

The power of the Dominion Parliament to enact a general law of nuisance as incident to its right to legislate as to public wrongs, is not incompatible with a right in the Provincial Legislatures to authorize a municipal corporation to pass a by-law against nuisances hurtful to public health, as incidental to municipal institutions.

This was the merits of a motion to quash a conviction made on the 29th November last.

The petitioners were occupants of a manufactory of cut nails, and it was complained that the chimney sent forth smoke in such quantity as to be a nuisance hurtful to public health and safety, and that they refused to remove and abate the nuisance, contrary to the by-law of the City of Montreal No. 130.

The defendants pleaded that the city had no jurisdiction to enact the By-law, and did not enact it in virtue of any competent legislative authority. The defendants were convicted.

PER CURIAM. The main question as put by the petitioners is,—Had the Legislature of Quebec power to authorize the city of Montreal to pass the by-law? Such power, if it exists, must be derived from the sections 91 and 92 of the Confederation Act, 1867. Sec. 91 enacts that the exclusive legislative authority of the Parliament of Canada extends to the criminal law. And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the provinces. Section 92 says that in each province the legislature may exclusively make laws in relation to municipal institutions in the province.

The petitioner contends that among the subjects assigned exclusively to the Parliament of Canada is the criminal law, and that the subject matter of the by-law—a nuisance—is a matter of criminal law,—referring to the text-books on the subject. The city, on the other hand, contends that though the Federal Parliament has jurisdiction over nuisances in general, it does not follow that the local legislatures cannot prohibit insalubrious or dangerous establishments in a province, or that they cannot confer upon municipalities the right of self-protection

and of protecting the citizens of a locality against the dangers of similar industries.

The By-law was made under 37 Vict. c. 51, s. 123, ss. 2, Quebec (Charter of Montreal), and 42-43 Vict. c. 53, s. 34, ss. 8. The counsel for the city says that this power is comprised in the words "municipal institutions." If the city could not deal with these matters under its charter, the greater part of the municipal regulations would be *ultra vires*, and the municipalities would be incapable of repressing abuses affecting health or the security of citizens, and the words "municipal institutions" would have no meaning. The discussions which have already taken place in our Courts respecting the liquor laws throw a good deal of light on the respective powers of the Dominion and Provincial legislatures. In *Sulte & The City of Three Rivers* it was held that the power of the Dominion legislature to pass a general prohibitory liquor law as incident to its right to legislate as to public wrongs, is not incompatible with a right in the provincial legislatures to pass prohibitory liquor laws as incident to municipal institutions (5 Legal News, p. 330); and in the case of *Poulin & The City of Quebec*, (7 Q. L. R. 337), Mr. Justice Tessier very pertinently asks the question, Is it not part of the municipal institutions to make disciplinary and police regulations to prevent disorder on Sunday and at night, by compelling tavern and saloon-keepers to keep their drinking places closed during that time? Can there be any question as to the power of our local legislature or even our municipal corporation, to prevent the sale and storage of powder except in certain places, and with certain precautions for the safety of the public? And yet this is a matter of trade, like any other.

I am justified in concluding that the power of the Dominion Parliament to pass a general law of nuisances as incident to its rights to legislate as to public wrongs, is not incompatible with a right in the provincial legislatures to pass the clause authorizing by-law 130 as incidental to municipal institutions.

Certiorari quashed.

Macmaster, Hutchinson & Weir for petitioners.
R. Roy, Q.C., for the City of Montreal.