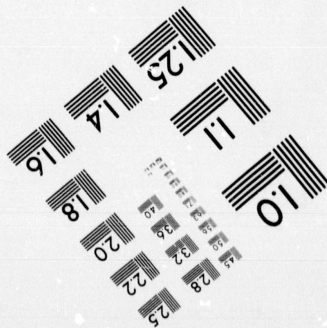
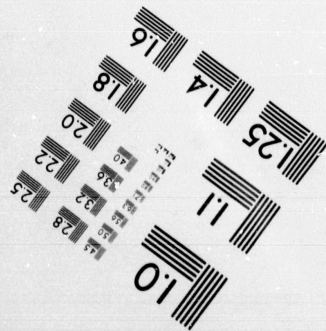
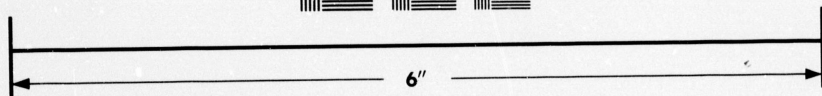
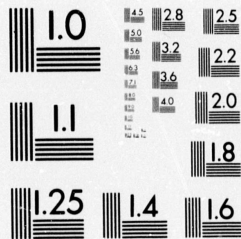


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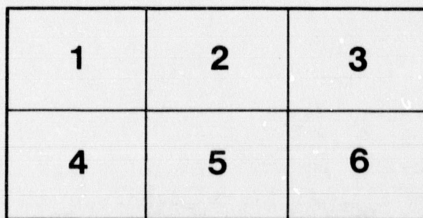
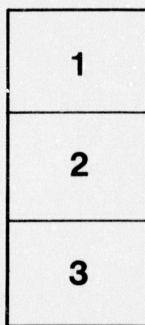
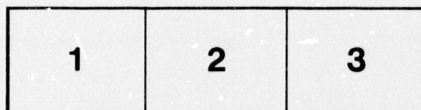
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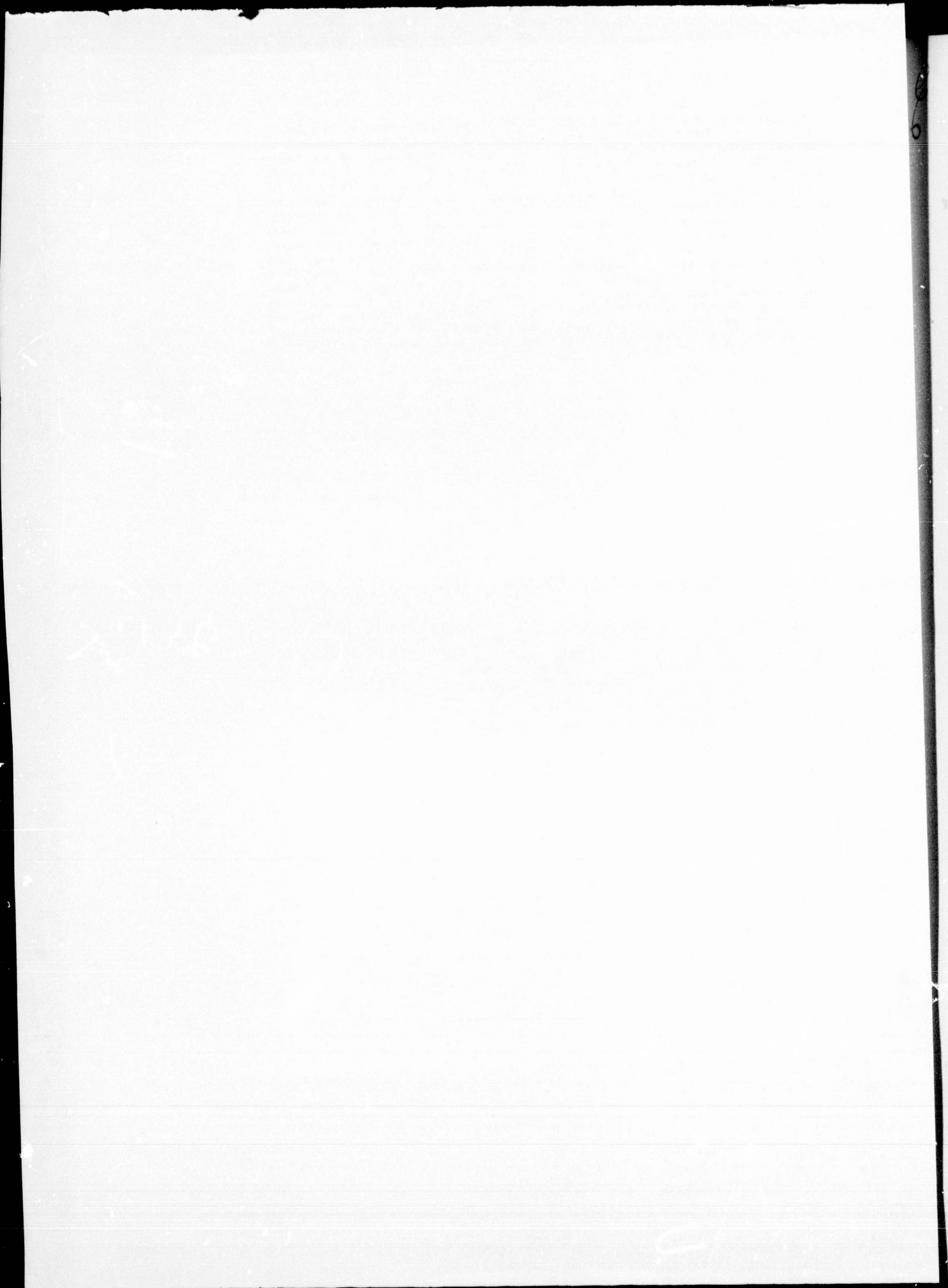
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REGINA v. WASON.

APPEAL FROM THE QUEEN'S BENCH DIVISION

TO THE

COURT OF APPEAL FOR ONTARIO.

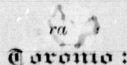
HEARD OCTOBER 17th, 1889.

BEFORE HAGARTY, C. J.; BURTON, J. A.; OSLER, J. A.; and
MACLENNAN, J. A.

EDWARD BLAKE, Q. C., AND E. IRVING, Q. C., FOR THE CROWN.

E. B. EDWARDS FOR THE RESPONDENT.

These notes of the argument for the Crown are printed as a very slight contribution to the long discussion on the meaning of the Constitutional Act.

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REGINA v. WASON.

ARGUMENT FOR THE CROWN.

This is an Appeal from an Order of the Queen's Bench Division, quashing a conviction, on the ground that the Act, under which it was made, is *ultra vires* of the Provincial Legislature, as trenching on Criminal Law.

The Appeal is taken under another Provincial Act, which is also attacked on the same ground, as trenching on Criminal Procedure.

