FERDINAND JACQUES SULTE DIT VADEBONCŒUR..... } APPELLANT;

AND

THE CORPORATION OF THE CITY OF THREE RIVERS, SÉVÈRE DUMOULIN, AND JOSEPH GEORGE ANTOINE FRIGON.... } RESPONDENTS.

1883
*Nov. 17.
1885
*Jan'y 12.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR THE PROVINCE OF QUEBEC (APPEAL SIDE).

Powers of Local Legislatures—Regulation of the sale of liquor—License fees—British North America Act, 1867, *sec* 91, 41 *Vic., ch.* 3 (*P.Q.*)—*Intra vires—Mandamus.*

The Quebec License Act (41 Vic., ch. 3), is intra vires of the Legislature of the Province of Quebec. (*Hodge* v. *The Queen*, 9 App. Cas., 117, followed).

As this Act does not interfere with the existing rights and powers of incorporated cities, a by-law passed by the corporation of the city of Three Rivers, on the 3rd April, 1877, in virtue of its charter (20 Vic., ch. 129, and 38 *Vic.*, ch. 76), imposing a license fee of $200 on the sale of intoxicating liquors, is within the powers of the said corporation.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) (1), whereby the judgment of the Superior Court at Three Rivers, rendered by Mr. Justice McCord in favor of the appellant, was reversed.

The appellant, wishing to obtain a license under the Quebec License Act of 1878, (41 Vic., ch. 3), to keep a saloon, on the 31st March, 1880, presented a certificate signed by twenty-five electors, to the council of the

* PRESENT—Sir W. J. Ritchie, C.J., and Strong, Fournier, Henry and Gwynne, JJ.

(1) 5 Leg. News 331.

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corporation of Three Rivers for confirmation, as required by sec. 11 of said act, and on the 5th May, 1880, requested the officers of the corporation to deliver over to him the certificate of confirmation, which they refused to do, unless the appellant should pay $200 as required by the by-laws of the corporation.

On this the appellant petitioned for a writ of mandamus dated the 5th May, 1880, alleging that the respondents refused to deliver to him the certificate required by the License Act of 1878, ch 3; that the by-laws relied on were illegal, null and void; that the respondents had not the right, according to the act of incorporation or any other law, to enact such by-law; that the local legislature could not authorize the council of the corporation of the city of Three Rivers to enact a by-law, with the object of imposing a tax of two hundred dollars, to be paid by those who desired to obtain the certificate of confirmation, required by the 11th sec. of the said License Act of 1878; and that finally such by-laws have the effect of regulating commerce to wit: the sale of spirituous liquors, which is the prerogative of the federal parliament, and that the local legislature acted ultra vires of its powers.

By his petition the appellant asked for the issue of a peremptory mandamus to declare the said by-laws null and to order the officials of the council to sign and deliver the said certificate to the appellant.

The respondents met this petition and the writ:

First, by a demurrer alleging that the respondents had never refused to perform any act which they were bound to do by law, but, on the contrary, that even in the said petition it is alleged that they did not sign nor deliver the certificate asked for, because of the existence of a by-law to the contrary, which prevented them doing so, before the reception from the appellant of the sum of two hundred dollars; and that the principal object of

the petition is to obtain the voiding of said by-laws which cannot be done by a writ of mandamus.

Secondly, the respondents pleaded that the Parliament of Canada, in 1857, by 20 Vic., ch. 129, authorized the council to enact the by-laws in question, which are at present in force and obligatory for all; that the sum of two hundred dollars is a duty or fee which must be paid by those who wish to sell spirituous liquors.

And that the British North America Act does not abrogate the said authority, but on the contrary confirms it. Finally, the respondents pleaded *une défense au fonds en fait.*

The statutes and by-laws bearing on the case are reviewed in the arguments and judgments hereinafter given.

