

then take away from the municipalities who had exercised it the power granted them by the Temperance Act of 1864, either *directly* or *indirectly*. It has been several times decided, and I need not quote the cases, that the Provincial Legislature could not by any legislation modify the Dunkin Act. If so, then the right to pass prohibitory by-laws which municipal bodies were given before Confederation, if used then could not be taken away or impaired afterwards. This alone is sufficient to decide this case in favor of the complainant. But, I believe, there are other reasons which might be invoked in favor of that pretension.

We find again these two acts, viz., the Mining Act and the Temperance Law, both included in our Revised Statutes, almost side by side. Art. 1095 of these statutes, which is called the Temperance Act, says:—"The Municipal Council of every county, city, town, township, parish or village shall have power . . . at any time to pass a by-law prohibiting the sale of intoxicating liquors and the issue of licenses therefor, within its limits."

Art. 1096: "Such by-law shall be drawn up and passed in ordinary form, and shall simply declare that the sale of liquors and the issue of licenses therefor are prohibited within such limits." Art. 1102 says, "As regards the prohibition of licenses, every such by-law shall come into force from the day of the communication thereof to the Collector of Provincial Revenue, and as regards the prohibition of sale . . . from the 1st of May following."

Those three articles, 1095, 1096 and 1102, have been consolidated from the old Temperance Act of 1864. This law then was not considered as altered or modified by the Mining Act at the time of the Revision of our Statutes, which contained also the "Mining Act" and Art. 1477, which I have quoted at the beginning. They were not considered inconsistent with each other. It may be worth while to remark that this Art. 1477 refers to 893 as the article under which penalties are imposed in a mining division, and if we turn to Art. 893 it is said: "The Lieutenant-Governor in Council may, by proclamation, issued and published in the usual manner, when mines

"are actually in operation and when the public interest requires the same, declare that this subsection shall apply to any or all mining divisions of the Province or any part thereof; and, after such proclamation whosoever in such mining divisions sells intoxicating liquors, without a license from the inspector of the division, is liable to a fine not exceeding \$100 etc., etc."

In this case I have not been able to find any such proclamation putting in force this Act about the penalties. It is well to notice that the penalty is heavier than under the ordinary license acts before the amendment of last session, which did not exceed \$75. This shows again the greater restrictions imposed by the Mining Act on the sale of liquors.

Another reason which affects materially the case of the defence is this:—The license filed herein is dated on the 19th of June, 1891, and to be valid until the 30th April, 1892. If we turn, however, to Art. 834 Quebec License Act, we find:—"Except ferry licenses, concerning which this section contains special provisions, steamboat bar licenses, which expire when the boats go into winter quarters, and licenses for taverns at the mines, which are of monthly duration, licenses are granted for one year, or for a portion of a year only and expire on the first day of the month of May subsequent to their issue."

In the body of the licence itself it is stated:—"This licence is granted . . . subject in all things to the provision of 'The Quebec License Law.'" *Semble*, in this case that the license should have been valid only for one month, and, if so, must have expired on the 19th of July last, unless renewed.

It is also singular that although the Mining Act refers us to the License Act for the mode of obtaining such licenses, still nothing is found therein concerning it.

Section 50 of the License Act of 1878, which prescribed the manner of obtaining such license has not been embodied in the Revised Statutes, with the exception of the heading, which is found over Art. 838, in the words following: "Licenses of railway buffets and taverns at the mines," although not a word concerning these last is contained