The principal Act, 51 Vic., cap. 32, Ont., provides that:

1. No person shall knowingly and wilfully sell, supply, bring or send to a cheese or butter manufactory, or the owner or manager thereof, to be manufactured, milk diluted with water, or in any way adulterated, or milk from which any cream has been taken, or milk commonly known as 'skimmed milk,' without distinctly notifying, in writing, the owner or manager of such cheese or butter manufactory, that the milk so sold, supplied or brought to be manufactured has been so diluted with water, or adulterated, or had the cream so taken from it, or become milk commonly known as 'skimmed milk,' as the case may be.

4. Any person who by himself, or by his servant, or agent, violates any of the provisions of the preceding sections of this Act, upon conviction thereof before any justice or justices of the peace, shall forfeit and pay a sum of not less than \$5 nor more than \$50, together with the costs of prosecution, in the discretion of such justice or justices, and in default of payment of such penalty and costs, shall be liable to be committed to the common gaol of the county, with hard labor for any period, not exceeding six months, unless the said penalty and costs of enforcing same be sooner paid.

The second Act, 52 Vic., cap. 15, Ont., provides that:

3.—(1) An appeal to the Court of Appeal shall lie from a judgment or decision of the High Court, or a Judge thereof, upon an application to quash a conviction made under a statute of the Legislature of Ontario creating an offence punishable by summary conviction before a justice, or to discharge a prisoner who is held in custody under such conviction, and without giving any security on the appeal, whether the conviction is quashed or the prisoner discharged, or the application is refused.

Provided that the Attorney-General for Canada or the Attorney-General for Ontario, certifies his opinion that the decision involves a question on the construction of the British North America Act, and that the same is of sufficient importance to justify the case being appealed.

(2) Upon such certificate being produced to the Clerk of the Court in which the judgment or decision has been given, the clerk shall certify under the seal of the Court the proceedings had before, or in said Court, to the Court of Appeal; and the Court of Appeal shall thereupon hear and determine the appeal without any formal pleadings, and shall give such order for carrying into effect the judgment of that Court as the circumstances of the case require. Such judgment shall be appealable like other judgments of the said Court.

(3) This section shall be deemed declaratory, and shall apply retroactively as well as otherwise.

The Crown avers that both these Acts are *intra vires*.

In support of this view, I may begin by stating some propositions, now almost axiomatic, an observance of which I contend solves both questions.

First, all reasonable presumptions and intentions are to be made in favor of the validity of the

law. If one available construction will maintain, while another would destroy it, we are to choose the former. There is no case in which we should more strenuously apply the rule of so construing *ut res magis valeat quam pereat*. One illustration of this method is to be found in the course of Ritchie C. J. in *Fredericton v. The Queen*, 3 C. S. C. R., where, dealing with an Act which was called "The Temperance Act," and whose preamble recited the desirability of promoting temperance throughout the Dominion, he rejected both title and preamble as indicative of a legislative object said to be *ultra vires*; pointing out that if the enacting clauses were, as he held them to be, within the legislative power of Parliament, under its authority to regulate trade and commerce, the Act must be held valid, title and preamble notwithstanding.

Next, in construing the Constitutional Act, we are, even more than commonly, to look at the whole law; to avoid detached views, and microscopic investigation of isolated words and phrases; to remember that the Act is little more than a skeleton; to seek for a reconciling and effectuating construction; to treat provisions, which may seem at first sight contradictory or repugnant, as rules and their exceptions or modifications; and to aim by all fair means at the accomplishment of the great and principal purposes which are indicated by the Act itself.

Again, all powers reasonably required in order to the full execution of express powers are to be liberally implied; and of this rule a capital illustration must be that no one of the political sovereignties organized under the Act is to be left dependent upon any other of them for the capacity fully to execute its exclusive powers. See *The Queen v. Hodge*, in this Court, 7 App. R., per Spragge, C. J., p. 252, and per Burton, J., p. 276. Any other construction would, in truth, be destructive *pro tanto* of the sovereignty; for over that which it can accomplish only at the will of another independent authority it has no sovereign power.

Again, the efficacy of all laws depends upon their sanctions. It is true that, after a time, a law which has commended itself to the general sentiment, and become, as it were, a habit of the people, exerts a power, apart from the mere dread of its compulsory enforcement; it has become, more or less, a part of that public morality which is so largely the creature of custom and convention. But, mainly at first, and largely afterwards, and always with reference to the law-breaking or criminal classes, it is upon the sanction that the efficacy depends. After all, law is force. A law without a sanction is *brutum fulmen*. Thus the power to make a law would necessarily imply power to provide a sanction, and machinery for the enforcement of the

law and for the execution of the sanction. Therefore, the addition of express power in the B. N. A. Act to affix certain sanctions was made *ex majori cautela*; and was, perhaps, due to that very difficulty, arising from the curious partition of power in respect to public justice, out of which the present questions grow. See *Regina v. Frawley*, per Spragge, C. J., 7 App. R.

Dealing now with that partition, I may observe that in cases of divided sovereignties such as ours, it would seem the obvious course to assign to each its own adequate and independent measure of Executive, Legislative and Judicial power, so making each complete in itself; and thus the Provinces and the Dominion would each have their own Courts and Judicial officers and machinery for the execution of their own laws. But our constitutional plan, perhaps not very logical in some other respects, is particularly confusing and unsymmetrical here. From motives, perhaps of economy, perhaps of supposed simplicity, I know not why, extraordinary arrangements have been made. Yet it is plain that the bulk of the whole subject of public justice goes to the Province. To the Province are committed Property and Civil Rights in their largest sense; the Administration of Justice generally, including the constitution, maintenance and organization of Courts of both Civil and Criminal jurisdiction, and including Civil procedure in those Courts; Public and Reformatory Prisons; Municipal institutions; and Local and Private matters; in which latter provisions are held to be included the extensive range of the so-called "Police power"; and to all this is added the imposition of punishment by fine, penalty or imprisonment for enforcing any Provincial law relating to any of the Provincial subjects of legislation.

To the Dominion are given the appointment and payment of the Judges, Penitentiaries, Criminal Law and Criminal Procedure, not including the organization of Courts, besides certain important departments carved out of "Property and Civil rights."

Now, stopping here, there might be an absolute failure of the execution of Dominion laws, because a Province might, through carelessness or design, omit to create a Court with the requisite jurisdiction; thus leaving the law a dead letter. But this contingency was obviated by the clause authorizing the Dominion to erect additional Courts for the better execution of its laws, and thus to supply any defect which the Province might leave.

I shall ask the Court to assume, if there be (as I shall show there is), a reasonable construction available, that the Provinces were not left defenceless either; and that they have power to complete and execute their laws, irrespective of Dominion action.

But first of all, before passing to procedure, I wish to deal with the principal Act; and to that end I enquire what is the real range of the Provincial law-making power?

It deals (some large sub-divisions no doubt excepted), with most things touching the rights and relations of men, save criminal law, in the sense to be given to that phrase when used in the Act, and criminal procedure, in the same sense; it deals even with criminal courts and criminal justice; and its power over its vast range of subjects is so full that it may attach to any law within that range highly penal sanctions—fine unlimited; penalty unlimited; imprisonment at hard labor; imprisonment unlimited in duration, even for the whole term of life; any penalty indeed now applied, short of death. The very fact that

express power is given to affix as sanctions dreadful punishments, used for grave crimes, the severest penalties awarded in practice to all but half a dozen out of many thousand criminals, is of itself cogent proof that the contemplated range of the Provincial laws must be very wide indeed.

