any Statute conferring such powers; but at any rate we have the two great Provinces of Confederation, and one of the smaller ones, persistently including amongst municipal institutions the right to prohibit the sale of strong drink. We cannot help thinking that this was sufficient to bring prohibitory liquor laws within the powers of local legislation as forming part of "municipal institutions" within the meaning of the B. N. A. Act. With Chief Justice Richards, we think that we ought to look "at the state of things existing in the Provinces at the time of passing the B. N. A. Act, and the legislation then in force in the different Provinces on the subject, and the general scope of Confederation then about to take place," when determining the value of indefinite terms in the Act. But in the case of "*The City of Fredericton* v. *The Queen*," it was decided by the Supreme Court that the Dominion Parliament has *alone* the power to pass a prohibitory liquor law. (3 S. C. R, p. 505.) It is true this decision goes somewhat beyond the real issue, which is as to the right of the Dominion Parliament to pass a prohibitory liquor law, which is quite a different thing. Still, we presume the point was fully argued before the Court.

It may be well to mention for the sake of precision, which, in quoting judgments, is of more importance than the multiplicity of references, that the question in *Cooey* v. *Brome*,* was not whether the local legislatures could pass a prohibitory liquor law, but whether the prohibitory law of the old Province of Canada was still in force. We were all of opinion that it was. This decision, then, was so far exactly similar to the decision in *Sauvé and The Corporation of Argenteuil*,† and in the cases of *Hart* v. *Missisquoi*,‡ and *Poitras* v. *The City of Quebec*,§ except that in the two last cases the Judge expressed the opinion that if the Temperance Act of 1864 had been repealed by the local legislature, he would have held that the local legislature could not have re-enacted it. Incidentally, in *Cooey and Brome*, Chief Justice Dorion expressed a different opinion; and as a general proposition, I may say, parenthetically, I do not see how a legislature has power to repeal what it cannot re-enact. Of course, it may sometimes indirectly do so, or do what will have a similar effect. The reversal of *Cooey and Brome** in this Court was not, however, on this question at all, but on the question of whether the by-law had been lawfully voted; so it appears that the consent reversal arrangement in the Supreme Court, of which we have heard something, signifies even less than was at first supposed. By not taking the state of things existing in at least three of the Provinces at the time of passing the B. N. A. Act and the legislation then in force, we arrive at the inconvenient conclusion that the municipal institutions, as they existed prior to Confederation, cannot be maintained by local legislation; and that, as in the present case, a municipality would be shorn of most useful powers, by the simple operation of a surrender of its charter, in order that the legislation may, for convenience sake, be amended, or consolidated. It is maintained that to renew these powers there must be joint legislation, if that be lawful, which is open to some doubt.

The consequences of arriving at such a conclusion compel us to look for some other mode of dealing with the Statute. Since this case was argued, we have seen a decision of Ch. J. Meredith, in the case of *Blouin and the Corporation of Quebec*,† in which the case of *The City of Fredericton and The Queen* is reviewed. The case of *Blouin* does not involve the question now before this Court, but the Chief Justice drew attention to a distinction between the case before him and that before the Supreme Court, which has been frequently recognized, and which it is important to keep in view; namely, that where a power is specially granted to one or other legislature, that power will not be nullified by the fact that, *indirectly*, it affects a special power granted to the other legislature. This is incontestible as to the power granted to Parliament (Sect. 91 last *alinea*, B. N. A. Act), and probably it is equally so as to the power granted to the local legislature. In other words, it is only in the case of absolute incompatibility that the special power granted to the local legislature gives way.

As an example of the application of this principle, and also as an authority bearing on the

*21 L. C. J., 182; 1 Legal News, 519.
†21 L. C. J., 119.
‡3 Q. L. R., 170.
§9 R. L., 531.

*1 Legal News, 519.
†7 Q. L. R. 18.