

THE CANADA MEDICAL RECORD,

A Monthly Journal of Medicine and Pharmacy

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SUBSCRIPTION TWO DOLLARS PER ANNUM.

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MONTREAL, APRIL, 1881.

DECISION RESPECTING THE RIGHTS OF QUALIFIED ONTARIO DRUGGISTS PRACTISING IN THE PROVINCE OF QUEBEC.

A case which has created considerable interest for some time among our Pharmaceutical friends in this Province is that of the Pharmaceutical Society of Quebec (Province) *vs.* John C. Bennett, in which a final decision has at last been reached. The circumstances are briefly stated by the *Canadian Pharmaceutical Journal* as follows:

Mr. John C. Bennett, of Brantford, was registered a member of the Ontario College, on June 14th, 1879, by virtue of his having served as apprentice and assistant prior to the passing of the Pharmacy Act. Shortly after the above date he commenced business in Montreal, but was quickly summoned by the Quebec Society, and on trial was fined five dollars and costs for unlawfully using the title of "Chemist and Druggist." He still continued business, and was again subjected to a legal ordeal with a like result. He then signified his intention of carrying the matter to a higher tribunal, and the case was brought up before the Superior Court; but the decision of the Police Magistrate was sustained. Mr. Bennett, who throughout has endeavored to maintain his position with a pertinacity more creditable to his pluck than profitable to his purse, next applied for an injunction to restrain the Pharmaceutical Society from further prosecution, and asking that the Quebec Act be declared unconstitutional and *ultra vires*, as being an interference with trade and commerce. Judge Rainville, before whom the case was argued, dismissed the petition, holding that pharmacy is only a branch of medicine, and comes under the jurisdiction of the Provincial Legislature. The petitioner was by no means satisfied with

this judgment, and consequently exercised his right to appeal. The case came up on March 22nd, before Chief Justice Dorion and Justices Monk, Cross and Baby. It was merely another edition of the suit entered by the College here against certain general traders in the vicinity of Hamilton. The attempt to upset the Pharmacy Act of Quebec, was however, equally unsuccessful with the effort to prove the Ontario Act unconstitutional.

Chief Justice Dorion remarked that the questions arising upon the division of powers between the Dominion and the Local Legislatures were surrounded with very great difficulty. The appellant here urged that the Quebec Pharmacy Act of 1875 was unconstitutional, on the ground that the Act was an infringement upon trade and commerce, a subject which falls exclusively within the jurisdiction of the Parliament of Canada. The Court was against the appellant on this point. In many instances the exercise of the powers confided to the Local Legislatures must trench in some degree upon the powers entrusted to the Dominion Legislature, just as the exercise of the powers given to the Federal Legislature must trench to some extent upon the powers assigned to the Local Legislature. There was an example of this in the recent case of Cushing & Dupuy, where the bankrupt laws passed by the Dominion interfered in some degree with provincial procedure. The Privy Council treated the question in a comprehensive manner, and held that the Confederation Act, in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency, intended to confer also the power to interfere with civil rights and procedure so far as a general law on the subject of insolvency might affect them. A great many of the powers given to one Legislature must incidentally conflict with the powers given to the other. Thus, the police regulations requiring the doors of saloons to be closed at a certain hour had been held not an infringement upon the powers of the Federal Legislature to regulate trade and commerce. The proper rule was this, that wherever power was given to one Legislature for a certain object, and the exercise of that power incidentally trespassed upon the powers assigned to the other Legislature, the incidental power was included in the power for the main object. Here pharmacy was a local subject, and the Act, in so far as it touched the subject of commerce, was merely incidental to the larger power, and was not unconstitutional. The judgment would therefore be confirmed.