliament. I would have been pleased if the hon. Secretary of State had seen fit to assent to the proposal made to submit the Bill to the Supreme Court for the opinion of the Judges on it. However, if he does not choose to do so before the second reading, I will vote for the second reading as it is, though it seems to be the general desire that the constitutionality of the measure should be tested. 20

Hon. Mr. SCOTT—I have no reason to complain of the treatment which this Bill has met from the Senate. Hon. gentlemen who have spoken on this subject are agreed that some legislation was necessary, and although some objections have been taken to the Bill, still its general principle has been conceded. Only one or two gentlemen met the Bill at its threshold with opposition and expressed an intention to vote against it, but I believe they represent a small minority in this Senate. The most formidable opposition has come from the gentlemen who believe it is proper to refer this measure to the Supreme Court. I am one of those, however, who would regret that this Senate should abnegate its powers in such a manner that it could not legislate without reference to the Supreme Court, and I do not think provision was made in the Act under which the Court was constituted for referring Bills of a public character for their decision, or it would be mentioned in the 53 section referring to Bills from the Senate and the House of Commons. I do not think we ever contemplated the reference of questions involving the right or prerogative of the Federal Parliament, nor do I believe it is fair to the Supreme Court Judges that questions of this kind should be sent before them without coming up from 30 40

the lower courts in the ordinary manner, after having been adjudicated upon by the judges below after arguments of council.* I am rather confirmed in that view by the observations of the learned Chief Justice when concurring in the opinion expressed by Justices Strong and Fournier on the Christian Brothers' Bill. He said :

10 " I doubt if the Legislature by the 53 Section of the Supreme and Exchequer Courts Act intended that the judges should, on the reference of a private Bill to them express their opinion on the constitutional right of the Parliament of Canada to pass the Bill, and for that reason I have not joined in the accompanying opinion."

I think that it is very clear that it was not the opinion of the learned Chief Justice that constitutional questions should be referred. I think it was an opinion that was not very difficult to express ; it was an opinion that was expressed by nearly every professional man in this Chamber, who had given the subject any attention. I know the opinion of the late Minister of Justice was very strong indeed, that it was not proper to refer cases of that kind that did not arise in the lower courts in the ordinary course. Now, with reference to this Bill, and the opinions of the Government when the House first met, if hon. gentlemen will refer to the Speech
20 from the Throne, they will find that it was announced there that a Bill of this kind would be introduced. A few days before the House met, the Supreme Court gave judgment in the case of the *Queen vs. Severn*. While that judgment was not generally satisfactory, the current of public opinion seemed to be that the Local Legislature had not the power to pass a prohibitory liquor law, and it is quite clear, from that decision, that the powers of the Local Legislatures are less than we had previously anticipated. The decision of the Supreme Court, that the Local Legislature could not enact any law that would be a restriction on trade, afforded the clue to the whole subject. My hon. friend put the case very practically when he
30 concurred in the opinion I myself expressed, that the greater necessarily included the less ; that the power to legislate in reference to trade and commerce necessarily gave power over the local traffic ; that so long as that traffic was not declared illicit or illegal, just so long had the Local Legislatures the right to issue licenses ; but the moment a higher power declared it was an illicit traffic, that moment their powers ceased. I do not think my hon. friend who expressed the opinion that the Government were not in possession of any more information now than they had last Session, is correct in his premises, because the discussion of this case of the *Queen vs. Severn* had taken place, the opinions of the Judges had been given, and
40 although they had not decided the important point that is involved here, still they gave us a sufficient intimation of what their view was to, at all events, satisfy my mind that the opinion of that Court is that the power to restrict rests entirely with the Federal Parliament. It is for these reasons that I think the Bill, in that particular, at all events, will not be found to be *ultra vires*. In drafting this Bill I was not familiar with the operation of the Dunkin Act, and I invoked the assistance of gentlemen who had

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.
**sic.*

No. 5.
Extract
from Senate
Debates,
1878, pp.
338-380—
continued.