Now I contend that it was not everything that was punishable under the laws as they stood at the date of Confederation that then became Dominion Criminal Law. For example, I would except offences coming within the departments of Municipal institutions, and of the Police power; and also acts which were punishable merely because penal sanctions had been attached exclusively for the better prevention of civil injuries. I submit that the true principle is that a law which, if it had not then been already passed, could have been thereafter passed by a Province, would not become Dominion Criminal Law on the 1st of July, 1867.

It is obvious that the Province, legislating on conduct, contracts, actions, rights, relations, property, local and private matters, as well as on Municipal institutions and matters within the Police power, can, if it thinks fit, attach to any of these laws sanctions, not only such as are generally appropriated to civil injuries, but such as are ordinarily restricted to criminal matters; it can, if it think fit, enforce any of these laws by severe punishment. The Provincial power goes far beyond the largest notion of satisfaction, restitution, or compensation to an individual aggrieved; though even such milder sanctions may be, as Austin shows, in a sense deterrent and punitive. The Provincial power includes what is solely penal; for example, a fine or penalty payable to the State; or imprisonment, and that at hard labor; and that again absolute, and not merely as a sanction for the payment of the fine. One might give a long list of citations from judgments, from the Privy Council downward, of phrases like Provincial Criminal Law. Grant that this is a just, though not the happiest, description of such laws as I have been describing; and it becomes obvious that we cannot interpret "criminal law" and "criminal procedure" in the 91st clause in their larger sense; or, if we do, that we must make an exception, and a great exception too, in respect to Provincial subjects.

Now, as to the distinctions usually taken between civil and criminal wrongs, it is to be observed that the definitions generally quoted have been attempted under a political organization in which the legislative authority was a unit; where the divisions of power which obtain with us had no existence. They are, therefore, the less useful for our purposes. At any rate they are various, nor is it easy to find any certain rule. In several decisions of our own Courts the authorities have been quoted; but these seem of less value for the reason I have mentioned, and also because the distinguishing characteristics of our situation hardly seem to have been sufficiently brought to the attention of the Court. I may, however, refer to Austin's language at vol. 2, p. 72; and quote his attempt to state certain distinctions in a later page.

Sanctions may be divided into civil and criminal, or (changing the expression), into private and public.

The distinction between private and public wrongs, or civil injuries and crimes, does not rest upon any difference between the respective tendencies of the two classes of offences. All wrongs being in their remote consequences generally mischievous; and most of the wrongs styled public, being immediately detrimental to determinate persons.

Viewed from a certain aspect, all wrongs and all sanctions are public. For all wrongs are violations of laws establish-

ed directly or indirectly by the Sovereign or State. And all sanctions are enforced by the Sovereign, or by sovereign authority.

But in certain cases of wrongs which are offences against rights, or (changing the expression) which are breaches of relative duties, the sanction is enforced at the instance or discretion of the injured party. It is competent to the determinate person immediately affected by the wrong, to enforce or remit the liability incurred by the wrong-doer. And, in every case of the kind, the injury and the sanction may be styled civil, or (if we like the term better) private.

In other cases of wrongs which are breaches of relative duties, the sanction is enforced at the discretion of the Sovereign or State. It is only by the Sovereign or State that the liability incurred by the wrong-doer can be remitted. And in every case of the kind, the injury and the sanction may be styled criminal or public.

In some countries, the pursuit or prosecution of crimes does not strictly reside in the Sovereign or State, but in some member of the sovereign body. For instance, the pursuit of criminals resides in this country in the King; or, in a few instances, in the House of Commons. The proposition must, therefore, be taken with this qualification.

In short, the distinction between private and public wrongs, or civil injuries and crimes, would seem to consist in this:

Where the wrong is a civil injury, the sanction is enforced at the discretion of the party whose right has been violated. Where the wrong is a crime, the sanction is enforced at the discretion of the sovereign. And, accordingly, the same wrong may be private or public, as we take it with reference to one, or to another sanction. Considered as a ground of action on the part of the injured individual, a battery is a civil injury. The same battery, considered as a ground for an indictment, is a crime, or public wrong.

But it is clear that the Provincial jurisdiction in respect of Municipal matters and the Police power, and its express authority to attach to any of its laws the penal sanctions I have mentioned, render less applicable to us Austin's distinction; or, if it is to be applied, then that the Provincial power is to be treated as an exception or modification.

Much more valuable in several aspects of this case are the observations of Stephen, in his *History of the Criminal Law*, vol. 1, p. 1; from which I quote several passages.

The most obvious meaning of the expression (the criminal law) is that part of the law which relates to crimes and their punishment—a crime being defined as an act or omission in respect of which legal punishment may be inflicted on the person who is in default, either by acting or omitting to act.

This definition is too wide for practical purposes. If it were applied in its full latitude it would embrace all law whatever, for one specific peculiarity by which law is distinguished from morality is that law is coercive, and all coercion at some stage involves the possibility of punishment. This might be shown in relation to matters altogether unconnected with criminal law, as the expression is commonly understood, such as legal maxims and the rules of inheritance.

It would be a violation of the common use of language to describe the law relating to the celebration of marriage, or the Merchant Shipping Act, or the law relating to the registration of births as branches of the Criminal Law, yet the statutes on each of these subjects contain a great or less number of sanctioning clauses which it is difficult to understand without reference to the whole of the acts to which they belong.

The definition of criminal law suggested above must either be considerably narrowed or must conflict with the common use of language by including many parts of the law to which the expression is not usually applied.

For all practical purposes a short description of the subject to which the expression "criminal law" is commonly applied is more useful than any attempt to sum up in a few words the specific peculiarity by which this is distinguished from other parts of the law. The following is such a description: The criminal law is that part of the law which relates to the definition and punishment of acts or omission which are punished as being (1) attacks upon public order, internal or external; or (2) abuses or obstructions of public authority; or (3) acts injurious to the public in general; or (4) attacks upon the persons of individuals or upon rights annexed to their persons; or (5) attacks upon the property of individuals or rights connected with and similar to rights of property.

This description of criminal law is intended to exclude two large and important classes of laws which might perhaps be included not only with propriety, but in accord-

ance with popular language under the phrase Criminal Law. These are, first, laws which constitute summary or police offences, and secondly, laws which impose upon certain offenders money penalties, which may be recovered by civil action, brought in some cases by the person offended, in others by common informers. Summary offences have of late years multiplied to such an extent that the law relating to them may be regarded as forming a special head of the law of England. Such offences differ in many important particulars from those gross outrages against the public and against individuals which we commonly associate with the word crime. It would be an abuse of language to apply such a name to the conduct of a person who does not sweep the snow from before his doors, or in whose chimney a fire occurs. On the other hand, many common offences against person and property have of late years been rendered liable to punishment by courts of summary jurisdiction, and such cases and the courts by which they are tried fall within the scope of the subject of this book, and are dealt with in their place.

The passage then goes on to show that penal actions are still further removed from the subject, and proceeds to deal with Austin's definition; and points out that in the common use of language the words "crime" and "criminal" no doubt connote moral guilt of a more serious character than that which is involved in a bare infringement of law as defined by Austin.

