1911

*Oct. 26, 27.

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*May 7.

LEON ERNEST OUIMET (PLAINTIFF) . APPELLANT;

AND

ADOLPHE BAZIN, HUSMER LANCTOT AND S. P. LEET, *ès qualité* (DEFENDANTS) . . . . . RESPONDENTS.

AND

THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC.

(MIS-EN-CAUSE.)

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Constitutional law—Construction of statute—Quebec "Sunday Act"—7 Edw. VII. c. 42, amended by 9 Edw. VII. c. 51—Prohibition of theatrical performances—Local, municipal and police regulations—Criminal law—Legislative jurisdiction—Validation by federal legislation—"Lord's Day Act," R.S.C., 1906, c. 153.

In the "Act respecting the observance of Sunday," 7 Edw. VII. ch. 42 (Que.), as amended by 9 Edw. VII. ch. 51 (Que.), the provisions prohibiting theatrical performances on Sunday are not of the character of local, municipal or police regulations. On the proper construction of the legislation, treated as a whole, they purport to create offences against criminal law and, consequently, are not within the legislative competence of a provisional legislature under the "British North America Act, 1867." *The Attorney-General for Ontario* v. *The Hamilton Street Railway Co.* ([1903] A.C. 524) followed. The legislation in question derives no validity from the provisions of the "Lord's Day Act," R.S.C., 1906, ch. 27. Judgment appealed from (Q.R. 20 K.B. 416) reversed, Idington and Brodeur JJ. dissenting.

Per Idington J., dissenting.—The provisions of section 2 of the statute 7 Edw. VII., ch. 42 (Que.), are severable from one another as well as from the other provisions of the statute, and,

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

consequently, although other provisions may be *ultra vires*, the prohibition in respect of theatrical performances on Sunday is a police regulation which is within the competence of the provincial legislature.

Per Brodeur J., dissenting.—The legislation in question deals merely with local matters affecting police regulations and civil rights within the province and, consequently, is *intra vires* of the Legislature of Quebec.

APPEAL from the judgment of the Court of King's Bench, appeal side(1), affirming, but for different reasons, the judgment of Pagnuelo J., in the Superior Court for the District of Montreal.

Informations were laid in the Police Court for the City of Montreal against the appellant charging him with having carried on a business and given theatrical performances and representations, in the City of Montreal, on Sunday, on certain dates mentioned in the month of August, 1910, for profit and without necessity or urgency, in contravention of the Quebec statutes respecting the observance of Sunday, 7 Edw. VII. ch. 42, amended by 9 Edw. VII. ch. 51. In consequence, the appellant sued out a writ of prohibition to prohibit the police magistrates of the City of Montreal (the respondents), from taking cognizance of the complaints.

The appellant was proprietor of a theatre, in the City of Montreal, in which he exhibited "moving pictures" and which he kept open to the public on Sundays. The principal grounds invoked by him in support of the writ of prohibition were that the police magistrates had no jurisdiction to entertain the complaints in the informations and that the statutes under which he was charged with the offences were *ultra vires* of the Legislature of Quebec. The Attorney-

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General for the Province of Quebec was made a party to the proceedings and, with the respondents, contested the action.

In the Superior Court, Mr. Justice Pagnuelo quashed the writ and his decision was affirmed by the judgment appealed from (1), but for different reasons. In the Court of King's Bench, Trenholme and Cross JJ. differed in opinion with the majority of the judges of that court (Jetté C.J. and Archambault and Carroll JJ.), but concurred in the result on the ground that the informations had been validly preferred in virtue of the provisions of the "Lord's Day Act," R.S.C. 1906, ch. 153.

The questions in issue on the present appeal are stated in the judgments now reported.

Aimé Geoffrion K.C. and *Lacroix K.C.* for the appellant.

Lafleur K.C. and *Donat Brodeur K.C.* for the respondents.

THE CHIEF JUSTICE.—The object of this appeal is not to ascertain whether, on some technical ground, the information, which is the basis of these proceedings, can be sustained; but to test the constitutional validity of section 2 of the "Quebec Act," 7 Edw. VII. ch. 42, as amended by 9 Edw. VII. ch. 51. That section is in these words:—

> No person shall, on Sunday, for gain, except in cases of necessity or urgency, do or cause to be done any industrial work, or pursue any business or calling, or give or organize theatrical performances, or excursions where intoxicating liquors are sold, or take part in or be present at such theatrical performances, or excursions.

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The contention of the respondent is that it was competent to the Quebec Legislature to enact that section on the ground that it is in the nature of a municipal or police regulation of a purely local character. It is also argued that an act or default may be forbidden by statute in such a way that the person guilty may be liable to a pecuniary penalty which is recoverable as a debt by civil process by a private person, or, in some cases, only by an officer of the Crown. In which case such an act or default may be an offence against the statute, but is not a crime. Halsbury, vol. 9, p. 233, note.

I most regretfully have come to the conclusion that the section in question is not a local, municipal or police regulation, for the breach of which a pecuniary penalty is imposed, but legislation designed to promote public order, safety and morals.

The section purports to deal with a subject, "the observance of Sunday," which is not within the legislative jurisdiction of a provincial legislature and is already the subject of criminal legislation, as appears upon reference to the statute 29 Car. II. ch. 7, part of the criminal law of England declared to be in force by the "Quebec Act," 14 Geo. III. ch. 83.

It must be accepted as settled that "criminal law," in the widest and fullest sense, is reserved for the exclusive legislative authority of the Dominion Parliament, subject to an exception of the legislation which is necessary for the purpose of enforcing, whether by fine, penalty or imprisonment, any of the laws validly made under the "enumerative heads" of section 92 of the "British North America Act, 1867." In *Attorney-General for*

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Ontario v. *Hamilton Street Railway Co.*(1), their Lordships, it is quite true, gave no opinion with respect to the validity of the section of the Act they were considering (R.S.O. 1897, ch. 246) by which tramway companies were, subject to certain exceptions, prohibited from working their trains on Sunday; but they held the phrase "Criminal Law," in section 91 of the "British North America Act," free from ambiguity and that, construed by its plain and ordinary meaning, it would include every such law as purports to deal with public wrongs, that is to say with offences against society rather than against the private citizen. Apply this test to the section we are now considering, assuming a breach of the prohibition, what private right could possibly be affected and for what conceivable violation of the section would a private citizen have recourse ? In *Russell* v. *The Queen*(2), at page 838, their Lordships says:—

> Laws of this nature ("Canada Temperance Act") designed for the promotion of public order, safety and 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

Austin tells us, Jurisprudence, Lect. XXVII.:—

> 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.

