

neglected their duty in that respect, he would in fact invoke an assumed jurisdiction on our part in every case in which a Local Legislature did, as he thinks, neglect its duty. The proper course for him and for myself, as citizens of the Province of Ontario, is to use our franchise and our influence to compel the Local Legislature to do its duty within the sphere of its jurisdiction, but not to say: "You have neglected your duty, and we will pass you by; we will not force you to do it, but we will pass you by, and we will do it here." Else you may find, under that view, a very large and extensive area of jurisdiction assumed here and taken away from the Local Legislature.

Mr. BERGIN. I am afraid the hon. gentleman hardly meets the case as I have put it. I quite admit that skimmed milk may not positively be poisonous, but I think he will admit that it would be a great deal better if it had the proper quantity of cream with it, if it had not been skimmed.

Mr. BLAKE. Certainly.

Mr. BERGIN. And I think the hon. gentleman's argument as regards Ontario possesses a good deal of the skimmed milk quality.

Mr. DESJARDINS. The hon. member for Bothwell has been good enough to call the attention of Quebec members to the assumed encroachment of the Federal upon the Local Parliament. But, if my memory serves me well, I think the basis upon which that Bill is created was admitted by the former Government, of which he was a part. I remember that an inspector of food and all those things that are sold in the groceries was appointed by the Liberal Government some years ago, and that we have had the report of that inspector every year distributed among the members. So, if we have no authority to go into the shops and investigate, I do not know that we were right then to do what we are trying to do now.

Sir JOHN A. MACDONALD. This Bill is not one for the protection of the public health, but it is to prevent adulterated articles being sent from one Province to another, or from Canada, as a whole, to a foreign country. Beyond doubt it will come within the category that the hon. gentleman alludes to. As to the skim-milk question, I fancy if the hon. gentleman will look at the law in England he will find that it is considered one of the most serious offences against infants and children in England to pass off milk with too much water in it, and it is treated as a grave offence. A milk-and-water diet does not nourish, but it rather starves, and the mothers and the poor children who think they are getting the pure article sometimes get quite a different thing. Chalk and water, for instance, have been very extensively used to adulterate milk, the mixture containing, perhaps, a very little sprinkling of milk. Such adulteration is considered to be an offence, not only against morals and society, but an offence of the character of a crime. It is not enough to limit proscription to adulterated articles that won't poison, that won't kill, but we must include articles unwholesome in themselves.

Mr. BLAKE. I didn't say adulterated; I spoke simply of skim milk.

It being Six o'clock, the Speaker left the Chair.

After Recess.

Mr. MILLS. Before the Committee rose at six o'clock I was setting forth some objections that seemed to me to lie against this measure, on the ground of our jurisdiction. One hon. gentleman said that I referred in particular to the members for the Province of Quebec. Well, Sir, my reason for doing that was that by the British North America Act, with the general consent of Ontario, Nova Scotia and

Mr. BLAKE.

New Brunswick, while this Parliament was given jurisdiction to deal with questions of property and civil rights, Quebec was specially protected under that provision of the Constitution. But I specially directed the attention of the hon. members of the Province of Quebec to this matter in order to point out that although they were protected by the Constitution against having the subjects of property and civil rights transferred to the Parliament of Canada, yet by legislation of this sort, by acquiescing in legislation beyond our jurisdiction, the courts would ultimately recognize a course of legislation that was long acquiesced in. This is done in the United States. We know there that where Congress has undertaken to legislate upon a subject that was supposed to lie within the jurisdiction of the States, and the action of Congress has long been acquiesced in, the courts refused to consider the question and to deal with it as if it were raised immediately after such legislation was had. There is no doubt the same rule would prevail here. If the Parliament of Canada should for a series of years legislate upon subjects of this sort and the Legislatures of the Provinces acquiesced in it, and the usurped authority was never brought before the courts, there is no doubt whatever that a court would be reluctant to disturb such legislation. Now I deny altogether the proposition laid down by the hon. member for Cornwall (Mr. Bergin) that the Local Legislature, by neglecting to legislate upon a subject in the public interest, loses its right to deal with that particular subject, or by its negligence could transfer to this House a jurisdiction of which it was not seized under the provisions of the Constitution. When we look at the provisions of this Act we find that it comes within the ordinary municipal and police law. The hon. gentleman who has charge of this Bill could not pretend to say that he is legislating on the subject of crime. He is not dealing with a branch of the criminal law. We cannot in this House give ourselves jurisdiction over a subject by declaring something done under it to be a crime, and thus to deal with the whole subject on any such ground; otherwise, we might usurp a large field of legislation that does not belong to us. In the British North America Act, section 92, we find this sub-section:

"The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the Province made in relation to any matter coming within the class of subjects enumerated in this section, shall be within the exclusive jurisdiction of the Province."

Now, so far as any offence against this law is made a punishable offence, it is not under the criminal law but under a mere police or municipal regulation. We are dealing with a subject that belongs to the Local Legislature and to which, under that particular provision of the Constitution, they have the power to attach any punishment they think proper, in the form of fine or imprisonment. This matter is referred to in a judgement by Mr. Justice Strong in the case of *Severn against the Queen*. In that case he says:

"The Provincial Legislatures possess authority to legislate in the exercise of what American authorities have conveniently termed the police power—meaning a power to legislate respecting ferries, markets, fares to be charged for vehicles let for hire, the regulation of the retail sale of spirits and liquors, and on a number of other cognate, but indefinite subjects, which, in all countries where the English municipal system or anything resembling it prevails, have been generally regarded and dealt with as subjects of municipal legislation."

Now, this case is a matter of exactly the same sort. When we look at section 6 of this Bill, we find that the Council of any city, town, county, or village, can appoint one or more Inspectors of food and drink. The hon. gentleman proposes here to confer power upon whom? Why, upon the Council of a town or city. Is the Council of a town or city a body created by the Legislature, and deriving its functions from powers given by this Legislature? Not at all. The hon. gentleman in doing this is giving a power which is a usual thing to give to Councils.