The Legal News.

VOL. VI. JULY 7, 1883. No. 27.

FEDERAL AND LOCAL JURISDICTION.

Two cases are noted in the present issue, bearing upon the respective powers of the Provinces and the Parliament of Canada. In the case of *Poulin & Corporation of Quebec*, the Court of Queen's Bench of the Province of Quebec affirmed a decision of Chief Justice Meredith, holding that a local Act, regulating the times at which saloons and taverns should be open for the sale of intoxicating liquors, is within the powers of a local legislature, being a mere matter of municipal police regulation, and that such legislation is not an interference with the Dominion power to regulate trade and commerce. The appeal taken from that judgment has now been dismissed by the Supreme Court. There can be little difficulty as to the soundness of this decision, and even those who have advocated the contrary opinion must, we think, be convinced by the reasons which have been given for refusing concurrence with their views. In the same sense is the decision given by Mr. Justice Torrance in *Pillow & City of Montreal*, also noted in our present issue. It was said that the local legislature, in authorizing the passing of a by-law against chimneys casting forth their smoke into the common air, had dealt with nuisance —a matter of criminal law—and, therefore, had exceeded its powers. The learned Judge before whom the point came in the Superior Court overruled this pretension. The decision seems to be fully justified by the judgment of the Supreme Court in *Poulin & Corporation of Quebec*, and it conforms to the principles which have governed several decisions of the same class.

THE STAMP QUESTION.

In *Coughlin* v. *Clark*, noticed on page 169, in which an appeal was taken from the judgment of Wilson, C.J., on the ground that the promissory note sued on was not properly stamped before the repeal of the Stamp Act, and that double stamping after the repeal did not cure the defect, judgment was rendered by the Queen's Bench Division, at Toronto, June 30, dismissing the appeal.

THE MARRIAGE BILL.

The cry of clerical influence, with which we have become so familiar in this Province, reaches us in a new form from England, in connection with the bill legalizing marriage with a deceased wife's sister. The second reading was carried this year in the Lords, after a struggle of many years, by a vote of 165 for and 158 contra. It was remarked that twenty bishops voted against the bill, and not one for it. But, at a later stage, the bill was defeated, and now it is said that the bishops not only recorded their own votes against the measure, but used private influence with lay peers who favoured the bill, to induce them to abstain from voting. So the cry is raised, turn the bishops out of the House of Lords. We imagine that if the bishops have sufficient "private influence" to defeat the bill, they were perfectly justified in using it. Their influence is the influence of men of culture and intelligence, and the Upper House would decidedly be the loser by their expulsion. A measure which they agree to oppose can afford to stand over, and so the Marriage Bill can well afford to await the event of another session or two.

SUPREME COURT DECISIONS.

The judgment of the Court of Queen's Bench, Montreal, has been reversed by the Supreme Court in the following cases:—*Loranger & Reed*, 5 L. N. 363; *Lionais & La Banque Molson*, 5 L. N. 364. The judgment in *Grange & McLellan*, 6 L. N. 138, has also been reversed. In the case of *Loranger & Reed*, in which the question is as to the constitutionality of the Provincial Act imposing a stamp duty of ten cents on exhibits, Justices Taschereau and Strong dissented.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, July 5, 1883.

Before TORRANCE, J.

Ex parte PILLOW et al., Petitioners for Writ of *Certiorari*, and THE CITY OF MONTREAL, Respondent.

Local and federal jurisdiction — Municipal institutions—Nuisance.

The power of the Dominion Parliament to enact a general law of nuisance as incident to its right to legislate as to public wrongs, is not incompatible with a right in the Provincial Legislatures to authorize a municipal corporation to pass a by-law against nuisances hurtful to public health, as incidental to municipal institutions.

This was the merits of a motion to quash a conviction made on the 29th November last.