In what respect can it be said that working on Sunday, or attendance at theatrical performances or excursions on that day, the things that are forbidden, constitute a civil injury against a private individual

(1) [1903] A.C. 524. (2) 7 App. Cas. 829.

for which he has a remedy ? The penalty, in case of breach, belongs to the Crown and can only be recovered under the summary conviction sections of the Criminal Code. It would appear also as if section 7 of the provincial Act was intended to prevent the enforcement of the penalty, except at the discretion of the Sovereign acting through the Attorney-General. It appears to me on the whole abundantly clear that the intention of the legislature was to forbid certain things which, in its opinion, are calculated to interfere with the proper observance of Sunday. In the *Hamilton Street Railway Case*(1) their Lordships hold, impliedly at least, that Christianity is part of the common law of the realm; that the observance of the Sabbath is a religious duty; and that a law which forbids any interference with that observance is, in its nature, criminal. See also *Pringle* v. *Town of Napanee*(2) ; *Cowan* v. *Milbourn*(3) ; *Vidal* v. *Girard's Executors*(4), at page 198.

It is impossible for me to believe that the legislature intended, by the enactment in question, to regulate civil rights. On the contrary, the evident object was to conserve public morality and to provide for the peace and order of the public on the Lord's Day. I am confirmed in this belief by the title of the Act which is described as "A law concerning the observance of Sunday"; and, as Sedgewick J., speaking for the majority of this court, said in *O'Connor* v.

(1) [1903] A.C. 524.
(2) 43 U.C.Q.B. 285.
(3) L.R. 2 Ex. 230.
(4) 43 U.S.R. 127.

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Nova Scotia Telephone Co.(1), at page 293; "We cannot with propriety shut our eyes to the words of the title." *Vide* also *Fielding* v. *Morley Corporation*(2), where it was held that

the title of an Act of Parliament is to be read as part of the enactments.

The profanation of the Lord's Day was an indictable offence at common law; 2 Chitty's Criminal Law (2 ed.), p. 20; 13 Encyclopædia of the Laws of England, *vo.*, "Sunday." Blackstone classifies those laws under the criminal law (offences against religion, morals and public convenience) and says:—

Profanation of the Lord's Day, vulgarly but improperly called Sabbath breaking, is another offence of the class now in question. 4 Stephens Com. Bk. VI. ch. 9.

In the enumeration of offences which may be tried summarily, Halsbury (vol. 9, No. 161), includes, at page 80, those arising out of breaches of the Sunday observance law (29 Car. II., ch. 7). See also *Rawlins* v. *Ellis*(3). In the report of the Commissioners on Criminal Law, vol. 2, at page 81, under the general heading of "Offences against religion," the Commissioners says:—

Certain religious observances, such for instance as that of the Sabbath, may properly be conceived as exercising so important and beneficial an influence on moral conduct, that the wanton violation of them ought to be prevented by penal laws. The other general principle which we have above referred to as furnishing a legitimate foundation for all laws of the class we are now considering may also, to a certain extent, be applicable, namely, that with respect to institutions and observances which carry strongly with them the opinions and feelings of the community, and open defiance of them may justly be the subject of punishment.

(1) 22 Can. S.C.R. 276. (2) [1899] 1 Ch. 1.
(3) (1846) 16 M. & W. 172.

In the absence of provincial enactments which make sections 889 to 1124 and 1125 of the Criminal Code applicable to prosecutions under the Quebec Laws — and we have not been referred to any — I would hesitate to hold with Mr. Justice Cross that the charge

> although set out and made as for offences against the ineffective provincial Acts * * * should not fail merely because of its having been laid as a violation of a wrongly cited statute, if it were in other respects a charge of an offence known to the law and triable by a magistrate.

I have always understood the rule to be that a prosecutor could not ground the one charge in his information upon two Acts, passed one by Parliament and the other by a provincial legislature, which contain separate and distinct provisions, no more than a statutory offence could be blended in the same count with one at common law.

I would allow the appeal with costs.

DAVIES J.—This is an appeal from the judgment of the Court of King's Bench of the Province of Quebec quashing a writ of prohibition issued against the police magistrates of the City of Montreal prohibiting them from proceeding further in certain prosecutions against the appellant, Ouimet, for having had on the first and eighth days of August

> for profit without necessity and urgency carried on a business and given theatrical representations on Sunday.

The complaint was made and the prosecutions instituted under the Quebec Acts 7 Edw. VII. ch. 42, and 9 Edw. VII. ch. 51. The former is intituled "An Act respecting the Observance of the Lord's Day."

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The principal sections are as follows:—

1. The laws of this legislature, whether general or special, respecting the observance of Sunday and in force on the twenty-eighth day of February, 1907, shall continue in force until amended, replaced or repealed: and every person shall be and remain entitled to do on Sunday any act not forbidden by the Acts of legislature, in force on the said date, or subject to the restrictions contained in this Act, to enjoy on Sunday all such liberties as are recognized by the customs of this province.

2. No person shall, on Sunday, for gain, except in cases of necessity or urgency, do or cause to be done any industrial work, or pursue any business or calling, or give or organize theatrical performances, or excursions where intoxicating liquors are sold, or take part in or be present at such theatrical performances, or excursions.

Sections 3 and 4 provide for punishment for offences against the Act by fine and imprisonment.

Sec. 5.—Nothing in the present Act shall repeal the Acts of this legislature now in force concerning the observance of Sunday, nor any by-laws passed thereunder, which laws and by-laws shall continue in full force and effect until amended, replaced or repealed according to law.

The amendment of 1909 increases the fines and imprisonment for subsequent offences.

The question raised for our consideration is as to the constitutionality of these Acts; that is, whether they were, as a whole, *ultra vires* of the Legislature of Quebec.

I was one of the judges of this court who, on a reference from the Governor-General in Council "In the matter of the jurisdiction of a province to legislate respecting abstention from labour on Sunday"(1), advised him, in answer to a question submitted to us whether the legislature of a province had authority to enact a statute in the terms of a draft bill annexed to the question

that we were unable to distinguish the draft bill then submitted for our opinion from the Act pronounced as *ultra vires* of the provincial

(1) 35 Can. S.C.R. 581.

legislature by the Judicial Committee in the reference made by the Government of Ontario to the Court of Appeal of that province in the matter of the Hamilton Street Railway Company reported in appeal to the Judicial Committee of the Privy Council(1)

The judges of this court who joined in giving that answer were of opinion that

the day commonly called Sunday or the Sabbath or the Lord's Day is recognized in all Christian countries as an existing institution and that legislation having for its object the compulsory observance of such day or the fixing of rules of conduct (with the usual sanctions) to be followed on that day is legislation properly falling within the views expressed by the Judicial Committee in the Hamilton Street Railway reference before referred to and is within the jurisdiction of the Dominion Parliament.

