

is important that legislation should be left to those bodies, to which, by the constitution, it is entrusted; and if we follow that rule, it does seem to me that, except, so far as the Territories are concerned, we should not undertake to legislate on the subject here.

Sir JOHN THOMPSON. In reply to the hon. member from Norfolk (Mr. Tisdale), I must say that when that hon. gentleman was explaining what the law was, I presumed he was referring to the Dominion Statute. With regard to the Ontario law my recollection is—and I speak subject to correction, for my recollection is not distinct as to its provisions—that the Province of Ontario has legislated on this question with reference to the preservation of useful birds and not in any way for the purpose of preventing cruelty to animals. With regards to remarks of the hon. member from Bothwell, I feel, with all deference to his arguments, as positive that this matter is within our jurisdiction and not within the jurisdiction of the Local Legislatures, as if we were dealing with the crime of high treason. Now, the powers the Provincial Legislatures possess are not, as he quoted them from memory, the imposition of fines, penalties, or imprisonment for the enforcement of any law of the Province, but “for the enforcement of any law of the Province made in relation to any matter coming within the class of subjects enumerated” in the section the hon. gentleman referred to, and none of the matters enumerated have any bearing on this question any more than they have on any other branch of the criminal law. It is true the creation and establishment of municipal institutions are within the province of the Provincial Legislatures alone, and the hon. gentleman argues from that that everything which tends to the peace, order, quietness and security of a municipality comes within the control of the Local Legislature. If that were so, every offence against the law would be exclusively within the control of the Provincial Legislatures. But I take it, unless it immediately concerns the creation or maintenance of municipal institutions, everything which is an offence, unless it is an offence against a provincial statute, made in relation to those subjects, is a matter only for our jurisdiction. If I am mistaken in my view of the provisions of the Ontario Act, and if the Ontario Legislature has deemed it wise to legislate to prevent cruelty to birds, I would ask the hon. gentleman why it is that a provision of that kind, which he deems salutary for Ontario should not be extended by us to the rest of Canada if we have the power to do so; and as to the question of power I have made my argument. As to his argument that we are infringing on provincial rights because we are dealing with wild animals which may be found on the property of a Province, he is a little wide of the subject. We are not dealing with the question of property. We are making it an offence to a man to act cruelly to his own property, and we have the right to say that a man shall not ill-treat his horse, under the penalty of being sent to the penitentiary, just as we have the right to declare that he shall not injure his wife or one of his children under the penalty we choose to inflict. We might as well argue in the latter case that we are disturbing the relations between husband and wife, as to argue in the former that we are interfering with the rights of property in the Provinces. We are not dealing with any question of property at all, and surely we have the right to say that a man shall not be cruel to his horse just as we have the right to say that he shall not be cruel to his own family.

Mr. TISDALE. I have looked into the law of Ontario and I do not think the hon. the Minister of Justice has quite understood one of the points I made. My point is that the Province of Ontario having passed a law prohibiting cruelty to animals, and the Dominion Legislature having tacitly conceded that such law is within the jurisdiction of the Province, we have not the right now to legislate on the same

Mr. MILLS (Bothwell).

subject for the Province of Ontario. If any of the other Provinces have not legislated on this subject, we might do so as regards them, but as regards the Province of Ontario that question is settled. The Ontario law is:

“It shall not be lawful to shoot, destroy, wound or injure, or to attempt to shoot, destroy, kill, wound or injure any bird whatsoever save and except eagles, falcons, hawks, owls, wild pigeons, black birds, king fishers, crows, jays, English sparrows and ravens and the birds specially mentioned in “The Act for the protection of game and fur-bearing animals.

“It shall not be lawful to take, capture, buy, sell, expose for sale, or have in possession any bird whatsoever, save the kinds hereinbefore or hereinafter excepted, or to set wholly or in part any net trap, springs, snare, cage or other machine.

“It shall not be lawful to take, injure, destroy or have in possession any nest, young or eggs of any bird whatsoever.”

With the exception of certain birds which are named, I maintain that it is an impossibility under the law of Ontario to be cruel to these birds, because you cannot catch them or shoot them or trap them or even have them in your possession, and therefore I contend that there is no necessity for this measure unless it is from a sentimental view desired to make further provision for that which is already provided. I do not profess to be an authority on provincial jurisdiction further than this, that, any Province having passed such laws, and those laws not having been disallowed, this Government has conceded that the subject is a matter of provincial jurisdiction.

Mr. WELDON (St. John). I cannot agree with my hon. friend from Norfolk (Mr. Tisdale), because, if his view is correct, the construction of the British North America Act would depend on which Legislature got first in the race. The question is, in which Legislature is the power vested, and that is a rather important question. The jurisdiction must be either in the Dominion Parliament or in the Provincial Legislatures. It cannot be in both. I must say that the argument of the Minister of Justice commends itself to my mind, that this is an offence coming within the criminal law, which is within the jurisdiction of this Parliament. A question might be raised that it is a matter more of a local and private nature, and that it therefore comes within the purview of the Provincial Legislatures, but it seems to me that, this Legislature being seized of the criminal law and having exclusive jurisdiction over that law, would have the right to make this an offence. I therefore think that the jurisdiction is rather within the Parliament of Canada than the Provincial Legislatures. Still, it is possible that a conflict might arise if you have the two Acts on the Statute book, and it is a matter which should be carefully considered. I am rather inclined to be in favor of this Bill, but I would like to see the last line in regard to wild animals and wild fowl eliminated from the section.

Mr. MULLOCK. Sub-section three of section three purports to give one person the right to destroy another person's property. I fail to see how this Parliament can assume to interfere with any man's property in that way. To give, even through the medium of justices of the peace, the right to one man to destroy another man's property is, to that extent, robbing a man of his property. It is assuming that this Parliament can indirectly or directly take from one person and give to another. There is no pretence, in the language of the last clause, that it is in any way brought within the criminal law. Jurisdiction is not attached to the clause in any way through the medium of the criminal law, so it is simply a bare proposition that this Parliament has the power to divest a man of this property in favor of another man, and, therefore, I think that the last clause, which the Minister commended to the House when the Bill was up for the second reading, and which has some merits in itself, is really contrary to the interests of the public.

Mr. BROWN. Having somewhat exhaustively discussed the subject on the second reading of the Bill, I do not propose to occupy the attention of the committee for more