J. Doutre, Q.C., for appellant :

The by-law which is relied on was passed prior to 1875, when all existing statutes concerning the city of Three Rivers were repealed, and in lieu thereof 38 Vic., ch. 76, was substituted as a new charter. This charter contains an important departure from the provisions of the Act of 1857, especially on the subject of retailers of spirituous liquors; and for any by-law subsequent to the passing of this statute, the city council had no other powers or authority than those contained in sec. 101, and by that section they can levy a tax by means of a license, and no discriminating scale of taxes on the trades or professions is authorized

At that time, 38 Vic., ch. 5, amending the Quebec License Act, was in force, and the legislature, when granting that charter, was fully aware of the burdens it had already imposed upon retailers of spirituous liquors. It had no doubt the right to authorize the city of Three Rivers to increase these burdens to any extent. On the other hand, the provincial government,

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deriving from the liquor trade an important part of its revenue is interested in delegating its taxing powers with prudence and deliberation.

Otherwise some municipalities, by imposing excessive taxes, might, in effect, prohibit the trade and thereby deprive the government of an important source of revenue. Therefore the delegated powers ought to be strictly construed.

Then, can the city fare better with the provisions of the License Act of 1878, under which the appellant applied and obtained the certificate of confirmation, the refusal of which caused the original action and the subsequent appeals ?

I submit that the License Act of 1878 does in no way maintain or revive by-laws previously existing, whether conflicting or conforming with the new License Act.

Sec. 36 says : "On each confirmation of a certificate for the purpose of obtaining a license for the cities of Quebec and Montreal, the sum of $8 is paid to the corporation of each of those cities ; and to other corporations, for the same object within the limits of their jurisdiction, a sum not exceeding twenty dollars may be demanded and received."

Sec. 37 : "The preceding provision does not deprive cities and incorporated towns of the rights which they may have by their charters or by-laws." This last provision did not exist in 34 Vic., ch. 2. It has been shown that the charter of 1875 did not contain any provision authorizing the council to single out the tavern keepers and impose upon them an exceptional tax, either directly or by means of a license. If it was not within its jurisdiction to impose such a tax, it is very doubtful if it could make a by-law to collect $20, for a confirmation of certificate, under the 36th sec of the License Act of 1878. However, such by-law is not in existence, and

it is useless to enquire into the extent of a power which has not been exercised.

Now, as to the constitutional question:—

The case raises a broader question than those discussed so far. Supposing the charter of 1857 ample enough to cover the by-law of 1871, could any legislation be had from the provincial legislature after the constitutional Act of 1867, to authorize a by-law to prohibit or regulate the liquor trade, beyond police regulations, such as ordering the closing of bar-rooms at certain hours, on Sundays, or on election days?

The maintenance of the charter of 1857 was protected by the 129th sec. of the British North America Act of 1867. As long as the city of Three Rivers was satisfied with that charter, the new constitution of Canada could not affect it. But as soon as they demanded and obtained the repeal of that charter, they fell under the provisions of the constitutional act, which placed within the power of the federal authority only the regulation of the liquor traffic, as an incident of the regulation of trade generally.

By the Consolidation Act of 1875, 38 Vic., ch. 76, sec. 1 (P. Q.), all the statutes concerning the city of Three Rivers were unqualifiedly repealed. From that moment, the legislature of Quebec could not delegate powers which it did not itself possess, such as prohibiting or impeding the sale of intoxicating liquors, otherwise than making regulations for the government of saloons, licensed taverns, &c., and the sale of liquors in public places, which would tend to the preservation of good order and prevention of disorderly conduct, rioting, or breaches of the peace. Going further was to assume to exercise a legislative power which pertains exclusively to the Parliament of Canada (1). So held, by

(1) Ritchie, C. J., in *Regina* v. *The Justices of Kings.* 15 N. B. Rep. (2 Pugsley) 535.

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the Supreme Court of Canada, in *Mayor of Fredericton* v. *the Queen* (1). So held, by the Privy Council, in *Russell* v. *Queen* (2).

These considerations, as well as those previously insisted upon, seem to have been overlooked by the Queen's Bench.

Incorporating and regulating municipal bodies, must be understood to be done in conformity with the general provisions of the constitutional act. The provincial legislatures cannot authorize municipalities to do things which the legislatures themselves could not do. For instance, the local legislatures could not authorize a municipality to organize or drill militia, a thing which they could not do themselves.

