

ceived their full confirmation by the judgments since rendered and to which I have already referred. Before Confederation our municipal law ch. 24 of the Con. Sts. of Lower Canada—like that of Upper Canada—recognized the right of municipal councils to prohibit generally the sale of liquors; sec. 26, sub. sec. 11, conferred upon all county councils in the month of March, of each year, the power to pass by-laws "for prohibiting and preventing the sale of *all* spirituous etc. liquors," and by sub. sec. 16 of sec. 27 every local council might make a similar by-law in any year when the county council had failed to do so in the month of March. This power to prohibit generally the sale of liquors, thus unmistakably conferred upon and enjoyed by municipal councils, prior to confederation, has been held to be continuing and not to have been disturbed by any provision of the Union Act; and it certainly has not since been taken away by any competent authority.

I do not feel that it is necessary for me to pursue the enquiry further. From the best thought and attention which I have been able to give this matter, I have come to the conclusion that the inherent right and responsibility, under the constitution, of controlling municipal institutions in the Province belongs to the legislature; and that the legislature may, and from its very nature must, delegate this control to councils, the recognized guardians and administrators of these municipal institutions; and that one of the most important elements of this control is the regulation of the liquor traffic, which may be effected in the discretion of the Council, under the power so delegated, either by a general or partial system of license, or by a general or partial system of prohibition, or by a combination of both systems.

Was defendant bound to conform to the requirement of the by-law prohibiting the sale of liquor by wholesale in the Town of Magog, and to refuse the license asked for by petitioner?

By the Quebec license Act, 41 Vict. cap. 3, sec. 48, the applicant for a wholesale shop license, was obliged to produce the same certificate confirmed by the Council, as was required for a hotel license. This formality

being observed, and on payment of the requisite duty, he was entitled to his wholesale license sec. 70, unless the sale in the municipality had been prohibited by by-law, sec. 51. Sec. 48 was amended in 1880, by 43-44 Vic. cap. 11, sec. 14, by taking away the necessity of a certificate for a wholesale license and by providing that "wholesale liquor shop licenses are granted simply upon payment to the proper license inspector of the required duties and fees." This latter provision was not reproduced in the Revised Statutes of Quebec and has disappeared entirely, so that under Art. 892 it is now the duty of the collector of provincial revenue to issue on application a wholesale liquor shop license on payment of the requisite fees unless he has received under Art. 860 copy of a municipal by-law prohibiting the sale of liquors in the municipality, in which case he is forbidden to issue any license except it be for a steamboat bar or a railway buffet. Here it is admitted that the defendant had received a copy of the by-law in question, at the time when petitioner applied to him for a wholesale liquor license: and I cannot conceive how it was possible for defendant to have given any other answer than the one which is embodied in the formal tender and offer made to him by petitioner of the requisite fees and which he signed. "*Je ne puis accepter cette offre parce que je dois m'en tenir aux dispositions de l'acte 53 victoria ch. 79 et du règlement passé par la Corporation de Magog en vertu de ce Statut tant que le dit règlement reste en vigueur.*"

On the whole I consider that sec. 39 of cap. 79, 53 Vic. Quebec, in so far as it authorizes the Municipal Council of the Town of Magog, to pass by-laws 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 within the competency and powers of the legislature of this Province—and not *ultra vires* thereof—that the Municipal Council of the Town of Magog in passing and enacting the by-law which is attacked by petitioner, was competent and acted *intra vires* of the power conferred upon it by said section,—that the said by-law is in all respects legal and binding for all the purposes thereof and of said section—and that defendant acted