

could substitute its discretion for that of the magistrates, and the judgment of the Honorable Mr. Justice Torrance in the case cited of *Privett v. Sexton et al.* is exactly to that effect. So then I can use my discretion, and if I refuse the confirmation of the certificate, the applicant has no remedy. But how am I to use this discretion? The plainest and most recent authority on the subject is the book cited by the opposants themselves: Maxwell on the interpretation of statutes, pages 100 and the following where it is said:

"Whereas in a multitude of acts something is left to be done according to the discretion of justices or other authorities on whom the power of doing it is conferred, the discretion must be exercised honestly and in the spirit of the act; otherwise the act done would not fall within the statute. According to his discretion means, it is said, according to the rules of reason and justice, not private opinion; according to law and not humor; it is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limits to which an honest man competent to the discharge of his office ought to confine himself, that is within the limits and for the objects intended by the Legislature."

What is the spirit of the Quebec license act? Clearly to put no restrictions upon the liquor traffic in the cities of Montreal and Quebec beyond requiring certain qualifications in traders.

What were the objects intended by the Legislature in passing that act? The answer to this question was given by one of the learned counsel for the opposants in the course of his argument, viz., one of its main objects if not the main object is to raise revenue.

Moreover, the liquor trade, however obnoxious to the feelings of a great number, is notwithstanding a legalized and a legitimate one. The liquor trader is in the eyes of the law on the same footing as all other traders.

The discretion left with the magistrates does not, should not go beyond ascertaining if the applicant possesses the personal qualifications required by law. In a case of conflicting evidence creating a doubt whether the applicant were sober, honest, or of good reputation, the magistrates should use their discretion and grant or refuse the license according as they

deem proper, and their decision would be final. But where the applicant has fulfilled all the requirements of the law, and is proven to be personally qualified to keep a house of public entertainment, as in the present instance, the discretion of the magistrates should be exercised honestly in the spirit of the law and according to the objects intended by the Legislature, as Maxwell puts it, and consequently the confirmation ought to be granted.

So long as the law remains in its present condition every qualified applicant is entitled to obtain his license. The license certificate of the applicant is confirmed.

Mr. Dugas concurred.

W. H. Kerr, Q.C., for applicant.

E. Carter, Q.C., and *J. J. MacLaren*, for opposants.

CANADA.

THE MARRIAGE BILL.—The bill of Mr. Girouard, as amended in committee of the whole, reads as follows:—

"1. Marriage between a man and the sister of his deceased wife, or the widow of his deceased brother, shall be legal.

"2. All such marriages heretofore contracted, the parties whereto are living as husband and wife at the time of the passing of this Act, shall be held to have been lawfully contracted; but nothing herein contained shall affect any rights actually acquired by the issue of the first marriage previous to the passing of this Act; nor shall this section render legal any such marriage when either of the parties has afterwards, during the life of the other and before the passing of this Act, lawfully intermarried with any other person."

OBITUARY.

We regret to learn that the illness of Mr. Recorder Sexton has had a fatal termination. His death took place in Montreal on Thursday, 18th instant, at the age of 72. Mr. Sexton was a member of the bar of this Province, and practised until appointed City Clerk in 1840. In 1859, he was appointed to the office of City Recorder, the duties of which he has performed during the past twenty-one years with much ability, and with great satisfaction to the public. A magistrate like Mr. Sexton is not easily replaced.