

RATION OF THE COUNTY OF RICHMOND (respdts. below), Respondents.

Temperance Act of 1864 preserved in force by the Confederation Act—Canada Temperance Act, 1878 (41 Vict., Cap. 16, sec. 3).

The appeal was from a judgment of the Superior Court at Sherbrooke (Doherty, J.), dismissing a petition on demurrer.

The petitioner, appellant, prayed for an injunction to order the respondent to desist from carrying out a by-law passed by the Corporation on the 14th March, 1877, under the authority of the Temperance Act of 1864, generally known as the Dunkin Act. The petitioner represented that he was a hotel-keeper and elector of the county, and that the effect of the by-law in question was to prevent him from continuing the sale of spirituous liquor. He urged that the Temperance Act of 1864 (under the authority of which the by-law was enacted) had ceased to have validity since the passing of the B. N. A. Act, inasmuch as by the latter Act power was given to the Dominion Parliament alone to regulate trade and commerce, and the Temperance Act of 1864 and the by-law in question were an infringement upon the trade and commerce of the country. He therefore sought to have the by-law set aside, and the Corporation enjoined from enforcing it.

The Corporation demurred to the action, assigning, amongst other grounds of demurrer, the following:

"Because at the time of the enactment of said by-law the respondents had full power and authority to enact the same, inasmuch as for that purpose the said 'The Temperance Act of 1864' was in full force and effect, and was specially continued in force and effect by the Confederation Act cited by the petitioner;

"Because the continuance in force and effect of the said 'The Temperance Act of 1864' has been fully approved and confirmed by the Legislature of the Dominion of Canada in and by the Temperance Act of 1878."

The demurrer was maintained, and on appeal it was

Held (confirming the judgment of the Court below), that the Temperance Act of 1864 was kept in force by the B. N. A. Act, section 129, which enacted: "Except as otherwise provided by this Act, all laws in force in Canada, Nova

"Scotia, or New Brunswick at the Union, etc., shall continue in Ontario, Quebec, Nova Scotia and New Brunswick respectively, as if the Union had not been made." Further, the Parliament of Canada, in passing the Temperance Act of 1878 (41 Vic. cap. 16), specially recognized the validity of the Temperance Act of 1864. (See sec. 3.)

Judgment confirmed.

L. C. Belanger for appellant.

Hall, White & Pannelon for respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, March 22, 1881.

DORION, C.J., MONK, CROSS & BABY, JJ.

BENNETT (petr. below), Appellant, and THE PHARMACEUTICAL ASSOCIATION OF THE PROVINCE OF QUEBEC (respdts. below), Respondents.

Powers of Local Legislatures—Quebec Pharmacy Act, 34 Vict., Cap. 52.

Appeal from a judgment rendered by the Superior Court at Montreal, Rainville, J., Nov. 30, 1880, dismissing appellant's petition.

The object of the petition was to obtain a writ of injunction against the respondents, to prohibit them from prosecuting the petitioner, and also praying that the Act of the Quebec Legislature known as the Quebec Pharmacy Act of 1875, 34 Vict., cap. 52, be declared unconstitutional and *ultra vires*.

It appeared that the petitioner, who holds a license from the Ontario College of Pharmacy, for about a year had been carrying on the business of chemist and druggist in the city of Montreal. He had recently been prosecuted in the Police Court, under the Quebec Pharmacy Act of 1875, for using the title of chemist and druggist. He contended that the Act was *ultra vires* of the local legislature, being an interference with trade and commerce, a matter which falls exclusively within the jurisdiction of the Parliament of Canada.

In answer to this it was urged on behalf of the respondents, (1) that pharmacy is a branch of the medical profession; and (2) that the Pharmacy Act does not touch what may properly be called acts of trading, but merely prohibits certain things which are recognized as being the legitimate business of a pharmacist,