

perform servile labour is declared "guilty of performing servile labour on Sunday within the meaning of the second section of this Act," i.e., the principal Act. It is an attempt to deal with the criminal law—to make an offence equal to a crime that the Parliament of Canada alone could create.

In my opinion the prohibition ought to issue to prevent the prosecutor from proceeding under these supposed amendments.

RITCHIE, J. : Previous to 1867, c. 159 of the Revised Statutes (3rd series) was part of the criminal law of Nova Scotia. The whole of that series is contained in one Act, the different chapters being grouped together under specific divisions, or parts, and titles, which are, I think, part of the Act. (See p. 1 and s. 1 of c. 170, at p. 680). In this Act or revision c. 159 is placed with all the other criminal statutes then in force in part 4, which is entitled "Of the Criminal Law, and the Administration of Criminal Justice," and in the subdivision or title xli., which is entitled "Of Offences against the Government."

By the British North America Act the criminal law of this province was placed within the exclusive legislative authority of the Parliament of Canada, and that authority was exercised in respect of this chapter in 1869, when the Parliament of Canada repealed two of its sections. Revised Statutes of Nova Scotia (3rd series), c. 159, being part of the criminal law, the local legislature of Nova Scotia had, in my opinion, no power to alter or amend any of its sections, and any legislation purporting to have that effect is *ultra vires* the Local Legislature. I wish to be distinctly understood as giving my opinion as to whether the Local Legislature could or could not, by any legislation, prevent the performance of servile or other labour on Sunday, but I think it cannot be done in the way attempted—that is, by trying to amend the criminal law. The stipendiary magistrate for the City of Halifax should be prohibited from convicting the Halifax Electric Tramway Company, Limited, for any breach of the acts of the Local Legislature of Nova Scotia, purporting to amend c. 159 of the Revised Statutes of Nova Scotia (3rd series), or any act in amendment thereof.

TOWNSHEND, J., concurred.

MCDONALD, C.J., after citing B.N.A. Act, s. 129, referred to the sections mentioned in the information, and held that they were not *ultra vires* the legislative powers of the local Legislature. He then proceeds as follows :

The ground was not taken on the argument that c. 159 was *ultra vires*, nor can I see how such an argument could prevail, if my view is correct, that the statute, by reason of the legislation I have mentioned is a police or municipal law of the Province and nothing more. It is amendable both as to procedure and the imposition of penalties by the Provincial Legislature. I have been unable to perceive upon what principle the amending Acts I have referred to can be said to be *ultra vires* the authority of the Provincial Legislature. It is the duty of that Legislature to enforce all the laws of the Province, c. 159 included, and to provide and regulate the machinery and procedure by which that can be done, for without rules of procedure applicable to the courts whose function it is to deal with the question involved, the law itself may be incapable of enforcement. The right of the Provincial Legislature to make such provisions, and to impose adequate punishment by fine or imprisonment under