And again in vol. 3 at p. 266, in dealing with certain offences punishable on summary conviction, a passage is to be found bearing directly and most cogently on the question in hand.

Probably all the Acts which regulate particular trades or branches of business, such as the Factory Acts, the Acts for the regulation of mines, the Companies Acts, and many others create offences punishable on summary conviction.

I pass over these large subjects in a cursory and summary way, because the offences in question do not form part of the criminal law properly so called; but are merely the sanctions by which other branches of the law are in case of need enforced.

Here we find, even in a case where the unity of legislative power tended to confusion, the recognition of that distinction which is made part of our fundamental law, and on which I largely rest in support of the validity of the Act.

Apart from other difficulties, it is clear that the subjects overlap; that the border line is doubtful, and is fluctuating; that what is purely a civil wrong to-day may wear something of a criminal aspect to-morrow; and that with us this very result may flow from the legislative action of a Province in applying to laws affecting property or civil rights a penal sanction, on the grounds that other sanctions are inadequate. Some breaches of contract for example, or of civil relations, and some invasions of rights or property are quasi criminal. They include elements of graver offence, or of greater turpitude, or of public danger or inconvenience which may properly entail highly punitive consequences; and which may result in the end in their being added to the list of crimes in the more restricted sense of the word. Again, sanctions now generally restricted to crime have formerly been applied to purely civil wrongs, as the non-payment of a debt; while on the other hand things formerly crimes have ceased to be so, for example, heresy and witchcraft. And once again certain classes of wrongs, formerly the subject of civil action only, are now prohibited under penal sanctions; while year by year the range of such prohibitions is extended to case after case of conduct which no one would call "criminal." It is not then from any such line of enquiry as this that we can hope to find a satisfactory solution.

Now, the conclusion I suggest is this, that we cannot affix any limit in this direction to the power of the Province in respect of "property and civil rights" (which, of course, includes the regulation of

property and of contracts and dealings) so long as: (1) Its law does not encroach on that which was in the proper and restricted sense "criminal" at the date of the B. N. A. Act; and (2) Its sanction does not touch life.

In some cases, the subject of legislation having two aspects—civil and criminal—each legislature can deal with the subject, one in its purely criminal aspect alone, the other in its purely civil aspect, and, in the latter case (at any rate in instances not complicated by the condition of things at the date of the B. N. A. Act) by the addition of sanctions of a highly punitive description.

The complication as to prior legislation arises from the circumstance that before 1867 the legislative power was undivided, and this unity made possible what was perhaps natural and convenient, namely legislation on various topics without any attempt to draw the line as to whether the law was purely in the nature of criminal law, or purely in the nature of a penal sanction for a civil wrong, or whether it was of a mixed nature, partaking of both characteristics. And there may be cases in which it is impossible, owing to this circumstance, now judicially to decide that sanctions, which in truth were wholly or in part penal sanctions in respect of civil wrongs, are so in such sort that they are withdrawn from the Criminal Law in the sense of the B. N. A. Act.*

Again, I contend that the power of the Province to deal punitively for the enforcement of its laws continues as to all matters not "criminal" in the sense of the 91st clause at the date of the B. N. A. Act, notwithstanding any Dominion legislation. Take a matter of property, right or contract not dealt with as "criminal" at the date of the B. N. A. Act, and suppose that thereafter the Province regulates or further regulates that matter, affixing a penal sanction to its law, the law is unquestionably valid. Suppose that later the Dominion should attempt to convert the matter into a crime and apply another punishment, would this nullify the Provincial legislation? Unquestionably not. The validity of the Dominion Act would depend upon the theory that, apart from the enforcement of the Provincial law by the Provincial sanction, there was some criminal public wrong requiring to be restrained by Dominion Criminal legislation, and this theory would leave untouched the Pro-

vincial power to legislate, affixing a penal sanction for the civil wrong.

As to offences, it is said that the wilful violation of any legislative Act is an offence. But very early in the first Session after Confederation, the Dominion Parliament legislated on this head by what is now R. S. C. 173, by the 25th section of which it was provided that every wilful violation of any Act of the Parliament of Canada, or of any Legislature of any Province of Canada, which is not made an offence of some other kind, shall be a misdemeanor and punishable accordingly. Parliament thus, so far as it could, recognized the power of the Provincial Legislatures to make laws, the violation of which should be criminal; and without interfering with cases in which a special sanction had been applied, gave, as far as it could, a criminal aspect to the wilful breach of Provincial Acts.

I touch with reluctance upon the Privy Council judgments in *Russell v. The Queen* and *The Queen v. Hodge*, venturing the observation that probably owing to the absence of the senior counsel at the opening of the argument, the attention of the Court was not, in the earlier case, adequately directed to important considerations which would have affected possibly its decision, and almost certainly its reasoning. For example, stress was not laid on the great division of Provincial jurisdiction involved in "Municipal Institutions," or on the vital but sometimes neglected principle that neither the General nor the Local Legislature can attract to itself a jurisdiction, in matters assigned exclusively to the other power, by the device of, in the one case, enlarging, or, in the other, restricting the geographical area or conditions in respect of which it proposes to legislate; and that we must recognize, as an inconvenience inseparable from the Federal system, a lack of power anywhere to make uniform regulations, co-extensive with the whole Dominion, on certain subjects relegated to Provincial authority. It seems to me, I confess, that a fuller development of these considerations in the earlier case would have prevented serious embarrassments in dealing satisfactorily with the later one.

But even from these judgments I draw support for the general principle for which I argue.

Thus in *Russell v. The Queen*, the Court finds that, in its legal aspect, the Temperance Act in question presents

an obvious and close similarity to laws which place restrictions on the sale or custody of poisonous drugs, or of dangerously explosive substances. These things, as well as intoxicating liquors, can, of course, be held as property, but a law placing restriction on their sale, custody or removal, on the ground that the free sale or use of them is dangerous to public safety, and making it a criminal offence punishable by fine or imprisonment to violate these restrictions, cannot properly be deemed a law in relation to property in the sense in which those words are used in the 92nd section. What Parliament is dealing with in legislation of this kind is not a matter in relation to property and its rights, but one relating to public order and safety. . . . Again, upon the same considerations, the Act in question cannot be regarded as legislation in relation to civil rights. In however large a sense these words are used it could not have been intended to prevent the Parliament of Canada from declaring and enacting certain uses of property, and certain acts in relation to property, to be criminal and wrongful. Laws which make it a criminal offence for a man wilfully to set fire to his own house on the ground that such an act endangers the public safety, or to overwork his horse on the ground of cruelty to the animal, though affecting in some sense property and the right of a man to do as he pleases with his own, cannot properly be regarded as legislation in relation to property or civil rights. . . . Laws of this nature designed for the promotion of public order, safety, or morals, and which subject those who contravene them to criminal procedure and punishment, belong to the subject of public wrongs rather than to that of civil rights.

