

POWERS OF PROVINCIAL LEGISLATURES.

by the Province of Canada, of delegating a right to municipal institutions of passing by-laws and of enforcing obedience to such by-laws, by therein imposing punishment on offenders against their provisions, is under s. 92, § 8, vested in the Provincial Legislature of Quebec. Further that there really is no conflict with the exclusive power possessed by the Federal Parliament over the Criminal Law and Procedure in Criminal matters, as the offence charged, to wit, playing cards with betting, is not an offence under the Criminal Law, but is merely an act prohibited under what may be called police regulations, which form no part or portion of the Criminal Law of the Dominion.

Apparently there is a good deal of force in the line of argument adopted in defence of the section of the statute attacked, but it is not the less true that its validity rests entirely upon the meaning to be attached to, and the extent of the words "The Criminal Law, except the constitution of Courts of Criminal jurisdiction, but including the Procedure in criminal matters," occurring in s. 91, § 27 of The British North American Act, 1867.

It becomes necessary, therefore, in the first place to establish the meaning of the words "The Criminal Law," and "The Procedure in criminal matters."

No difficulty can be experienced in arriving at the conclusion that the Criminal Law is that portion of the law relating to crimes. Consequently the investigation becomes narrowed down into an inquiry as to what is a crime?

It would almost seem as if the Legislature of Quebec were of opinion that the Criminal Law does not apply to any minor non-indictable offence—that in fact all offences punishable solely on summary conviction do not fall within the domain of Criminal Law, and are not recognized as crimes.

According to the definition of Blackstone, "A crime or misdemeanor is an act committed or omitted, in violation of public law. This general definition comprehends both crimes and misdemeanors; which, properly speaking, are merely synonymous terms; though, in common usage, the word 'crimes' is made to denote such offences as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentler name of misdemeanors only."*

Mr. Sergeant Stephens in his Commentaries gives the following definition: "A crime is the violation of a right, when considered in reference to the evil tendency of such violation as regards the community at large."†

Mr. Justice Littledale in *Mann v. Owen*, 9 B. & C. 602, thus expressed himself: "The proper definition of the word 'crime' is an offence for which the law awards punishment."

In the case of *Hearne v. Garton*, 2 E. & E. 64, it was held that the provision of the Great Western Railway Act, 5 & 6 W. 4 c. 107, enacting "that every person who shall send or cause to be sent by the said railway any vitriol, or other goods of a dangerous quality, shall distinctly mark or state the nature of such goods on the outside of the package, or give notice in writing to the servant of the Company with whom the same are left, at the time of sending, on pain of forfeiting £10 for every default, or being imprisoned," made such sending of dangerous goods without notice a criminal offence—and Mr. Justice Crompton there said (p. 76): "I do not think that the act is merely for the protection of the railway; it is also for the protection of the public; and it makes the sending a crime, not merely in form, but in reality, by affixing a punishment to it."

In the case of *Attorney General v. Radloff*, 10 Ex. 84, which was an information in the Exchequer to recover penalties for smuggling tobacco, the whole question turned upon the point whether such information was a criminal proceeding, and the Court, composed of Pollock, C.B., Parke, Platt and Martin, BB., was equally divided. Pollock, C.B., and Parke, B., being of opinion that it was a criminal proceeding, and Platt and Martin, BB. considering it a civil matter. Parke, B. made use of the following expressions: "Next, is this a criminal proceeding by which the defendant is charged with the commission of an offence punishable by summary conviction? As to its being a criminal proceeding: an information by the Attorney General for an offence against the revenue laws is a criminal proceeding—it is a proceeding instituted by the Crown for the punishment of a crime—for it is a crime and an injury to the public to disobey statute revenue law; and accordingly the old form of proclamation, made before the trial of information for such offences, styles these offences misdemeanors."

Pollock, C.B. said: "In the first place I am of opinion that the proceeding in this Court to recover penalties on an information filed by him on behalf of the Crown, is a criminal proceeding. . . . The only remaining question then is—is it a criminal offence? I should be sorry if I could bring myself to entertain any doubt about it. I think it is a very grave offence against the public. I cannot distinguish, either in morals or law, between cheating the state and cheating a private individual. . . . I am of opinion, therefore, that it is a criminal offence. It is very true that it is not punishable in the ordinary way by indictment; but it is punishable by fine, and the fine may be imposed on summary conviction. Therefore, this being, in my judgment, an offence punishable on summary conviction, and the question arising in a criminal proceeding, I am of opinion that the defendant was not a competent witness, and was properly rejected."

* Bl. Com. p. 5, (ed. 1769.)

† Stephen's Com. p. 77.