from the throne, and by blaown utterances early in June that he was prepared to included here but he did not say so. It o the forefront of the battle to declare what the conservative party of Ontario to peet what the hon, gentleman designed pestors this power of leaning licenses to the municipalities. But they afterned implically if not expressly ave, expressely in Afr. Marglith's appeach that that was to be tions at Perente for the province of Ontario and not in Ottawa for the whole Dominion. Now, if as the hon gentleman on the lith of September thought that the local legislature had nothing to do with this could not deal with it, that their measure law which transferred the power to I hardy of commissioners was pro tanto not not the people of Ontario gathering the force together as his was for the im ponelline conflict that he was about to renow, the presion complete jurisdiction: ention that he was gaing to the thing de he did his a loss his depoty to announce ther thing, if his anciended in this cluse when he thought he could do noth that the marin was called upon to undergo vives called upon at that convention to condon the territorial rights of their s boundary award they were called until to sive up the que tion of disallowance; I then a the same time to willow coolner chargestion of provincial righter sd inte matter to dangle before speople of Ostario as a for which he "I have given in the boundary good, I have siven up the question of all allowances goods but I have yet id your party illusiance, and that is, that an about give up the power of vour proso the bong anthonon's founds were allowed to make the testatements. Proceeding throughpileally, an arrive next at the hon-good man himself, in his capacity, not as of the party marshalling his.

an faras I have been sblo to learn. We do not know all riginal by Moser's Cosgrave, Hodge, C'Reele, Mitchell and O'Shanghnessy,

tirely treat that statement of the hon. why wood ten oble same in I were other priore the elections, and that every those gant before the enchose might not perpendicular period of the state of the sta to istufores themselves with reference to dus to take de matteriato his own Hospids d'We are going to take ame a measure." Well, where is

manting We have no measure; we cure; no have not even got the naterials which the hon, gentleman says them himself. Ye' his talls those gentleato the matter into their own hands and ing about the character of the measure. so me further, from the correspondence hich has appeared on the subject, that heir views and to what the mescape

faid before the privy connect. Have we got their views' l'orbane we shall have them est the hom scontleman was taking stops frame his measure, for he was obtaining derested in it, and his asks them if they Alliances were a little aronsed, and they also approached the hon goutleman. He

No thus get a dop orther. The hon, genetleman knew by this time that the regulaconsider in the different provinces, and to had decided that he would not make or attempt to relax any of the restrictions. to force in any one province not as he area, to day, that we should make a meawhich, giving a little bere and taking a little there, accommodating itself one way and accommodating itself the other may, will be pretty nearly right all over but he says that he has no intention of rataging any of the restrictions which are in force in any of the provinces. So we see that he was attempting to frame his more , and he had a portion of the basis hid to tell the victuallers that he was going to frame it, and that it would be non-political, that he was going to frame it, and that he would not widen any of the restrictions

100AL CONSTRIVATIVE PARTY and they brought forward a resolution on this subject in the local legislature; and they proposed, on the 24th January, this e solution, as expressive of their policy under the hon, gent eman's old guidance, if not his then present guidance:

Philad or par, while propagaining the

and that the power of appointing one or note themse inspection in each themse district should be vested in these boards, and this nonsergets that legislation providing for this charge in the law, and for handing over to the municipalities the whole of the themse fees every a sum unflicient to pay the expenses of the themse branch of the department of the provincial secretary, has not been proposed for its consideration by the advisors of his honor the lieutenant-governor."

l'ime, str. had brought a little wisdom to these gentlemen. They had found that their proposal to hand back to the municipalities the powers with which they had been formerly invested, did not take. They found that neither the municipalities themselves nor the people at large were favorable to that change, and they proposed a modification of the hon, gentleman's scheme of June and of September in the convention-a modification giving a larger power only to the councils of counties, cities, and incorpor-sted towns, a very different thing from what they had up to that time proposed. They had also found, I have no doubt, considerable trouble about the hon, gentleman's own pretensions. They found it necessary to say that they were sincere, at any rate, on the third, if not on the first and second on the third, if not on the first and second subjects of contention upon the question of provincial rights; and therefore the local conservative leader felt it necessary, and it suppose he was permitted, to announce a difference of opinion from the hon gentleman; so, in supporting the resolution to which I have referred, he made a speech, in which he used this languages:

