

quite recently) the criminal law was put in motion solely by private prosecutors and at their expense. The former requirement was, therefore, considered necessary to ensure the punishment of offences before any person injured thereby could seek redress by civil proceedings; that in this province a different system has always existed; and the enactment of the Code was, therefore, only a somewhat tardy application of the maxim "*Cessante ratione legis, cessat ipsa lex.*"

It was further argued that sec. 534 is not an interference with civil rights within the province in the true sense of those words, and is, therefore, not within the mischief which was being guarded against by sub-sec. 13 of sec. 92.

It was contended that it is only the repeal of a prohibition and restraint on civil proceedings no longer deemed to be necessary in the public interest. It was asked, could the provincial legislature have effectually passed such an enactment? And this question being answered in the negative (as it must be), then it was said it must be within the jurisdiction of the federal Parliament, as it certainly is within the power of one or the other.

It was long ago decided by the Privy Council that if a matter comes primarily within the provisions of sec. 91 of the B. N. A. Act, the legislation in respect thereof is not invalidated because it may to some extent affect those subjects which, by sec. 92, are reserved exclusively to the provincial jurisdiction.

The question, however, seems to have been disposed of by a Divisional Court in *Gambell v. Heggie*, 6 O. W. R. 184. The point was there under consideration, though no question was raised as to the validity of sec. 534. . . . This is, perhaps, not an express and binding decision on the validity of the section, as that question was not argued by the counsel for the defendant. It is, however, such an expression of opinion as it would be extremely improper to disregard, even if I had formed a definite conclusion to the contrary.

If defendant's counsel are still unconvinced, they must be left to carry the matter further, and perhaps to succeed they must be prepared to go at least as high as the Court of Appeal, in view of the decision in *Gambell v. Heggie*, supra.

They may then satisfy the Court that at least the section of the Code is not binding until it has been confirmed by a