Turning for a moment to this decision of the Judicial Committee in which it was held that the Act there in question (R.S.O., 1897, ch. 246), intituled "An Act to Prevent the Profanation of the Lord's Day," treated as a whole, was beyond the competency of the Ontario Legislature to enact, it will be seen that this Act was originally enacted by the late Province of Upper Canada, before 1867, the legislature of which was competent for the purpose, but was consolidated and amended by extending and enlarging its provisions by the Act of the Province of Ontario passed in 1897. It was the validity or constitutionality of the consolidated Act that their Lordships were called upon to determine. Had the Legislature of Ontario the power to re-enact the original Act in its original form or to re-enact it enlarging its scope and extending its provisions prohibiting work on Sunday ? The answer of their Lordships, shortly, was that the legislature had no such power because the Act, treated as a whole, was beyond its competency to enact. The reasons for

(1) [1903] A.C. 524.

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their conclusion given by the Lord Chancellor are short and to the point. He says:—

> The question turns upon a very simple consideration. The reservation of the criminal law for the Dominion of Canada is given in clear and intelligible words which must be construed according to their natural and ordinary signification. Those words seem to their Lordships to require, and indeed to admit, of no plainer exposition than the language itself affords. Section 91, sub-section 27, of the "British North America Act, 1867," reserves for the exclusive legislative authority of the Parliament of Canada "the criminal law, except the constitution of courts of criminal jurisdiction." It is, therefore, the criminal law in its widest sense that is reserved, and it is impossible, notwithstanding the very protracted argument to which their Lordships have listened, to doubt that an infraction of the Act, which in its original form, without the amendment afterwards introduced, was in operation at the time of Confederation, is an offence against the criminal law. The fact that from the criminal law generally there is one exception, namely, "the constitution of courts of criminal jurisdiction," renders it more clear, if anything were necessary to render it more clear, that with that exception (which obviously does not include what has been contended for in this case) the criminal law in its widest sense, is reserved for the exclusive authority of the Dominion Parliament.

The pith of this judgment lies in the meaning they gave to section 91, sub-section 27, of the "British North America Act, 1867, reserving for the exclusive authority of the Parliament of Canada "the criminal law, except the constitution of courts of criminal jurisdiction" and in their judgment the words "criminal law," as used in section 91 of our "Constitutional Act," mean criminal law in its widest sense.

I have heard nothing to induce me to change the opinion in which I joined with my brother judges, in giving advice to the Governor-General in Council on the draft bill for prohibiting, on Sunday, the performance of work and labour, transaction of business, engaging in sport for gain, and keeping open places of entertainment. Nor am I able to discover any substantial distinction between the Act of the Legislature

of Quebec we are now considering and the draft bill upon which this court, in 1905, gave its opinion.

The object and purpose of each was to prohibit, on Sunday, the performance of work and labour, transaction of business or giving or taking part in theatrical performances, etc.

I do not mean to say that the Quebec legislation now in question and the draft bill with respect to which the opinion I have referred to was given cover the same ground. The prohibitions in one differ somewhat from those in the other and those in the draft bill are doubtless broader and more extensive than in the Quebec Act.

That, however, cannot affect the right to legislate on the subject-matter dealt with which is the same in both cases. I am of opinion that they are both beyond the competence of the provincial legislature as being within the exclusive right of the Parliament of Canada under sub-section 27 of section 91 of our "Constitutional Act"—"the criminal law except the constitution of courts of criminal jurisdiction."

I add this qualification, that the first and sixth sections of the Quebec Act now before us, 7 Edw. VII. ch. 42, may be said to permit certain things or acts to be done on Sunday prohibited by the federal Act of 1906 and, in so far as it does so permit, these sections may be *intra vires* the Quebec Legislature under the powers delegated and conceded to it by the Dominion legislation.

But it is contended that the Quebec Legislature derived, from the above federal Act, power to legislate on the subject of Sunday observance and that such federal legislation "validated" and gave life to provincial legislation which might otherwise be *ultra vires*.

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My construction of the federal Act is that it was an attempt to enact generally prohibitive legislation with regard to the proper observance of Sunday or the Lord's Day for the whole of Canada. But that, recognizing the different circumstances, habits, customs and religious beliefs which prevailed in the several provinces of the Dominion, Parliament determined to delegate to each provincial legislature the power to declare that any act or thing prohibited by the Dominion Act might be exempted from the operation of such act and permitted to be done by provincial legislation existing at the time the federal Act came into force or subsequently enacted.

As to the power of the Parliament of Canada so to delegate its powers I have no doubt whatever. Our statutes are full of legislation of a similar kind and, holding the Parliament of Canada to be a Sovereign Parliament within its powers as defined by our "Constitutional Act," I cannot doubt that, legislating within these powers, it can delegate to another person, body or authority the power to make a law as binding and effective as if embodied in one of its own statutes.

If I have properly construed the power of the Parliament of Canada to legislate exclusively on this subject, the observance of Sunday or the Lord's Day, and have also properly construed the federal Act of 1906 on that subject, the only question to be answered respecting the validity of the provincial legislation on the subject now before us is whether it is legislation permitting something to be done on Sunday which has been prohibited by the Dominion Act. If it is, such legislation is valid because power so to legislate is given by the federal Act. If, on the contrary, the provincial legislation is in itself prohibitive and not

permissive, and just so far as it is of that character, it is *ultra vires*.

Applying this rule to the second section of the Act now before us and under which the prosecutions were brought, and limiting my opinion to the one point desired by counsel to be determined, I conclude that the legislation of the province now in question is beyond the competence of the legislature and that, therefore, this appeal must be allowed and the judgment quashing the writ of prohibition vacated with costs.

IDINGTON J.—The appellant seeks to have respondents prohibited from proceeding with the trial of charges laid before the police magistrate of Montreal alleging an infringement of 7 Edw. VII. ch. 42, as amended by chapter 51 of 9 Edw. VII., passed by the Legislature of the Province of Quebec.

The second section of the latter Act is as follows:—

2. No person shall, on Sunday, for gain, except in cases of necessity or urgency, do or cause to be done any industrial work, or pursue any business or calling, or give or organize theatrical performances, or excursions where intoxicating liquors are sold, or take part in or be present at such theatrical performances, or excursions.

The question raised is as to the power of the legislature to so enact.

It is claimed this is criminal legislation within the meaning of section 91, sub-section 27, of the "British North America Act," which assigns the exclusive power of legislation on the subject of

the criminal law, except the constitution of Courts of Criminal Jurisdiction, but including the procedure in criminal matters

to the Parliament of Canada.