'If it was thought that greater powers should be concerned mon the legislature in the settle-ment of this question, there was still a remedy ment of this question, there was still a remedy to apply for in an amendment to the constitution. A great deal had been said about the observations made by the leader of the Dominion government in reference to this subject. He could only understand his position from the responsy published of his speeches, and that was that the result of the determination of the highest court in the land, when the question of granting licenses accidentally arose, was that the laws passed by the provincial legislatures were null and void so far as they assumed to deal with the granting of tavern and shop licenses. The leader of the Dominion government seemed to take the view that there must be legislation passed by the Dominion for the purpose of dealing with the question in the interests of temperance. It was clear that if this house had no power of initialicion everybody was at present free to embark in the liquor traffic. He confessed that his views were that the jurislicion rested in the local legislature, and that the Dominion had no power to deal with the question. Hethought the local legislature, and that the Dominion had so power to dealing with the question. Hethough the first part of dealing with the question. Hethough the first part of the p power rested with the Dominion authorities they most all court that judgment."

> remedy in an amendment to the constitu-tion, leaving to or giving to the local legisinture that which it was up to a late period supposed they had the right to deal with this question. Well, there again you see A DEVENUENCE OF VIEW.

nd they sent a deputation down here ing: "I alone have the right to deal with this question," while Mr. Meredith in Onperiod on the occasion, and per asks his supporters down here to say that the local legislature has no jurisdiction: the local legislature has included in a local legislature has included i the local legislature has jurisdiction; and the published in the new apapers, which was between these two wings of his supporters I leave him to settle the difficulty. But next, we come to the speech from the centleman's policy upon the subject of inliquors was anteredent to the decision in lin-sell v the Queen was announced, in fact antecedently to that time. I have shown that he declared several weeks before that decision was pronounced that he would proceed to Ottawa to legislate in this direction, if he were given power by the the speech which he advises his excellency Well, sir they called upon him; they en- to make, and puts in his excellency's mouth culted of him he had amounced that he words signifying that it is this decision in was soing to do it in line whether he Russell v. the Queen which forces the govment on this question. But that is not what forces it upon the hon, gentleman. What forces it upon him is

THE ANTE-RUSE FION PLRDER which he made before the decision in Russell v. the Queen took place at all—the pledge that he would do this thing in order to subvert and defeat the policy of "that little tyrant" Mr. Mowat. Then we find him occupying, in the debate on the address, still milder ground. He roars now, not as he did in fune, when he talked not as he did in June, when he talked about his power and his intention; he roars like a sucking dove. You find him say-

That subject that is, legislation with regard to linear houses was not willingly undertaken by the present government. They were quite sufficient that the law as it obtains in the different provinces should be continued: Was he satisfied in June, when he declared

that he would, if returned, pass a law here to subvert the power of the local legislatures, and to restore to the municipalities the power of which they were deprived? These were not expressions of satisfaction, but of dissatisfaction and discontent, and hadetermined to remove that dissatisfac-tion by altering the law. Then he says: They were quite satisfied that each province

"They were quite satisfied that each province shold, so far as the law will allow it to enact such statutes, deal with the subject on shop, tavora and saloon licenses. Neither the government nor the parliament of Canada, I take it, wished to interfere; and it was only when the decision which was given in June last on the Scott act, a Dominion act, forced the subject upon them that they thought it their duty to bring it before parliament. I never had any doubt that when the question was brought before the courts, it would be decided that the different provincial legislatures had no right whatever to deal with that subject evecute for revenue purposes for the purpose of imposing venue purposes for the purpose of imposing sation for provincial or immeripal purposes. expressed the opinion in parliament years ago, and last year Lexpressed it at a public meeting in Toronto or its vicinity. But while that opinion was strongly impressed upon my mind flook no steps, nor did the government of which i was a member take any steps, for the purpose of interfering with the legislation of the different spreyings, or forcing Dominion legislation on the country or treint to contraine such nowers in country, or trying to centralize such powers in this parliament. On the contrary, the only cen-tralizetion on that subject the only time in which that question was in any way dealt with

THE RUSSELL V. QUEEN EXCUSE, Then the hon gentleman proceeds to sav in reference to the case of Russell v. the

Queen.

