should be established, while Her Majesty's appointment can confer the like rank in all those Courts, as well as in the Provincial Courts, and as well out of those Courts as within their precincts.

Then again, by an old law of the Province of Upper Canada, it was enacted that it should no longer be necessary that Commissions should be issued for holding Courts of Assize and *Nisi Prius*, Oyer and Terminer and General Gaol Delivery, but that if they should issue, they should contain the names of the Chief Justices and Judges of the Superior Courts of Common Law, and that they might also contain the names of any of the Judges of the County Courts, and of any of Her Majesty's Counsel learned in the law, of the Upper Canada Bar, one of whom shall preside in the absence of the Chief Justices, and of all the other Judges of the said Superior Courts, and that if no such Commissions should be issued, the said Courts should be presided over by one of the Chief Justices, or of the Judges of the said Superior Courts, or in their absence, then by some one Judge of a County Court, *or by some one of Her Majesty's Counsel, learned in the law of the Upper Canada Bar*, upon such Judge or Counsel being requested by any one of the said Chief Justices or Judges of such Superior Courts to attend for that purpose.

Now, if by any chance a gentleman claiming to hold the rank of a Queen's Counsel in virtue of Letters Patent, signed by a Lieutenant-Governor, should preside at a Court of Oyer and Terminer upon the trial of an important criminal case, and the validity of the trial should be called in question upon the ground that the gentleman presiding was not qualified to sit as a Judge, not having any commission from the Dominion Government, conferring upon him the rank of "Judge," and not having any appointment from Her Majesty conferring upon him the rank of "Queen's Counsel," a very embarrassing question might arise and the ends of justice might be frustrated. Convenience, therefore, as well as the observance of uniformity in the exercise of the power, would seem to concur with other considerations in pointing to the propriety of this branch of the Royal prerogative being maintained as of old inseparably annexed to that prerogative, and to be exercised at the sole discretion of Her Majesty, through Her sole representative in this Dominion, His Excellency the Governor-General.

The Provincial Act which contains the above recital, proceeds to declare and enact that it was and is lawful for the Lieutenant-Governor by Letters Patent under the Great Seal of the Province of Nova Scotia, to appoint from among the members of the Bar of Nova Scotia, such persons as he may deem right to be during pleasure Provincial officers, under the name of Her Majesty's Counsel learned in the law for the Province of Nova Scotia.

Now, if "it has been, and is lawful" for the Lieutenant-Governor to make Queen's Counsel, it can only be so by the provisions of the B. N. A. Act. If that Act does confer the power upon the Provincial Executive, no doubt the Lieutenant-Governor has it, and a Provincial Act can add no force to the Imperial Act. But if the Imperial Act does not confer the power then the Lieutenant-Governor has it not, nor can any Act of the Provincial Legislature effectually declare that he has, or by enactment pointing to the future confer it upon him.

The futility of a declaratory Act passed by a subordinate Legislature for the purpose of authoritatively defining the intention entertained by the Supreme Parliament in the Act which gives to the subordinate its existence, and professing to put a construction upon a doubtful point in that Act as to the powers conferred upon the subordinate is too apparent to need comment. The office of a declaratory Act is of a nature which requires that it should be passed only by the power which passed the Act, the intention of which is professed to be declared; and as to an Act providing for the future for the extension of the limits of the authority of the Lieutenant-Governor, it is equally plain that no power but the Imperial Parliament, which has set limits to the jurisdiction of the Provincial Executive, can extend these limits and enlarge that jurisdiction.

It has been said that the Crown officers in England at some time have given it as their opinion that the power claimed to be exercised by the Lieut.-Governor might be conferred upon him by an Act of the Provincial Legislature, of which he himself is a component part. I have not seen their opinion, nor have I been able to suggest to myself the arguments by which such an opinion could be supported; all I can say therefore, in the absence of the light of the opinion given, is, that, in the best exercise of my own judgment which I am bound to exercise here to the utmost of my ability, with such light as I have, I have been unable to bring my mind to any other conclusion than that the Letters Patent under which the appellants claim rank as Queen's Counsel, and the Provincial Statute in virtue of which these Letters Patent issued, as well as the Act regulating precedence are, for the reasons above given, null and void, and for this reason I am of opinion that the appeal should be dismissed with cost.

Appeal dismissed with costs.