The petitioners were occupants of a manufactory of cut nails, and it was complained that the chimney sent forth smoke in such quantity as to be a nuisance hurtful to public health and safety, and that they refused to remove and abate the nuisance, contrary to the by-law of the City of Montreal No. 130.

The defendants pleaded that the city had no jurisdiction to enact the By-law, and did not enact it in virtue of any competent legislative authority. The defendants were convicted.

PER CURIAM. The main question as put by the petitioners is,—Had the Legislature of Quebec power to authorize the city of Montreal to pass the by-law? Such power, if it exists, must be derived from the sections 91 and 92 of the Confederation Act, 1867. Sec. 91 enacts that the exclusive legislative authority of the Parliament of Canada extends to the criminal law. And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the provinces. Section 92 says that in each province the legislature may exclusively make laws in relation to municipal institutions in the province.

The petitioner contends that among the subjects assigned exclusively to the Parliament of Canada is the criminal law, and that the subject matter of the by-law—a nuisance—is a matter of criminal law,—referring to the text-books on the subject. The city, on the other hand, contends that though the Federal Parliament has jurisdiction over nuisances in general, it does not follow that the local legislatures cannot prohibit insalubrious or dangerous establishments in a province, or that they cannot confer upon municipalities the right of self-protection and of protecting the citizens of a locality against the dangers of similar industries.

The By-law was made under 37 Vict. c. 51, s. 123, ss. 2, Quebec (Charter of Montreal), and 42-43 Vict. c. 53, s. 34, ss. 8. The counsel for the city says that this power is comprised in the words "municipal institutions." If the city could not deal with these matters under its charter, the greater part of the municipal regulations would be *ultra vires*, and the municipalities would be incapable of repressing abuses affecting health or the security of citizens, and the words "municipal institutions" would have no meaning. The discussions which have already taken place in our Courts respecting the liquor laws throw a good deal of light on the respective powers of the Dominion and Provincial legislatures. In *Sulte & The City of Three Rivers* it was held that the power of the Dominion legislature to pass a general prohibitory liquor law as incident to its right to legislate as to public wrongs, is not incompatible with a right in the provincial legislatures to pass prohibitory liquor laws as incident to municipal institutions (5 Legal News, p. 330); and in the case of *Poulin & The City of Quebec*, (7 Q. L. R. 337), Mr. Justice Tessier very pertinently asks the question, Is it not part of the municipal institutions to make disciplinary and police regulations to prevent disorder on Sunday and at night, by compelling tavern and saloon-keepers to keep their drinking places closed during that time? Can there be any question as to the power of our local legislature or even our municipal corporation, to prevent the sale and storage of powder except in certain places, and with certain precautions for the safety of the public? And yet this is a matter of trade, like any other.

I am justified in concluding that the power of the Dominion Parliament to pass a general law of nuisances as incident to its rights to legislate as to public wrongs, is not incompatible with a right in the provincial legislatures to pass the clause authorizing by-law 130 as incidental to municipal institutions.

Certiorari quashed.

Macmaster, Hutchinson & Weir for petitioners.

R. Roy, Q.C., for the City of Montreal.

SUPERIOR COURT.

SHERBROOKE, June 26, 1883.

Before BROOKS, J.

GRIFFITH, Petitioner, & RIOUX *et al.*, Respondents.

Temperance Act, 1864—*Prohibition.*

Held, 1. *That the Act* 34 *Vic., ch.* 2, *Quebec* (*License Act*, 1870), *and the Municipal Code —are ultra vires of the Quebec Legislature, in so far as they pretend to repeal the procedure clauses or any part of the Temperance Act of* 1864.