"It is quits clear to every lawyer, and any man who is not a lawyer, who reads that indigment, will see that the very reasons on which the privy council decided that this parliament had the right to deal with the Scott act, are the reasons showing that the provincial legislature had not the right to deal with that subject under the trooks act, except as a matter of refenue for municipal or provincial purposes. The hongenterman says that we should have allowed the matter to stand over until it was finally decided. Sir, if there be any value in that decision, and there is every value in it, because it is the law of the land, there is nevelock at his moment in the province of Ontario against the unlimited, unrestrained sale of intoxicating liquors. This is not a matter we can play with; it is not a matter of policy; it is a matter of necessity. If we wish to prevent the unrestrained sale of intoxicating liquors we must legislate immediately; for I take at that any man in his city or it any other part of Ontario can open his sulcon and sell idnors, and there is not a court in the world can prevent his doing so."

Now you will observe that a very different line is taken at this early stage of the season from what the hon gestleman took in June last. He was going to do it because he disapproved of the local legislation, because he thought it should be amanded and had better. Then he was clear as to how he should restore to the municipalities the powers of which they had been deprived. Now he says it was not a matter of policy at all, but a matter of necessity arising out should restore to the municipalities the powers of which they had been deprived. Now he says it was not a matter of policy at all, but a matter of necessity arising out

The first question is whether that decision does decide that there is no power to restrict the number of licenses held in by he local legislatures at all. To that subject the hon gentleman has not addressed himself to day at all. In the debate on the address he disposed of it very summarily. He said that any lawyer, or any one who is not a lawyer, who chose to read that judgment must see plainly from it that the unavoidable result was that no power was left with the local legislature to restrict the number of licenses. Now fide power was left with the local legislature to restrict the number of licenses. Now I do not draw that conclusion from the decision of Russell v. the Queen. In the first place that judgment does not deal in the slightest degree with, does not touch in any way upon that large part of provincial rights which is comprised in the subject of municipal institutions. The decision is expressly stated to be upon the consideration of whether the power to pass the narticular whether the power to pass the particular law which was before the privy council, namely, the Scott act, was vested in a local namely, the Scott act, was vested in a local legislature under any one of these headings: property and civil rights; shop, tavern and saloon licenses; or local and private matters. The judges expressly say that these were the points which were raised before them, and upon which they judged. They do not say a word about municipal institutions having been suggested or argued. Now, sir, if hon gentlemen sitting in this parliament, if ministers of the crown, chosen from all the different pro-

touching the sale of liquor, what powers have been given to the different municipal bodies in that regard, if we require to-day to take the first step in order to inform our minds upon the mixed question of law and fact as to what are the laws and what mean the laws, can we suppose that the judicial committee of the privy council was inspired to know all about those municipal institutions and local laws which were not even alluded to in the argument and the judgment? Can it be seriously argued before a Canadian parliament that the single decision of four or five men -when the great question of municipal institutions sion in which the whole question of municipal institutions shall have been brought There you see, sir, the hon, gentlemen de up expressly in which that mass of statu-clares himself of opinion that this power tory learning which is required in order to rests, not with the Dominion but with the know what the position of the municipal local legislature, and he suggests that that institutions of each province was at the position should be maintained at any fate time of confederation, was not called for, until the highest court of the country should in which the true construction of this decide to the contrary, and he furthermore phrase "municipal institutions" was not suggests that even then there would be a fully debated and decided no man in the absence of such a decision can say that this question which, in the largest of the profines, in the next largest of the provinces. and in two or three more of them, was

vinces, do not know what are

DEALT WITH SEFORE CONFEDERATION and for years after as a subject of municipal institutions, is not to be found in the confederation act. I am not now discussing the meaning of the term municipal institutario is claiming that they alone have the tions. I am merely pointing out that we right to deal with it. The hon, gentleman have to decide that before we agree that it plicated and somewhat obscure constitu- judgment is not satisfactory, even as far tion that because this legislature may do as it goes. But the question is, how far particular laing, therefore, in the absence-aye, noticeably, in some cases in the presence even of local legislation, the local legislature shall have no power to legislate at all. The proposition that that will bega non sequitur is established in very decision of Russell v. the Queen, which speaks of the possibility that might arise in absence of Federal legislation. It does not at all follow, because the powers may overlap. We know that many of the powers do overlap, and that, coming under object, it is possible there may be an impinging on some of the subjects in one legislature on the action of the other. But it is not a legislating upon the subject; it is an impinging upon the subject.