experience of its workings. I had the pleasure of communications from the Alliance, through their Secretary, and from other prominent temperance men who were kind enough to write and suggest the provisions that would be most applicable. I do not pretend that the details of this Bill are in any sense perfect. It could not be expected that they would be. The whole system adopted here is a new one; the machinery is entirely different from the Dunkin Act, and it could not be hoped that one would be successful in meeting all the wishes of gentlemen who have devoted much more attention to the subject than I have. I shall only be too happy to receive the suggestions of hon. gentlemen who are anxious to make it as perfect as possible. With reference to the suggestions that this Bill will work, injuriously on those engaged in trade, I need only say that when it goes into operation in any particular district, it simply restricts the sale in that district, but does not prevent the manufacturer or liquor dealer from selling to parties outside the district in which the sale is prohibited. There was no other possible way of meeting the difficulty. It would be too arbitrary to say that the manufacture or sale would be absolutely prohibited, and that large premises should be shut up for years entailing great loss on the owners. Take Windsor for instance, where there is a large distillery that pays to the Government a revenue of nearly a million dollars per annum; it would be preposterous to say, that that brewery should not have a right to sell in other parts of the Dominion and over the world. It is the same with Gooderham and Worts of Toronto. If the law went into operation there, it would be manifestly unjust to say that they should not manufacture and sell to outside people, because if they did not do so other people would, and the temperance men would not gain anything by restricting them from selling. The whole spirit of the Bill is that when the majority of the people are against the sale of liquor in any municipality there the sale should be prohibited. Beyond that I do not think it is wise to pretend to go.

Hon. Mr. REESOR—Is the manufacture interfered with at all?

Hon. Mr. SCOTT—Not as long as the manufacturer takes the precaution not to sell in the prohibited district. If hon. gentlemen ask more than that it could not be given in any other way than by closing up the distilleries altogether.

Hon. Mr. DEVER—I think the hon. Secretary of State says a more stringent law than this was in force in New Brunswick. At one time in that province a prohibitory law had been passed. It was enforced only nine months, when the Lieutenant-Governor, finding petitions and protests were flowing in from all quarters against the law, called the Legislature together, dissolved the House, and appealed to the country on the question. The result was, that every man who had a hand in passing that Bill, with the exception, of one, was defeated in his constituency.

The bill was read the second time.

No. 6.

Extract from Senate Debates, 1878, pp. 552-558.

THE LIQUOR TRAFFIC REGULATION BILL.

No. 6.
Extract
from Senate
Debates,
1878, pp.
552-558.

THIRD READING.

Hon. Mr. SCOTT moved the third reading of Bill " J," " An Act respecting the traffic in intoxicating liquors." He said : In moving the third reading of the Bill, I feel it my duty to make a few observations explanatory of the reasons why I cannot accept the proposition of my hon. friend from Arichat that was discussed yesterday, and which has been carried once each way.

10 The Bill as it originally stood contained a clause taking away the right of *certiorari*. As to the general principles on which the hon. gentleman debated this question, I entirely concur, and I think the rule he laid down is the safe and true one. I only plead that this particular Bill ought to be an exception to the rule. It is on that ground alone I ask the House to yield a point, and allow their better judgment to go with me on this particular measure, because I think there are grounds to justify the view I took. I was sorry to differ from my hon. friend who has taken a warm interest in this Bill, and has discussed with great candour the different clauses as they came up; therefore I would have been very desirous to meet his views on this

20 subject, but that I feel it would destroy the good results that I hope will flow from this Bill in counties where it may be adopted. I consider the principle of appeal by writ of *certiorari* ought not to exist in cases under this Act in the same force that it does in ordinary cases. In ordinary suits there are always two parties, each one having an equal interest. In criminal cases even, where the Crown is prosecutor, there is always a private prosecutor, the party who has been aggrieved either by assault, arson, burglary, or any other particular crime by which his private rights have been infringed upon. In the particular cases which will come under the jurisdiction of this measure, there is but one party who takes a strong