2. *That the incorporation of a village as a Town Corporation under special charter does not relieve the territory comprised within its limits from the operation of the Temperance Act of* 1864, *which had been brought into force by a by-law of the County Municipality of which the village had formed a part.*

3. *That the proceeding in question was not beyond the jurisdiction of the District Magistrate.*

PER CURIAM. This is a petition by said Edward Griffith, asking that respondents, George E. Rioux, District Magistrate, and Allan D. G. Hazle, complainant, be restrained from proceeding with a prosecution brought before said District Magistrate in November, 1882, by said complainant Hazle, against said petitioner, for having on the 18th September, 1882, sold intoxicating liquors in quantity less than five gallons, contrary to the Temperance Act of 1864, 27 and 28 Vic., cap. 18 (Dunkin Act), and asking the penalty prescribed by that Act, of $50.00; alleging:

1st. That said Act of 1864 was not in force in Richmond, and no such penalty as $50.00 existed. That the only penalty was $75.00, provided by Quebec License Act of 1878.

2nd. That petitioner had a shop license under hand of Revenue Inspector.

3rd. That if the Temperance Act of 1864 was ever in force in Richmond, it had ceased, by reason of incorporation of the Town of Richmond, under special charter, 45 Vic., cap. 103, to form part of the territory of County of Richmond, ceased to be bound by the by-laws of said county, and therefore the Temperance Act not in force there. That respondent Rioux had no jurisdiction to try the case, but had illegally proceeded to hear the evidence, and was about to render judgment, and was about to declare the License Act of 1870, so far as it repeals the 27th and 28th Vic., cap. 18, and sec. 1086 of Municipal Code, so far as it repeals said 27th and 28th Vic., cap. 18, *ultra vires.*

The petitioner alleges, besides the repeal of all those portions of 27 and 28 Vic., cap. 18, by Quebec License Act, 34th Vic., cap. 2, sec. 12, under which the prosecution was brought, that he had a perfect right to sell, having obtained a shop license from the Revenue Inspector of the District. That in March, 1877, a by-law was enacted under Dunkin Act, so called, by which it was pretended that the sale of intoxicating liquors was prohibited within the limits of Richmond County, then including the now Town of Richmond, but on 27th May, 1882, Richmond received special charter from the Legislature of Quebec, 45th Vic., cap. 103, and since then, it has formed no portion of the county, and the said by-law has had no force there. That by its charter, Richmond had specially granted to it, the right to restrain, regulate or prohibit *traffic in liquor*, and on 19th June, passed a by-law, regulating the license fee, and petitioner had paid the same as well as the Government fees, and obtained a shop license, and that respondent Rioux had no right or jurisdiction to question the validity of repealing statutes, or investigate said case.

Respondent Rioux appeared and declared "qu'il s'en rapporte à justice."

Respondent Hazle persisted in his right to proceed under Temperance Act, alleging that this Act had never been repealed, *i.e.*, those portions under which he was proceeding, and that any actien by the Legislature of Quebec, so far as it pretended to repeal any of said Act, was *ultra vires*; that it was specially provided by the charter of Richmond Town, 45 Vic., cap. 103, sec. 3, that "the by-laws, orders, rolls and "municipal Acts, which governed the territory "heretofore forming the Village of Richmond, "shall continue in force until they are amend-"ed, repealed or replaced by the Town Council "to be hereafter elected."

That no repeal of the Temperance Act had been had, and Richmond Town had no right, by by-law or otherwise, to authorize the issuing of licenses, or grant certificates, and their action was null in that respect; that the "Town Council to be hereafter elected," could not be elected under said Act until January, 1883, while the offence committed was in November,

1882; that Respondent Rioux did not exceed his jurisdiction in hearing said case; that license had no effect on prosecution. 27 and 28 Vic., cap. 18, sec. 12, sub-sec. 2.

Petitioner Griffith filed, amongst other documents, copies of License, By-law of Town of Richmond of June 19, 1882, styled License By-law, authorizing collection of certain license fees, fixing $60 as fee to be paid for shop licenses. And the by-law of County Council, March 14th, 1877, prohibiting, under Temperance Act, sale of liquors in said county, with certificate of approval thereof on 19th April, 1877, by municipal electors.

