

New Bruns. Rep.]

REGINA V. JUSTICES OF KING'S COUNTY.

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not exceeding one hundred dollars, nor less than twenty dollars." To support the contention of the other side, it must be held that the word "empowered" is equivalent to "shall;" but it has no such meaning: it leaves the matter entirely in the discretion of the Justices. [RITCHIE, C.J. How do you read the word "discretion?" Must it not be a legal discretion?] It is an absolute, arbitrary discretion, left by the legislature advisedly in the hands of the Sessions. [ALLEN, J. Would not the provision in a previous Act, that where two-thirds of the ratepayers petition the Sessions they must refuse, rather seem to imply that, where there is no such petition, they should exercise a discretion as to the persons, but not altogether refuse?] No, because, if there is a petition, they have no discretion at all. The Sessions have the power within themselves to grant licenses, or not, as they please. Then it is said this Act interferes with the powers of the Dominion Parliament, as relating to the criminal law. The same question came up in the case of *The Queen v. McMillan*, which expressly decided that for all matters on which the local legislatures had a right to legislate, they had also a right to legislate for the purpose of carrying them out. [RITCHIE, C.J. The British America Act, in one section says, the local legislature shall have the right to legislate as to tavern licenses for the purposes of revenue. Is not the inference from that rather that they have no right to legislate against the raising of a revenue?] The third and perhaps the most important objection is, that the Act 36 Vict., c. 10, has reference to trade and commerce, and that all matters relating thereto are, by the British America Act, given exclusively to the Federal Parliament. I presume it will be contended that the Sessions, by refusing to grant licenses, and so preventing the sale of articles from which a revenue can be collected, are interfering with the trade and commerce of the country. My answer is, that the "trade and commerce" there referred to mean trade and commerce with foreign countries. [RITCHIE, C.J. Take the case of a vessel coming from France to this country laden with liquors. She is a foreign vessel, owned by foreigners; she comes to St. John, the consignee pays the duty, and the vessel goes to Rothesay, where he finds he cannot by law sell his goods. Why might not the same provision be applied to tobacco, sugar, silks and satins? What would be the result? This man is told by the Dominion Government he has a right to sell, by taking his money for duties, and yet he finds he cannot dispose of

his goods.] Then, how can the Sessions regulate the licenses, as they may thereby restrict the sale, by making the charges so high that the dealers could not pay them? [RITCHIE, C.J. In such a case they would come to this Court, and it might inquire whether the charge was made so high for the purpose of revenue, or to prohibit it, and, without discussing that point now, it is possible this Court might interpose. Take the case of wholesale licenses, the same thing could be done as has been done here with the retail.) I admit it is an interference with trade, but not such an interference as is meant or contemplated by the Act. [ALLEN, J. What do you say is?] If there was a restriction on the importation, before it gets into the country, that would be. [ALLEN, J. Does not the prevention of the sale effectually prevent its importation?] That might be the result, but the legislature does not directly legislate to that end. [RITCHIE, C.J. There is another word in the British America Act besides "Commerce"—"Trade," which is defined as being the "exchange of goods for other goods, or for money; the business of buying and selling," &c.; while "Commerce," on the other hand, is defined as "an interchange of goods, wares, productions, or property of any kind, between nations or individuals." If the signification of the term "trade" is extended to that of "commerce," there is redundancy of words.] I think the words are used as synonymous. [RITCHIE, C.J. Can we believe that the legislature would use two words—each having a distinct meaning—as synonymous? Is there not an authority that there is nothing more dangerous than to say that two words are to bear an equivalent meaning, when ordinarily they have distinct meanings?] If the word "trade" in the British America Act means all internal trade, our legislature could not in any way touch or affect trade between even St. John and Fredericton. [RITCHIE, C.J. I should doubt if it could; and reasonably not, because the other provinces might be materially interested in the local trade between different parts of the same province.] Counsel cited 1 *Kent Com.* 488-492.

S. R. Thomson, Q.C., in support of the rule. The word "empowered" means a power, coupled with a trust. [RITCHIE, C.J. In other words, you say that "empowered to grant" does not give power to withhold.] If a man is empowered to do anything for the benefit of another, he is bound to do it: he has no power to refuse. This was a power accompanied with a duty, which the Sessions must not abuse: they are bound to grant licenses to decent per-