* NOTE.—An illustration of this class of case, and an attempt to meet the difficulty it presented, may be found in the Dominion Statute, 40 Vic., cap. 35, for which the writer happened to be responsible. Certain old laws of Upper Canada, Lower Canada and Prince Edward Island punished breaches of the contract of service by imprisonment in language which, having regard to the unity of the Legislative power and the wide sweep of the enactments, might perhaps be deemed to make the offence criminal. It was thought that the stigma of crime ought not to be affixed to ordinary breaches of the contract of service any more than to ordinary breaches of other contracts. At the same time it was considered that certain breaches of contract partook of a criminal character and should be so dealt with. Under these circumstances the Statute was framed with this preamble:

"WHEREAS breaches of contract, whether of service or otherwise, are in general civil wrongs only and not criminal in their nature, and it is just that breaches of contract of service should in general be treated, like other breaches of contract, as civil wrongs, and not as crimes, and that the law should be amended accordingly: And, Whereas certain wilful and malicious breaches of contract, involving danger to persons or property or grave public inconvenience, should be punished as crimes."

The Statute then proceeded to repeal, from and after the 1st of May, 1878, all parts of the old laws which made a violation of any of their sections criminal. The delay was expressly given in order to enable the Local Legislatures, if they pleased, to pass further laws upon the subject of those ordinary breaches of contract which were not dealt with by the Dominion Statute, affixing, if they pleased, penal sanctions in respect of the civil injury. Having accomplished so far as it could this repeal, the Statute proceeded to deal, as crimes, with certain wilful and malicious breaches of contract involving danger to persons or property or grave public inconvenience which were declared to possess the characteristics of crime. But it is obvious that had Parliament, however improperly, assumed a jurisdiction to treat even ordinary breaches of contract as crimes, the question whether the judicial department could intervene would have been of very difficult solution. See, however, *Regina v. Frawley*, per Spragge, C.J., who indicates that it is not all such exorbitant degrees of power which would escape judicial invalidation; and there are dicta elsewhere to the like effect.

And their Lordships add that they have direct relation to criminal law. Their Lordships point out that the incidental touching upon property and civil rights involved in such legislation cannot deprive Parliament of its legislative power; and then, alluding to the argument, that "if the Act related to criminal law, it was Provincial criminal law" and came within sub-section 15 of section 92, their Lordships say:—

No doubt this argument would be well founded if the principal matter of the Act could be brought within any of these classes of subjects;

that is, was comprised within clause 92. Now all this reasoning is entirely consistent with the propositions I advance. But again it is to be remembered that when engaged in the difficult task of adjudicating on the questions raised in the *Queen v. Hodge*, the Court, though disclaiming any intention to vary its former propositions, has stated as

the principle which Russell's case and the case of the *Citizens Insurance Company* illustrate, that subjects which in one aspect and for one purpose fall within section 92 may, in another aspect and for another purpose, fall within section 91.

This definition of the principle illustrated in Russell's case does not merely minimize, it quite removes any embarrassment which that case might otherwise produce; and the definition itself is not merely harmless to me; it is useful; for it is on all fours with the view I advance as to the possible jurisdiction of both Legislatures, for certain different purposes, and in certain different aspects, over the same subject.

I need hardly say that the decision in *Hodge's* case is in itself valuable, as supporting the Provincial jurisdiction, by the emphatic declaration that, within the limits of section 92, its authority is as plenary and as ample as the Imperial Parliament in the plenitude of its power possessed and could bestow; and that, within its limits of subjects and area, the Local Legislature is supreme, and has the same authority as the Imperial Parliament would have had, under like circumstances, to confide to a body of its own creation, authority to make by-laws in order to carry its enactments into effect. All this is said to be the exercise of lawful authority auxiliary to legislation; and the decision is thus very valuable on the second, as well as on the first, branch of this appeal.

Now, I admit that a possible result of the double power I suggest might be a very inconvenient and undesirable exposure to a double liability; but legislation of that character is very unlikely and could be easily remedied; and its possibility is a danger infinitely less than that to which the other alternative exposes us. In truth the general proposition that valid Provincial laws may be nullified by Dominion legislation is not merely dangerous but fatal. It is utterly opposed to the spirit of the Canadian Constitution. Our constitution does not contemplate, save in certain specially excepted cases, concurrent, or their complement, over-riding powers; it is in its essence a constitution of exclusive enumerated powers, and the express over-riding authority of Parliament is confined to certain contingencies in matters of Education and Public Works and to the subjects of Immigration and Agriculture. These express provisions add force to the argument, amply strong by itself, that there is no large implied power on the part of the Dominion so to over-ride Provincial legislation as to abrogate Provincial powers. Cases there may be, per-

haps, in which the exercise of the powers of one Legislature may have an incidental tendency to narrow the freedom of action of another, but they are obviously to be confined to instances of necessary implication, and to be restricted within the narrowest limits. Were it otherwise, the Dominion Parliament would be like Aaron's rod—it would soon swallow up the rest. For example, all that would be necessary would be to go on making fresh crimes, and with each fresh crime created a power would be abstracted from the Provincial jurisdiction. This would never do.

Now, if the result I propound follows when the Province acts first, it must follow even though the Province does not act first. It can make no difference which acts first. The same principle must rule, the same results must ensue. It follows then that the Province can, altogether regardless of Dominion action, whether precedent or subsequent, regulate all affairs within the range of its power, by laws, to which it may attach the sanctions of a fine or penalty, payable even to the State, or of imprisonment at hard labor, and that, either absolutely or as a further sanction for the payment of the fine—sanctions these which, for many of the consequences to the individual and for many of the grounds of distinction generally taken, make the transaction a crime; and which, therefore, if you say they make it a crime, show that there may be in truth "Provincial Criminal Law" as so often declared. And so, of course, in a certain sense there may, in respect to Municipal Institutions and the Police power; though, in regard to the application of a penal sanction to a law relating to property and civil rights, I submit that the remark of Stephen applies, and that such a law is not properly to be called "criminal law," at any rate under our constitution.

I have said that the sanction in these cases may be one exigible by the State, independent of the individual aggrieved; for the enforcement of laws regulating civil rights is not merely, or perhaps even chiefly, a private object; the prosperity, even the stability, of the State may, and does, depend upon it; and though as a rule it is adequately secured by private suit or prosecution; though as a rule State intervention would be absurd or harmful; yet all this is for the Legislature, not for the lawyer, since it is conceivable that a public sanction enforced in the public interest may, in some cases, be required.

But this appeal does not need a decision so broad as my argument up to this stage would allow, as is easily to be seen upon an analysis of the provision in question.

The thing regulated here is very clearly only a contract or dealing in connection with a particular trade or business; nor does the regulation profess to deal at all with a public wrong such as is commonly called criminal. It touches the contract for the delivery of milk to a cheese factory to be manufactured. It creates a term or regulates a provision of that contract, namely, that unless there be a written notice by the deliverer showing that the milk is skimmed the milk delivered must be unskimmed. It provides facilities for the ascertainment, at the instance of the receiver, of a breach of its prohibition, and it attaches the sanction of a fine, payable one-half to the informer and one-half to the municipality; which sanction is enforced by the further sanction of imprisonment for a limited time or until payment of the fine. One is reminded of the examples put by Austin, vol. 2, p. 140:

I am condemned to restore a house which I detain from the owner, to make satisfaction for a breach of contract, to pay damages for an assault to the injured party, or to pay a fine for the same offence. The sanction which attaches upon me in this the first stage is an obligation, an obligation to deliver the house, or to pay the damages or fine. If I refuse to perform this obligation I may incur a further obligation, for instance, an obligation to pay a fine or to suffer imprisonment.