No evidence is taken, but the judgment is sought upon the law as applicable to the case; and at the argument, it was stated, by both petitioner and respondent, that they desired a judgment upon the point as to the power of the Legislature to repeal the provisions of the Temperance Act, providing penalty and procedure for illicit sale of intoxicating liquors, and upon the power of the Legislature to do indirectly, *i.e.*, by granting the charter 45 Vic., cap. 103, what, it was alleged, they could not do directly, confer upon the Town of Richmond, the right to *restrain*, *regulate* or *prohibit* the *sale* of any spirituous, alcoholic, or intoxicating liquors within the limits of the town; it being urged by petitioner that the by-laws of the Council of 19th June, 1882, regulating sale, *i.e.*, fixing fees implied under their charter, repealed the County By-law, prohibiting the sale.

The first and main question is:

Had the Local Legislature a right to enact 34 Vic., cap. 2, Sec. 197, by which those parts of 27 and 28 Vic., cap. 18, which provide for penalties and procedure to enforce them, were repealed?

In order to determine this, it is necessary to examine the provisions of the B. N. Act, and see if this power could come under the class of subjects, enumerated in Sec. 92, with regard to which the Legislature was empowered *exclusively* to make laws. If so, it must be under sub-Secs. 8, 9, 13 or 16.

The Temperance Act being in force at the time of Confederation, remained so, "until "legally repealed, abolished, or altered by the "Parliament of Canada, or by the Legislature "of the respective Provinces, according to the "authority of the Parliament, or of the Legis- "lature under this Act." Sec. 129 B. N. A. Act. It is contended that by the decision in Q. B., 1882, *The Corporation of Three Rivers & Sulte*, in which Mr. Justice Ramsay declared: "We hold that under a proper interpretation of Sub. Sec. 8, the right to pass a prohibitory liquor law *for the purpose of municipal institutions*, has been reserved to the Local Legislatures by the B. N. A. Act," it follows that the Legislature had the power to repeal the Temperance Act, but this, I think, does not at all follow, even if for the purposes of Municipal institutions, the Legislature could *prohibit*. But it must be remarked that this case was that of Three Rivers incorporated prior to Confederation, *i.e.*, in 1857, and which by its charter had certain special powers as to restrictions and conditions under which inspectors should grant licenses, and so far as report goes no prohibition was actually made, but only an amendment to a By-law, fixing *the fees*. Can they repeal a law passed by the late Province of Canada, which declared what was the penalty for illicit sale, and prescribed the mode in which its payment should be enforced?

As against this decision we have the declaration of the Chief Justice of the Supreme Court in the case of the *City of Fredericton*, S. C. Reports, vol. 3, pp. 542, 543, *et seq.*: "When I "had the honor to be Chief Justice of New "Brunswick, the question of the right of the "Local Legislature to pass laws prohibiting "the sale or traffic in intoxicating liquors, "came squarely before the Supreme Court of "that Province, and that Court in the case of "*Regina* v. *The Justices of Queen's County*, "unanimously held that the Legislature had "no power or authority to prohibit the sale of "intoxicating liquors, and declared the Act "passed with that intent, *ultra vires*, and there- "fore, unconstitutional. I am of the same "opinion now," &c., &c.

In this judgment concurred Fournier, Taschereau and Gwynne, JJ. dissenting. Henry, J. dissenting.

Taschereau, J., says; p. 557: It is clear that the Canada Temperance Act of 1878 could not be enacted by the Provincial Legislatures, for the simple reason that they have only the powers that are expressly given them by the

B. N. A. Act, and this does not give them the power to effect such legislation.

It would seem that if they could not pass the Canada Temperance Act of 1878, they could not have passed that of 1864, and Mr. Justice Ramsay says in the *Three Rivers & Sulte* case, "I do not see how a Legislature has power to *repeal* what it cannot *re-enact*."

