

"Will you allow me space to refer to the question as to whether the proposed referendum bill is constitutional? The position in Manitoba is shortly this. The Liquor Act was passed by the Legislature and received the Royal assent on the 5th July, 1900. The amending Act under which it was to come into force upon the proclamation of the Lieutenant-Governor-in-Council received the Royal assent on the 29th March, 1901. It is now proposed to take a vote of the people as to whether the Liquor Act should be enforced or not. The question has not, as far as I can learn, been dealt with in any English court, and so we turn to American authorities to ascertain whether a similar case has arisen there, and upon so doing I find the law to be laid down in the American and English Encyclopaedia of Law, second edition, Vol. 6, page 1022, as follows. (I might say this work is perhaps more commonly referred to as authority by both judges and counsel than any other):

"Even the people of the State cannot under the constitution by means of submission to popular vote, be reinvested with the function of legislation conferred by them on a department of the Government, and the Legislature cannot render the enactment of a law dependent on its acceptance by the voters of the State, nor can the expediency of repealing an existing law be thus submitted to a popular vote.

"For the Legislators to say that they deem a law expedient, provided the people shall deem it expedient amounts to an abandonment of the Legislative functions. A statute passed to take effect upon a subsequent event must be when it comes from the hands of the law in present to take effect in future. On the question of the expediency of the law, the Legislature must exercise its own judgment definitely and finally. If the law can be made to take effect on the occurrence of an event, the Legislature must declare it expedient if the event shall happen, but inexpedient if it shall not happen. They can appeal to no other man or men to judge for them in relation to its present or future propriety or necessity. They must exercise that power themselves, and thus perform the duty imposed upon them by the constitution, but in case of a law drawn to take effect, if it shall be approved by popular vote, no event affecting the expediency of the law is expected to happen. The expediency or wisdom of the law abstractly considered does not depend upon a vote of the people. If it is unwise before the vote is taken it is equally unwise afterwards. The Legislature had no more right to refer such a question to the whole people than to a single individual. (Ex parte Wall, 17 Am., R. 425.)

"This liability arises no less from the joint principle applicable to every delegated power requiring knowledge, discretion and rectitude in its exercise than from the positive provisions of the constitution itself. The people in whom the power resided have voluntarily relinquished its exercise, and have positively ordained that it shall be vested in the Assembly. To allow the general Assembly to cast it back on them would be to subvert the constitution, and change its distribution of power without their action or consent. (Cincinnati, etc., R. Co. v. Clinton Co., 1 Ohio, S., 77.)

"(Illustration) Where a statute regularly passed by the General Assembly and approved by the Governor contained provisions for submitting it to a vote of the people, as to whether it should become law or not, it was held that such provisions were void, and that such votes of the people pursuant thereto had no legal effect whatever, and that it became a law when it passed the two Houses and was properly signed. (Santo v. State 63 Am., 457.)"

Now, then, honorable gentlemen will see who have followed me at all, the idea which animated the distinguished gentleman who wrote this letter. As long as the referendum is no part of the constitution, and unless you change the constitution the duties and the exercise of the functions of the Legislature remain intact and unattackable, and no matter what you pretend to do, you cannot, without changing the constitution, do something which this constitution says you shall not do, or refrain from doing something which the Legislature says should be done. The name of the writer