THE OREAT QUESTION we have to consider is this -the passage in the speech from the throne puts it is not the question whether the local legislature man proposes we should legislate upon uestion, not of policy, but necessity. says this is a necessity, because the local legislature cannot legislate in this direction, and gives as authority Russell v. the Queen, though not a word has been said in that about municipal institutions or the powers exercised by them, or that have been exercised through their medium in many of the provinces, many long years pefore the confederation act was passed. I maintain that, however you may construe those words, that to whatever powers you may consider them to extend, no man will venture to say that the most important in-gredient in determining their true con-struction and the extent of their powers is not this very subject to which I have re-ferred. What was done under it before? What was the status quo? What was the municipal legislation of the provinces? It was that which, in the opinion and follow-

ing the views of the people of the country, at whose instance this act was passed, was embraced in the term municipal institutions, at the time that act was passed. Lawyers have said so; priests have said so; judges have so; legislators have said so; and I maintain that no man can dispute that proposition. Yet we have not argued it. Yet we have not discussed it. In Russell v. the Queen it has not been discussed. The hon, gentleman does not discuss it. and he process to us this day to assume that there is no such power in the local legislatures, without discussion and without decision from any authority on the subject. Now, sir, reflect for a moment

upon what was done under municipal institutions in only one provice. MUNICIPAL LICENSING POWERS. In the old province of I pper Canada, under municipal institutions before the confederation act, these institutions had power to grant tavern licenses, certificates and shop licenses. There was a provision that no tavern licenses should issue, save on a petion of thirty resident ratepayers, and a report of the inspector as to accommodation. There was a provision that no licenses whatever should issue on agricultural exhibition days near the ground on which exhibitions were held. There was power to declare the condition of tavern licenses; there was a prescription of the minimum accommodation; there was a provision for number of tavern licenses; there was a maximum number not to exceed one to 250 certain places, and to prohibit wholly sales in shops. There was a provision that such a by-law as that should be approved by the legal electors; a provision that all licensed houses should have signs; that shops licensed should not sell for consumption on the premises; a provision restricting the side and disposal between seven o'clock on Saturday night and eighto'clock on Monday morning, or at any other time when any local by-law should prescribe the closing of the house. There was a power to license, regulate and govern keepers of billiard tables and to fix the license fees; there was powerto limit the number and to regulate victualing houses, dedinaries, housed where fruit, oysters, clams and victualisaete sold table eaten therein, and all other places for reception or entertainof wax work, menageries, circus riding and other like shows usually exhibited by shownen, and to fix a license fee not exceeding \$100. There was a provision that no such licenses should issue on days of sgricultural exhibitions near the grounds. OTHER MUNICIPAL POWERS

There was a power to license, regulate others carrying on petty trades, not residents of the municipality, and to fix their license fees. There was a power to establish markets, to regulate markets, to prevent or regulate the sale by retailin streets of meat, vegetables, fruits or beverages; power to prevent or regulate the buying or selling of articles or animals exposed for sale or marketed; to regulate the place and manner of selling and weighing butchers' manner of seiling and weighing butchers mear, flab, hay, straw, fodder, wood and lumber. There was power to prevent forestalling and regulating a monopoly of market grains, meats, flah, fruits, roots, vegetables, poultry and dairy products; to prevent and regulate the purchase of such things by hucksters and runners living in or near the municipality; power to regulate the weighing and measuring of cordwood, cosl or other fuel. There was a pro-vision regulating penalties for short weight, count or measurement. There was a provision regulating victuals and other things exposed for sale or market; and for regulating the assize of bread, and preventing the use of deleterious materials. There was a provision preventing and regulating the erection or contamination of slaughter houses, gas works, tanneries, distilleries or other manufactories or trades which may prove to be mias mous: for preventing persons in streets from importuning travellers and regulating persons so employed; for regulating and licensing owners of livery stables, orses, cabs, etc.; for regulating the keeping and exposing of gunpowder and other combustible or dangerous materials; for regulating all magazines for powder, etc.; for licensing keepers of intelligence offices, regulating the same, prohibiting the same, and fixing certain license fees. Now I have given you a list, some of them, perhaps, now beyond the jurisdiction of the municipalities, some of which are un-doubtedly still within their jurisdiction, and as to some of which it may be questole whether they are within or with out their jurisdiction. But I say these things have to be considered by this parliament before it assumes to arrogate to itself the power of interfering with the recorded yiew of what was embraced in municipal Institutions and conceded by courts before they give consideration to that clause of our constitution. I might go to the other provinces-to Quebec and some of the other provinces—and point out other like powers, giving other like indications as to

what municipal institutions may be con-strucd to mean. Now it may be ultimately decided, as the hon. gentleman suggests. R. BLAKE'S OPINION OF THE RUSSELL V.

