

duty of defendant, on payment of the prescribed fee, to have granted petitioner his license, and if that be so, the writ is clearly demurrable under par. 2 of Art. 1022, C. P. In the *Sulte* case, which was not unlike the present one as regards the principle involved, the proceeding was by mandamus; and the defendant raised the same objection; but it was overruled, and the case went to the Queen's Bench and Supreme Court. On the suggestion of petitioner's counsel the Attorney General has been notified to appear if he saw fit; and he has declined to do so.

The issue, therefore, is clear and distinct; and, although differing in some respects from that presented in what may now be regarded as the leading and decisive cases affecting the respective powers of Parliament and of legislature, recourse must be had to them to aid in determining where the legislative power rests. As regards the matter now under consideration, the sole questions are, had the legislature the right to confer upon the Magog Council the power to pass a by-law to prohibit the sale of liquor by wholesale — and was defendant bound to observe such by-law.

Our jurisprudence on the general question of prohibitory power, was, certainly, for several years after Confederation, in what may be designated an embryo state, not having received the full development which has more recently been given to it by the pronouncements of the highest Courts of the Province, of the Dominion, and of the Empire. Among the early decisions which are quoted in support of the view that Parliament alone can deal with the question of prohibition, is that of *Cooley & The County of Brome*. Having been counsel in that case, I know something of what the issues really were. It was on a petition to set aside a by-law adopting the Temperance Act of 1864, which it was contended had been repealed, as regards the Province of Quebec, by the Municipal Code and the License Act. The late Mr. Justice Dunkin did hold that the legislature had not repealed, and could not repeal, the Temperance Act. His judgment was set aside by the Court of Appeals on a different ground, — an informality in the manner of taking the vote. I find, however,

that the members of that Court expressed their views freely on the question of legislative power. The late Sir Antoine Dorion said: "Before the union of the Provinces was effected by Confederation, the power to prohibit the sale of intoxicating liquors had already been conferred by the Temperance Act of 1864, to the municipalities of the Provinces of Upper and Lower Canada. It was by that Act made a matter of local and municipal regulation. By the Confederation Act all the laws then in force in the several provinces were continued (sec. 129), and municipal institutions (sub. sec. 8), as well as all matters of a merely local or private nature in each province (sub. sec. 16, sec. 92), were placed under exclusive legislative control of the several provinces. In the absence of any expressions to restrict the powers so conferred, they must be understood to comprise all those matters, which at the time the union was effected, had been considered by the then existing legislatures as belonging to municipal institutions and as being of a local or provincial character. This would comprise the authority which the legislature of United Canada had already delegated to the several municipalities to prohibit the sale of intoxicating liquors within the limits of such municipalities. The meaning of the words trade and commerce as used in the second sub-section of sec. 91 of the B. N. A. Act ought to be restricted to those branches of commerce of a broader application than those already enumerated and which are specially provided for in sec. 91, such as the import and export trade of the country, customs and excise duties, and generally all those matters of trade affecting the whole Dominion, or more than one of the provinces or their trade relations with one another, or with the Empire or any of its possessions. I do not wish here to lay down as a rule that there are no cases in which the Dominion Parliament could not regulate or prohibit the sale of intoxicating liquors or other articles of trade within the Provinces composing the Dominion.

"It is not necessary to express any opinion what might be the authority of the