30 interest in the proceeding, and that is the defendant, and my belief is—and that belief is not one hastily arrived at—that prosecutions under this Act will not be put in force unless there is always ample justification for the proceedings. My experience of the Dunkin Act has led me to the conclusion that parties will not be prosecuted under this Act, unless for very flagrant offences and breaches of the law. A prosecution under this law before the most partial and most biased justices even, cannot be successful unless there is ample justification for the proceeding. The tribunal that will have jurisdiction under this Bill will be extremely unwilling to punish any man for the infraction of the law unless his conduct had brought him fairly within

40 the power of the law. That, I think, may be laid down as a sound and correct principle; therefore it is in that character exceptional. It is also exceptional in another character, that the defendant is the only one who is personally interested in the prosecution. The private prosecutor is, as a

No. 6.
Extract
from Senate
Debates,
1878, pp.
552-558—
continued.

rule, an unwilling witness, as men abhor the idea of being placed in the position of informers on their fellow men, and the private prosecutor will not follow up a case under this Act.

Hon. Mr. ALLAN—The hon. gentleman is laying down a principle which is the very principle we on this side of the House urge so strongly in reference to the clause where you call upon a party who is taken up under this law to turn informer against the party who sold him the liquor.

Hon. Mr. SCOTT—That clause had not really come under discussion. It was merely suggested by an hon. Senator here, but it was never fairly before the House, nor was there any vote taken on it. I suggested myself that if the clause were proposed to the House, it should be with considerable modifications. Hon. gentlemen can, of course, quite understand the ground on which I now ask the House to restore the clause as it stood originally, because there will be a very strong interest to defeat or postpone the prosecution of any action under this law, and any benefit that we are likely to gain under it will be entirely lost by allowing appeal to higher courts. Money will not be wanted, and if delay is only gained, the private prosecution will break down. Unless the expenses are absolutely paid by the Government to follow it up, it is not likely that the private prosecutor will do so, and follow up a disagreeable duty that, for the moment, he may have taken upon himself. It is not at all probable that a private prosecutor will waste weeks and months in prosecuting a case before the higher courts, and temperance people are not likely to raise any fund for the purpose; as they have not the same interest at stake that the other side have. When a party is arrested for the infraction of this law it will not be for an offence that would make a case for a higher tribunal; it will be a mere recital of facts that will depend upon the amount of evidence that can be brought forward, and I think parties are not liable to be punished under the Act, unless a very strong case is made out against the defendant, as he will always be given the benefit of a doubt. It is for these reasons I must ask the House to allow me to avail myself of the notice I have given to restore the proposition that was defeated yesterday. I move that the Bill do not now receive its third reading, but that the 111th clause be amended so that it shall stand the same as it was when the Bill first came before the House. 10 20 30

Hon. Mr. MILLER—I have listened very attentively to the remarks of the hon. gentleman, who has debated this subject with much calmness and moderation. I have entertained a very strong opinion on the other side, however, and a large number of gentlemen endorse those views. I do not desire to occupy the time of the House by reiterating the arguments from this side of the House in favor of the view which we have advanced. The House understands the question which it is called upon to decide, and I am willing that the decision shall be taken upon it without further loss of time. If the sense of the House is against us we will only have to submit with the best grace we can. 40

Hon. Mr. VIDAL—Feeling that I do not stand here to speak my own sentiments, or to urge my own peculiar views, but representing, as I do, the

views of many thousands of persons outside of this House, whose eyes are bent upon us, and who are anxiously watching what action we may take—because this clause as it stood in the Bill, when it was originally introduced, is one of the greatest importance, and cannot be dispensed with—if the amendment is continued in the Bill, it will make it inoperative, as it will give the power to carry suits under this law from court to court, and no benefit can be derived from the operation of the law. I maintain that even as the Bill now stands, offences against its provisions may be tried under the Summary Convictions Act. And in the Summary Convictions Act, I find a most extraordinary clause,—a clause with all this “tyranny”; with all this “oppression”; with all this “taking away the rights and liberties of British subjects”; a Bill introduced into this House by Senator Campbell himself, a Bill carried by the late Government. We find in it the following provision :

“No conviction or order, or adjudication, made in appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* into any of Her Majesty’s Superior Courts of record.”

