

ing distinct and exclusive legislative powers, there must be care exercised by each to avoid encroachments by either body upon the exclusive powers of the other." 'As an abstract proposition it may be affirmed that if the Dominion Legislature were to enact that some of the matters vested in the Parliament—for instance "Bills of Exchange and Promissory Notes"—should be litigated only in a particular local court, and not in any other court whatever, such an enactment would be unconstitutional, because it would be an encroachment on the exclusive powers of the Provincial Legislature."<sup>2</sup> 'A confirmed Act of a legislature, lawfully constituted, whether in a settled or conquered colony, has, as to matters within its competence, and the limits of its jurisdiction, the operation and force of *sovereign legislation*—though subject to be controlled by the Imperial Parliament."<sup>3</sup> 'But in cases of concurrent authority, where the laws of the State are in direct and manifest collision on the same subject, those of the Union, being the supreme law of the land, are of paramount authority, and the State Laws so far, and so far only, as such incompatibility exists, must necessarily yield.'<sup>4</sup>

In the creation of these dual governments, the statutory powers or prerogatives of the Crown were necessarily divided; some were assigned to the Dominion, and some to the Provincial, Governments, to the extent necessary for the complete and efficient exercise of the 'exclusive' authority of each.

It was not politically necessary, except for a harmless rhetorical purpose, to enact in the British North America Act that 'the Executive Government

and authority of and over Canada is hereby declared to continue, and be vested, in the Queen.' Nor was it necessary, except as giving a key to what were to be the Governor-General's functions and jurisdiction in Provincial Legislation, to declare that 'the provisions of this Act, referring to the Governor-General, extend and apply to the Governor-General for the time being, carrying on the Government of Canada *on behalf and in the name of the Queen*.' By constitutional usage, all Governors of colonies carry on their governments 'on behalf, and in the name, of' the Sovereign, as representing the chief executive authority of the State. In Canada, the Governor-General's assent to Bills, his appointment of Lieutenant-Governors, Privy Councillors, Judges and other functionaries, and his other acts of Government, within his jurisdiction, are 'on behalf, and in the name, of the Queen,' by and with the advice which the law and the constitution has assigned to him.<sup>5</sup>

It will, doubtless, be conceded that the Colonial Prerogatives of the Crown, may be vested by statute or Royal Commission, in a Governor-General or in a Lieutenant-Governor; some of such prerogatives *ex necessitate*,

(8) 'The distinction drawn in the statute between an act of the Governor, and an act of the Governor in Council, is a technical one, and arose from the fact, that in Canada, for a long period before confederation, certain acts of administration were required by law to be done under the sanction of an Order in Council, while others did not require that formality. In both cases, however, since responsible government has been conceded, such acts have always been performed under the advice of a responsible ministry.'—Sir J. A. Macdonald's Memorandum, H. of C. (Imp.), 1878-9, p. 109. His Excellency's Ministers (whose recommendation is essential to action) are responsible, not merely for the advice given, but also for the action taken. The Canadian Parliament has the right to call them to account, not merely for what is proposed, but for what is done,—in a word, what is done is practically *their* doing.—Mr. Blake's Memorandum, Sess. Papers, (Can.) 1877. No. 89 p. 452. See also Todd's Parliamentary Government in the Colonies, p. 79. 341, 414.

(1) Per Harrison, C. J., *Regina v. Lawrence*, 4 Q.B. Ont. 174.

(2) Per Wilson, C. J., *Crombie v. Jackson*, 34 Q. B., Ont. 575.

(3) Per Willes, J., *Phillips v. Eyre*, L. R. 6 Q. B., 20.

(4) Per Marshall, C. J., *Gibbons v. Ogden*, 9 Wheaton, U. S. 130.