Mark how he treats it as no extraordinary matter that the sanction of imprisonment should be attached to purely civil wrongs.

Again, the consequence of the breach here is no public injury. It is that whereas the "patrons" should divide the proceeds of the cheese in proportion to the pounds of milk they supply, and the factory should be paid according to the pounds of cheese it produces, the defendant gets a larger share than, as between himself and these others, he should receive; and this because he has deprived his milk of a portion of its cream. This is a private and civil wrong. Nor does the Legislature deal with it as public. For looked at in that aspect, you should find the delivery of skimmed milk absolutely prohibited; you should find its acceptance alike prohibited. But you find no prohibition of the acceptance; and you find that a written notice of the fact of the skimming renders the delivery harmless.

The case was one in which it was easy to commit, and difficult to detect, a breach of the regulation; for which the ordinary sanctions were deemed inadequate; in respect of which, therefore, it was thought the contract required the interposition of the Legislature by regulation enforced by a penal sanction; and the Province acted strictly within its powers.

Look at the Insurance Act, where the contract between insurance companies and the insured is regulated; where clauses are introduced by Statute; where clauses are erased by Statute. All this has been decided by the Privy Council to be well within the power of the Legislature. Suppose that later it were deemed expedient to add to the sanctions already provided for the observance of this Insurance law a clause inflicting fine or penalty on a company, or imprisonment on an officer who might attempt to violate its provisions, who can say that such a clause would make the subject criminal within the meaning of the 91st clause, so that such a regulation, however absurd or inappropriate it might be thought by jurists, would be beyond the competence of the Legislature?

The mere fact that any informer can complain, and that thus the element of punishment independent of the party aggrieved is introduced is immaterial; first because it is clear that the limitation to the factory of the power to apply the tests involves a practical limitation to the factory of the power to complain; and, secondly, because, as I have already pointed out, it being for the interest of the State that its regulations and laws should be observed, the State has, however imprudent or unsound may be its exercise, the power of undertaking the punishment of breaches of those laws, either by itself or through the medium of an informer.

I must submit that the judgment of the learned Chief Justice below is based upon a principle of construction entirely opposed to that which really applies. As I have already argued, we should, if we strain at all, strain to maintain the law; but this judgment rather seems, if I may say so, to be a straining to destroy the law. The judgment declares that—

The primary object of this Act is to create new offences and to punish them by fine, and, in default of payment, by imprisonment, and this is its true nature and character.

The result sought to be obtained thereby is no doubt fair dealing, and this is the result sought to be obtained by making the obtaining chattels, money or valuable securities by false pretences with intent to defraud an offence punishable by imprisonment.

It is sought by this Act to bring about the result that persons contracting to deliver milk to a cheese or butter manufactory will be deterred from dishonesty in carrying out such contracts, and in this way this legislation has relation to property and civil rights, contracts and the enforcement of them coming clearly within that definition.

But its relation to "property and civil rights" is much more remote than its relation to "criminal law," and it is under the latter class that it must be ranged.

And coming, as I must hold it to come, within "criminal law," it cannot come within matters of a purely local or private nature.

This, I must confess, seems to me to approach an inversion and a perversion of the Act. It is acknowledged that the Act has a relation to property and civil rights; it is acknowledged that the result sought to be obtained by the Act is to deter persons from dishonesty in carrying out their contracts; but it is said that after all the primary object is the making of a new offence, and that the proximate relation is to criminal law and not to civil rights. The means are thus substituted for the end. The primary object in truth is the regulation of the contract, the provision for fair dealing, the prohibition of unfair dealing and the application of tests for the ascertainment of the dealing; and, incidentally to all this, as a means for securing all this, all which admittedly is within the power of the Legislature, sanctions are attached for breaches of the provisions. These sanctions are also admittedly within the power of the Legislature. And thus, both regulations and sanctions being within its power, the whole is valid.

It seems to me that on the other theory the Statute of Frauds might stand condemned by its title, as a dealing with crime. It is known as an Act for the prevention of fraud and perjuries. What can sound more like "criminal law" than that? But when you look at the Statute what can be more clear than that it is a law regulating civil contracts in such a way as to diminish the risk of the evils of fraud and perjury? Suppose that to the breach of such a law some penal sanctions were attached, it would yet remain under our constitution a Provincial subject.

I submit that the judgment of Mr. Justice Street more accurately applies the true principles when he says:

The adjustment of the basis upon which the dealings between the managers of cheese factories in the Province and the persons supplying milk to them should take place, and the devising of the best means of securing the former against unfair dealing on the part of the latter seem to fall well within the scope of the description of "property and civil rights of the Province," and if the punishment imposed had been confined to pecuniary damages for the loss sustained there could be little doubt as to the validity of the Act. We have here, however, not only a law forbidding the delivery of skimmed milk to the manufacturer, but the imposition on the person delivering it of a punishment upon his conviction, before a Justice of the Peace, of a violation of the provisions of the Act, and it is urged that this is a transgression upon the power exclusively reserved to the Dominion Parliament of dealing with the "criminal law" of the Dominion.

There are good reasons for holding that the Provincial Legislatures could not, by the mere act of passing a Statute forbidding the doing of something, already an offence, but affecting property and civil rights in the Province, confer upon themselves jurisdiction to inflict a new punishment for the offence, and justify it upon the ground that they were merely enforcing their own Statute. The foundation for the jurisdiction claimed would be defective because of its dealings with matters of criminal law. But when the British North America Act was passed, it was not an

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offence, either at common law or by Statute, for a person to deliver skimmed milk without revealing the fact. (See *Burnby v. Bollett*, 16 M. & W. 644, in which the old Statutes upon kindred matters are quoted.) I do not mean to say that this is the only test to be applied, but it clears the ground of the initial difficulty and leaves it open to us to consider the real character of the legislation which is attacked, that legislation being within the letters of powers of the Legislature under the Constitutional Act. Is it an Act constituting a new crime for the purpose of punishing that crime in the interest of public morality? Or is it an Act for the regulation of the dealings and rights of cheese makers and their patrons, with punishments imposed for the protection of the former? If it is found to come under the former head, I think it is bad as dealing with criminal law, if under the latter, I think it is good as an exercise of the rights conferred on the Province by the 92nd section of the British North America Act. An examination of the Act satisfies me that the latter is its true object, intention and character. It is not made an offence to deliver skimmed, sour, tainted, or adulterated milk to the cheese maker, as we should expect to find it an Act intended for the public interest; the offence consists in doing so without notifying the fact to the cheese maker; he is the person injured by the breach, and intended to be protected by the notice. It is true that the cheese maker is not necessarily required to be the informant upon a prosecution under the Act, but he is the only person who is authorized to compel the person who has delivered the milk to submit his cows and his milk to the tests provided by the Act. These tests appear to be the only practicable means in most cases of obtaining proof of the offence. They are, at all events, the means pointed out by the Statute, and if the offence created were intended to be punished in the interests of the public and not of the cheese maker, we should have expected to find the means of proving it placed in the hands of the officers of public justice, and not confined to the persons against whom the offence is alleged to have been committed.