Hon. Mr. DICKEY—But there is an appeal there.

Hon. Mr. VIDAL—I contend that this prevention of removing a case by a writ of *certiorari* into any higher court is embodied in this very Act, and has been the law of the land since 1869, and in defence of this the only argument I would adduce is the argument to be adduced from experience. I have already stated that this section has been the law of the land in the Provinces of Ontario and Quebec for the last fourteen years, and that during those years we never had a word of complaint against it.

Hon. Mr. DICKEY—What about all the other Provinces of the Dominion ?

Hon. Mr. VIDAL—I cannot speak for the other Provinces, but I am speaking of a very large section of the Dominion which contains many people who are as jealous of their individual rights and liberties, as the people in Nova Scotia or any other Province, and the very fact of that law being in the statute books for eleven years without any fault being found with it, or any attempt being made to repeal it, is sufficient to prove that it is not injurious to the people. I find on referring to the Act under which prosecutions are to be brought, that any offence committed where the fine exceeds \$10, may be brought by appeal before any Court of Sessions and be adjudicated upon there. There is ample protection there. I trust in consequence of the important character that is attached to this question by the temperance men outside of the House who have been so long striving for legislation in this direction, that this House in compliance with their wish will allow the clause to stand as it was in the Bill when originally introduced.

Hon. Mr. SKEAD—I want to ask the hon. Secretary of State if this clause that is now under discussion, is the same as it is in the Dunkin Act.

Hon. Mr. Scott—Yes, it is the same.

No. 6.
Extract
from Senate
Debates,
1878, pp.
552-558—
continued.

No. 6.
Extract
from Senate
Debates,
1878, pp.
552-558—
continued.

Hon. Mr. SKEAD—I have been a supporter of the Dunkin Act for several years, and have fought several elections to bring it into operation, in some of which I have been beaten. Although I am not a teetotaler, I am a sober man, and I believe that the Dunkin Act has done good in this Dominion. If the Secretary of State says this clause is the same as it is in the Dunkin Act, I am going to support it. A vote was then taken on the motion, which was carried on the following division:—

CONTENTS.

The Honorable Messrs.

Aikins,	McClelan (Hopewell),	10
Baillargeon,	McLelan (Londonderry),	
Benson,	McMaster,	
Bureau,	Paquet,	
Chaffers,	Penny,	
Chapais,	Power,	
Christie (Speaker),	Pozer,	
Cormier,	Reesor,	
Febre,	Scott,	
Ferrier,	Seymour,	
Girard,	Simpson,	20
Grant,	Skead,	
Hope,	Stevens,	
Howlan,	Vidal,	
Leonard,	Wark.—31.	
Lewin,		

NON-CONTENTS.

The Honorable Messrs.

Alexander,	Haviland,	
Allan,	Haythorne,	
Bellerose,	Kaulbach,	
Botsford,	Macdonald (Victoria),	30
Bourinot,	Macfarlane,	
Campbell,	Macpherson,	
Carrall,	Miller,	
Cochrane,	Montgomery,	
Cornwall,	Muirhead,	
Dever,	Northup,	
Dickey,	Odell,	
Dickson,	Read,	
Ferguson,	Ryan,	
Glasier,	Sutherland,	40
Hamilton (Kingston),	Wilmot.—30.	

Hon. Mr. SCOTT moved the third reading of the Bill.

Hon. Mr. CAMPBELL—I would ask the hon. Secretary of State if he has considered the amendment which I proposed yesterday, to provide that the

vote polled shall be at least one-third of the total electoral vote of the constituency.

Hon. Mr. SCOTT—I conceive that the electors will have sufficient interest in the Act to attend and record their votes.

