

New Bruns. Rep.]

REG. V. J. STICES, &C.—ROWAN V. HARRISON.

[Insolvency Case.]

uous liquors of all kinds without coming in direct conflict with the Dominion Legislature on the subject of inland revenue, involving the right of manufacturing and distilling or making of spirits, &c., as regulated by the Act 31 Vict. chap. 8, and the subsequent Acts in amendment thereof, and the excise duties leviable thereby, and the licenses authorised to be granted thereunder. Cases from the United States Courts were cited as bearing on this question; but there is a very clear distinction between the powers of Congress and the powers of the Dominion Parliament. In the United States Congress has not the same full power of regulating trade and commerce that belongs to the Dominion Parliament. The power of Congress, as we understand it, is confined to "regulating commerce with foreign nations and among the several states," giving no right to interfere with the internal commerce of an individual state, that it does not extend to that commerce which was completely internal, carried on within the particular state, and which did not extend to, or affect other states, but is restricted to that commerce which concerns more states than one, reserving the completely internal commerce of a state for the state itself, and therefore state license laws have been held constitutional and valid. But even there, as we understand the cases, it has been held that the sale of the imported liquors by the importer in the original casks would seem not to be affected; but when the importer parts with the goods imported and changes their condition, his rights and all rights respecting the sale claimed under the laws of the United States are gone, that is, so soon as they become mixed with or incorporated into the general mass of the property of the state, they become subject and liable to state legislation.

Under the British North America Act, 1867, the local legislatures have no powers except those expressly given to them; and with respect to the granting of licenses affecting trade they are expressly confined to "shop, saloon, tavern, auctioneer and other licenses, in order to the raising of a revenue for provincial, local or municipal purposes," a provision under which a revenue may be derived from the sale and traffic, but which the prohibition of the sale or traffic would entirely destroy, and which would be in direct antagonism with the privilege thereby conceded.

We by no means wish it to be understood that the Local Legislatures have not the power of making such regulations for the government of saloons, licensed taverns, &c., and the sale of

spirituous liquors in public places, as would tend to the preservation of good order and prevention of disorderly conduct, rioting or breaches of the peace. In such cases, and possibly others of a similar character, the regulations would have nothing to do with trade or commerce, but with good order and local government, matters of municipal police and not of commerce, and which municipal institutions are peculiarly competent to manage and regulate; but if, outside of this, and beyond the granting of the licenses before referred to, in order to raise a revenue for the purposes mentioned, the legislature undertakes directly or indirectly to prohibit the manufacture or sale, or limit the use of any article of trade or commerce, whether it be spirituous liquors, flour or other articles of merchandise, so as to actually and absolutely to interfere with the traffic in such articles, and thereby prevent trade and commerce being carried on with respect to them, we are clearly of opinion they assume to exercise a legislative power which pertains exclusively to the Parliament of Canada, and in our opinion the Act of the Local Legislature (34 Vict. c. 6), declaring that "no license for the sale of spirituous liquors shall be granted or issued within any parish or municipality in the province when a majority of the ratepayers resident in such parish or municipality shall petition the Sessions or Municipal Council against issuing any license within such parish or municipality," is *ultra vires* the local legislature of this province.

Rule absolute for mandamus.

INSOLVENCY CASES.

ROWAN V. HARRISON.—THE SAME V. TURNER.

Insolvent Act of 1869—Contingent liability—Whether barred by discharge of Insolvent—Policy of Marine Insurance—Claim under.

A contingent liability, which may never become a debt, is not provable against the estate of an insolvent under the Insolvent Act of 1869, and is not barred by his discharge.

Defendant underwrote in favour of plaintiff a policy of insurance on a ship, of which plaintiff was part owner, loss, if any, to be paid in sixty days after proof of loss and adjustment and proof of interest, and the ship was beached in a gale on the 18th October, 1872. Efforts were made between 18th and 30th October to get her off, and she was finally hove off and towed to an anchorage on the 31st October, where she remained until 9th November. On the 14th she was hauled into a dry dock, and on the 16th examined by surveyors, who reported what damage was done, and recommended repairs. On December 3 she was hauled out of the dock, and on December 12 the surveyors reported that all