There are two summonses in the appeal case presented; one of the 14th of August, and the other of

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the 21st of August. The former makes the charge without specifying the statute it infringes. The latter specifically assigns a contravention of the statutes above referred to. Singularly enough both allege as if a single offence what, to my mind, clearly covers two offences against the Act.

The above quoted statute clearly constitutes a distinctly independent offence, or perhaps two, in prohibiting the doing of "any industrial work or business" and by the following words other independent offences. Each is thus described and separated by the disjunctive "or."

But in the summons they are coupled together by the conjunctive "and," which is not the language of the Act.

The parties desire to have the constitutional question determined and raise no point regarding this objectionable misjoinder of offences which, in itself, is possibly amendable by the magistrate if objected to.

It is, therefore, not in that sense I refer to this minor matter, but to bring out in relief or so far as I can the real meaning of the statute as I read it.

If objection had been taken to this misjoinder and the magistrate had refused to amend and convicted and made his conviction follow the exact language of the summons, or of the statute, his conviction would have been bad in form and liable to be quashed for thus embracing two offences in one conviction, or bad from uncertainty arising from its alternative form which would, therefore, cover neither offence.

Tested thus we have in the same section a number of new offences created of which one is doing or causing "to be done any industrial work," and another is pursuing "any business or calling."

This latter is said to be, and I assume it to be a bad translation of the French version "un * * négoce."

That being assumed does not mend matters much for the present argument. It still leaves an enactment of a very wide comprehensive meaning and I venture to think almost, if not altogether as much so as the Ontario enactment, R.S.O. [1897] ch. 246, sec. 1, which was before the Judicial Committee of the Privy Council in the case of *The Attorney-General for Ontario* v. *The Hamilton Street Railway Co.*(1), and which reads as follows:—

1. It is not lawful for any merchant, tradesman, farmer, artificer, mechanic, workman, labourer or other person whatsoever on the Lord's Day, to sell or publicly shew forth, or expose, or offer for sale, or to purchase, any goods, chattels, or other personal property, or any real estate whatsoever, or to do or exercise any worldly labour, business or work, of his ordinary calling (conveying travellers or Her Majesty's mail, by land or by water, selling drugs and medicines, and other works of necessity and works of charity only excepted).

The first question in said case submitted to the Court of Appeal for Ontario and brought by way of appeal therefrom under the consideration of the Judicial Committee was as follows:—

1. Had the Legislature of Ontario jurisdiction to enact chapter 246 of the Revised Statutes of Ontario, 1897, intituled "An Act to prevent the Profanation of the Lord's Day," and in particular sections 1, 7 and 8 thereof?

The Judicial Committee, speaking through the Lord Chancellor, disposed of it as follows:—

THE LORD CHANCELLOR.—Their Lordships are of opinion that the Act in question, Revised Statutes of Ontario, 1897, chapter 246, intituled "An Act to prevent the Profanation of the Lord's Day," treated as a whole, was beyond the competency of the Ontario Legislature to enact, and they are accordingly of opinion that the first question which was referred to the Court of Appeal for Ontario by

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the Lieutenant-Governor, pursuant to chapter 84 of the Revised Statutes of Ontario, 1897, ought to be answered in the negative.

Then the court intimates the opinion so expressed rendered it unnecessary to answer the second question which rather looked to future legislation, and declined to answer further the remaining hypothetical questions submitted.

In order to estimate properly the effect of the expression "treated as a whole" in the above opinion we must look at the remaining sections of the said Ontario Act.

Section 2 deals with political meetings, tippling, brawling, etc.; section 3 with games and amusements; section 4 with hunting; section 5 with fishing; section 6 with bathing in exposed situations, and each of these things if done on Sunday is declared to be unlawful.

Sections 7 and 8 prohibit steamboat and railway excursions for hire, and the running of street cars on Sunday.

Condensing them thus each offence may not be accurately described, but I think they are sufficiently so to shew the nature of the Act when I add that there were penal clauses and prosecutions therefor provided in the Act.

The recovery of these penalties before a justice of the peace was provided for and he so far as the Act could was enabled thereby to direct a warrant to levy on the goods of the offender and in default of realizing the penalty and costs to imprison for a term not exceeding three months.

When we compare the sweepingly comprehensive language, first quoted, of the Quebec statute with this wherein lies the difference ?

There is a greater multiplicity of words in the

Ontario Act than in the other. But, when condensed, each reaches to almost every activity of mankind in their daily avocations. The specific things in the Ontario Act, not embraced in this comprehensive language used by the Quebec Act, are comparatively unimportant as a test relative to criminal legislation by which to distinguish the one Act from the other.

So comprehensive is the language in question here that it runs athwart the courses of business and transactions of men which they are only enabled to do by virtue of Dominion legislation. Counsel for respondent says that is not intended. But the Act discriminates not and covers the case of the banker and the railway manager or superintendent and all under him or them, as well as the case of the corner grocer or village blacksmith.

The Quebec farmer or professional man might work and possibly escape the operation of the Quebec Act whilst the Ontario Act leaves less chance of such escape from its drag-net.

But is that what can enable us to distinguish between them ? And so distinguish as to say the ruling does not bind us ? I confess I cannot see my way clear to do so.

The argument for a power of delegation from the Dominion Parliament may be good or bad. I need express no opinion for I fail to see the existence of any delegation in regard to this legislation now in question. Nor do I find anything by way of reference that can constitute its adoption by Parliament directly or indirectly. All I do find is that exceptions to be presumed by us here as quite proper exceptions are made in the "Lord's Day Act," R.S.C. ch. 153, by sections 5, 7 and 8, which cannot help here where that Act, by

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consent of the parties, is in its direct operative effect excluded from our consideration. Admittedly there exists no consent of the Attorney-General to this prosecution, which is needed to render the "Lord's Day Act," in such a case, operative in Quebec.

In section 16 of that Act there is said to be something to get round all this.

That section in its first part guards against being held to repeal provincial legislation then existing. It is said that this proper exception in order to prevent vexatious meddling is a something that creates. I cannot think so. Nor do I think the second part of the section, declaring that an offender against the Act who is on the facts violating "any other Act or law" may be prosecuted under either, helps.

It is to be observed that this obviously pre-supposes "the Act or law" to be a law and not a nullity.

Each act is intended by this section to be independent of any other.

In touching such a complex subject as this has become by the mass of legislation and judicial decision bearing upon it, this section is eminently proper for the purpose it was framed. That was to avoid friction and confusion.

I would not hold any man liable to prosecution on any provincial legislation resting solely upon this language of said section 16 to give it a vitality it did not carry in its own language when resting on the powers of the legislature of the province enacting it.