Hon. Mr. CAMPBELL—I understood from the hon. gentleman from Sarnia that this amendment would be taken into consideration, and that the proposition would be considered favorably.

Hon. Mr. SCOTT—I do not think it would be right to depart from the principle ordinarily laid down, that the majority of the votes shall decide
10 the question.

The Bill was read the third time.

The question was then put whether this Bill shall pass?

Hon. Mr. CAMPBELL—Before the Bill finally passes I desire to ask the hon. Secretary of State whether the preamble is in the shape it ought to be. It seems to me there is a much better preamble that sets forth more correctly the position that the Government took in introducing this measure, to be found in the preamble of a bill which has not been used, but which was printed some time ago. That preamble seems to me to lay the foundation of the right of this Legislature to enact this Bill. I would suggest that it
20 be the preamble to the Bill just about to pass.

Hon. Mr. SCOTT—That conclusion is open to challenge by hon. gentlemen in this House who take a different view, and I do not think it would be wise to predicate it on any such a basis.

Hon. Mr. DICKEY—I am afraid the suggestion introduces rather an inconvenient consideration with respect to that very preamble. It begins with the declaration that the legislation in all the Provinces should be uniform, yet, from the beginning to the end of this Bill, throughout, we find there are two kinds of legislation in the same Province, running *pari passu*, and that these again are different from any other legislation in any
30 other Province; that there is different legislation in regard to the traffic in intoxicating liquors in nearly every Province of the Dominion. Whilst the Bill sets out in the preamble that it is desirable to have uniformity in this matter, it is devoid of that element from the beginning to the end of it.

Hon. Mr. SCOTT—The Bill is one that cannot be enforced until the people invite it. When the people in any locality invite it, it then becomes uniform in all localities in which it is in force. Being a permissive Bill, wherever it is once introduced it is practically a uniform measure; until then it is nothing.

Hon. Mr. MACFARLANE—Before the Bill finally passes, the question
40 raised by my hon. friend, as to the expenditure under this Bill, should be settled. I believe it is going to be a very onerous and expensive piece of legislation to this country, that it will be equally expensive as the calling into existence of elections under the General Elections Act.

No. 6.
Extract
from Senate
Debates,
1878, pp.
552-558—
continued.

No. 6.
Extract
from Senate
Debates,
1878, pp.
552-558—
continued.

Hon. Mr. SCOTT—No.

Hon. Mr. MACFARLANE—How does my hon. friend get over it? You have all the machinery of an election—ballot boxes, returning officers, scrutineers, notices, etc., and I think we ought to have some expression from the Government as to whether it is to be a charge that is to be borne entirely by the general revenue of the country. I believe the expenditure is one that ought to be borne by the locality which calls the law into operation, and before the Bill leaves this Chamber, we ought to have some assurance from the Government as to what means they propose to adopt to put this Bill into operation. 10

Hon. Mr. DICKEY—I understood we were to have this explanation to-day.

Hon. Mr. KAULBACH—I said from the first when this Bill was introduced, that I did not believe it had the support of the temperance people. I have had my belief that this Bill was intended for another purpose, brought in as it was at the last Session of this Parliament, and I am now confirmed in my belief. The Secretary of State very reluctantly told us yesterday when he was hard pressed in the matter, and when he was asked by my hon. friend from Richmond as to the question of expense, that it would not cost more than \$400 or \$500 to put it into operation in a county with say, thirty polling places, and he did not suppose there would be many places where it would be put into force. He believed the Province of Nova Scotia would be satisfied with their own license law, and it would not likely go into operation very extensively in Ontario, because they already had the Dunkin Act there, that probably it might be put into operation in New Brunswick; and we were told by another hon. gentleman that the Municipal law of Quebec was sufficient for that Province. Therefore the hon. the Secretary of State has shown us that no part of Canada is desirous of having this absurd and impracticable legislation. I cannot see what object the Government had in introducing this Bill into the Senate, unless it was to have it defeated here—and thus take credit to themselves and at the same time rejoice in its defeat. There is no other way to account for this sudden temperance conversion, unless it was to gain support in the last days of the Government's existence from a certain class of the community, whom the Government would deceive and ensnare. 20 30

Hon. Mr. WARK—I presented twenty-five petitions here myself from ladies of the Maritime Provinces showing that they wanted this law there.