In the present instance they have repealed portions of the Act of 1864, "in so far as relate to matters within this Province and matters within the control of the Legislature of Quebec," and have made new provisions, increasing the penalty.

Does this come within either sub-sections 8 or 9 of Sec. 92 of the B. N. A. Act?

The legislation is certainly not municipal, because it merely says that for a violation of the By-law prohibiting altogether the sale, the penalty shall be for selling without a license, $75, instead of $50.

It cannot be contended that this is given for the purposes of municipal institutions, as the only way in which it could be so construed would be if the prosecution had been in the name of the municipality, but here it is by a private individual.

Again, it cannot be said to come under sub-sec. 9, as fines and penalties cannot be imposed "for the purpose of raising a revenue for provincial, local or municipal purposes."

It is not a matter of police regulation. See *Poulin* v. *The Corporation of Quebec*. Ch. Justice Meredith says (and his judgment was sustained in appeal, Q. L. Reports, vol. 7, p. 339) "Considering that the Parliament of Canada, under the power given to it to regulate trade and commerce, *alone* has the power to prohibit the trade in intoxicating liquors, yet that the provincial legislatures, under the power given to them, may, for the *preservation of good order*, in the municipalities which they are empowered to establish, and which are under their control, make *reasonable police* regulations, although such regulations may, to some extent, interfere with the sale of spirituous liquors."

Ramsay, J., said: "It seems to me that this is purely a matter of police regulation, and consequently it is within the powers of municipal corporations, and that the exercise of such power cannot be considered as a *restriction of trade and commerce*."

Caron, J., held in *Hart* v. *The Corporation of the County of Missisquoi*, 3 Q. L. R., p. 170: "Que les pouvoirs accordés aux conseils des comtés, par l'Acte de Tempérance de 1864, ne pouvaient être ni modifiés, ni abrogés par la législature de Québec, parce que ces pouvoirs concernent l'industrie et le commerce, qu'ils sont de contrôle exclusif du Parlement du Canada."

Upon this point there would seem to be little doubt. Sec. 91 of B. N. A. Act, s. sec. 2, confers exclusively the regulation of trade and commerce upon Parliament.

The Supreme Court of Canada decided, in the case of the *City of Fredericton*—Supreme Court Reports, vol. 3, page 505—that under sub-sec. 2 of sec. 91 of B. N. A. Act, 1867, in regulation of trade and commerce, the Parliament of Canada *alone* has the power of prohibiting the traffic in intoxicating liquors in the Dominion or in any part of it.

In *Russell & The Queen*—Privy Council appeal cases, 1882, page 842—the Privy Council, in declaring the Temperance Act of 1878 within the power of Parliament, say: "Their Lordships have *come to the conclusion that the Act in question does not fall within any of the classes of subjects assigned exclusively to the Provincial Legislatures*, it becomes unnecessary to discuss the further question, whether its provisions also fall within any of the classes of subjects enumerated in Sec. 91. In abstaining from this discussion, they must not be understood as intimating any dissent from the opinion of the Chief Justice of the Supreme Court of Canada and the other Judges who held that the Act, as a general regulation of the traffic in intoxicating liquors throughout the Dominion, fell within the class of subjects, "the regulation of trade and commerce," enumerated in that section, and was, on that ground, a valid exercise of the legislative power of Canada."

The Provincial Legislatures have only such powers as have been conferred upon them by the B. N. A. Act, and the whole of the balance or residuum is in the Parliament of Canada.

The Privy Council has declared that Parliament has the right to legislate for the whole Dominion on the subject.

Thd Supreme Court of Canada has declared that Parliament has not only the right but the sole right to prohibit the sale of intoxicating liquors in the Dominion or in any part of it.

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.)

