Austria will hold its next international fair at Vienna in March.

Peru is considering the increase of its gasoline consumption tax.

Italy now has 113,000 miles of improved roads.

Pickles grown in America are becoming popular in China.

The Daily Argument

AUNT HET

BY ROBERT QUILLEN

"Ma saw Betty's beau at a picture show with another girl, so Ma didn't remember what the picture was about."

POOR PA

"A woman needs a lot of imagination. You can't love a man unless you can look up to him, an' sometimes it's awful hard to keep thinkin' he's superior."

CANADA SAFE AS PART OF THE EMPIRE

Does Canada Need England? Is Theme Of London Express Editor in Striking Address Before Canadian Club at Toronto.

TORONTO, Jan. 8.—Canada's need of Great Britain for her defence, as a partner in business and as a model of tradition, as well as Great Britain's need of Canada for her quality of youth, were stressed by Arthur Beverly Baxter, Managing Editor of the London Express, in an address today before the Canadian Club of Toronto.

In answering the question, "Does Canada need England?" which formed the title of his address, Mr. Baxter plunged into the question of national defence. "Perhaps the war spirit is over. I hope to God it is," he said, "but with France arming with all the extravagance of a Napoleon, I believe Canada must face the possibility of future war."

"Canada is in a fortunate position," declared the speaker, "in that she has her guarantee of safety as a part of the British Empire, and we cannot deny it, her guarantee under the Monroe doctrine. If Canada were to decide to go it alone she must take the position to Cuba. Canada needs the British League of Nations, a League of Nations from which you can walk out any day or any hour without a word of protest being raised in England. The greatest freedom in the world is that of the units of that League of Nations.

Economically Mr. Baxter held that England is an enormous and unequalled partner to Canada. I can see the day when the barriers will come down between England, and this country, between Canada and Australia, India and other parts of the Empire—a wonderful free trading unit."

(Special to The Guardian)

BELGRADE, Jan. 8—Details of the events of last Saturday night when King Alexander cut the Gordian knot of the political situation by dissolving Parliament and taking over to himself the powers of government are only gradually becoming known. As the facts gradually come out the secrecy with which the change was engineered becomes more pronounced.

Even the minister of the palace, M. Jovanovitch, did not know what was pending. He has since been replaced by Bozho Jeftchitch. The secrecy with which the king moved can be judged further by the fact that several cabinet ministers went to their offices the next morning and found, to their amazement, that successors were already at their desks.

Throughout the whole country changes in officials and the suspension of local government bodies has been carried out with similiar efficiency and thoroughness. Even in the most remote parts of the kingdom special messengers arrived Sunday morning with the new orders. The new regime is going ahead with the same policy of omitting preliminary announcements.

Tomatoes grown in Italy are being sent to this country.

Magistrate

Continued from page 1

tention that section 52 of the Prohibition Act was not enforced. If we look at the original Act, we find that it provided that under section 52 no one should have any liquor, except that purchased from the Vendor, and in the properly labelled container in which it was so purchased.

Drastic Legislation

Then came Section 185, which provided that section 52 should not come into force until proclaimed by the Lieutenant Governor in Council pursuant to a request by the Prohibition Commission. This, Mr. Johnston, stated, was a very drastic piece of legislation. Why was Section 185 passed and this section kept in abeyance? Because it was unusual legislation, not in force in any other part of Canada, and it was held over for consideration. Section 52 was subsequently held ultra vires by this court on the ground that it interfered with interprovincial trade.

Then there was a proclamation by which the old Section 52 was brought into effect. It is suggested in this argument that this proclamation could be of no effect, for it endeavored to bring into effect a section which was declared ultra vires.

Then, in 1923, Section 52 was repealed, and re-enacted, in the very same statute. Now the question is does not this Section 185 apply to this new Section 52, so that before this section could come into effect, a new proclamation would have to be issued? Mr. Johnston submitted that this was in fact the state of affairs, and that a new proclamation was necessary to bring the section into effect.

In dealing with the repeal of certain sections of the Act, and their simultaneous re-enactment, we must look, not to these sections alone, but to the whole act. The provisions of Section 185 must be invoked to bring Section 52 again into effect. In support of this, Counsel cited the case of Attorney General vs. Lamplough. The matter came up in the judgment of this court also in the case of Patrick MacKenna, in which the court referred to the case of Norton vs. Shelby County, in which it was decided that an unconstitutional Act was not law, and was as inoperative as if it had never been passed. For that reason, the section was re-enacted in 1923. Furthermore, Counsel submitted, section 52 had never been brought into effect, even had it been constitutional and valid.