As regards the raising of a revenue for municipal purposes, no doubt they could do it always within the same limit, and it was plainly done, and exhausted by 38 Vic., ch. 76, sec. 101, sub-sec. 7, which empowered the city of Three Rivers to levy a business tax on the tavern keepers, either directly or by means of a license. Beyond the powers contained in that section, the legislature of Quebec authorized the respondent if they had jurisdiction from their charter, to levy a license fee, to the extent of $20, but no more.

In passing that License Act of 1878, the legislature of Quebec was conscious of its power, as is manifested by the authority granted to Quebec and Montreal to levy a moderate license fee of $8 and to other municipalities, having jurisdiction from their charter, to impose a license fee up to $20 The legislature evidently thought that going further would encroach upon federal authority, and amount to partial prohibition or to regulation of traffic.

N. L. Denoncourt, Q.C., (*J M. McDougall* with him) for respondents:

(1) 3 Can. S. C. R. 505. (2) 7 App. Cas. 829.

The Act which created the respondents a municipal corporation gave them the power to enact the by-laws of the 30th January, 1871, and of the 3rd April, 1877, and this last act has not been in any way repealed by the License Act of 1878 of the Quebec legislature, and is not *ultra vires* (1).

As to the constitutional question, the British North America Act, by the sub-sec. 8 of sec. 92, gives to local legislatures the right to pass a prohibitory liquor law for the purposes of municipal institutions.

The City of Fredericton v. *The Queen* (2) and *Russell* v. *The Queen* (3) decided that the Parliament of *Canada* had the power to legislate on traffic of intoxicating liquors; but it is not said that municipalities had no more the right to impose taxes on persons wishing to sell liquors as they had before. So these decisions do not affect in any way the respondents in this present appeal. [The learned counsel also relied on the reasons given by Mr. Justice Ramsay in the court below (4).]

RITCHIE, C.J.:—

No matter of fact comes up before this court. The whole case consists in enquiring whether the corporation and its officers had the right to exact $200 before delivering their certificate of confirmation of the elector's certificate.

I think the appeal should be dismissed. I cannot discover that any of the rights conferred on the corporation of the city of Three Rivers are superseded or taken away by the Quebec License Act of 1878, or any other Act. On the contrary, by sec. 255 of the Quebec License Law of 1878, it is enacted, "But the dispositions of this act shall in no way affect the rights and powers belonging to cities and incorporated towns by virtue of their

(1) See secs. 37 and 255, 41 Vic., ch. 3 and sec. 129 of B. N. A. Act, 1867.
(2) 3 Can. S. C. R. 505.
(3) 7 App. Cas. 829.
(4) 5 Leg. News 332.

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charters and by-laws, and shall not have the effect of abrogating or repealing the same;" showing how careful the Legislature was to make it apparent beyond all doubt, that the existing rights and privileges of incorporated cities were not to be interfered with.

The case of *Hodge* v. *Queen* (1), just decided by the Privy Council, covers the constitutional question raised.

STRONG, J.:—

I agree entirely with the judgment delivered by Mr. Justice Ramsay in the Court of Queen's Bench, determining that the Quebec License Law of 1878 does not repeal or in any way affect the powers conferred on the city of Three Rivers by its Act of incorporation; and that the by-law now in question requiring the payment of a license fee of $200 by tavern keepers, was authorized by that Act. If the Act of incorporation had been passed since Confederation, it would have been *intra vires*, as an exercise of the police power, which, by the British North America Act, is vested in the Local Legislatures.

As Mr. Justice Ramsay has so fully and ably considered the case, I do not feel called upon to say anything further on this head. *Hodge* v. *The Queen* decided by the Privy Council, since the judgment of the Court of Queen's Bench was delivered, having put an end to the question, any further discussion of it is uncalled for. I desire to add, however, that the powers with which the corporation is invested by the Act 37 Vic., ch. 129, sec. 37, clause 14 would, if now for the first time conferred upon the municipality by the Local Legislature, be valid under the British North America Act, sec. 92, sub-sec. 9, as an exercise of the power to raise money, by means of tavern licenses, for municipal

(1) 9 App. Cas. 117.

purposes. I am of opinion that the appeal should be dismissed with costs.

