

lative authority in relation to the criminal law (including the procedure in criminal matters) having been reserved by sec. 91 (27) of the British North America Act, 1867, to the Parliament of Canada. This contention should not prevail. In a series of cases, commencing with *Hearne v. Garton* (1859), 2 E. & E. 66, and ending with *Ex p. Schofield*, [1891] 2 Q.B. 428, it was held that the imposition of a fine or penalty (not being by way of reimbursement) for the breach of an order of a public authority is matter of criminal and not civil procedure. But, in construing the British North America Act, it is necessary to read secs. 91 and 92 together; and regard must be had to the fact that sec. 92 (15) gives to a Provincial Legislature exclusive power to make laws in relation to the imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the Province made within the scope of its powers. The Act now in question fell within the latter provision, and was, therefore, within the powers of the Legislature of Ontario.

Secondly, it was contended that, as, under the order of the 27th February, 1917, the first 100 additional cars were to be placed in operation not later than the 1st January, 1918, there was a complete breach of the order on that date; and, accordingly, there could not after that date be such a non-compliance with the order as to subject the company to the penalties authorised by the Act. Their Lordships were unable to agree with this contention. The substance of the thing to be done was to put the additional cars in service. The limit of time was a further and subsidiary provision; and, notwithstanding the breach of this latter provision, the direction to provide the cars remained in force.

But, thirdly, it was argued on behalf of the appellants that the order of the 19th April, 1918, was not authorised by the Act of 1918, as it was an order not for enforcing compliance with the order of the 27th February, 1917, but for punishing a past breach of the order; or, in other words, that the only order contemplated by the new sec. 260a was an order fixing a period within which some existing or future order should be complied with, and imposing a penalty for every day of default after that period had elapsed. In their Lordships' opinion, that was the true construction of the section. By it the Board is authorised to impose penalties for non-compliance with its orders, but subject to the condition that such penalties must be imposed "for the purpose of enforcing compliance" with those orders; and this expression points, not to the summary imposition of a penalty for a past breach without previous warning, but to the imposition of a penalty in advance and for the purpose of procuring by means of such an inducement obedience to the order. Further, it was plain that sec. 260a, although general in its terms, was passed with special reference to