

trade and business as Lumber Merchants at Arnprior, in partnership, under the name or firm of "Hartney & Co.," and that the said partnership hath subsisted since the twentieth day of September, one thousand eight hundred and seventy-five; and that we, the said James Hartney, Neil Robertson, and William John Macdonald are, and have been, since the said day, the only members of the said partnership.

"Witness our hands at Arnprior, aforesaid, this twentieth day of September, one thousand eight hundred and seventy-five.

(Signed) { "JAMES HARTNEY,  
"NEIL ROBERTSON,  
"WM. J. MACDONALD."

"I certify the within paper writing to be a true and correct copy of a partnership made between James Hartney, Neil Robertson and William John Macdonald, and registered in the Registry Office for the County of Renfrew.

"Given under my hand and Seal of Office, at Pembroke, this twentieth day of March, A.D. 1877.

"ANDREW IRVING,  
"Registrar."

Mr. McDOUGALL: When was it dated?

Mr. WHITE said it was dated on the 25th September, 1875, six months before he was appointed to the office. Although he had searched in the registry office and the *Canada Gazette*, he had been unable to find that any dissolution of partnership had since taken place. He claimed this: that it was not in the public interest that a man engaged in the lumber trade at that point should be slidemaster.

Mr. McDOUGALL: He had ceased to have any interest in the trade before he was appointed.

Sir JOHN A. MACDONALD: He could not by law according to the registry.

Mr. McDOUGALL: I know the fact.

*Motion agreed to.*

### THE CHICOUTIMI MAILS.

#### MOTION FOR CORRESPONDENCE.

Mr. CIMON moved for all correspondence respecting the lessening the number of the mails between Chicoutimi and L'Anse-au-Foin, in the County of Chicoutimi.

*Motion agreed to.*

## VOTING BY BALLOT ON THE DUNKIN ACT.

### RESOLUTION PROPOSED.

Mr. ROBINSON moved:

"That the House do resolve itself into a Committee of the Whole to consider the following resolution:—That it is expedient to provide that so far as the concurrence of the Parliament of Canada may be necessary for the purpose, the Legislature of the Province of Ontario or the Province of Quebec shall be authorized and empowered to provide that the votes of the electors under the Act of the late Province of Canada, 27, 28 Vict., chap. 18, therein called the Temperance Act, and commonly known as the Dunkin Act, shall be given by ballot in such manner as the Provincial Legislature may direct, subject to such provisions and changes only as may be deemed necessary for the purpose, but retaining all the provisions of the Act which are not inconsistent with the voting by ballot."

He said hon. gentlemen would see that there was no attempt in this resolution to affect the principles contained in the well-known Dunkin Act. It merely involved a new manner of carrying out these principles. The principle of voting by ballot had been found to be most useful in more important matters than even the Dunkin Act, and was very popular. He thought he was authorized to say that the principle of voting by ballot in reference to this measure, was approved of, not only by those who were inclined to oppose the principle of the Dunkin Act, but also by those who were in favour of the principles of that Act; and it was, therefore, as much in the interest of one party as another that he had drawn the attention of the House to the question. The well-known Dunkin Act was passed in 1864, and applied to Upper and Lower Canada—now Ontario and Quebec. The powers under it were to be exercised by municipalities and by the British North America Act, section 92, legislation respecting municipal institutions in the Province, was assigned exclusively to the Provincial Legislatures. But by section 91 of that Act, legislation respecting trade and commerce was assigned exclusively to the Parliament of Canada; and the Dunkin Act, where in force, made the trade and commerce in intoxicating liquors

unlawful and so restrained trade. By section 129, laws in force at the time of the passing of the British North America Act remained in force, but could only be altered or repealed by the Legislature which could legislate on the matters to which they respectively relate; and if they related both to matters under the control of the Provincial Legislature and Canadian Parliament, it would seem that the action of both was required to repeal or alter them. He would point out to the House the examples of such joint action, in support of the principle involved and asked for in his motion. In 1869 Parliament passed Mr. Sandfield Macdonald's Act, 32 and 33 Vic., chapter 35, authorizing County Judges or their deputies to try certain offences; but, as the constitution of courts, fees of sheriffs, &c., for carrying the Act into execution belonged to Ontario, the Provincial Legislature passed their Act, 33 Vic., chapter 10, and called the Court "The County Judge's Criminal Court." It had no name under the Dominion Act, nor was the Judge said to hold a Court. In 1874 the Canadian Parliament passed Mr. (now Judge) Moss' Act about Permanent Building Societies in Ontario, and the Legislature of Ontario, thinking their powers encroached upon, passed their Act, 39 Vic., chap. 32, repealing the Canadian Act, except section seven about interest, which was not a matter they could deal with, and confirming things done under the Canadian Act. In 1870-71 the Ontario Legislature passed their Act establishing the Central Prison, and in 1873, chapter 46, and again in 1875, chapter 69, the Parliament of Canada passed Acts to enable the Lieutenant-Governor and officers to carry out the Act, and to transfer prisoners to it from the common jails, and do other things to which the Provincial legislative powers did not extend. In the present Session the Minister of Justice's Bills, numbers 55, 77 and 94, all had the same effect of supplying, by the powers of the Canadian Parliament, the want of legislative powers in the Ontario Legislature; and the Finance Minister's Bill, No. 36 (Insurance Bill of last session), after reciting that the Act, chapter 52, of The Consolidated Stat-