Hon. Mr. KAULBACH—The petitions were not for such absurd legislation as this, but for a prohibitory liquor law.

Hon. Mr. VIDAL—The petitions I presented were for the passage of this very Bill. 40

Hon. Mr. KAULBACH—I saw none—and I believe there could not have been many of that character, and my hon. friend has distinctly told us that it was not the legislation asked for by the thousands who petitioned this Senate,

and he further showed that it was not at all equal to or as desirable as the License Act of Nova Scotia.

It being six o'clock the House rose for recess.

AFTER RECESS.

Hon. Mr. KAULBACH resumed:—I was about showing, before the House rose for recess, that not only is the license law of Nova Scotia very vigorously enforced on the part of the prosecuting officers, as well as private individuals, but every allurements is frequently offered to tempt people to violate the law. The temperance organizations watch closely the violations of the law, and we have known persons to be so zealous to punish as to offer inducements to men to go and purchase liquor under false pretences, and to represent that it was needed in the family for sickness, and otherwise to lead people into violation of the law, and afterwards, when they yielded, they were prosecuted for it. The hon. the Secretary of State means to say, in fact, unblushingly tells us, that in such cases the right of appeal from an unjust decision would defeat the ends of justice. I believe every British subject should enjoy the sacred privilege of carrying his case to a higher court when he thinks he has been treated with injustice either to his person or his property. The Government have introduced this Bill without consultation with the Supreme Court, to ascertain whether it is within our jurisdiction or not, although Session after Session the temperance organizations have approached the Government and requested them to have the question of jurisdiction decided. They not only bring in a measure which is regarded by many of the legal minds in this House as *ultra vires*, but they deprive the Provinces and municipalities of a source of revenue which it is believed they possess under the 92nd section of the British North America Act. They deprive the people of the right of going to a higher court, and ascertaining whether this arbitrary and despotic law is constitutional or not. Why is it not attempted to restrict the pernicious effect of the use of opium—which is well known to exist, and with greater injury to the party enslaved by its use? The Government cannot be sincere, otherwise they would not pass such an Act, one which the Secretary of State sees no necessity for; one which enables persons, too frequently lacking the necessary qualifications, to try such cases, and at the same time depriving the defendants of the right of appeal. The very character of this legislation will defeat its object. The hon. the Secretary of State says, he knows no part of the Dominion that wants it. He has shown that in Nova Scotia there is an excellent license law which works well, and it is not needed there. He has shown that in Quebec the municipal laws furnish all the legislation that is requisite. He has shown that in Ontario the Dunkin Act is in force. He is forced to fall back on New Brunswick. He says that that Province requires it. I think that is rather a stigma on the people of New Brunswick, because we can only draw the inference that the people of that Province are so addicted to intemperance that they require special legislation. The Province of New Brunswick, has under the British North America Act, the undoubted power to make laws for the regulation of this traffic within its

No. 6.
Extract
from Senate
Debates,
1878, pp.
552-558—
continued.

No. 6.
Extract
from Senate
Debates,
1878, pp.
552-558—
continued.

own limits. Once the Legislature in New Brunswick passed a prohibitory law, and we all know the result of it. After a short trial it was repealed, and the Government which passed it was hurled from power. The Government have assumed the responsibility of passing a law which I believe is *ultra vires*, and which an infinitesimal minority can force upon the country, and subject it to strife and enormous expenditure. A more despotic Act has never been passed by any Parliament.

Hon. Mr. GIRARD moved to amend the preamble by inserting the words, "to promote temperance."

The motion was agreed to.

