constitutionality of the local statute in question may be derived, viz.: sub-section 27 of section 91 and sub-section 14 of section 92, which both expressly and impliedly prohibit a local legislature from passing a criminal "procedure" Act. Conceding that a local legislature has power "to impose a fine, penalty or imprisonment, to enforce any provincial law" under sub-section 15 of section 92 which is, that it has power to that extent to create an offence or crime, as to which there can be no doubt, still, it is perfectly plain from the two sections quoted, that authority to provide "procedure" in such a case of the creation of a crime by a local legislature can only come from the Parliament of Canada.

This shows that a local legislature though it has power to impose a fine, etc., to enforce any provincial law, has not complete control over the subject involved in such a law, and that it was intended to restrict its functions within certain limitations. This was only natural in a legislative body which was to be only an arm of the body of Parliament, and excludes the idea that such an arm was to have all the force of the whole body. Powers or incidents, therefore, which might be inferred from, or regarded as attached to, a perfect body, cannot be said to spring from a mere part of the body, otherwise a part would be equal to the whole which would be absurd.

There is a great difference between the source from which the powers which were conferred upon Lieutenant-Governors before confederation were derived and that, from which such functionaries derive their powers under the B. N. A. Act, because, while in one case power was conferred by direct and special grant from the crown and unlimited, in the other it was not only not conferred by the crown, for the crown is not a part of the local legislature, but the power is expressly limited by the act of union. In other words the power in the former case is expressly given by grant and is unlimited; in the latter it is not given by grant from the crown at all, and is limited within certain defined boundaries by the Imperial Parliament. The authority, there, cited by the learned judge, viz.: *Re Bishop of Natal* v. *Crown* 3 Moo., N.S. 148, has no application to the Ontario statute at all.

Then, might it not be urged that the exercise of the royal clemency is a question of "procedure"? It was so treated in our former criminal procedure act, 29 and 30 Vict., cap. 28, section 126, and though it now forms part of cap. 181, entitled "An Act respecting Punishments, Pardons and Commutation of Sentences," it is still not a matter of "procedure"? Besides does this enactment, giving His Excellency exclusive power to exercise the prerogative of pardon, not show an express intention on the part of Her Majesty to prohibit its exercise by any other person?

Expressio unius est exclusio alterius.

But, without reference to these last points, is the conclusion to be drawn from the preceding reasoning not irresistible, that the local statute in question is clearly *ultra vires*, and that the judgment in question instead of having been given for the Province should have been given for the Dominion?

LEX.