utes of Upper Canada, respecting Mutual Insurance Companies, was repealed by the Ontario Legislature, but that doubts might be entertained as to their powers over the said chapter, repealed it once again, so far as it might be within the legislative jurisdiction of Canada. He could find no more precedents, but the House would see that those already cited were sufficient to bear out the principle of jurisdiction, for which, in his motion, he had asked the concurrence of the House; and as, apart from the question of jurisdiction, the principle of voting by ballot, another important question, was now approved of by the people, and found to be beneficial, he hoped the House would see no objection to its being adopted in voting for the Dunkin Act.

Mr. BLAKE said, without entering into any controversy, which he did not think it was expedient to enter into in the present state of the dispute as to whom the jurisdiction in this particular matter properly belonged, he would say that it seemed to him that the proposition of the hon. gentleman was one which could not be at all assented to. There were, no doubt, many classes of subjects upon which it was difficult to find the precise line which separated the jurisdiction of the Local and Federal Legislatures. There were some subjects of a different character to each other, but yet which ran very much into one another, in reference to which both the Federal and the Local Legislatures were liable to find themselves overstepping their several jurisdictions. But this proposition he took to be clear: that whatever might be the legislative authority of the Parliament of Canada, it was bound to execute that authority itself. It could not delegate to any other power the execution of its legislative rights. If they had power to repeal, amend, alter, or supplement the provisions of the Act of 1864, they, of course, had the right to do it, but they had not the right to authorize Local Legislatures to do it. They were responsible to the people for the execution of their legislative powers. They were bound to exercise for themselves this power, but they could not entrust their respon-

sibility to, or confer their authority upon, Local Legislatures. Doubts might occasionally arise, in which it might be found expedient—although it must only be pursued in emergency to avoid the possibility of serious difficulties—that there should be legislation in both the Federal and the Local Legislatures. But this was upon the very principle which underlay the objection he had to the hon. gentleman's motion, namely, that the exercise of the legislative power of a Parliament, whether it were Federal or Local, must be performed by that Parliament itself. Therefore, it was that he felt it necessary to enter into no other considerations which might occur upon this motion. He regretted very much that circumstances had prevented the question of jurisdiction being disposed of by the highest court. While he thought it would be more expedient that legislation in connection with this matter should not take place during the present Session, in the hope that the difficulties now existing might be cleared up in the interval, he would not say that the argument which he was here presenting would be an argument of more than expediency. He would not say that Parliament might not, if it pleased, take upon itself, even at the present time, and with the risk of inconvenience which might arise, to assume jurisdiction; but what he would say was that, if Parliament assumed jurisdiction, it must perform its own legislation and exercise its own powers and not delegate them to any other body. He could not, therefore, support the proposition of the hon. gentleman.

Sir JOHN A. MACDONALD said it was to be regretted, as the hon. the Minister of Justice had truly said, that the conflict of jurisdiction which had arisen in regard to that vexed question that seemed to agitate the people, especially those of Ontario, had not been finally settled by an authoritative decision. They could not, however, help it. Meanwhile, he ventured to differ entirely from the contention of the hon. the Minister of Justice that the Canadian Parliament could not hand over its powers to a subordinate body. It was the first time he

had heard of any such limitation. The power of putting into effect the Dunkin Act was delegated by the Legislature of the late Province of Canada to the different municipalities. The Dominion Parliament had the power to impose a tax throughout every municipality, town, and county in Canada, and yet it handed over that power to municipalities. Parliament might give them certain powers, and might limit or increase them, or take them away. It was clear to him that if the question of a Prohibitory Liquor Law was within the jurisdiction of Parliament, it had the power to delegate its authority to a subordinate body, and could even distinctly limit the Legislature of Ontario or Quebec to dealing with the subject in a certain way; and so in the case of municipalities. So long as Parliament had jurisdiction over the subject for legislation, as a matter of administration it could employ the medium of any subordinate body. It did not appear, moreover, that those subordinate bodies were to be merely machines; Parliament could call on them to exercise their judgment as *quasi-legislators*.