RITCHIE, C.J. I cannot see how it can be said that prohibition will not lie without first determining whether the Act is *ultra vires* or not; for if the Act is *ultra vires* then I can see no reason why prohibition would not be a proper remedy, because there could then be no pretence that the Recorder's Court could have jurisdiction over an offence alleged to be created by a statute which had no legal existence; but holding the Act to be *intra vires*, (that is within the legislative power of the Provincial Legislature), I fully appreciate the position taken by Mr. Justice Ramsay, that the Recorder's Court, having jurisdiction over the subject matter legislated on—however badly it may judge—it cannot be stopped by prohibition on the pretext that it has misconstrued the Act. Mr. Justice Ramsay clearly acted on this view, for before holding that prohibition would not lie, he expressly held that the Local Legislature had authority to prohibit or regulate the sale of liquors in saloons or taverns on Sunday, or at particular times, as being a matter of police regulation, and consequently within the powers of municipal corporations. When in the case of *Reg.* v. *The Justices of King's*, I was called upon to adjudicate on the right of the Provincial Legislatures to prohibit absolutely the sale of spirituous liquors, and when I arrived at the conclusion that the legislative power to do this rested in the Dominion Parliament, I advisedly and carefully guarded the enunciation of that conclusion in these words:—"We by no means wish to be understood that the Local Legislatures have not the power of making such regulations for the government of saloons, licensed taverns, etc., and the sale of spirituous liquors in public places, as would tend to the preservation of good order and the prevention of disorderly conduct, rioting, or breaches of the peace. In such cases, and possibly others of a similar character, the regulations would have nothing to do with trade or commerce, but with good order and local government, matters of municipal police and not of commerce, and which municipal institutions are peculiarly competent to regulate." I still think, as I did then, that a provision such as section one, of 42 and 43 Victoria, chapter 4 of the Quebec Act, is within the Legislative authority of the Provincial Legislature as being simply a local police regulation, and which the Legislature has—as incident to its power to legislate on matters in relation to municipal institutions—a right to enact. As at the time of the passing of this Act, and at the time of the committing of, and the conviction for, the alleged breach of the law, there was no Dominion legislation contravening in any way the provisions of this Provincial law, it is not necessary for the purpose of deciding this cause to inquire or determine if, and in what particulars, and to what extent the legislation of either will prevail over that of the other, when the Dominion Parliament, legislating for the peace, good order, etc., of the Dominion, or on the subject of trade and commerce in connection with the traffic in intoxicating liquors, conflicts with the Provincial legislation. In the view I take of the inapplicability of the remedy by prohibition, the Act being in my opinion *intra vires*, it is unnecessary to express any opinion as to the construction of the first section of 42 and 43 Victoria, chapter 4, though I by no means wish it to be understood that I think the construction placed on the statute by the Recorder's Court incorrect. I merely express no opinion on it as not being necessary for the determination of the case before us. The appeal, in my opinion, should be dismissed.

Judgment confirmed.

LOUISIANA DECISIONS.

Volume I of McGloin's Reports of cases in the Courts of Appeal of the State of Louisiana, is now completed. The volume contains the following, among other decisions:—

Agency.—1. Where a party conducts a business, for which the services of a superintendent or manager are essential, and does not himself act as such manager or superintendent, there is a representation that the parties actually performing such essential duties are his agents, with necessary powers.—*Lochte* v. *Gélé*, p. 52.

2. One dealing with a factor may be sued by the principal; but, ordinarily, the former may, in such a suit, avail himself of all the defences which would have been open to him had the demand been made in the name of the factor.—*Delaume* v. *Agar*, p. 97.

3. Where the owner of real property agrees to pay a certain sum to a broker for securing a purchaser, the compensation of the broker is earned so soon as the purchaser is secured.—*Houston* v. *Boagni*, p. 164.

4. A bank taking paper for collection is, as

to it, the agent of the depositor, who may at any moment revoke the agency and reclaim the deposit; and even where the bank has permitted the depositor to draw against such deposit, this does not destroy the agency and divest such depositor of his title.—*La. Ice Co.* v. *State Nat. Bank*, p. 181.

