

have therefore to enquire whether the subject matter of the public health is by its nature local or private. The argument that Sect. 91, SS. 11, has expressly attributed "Quarantine, and the establishment and maintenance of marine hospitals" to the federal jurisdiction, therefore it has transferred all other matters relating to health to the local legislatures, appears to me to be a mis-application of the doctrine of *inclusio unius* etc. To apply it in this way to the powers of Parliament, would be to ignore the introductory and concluding parts of section 91, and to place the generality of local legislation on a higher footing than the generality of the federal parliament. (1)

It seems to me, however, that there is room for distinction, and that we cannot decide the question absolutely by saying "public health" is wholly a federal matter, or that it is wholly a local matter. Many questions more or less nearly relating to health may be merely local: as, for instance, scavenging, drains, cess-pools, over-crowding of dwellings, preventing nuisances and other matters too numerous to be detailed. It seems to me, nevertheless, to be quite as clear that questions of health, which may affect the whole people of the Dominion, are matters for general and not for local legislation, by their very nature. (2.)

This is no classification made for the purposes of our federal system. All our municipal

(1.) At the delivery of the judgment a new argument was advanced to answer this. It was said, S. S. 2, Sect. 92, B. N. A. Act, 1867, gives all the other powers relating to health to the local legislatures. It makes no allusion to general health. It charges the local finances with all hospitals and other eleemosynary institutions, except marine hospitals. In the next place, if establishing, maintaining and paying for hospitals has any direct relation to the laws concerning public health, it is clear sub-section 7, Sect. 92, no more exhausts the subject than does S.S. 10 of Sect. 91. This answer then is inconclusive.

(2.) It has been contended that, under chap. 38 C.S.C., the matter was made municipal. If so, it was unnecessary to refer to s.s. 7, sec. 92, for s.s. 8 gives "municipal institutions in the Province" generally. But it is inexact to say chap. 38 treats the health of the whole of Canada as a municipal matter. It proceeded on a totally contrary principle. The origin and cost of it remain with the Government, the municipal organization only being employed as an auxiliary to the direct action of Government.

laws have recognized the former class of health regulations; while the Act before us shows that the public health of a municipality was looked upon as quite a different thing from the public health of the then Province of Canada.

The history of the legislation will make this plain. The session of the 12 Vic. (1849) was a very active one, for all matters of organization. The quarantine act was amended, chap. 7; the preservation of the public health act (origin of the 38 C.S.C.) was introduced, or rather regulated, and its quality, as a measure of general import, fixed by chap. 8. A general municipal corporation act for Upper Canada was also passed (12 Vic. c. 81), which did not attribute the preservation of the public health of the then province to the municipalities, although the Act referred to health; showing that the legislature of the old Province of Canada was attracted to the subject. It would probably be difficult to give any example in the legislations of the civilized world, of the greater organizations for the public health being left entirely to municipal control. To say that the control of the central government over matters of public health was to begin and to stop at the seashore is inconceivable.

I think, therefore, that it is by examining chap. 38 C.S.C. we must decide whether it specially is a general or a local Act. Whether we look at its terms, its history or the reason of things, it seems to me clear that the statute regulates a federal matter, and that the Parliament of Canada had a right to repeal or amend that Act, and to pass any other general law affecting the public health.

This power was fully exercised by the 31 Vic. c. 63, and the 38 chap. C.S.C. was repealed, and new provisions respecting the public health were substituted (sections 7, 8, 9, 10, 11 and 12). Later, by the 35 Vic. c. 27, sec. 11, in its turn the 31 Vic. chap. 63 was repealed, but it was expressly provided that what the 31 Vic. had repealed should not revive. Chap. 38 C. S. C. was therefore repealed, and remains so, if Parliament had jurisdiction over the matter. I don't think it necessary to go into minute detail as to