Mr. MILLS said the doctrine laid down by the right hon. member for Kingston was a most extraordinary one. He had not only confounded the principle of administration with legislation, but he had asserted that this Parliament might deprive itself of the power of legislation when it pleased. The British North America Act provided for a division of the powers between the Dominion Parliament and Local Legislatures. If the right hon. gentleman's views were correct, that division was a mere imaginary one. That contention did not rest on a substantial basis. If it were true, Parliament might pass a law declaring that Provincial Legislatures should deal with the subject of criminal law, or might pass a law declaring that Provincial Legislatures should determine whether Parliament should be elected for five or ten years. There was not a power possessed by Parliament under the British North America Act, which power was declared to be exclusively vested in the Parliament of Canada, but might be handed over to and vested in Provincial Legislatures, if the argu-

ment of the right hon. member for Kingston was valid. There was a provision in the British North America Act regarding property and civil rights, which provided that with the consent of Provincial Legislatures, the Canadian Parliament might legislate upon that subject. If the right hon. gentleman's views were correct, there was no necessity for such provision; the Provincial Legislatures would have had that power with the consent of the Dominion Parliament without their being any special provision on the subject. That would not be a Federal system under which Provincial Legislatures had an independent existence within their own sphere, distinct from the power of the Dominion Parliament. He stated, without hesitation, that the right hon. member for Kingston could not find, from any Federal constitution, a law which would, in the smallest degree, sustain the view which he had promulgated. There was no authority for any such view. The right hon. gentleman had declared that Parliament could form municipal councils and boards, distinct from those which had an existence under the authority of the Provincial Legislatures. If Parliament had that power, what necessity was there to expressly mention that it was vested in the Local Legislatures; it was not expressly stated that it was vested in the Parliament of Canada. If Parliament had the same power to create a municipal body, having a distinct legislative power, there might be a legislative power independent of the Provincial Legislature; instead of giving the power to the Provincial Legislature, Parliament might create a separate and distinct body; and such a body would have its existence, not under the constitution, but under the Act of Parliament. The position of the right hon. member for Kingston was, not only untenable, but it was not consistent with common sense that any such power should be asserted. Instead of having two legislative bodies, distinct and separate, existing under the constitution there might be a number created by Government and a number created by the Provincial Legislatures, each undertaking to discharge the

duties specially and exclusively vested by the British North American Act in the Provincial Legislatures and in Parliament. The object of administration was quite distinct from that of legislation. Parliament might provide machinery for the administration of the laws, and it might, in some cases, make use of local machinery, where there was no objection to its doing so; but to say that because Parliament had the power to provide the necessary machinery for the proper administration of the laws, that therefore it had the power to surrender the power it possessed and put an end to its existence and authority, was an entirely different proposition. The right hon. member for Kingston had claimed that this was a paramount Legislature, and declared that it possessed paramount power. There was nothing of that kind in the Constitution, and the Canadian Parliament had its functions as well as the Local Legislatures. Its functions might be more important in the eyes of hon. members than those of the Provincial Legislatures, and in that view they might be correct. More ability and information might be required for the proper and efficient administration of the affairs of Parliament, and they might be more dignified in the estimation of the people. But Parliament was not paramount. The functions of Parliament and the Provincial Legislatures were separate and distinct. If Parliament were paramount it would have the power to determine on what subjects they would legislate and what not; but the British North American Act provided that certain subjects should be exclusively vested in the Provincial Legislatures. Those Legislatures had their own legitimate sphere and were as independent of Parliament as if they were separate and distinct sovereignties. There could be no question about that point, and the idea of paramount power was one wholly inconsistent with the federal system of Government which, under the constitution, had been established in this country. There could be no question that it was the British North American Act that gave the Canadian Parliament power to legislate upon the subject of licensing or refusing licenses to sell intoxicating liquors. If the Provincial

Legislatures possessed that power under the British North America Act, the Canadian Parliament could not divest them of it; if they did not possess that power, Parliament had no legal power to interfere, and any legislation on the part of Parliament, without the authority of the British North America Act was simply *ultra vires*, and would be so held by the Courts of the country. There was nothing Parliament could do which could extend the powers with which it was invested, and nothing which could limit and take away any portion of the authority imposed upon it; and the legislation proposed would be quite improper under the Constitution on the authority of which hon. members were in the House undertaking and executing the legislation of the people. Parliament had all power and authority so long as it attended to its own business and kept within the limits of the Constitution. The French Minister once said to Charles II that if the English King would keep within the limits of the Constitution he would be one of the greatest monarchs of the world, but if he were outside of the Constitution he was nothing. That was precisely the position of the Dominion Parliament; its power was absolute within the limits assigned to it, but when it went outside it was nothing.