Finding then as I do in this Statute, that the punishments imposed by it are directed to the enforcement of a law of the Provincial Legislature relating to Property and Civil rights in the Province; that the offences created by it formed no part of the criminal law previously existing; and that the apparent object of the Act is to protect private rights than to punish public wrongs, I am obliged to differ from the conclusions at which the Chief Justice has arrived and to say that in my judgment the conviction should be affirmed, and the motion dismissed with costs.

One word upon the suggestion of the learned Judge that if the punishment imposed had been confined to pecuniary damages there could be little doubt as to the validity of the Act. That suggestion is unquestionably true; but I submit that the indisputability of the power of the Province to affix a penal sanction removes any elements of doubt which, but for that power, the introduction of such a sanction might have imported.

Neither of the judgments suggest any difficulty arising out of existing Dominion legislation; but it is contended for the respondent that the same matter was dealt with by Parliament, prior to the passing of this Act, under the Adulteration Act, and that this affects the validity of the Provincial Act. I have already argued that no such dealing could destroy the power of the local Legislature to affix a penal sanction to its laws; but it cannot be said here that the ground was covered by the Adulteration Act, because, firstly, that Act deals with the case of selling or exposing for sale. This is not that case. It is the case of delivery to a factory for manufacture. Secondly, the Adulteration Act makes it an offence to sell skimmed milk to a purchaser unless the purchaser has asked for skimmed milk, and, having so asked, has been supplied out of marked vessels; but this Act deals with the case of supplying skimmed milk to a factory irrespective of any request, without a written notice of the fact that the milk is skimmed. Thirdly the Adulteration Act deals with a case of supposed public wrong to a consumer, and, of course, it may be that an infant or an invalid consumer might seriously suffer in health by a breach of its provisions, and it may perhaps be fairly said that a public wrong would be thus created; but here the wrong is simply a

loss of money to the factory and the acquirement of an unremunerated value by the deliverer. And fourthly, the Dominion has itself legislated this very year by 52 Vic., cap. 43, upon the subject matter of the Provincial Act, though not in exact duplication of its provisions. It is not material to analyze this late Act. I cite it only as a legislative interpretation of the Adulteration Act, clearly showing, by the mere fact of its enactment, that that Act had not already dealt with the question.

In the general result I submit that I have established that the principal Act is within the powers of the local Legislature, and, therefore, that the conviction was good.

I now come to the second point, arising on the Act authorizing the appeal, and this I submit is, in effect, settled by the other. You find in the same short sub-section of the 91st clause the phrases "criminal law" and "criminal procedure" used in an enumeration of powers. "Criminal" must have been used in the same sense in both phrases. The "criminal procedure" of the clause is the procedure required to enforce the "criminal law" of the clause. Its extent is limited by the extent of that law. If, then, this be not a "criminal law" within the 91st clause, neither is the procedure for enforcing it "criminal procedure" within that clause.

The obvious intent was to provide for the creation of a common criminal law, executed by a common procedure, all over the Dominion; but there was no intent to hand over to the general Legislature, entrusted only with common concerns, an authority, still less the exclusive authority, to create procedure for the execution of purely local laws. Such a notion runs counter to the great scheme of the Act. But it does more—it is even fatal to it; because it would leave the Provincial Legislature entirely helpless to make effective those laws which, notwithstanding, that Legislature alone has the power to enact. There would be much more than a confusion of powers, there would be an absolute defect of power. Each Province might have different views as to the legislation proper to be passed upon these subjects. Such diversities of view existed, were expected to continue, and were intended to prevail; and this was the very ground for the assignment of these matters to local authorities. But to say that, after all, the local view is to have force or not, according as the Dominion Parliament shall choose to provide procedure or not, is in effect to render necessary the sanction, the active sanction of the general Legislature to every local law of this nature. It is more potent than a veto, for its negative result is produced by simple inaction. Its effect is, at best, to entangle inextricably the machinery of legislation, and, at worst, to completely cripple it. It is more confusing than a case of concurrent powers, because neither Legislature can, by itself, do anything effectually. It requires the action of both to move; one is to say what shall be the law, but the other is to say how, and therefore is also to say whether that law shall be executed. This would be a constitutional monster, whose natural fruit would be abortions.

I submit, then, that it is absolutely clear that a construction which would apply the exclusive "criminal procedure" power of the 91st clause to the case of a local law would be a violation and frustration of the Constitutional Act.

The procedure power is, if my contention as to the true nature of the principal Act be correct, covered expressly by the words "procedure in

civil matters," which must receive an interpretation large enough to embrace all procedure for the enforcement of Provincial laws of the nature in question.

But, in truth, save for the curious partition of power to which I have alluded, we would not have seen "procedure" named at all. It is obviously covered by or implied in more than one of the general powers given in this connection. The administration of justice includes it, the power to make laws on any particular subject embraces it so far as that subject is concerned, the power to affix sanctions to laws involves it—it is a matter ancillary and essential to the main power.

Who can doubt, for example, that the power to establish additional Courts for the better execution of the laws of Canada implies power to prescribe procedure in these Courts, even although the laws to be executed deal with civil matters? Who can doubt again that the power to legislate upon a particular subject matter includes the necessary procedure for the execution of the law? No one; at any rate after the decision in *Cushing v. Dupuy*, 5 App. Ca. 409, where the Privy Council said:

Procedure must necessarily form an essential part of any law dealing with Insolvency. It is, therefore, to be presumed, indeed it is a necessary implication, that the Imperial Statute in assigning to the Dominion Parliament the subjects of Bankruptcy and Insolvency, intended to confer upon it legislative power to interfere with property, civil rights and procedure within the Provinces so far as a general law relating to these subjects might affect them. Their Lordships therefore think that the Parliament of Canada would not infringe the exclusive powers given to the Provincial Legislatures by enacting that the judgment of the Court of Queen's Bench in matters of Insolvency should be final and not subject to the appeal as of right to Her Majesty in Council allowed by Article 1,178 of the code of Civil Procedure.

The principle of this decision has the most direct and obvious application in favor of the Provincial power here.

I contend, then, that there is ample power, express or implied, to provide for the procedure thought fitting in respect of all laws within Provincial authority.

Curiously enough almost all the decisions which touch this point are to be found in the Quebec Courts, and I will quote the view of three Judges of great ability, who in separate cases came to the conclusion which I am now suggesting.

