

1882; that Respondent Rioux did not exceed his jurisdiction in hearing said case; that license had no effect on prosecution. 27 and 28 Vic., cap. 18, sec. 12, sub-sec. 2.

Petitioner Griffith filed, amongst other documents, copies of License, By-law of Town of Richmond of June 19, 1882, styled License By-law, authorizing collection of certain license fees, fixing \$60 as fee to be paid for shop licenses. And the by-law of County Council, March 14th, 1877, prohibiting, under Temperance Act, sale of liquors in said county, with certificate of approval thereof on 19th April, 1877, by municipal electors.

No evidence is taken, but the judgment is sought upon the law as applicable to the case; and at the argument, it was stated, by both petitioner and respondent, that they desired a judgment upon the point as to the power of the Legislature to repeal the provisions of the Temperance Act, providing penalty and procedure for illicit sale of intoxicating liquors, and upon the power of the Legislature to do indirectly, *i.e.*, by granting the charter 45 Vic., cap. 103, what, it was alleged, they could not do directly, confer upon the Town of Richmond, the right to *restrain, regulate or prohibit* the sale of any spirituous, alcoholic, or intoxicating liquors within the limits of the town; it being urged by petitioner that the by-laws of the Council of 19th June, 1882, regulating sale, *i.e.*, fixing fees implied under their charter, repealed the County By-law, prohibiting the sale.

The first and main question is:

Had the Local Legislature a right to enact 34 Vic., cap. 2, Sec. 197, by which those parts of 27 and 28 Vic., cap. 18, which provide for penalties and procedure to enforce them, were repealed?

In order to determine this, it is necessary to examine the provisions of the B. N. Act, and see if this power could come under the class of subjects, enumerated in Sec. 92, with regard to which the Legislature was empowered *exclusively* to make laws. If so, it must be under sub-Secs. 8, 9, 13 or 16.

The Temperance Act being in force at the time of Confederation, remained so, "until legally repealed, abolished, or altered by the Parliament of Canada, or by the Legislature

"of the respective Provinces, according to the authority of the Parliament, or of the Legislature under this Act." Sec. 129 B. N. A. Act. It is contended that by the decision in Q. B., 1882, *The Corporation of Three Rivers & Sulte*, in which Mr. Justice Ramsay declared: "We hold that under a proper interpretation of Sub. Sec. 8, the right to pass a prohibitory liquor law for the purpose of municipal institutions, has been reserved to the Local Legislatures by the B. N. A. Act," it follows that the Legislature had the power to repeal the Temperance Act, but this, I think, does not at all follow, even if for the purposes of Municipal institutions, the Legislature could *prohibit*. But it must be remarked that this case was that of Three Rivers incorporated prior to Confederation, *i.e.*, in 1857, and which by its charter had certain special powers as to restrictions and conditions under which inspectors should grant licenses, and so far as report goes no prohibition was actually made, but only an amendment to a By-law, fixing *the fees*. Can they repeal a law passed by the late Province of Canada, which declared what was the penalty for illicit sale, and prescribed the mode in which its payment should be enforced?

As against this decision we have the declaration of the Chief Justice of the Supreme Court in the case of the *City of Fredericton*, S. C. Reports, vol. 3, pp. 542, 543, *et seq.*: "When I had the honor to be Chief Justice of New Brunswick, the question of the right of the Local Legislature to pass laws prohibiting the sale or traffic in intoxicating liquors, came squarely before the Supreme Court of that Province, and that Court in the case of *Regina v. The Justices of Queen's County*, unanimously held that the Legislature had no power or authority to prohibit the sale of intoxicating liquors, and declared the Act passed with that intent, *ultra vires*, and therefore, unconstitutional. I am of the same opinion now," &c., &c.

In this judgment concurred Fournier, Taschereau and Gwynne, JJ. dissenting. Henry, J. dissenting.

Taschereau, J., says; p. 557: It is clear that the Canada Temperance Act of 1878 could not be enacted by the Provincial Legislatures, for the simple reason that they have only the powers that are expressly given them by the