FOURNIER, J. :—

I am also of opinion that this appeal should be dismissed. The constitutional question has now, to my mind, been definitely settled by the decision of the Privy Council in the case of *Hodge* v. *The Queen* (1). As to the legality of the by-laws, I am of opinion that they are continued in force by the statute, and that the corporation, by virtue of its Act of incorporation, had power to pass the by-laws in question.

HENRY, J. :

The city of Three Rivers was incorporated by an Act of the late Province of Canada (20 Vic., ch. 129), by which it received power to raise funds for the expenses of the city, and for improvements, by the imposition of taxes, including those on proprietors of houses for public entertainment, taverns, coffee houses and eating houses, and on retailers of spirituous liquors, &c. The council of the city was empowered to make by-laws for restraining and prohibiting "the sale of any spirituous, vinous, alcoholic and intoxicating liquors, or for authorizing such sale, subject to such restrictions as they may deem expedient for determining under what restrictions and conditions, and in what manner, the revenue inspector * * * shall grant licenses to merchants, traders, shop-keepers, tavern keepers and other persons, to sell such liquors; for fixing the sum payable for every such license—provided that, in any case, it shall not be less than the sum which is now payable therefor by virtue of the laws at present in force; for regulating and governing all shop-keepers, tavern-keepers and other persons selling such liquors by retail; and in what

(1) 9 App. Cas. 117.

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places such liquors shall be sold, and in such manner as they may deem expedient to prevent drunkenness, &c."

That Act was substantially confirmed by section 129 of the British North America Act—leaving it to be continued, repealed, altered or amended, as therein provided.

By a by-law passed by the council of the city in 1871, a license fee of one hundred dollars was imposed on all licensees to keep an inn, hotel, tavern or public house, for the selling or retailing of any spirituous, vinous, alcoholic or intoxicating liquors; and such license was not to be issued until such sum, and all fees, should be paid.

In 1875 the Legislature of the Province of Quebec passed an Act amending and consolidating the Act of incorporation of the city of Three Rivers, and several Acts in amendment thereof, and re-enacted the provisions of that Act in relation to licenses, tavern-keepers, &c.; leaving the same powers with the council of the city as those conferred by the Act of incorporation in relation to by-laws.

Under the provisions, and by virtue of the power given by the latter Act, the council, by a by-law passed in 1877, raised the license duty from $100 to $200.

It is objected by the appellant that the legislation of the Province of Quebec in 1875 was *ultra vires*, on the ground that by the British North America Act the legislative power to deal with the subject in question was vested in the Parliament of Canada, and not in the Legislature of the Province of Quebec. If that objection is well founded, he would be entitled to our judgment. He refused to pay the sum provided by the later by-law of the council, and if the council had not the power to impose the increased duty under the Act of 1875, before mentioned, they got it in no other way.

I am and, I may say, always have been, of the opinion that the British North America Act, if read in the light which a knowledge of the subject before the passage of that Act would produce, plainly gives the power of legislation to the Local Legislatures in respect of such licenses. I so gave my opinion in the case of *Fredericton* v. *The Queen* (1), argued and decided in this court; and I think it better to refer to my judgment in that case for some of my reasons than to repeat them at length here. It is true that my views expressed in my judgment in that case, as to "The Canada Temperance Act, 1878," were not shared by my learned brethern, nor by the Judicial Committee of the Privy Council; but the judgment of this court in that case, and that of the Privy Council in *Russell* v. *The Queen* (2), contain nothing, or but little, in conflict with the proposition that the Legislature of the Province of Quebec had the exclusive power to deal with the subject-matter in question; and that view is fully sustained by the judgment of the Privy Council in a later case, *Hodge* v. *The Queen* (3).

