

RITCHIE, C.J. I cannot see how it can be said that prohibition will not lie without first determining whether the Act is *ultra vires* or not; for if the Act is *ultra vires* then I can see no reason why prohibition would not be a proper remedy, because there could then be no pretence that the Recorder's Court could have jurisdiction over an offence alleged to be created by a statute which had no legal existence; but holding the Act to be *intra vires*, (that is within the legislative power of the Provincial Legislature), I fully appreciate the position taken by Mr. Justice Ramsay, that the Recorder's Court, having jurisdiction over the subject matter legislated on—however badly it may judge—it cannot be stopped by prohibition on the pretext that it has misconstrued the Act. Mr. Justice Ramsay clearly acted on this view, for before holding that prohibition would not lie, he expressly held that the Local Legislature had authority to prohibit or regulate the sale of liquors in saloons or taverns on Sunday, or at particular times, as being a matter of police regulation, and consequently within the powers of municipal corporations. When in the case of *Reg. v. The Justices of King's*, I was called upon to adjudicate on the right of the Provincial Legislatures to prohibit absolutely the sale of spirituous liquors, and when I arrived at the conclusion that the legislative power to do this rested in the Dominion Parliament, I advisedly and carefully guarded the enunciation of that conclusion in these words:—"We by no means wish to be understood that the Local Legislatures have not the power of making such regulations for the government of saloons, licensed taverns, etc., and the sale of spirituous liquors in public places, as would tend to the preservation of good order and the prevention of disorderly conduct, rioting, or breaches of the peace. In such cases, and possibly others of a similar character, the regulations would have nothing to do with trade or commerce, but with good order and local government, matters of municipal police and not of commerce, and which municipal institutions are peculiarly competent to regulate." I still think, as I did then, that a provision such as section one, of 42 and 43 Victoria, chapter 4 of the Quebec Act, is within the Legislative authority of the Provincial Legislature as being simply a local police regulation, and which the Legislature has—as incident to its power to legislate on matters

in relation to municipal institutions—a right to enact. As at the time of the passing of this Act, and at the time of the committing of, and the conviction for, the alleged breach of the law, there was no Dominion legislation contravening in any way the provisions of this Provincial law, it is not necessary for the purpose of deciding this cause to inquire or determine if, and in what particulars, and to what extent the legislation of either will prevail over that of the other, when the Dominion Parliament, legislating for the peace, good order, etc., of the Dominion, or on the subject of trade and commerce in connection with the traffic in intoxicating liquors, conflicts with the Provincial legislation. In the view I take of the inapplicability of the remedy by prohibition; the Act being in my opinion *intra vires*, it is unnecessary to express any opinion as to the construction of the first section of 42 and 43 Victoria, chapter 4, though I by no means wish it to be understood that I think the construction placed on the statute by the Recorder's Court incorrect. I merely express no opinion on it as not being necessary for the determination of the case before us. The appeal, in my opinion, should be dismissed.

Judgment confirmed.

LOUISIANA DECISIONS.

Volume I of McGloin's Reports of cases in the Courts of Appeal of the State of Louisiana, is now completed. The volume contains the following, among other decisions:—

Agency.—1. Where a party conducts a business, for which the services of a superintendent or manager are essential, and does not himself act as such manager or superintendent, there is a representation that the parties actually performing such essential duties are his agents, with necessary powers.—*Lochte v. Gélé*, p. 52.

2. One dealing with a factor may be sued by the principal; but, ordinarily, the former may, in such a suit, avail himself of all the defences which would have been open to him had the demand been made in the name of the factor.—*Delaume v. Agar*, p. 97.

3. Where the owner of real property agrees to pay a certain sum to a broker for securing a purchaser, the compensation of the broker is earned so soon as the purchaser is secured.—*Houston v. Boagni*, p. 164.

4. A bank taking paper for collection is, as