

## POWERS OF PROVINCIAL LEGISLATURES.

should be entrusted solely to the most erudite of Judicial officers. If this state of things is allowed to continue, the greatest confusion will prevail, and it is the duty of the imperial Parliament immediately to provide for the constitution, maintenance, and organization of a Court possessing the power of deciding in favour of or against the constitutionality of Acts of Parliament and of Provincial Legislatures.

A constitutional question, fraught with grave consequences to municipal corporations, was lately raised in the Province of Quebec, under the following circumstances:

The Legislature of the Province of Quebec, by 32 Vic. c. 70, s. 17, provided as follows: "In addition to the powers already accorded to the Council of the City of Montreal, in and by its Acts of incorporation, and the several acts of amendment thereof, to enforce the observance of the by-laws of the said Council, made under and by virtue of the Acts for the purposes in the said acts expressed, it shall be lawful for the said Council to impose in and by such by-laws a fine not exceeding twenty dollars and costs of prosecution, to be forthwith leviable on the goods and chattels of the defendant, or to enact that in default of immediate payment of the said fine and costs, the defendant may be imprisoned in the common gaol for a period not exceeding two months, the said imprisonment to cease upon payment of the said fine and costs, or to impose the said fine and costs in addition to the said imprisonment."

Sec. 19 of the same Act provides that "the five preceding sections, and section fourteen and fifteen of the thirty-first Victoria, chapter thirty-seven, shall not be deemed to apply to any matter of criminal procedure before the said Recorder's Court."

Previous to the passing of the 32 Vic. c. 70 (Quebec) the City Council of Montreal had passed a by-law, chap. 17 (Glackmeyer, p. 306), whereof s. 8 was in the following words: "Every description of gaming and all playing of cards, dice, or other games of chance, with betting, and all cock fighting and dog fighting, are hereby prohibited and forbidden in any hotel, restaurant, inn or shop, either licensed or unlicensed, in this said city; and any person found guilty of gaming or playing at cards or any other game of chance, with betting, in any hotel, restaurant, inn or shop, either licensed or unlicensed, in this said City, shall be subject to the penalty hereinafter provided."

S. 9 of the same by-law provided that "any person who shall offend against any of the provisions of this by-law shall, for each offence incur a penalty not exceeding twenty dollars, and be liable to an imprisonment not exceeding thirty days, and a like fine and imprisonment for every forty-eight hours that such person shall continue in violation of this by-law."

So far as the provisions of the said by-law against gaming were concerned, the City Council derived its authority from 23 Vic., c. 72, s. 10, § 1, which provided as follows: "it shall be lawful for the said Council at any meeting or meetings of the said Council composed of not less than two-thirds of the members thereof, to make by-laws which shall be binding on all persons for" (amongst others) "the following purposes . . . to restrain and prohibit all descriptions of gaming in the said city, and all playing of cards, dice, or other games of chance, with or without betting, in any hotel restaurant, tavern, inn or shop, either licensed or unlicensed, in the said city;" and by the 13th section of the last mentioned Act, it was provided: "And by any such by-law, for any of the purposes aforesaid the said Council may impose such fines, not exceeding twenty dollars, or such imprisonment, not exceeding thirty days, or both, as they may deem necessary for enforcing the same."

On the 18th March, 1870, the City Council of Montreal, acting as was supposed under the authority of 32 Vict., c. 70, s. 17, re-enacts all the sections of by-law chap. 17, with the exception of s. 9, in lieu of which it was provided as follows: "Any person offending against any of the provisions of this by-law shall be liable to a fine not exceeding twenty dollars and cost of prosecution, and to an imprisonment not exceeding two months for each offence." (By-law 36, Glackmeyer, App. p. 138.)

Under by-law 36, a person was convicted of playing cards with betting in an hotel in the city of Montreal, and was condemned to pay \$20 fine and costs, and to be imprisoned in the common gaol for two months.

The by-law and conviction was referred to solely as illustrations of the working of 32 Vic. c. 30 s. 17, and it is proposed to inquire whether the said section is not *ultra vires* of the Legislature of Quebec.

The arguments made use of in favour of the constitutionality of the section in question are to the following effect:

Under the British North America Act, 1867, s. 92, the Provincial Legislatures have the exclusive right of making laws in relation to matters coming within certain classes of subjects therein enumerated, amongst which classes figure "8. Municipal Institutions in the Province." Consequently the Quebec Legislature had a right to legislate in relation to all matters relating, or essential, to the corporation of Montreal. Having the power to legislate in relation to municipal institutions exclusively, it necessarily follows that the Provincial Legislature have the power of granting to such municipal institutions the right of making by-laws, and as without the power of enforcing obedience to their provisions such by-laws would be but waste paper, it must be taken for granted that the power, formerly exercised