Limit to Legislative Power

The legislature of this province has no right to delegate to any one man, or to a board of commissioners the power of saying when any law or statute shall go into effect. This matter came up in somewhat similar form before the Privy Council by which it was declared that the International Referendum law of Manitoba was invalid, because it compelled the Lieutenant Governor to submit enactments to a body of voters to decide whether or no they were to become law.

Mr. Johnston submitted that the case under consideration was analagous. Here the statute was to be submitted to a board, which would say when it should become law, and that no provincial legislature had authority to delegate its powers, as it might, thereby give to one person in the community the right of declaring when legislation would become law.

In opening his argument on the constitutionality of section 21, Mr. Johnston submitted that the question was not whether the provincial legislature could appoint Magistrates and justices of the peace, or what power and authority could be granted to them, but the question was whether, in this case, the legislature had attempted to confer upon Mr. Tweedy jurisdiction, power and authority which were well recognized as appertaining to the supreme court of the province including its inherent powers in matters of appeal.

Cites Authority

He cited in this connection R. vs. Taylor, 1840, wherein it was decided that Quo Warranto proceedings would not be granted against a borough official, where what was really in question was the validity of a statute.

Here we were calling into question the right of the Legislature of Prince Edward Island to constitute such a court as purports to be constituted in sec. 21.

The question is whether or not the Legislature of this province can confer upon one of its appointees, authority, jurisdiction and powers such as our county and superior courts have been accustomed to carry on. Mr. Johnston submitted that the Legislature had no power to do this, and further than the Supreme Court here was more a Dominion Court than a Provincial Court. He quoted section 129 of the B.N.A. act in support of this contention. Such Supreme or Superior court had the right to prove its own rules of proceedings, to hear appeals and to review the proceedings of lower courts. Such are the powers which this section 21 purports to vest in the three magistrates to be appointed under the Prohibition Act.

What are these powers? Section 24 provides that any prosecutor under the act may appeal to the county court.

All the powers which the Supreme Court has been accustomed to exercise, of appeal, quashing convictions and review are transferred to these three magistrates. And if the legislature can do this in one field it may do it in others, and so rob the Superior Courts of most of their rights and powers. Counsel was emphatically of the opinion that no legislature had the right to hand over any of the powers or jurisdiction of these courts, which were reserved to them by the B.N.A. act, and had been theirs, but before and since Confederation, to one of its own appointees.

In support, Mr. Johnston cited the case of Bark vs. Tunstall.

Respondents Contention

With regard to the contention of counsel for respondent, that Masters in Chancery, and other such officers were often accorded a certain jurisdiction accustomed to be exercised by judges, he took exception to this, and claimed that where the Legislature attempted to confer on masters of the court powers vested in the Supreme Court, such legislation was declared ultra vires. In support of this, he quoted a decision of the court of appeal of Alberta, in which such powers were attempted to be conferred, and the legislation was declared ultra vires.

This question also came before the Privy Council in the case of the Jurisdiction Act, 1924, of Ontario, where an attempt was made by the Legislature of Ontario to assign a certain appellate jurisdiction and the appointment of Chief Justices to such persons as the Lieutenant Governor in Council should appoint. The legislation was declared ultra vires.

In the case of the MacLean Gold Mines vs. the Attorney General, a mining commissioner was endowed with certain powers exercised by the Superior Court. This was held to be ultra vires.

In a case decided in North Carolina, Rhyne vs. Lipscombe, the finding was also along the same lines.

The question arises whether the constitutionality of the statutes can be raised in these proceedings and here again we have to refer mainly to Canadian and United States cases. Thus in the case of Norton vs. Shelby County; it was decided that the acts of the Shelby County Commission, infringing on those of justices of the peace and other judges were unconstitutional, and therefore, void. This decision has been taken cognizance of by our courts, previously, namely, in the case of Patrick McKenna.

Methods of Procedure

If a man is in office, if the office itself is properly constituted, there is no wrong done to the public, and the only recourse against him is to take proceedings to oust him from office.

But where the court is improperly constituted and the person holding it a usurper from the beginning, the acts of such a court are utterly void. In other words there cannot be a de facto Judge of a de facto court. There must be a court before there can be a de facto judge.

In this case we are trying the constitutionality of a statute.

The Chief Justice: The Court is now trying an application for certiorari. Will you submit cases showing the relation of this matter to the present application for a writ of certiorari?

