

SUPERIOR COURT.

SHERRROOKE, June 26, 1883.

Before BROOKS, J.

GRIFFITH, Petitioner, & RIOUX *et al.*, Respondents.
Temperance Act, 1864—Prohibition.

Held, 1. That the Act 34 Vic., ch. 2, Quebec (License Act, 1870), and the Municipal Code—are *ultra vires* of the Quebec Legislature, in so far as they pretend to repeal the procedure clauses or any part of the Temperance Act of 1864.

2. That the incorporation of a village as a Town Corporation under special charter does not relieve the territory comprised within its limits from the operation of the Temperance Act of 1864, which had been brought into force by a by-law of the County Municipality of which the village had formed a part.

3. That the proceeding in question was not beyond the jurisdiction of the District Magistrate.

PER CURIAM. This is a petition by said Edward Griffith, asking that respondents, George E. Rioux, District Magistrate, and Allan D. G. Hazle, complainant, be restrained from proceeding with a prosecution brought before said District Magistrate in November, 1882, by said complainant Hazle, against said petitioner, for having on the 18th September, 1882, sold intoxicating liquors in quantity less than five gallons, contrary to the Temperance Act of 1864, 27 and 28 Vic., cap. 18 (Dunkin Act), and asking the penalty prescribed by that Act, of \$50.00; alleging:

1st. That said Act of 1864 was not in force in Richmond, and no such penalty as \$50.00 existed. That the only penalty was \$75.00, provided by Quebec License Act of 1878.

2nd. That petitioner had a shop license under hand of Revenue Inspector.

3rd. That if the Temperance Act of 1864 was ever in force in Richmond, it had ceased, by reason of incorporation of the Town of Richmond, under special charter, 45 Vic., cap. 103, to form part of the territory of County of Richmond, ceased to be bound by the by-laws of said county, and therefore the Temperance Act not in force there. That respondent Rioux had no jurisdiction to try the case, but had illegally proceeded to hear the evidence, and was about to render judgment, and was about to declare the License Act of 1870, so far as it

repeals the 27th and 28th Vic., cap. 18, and sec. 1086 of Municipal Code, so far as it repeals said 27th and 28th Vic., cap. 18, *ultra vires*.

The petitioner alleges, besides the repeal of all those portions of 27 and 28 Vic., cap. 18, by Quebec License Act, 34th Vic., cap. 2, sec. 12, under which the prosecution was brought, that he had a perfect right to sell, having obtained a shop license from the Revenue Inspector of the District. That in March, 1877, a by-law was enacted under Dunkin Act, so called, by which it was pretended that the sale of intoxicating liquors was prohibited within the limits of Richmond County, then including the now Town of Richmond, but on 27th May, 1882, Richmond received special charter from the Legislature of Quebec, 45th Vic., cap. 103, and since then, it has formed no portion of the county, and the said by-law has had no force there. That by its charter, Richmond had specially granted to it, the right to restrain, regulate or prohibit *traffic in liquor*, and on 19th June, passed a by-law, regulating the license fee, and petitioner had paid the same as well as the Government fees, and obtained a shop license, and that respondent Rioux had no right or jurisdiction to question the validity of repealing statutes, or investigate said case.

Respondent Rioux appeared and declared "qu'il s'en rapporte à justice."

Respondent Hazle persisted in his right to proceed under Temperance Act, alleging that this Act had never been repealed, *i.e.*, those portions under which he was proceeding, and that any action by the Legislature of Quebec, so far as it pretended to repeal any of said Act, was *ultra vires*; that it was specially provided by the charter of Richmond Town, 45 Vic., cap. 103, sec. 3, that "the by-laws, orders, rolls and municipal Acts, which governed the territory heretofore forming the Village of Richmond, shall continue in force until they are amended, repealed or replaced by the Town Council to be hereafter elected."

That no repeal of the Temperance Act had been had, and Richmond Town had no right, by by-law or otherwise, to authorize the issuing of licenses, or grant certificates, and their action was null in that respect; that the "Town Council to be hereafter elected," could not be elected under said Act until January, 1883, while the offence committed was in November,