By sec. 92 of the British North America Act the Local Legislatures were given the exclusive power to legislate in regard to "shop, saloon, tavern, auctioneers and other licenses, in order to the raising of a revenue for provincial, local or municipal purposes," and also as to "municipal institutions." The power over those subjects is therein stated to be exclusive, and when we find that expression used we would hardly think it necessary to examine other parts of the Act with any expectation of finding a counter provision—the power is not only given expressly but exclusively. Did parliament mean what it said, or did it so provide, and intend that the provision should be overridden and controlled, and rendered totally inoperative? I cannot come to

(1) 3 Can. S. C. C. 565.
(2) 7 App. Cas. 829.
(3) 9 App. Cas. 117.

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such a conclusion. The uncontrolled power is thus given to the Local Legislatures to raise a revenue for either of the purposes named; it is given as an exclusive right, and unless modified by some one of the enumerated powers in sec. 91, I maintain that the Parliament of Canada has no power to interfere with that right for any object or purpose, or for any reason or consideration whatever. I am not forgetful of the substance and importance of the last clause of sec. 91, which provides that "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 the subjects by this Act assigned exclusively to the legislatures of the provinces." Can we, however, conclude that the framers of the Act and Parliament meant, by a clause of such a general character, intended principally to cover unforeseen difficulties, to completely override and control such a plain enactment as the following:

> In each province the legislature may exclusively make laws in relation to shop, saloon, tavern, auctioneer and other licenses, in order to the raising of revenue for provincial, local, or municipal purposes.

The object, as stated, was to enable each province to raise a revenue. Under the provisions as to "municipal institutions" the Local Legislatures derive the power to make laws to regulate shops, saloons and taverns. These provisions are explicit as well as comprehensive, and exclude every other legislation in the Dominion as to those subjects; unless, indeed, under the concluding clause of sec. 91, just quoted, they are subordinated to the power of legislation given to the Dominion Parliament as being within one or more of the classes of subjects enumerated in sec. 91. The Act most pointedly and effectually excludes and prohibits the

interference of the Dominion Parliament with the exclusive powers of the local legislatures as to the matters in question, except (and only in that case) the subject-matter comes within one of the classes of subjects mentioned and enumerated in sec. 91. The first part of sec. 91 gives power to the Parliament of Canada.

To make laws for the peace, order and good government of *Canada*, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces.

The right to make laws for the peace, &c., of Canada, is as fully restricted to such subjects as do not come within the classes of subjects assigned to the legislatures of the provinces, as language can make it. The subject of licenses for shops, taverns, &c., are exclusively so given, and therefore the right to make laws for the good government of Canada does not include power to interfere with local legislation. Here, then, the power is limited; and any substantial interference with the functions assigned to the legislatures of the provinces, is excepted from the power conferred by the general terms of the preceding part of the clause. It was, to my mind, the clear intention of the clause, and of those who framed it, that the exclusive powers given to the legislatures of the provinces should not be affected; but that, outside of and apart from them, the power of the Parliament of Canada was to be unlimited.

Legislation by that Parliament, under the power conveyed by that clause, conflicting with Acts of the local legislatures under the powers exclusively given by sec. 92, I consider *ultra vires*.

In the judgment of the Privy Council in *Russell* v. *The Queen* (1), I find this sentence:

It was not, of course, contended for the appellant that the Legislature of New Brunswick could ha e passed the Act in question,

(1) 7 App. Cas. 829.

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which embraces in its enactments all the provinces; nor was it denied, with respect to this last contention, that the Parliament of Canada might have passed an Act of the nature of that under discussion, to take effect at the same time throughout the whole Dominion.

If not denied when such a proposition was stated, it is the same as if it were alleged to have been admitted. If so admitted by the counsel at the argument, there was but little left requiring the judgment of the august tribunal considering the case. The result was therefore, only what would be reasonably expected.

