

Held, 1. That a local Statute empowering a municipality to make by-laws prohibiting the sale of liquor, or allowing its sale under certain conditions, is not justified by sub-section 9, Section 92, B. N. A. Act of 1867, even though the municipality only exercises the power to the extent of fixing a tax by way of licence, and for the purposes of revenue.

2. That the state of things existing in the confederated Provinces at the time of Confederation, and more particularly that which was recognized by law in all or most of the Provinces, is a useful guide in the interpretation of the meaning attached by the Imperial Parliament to indefinite expressions employed in the B. N. A. Act of 1867.

3. That at the time of Confederation, the right to prohibit the sale of intoxicating drinks, existed as a municipal institution, in the then Province of Canada, and in Nova Scotia, and consequently that it is to be deemed a "municipal institution" within the meaning of sub-section 8, Section 92, B. N. A. Act of 1867.

4. That the power of the Dominion Parliament to pass a general prohibitory liquor law as incidental to its rights to legislate as to public wrongs, is not incompatible with a right in the Provincial Legislatures to pass prohibitory liquor laws as incidental to municipal institutions.

RAMSAY, J. The evidence in this case is formal and gives rise to no difficulty. Two questions come up on this appeal :

1st. Is the corporation, appellant, authorized to pass the By-Law of the 3rd April, 1877, under the local legislation, so far as that legislature can authorize ?

2nd. Has the local legislature such right ?

With regard to the first of these questions, it appears, that on the 3rd of April, 1877, an amendment was passed to a by-law made in 1871 regulating that a licence fee of \$200 should be paid by any one authorized to retail liquors, before the certificate of the corporation to enable the party to obtain a licence was granted. The Statute under which this by-law is justified is the 38 Vict., c. 76, sec. 75, 2, by which it is provided that "the said council shall have power to make by-laws :

1. * * * * *

2. For determining under what restrictions and conditions, and in what manner the Collec-

tor of inland revenue for the district of Three Rivers, shall grant licenses to merchants, traders, shop-keepers, tavern-keepers, and other persons to sell such liquors."

This seems clear enough, but it is said that the Licence Act of 1878 limited the powers of the corporation. By section 36 of that Act (41 Vic. c. 3, Q.) it is enacted that "on each confirmation of a certificate, for the purpose of obtaining a license for the cities of Quebec and Montreal, the sum of \$8 is paid to the corporation of each of those cities; and to other corporations for the same object, within the limits of their jurisdiction, a sum not exceeding \$20 may be demanded and received."

"Section 37: The preceding provision does not deprive cities and incorporated towns of the rights which they have by their charters or BY-LAWS."

It is probable that the legislature intended to say that, "the preceding provision does not deprive incorporated cities and towns of the rights which they may have under any by-law made in conformity with their respective charters." It may be further said in support of this reading of the Statute, that the general principle is that special laws are not presumed to be repealed by general ones unless they are incompatible or expressly repealed.

In so far, then, as incorporated towns, other than Quebec and Montreal, are concerned, it seems to leave in force any by-law then existing, made in conformity with a special charter. Therefore, as the by-law was made in 1871 and amended in 1877, a year before the 41 Vic., the proviso of Sec. 37 excepts these by-laws from the provision of Sec. 36. Whether a new by-law made subsequent to 1878 would be so covered, it is not now necessary to decide.

As to the 2nd question: Sub-section 9, of Sec. 92, of B.N.A. Act, gives the local legislatures the right to make laws IN RELATION TO "Shop, saloon, tavern, auctioneer and other licenses in order to the raising of a revenue for provincial, local or municipal purposes." The Statute does not say that the local legislatures can only oblige shop-keepers &c. to take out a license, but that they may make laws "in relation to" such licenses. That is a distinction which seems to have escaped observation in the case of *Angers v. The Queen Ins. Co.** probably because the pretention

*1 Legal News, p. 410.