So far as these prosecutions rest on the comprehensive legislation in the first part of the section consisting of the two members thereof covering trade or business, and which I have dealt with, I think they should be prohibited.

But is there not presented in same section another offence of giving or organizing theatrical performances for gain which is something severable as the disjunctive "or" indicates, and entirely different on its face and gives rise to entirely different considerations from those applicable to the preceding parts I have just disposed of ?

I do not know what conceivable cases of necessity or urgency can exist in relation to running a theatre on Sunday. I will assume that exception relates only to the cases falling under the part of the section with which I have dealt. But I cannot help remarking that the existence of this exception so looked at debars us from being able to make of the whole section only one enactment prohibiting work or business when so considered relative to giving on Sunday theatrical performances or excursions where intoxicating liquors are sold helps to sever these two prohibitions from the rest of the Act and permit of them being considered on their several legal merits.

Whether this severance is quite satisfactory or not, it is desirable, having regard to the main object of the parties, to treat the case as if it were clearly so.

I think the giving on Sunday of theatrical performances or excursions of the kind described may well be prohibited by provincial legislation. The prohibition of such a specific act as either might well find a precedent in the many cases recognizing the right of a province to make such mere police regulations as the social habits and conditions existing in that province may require.

It is said by counsel for appellant that these precedents rest upon the licensing power, but I do not

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think the principles observed in reaching the conclusion rested there in all of them.

I do not propose analyzing the cases in detail, but select as utterly free from this suggestion of dependence on the licensing power the case of *Reg.* v. *Wason* (1), and vol. 4, Cartwright's Cases on the "British North America Act," page 578, when the Court of Appeal for Ontario, then composed of Chief Justice Hagarty, Mr. Justice Burton, late Chief Justice of the same court, Mr. Justice Osler, and Mr. Justice Maclennan, later and till recently a member of this court, upheld legislation prohibiting the knowingly and wilfully selling to a cheese or butter manufactory milk diluted with water, or adulterated, or from which the cream had been taken, without notifying the owner or manager of the factory, and subjecting the offender to a penalty.

I had previously to the legislation thus enacted and passed upon, formed the opinion it was competent for a provincial legislature to pass it. I see no reasons to change the opinion I then formed.

The decision is, of course, not binding upon us, but the principles upon which that court proceeded seem to me sound and the relation of the subject to then existing federal legislation gives it a peculiar aptness to be considered in this case.

The reported argument of Mr. Blake in appeal as well as the reasons of the several judges in giving judgment are certainly instructive if not binding.

The case of *Hodge* v. *The Queen* (2) shews the regulation there in question dealt with a prohibition against playing billiards in a licensed hotel on Sunday.

(1) 17 Ont. App. R. 221. (2) 9 App. Cas. 117.

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But though as suggested by appellant's counsel that arose out of the licensing power or regulation we are only carried back a step further for the licensing power itself was, by sub-section 9, of section 92, only for the raising of revenue.

Another and a broader reason lies at the foundation of this and all the other decisions upholding the power of regulation and prohibition of the liquor selling business.

The powers assigned by sections 8, 13 and 16, as well as sub-section 9, have in turn had to be relied upon.

The preventing of playing billiards in a licensed hotel on Sunday, does not seem very closely related to the licensing power. The decision in that regard rather shews that circumstances or conditions may arise which render it a proper thing for the consideration by a local legislature and foundation for doing something to eradicate an evil which is not likely to be dealt with by Parliament.

I should pause before saying it was powerless to do so for I can conceive a legislature of a province being confronted with conditions which it alone would be likely to deal with and which the ordinary scope of the criminal law would not reach.

A great deal of our municipal legislation is and must as our cities grow be still more of this character.

True this is not a municipal regulation, but suppose the legislature chose to assign the power to city municipalities to make such regulation respecting theatrical exhibitions as that here in question, can it be said it would then be legislating *ultra vires ?*

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We, at least, in *City of Montreal* v. *Beauvais*(1), have gone quite as far in upholding a by-law enabled by the legislature for closing shops after certain hours. That was for a closing of shops and rested upon the powers given by the sub-sections to which I have referred, and this is for a closing of a house of another kind for a whole day. I may add that leave to appeal from our decision in that case was refused by the Judicial Committee.

Each was, no doubt, intended to promote by such police regulations the health and moral well-being of the people.

Neither is necessarily within the criminal law.

The remarks of Lord Davey in *City of Toronto* v. *Virgo*(2), at page 93, point in the direction of what I am trying to reach in that regard.

And this now in question being of the character I have referred to as being within the power of the legislature I do not think it should be held null because of the constitutionally evil company it is found in.

The latter circumstance, of course, makes its maintenance more difficult. And though I am unable to see how any of the Act can rest directly upon the federal legislation pointed to, it is clear that the circumstance of Parliament desiring to maintain local legislation of such a character is not an argument against the maintenance of its validity.

In the view I have taken it is almost needless to add it is not a well-drawn Act, or at least not as effective as one might now be made if the draughtsmen were set to work with the present state of the federal

(1) 42 Can. S.C.R. 211. (2) [1896] A.C. 88.

legislation. Or the licensing power and its consequent power of regulation might be resorted to.

What can be done thus indirectly, I submit, may be upheld when done directly.

I think the prohibition should not extend to a charge properly confined to the prohibition of any theatrical representation on Sunday for gain. It seems severable from the *ultra vires* part of the Act.

The appeal should, therefore, be allowed in part and that being a divided success should carry no costs.

DUFF J.—The Quebec statute which is impeached on this appeal professes to create offences which, in my opinion, if validly created would be offences against the criminal law within the meaning of section 91, sub-section 27, of the "British North America Act." The enactment appears to me, in effect, to treat the acts prohibited as constituting a profanation of the Christian institution of the Lord's Day and to declare them punishable as such. Such an enactment we are, in my opinion, bound to hold, on the authority of *The Attorney-General* v. *Hamilton Street Railway Co.*(1), to be an enactment dealing with the subject of the criminal law.

It is perhaps needless to say that it does not follow from this that the whole subject of the regulation of the conduct of people on the first day of the week is exclusively committed to the Dominion Parliament. It is not at all necessary in this case to express any opinion upon the question, and I wish to reserve the question in the fullest degree of how far regulations enacted by a provincial legislature affecting the con-

(1) [1903] A.C. 524.

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duct of people on Sunday, but enacted solely with a view to promote some object having no relation to the religious character of the day would constitute an invasion of the jurisdiction reserved to the Dominion Parliament. But it may be noted that since the decision of the Judicial Committe in *Hodge* v. *The Queen* (1), it has never been doubted that the Sunday-closing provisions in force in most of the provinces affecting what is commonly called the "liquor trade" were entirely within the competence of the provinces to enact; and it is, of course, undisputed that for the purpose of making such enactments effective when within their competence the legislatures may exercise all the powers conferred by sub-section 15 of section 92 of the "British North America Act."

