

C. 599). The Court, (per Ramsay J.), stated: "The case of Coote decided in the Privy Council, directly recognizes the power of the Local Legislature to create new Courts for the execution of criminal law, as also the power to nominate Magistrates to sit in such court. We have therefore the highest authority for holding that, generally, the appointment of Magistrates is within the powers of the Local Executives. So much being established, almost all difficulty disappears." Turning now to the case of *Regina vs Coote*, which the Quebec Court of Queen's Bench had relied on as solving all difficulties, as to the conflict of powers, it is matter of regret to find that it really has no bearing on that subject whatever. The single passage in that judgment which bears upon any constitutional question is contained in the following extract from the judgment delivered by Sir Robert Collier: "The objection taken at the trial appears to have been that to constitute such a court as that of the Fire Marshal was beyond the power of the Provincial Legislature, and that consequently the depositions were illegally taken. Subsequently other objections were taken in arrest of judgment and the question of the admissibility of the depositions was reserved. It was held by the whole Court (in their Lordship's opinion, rightly,) that the constitution of the Court of the Fire Marshal, with the powers given to it, was within the competency of the Provincial Legislature."

There was no contention at the argument, and no decision by the Court, as was supposed by Mr. Justice Ramsay, that the "power to nominate Magistrates to sit in such courts, is within the power of the Local Executive." No solution, therefore of the difficulty noticed by the Court of Queen's Bench in the case of *Regina vs Horner* is to be found in the decision of the Privy Council in *Regina vs. Coote*.

The fact is that the Statute then under review created officers called "Fire Marshals," with the power of making investigations concerning fires, and their power, in so far as it came under the consideration of the Judicial Committee, was merely that of summoning witnesses, and of committing suspected persons for trial. How then could it have been supposed that this was a decision, even in favor of the principle that Local Legislatures could "create new courts for the execution of the criminal law," as stated by Mr. Justice Ramsay, much less a decision affirming "the power" of the Local authorities to appoint "the Judges to sit in such courts"? The power "to create new Courts for the execution of the criminal law" was expressly conferred by the British North America Act, and fortunately, it does not rest on the case of *Regina vs. Coote*. As to the suggestion that the Local Legislature had even attempted, by the Act then under consideration, to create a new "court for the execution of the criminal law," it is not only apparent from the references of the Judicial Committee that no such attempt had been made, but the Court of Queen's Bench itself had decided, in 1872, (*ex parte Dixon* 2 *Revue Critique* 231), that the Statute in question had no connection with criminal procedure.

The only remaining passages in the judgment of *Regina vs. Horner* are an attempt to work out the theory on which it was imagined that the case of *Regina vs. Coote* had been decided, and the case