In *Pope v. Griffith*, reported in 2 Cartwright's cases on B. N. A. Act, Judge Ramsay, at page 295, said:

Whatever may be the definition of a crime, I would remind those who lean too much upon definitions, of their danger: it will not be denied that, in one sense of the word, the act of which appellant is accused is a crime; but it is equally plain that it is not a crime in the sense of sub-sec. 27, sec. 91, of the B. N. A. Act. Now if the significance attached to the word "criminal" is restricted, when referring to law in this sub-section, why should it be used in a different sense when applied to procedure? It cannot be presumed that in one short paragraph, particularly a paragraph of an enumeration of powers, the Legislature should have intended to apply two different meanings to the same word, especially when by doing so they would be transferring the legislation with regard to a purely local matter to Parliament. The rule is all the other way. Sub-section 16 of section 92, reserves to the local Legislature generally, the right to make laws affecting all matters of a merely local or private nature in the Province. What can be more local than the procedure to give force to a local law? If this view be correct, it is not a question of clashing, and the provision of section 91, giving superior authority to the enumeration of the powers of Parliament, does not apply. The powers are perfectly distinct. Parliament makes the laws of procedure affecting the criminal law which it enacts, each of the Legislatures make the laws of procedure affecting the penal laws which they enact respectively. I am, therefore, of opinion that the appeal does not lie under the Dominion Act, 32 and 33 Vic., c. 31, s. 65.

In *ex parte Duncan*, reported in the same volume at page 300, Judge Dunkin said:

Every local Legislature, without let or hindrance from Parliament—and therefore without need of aid from Parliament—can impose punishment by fine, penalty or imprisonment, for enforcing certain laws which it alone can make. To hold that while it can freely qualify infractions of such laws as punishable, and assign to each its measure of punishment by fine, penalty or imprisonment, the procedure requisite in order to the infliction of such punishment (as being essentially procedure in a criminal matter) must be such only as Parliament may see fit to provide, would be to hold the doubly untenable doctrine that (on the one hand) every local Legislature can at will create certain crimes and assign certain criminal punishments, and that (on the other hand) Parliament can at will admit such crimes and punishments within, or exclude them from, the range of the procedure needed to repress such crimes by real infliction of such punishments.

Whatever infractions of law, whether as to matters of Dominion or Provincial legislation, Parliament sees fit to designate as crimes, it, and it alone, can so declare, and as such punish, and to that end regulate procedure. Whatever infractions of any Provincial law coming within the purview of this 92nd section Parliament may not see fit thus to deal with, the interested Province may punish by fine, penalty or imprisonment, but its so doing does not make the offence to be thus punished a crime, nor the procedure laid down in order to its punishment procedure in a criminal matter. On the contrary, such whole matter must remain a civil matter, within what is here the true meaning of these respective terms.

In *Page v. Griffith*, in the same volume, at page 308, Judge Sanborn said:

Had the Provincial Legislature power to provide the procedure for enforcing the penalties incurred under the License Act, 34 Vic. c. 2? If it had, has a right of appeal been granted by said Act? As respects the first question I think the Local Legislature had such power. When the power is given by the B. N. A. Act to the Parliament of the Dominion to provide procedure in criminal matters, I understand reference to be had to the general criminal law, comprised in the Criminal Statutes of the Dominion and in the common law. This view is confirmed by the Criminal Procedure Act, which has no reference whatever to local penal laws, but to laws in force throughout the Dominion.

And again at page 310:

The B. N. A. Act gives the Legislatures of the several Provinces power over shop, saloon and tavern licenses, and to impose fine, penalty or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated amongst their powers. Where power is given by Statute to impose a penalty it implies power to enforce it. (Dwarris on Statutes, p. 23.)

The B. N. A. Act must be understood to have given this power to the several Provinces. Any other view would give the Legislature of a Province less power than a municipality which such legislature can create. It would be contrary to the manifest intention of the Imperial Parliament in allocating the respective powers which each Legislature should possess.

See also the case of *Coté v. Chauveau*, in the same volume at page 311; and I may in the same connection refer to the language of Chief Justice Richards in the *Queen v. Boardman*, 30 U. C. Q. B. 553, and also to the *Queen v. Lawrence*, 43 U. C. Q. B. 164.

It is also to be remarked that the appeal to this Court, and subsequently to the Privy Council, in the case of the *Queen v. Hodge* took place under a Provincial Act entirely analogous to the one now attacked. No suggestion was made from bench or bar that that Act was of doubtful authority, and yet upon the present argument the *Queen v. Hodge* never could have got beyond the Court of Queen's Bench.

Again, this Act providing for an appeal is unquestionably the constitution of a Court of Criminal Jurisdiction, and is thus, so far at any rate, within the admitted competence of the Provincial Legislature, even though the jurisdiction should embrace Dominion criminal law, or law whose procedure was Dominion criminal procedure. Indeed

I think it may well be doubted whether the Dominion Legislature could exclude any Court so established from the exercise of its jurisdiction. The 92nd clause gives to the Provincial Legislature the exclusive power to create courts even of criminal jurisdiction. A subsequent clause, it is true, authorizes the Dominion Legislature to create additional courts for the better execution of its laws. But does this, or does the procedure power imply a right to inhibit the Provincial court, lawfully created, from exercising its jurisdiction, at any rate where an appeal is created? I submit not. If there be such a right I submit that it must be exercised by express negative words precluding the appeal, in default of which words the court must act upon the law, basing its procedure on the general principles of administration, or on the nearest analogous rules. But there is here no such negative action. On the contrary, all that has been done by the Dominion Parliament is in the sense of recognition of the appellate courts of criminal jurisdiction created by the local Legislatures. There is more than the absence of negation. There is positive recognition and adoption. I refer to the Summary Convictions Act, R. S. C. cap. 178, which is applied by the third section to

Every case of offence or act over which the Parliament of Canada has legislative authority, and for which the party is liable on summary conviction to imprisonment, fine, penalty or other punishment.

The 76th section under the head of Appeals provides:

Unless it is otherwise provided in any special Act under which a conviction takes place or an Order is made by a Justice, or unless some other Court of Appeal having jurisdiction in the premises is provided by an Act of the Legislature of the Province within which such conviction takes place or order is made any person, etc., may apply in Ontario to the Court of General Sessions of the Peace,

etc. . . . And if any other Court of Appeal is provided in any Province as aforesaid the Appeal shall be to such Court.

And the 77th section provides:

Every right of appeal shall, unless it is otherwise provided in any special Act, be subject to the conditions following, that is to say, etc.

I may observe further that the 106th section which provides that:

No return purporting to be made by any Justice of the Peace under this Act shall be vitiated by the fact of its including by mistake any convictions or orders had or made before him in any matter over which any Provincial Legislature had exclusive jurisdiction or with respect to which he acted under the authority of any Provincial law,

is a very fair indication (of a nature which has been often judicially declared to be worthy of attention in the consideration of cases of doubtful legislative power), that in the view of the Dominion Legislature the procedure in respect of Provincial offences was not Dominion but Provincial. It must not be forgotten that, although this question happens to be raised upon an appeal to-day, yet it must be decided upon grounds applying to every stage of the procedure for the execution of this law. It is not the last step only; it is the very first step that is barred by this objection. If this objection holds good nothing whatever can be done towards the execution of the law unless the Dominion chooses to provide procedure; and thus as I have pointed out the incredible result would be reached that a Sovereign legislative power is left absolutely impotent, being dependent upon another legislative power for the machinery without which its law must remain inoperative. I submit that a conclusion so monstrous should be rejected; and that, both laws being valid, the Order of the Queen's Bench should be reversed, and the conviction maintained.



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