I am always ready to give such a construction to that concluding clause of section 91 as will give it all the effect it was intended to have and it is legitimately entitled to, but I cannot do so to the extent of nullifying other provisions so unambiguous and explicit as those of sec. 92, to which I have referred. My learned brethren differed from me in the case of *Fredericton* v. *The Queen* (1), on the ground that the right to legislate as to "trade and commerce" being vested in the Parliament of Canada, the local legislatures could not enact the same provisions as are found in the "Canada Temperance Act, 1878," and consequently the power must be in the Canadian Parliament to pass that Act. That was, however, a result and conclusion I felt unable to arrive at or appreciate, for the reasons given in my judgment in that case. The same questions involved in *Fredericton* v. *The Queen* came subsequently, in the case of *Russell* v. *The Queen* before the Judicial Committee of Her Majesty's Privy Council. The grounds taken by my learned brethren were neither adopted nor repudiated in the judgment in the latter case, but the same result on other grounds was reached, and the constitutionality of the "Canada Temperance Act, 1878," established, on grounds which, in my opinion, do not

(1) 3 Can. S. C. R. 565.

touch the issue before us in this case. It has been argued that because a prohibitory Act of the Legislature of any of the provinces would be an interference with "trade and commerce," the power to deal with the regulation of which was given to the Parliament of Canada, such an Act would be *ultra vires;* and therefore the power to pass such an Act must necessarily be in that parliament. I cannot adopt that proposition, because I think, that independently of other reasons, such legislation would, and must, necessarily override and destroy the provision intended to enable the local legislatures to raise the revenue, as in sub-sec. 9 of sec. 92. No doubt, it was fully understood and agreed upon, by those who considered the subject of the confederation of the four provinces, that certain means for raising a revenue for the purposes named in that sub-section should be given to the local legislatures. Some of the provinces were then raising thousands of dollars by revenues from licenses; and it must be assumed that such means of revenue were intended to be continued. If, therefore, the Parliament of Canada passed a prohibitory Act, it would tend to sweep away the revenues intended to be raised and expended in each of the provinces. No one could or would object to the passage of such an Act, if rights incontestably vested in the local legislatures, as to revenue for the purposes named, were not interfered with. The learned judges of the Privy Council hesitated to ascribe the power to pass such an Act to the right to legislate for the "regulation of trade and commerce," possibly considering that prohibitory legislation might not be "regulation." Suppose, under what is termed the local option provisions of the Canada Temperance Act, 1878, the prohibitory principle should be adopted by a large number of the districts in a province, there would necessarily be a comparative

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loss of local revenue. That loss would be caused by means of Dominion legislation, and without any provision for making up the loss to the province. Taking the whole of the British North America Act, into consideration, with the knowledge of the state of matters existing in the four confederated provinces at the time of confederation, can it be fairly and reasonably contended that such a result was intended by the framers of the constitution? As one of those so engaged, as well as in the preparation of the British North America Act, I can arrive at no such conclusion. My decision in this case, and the views I have expressed, are, however, the result of my construction of the words and phraseology of the Act itself.

It was claimed that the License Act of 1878 limited the power of the corporations by the provisions of sec. 36. Sec. 37, however, enacts that "The preceding provision does not deprive cities and incorporated towns of the rights which they have by their charters or by-laws."

For the reasons given, I think the appeal should be dismissed, and the judgment below confirmed, with costs.

GWYNNE, J.:

By the Act 20 Vic., ch. 129, passed by the parliament of the late Province of Canada, the city of Three Rivers was incorporated, and by section 36 sub-sec 7 of that Act it was enacted, that in order to raise the necessary funds to meet the expenses of the said city, and to provide for the several necessary public improvements in the said city, it should be lawful for the council of the city, among other taxes, to impose certain duties or annual taxes on the proprietors or occupiers of houses of public entertainment, taverns, coffee houses and eating houses, and on all retailers of spirituous liquors,

&c.; and by the 37th section of the Act the said council was empowered to make by-laws:

For (among other things) restraining and prohibiting the sale of any spirituous, vinous, alcoholic and intoxicating liquor, or for authorising such sale, subject to such restrictions as they may deem expedient for determining under what restrictions and conditions, and in what manner, the Revenue Inspector of the district of Three Rivers shall grant licenses to merchants, traders, shop-keepers, tavern-keepers, and other persons to sell such liquors, for fixing the sum payable for every such license, provided that in any case it shall not be less than the sum which is now payable therefor by virtue of the laws at present in force. For regulating and governing all shop-keepers, tavern-keepers, and other persons selling such liquors by retail, and in what places such liquors shall be sold in such manner as they may deem expedient to prevent drunkenness, and for preventing the sale of any intoxicating beverage to any child, apprentice or servant.