It is impossible, I think, consistently with the view above expressed, to hold that the statute in question can derive any efficacy from the "Lord's Day Act," ch. 153, R.S.C. 1906. This latter enactment appears to be framed upon the theory that the provinces may pass laws governing the conduct of people on Sunday; and by the express provisions of the Act such laws, if in force when the Act became law, are not to be affected by it. That is a very different thing from saying that in this Act the Dominion Parliament has manifested an intention to give the force of law to legislation passed by a provincial legislature professing to do what a province under its own powers of legislation cannot do, viz., to create an offence against the criminal law within the meaning of the enactment of the "British North America Act" already referred to. We should, I think, be going beyond what is justified

(1) 9 App. Cas. 117.

by the guarded language of the Dominion statute if we were to construe it as giving validity to such legislation.

ANGLIN J.—The question to be determined on this appeal is the constitutionality of the prohibitive provisions of the Quebec statute, 7 Edw. VII. ch. 42, as amended by the statute 9 Edw. VII. ch. 51.

The validity of this legislation is supported by the respondents on two distinct grounds: (*a*) that it is within the legislative jurisdiction conferred upon the provinces of the "British North America Act"; (*b*) that, if otherwise unconstitutional, it has been validated by certain provisions of the federal "Lord's Day Act" — chapter 27 of the Dominion Revised Statutes of 1906.

(*a*) I am unable to find any real distinction between the Quebec legislation now under consideration and that of the Province of Ontario held to be *ultra vires* by the Judicial Committee in the *Hamilton Street Railway Case*(1).

The history of the Quebec legislation is, no doubt, different from that of the Ontario Act. The pre-confederation legislation of Quebec (Con. Stat. L.C., 1860, ch. 23) was much narrower in its scope than the ante-confederation statute in force in Ontario (Con. Stat. U.C., 1859, ch. 104). But, whatever might be said of an Act of a provincial legislature similar to the earlier Lower Canada legislation, the Quebec statute now before us, because indistinguishable in substance and principle from the Ontario legislation condemned by the Privy Council, must be held by us

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to be *ultra vires* as an invasion of the domain of criminal law assigned by the "British North America Act" to the legislative jurisdiction of the Parliament of Canada.

Although enacted by a provincial legislature not empowered to deal with criminal law, the Ontario legislation was, in the view of the Privy Council, so distinctly criminal in its character that it could not be upheld as an exercise of provincial jurisdiction under any of the powers conferred by section 92 of the "British North America Act," notwithstanding the cogency of the presumption that a legislature always means to act within its jurisdiction. I do not regard the decision of the Judicial Committee as depending on the fact that the Upper Canada "Lord's Day Act" (Con. Stat. U.C., 1859, ch. 104) had been originally enacted by a legislature clothed with authority to pass criminal laws. Neither can I accede to an argument which involves the view that legislation held to be criminal in one province of Canada may be regarded as something different in another province, or that the phrase "the criminal law" used in section 91, sub-section 27, of the Imperial "British North America Act" may have a meaning different from that which would be attached to it in other legislation of the Imperial Parliament. Lord Chancellor Halsbury says that it is "the criminal law in its widest sense that is reserved" to the Dominion Parliament.

In the criminal law of England, in 1867, was embraced the "Sunday Observance Act," 29 Car. II., ch. 7, and other restrictive legislation. 13 Encyc. Laws of Eng., p. 707. Indeed, a person who kept open shop on Sunday would appear to have been indictable at

common law as

> a common Sabbath-breaker and prophaner of the Lord's Day commonly called Sunday. 2 Chitty's Criminal Law (2 ed.), p. 20.

Legislation of a prohibitive character, to infractions of which punitive sanctions are attached, passed for the purpose of preventing profanation of the Sabbath would, therefore, appear to be within the purview of sub-section 27 of section 91, of the Imperial "British North America Act," conferring on the Dominion Parliament exclusive jurisdiction to legislate in respect to "the criminal law."

I abstain, however, from attempting to enunciate a criterion for the determination of the broader question — when a prohibitive enactment, carrying penal sanctions for its infraction, should be regarded as so for partaking of the nature of criminal law that it is within the exclusive legislative power of the Federal Parliament. I rest my opinion in the present case chiefly upon the judgment of the Judicial Committee already adverted to.

It was suggested at bar that the Quebec statute might be defended as legislation merely affecting civil rights, or as legislation in the nature of a local or municipal police regulation, with sanctions, authorized by clause 15 of section 92 of the "British North America Act," appropriate to ensure obedience to its prohibitions. But the very first section indicates unmistakably that the purpose of the legislation is to make what the legislature deemed suitable provision "respecting the observance of Sunday" in the province. To carry out this purpose we find in the second section a prohibition couched in wide and sweeping terms. Section 6 further confirms this view of the character of the statute, making it still more ap-

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parent that to prevent profanation of the Sabbath is its object. It is such legislation that their Lordships of the Judicial Committee, as I understand their judgment, have held to be criminal law and as such beyond the competency of a provincial legislature.

I do not refer to the fact that the informations in this case each charge more than one offence further than to say that any objection on that ground was waived. Counsel for both parties asked our decision upon the validity of section 2 of the Quebec statute, as a whole, and of the subsequent sections providing sanctions for infractions of section 2. I do not attempt to distinguish between the several matters and things forbidden by section 2. Forming part of an Act of which the purpose was to prevent profanation of the Sunday each of the prohibitions must, I think, under the decision in the *Hamilton Street Railway Case*(1), be regarded as criminal legislation.

(*b*) The Dominion "Lord's Day Act" excepts from the operation of its prohibitive clauses everything which is, by provincial legislation, past or future, declared to be lawful. While reserving to, or conferring upon, provincial legislatures the power to make exceptions from the operation of the Dominion statute — and thus in effect *pro tanto* to amend it — and recognizing and maintaining in force, if not validating, provincial legislation already passed declaring certain acts to be lawful on Sunday (provisions made, no doubt, to enable local bodies to deal with the peculiar requirements of localities with which they would presumably be more familiar and perhaps more in sympathy), there is not a word in the federal statute

(1) [1903] A.C. 524.

confirming or authorizing anything in the nature of provincial prohibitive legislation past or future. On the contrary section 14 declares that

> nothing in this Act shall be construed to * * * in any way affect any provisions of any Act or law relating in any way to the observance of the Lord's Day in force in any province of Canada when the Act comes into force.

