

New Bruns. Rep.]

REGINA V. JUSTICES OF KING'S COUNTY.

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sons. It was, in other words, a public trust granted to the Sessions for the benefit of the people. They were to exercise their "discretion," which by the Imperial Dictionary is defined to mean "Prudence, or knowledge and prudence; that discernment which enables a person to judge critically of what is correct and proper, united with caution." Had the word been "caprice," the contention of the counsel on the other side would be applicable. Where was the caution here—the discernment? It must be done with a sound discretion, exercised according to law. The legislature clearly—from the wording of the Act—intended the Sessions could not arbitrarily withhold licenses unless there was a petition. The Imperial Dictionary also defines the meaning of the word "empower" thus: it says, "The Sessions of Scotland are empowered to try causes." Could they refuse? The County Courts in this province are empowered to try causes up to \$200; and could the judge refuse to try such a cause? I do not contend the 36 Vict., c. 10, with my construction, is *ultra vires*; but if it is as contended for by the other side, it is so. Does my learned friend say the local legislature could provide that no one should exercise the business of an auctioneer? [*Per Cur.* If *Dr. Tuck's* contention is correct, that, as a general proposition, the local legislatures have the right to prohibit the sale of liquors, where was the necessity of specially allowing them to regulate licenses, as they would have that right any way?] The Act in this particular merely excepts out of trade what would otherwise have gone to the Federal Parliament. But the power to control is only given in a limited way—only to enable them to raise a revenue. The local legislatures have the right, and only the right, to regulate the licenses in order to raise a revenue. Where do they get it for the purpose of destroying the revenue? Wherever there is a doubt, the subject shall be held to come within the jurisdiction of the Federal Parliament.

Cur. adv. vult.

The judgment of the Court was now delivered by

RITCHIE, C.J. This was an application for a mandamus to the Justices of King's County to compel them to grant a tavern license to one Montgomery McManus. Application had been made by McManus to the Sessions for a license in February, 1874, and the usual fee tendered. The Sessions refused to grant a license, alleging as a reason that they did not intend to grant any licenses to sell spirituous liquors for that year. McManus was shortly

afterwards fined for selling liquor without a license.

In shewing cause against the application it was objected: 1st, That the power given to the Parliament of Canada, by "The British North America Act, 1867," Sec. 91, to regulate trade and commerce, meant trade and commerce with foreign countries, and that the power to make laws respecting tavern licenses belonged exclusively to the Provincial Legislature, by the 92nd section of the Act. 2nd, That by the Act of Assembly 36 Vict. c. 10, sec. 2, it was entirely in the discretion of the Sessions whether they granted licenses or not; that it was an arbitrary discretion which could not be questioned.

To the Dominion Parliament of Canada is given the power to legislate exclusively on "the regulation of trade and commerce," and the power of "raising money by any mode or system of taxation." The regulation of trade and commerce must involve full power over the matter to be regulated, and must necessarily exclude the interference of all other bodies that would attempt to intermeddle with the same thing. The power thus given to the Dominion Parliament is general, without limitation or restriction, and therefore must include traffic in articles of merchandise, not only in connection with foreign countries, but also that which is internal between different provinces of the Dominion, as well as that which is carried on within the limits of an individual province.

As a matter of trade and commerce, the right to sell is inseparably connected with the law permitting importation.

If, then, the Dominion Parliament authorise the importation of any article of merchandise into the Dominion, and places no restriction on its being dealt with in due course of trade and commerce, or on its consumption, but exacts and receives duties thereon on such importation, it would be in direct conflict with such legislation and with the right to raise money by any mode or system of taxation if the local legislature of the province into which the article was so legally imported, and on which a revenue was sought to be raised, could so legislate as to prohibit its being bought or sold, and to prevent trade or traffic therein, and thus destroy its commercial value, and with all its trade and commerce in the article so prohibited, and thus render it practically valueless as an article of commerce on which a revenue could be levied. Again, how can the local legislature prohibit or authorise the Sessions to prohibit (by arbitrarily refusing to grant any licenses) the sale of spirit-