This act was in force when the British North America Act was passed, which, by its 92nd section, items 8 and 9, enacts, that in each province thereby constituted the legislature may exclusively make laws relating to municipal institutions in the province, and to shop, saloon, tavern, auctioneer and other licenses, in order to the raising of a revenue for provincial, local or municipal purposes; and by its 129th section, that, except as otherwise provided by the Act, all laws in force in Canada, Nova Scotia or New Brunswick, at the Union, should continue in force in Ontario, Quebec, Nova Scotia and New Brunswick respectively, as if the union had not been made, subject, nevertheless (except with respect to such as are enacted by or exist under Acts of the Imperial Parliament) to be repealed, abolished or altered by the Parliament of Canada, or by the legislature of the respective provinces, according as the matter of each such Act should be subjected by the British North America Act to the authority of parliament, or to that of the provincial legislatures. The effect, then, of the 129th section, was to continue in force all the provisions of the Act 20th Vic., ch. 129, incorporat-

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ing the city of Three Rivers, except in so far as provision to the contrary was made, if provision to the contrary was made, by the British North America Act. While this Act was so continued in force the council of the city passed a by-law in 1871, whereby it was enacted that no hotel keeper or other person could obtain a license to keep an inn, hotel, or tavern, or any public house for the selling and retailing any spirituous, vinous, alcholic or intoxicating liquor, in the city of Three Rivers, before conforming to all the provisions of the law which regulates the obtaining such license, nor until he shall have obtained a certificate, as required by law, which certificate shall not be granted by the said council until such hotel keeper or other person shall have paid to the secretary treasurer of the said council the sum of one hundred dollars over and above all duties and fees on such license. Now, this by-law having for its authority only the above quoted sections of 20th Vic., ch. 129, could only be a valid by-law in the event of such sections being continued by the 129th section of the British North America Act, which section only continued the above sections of 20 Vic., ch. 129, if there was no provision to the contrary in the British North America Act, and in that case the right to repeal, abolish, and alter the provisions contained in the above sections of the 20th Vic., ch. 129, equally with all other sections of that Act as had been continued by the 129th section of the British North America Act, would seem naturally to fall within the jurisdiction of the provincial legislature under the clause of the 92nd section, which places under the exclusive jurisdiction of the legislatures of each province, the power to make laws in relation to municipal institutions in the province. Acting on this assumption, the Legislature of the Province of Quebec, in 1875, passed the Act 38 Vic., ch. 76, for amending and consolidating

the act of incorporation of the city of Three Rivers and the different Acts amending that Act, and by the 74th and 75th sections of this Act, re-enacted in substance and almost *verbatim* the provisions contained in the above 37th section, and by the 101st section, sub-sec. 7, the precise provision contained in the above 36th section of 20 *Vic.*, ch. 129.

Now, is there anything in the British North America Act which makes it to have been *ultra vires* of the Legislature of the Province of Quebec to re-enact, as they have done by 38 Vic., ch. 76, the substance of the above sections of 20th Vic, ch. 129, regulating the conditions upon which licenses to sell spirituous liquors may be granted in a municipality by the Revenue Inspector and for regulating the conduct of the licensed dealers therein? This question, as it appears to me, must be answered in the negative. I cannot doubt that by item No. 8 of sec. 92, which vests in the provincial legislatures the exclusive power of making laws in relation to municipal institutions, the authors of the scheme of confederation had in view municipal institutions as they had then already been organized in some of the provinces, and that the term as used in the British North America Act, unless there be some provision to the contrary in sec. 91 of the Act, comprehends the powers with which municipal institutions, as constituted by Acts then in force in the respective provinces, were already invested for regulating the traffic in intoxicating liquors in shops, saloons, hotels and taverns, and the issue of licenses therefor, as being powers deemed necessary and proper for the beneficial working of a perfect system of local municipal self-government Unless, then, there be some provision in the British North America Act to the contrary, the Legislature of the Province of Quebec had full power, in any Act passed by it creating a

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municipality, or in any Act amending and consolidating the Acts already in force incorporating the city of Three Rivers, to insert the provisions in question here which are contained in the 74th, 75th and 101st sections of 38 Vic., ch. 76.