The provincial legislation in so far as it is prohibitive must, therefore, depend for its force and efficacy upon the powers of the legislature which enacted it. In so far as it provides for the exception of acts and things which would otherwise fall under the prohibitions of sections 2, 5 and 6 of the federal Act (sections 5, 7 and 8, R.S.C. 1906, ch. 153), Parliament has made that Act inoperative. But beyond these saving exceptions the Dominion statute does not "in any way affect" provincial legislation.

In this view it is unnecessary to consider the question debated at bar as to the power of the Dominion Parliament to delegate its legislative functions to a provincial legislature.

The latter part of section 1 of the Quebec statute may be within the saving provisions of the federal Act; but the prohibitive clauses of the Quebec statute are, I think, *ultra vires* of a provincial legislature.

The appeal should, in my opinion, be allowed.

BRODEUR J. (dissident).—Nous avons à décider si l'acte de la législature de Québec sur l'observance du dimanche, qui est le chapître 42 des statuts 7 Edouard VII. est constitutionnel.

La présente cause avait trait d'abord à le fermeture des théâtres le dimanche; mais un consentement, qui est au dossier, démontre qu'il s'agit d'un *"test case"*

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et que d'un commun accord on soumet à la décision des tribunaux la légalité de tout le statut lui-même. Voici les propres terms de ce consentment:—

> Les parties en cette cause consentent à limiter leur argumentation et leurs prétentions à la seule question de savoir si la loi sur l'observance du dimanche passée par la législature de Québec en vertu du statut 7 Edouard VII., ch. 42 de 1907 est constitutionnelle, *ultra vires* ou *intra vires*, les moyens de prohibition ne devant pas être discutés, le tout pour éviter des frais et des pertes de temps.
>
> La même entente est convenue pour les autres causes de Sharpe, Richardson et Applegath.

Pour bien comprendre la raison d'être de cette législation il est important, je crois, de connaître les circonstances qui y ont donné lieu.

La province d'Ontario avait dans ses statuts une loi dominicale basée sur le statut de Charles II. Elle était intitulée "An Act to prevent the profanation of the Lord's Day." Passée sous l'Union du Haut et du Bas Canada elle avait été reproduite dans les statuts refondus d'Ontario et plus tard on jugéa à propos d'en étendre les dispositions en prohibitant la circulation des tramways le dimanche. Les tribunaux furent saisis de la question et le Conseil Privé, dans la cause de *Attorney-General for Ontario* v. *Hamilton Street Railway Co.*(1), décida en substance que cette législation provinciale était de sa nature criminelle et était dans son ensemble (as a whole) inconstitutionnelle. On a alors demandé au parlement fédéral de légiférer sur la matière. Le gouvernement crut, avant d'adopter une législation générale, devoir en référer à cette cour et soumit à cette fin certaines questions auxquelles des réponses furent données.

Il était bien évident par la nature des réponses que le parlement fédéral ne pouvait se soustraire à l'obli-

(1) [1903] A.C. 524.

gation d'agir. Mais il lui restait a décider quelle forme il allait donner a sa législation. Il pouvait bien procéder sous les dispositions de l'Acte de l'Amérique Britannique du Nord (sous-sec. 27 de l'article 91), à déclarer criminelle toute œuvre servile ou tout acte de commerce fait le dimanche et son autorité n'aurait pas pu être contestée. Mais il se trouvait en présence de lois existant depuis des siècles dans certaines provinces; il avait à faire face à des coutumes séculaires qui par leur caractère contribuaient à la sanctification du dimanche ou au développement de la religiosité de la population, ou qui avaient été nécessitées par des établissements par trop dispersés. Je pourrais citer, entr'autres coutumes, les pèlerinages qui ont lieu le dimanche depuis un temps immémorial dans la Province de Québec.

Il en est de même de cette coutume pour le paysan d'apporter à l'église les prémisses de ses produits et de les faire vendre à enchères publiques après le service divin pour en consacrer le produit au soutien des œuvres religieuses.

Une loi qui aurait été adoptée par le Parlement fédéral et qui aurait déclaré criminelle toute excursion le dimanche ou qui aurait prohibé la vente de denrées ce jour-là aurait naturellement frappé ces coutumes si recommendables.

En présence de ces difficultés, le Parlement n'a pas procédé à amender le code criminel mais il a passé une loi qui par son titre, "Acte concernant l'observance du dimanche," et par ses dispositions en général doit être classée parmi celles adoptées pour la paix, l'ordre et le bon gouvernement du pays sous les dispositions du premier paragraphe de la section 91 qui se lit comme suit:—

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It shall be lawful for the Queen by and with the advice and consent of the Senate and House of Commons to make laws for the *peace, order and good government of Canada* in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces.

Cette loi du dimanche adoptée par le Parlement fédéral est le ch. 153 des status refondus du Canada, 1906.

On trouve que le Parlement, bien loin de vouloir empiéter sur les droits des provinces les a, au contraire, formellement reconnus en déclarant dans les sections 5, 7, 8 et 16 que ses dispositions n'auaient d'effet que si les provinces n'ont pas de loi couvrant le cas.

La législation dominicale frappe les droits civils qui, comme on le sait, sont du ressort des provinces et il n'y a pas lieu alors de s'étonner de voir le Parlement fédéral respecter l'autonomie des Provinces sous ce rapport.

Nous avons dans nos lois et dans notre jurisprudence la question de la tempérance qui peut nous servir de guide dans l'interprétation de la loi fédérale et de la loi provinciale du dimanche. Le Parlement fédéral a, comme on le sait, le "Canada Temperance Act" qui pourvoit à la prohibition des liqueurs dans certains districts. Cette loi a été attaquée et le Conseil Privé, en 1882, dans la cause de *Russell* v. *The Queen*(1), a décidé que le Parlement fédéral, en vertu de ses pouvoirs de faire des lois pour la paix et le bon ordre du Canada, pouvait passer cet acte.

C'est une loi tendant à restreindre l'abus des liqueurs enivrantes.

Les provinces également avaient légiféré sur la matière et avaient ordonné, par exemple, la fermeture

(1) 7 App. Cas. 829.

des débits de liqueurs le dimanche ou pendant certaines heures les jours de semaine. Ces lois provinciales ont été également attaquées comme inconstitutionnelles et le Conseil Privé à différentes reprises en a maintenu la validité. *Hodge* v. *The Queen*(1) ; *Attorney-General for Ontario* v. *Attorney-General for the Dominion*(2) ; *Attorney-General of Manitoba* v. *Manitoba Licence Holders Association*(3) ; *Poulin* v. *Corporation of Québec*(4) ; *Huson* v. *Township of South Nowich*(5).

