

The Legal News.

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SUPERIOR COURT—DISTRICT OF ST. FRANCIS.

SHERBROOKE, Sept. 10, 1891.

Before LYNCH, J.

LEPINE v. LAURENT.

Constitutional Law—Powers of Provincial Legislature—Sale of Liquor—53 Vict. (Q.) ch. 79, s. 39.

Held:—*That the Provincial Legislature has the right to confer on municipalities power to prohibit the sale of intoxicating liquors by wholesale as well as by retail, and that 53 Vict. (Q.) ch. 79, s. 39, by which the town of Magog is authorized to restrain, regulate, or PROHIBIT the sale of any spirituous, vinous, alcoholic or intoxicating liquors by retail or wholesale within the limits of the town, is intra vires.*

The following judgment was delivered by Mr. Justice Lynch, at Sherbrooke, in the case of Napoléon Lepine, of Magog, petitioner, against Arthur P. Laurent, collector of provincial revenue, to compel the respondent to issue a wholesale liquor license to the petitioner.

LYNCH, J. :—

In 1890 the legislature of Quebec, by the Act 53 Vict. chap. 79, incorporated the Town of Magog; and by section 39 power was given the Municipal Council to pass by-laws, among other purposes—"To restrain, regulate or prohibit the sale of any spirituous, vinous, alcoholic or intoxicating liquors, by retail or wholesale within the limits of the town."

On the 13th April, 1891, the Council of the Town of Magog passed the following by-law: "It is hereby enacted that on and after the 1st day of May, 1891, the granting of licenses for the sale of spirituous, vinous, alcoholic or intoxicating liquors, in any quantities by wholesale or retail, in stores, shops and all other places (excepting hotels), within the limits of the Town of Magog, is hereby prohibited, and the granting

"of certificates for such sale will be refused by this Council in accordance with the provisions of article 39 of the Act of incorporation of the Town of Magog and other provisions of the statutes of the Province of Quebec."

It would appear that prior to the 1st of May last, petitioner had a license for the sale of liquor by wholesale at said Town of Magog; and that he subsequently applied to the defendant, the collector of provincial revenue for said district, for the renewal of such wholesale license, tendering him therefor the fees fixed by the statute 54 Vic. Cap. 13, Sec. 12. To this tender formally made by a notary public, defendant answered that he could not accept, that he must be governed by the dispositions of the Act 53 Vic. Cap. 79, and of the by-law passed by the Corporation of Magog in virtue of this statute, so long as that by-law remains in force.

On the 17th August last, petitioner applied to this Court for the issuance of a writ of mandamus, addressed to the defendant, ordering him to appear and show cause why a peremptory writ should not issue, enjoining him to grant petitioner the wholesale license for which he had applied; and with the petition was a deposit of the amount of fees required by law. It was ordered that a copy of the petition should be served on the defendant, with a notice that the same would be heard on the 20th.

On the last named day petitioner and defendant appeared by their respective counsel, and the Corporation of the Town of Magog applied to be permitted to appear and to be heard by counsel, which application was granted. The main facts relied on by petitioner were admitted at the argument; and the only question at all seriously discussed was the constitutional right of the Quebec legislature to authorize the Council of Magog to prohibit the sale of liquor, as had been done by the section of the Act of incorporation above quoted. It was incidentally suggested by defendant's counsel that the allegations of the petition did not disclose a right to the writ of mandamus; and that the more correct proceeding on the part of petitioner, would be an action to set aside the by-law. It is alleged that it was the