Mr. PALMER said he quite agreed with the hon. the Minister of Interior that the powers of the British North America Act were divided, and they could not be encroached on either by one side or the other. The power to legislate given to the Provincial Legislatures was just as absolute within the limits of the British North America Act as was the power given to the Canadian Parliament within the class of subjects relegated to Parliament. He also agreed with the principle laid down by the hon. the Minister of Justice, that it was impossible for Parliament to abrogate its legislative powers. That meant that whatever it could enact, it could repeal; that it was impossible it could grant any power—the power to legislate—to any other body whatever, whether a Provincial Assembly or any other body, that it could not take away at any moment.

He agreed with the right hon. member for Kingston in regard to the paramount power of Parliament. That meant that it was impossible that Parliament could grant a power to anybody which it could not repeal. It would be extraordinary to limit the power, if they could not declare upon these subjects, when, where, and how it should be enforced. He could understand no such limit being placed upon their powers. He considered that their power of legislation over the class of subjects delegated to them was absolute. They could deal with them in any way they chose. It would be impossible for them to act with relation to the great variety of subjects under their control on any other principle. It might be perfectly right to trade in alcoholic liquors, but it was not in the power of the Local Parliament to prohibit such trade. While he entirely agreed with his hon. friend opposite to a certain extent, he must concur with the argument of his right hon. friend from Kingston, as far as it was applicable to this subject.

Mr. MILLS said he wished to ask the hon. gentleman if he understood the hon. gentleman to argue that they could create a Parliament and confer upon it the power to legislate—say upon the subject of promissory notes, or upon the interests of shipping or navigation? Could they call a second Parliament into existence to legislate on these subjects as long as they pleased?

Mr. PALMER said he did not think they could do that. They might create a tribunal in this relation, but it would not be a Parliament. Power was delegated by Parliament to the Governor in Council, and if his hon. friend the Minister of Justice was able to draw any distinction in this regard, he was not so able. This question came within the class of subjects upon which this Parliament could legislate. He had never heard it suggested whether or not the Local Legislatures had power to regulate the sale of liquor, or, if there had been, to what extent they could do so. He knew of no case in which the point was raised. He apprehended that there could not be a conflict of opinions in this respect unless

they knew exactly the extent of the particular sale. He thought that the New Brunswick decision was, that whenever the real scope of regulations and powers entirely interfered and stopped the trade in that particular article, it was unconstitutional. Whether anything further than that had been decided he did not know; but he had never heard it suggested that this Parliament could not regulate the trade in alcoholic liquors, but of course they could not interfere with the local rights of the Local Legislatures.

Mr. BLAKE said he was supposed to have said that they could not delegate power to anybody; but what he had really said was that this Parliament could not delegate any of its legislative powers, except so far as administrative powers were concerned, and sometimes the line might be drawn so that they could not delegate these save to be properly executed by Ministerial officers.

Mr. PALMER: May I ask, whether this Parliament has any power to delegate exceptional legislative power, or not?

Mr. BLAKE: This Parliament has power to legislate, and to legislate touching things to be administered, and to make provision by law for the administration of affairs and the powers of the various administrators.

Mr. KIRKPATRICK said, he took it that they had a right to pass a law stating that the manner of voting with regard to the Dunkin Act should be the same adopted for voting at the municipal elections in the Provinces, and in the manner adopted by the Provincial Legislatures, for any election they choose to name, as they had already done. They had delegated or given power to the Local Legislatures to say who should vote for members of this House.

Mr. BLAKE: No, no.

Mr. KIRKPATRICK: Yes, we have.

Mr. BLAKE: No.

Mr. KIRKPATRICK said they had declared that the persons who should so vote were those who voted for members of the Local Legislatures.

Mr. PALMER.