10

Hon. Mr. DEVER—I profess to be a free trader, hence I look upon all these measures which are a restriction on trade as being opposed to the interests of the people and commerce. I am not connected with the liquor traffic myself at present, and I never expect to be in the future. I have no relations engaged in it, and I do not think I have ever drunk a gallon of alcohol in all my life, any more than my honored friend from Sarnia. But I am opposed to the legislation which proposes to hamper trade. I have no desire to be engaged in the traffic at present, either by importation or otherwise, since it is so hardly dealt with, so shackled and so injured. I do not think that any spirited man who understands the trade of the country would permit himself to be engaged in a business that seems to be at present used for the purpose of raising duties for the Government and nothing else. He would simply be not a merchant but a broker for the purpose of raising duties and paying them into the treasury of this country. I desire to do justice to everybody, and as a free trader I look upon it as gross injustice to the liquor trade to pass a measure like this, because I believe Providence made the several countries of the earth that they might produce different articles of commerce to exchange with each other. The West Indies produce the sugar cane and molasses, which, when converted into rum, become an article of export. France furnishes her wines and brandies to Great Britain and other countries. We produce lumber, which is exchanged with the West Indies for their rum or spirits. Thus the trade goes on. The hon. Secretary of State, who occupies a very high position in this country, made the following strange remark: "My own opinion is that alcoholic stimulants of any kind are injurious to the human body." Such a declaration as this, coming from so high a source, will have its due influence on this country. As a great many people do not share this opinion of the hon. gentleman, I fear it will engender a great deal of ill-feeling. But I would remind the hon. Secretary of State that he does not look upon all alcoholic stimulants in the same way, because I understand the hon. gentleman is an excellent judge of the different kinds of wine, and periodically takes pleasure in recommending them. I think he is guilty of inconsistency in that respect, as I find that wines, even of the best kind, contain an average of from 13 to 37 per cent. of proof alcohol, and when the hon. gentleman recommends his friends to take that percentage of that deadly poison, as he considers it, he is neither treating them justly nor acting conscientiously. The hon. Senator from

20

30

40

Sarnia, too, in his remarks upon this Bill spoke of this article of commerce as one which could only be represented by the upas tree. The hon. gentleman seems to forget that we derive a revenue of \$6,000,000 a year from this same upas tree; and the total revenue from Customs and Excise is not \$18,000,000 annually. He will see that one-third of it comes from the liquor traffic, and, I suppose a very considerable portion of it, too, goes to pay the salaries of very high officials in the land; and even members of the Senate, who advocate prohibition, benefit by it also. Another hon. gentleman referred to the condition of affairs in Ireland, and related the experience of the temperance men there. For the purpose of showing the hon. gentleman that his statement was not quite in accordance with facts, I would direct his attention to the extract which I am about to read from the pastoral of an eminent gentleman, known as Dr. Dorrian, one of the ablest Roman Catholic Bishops of Ireland. It was directed against a Bill, similar in principle to this one before the Senate, sought to be passed by the British House of Commons. Dr. Dorrian condemned the Bill before the British House of Commons in the strongest language :

No. 6.
Extract
from Senate
Debates,
1878, pp.
552-558—
continued.

“ For intemperance ” he said, “ Sunday closing is not and will not, in our opinion, prove a remedy. It will do other mischief, as was abundantly proved by the evidence given before the Committee of the Commons last year. It will lead to illicit consumption and the worst consequent immorality, from which we are now saved by the responsible and respectable publican. For, if the latter is not virtuous and respectable, then withdraw his license; and this punishment on the seller, as well as a judicious and suitable punishment on the excessive consumer, not on his or her innocent family, will produce sobriety, and prove to be a reasonably just remedy. Sunday is not the day on which the greatest amount of drunkenness troubles the peace of society. The evidence of last year shows it to be the most sober day of the seven, there being one-tenth, and not one-seventh, amenable on that day. We think there may be valid reasons for closing public houses at places of worship where clan fights take place. But where no abuse occurs, to close them is an act of the veriest tyranny, and inflicted by those who do not themselves abstain, on men their equals in virtue and sobriety. In the year 1876 there were over all Ireland, on each Sunday, 182, out of a population of 5,400,000, amenable for drunkenness.” With respect to the measure of popular support the Bill obtains in Ireland, Dr. Dorrian said :—“ It is said the majority of the population is in favor of the measure. The contrary seems to be the fact, if we look to the memorial signed in favor of the Sunday closing. In this diocese fourteen priests have signed out of a total of 120, and some of those with conditions attached. In Dublin seventy have signed out of nearly 400 total. But what is singular, is that all the signatories are persons who are to be in no way affected by the law, should it pass, and give us no assurance that they shall be adherents, at their own hearths, to the restriction they would impose.”