Mr. Johnston: I start by assuming that there must be some remedy, secondly by showing that Quo Warranto will not apply.

The Chief Justice said that more relevant authorities should be given than any yet cited—authorities having some definite application to the application for certiorari.

Mr. Justice Arsenault: The statute constituting the court with the corollary question of its validity must be read into the record. How else could it be got before the court?

Mr. Johnston: This involves the question of Jurisdiction. The validity of the act is attacked, for there is no jurisdiction if the act is not valid. I submit we can do this by certiorari.

The Chief Justice: Certiorari is a writ so extensively applied for, that I would expect that there would be an abundance of cases illustrating the whole field over which it is used.

Mr. Johnston: I have given Your Lordship two cases of certiorari; one of prohibition, one of habeas corpus, and one where Quo Warranto will not lie. The writ of error is closely allied to Habeas Corpus and I have cited the case of Norton vs. Shelby County. I take the broad ground of the constitutionality of the office. The writ of Prohibition doesn't seem to work; nor Habeas Corpus; appeals are barred. We are taking the only remedy we can.

Mr. E. H. Strong then dealt with the question of the Jurisdiction of Mr. Tweedy in relation to the Summerside incorporation act of 1903, under which the Stipendiary Magistrate of the town of Summerside was declared to have sole jurisdiction over all matters coming within his cognizance.

The Prohibition Act is a public act; the Summerside incorporation act is a private act. Among other things, a portion of the fines collected under the Prohibition Act went to the town of Summerside. Previous to the 1925 Act two Justices of the Peace claimed jurisdiction in the town, and section 8 of the 1925 Act passed on petition of the town of Summerside, expressly safeguards the jurisdiction of the Stipendiary Magistrate of that town from being infringed upon by any justices of the peace, or county court judges.

Now, a general Act does not by implication (Lynn vs. Peel, cited; also Thorpe vs. Adams) abrogate an earlier private or particular Act. Hardcastle on statute law states that in the absence of any special indication of intention to that effect in the legislation, local acts are not repealed by general acts. The books are bristling with discussion on these points.

Now how does this section 21 accord with the Summerside incorporation act? It gives jurisdiction to these three magistrates, "notwithstanding any statute in this province to the contrary."

Surely then, it is highly improbable that this was meant to apply to the town of Summerside, without some specific mention. It cannot be thought that the legislature wished to abrogate, in effect, the Summerside incorporation act in this way.

As to the necessity for three magistrates Mr. Strong contended that the reason three were provided for in the statute, was that, with one in each county, say, there would be ready access to them. He was satisfied, on perusing the statute, that it had not been complied with, and that, therefore, the appointment of one magistrate was invalid. In closing, he asked that the rule be granted.

Mr. Campbell in rebuttal, claimed in reference to the incorporation act of the town of Summerside, that the phrase "including any incorporated town" was meant specially to confer the jurisdiction of the prohibition magistrate on the towns of Summerside and Charlottetown, as they were the duly incorporated towns in the province. This was a sufficiently specific reference to abrogate the particular act to that extent.

As regards the question of the constitutionality of the court, the authority of the Dominion Government under the B.N.A. Act was really intended to extend only to the appointment of Superior Court Judges.

He reaffirmed his contention that no endeavour had been made to remove jurisdiction from Dominion Courts in federal matters. The only change in jurisdiction was that which was confessed by the Provincial Government through its non enactments. Surely this was admissable.

He questioned whether the 4th and 5th grounds of the application could be reviewed and called attention to the failure of the applicant to produce direct authority for reviews by way of certiorari, whereas he himself had been able to find many authorities to the effect that the court could not, under an application for certiorari, inquire into the matter of whether of no the court was properly constituted.

As to the allegation of bias in the magistrate, a refusal to adjourn the court could not be considered as evidence of this, unless improper conduct was shown, and this had not been done. In any case, the adjournment had not been refused by the magistrate, though it was within his power to do so.

After Mr. Campbell **Mr. Johnston** arose and stated a question had been asked by the Court as to the efficiency of the remedy by certiorari, and wished to make his position clear. He said there is a conviction before the court, which the Court was asked to quash by certiorari. If this conviction was made by either a de jure or a de facto judge, it was valid; if not so made, it was made without jurisdiction, and was invalid.

In arriving at whether it was valid or invalid, the constitutionality of the statute was in issue, and this question of jurisdiction ought to be raised and could only be properly raised by certiorari proceedings. This, he claimed, was his position in this matter.

The court reserved decision.