

It is conceded that the Legislature cannot repeal what it cannot re-enact.

The power to prohibit is admittedly not exclusively conferred upon the Legislature, and not being exclusively given under the B. N. A. Act to the Legislature, Parliament can legislate.

The Canada Temperance Act, 1864, passed by Old Canada, could only be repealed by Parliament, as the first 10 sections have been by Canada Temperance Act, 1878. If there is any conflict of authority as to who shall legislate upon the subject, the Legislature must yield to Parliament. Parliament has legislated. It has declared as to what municipalities the Act of 1864 is repealed, *i.e.* the first 10 sections. It has provided where *it is not in force*, new machinery for prohibiting; it has provided penalties for infraction of the law and procedure to enforce, and if it can do this, which the Privy Council has declared it can—the local legislature cannot have concurrent powers. Our Parliament must be supreme. Lord Carnarvon said in the discussion of his bill before the House of Lords: "That the authority of the Central Parliament will prevail whenever it may come in conflict with the Local Legislature, and any residue of legislation if any unprovided for in the specific classification, will belong to the central body." If this power belongs to Parliament, and it does, if it is not *exclusively* given to the Legislature, which is not pretended, the Legislature have, by License Act and its amendments, and by Municipal Code Art. 1086, exceeded its authority.

I cannot in deference to the decisions in this matter, declare otherwise than that the amendments to the Temperance Act of 1864, are *ultra vires*.

The next question which arises is: Could the Legislature do indirectly, *i.e.*, by 45th Vic., cap. 103, incorporating the Town of Richmond, and giving it power to restrain, regulate or prohibit the sale of liquors, what they could not do directly?

I do not think it necessary to enlarge upon this. The Legislature could not so, legally, act, nor has the Town of Richmond made any By-law which can be said, even if they had the power, to have repealed the By-law passed under the Dunkin Act. They have fixed, in case licenses are granted, a fee to be paid to the municipality, under sub-section 8, of section 92 of the B.N.A.

Act, for the purpose of raising municipal revenue; the power having been given them by their charter, to regulate the sale in all cases, provided it could legally be sold at all.

As to the third point, that the separation of Richmond (Town) from the County, withdrew it from the operation of the By-law, enacted when it was in the county, it is, I think, equally clear that such could not have been the effect, as thus the Legislature would have been doing, indirectly, what they could not directly do.

I have thus referred to the points raised by the parties and argued with great ability, on both sides of this case, irrespective of the question if the District Magistrate had jurisdiction to try this case.

The prohibition could only be addressed to an inferior court whenever it *exceeds its jurisdiction*.

I find in this case that Petitioner appeared before respondent Rioux, accepted the jurisdiction by pleading to the merits, and according to his own allegations, only applied for the writ when he became convinced that the judgment was about to go against him.

I think that the Court below had jurisdiction, that petitioner accepted that jurisdiction, by appearing and pleading as he did; *Simard v. Corporation of Montmorency*, Q. B., 8 *Revue Légale*, p. 546, and the result must be that the Writ of Prohibition is set aside and quashed, and the petition dismissed with costs, in favor of respondent Hazle.

H. B. Brown for petitioner.

J. J. Maclaren for respondents.

#### SUPREME COURT OF CANADA.

OTTAWA, June, 1883.

RITCHIE, C.J., STRONG, FOURNIER, HENRY, TASCHEREAU and GWYNNE, JJ.

POULIN v. LA CORPORATION DE QUEBEC.

*Prohibition—Local Jurisdiction.*

*The Provincial statute 42-43 Vict. (Que.) chap. 4, ordering that places in which spirituous liquors are sold shall be closed on Sunday, is a police regulation, and is not in excess of the powers of the local legislature.*

The appeal was from a judgment of the Court of Queen's Bench in appeal, rendered at Quebec, confirming a judgment of the Superior Court, Meredith, C. J. (See 7 Q.L.R. 337, and 5 L. N. 3.)