

City of Halifax from proceeding to try and convict the defendant company for a violation of the latter Act) that c. 159 of the Revised Statutes (3rd series) being part of the Criminal Law of Canada, the Legislature of Nova Scotia had no power to alter or amend any of its provisions and that any legislation, such as c. 32 of the Acts of 1891, purporting to have that effect, was ultra vires.

*Held*, nevertheless, that the Provincial Legislature would have power to deal with the subject by legislation coming under the head of property and civil rights.

MCDONALD, C.J., dissented.

[HALIFAX, JAN. 11, 1898.]

This was an application for a writ of prohibition to restrain the Stipendiary Magistrate of Halifax from proceeding to adjudicate upon a complaint made before him against the defendant company, charging them with a violation of R.S. (third series) c. 159, in that the company directed and permitted a motor man, one of their servants, to perform servile labour in the City of Halifax on Sunday, by operating a tram car owned by the company upon and along the streets of the said city, and by carrying passengers in the car and performing the duties of a motorman in connection therewith, such labour being servile labour within the meaning of the said statute, as amended by c. 32 of the Acts of Nova Scotia, 1891, and not being a work of necessity or mercy within the meaning of such statute.

*Hon. J. W. Longley, Q.C., Attorney-General, for the Crown.*

*W. H. Covert, for the defendant company.*

GRAHAM, E.J. : Before the British North America Act was passed we had in the Revised Statutes (3rd series) under the part relating to the Criminal Law and the Administration of Criminal Justice, a chapter entitled "Of Offences against Religion." Some of the provisions were repealed by the Parliament of Canada, having found a place in the body of criminal law. Three sections were not repealed or re-enacted. S. 2 is as follows : "Any person who shall be convicted before a justice of the peace of shooting, gambling or sporting, of frequenting tippling houses or of servile labour, works of necessity and mercy excepted, on the Lord's Day, shall for every offence forfeit not less than one, nor more than eight dollars, and in default of payment shall be committed to jail for a term of not less than twelve hours nor more than four days."

There has been legislation purporting to be amendments of this provision passed by the Provincial Legislature, viz. : 1889, c. 5 ; 1890, c. 22 ; 1891, c. 32. And by the last of these a natural person or body corporate employing or directing any person to perform servile labour on Sunday is guilty of performing servile labour on Sunday within the meaning of the second section of the principal Act, and is liable to penalty, etc.

The first question, I think, is whether the second section relates to a subject coming within "property and civil rights" under s. 92, or "the criminal law" under s. 91 of the British North America Act. Is it aimed at a public wrong, or is it a "shall not" in respect to civil rights? Of course the imposition of a penalty means little. Both Legislatures may impose penalties for the enforcement of their laws by the express terms of the Act. The applicants for the writ of prohibition contend that the subject of this legislation could