No. 6.
 Extract
 from Senate
 Debates,
 1878, pp.
 552-558—
continued.

This does not seem to me to carry out the declaration of my hon. friend, who, I might remark, is a new convert to temperance. My opinion is, that a license law is what is required. I believe a proper license law would regulate the traffic, that parties who abuse their privilege of enjoying the fruits of the earth should be punished the same as parties guilty of other offences. I believe that liquor dealers, when found guilty of improper conduct, should have their licenses withdrawn from them, and in this way the cause of temperance could be better advanced than by such legislation as the measure before the House. Besides, there are numbers of persons in every country who are conscientiously in favor of taking their liquor or wines. They have their conscientious views, too, as well as those who claim to be teetotalers; and I hold an authority in my hand which expresses those views very clearly. And with the permission of the House, I will conclude my remarks (which I hope will be considered to the point) by reading from it as follows. It says :—

“ Every gentleman has wine at his table whenever he has invited guests. Indeed, wine is considered an indispensable part of a good dinner, to which a gentleman has been formally invited. Even if you are a total-abstinence man yourself, you will not, if you are really a gentleman, attempt to compel all your guests to be so against their wish. If you are so fanatical that you have what is called ‘ conscientious scruples ’ against furnishing wine, then you should invite none to dine who are not as fanatical and bigoted as yourself. You must consider that a gentleman may have conscientious scruples against dining with you on cold water, for there are even temperate, and sober gentlemen, who would go without meat as soon as be deprived of their glass of wine at dinner. The vegetarian, who would force his guests to dine on cabbages, sauer-kROUT, and onions, is hardly guilty of a greater breach of etiquette than the total-abstinence fanatic who would compel his guests to go without wine.”

The Bill was then passed.

30

In the Privy Council.

No. 2 of 1940.

ON APPEAL FROM THE SUPREME COURT
OF ONTARIO.

IN THE MATTER OF A REFERENCE AS TO THE
VALIDITY OF PARTS I, II AND III OF THE
CANADA TEMPERANCE ACT, R.S.C. 1927, CHAPTER
196;

And IN THE MATTER OF THE CONSTITUTIONAL
QUESTIONS ACT, R.S.O. 1937, CHAPTER 130;

And IN THE MATTER OF THE CONSOLIDATED
RULES OF PRACTICE;

BETWEEN

THE ATTORNEY-GENERAL OF ONTARIO,
THE MODERATION LEAGUE OF
ONTARIO - - *Appellant*

AND

THE CANADIAN TEMPERANCE FEDERATION,
THE ONTARIO TEMPERANCE
FEDERATION, THE TEMPERANCE FEDERATIONS OF THE COUNTIES OF PERTH,
PEEL, HURON AND MANITOULIN
ISLAND, THE UNITED CHURCH OF
CANADA, THE SOCIAL SERVICE COUNCIL OF THE CHURCH OF ENGLAND
AND THE ATTORNEY-GENERAL OF
CANADA - *Respondents.*

APPENDIX TO CASE FOR THE
ATTORNEY-GENERAL OF CANADA.

CHARLES RUSSELL & CO.,

22, Rutland Gate,

S.W.7.

Solicitors for the Attorney-General of Canada.