

a more delicate task than it should be considered now, when the relative positions of the Legislatures and Parliament are better understood, and the principles which should guide both have become more familiar.

The most remarkable instance in which Provincial Legislation has over-run the limits of Provincial competence has been the legislation in reference to the Administration of Justice. It has been common for the Provinces to enact from time to time what the qualifications of the Judges who were to be appointed by the Governor General, should be, although this seems to the undersigned to be an attempt to control, by Provincial Legislation, the power vested in the Governor General by the British North America Act.

The most plausible argument offered in defence of such legislation has been the contention set up in one quarter that, inasmuch as it is for the Provincial Legislatures to say whether the Court shall be constituted or not, it is proper for them to say that the Court shall be constituted, provided Judges of certain qualifications are appointed to preside therein. This seems to the undersigned to be erroneous in principle. It is an attempt to provide that the power of the Governor General shall be exercised only *sub modo*, and if the principle were recognized it would be competent to provide that Provincial Courts should only be established, provided the Judges should be those nominated by the Provincial Executive or taken from a class nominated by that Executive.

Again, in reference to this subject, doubtful legislation has been adopted in nearly all the Provinces, setting up Courts with civil and criminal jurisdiction, with Judges appointed by Provincial or municipal authority. In some instances, and with respect to some of these tribunals, it would seem that the doubts as to their constitutionality have been lessened or removed by the Dominion Parliament from time to time, recognizing them, or conferring jurisdiction upon them. As regards others of them, the legislation may still be open to grave question, although in most cases, as in the case of Quebec, now under consideration, the Legislatures have been careful to avoid conferring the title of "Judges" upon the officers whom they have really undertaken to clothe with judicial powers.

In legislating upon this subject, the enactments have followed a course which it has been difficult to control without seeming to infringe unnecessarily on Provincial action, and without seeming, at least, to impugn a series of Provincial Statutes which have frequently been left to their operation.

In other instances the promoters of this kind of legislation have been disposed to assume that the organization of a tribunal with small civil and criminal jurisdiction, presided over by a Judge or Magistrate appointed by the Provincial Executive, would be within Provincial authority, and that such a tribunal having been established, its authority and jurisdiction could be widened and increased under the powers which the Provincial Legislatures possess to regulate the administration of justice in the Province "including the constitution, maintenance and organization of the Provincial Courts, both of criminal and civil jurisdiction, and including procedure in civil matters in these courts."