They had divested themselves of certain powers. The Local Legislatures might change, from day to day or year to year, this regulation without reference to this Parliament, and almost legislate them out of existence by adopting universal suffrage or raising the franchise very high. He knew his hon. friend would say they did not delegate this power, and perhaps they did not; but they could say that the manner of voting for this law should be the same as was adopted in certain other cases.

Mr. BLAKE: That is not what is proposed.

Mr. KIRKPATRICK said they could change the resolution, and say that the manner of voting for this Act should be the same as was adopted for municipal or provincial elections; and this, in fact, would attain the object of the resolution. He agreed certainly that it would not be expedient, and, perhaps, not possible or right, for them to delegate their legislative powers, but they could prescribe the manner of voting.

Mr. BLAKE: That is to say, if the jurisdiction exists.

Mr. KIRKPATRICK: Assuming that we have jurisdiction at all.

Mr. GUTHRIE said another and very serious difficulty existed with regard to dealing with the Dunkin Act. Could they delegate their powers? He understood the right hon. member for Kingston to say that they could do what the Imperial Parliament had done, and add to the list of subjects concerning which the Local Legislatures were clothed with jurisdiction by the British North America Act, the subject of prohibition. The very statement of the proposal seemed to show that it was untenable. No doubt there was a general desire on the part of both those who opposed and favoured the Dunkin Act, that certain amendments in its provisions should be made. He had intended to propose a very important amendment—had it been clear that the House had jurisdiction on the subject—and this was to strike out the five-gallon clause, which allowed any merchant or trader without a license to sell liquor in quantities of five gal-

lons or one dozen bottles, where the Dunkin Act was in force. Another amendment would be to increase the number of polling places as, in some municipalities only one poll at present existed, voting was rendered very difficult. People had to travel many miles to vote, in some cases fifteen or twenty, and he thought this might well be amended. Voting by ballot should also be adopted. These were all points of importance. The difficulty was to decide where the power of amendment lay. If they assumed that they had power to authorize it, why should they not do it themselves? The very fact that they could authorize another Legislature to do so, would presuppose that they had such power; and, if they possessed it, they ought not to shirk the responsibility or to transfer it. There were reasons for not doing so, and which rendered it inexpedient at the present time. These reasons were well known to members of the House. The proposal of the hon. member for Toronto (Mr. Robinson) implied that difficulties surrounded the question and did not relieve it of any.

Mr. ORTON said it was well known that the question of the adoption of the Dunkin Act was now causing a great deal of excitement. In many counties much ill-feeling was shown, and many County Councils had refused to submit the law to a vote, on the ground that in interest of fair play and of both classes, the bitter feeling existing between the respective parties should be removed. He hoped that the Minister of Justice would reconsider the question and be able to frame some form of motion, or devise other means by which this vexed question could be settled. If this could be done, a very great benefit would be conferred, and it would be well received throughout the country. As the Dominion Government had control over the portion of the Act which referred to the trade and commerce of the country, there was some way by which they could, by an expression of opinion, state that voting by ballot would not interfere with the trade and commerce of the country in reference to this particular subject; and it would then be

left open for the Local Legislatures to act upon it.

Mr. ROBINSON asked whether he had understood the Minister of Justice to say that the principle involved in this motion, as to the power of the House to delegate legislative powers to the Ontario or Quebec Legislatures, was one of the questions about to be argued before the Supreme Court, and that until it was decided one way or the other, he (Mr. Blake) would object to any motion containing any such principle.

Mr. BLAKE: I do not know how the hon. gentleman understood me; but I know that if he understood me in that way he misunderstood me entirely.

Mr. ROBINSON: I asked a civil question and I expected a civil answer.

Mr. MACKENZIE: I hope the hon. gentleman does not wish to put it to a vote. The motion ought not to have been proposed at all.

Mr. ROBINSON: Under the circumstances I will withdraw the motion.

Motion, with leave of the House, *withdrawn*.

## SPECIAL TARIFF FOR BRITISH COLUMBIA.

### MOTION FOR CORRESPONDENCE.

Mr. DECOSMOS moved for a return of all correspondence respecting a Special Tariff for the Province of British Columbia. He said that this subject had engaged the attention of the Legislature of the Province of British Columbia before they entered the Dominion, and since that period; and it was at the present moment under discussion. This subject, he believed, had gained a conquest even in this Parliament. The fact that the hon. member for Sunbury had seconded his motion, was an evidence of his belief that a special tariff for British Columbia was desirable. The people of that Province had never asked that a tariff should be imposed with a view to exclude the products or manufactures of any other Province or territory of the Dominion. They had always held that the produce and manufactures of