It seems to be supposed that the judgment of this court in the *City of Fredericton* v. *The Queen* is an authority to the effect that since the passing of the British North America Act it is not competent for a provincial legislature to restrain or prohibit, in any manner, the sale of any spirituous liquors, and that therefore the Legislature of the Province of Quebec could not invest the corporation of the city of Three River with the powerss purported to be vested in them by the 74th and 75th sections of the Act 38 Vic., ch. 76, and that the Dominion Parliament alone could enact the provisions contained in the 75th section. The effect of this contention, if sound, would be, that instead of the Provincial Legislatures having exclusive power to make laws in relation to municipal institutions in the province, which the B. N. A. Act they are declared to have, and which by the authors of the scheme of Confederation intended they should have, the joint action of the Dominion Parliament and of the legislature of any province would be necessary to invest municipal corporations in that province with powers which have always been considered to be necessary and proper for the effectual working of that system of local municipal self-government which prevailed at the time of Confederation being agreed upon. But the *City of Fredericton* v. *The Queen* (1), raised no such question, nor is any such point professed to be decided by our judgment in that case. There was no question there as to the right of a provincial legislature to insert, in an Act passed by it in relation to municipal institutions, such a provision as that in question here.

(1) 3 Can. S. C. R. 505.

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What was decided in the *City of Fredericton* v. *The Queen* was, that the Provincial Legislatures had not jurisdiction to pass such an Act as "The Canada Temperance Act of 1878," and that the Dominion Parliament alone was competent to pass it; and of this opinion, also, was the Judicial Committee of the Privy Council in *Russell* v. *The Queen* (1); but there was nothing whatever in the decision calculated to call in question the right of the provincial legislatures to insert, in all acts in relation to municipal institutions, such provisions as those in question here, which relate to the raising of revenue from the issue of tavern licenses, and to the establishment of regulations of a purely local and municipal character for governing the conduct of the parties licensed, which have always been deemed to be usual, and indeed proper and necessary regulations, to be established and enforced in all well-ordered municipalities, and essential to the efficient working of a system of local municipal self-government; and which, being of a purely local, municipal, private and domestic character, do not come within the true meaning of the term "regulation of trade and commerce" as used in section 91, which term, as there used, is to be construed as applying to subjects of a general, public and quasi national character, in which the inhabitants of the Dominion at large may be said to have a common interest, as distinct from those matters of a purely provincial, local, municipal, private and domestic character, in which the inhabitants of the several provinces may, as such, be said to have a peculiar and local interest. The by-law, therefore, of the city of Three Rivers, passed in 1877, increasing the license fee as established by the by-law of 1871, from $100 to $200, was authorized by the Act 38 Vic. ch. 76, and there is nothing in the License Act, 41 Vic. ch. 3, depriving the corporation of the powers vested in it by

(1) 7 App. Cas. 829.

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38 Vic. ch. 76. On the contrary, all those powers are, by the 37th sec. of 41 Vic., expressly preserved intact. The plaintiff, therefore, has failed to show any right to have had granted to him the certificate which he demanded of the corporation officers, he having failed to pay the $200 established by the by-law of the city then in force, as the fee necessary to be paid to entitle him to such certificate.

If a corporation, under color of passing a by-law in virtue of the powers vested in it, should, for the purpose of effecting a total prevention of the trade in spirituous liquors in the municipality, pass a by-law establishing such an extravagant license fee as would have the effect of total annihilation of such trade within the municipality, the question of the validity of such a by-law will be open to consideration upon a proceeding raising that question. No such question is involved in the present case, and it will be time enough to entertain it if and when it shall arise.

Appeal dismissed with costs.

Solicitor for appellant: *M. Honan.*

Solicitor for respondents: *N. L. Denoncourt.*