5. An employer continuing an employee in his service, after learning of negligence or misconduct on the part of the latter, is estopped from subsequently complaining.—*Marshal* v. *Sims*, p. 223.

Appeal.—Where a firm and its members are sued and condemned *in solido*, the appeal of the firm brings up the entire case, and avails the members.—*Marshal* v. *Sims*, p. 223.

Bank.—The certification of a check is equivalent to the acceptance of a bill—the check standing on the same footing as an accepted bill.—*La. Ice Co.* v. *State Nat. Bank*, p. 181.

Bills and Notes.—1. The acceptor of a commercial draft or bill of exchange guarantees the signature and the right of the drawer to draw the same.—*Agnel* v. *Ellis*, p. 57.

2. One sued upon his own promissory note cannot impeach the title of the holder, until he has shown his interest in such an issue.—*Carroll* v. *Peters*, p. 88.

Common carrier.—1. Tow boats are common carriers.—*Wood* v. *Harbor Protection Co.*, p. 121.

2. In case of collision between a vessel moored and one in motion, the presumption is against the latter.—*Ib.*

Costs.—Where in a former litigation, a party has had judgment for his costs, he cannot sue again for such costs.—*Levy* v. *Flash*, p. 124.

Default.—1. A putting in default is not necessary where the party owing compliance is unable to perform, or where, on demand, he refuses absolutely to comply or seeks to impose conditions foreign to the contract.—*Alford* v. *Tiblier*, p. 151.

2. A suit to rescind a transaction must be preceded by a tender of restitution; such as, if accepted, would restore all parties to the condition they were in before such transaction.—*Adams* v. *Moulton*, p. 210.

Garnishment. — Where a garnishee answers without reservation, he cannot subsequently complain of insufficiency of notice or of information.—*Carroll* v. *Wallace*, p. 316.

Lease.—Where the true condition of rented premises can be readily observed at the time of leasing, the tenant cannot subsequently complain of a defect in the drainage.—*Lorenzen* v. *Woods*, p. 373.

Obligations, Interpetation of.—1. Where a party has for years been employed by another, during which time his salary has been several times increased, and throughout board has been considered as included, without special stipulation to that effect, the former has the right, in subsequent negotiations, to consider his board as still included; and if the employer contemplates a change in this regard, it is incumbent on him to mention the fact.—*Godbold* v. *Harrison*, p. 31.

2. Where defendants purchased 200 casks of seltzer water, packed in Prussia, each cask of 100 stone jugs, and it is shown that such casks cannot be transported without some breakage of jugs: *held*, that these circumstances entered into the contract, and where the actual breakage is not beyond what is usual, the vendee cannot demand a rescission.—*Hays* v. *Smith*, p. 193.

3. A party cannot demand the partial rescission of a contract.—*Marshal* v. *Sims*, p. 223.

4. A contract for the sale of cotton futures where neither delivery nor payment of price is contemplated, but only an adjustment of differences, is aleatory and void. The intent to wager may be implied, and circumstantial evidence is admissible to show its character.—*Succession of Condon*, p. 351.

Parent and Child.—The father is liable for damages occasioned by his minor child residing with him, or placed by him with other persons.—*Marrioneaux* v. *Brugier*, p. 257.

Railroad.—Where a citizen cannot prevent the application of the public streets, by lawful authority, to the use of a railroad for right of way, etc., he may insist that such streets be used in a manner least injurious to him.—*Laviosa* v. *Railroad*, p. 299.

Society.—Where an "unauthorised corporation," or "private society," is organized for the purpose of creating a common fund and providing a common tomb, and the members are to receive, in return for dues and fees, relief and treatment during illness, burial at death, and certain specified assistance to their widows and orphans when these last are left in necessitous circumstances: *held*, that the death of a member does not dissolve the association. The interest of a member in the assets, etc., of such a society, lapses with his death, and does not pass to his heirs.—*Sociedad* v. *Docurro*, p. 218.