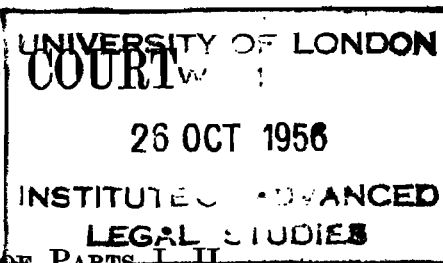


In the Privy Council.

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 - - *Appellant*

AND

THE MODERATION LEAGUE OF ONTARIO, 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.*

RESPONDENTS' CASE  
A.-G. OF CANADA.

**CASE FOR THE ATTORNEY-GENERAL OF CANADA.**

1. This is an appeal by the Attorney-General of Ontario from the judgment of the Supreme Court of Ontario delivered on the 26th day of September 1939 upon a reference under the provisions of the Constitutional Questions Act, Revised Statutes of Ontario 1937, chapter 130. RECORD. p. 14.

RECORD.  
p. 6, l. 16.

2. The question submitted for the decision of the Court was in the following terms: "Are Parts I, II and III of the Canada Temperance Act, R.S.C. 1927, Ch. 196, constitutionally valid in whole or in part, and if in part in what respect?"

p. 14.

3. The Court, consisting of Riddell, Fisher, Henderson, McTague and Gillanders, J.J.A., answered the question affirmatively, that is to say, that Parts I, II and III of the Act in question were constitutionally valid in their entirety. Henderson J.A. dissented. Reasons for Judgment are reported in 1939 O.R. 570.

pp. 15-31.

4. Parts I, II and III of the Act have remained virtually unchanged since their first enactment in 1878. The original Canada Temperance Act, passed on May 10, 1878, contained the following preamble:

"Whereas it is very desirable to promote temperance in the Dominion and that there should be uniform legislation in all the Provinces respecting traffic in intoxicating liquors." Statutes of Canada, 41 Victoria, Ch. 16.

This preamble was dropped from all subsequent revisions and consolidations of the statute.

5. Part I makes detailed provisions for bringing the Act into force by a system of local option within counties and cities. A petition is to be presented to the Governor-General-in-Council signed by one-fourth of the electors in such county or city. The petition is then submitted to a vote by the electors and, if approved by them, an Order-in-Council is made bringing the Act into effect. Similar means are also provided for revocation of such Orders-in-Council.

6. Part II of the Act prohibits, subject to certain exceptions, the sale of intoxicating liquor within the area in which the Act has been brought into force by the means outlined in Part I. Part II is general in its application throughout Canada but subject to the local option provisions of Part I.

7. Part III of the Act provides for the prosecution and punishment of those who disobey the provisions of Part II.

8. The constitutional validity of the Canada Temperance Act was directly in issue and was determined by the Judicial Committee in *Russell v. The Queen* (1882), 7 A.C. 829. This decision affirmed the judgment of the Supreme Court of Canada in *The City of Fredericton v. The Queen* (1880), 3 S.C.R. 505.

9. The validity of the Act was also directly in issue before the Judicial Committee and was upheld in *Attorney-General for Ontario v. Attorney-General for the Dominion (Prohibition Case)*, (1896), A.C. 348. Lord Watson in that case said that the Act of 1886 would remain in force until repealed by the Parliament which passed it.

10. These decisions which upheld the validity of the Canada Temperance Act have been the frequent subject matter of judicial comment and reference and have been frequently accepted as authorities for the proper interpretation of the British North America Act.

RECORD.

11. Provincial enactments dealing with the subject of intoxicating liquors have recognized the validity of the Canada Temperance Act. (Quebec Alcoholic Liquor Act, R.S.Q. (1923) Ch. 37, s. 21 (2a); Nova Scotia Temperance Act R.S.N.S. (1923) Ch. 158, s. 3; Ontario Liquor Control Act, R.S.O. (1927) Ch. 237, s. 68 amended in 1934 by 24 Geo. V., Ch. 26, s. 13, and repealed in 1936 by 1 Edward VIII, Ch. 34, s. 6).

12. The Supreme Court on this reference were of opinion that the legislation must be upheld. Riddell J.A. based his judgment on the principle of stare decisis and his finding that in any event there was no evidence of change of circumstances since the Judicial Committee had determined the validity of the Canada Temperance Act. Fisher J.A. expressed the opinion that the Court was not furnished with any evidence establishing that conditions since the Canada Temperance Act was passed, had improved and that the crisis since 1878 has entirely passed. McTague J.A., with whom Gillanders J.A. agreed, also based his decision upon the principle of stare decisis.

pp. 15-16.

pp. 16-18.

pp. 29-31.

13. Henderson J.A. dissenting, after exhaustively reviewing contemporary accounts of the evil with which the Canada Temperance Act was designed to cope, adopted the dicta of Lord Haldane in *Toronto Electric Commissioners vs. Snider* as the basis of his judgment. He was of the opinion that any emergency which might be assumed to have existed in 1878 no longer existed and that, therefore, the basis for the decision in fact had been removed. He also held that the legislation was not justified by reference to Head 27 of section 91 of the British North America Act, "Criminal Law."

pp. 18-29.

p. 29, l. 19.

p. 29, l. 22.

14. The Attorney-General for Canada humbly submits that the judgment of the Supreme Court of Ontario hereinbefore referred to, is right and that this appeal should be dismissed for the following, among other

### REASONS

(1) Because the Canada Temperance Act has been held by the Judicial Committee of the Privy Council to be constitutionally valid.

(2) Because the Judicial Committee of the Privy Council has held that the subject matter of the said Act does not fall within any of the classes of subjects assigned exclusively to the Provincial Legislatures.

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- (3) Because the finality of the decision of the Judicial Committee of the Privy Council upholding the validity of the Act has been consistently recognized by provincial legislation.
- (4) Because the decision of the Judicial Committee upholding the validity of the said Act does not purport to be based on the existence of any national emergency arising out of the liquor traffic in Canada.
- (5) Because if the decision was based on the existence of a national emergency assumed or proved to have existed in Canada at the time of the passing of the Act, there is no evidence 10 before the Court that such emergency has ceased to exist.

AIME GEOFFRION.

J. C. McRUER.

C. P. PLAXTON.

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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  
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**CASE FOR THE ATTORNEY-GENERAL  
OF CANADA.**

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**CHARLES RUSSELL & CO.,**

22, Rutland Gate, S.W.7.

*Solicitors for the Attorney-General of Canada.*