

the Council of the parish of Ste. Anne de la Perade to pass such a by-law, and that possibly the by-law itself did not apply, and could not be applied, to the case of a wholesale liquor license, and was limited in its operation to the prohibition of the sale of intoxicating liquors in quantities less than three gallons, or one dozen bottles, as authorized by art. 561 of the municipal code, and consequently could not apply to a wholesale license which would be in excess of the power thus delegated. I am not now called upon to determine any such questions. What the petitioner asks me to do, is, to declare that the legislature of Quebec had no right or authority under sec. 92 of the B. N. A. Act, to confer upon the municipal council of the Town of Magog the power of passing a by-law to prohibit within its limits the sale of liquor by wholesale, as has unquestionably been done by 53 Vic. cap. 79 of the Quebec Statutes, sec. 39. The Supreme Court and the Court of Appeals have, in the decisions referred to, supported by the judgment of the Privy Council in the *Hodge* case, emphatically laid down the doctrine that the regulation of the liquor traffic, wholesale and retail, is within the exclusive control of the local legislature; and the Court of Appeals in the *Moir* case has affirmed, in the most distinct manner, the right of the legislature to delegate to municipal councils the power of prohibiting the sale of liquor by retail. In the *Severn* case the Supreme Court went far in the direction of holding that the regulation of, and the right to license, the wholesale trade was not within the attributes of the legislature: but in the *Molson* case, the Chief Justice remarked:—"In view of the cases determined by the Privy Council, since the case of *Severn v. The Queen* was decided in this Court, which appear to me to have established conclusively that the right and power to legislate in relation to the issue of licenses for the sale of intoxicating liquors by wholesale and retail belong to the local legislature, we are bound to hold that the Quebec license Act of 1878 and its amendments, are valid and constitutional." It may then be assumed as judicially settled that the legislature of Quebec had and has, under the constitution, the power to delegate

to municipal councils the authority to license or to prohibit the sale by retail of intoxicating liquor, and to license the sale by wholesale; but it is said that the same power does not exist concerning the prohibition of the sale by wholesale. Why should the one be treated differently from the other? It may be as important in the interest of the locality, and in some instances possibly more so, to prohibit the sale by wholesale as by retail: and can the one local prohibition be regarded as an interference with the regulation of trade and commerce when the other is not? I must confess my inability to appreciate the distinction. The late Chief Justice Dorion, in the course of his observations in the *Cooley* case, quoted two decisions of the Court of Queen's Bench of Ontario, which have a decided bearing on the point now under consideration. In the case of *Regina v. Taylor* it was said:—"The Ontario legislature has a right to license or prohibit the sale of liquor in shops or taverns, and in other places of the like kind, because it has the exclusive power over municipal institutions: and these institutions had before and at the time of Confederation the exercise of these powers, and because such power, read in connection with sec. 92 sub. sec. 16 of the Confederation Act, is now a matter of a merely local or private nature in the Province. That power is in restraint of trade, as well as a matter of police. The general regulation of trade and commerce which is vested in the Dominion government must be considered to be modified by the powers which the Ontario legislature, acting in relation to municipal institutions, may properly exercise." The same Court also held in *Slavin v. The Corporation of the village of Orillia*:—"That by-laws passed by municipal corporations wholly prohibiting spirituous liquors in shops and places other than houses of public entertainment and limiting the number of tavern licenses to nine, were valid as being within the powers of the corporation under the 32 Vict. cap. 32 Ont., and that it was within the power of the Provincial legislature to confer such power."

These judgments express my view of the power of the legislature; and they have re