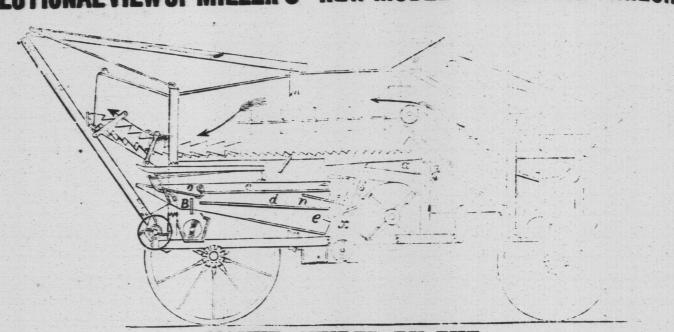
I deny his [Sir John Macdonald's] opinion of the decision in Russell v. the Queen, and the argument in Russell v. the Queen. I have read the stenographer's notes of fortunate that in a constitutional case of this high consequence, the senior counsel, a man whose knowledge and power and eminence everybody knows and respects—Mr. Benjamin—should have been absent, and that the brunt of the argument should have been however the consequence. have been borne by the junior counsel. Mr. Benjamin appears only at the close in regulating the different licenses. It does delivering a concise argument. I say the not at all follow in the reading of our comhon, gentleman says no lawyer reading that judgment will come to any other conclusion; he says no layman would come to any other conclusion. But lawyers have many decisions, and is adverted to in this come to a different conclusion, judges have come to a different conclusion, courts have come to a different conclusion; and what the hon, gentleman declares no lawyer would say, some of the highest and most respectable and esteemed judges of this land have already said. I refer to the case of Three Rivers against Suite, which was heard before the court of appeal of the prcvince of Quebec. Present: Chief Justice Dorion: Moss, Ramsay, Tessier and Baby, Justices. The question was raised in this case, a case in which the learned judges held over their judgment for a time in order that they might get the full text of the judgment in Russell v. the Queen, and to see how far it concluded the point which was before them; and with that judgment before them these statements are made. Sub section 8, to which they refer, is the

relating to municipal institutions, and this is what they say: "But we have still todetermine another questhat the prohibitory liquor law is not essential to the existence of municipal institutions, and Part it may fairly be asked, whether it was the intention of the imperial parliament, in an ensumeration of this sort, to confine minicipal institutions to those matters only which are of the essence of municipal institutions. If such was the intention of parliamear a wice field for speculation was left open, or it was contemplated to restrict municipal institutions within very narrow limits. It would seem, however, we have not to determine what Institutions are essential to municipal existence in the abstract, but the meaning of the term at the time of confederation. In so far as the province of Quebec is concerned, numicipal institutions were the creation of special statutes. The general set was passed no longer back than Ets. It was introduced under the title of the municipal and coad set. Roads and their maintenance bridges, ferries, fords, prevention of abuses prejudicial to agriculture, police regulations, and many other matters were subjected to municipal control. Among other things county councils were given the power to make by-haws for prohibiting and preventing the sale of all spiritnoss, vinous, alcoholic and intoxicating amors, or to permit such sale subject to such limitations as they considered expedient. For determining under what restrictions and conditions and in what manner the revenue inspector of the district shall grant licenses to shop keepers, tavery of Three fitivers was incorporated, and as the municipal and road act was repealed, as far as it affected or might affect. Three livers, the two sub-sections it and it; above quoted, were renacted in precisely the same words for the new incorporation. (See 20 Vin. cap. 129, see 3. foot of page 483 and 199. These statutes were in force at the time of confederation.

"In 1853 an act was passed styled an act respecting the municipal institutions of Upper Canada; and in that act powers with a confederation, as forming part of municipal institutions were provinces of confederation and one of the smaller ones persistently including among municipal intention of the imperial parliament, in an en-numeration of this sort, to confine municipal in-stitutions to those matters only which are of the

Then he goes on to say:

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