Dans la seconde de ces causes, Leurs Seigneuries disent, à la p. 365:—

> In section 92, No. 16 appears to them (their Lordships) to have the same office which the general enactment with respect to matters concerning the peace, order and good government of Canada so far as supplementary of the enumerated subjects fulfils in section 91.

Dans la cause de *Russell* v. *The Queen*(6), le Conseil Privé avait également déclaré que dans ses attributions de légiférer pour la paix et le bon ordre le Parlement fédéral avait le droit de passer une loi prohibitant l'usage des liqueurs. Les provinces ont également le pouvoir d'exercer la même autorité.

Si les provinces peuvent fermer les buvettes le dimanche, je ne pourrais pas m'expliquer pourquoi dans l'exercice de leurs pouvoirs de faire des lois de police elles n'auraient pas le droit de fermer les théâtres le dimanche.

La législation provinciale en question dans cette cause-ci n'a fait, après tout, qu'une réglementation de police. Cette prohibition des représentations théâtrales le dimanche d'ailleurs n'arrive qu'incidem-

(1) (1883) 9 App. Cas. 117.
(2) (1896) A.C. 348.
(3) [1902] A.C. 73.
(4) 9 Can. S.C.R. 185.
(5) 24 Can. S.C.R. 145.
(6) 7 App. Cas. 829.

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ment dans le statut. Ce dernier a pour but principal de revêtir de l'autorité de la loi les us et coutumes de la province de Québec. Voici la section 1ère de ce statut:—

> Les lois de cette législature, soit générales, soit spéciales, relatives à l'observance du dimanche en vigueur le 28 de février, 1907, continueront à être en vigueur jusqu'à ce qu'elles soient modifiées, remplacées ou abrogées; et il est et continue d'être permis à toute personne de faire le dimanche tout acte qui n'est pas prohibé par loi de cette législature en vigueur à la dite date, ou d'user le dimanche de toutes les libertés que lui reconnaissent les usages de cette province sous les restrictions contenues en la présente loi.

Elle énonce parmi ces restrictions les œuvres serviles inutiles, les représentations théâtrales et les excursions où l'on débite des liqueurs en édictant l'article 2 que se lit comme suit:—

> Sect. 2.—Il est défendu le dimanche dans un but de lucre, sauf néanmoins le cas de nécessité ou d'urgence, d'exécuter ou de faire exécuter aucune œuvre industrielle, ainsi que d'exercer aucun négoce ou métier, ou de donner ou d'organiser des représentations théâtrales ou des excursions accompagnées de vente de liqueurs enivrantes ou de prendre part ou d'assister à ces représentations théâtrales ou à ces excursions.

On ne saurait prétendre que ces dernièrers dispositions devraient rendre toute la loi nulle et inconstitutionelle; et, comme je l'ai dit au commencement, nous sommes appelés à nous prononcer sur la validité de toute l'acte lui-même, vu le consentement signé par les parties au procès.

Nous devons donc rechercher quelle est l'idée dominante de cette loi. Pour moi, je la trouve dans la section 1ère; et la dernière section n'a été édictée que dans le but d'empêcher les propriétaires de théâtres, les organisateurs d'excursions et les commerçants ou industriels d'invoquer des usages qui auraient pu exister et qui seraient devenus légalisés par la première section.

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D'ailleurs, en supposant que ces prohibitions seraient seules, je dis qu'on devrait les considérer comme règlements de police tombant sous la juridiction provinciale.

Le travail le dimanche a toujours été considéré dans Québec, dès les premiers temps de la colonie, comme devant être réglementé par les autorités policières. Comme on le sait, l'Intendant sous la domination française avait le droit de faire des règlements de police. La législation criminelle, au contraire, appartenait au Conseil Souverain ou au Conseil Supérieur. Or suivant cette distribution des pouvoirs législatifs, l'intendant Raudot prohibait le 25 mai, 1709, toute œuvre servile les dimanches et les jours de fête. Nous pouvons trouver le texte de cette ordonnance, ainsi que de certaines autres qu'il a faites pour empêcher qu'on fasse du bruit près des églises aux pages 421 et 426 des "Ordonnances des Gouverneurs et des Intendants sur la voirie et *la police*" compliées en 1856, 3ème vol.

Le parlement fédéral, par sa loi de 1906, n'a pas voulu faire une législation criminelle. S'il avait voulu lui donner ce caractère, il ne l'aurait pas appelé simplement "An Act respecting the Lord's Day"; mais, adoptant les termes du statut d'Ontario qui venait d'être examiné par le Conseil Privé, il l'aurait intitulé "An Act to prevent the profanation of the Lord's Day." Il aurait amendé son Code criminel. Il y avait déjà dans ce code la partie 22 qui traite des offenses contre la religion.

Mais dans la loi il n'est nullement question du Code criminel.

Une action qui est signalée criminelle par le législateur doit frapper tous les citoyens d'un même pays.

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Il paraîtrait étrange qu'un acte pourrait être un crime dans un certain endroit du pays et ne le serait pas ailleurs. Ce serait cependant la portée du statut fédéral que nous examinons. En effet, dans les sections 5, 7, 8 et 16 on y défend certaines choses pourvu qu'une loi provinciale n'aît été passée à ce sujet.

Ainsi dans une province un travail quelconque par l'opération de la loi fédérale y serait défendu, tandis que par l'effet d'une loi provinciale il serait permis dans une autre province.

Si nous consultons la section 6 du statut fédéral au sujet des télégraphistes, nous voyons également que ce statut ne saurait être une législation criminelle vu que cette législation a en vue la création d'un jour de repos.

Il est bien évident pour moi que ce statut fédéral ne doit pas être considéré comme un statut criminel, mais comme une loi concernant la paix et le bon ordre du pays.

Alors toute législation provinciale qui n'est pas incompatible avec les dispositions de ce statut est valide parce qu'elle a trait à des droits civils, à des matières d'intérêt local et que sa règlementation du sujet participe des lois de police sous les dispositions des sous-sections 13 et 16 de l'article 92 de l'acte de l'Amérique Britannique du Nord.

L'appellant a invoqué en sa faveur l'opinion donnée par la cour suprême sur la référence qui a été faite par le Gouveurneur-en-Conseil.

La législation qui a été adoptée subséquemment par le Parlement fédéral et par la législature provinciale de Québec démontre, comme je viens de le dire, que ni dans un Parlement ni dans l'autre on a

voulu légiférer criminellement. On paraît au contraire s'être entendu, et le Parlement fédéral et les provinces, pour éviter l'écueil qui avait été signalé par la cour suprême.

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Pour toutes ces raisons je serais d'avis de renvoyer l'appel avec dépens.

Appeal allowed with costs.

Solicitor for the appellant: *J. O. Lacroix.*

Solicitor for the respondents: *Douat Brodeur.*