

on the other side a similar mark of a thumb. This was not all: the baby's left wrist was twisted out of shape and swollen. On this evidence, coupled with the statement of the mother, the prisoner was convicted. As the assault took place only a month before the birth of the child, it is difficult to escape the conclusion that the marks and injuries observed by the jury had been inflicted after birth, and for the purpose of manufacturing evidence. The jury must have been very credulous indeed to imagine that they had any connection with the assault. The mystery is why the judge should have admitted such evidence.

#### COURT OF QUEEN'S BENCH.

QUEBEC, Oct. 8, 1886.

*Before* DORION, C. J., RAMSAY, TESSIER, CROSS, BABY, J.J.

RINFRET (def. below), Appellant, and POPE (petitioner below), Respondent.

*Constitutional Law — Public Health — Jurisdiction*—C. S. C. ch. 38—31 Vict. (D.) ch. 63—*Quo Warranto*.

**HELD:**—1. (RAMSAY and CROSS, J.J. *diss.*) that legislation concerning the public health, with the exception of quarantine establishments and marine hospitals, comes within the powers attributed to the provincial legislatures, and the Dominion Parliament had no jurisdiction to repeal the C. S. C. Ch. 38 which contains provisions concerning the maintenance of public health in the former Province of Canada. The Act 31 Vict. (D.) Ch. 63 is therefore *ultra vires*.

2. Where a local board of health was illegally appointed by the City Council of Quebec, after the Council had ceased to have any right to make such appointment, a *quo warranto* might be sued out in the name of any citizen and ratepayer, to test the validity of the appointment, and such proceeding need not be brought in the name of the Attorney General.
3. There being no evidence that the defendant, in accepting his illegal nomination as a member of the board of health by the City Council, had acted in bad faith, or done anything prejudicial, he should not be mulcted in a fine for his action in the premises.

The respondent's petition for a writ in the nature of a *quo warranto* was maintained in the Court below by CASALTY, J.

RAMSAY, J.—This is a proceeding under Art. 1016 C. C. P., in the nature of a *quo warranto*, calling upon the appellant to show why he occupied the office of member of the Board of Health, appointed by the Corporation of the City of Quebec.

It was contended that the respondent had no interest to raise the question. I think this proposition is untenable under the Code, Art. 1016. Respondent is a corporator of the corporation of the city of Quebec, and his interest attaches to its every act. It seems to me to be idle to say that it may do the respondent no harm. That is not the question, but whether it is unlawful, and therefore whether it may do him harm.

The petition was met by a law issue, and by a peremptory exception. By the former it was contended that chap. 38 C. S. C., had been abolished by the 31 Vic. cap. 63, a Dominion Act, that the appointment of a board of health by the Lt. Governor was therefore illegal, and that the corporation was entitled to name a board of health.

This raises a constitutional question, which we have not yet had before us, namely, whether the legislation respecting the health of the people of Canada generally is a subject for local or for federal legislation; and particularly whether chap. 38, C. S. C., is a statute regulating a matter of federal or of local concern.

By the classification of sects. 91 and 92 of the B. N. A. Act, 1867, the matter of public health is not attributed in express terms either to the legislation of Parliament or to that of the local legislatures. An endless number of subjects are not expressly attributed to one or other legislature; and it is inexact to say that everything which is not expressly attributed to the local legislature, belongs to the jurisdiction of Parliament. It is even more strikingly inexact to contend, that what is not expressly attributed to federal legislation is subject of local legislation, for the statute says the contrary. But section 92, SS. 16, attributes to the local legislatures "generally all matters of a merely local or private nature in the province." We