

SUPERIOR COURT.

MONTREAL, September 29, 1883.

Before RAINVILLE, J.

Ex parte HOGAN, and THE RECORDER OF MONTREAL.

Prohibition—Recorder—Quebec License Law.

The Superior Court will not interfere by writ of prohibition to prevent the Recorder of Montreal from hearing and deciding upon a complaint against petitioner in a matter within the jurisdiction of the Recorder.

In a proceeding against the petitioner before the Recorder, under the Quebec License Law, the revocation of petitioner's license as hotel-keeper was asked for. Held, that even if the license law did not sustain the demand for revocation of license, the Recorder nevertheless had jurisdiction to try the case, and the defendant's remedy was by certiorari.

The petitioner alleged in support of his petition for a writ of prohibition:—"That the City of Montreal, in its capacity of a body corporate, has caused to be issued out of the Recorder's Court of the City of Montreal a summons addressed to your petitioner and against him, whereby the City of Montreal complains that your Petitioner on Sunday, 12th August last past, did neglect to keep closed the bar of a certain inn then kept by him on the line of St. James street in the said city, Sunday being a time when the sale of intoxicating liquors is prohibited, contrary to the provisions of the Quebec License law of 1878, in such case made and provided, whereby and by force of the said law the said Petitioner had (as the said complaint alleges) become liable to pay a fine of not less than \$30 nor more than \$75, and the said complainant then and there and thereby prayed for judgment in the premises, and that the said Petitioner be condemned to pay a fine of not less than \$30 nor more than \$75 for the said offence, and further that the certificate by virtue of which the said Henry Hogan, your petitioner, obtained his license be revoked, &c.

"That the said Court in issuing the said writ of summons, exceeded its jurisdiction, for the following amongst other reasons:

1st. Because the Legislature of the Province of Quebec had no power or authority to pass the said Act intituled the Quebec License law of 1878, and the same is by its provisions and

more especially in respect of the provisions respecting the days whereon the trade and commerce in intoxicating liquors may lawfully be carried on, is *ultra vires* and unconstitutional;

2. Because the City of Montreal had no authority to institute the said prosecution and to pray or ask the said Court to cancel the certificate of your Petitioner in the premises, nor has the said Court jurisdiction to cancel the same;

3. Because the provisions of the Quebec License law of 1878 respecting the periods when bars shall be kept closed (Sect. 92) has been repealed as your petitioner is advised;

4. Because your petitioner has already been convicted, to wit, on the 6th day of August last past for the same offence as that complained of in the said summons, to wit, of having his bar, in the said house on said street, open at a time when the sale of intoxicating liquors was prohibited, although said offence so complained of was on a date anterior to the said 12th of August, and that if the said Court were to punish your petitioner for the offence charged in the summons issued against him as hereinbefore firstly set forth, your petitioner would be condemned more than once for the same offence;

5. Because the Act of the Legislature of this Province, 45 Victoria, chapter 9, is unconstitutional and *ultra vires* of the said legislature in so far as it affects the trade and commerce in intoxicating liquors, by declaring days whereon the one may not be sold, and forbidding owners or lessees or occupants of houses from free use of their said houses or of certain rooms in them, and further in declaring the not keeping of the bar in taverns and restaurants closed during certain hours and periods therein indicated, an "offence."

"That the said Recorder's Court in issuing the said summons and in causing the same to be served upon your petitioner, and in allowing the same to be returned into it, and in all the proceedings held and taken respecting the same, has acted in excess of its jurisdiction;

"That your petitioner has filed a plea to the said summons, alleging the unconstitutionality of the aforesaid several acts in so far as the complaint against him is concerned, and the various excesses of jurisdiction had and committed by the said Recorder's Court;

"That your petitioner is credibly informed that the Recorder of the City of Montreal, before