

DELEGATION OF LEGISLATIVE POWER.

Hagarty, C.J., holding that "it is a power that must be exercised by the Legislature alone."

From that decision the Attorney General, under the Act 44 Vict. c. 22, s. 17, appealed to the Court of Appeal; and the latter Court, by a unanimous judgment, (7 App. R 246), reversed the decision of the Queen's Bench, and affirmed the power of the Provincial Legislature to delegate to local bodies the authority to punish infractions of their by-laws or regulations by fine and imprisonment; but holding that in the case appealed the Legislature had not delegated any authority to create "new restrictions and limitations on individual liberty of action."

The delegation to local bodies of legislative power to make rules and regulations, and to provide punishment for the infraction of them, was conferred upon municipal bodies in England by the Municipal Corporations Act, 5 & 6 Wm. IV. c. 76, s. 90, which empowered the council of each corporation to make by-laws for the good rule and government of the borough, etc., and to appoint by such by-laws, such fines as they should deem necessary for the prevention and suppression of offences—such fines not to exceed £5, and to be levied by distress, and in default of a sufficient distress the offender to be imprisoned for a term not exceeding one month.

In the United States, it has been held that although the proposition that the Legislature is alone competent to make laws is true; yet it is also settled that it is competent for a Legislature to delegate to municipal corporations the power to make by-laws and ordinances which shall have the force, in favor of the municipality and against persons bound thereby, of laws passed by the Legislature (1 Dillon Mun. Corp. 322). And further that municipal corporations have an implied power to proceed for the enforcement of their by-laws and ordinances by reasonable and proper fines against those who break them,—for

a by-law or ordinance without a penalty would be nugatory (1 Dillon 345).

This power to delegate to local bodies authority to prescribe rules and regulations appears to have been exercised by the former Legislature of Upper Canada from its first session in 1792. The Act 33 Geo. III. c. 2, provided that overseers of highways should be elected, who should determine upon the height and sufficiency of any fence or fences within their parish or township "conformably to any resolution agreed upon by the inhabitants" at the meeting of election. Again, 34 Geo. III. c. 8, authorized the inhabitant householders in every district, at their annual town meeting, to ascertain and determine, in what manner and at what periods, horned cattle, horses, etc., should be allowed to run at large, and to resolve that the same, or any part thereof, should be restrained from so doing; and that any such cattle, etc., found at large, contrary to the regulations of the town meeting, should be impounded until such fees as the Justices in Quarter Session should determine, should be paid to the pound-keeper.

But the most important exercise of this power to delegate legislative authority appears in the Acts which authorized the Commissioners of the Peace in various districts to establish markets for the sale of meat, butter, eggs, etc. Under these Acts the Commissioners were authorized to appoint the days and hours for such sales in such markets, and to make such orders and regulations relative thereto as they should deem expedient—adding this further power: "to impose such fines not exceeding 20s., for any offence committed against such rules and regulations, as to them in their discretion shall seem requisite and proper;" and providing that "if any person shall transgress the orders and regulations so made by the said Commissioners, such person shall, for every such transgression, forfeit the sum which in every such order rule and regulation shall be specified." The Acts delegating this legislative power are: 41 Geo.