The whole argument lies in a narrow limit, and may be thus simply stated:—He who takes an office takes it with all its legal incidents. His Commission as certainly and as perfectly conveys to him all that by law belongs to his office as it conveys the office itself. The right of a Puisné Judge to take rank according to his seniority is undoubtedly an incident of his office. If the Crown has a right to recal his Commission, then, as the greater power includes the less, it has also a right to regulate his precedence. But if the law have deprived the Crown of this power over his Commission, then it has also, by necessary implication, and as a legal consequence, deprived it of the power to take away the legal incidents of the office conferred by that Commission. A contrary doctrine tends to a palpable logical absurdity. The aggregate of every office is made up of its specific duties and rights; if, notwithstanding the protective law, one right legally incident to it may be taken away, then also another may. The rank first, the patronage (when, as in England, such exists,) next, the emoluments afterwards—and thus the honorable and lucrative place which is bestowed during good behaviour, and is by statute and for wise purposes put beyond the control of the Crown, may be reduced to a charge from the burdens and humiliations of which the incumbent would be glad to escape. But the same argument may be stated in another form:—the Letters Patent granted to Mr. Justice Bedard have a two-fold effect: the one is to settle his rank; the other is to degrade me from mine. The right then to confer a special precedence, necessarily involves a right to supersede and to deprive of the same precedence. The consequence is, that a Government disposed to gratify its personal or political partialities and antipathies might, by bringing up the Junior Members of the Bench, degrade the Senior Judge, if he happen to be obnoxious to the men in power, from the first place after the Chief Justice to the last in the Court. But the same Prerogative which had thus degraded him, might, in the hands of a succeeding Government more favorable or less unjust, restore him to his former place, thus destroying all right of precedence given over him. Can it be contended that such a power in the Crown is consistent with the independence of the Judges, or can co-exist with the Statute for securing that independence? It is plain that, with one of the most important legal incidents of their office (their rank) thus at the mercy of each successive administration (especially in the peculiar social position of this country) the purity of the Bench must be exposed to the corrupting influence of political favoritism and intrigue, and that the law will, in effect, be evaded and neutralized. It seems to me then, undeniable, that the statute which restricts the Prerogative from recalling the Commissions of Judges, deprives it also of all authority to interfere directly or indirectly with their relative rank. I would gladly continue the examination of this question, as affected by the precedents and usages to be found in the Courts of England, because I am anxious that it should be considered under all its aspects, and am satisfied that nothing adverse, in principle, to my pretensions can be found there. But the length which this letter has attained, and the knowledge that those for whose perusal it is intended, are more conversant with this branch of the subject than I can possibly be, deter me from giving it more than a passing notice. It appears that, on the removal of Judges in England from one Bench to another, they have in some instances, at least, retained in the new Court the precedence derived from their original Commissions. The reason assigned for this, in one of the old Reports Cro. car. 127, is that in coming from the one Court to the other, the party merely changes his Court, but never ceases to be a Judge,—the same reason applies to the case reported in Sid. 408. These cases, and several others to be found in the books, occurred before the passing of the Statute for securing the independence of the Judges. There are other cases of the transfer of Judges from one Court to another, to be found since that period, and I am informed that one of these, the exchange between Sir Francis Buller and Sir Soulden Lawrence, is relied upon as an authority against me. Sir Francis Buller was appointed Puisné Judge of the King's Bench in 1777, and the exchange alluded to by which he went into the Common Pleas and Sir Soulden Lawrence into the King's Bench, took place in 1794. There are facts connected with this case which are not satisfactorily ascertained, and without which it is impossible to draw any conclusion from it; one is, that it does not certainly appear where, or by what rule Judge Buller was placed in the Court of Common Pleas. In the report of the cases in which his name occurred it is for the most part, but not invariably, mentioned before that of Mr. Justice Heath, whose Commission in the Common Pleas was posterior to his in the King's Bench. It is also true, that in the absence of the Chief Justice, he usually delivered the opinion of the Court, but this he did also in the King's Bench, although Sir William Ashurst was by many years his senior there; and the certainty of the conclusion which might be drawn from these facts, is disturbed by an inspection of the list of Judges in the beginning of the volume of Reports, where we find his name placed last. Another fact not certainly known, relates to the manner in which he ceased to be a Judge of the King's Bench. The memorandum to be found in the 5th vol. of the Term Reports, page 638, states that "Mr. Justice Buller *resigned his seat in this Court.*" I am not aware of the terms of the Letters Patent by which the judicial authority is conferred in England, but I doubt, whether by this is meant the formal resignation of his office of Judge. Such resignation, I apprehend, would be unnecessary, for nothing is more certain than that, by the common law, the acceptance of a second office determines the tenure of a former one with which it is incompatible. And it is undoubted that the office of Judge of the King's Bench is incompatible with the same office in the Common Pleas. The private history and details of the exchange can only be learned in the place where it occurred; but it is certain that some negociation must have been had between the parties interested before the transfer was effected. Sir Francis Buller came down from a higher Court, the King's Bench, to a lower, and the Judges of the Common Pleas may for all we can see have consented to his taking a certain place among them. At all events, no objection appears to have been made, and it may be observed of this and of all other similar cases—that where no question is raised no legal principle can be considered settled by them. There is certainly nothing to be found in the English cases which in the least countenances the proposition that, "*the Prerogative of the Crown permits the arrangements of rank and order "in the Court," or that special precedence has ever been given to a Puisné Judge by Letters Patent.* And after a careful examination of all which I have been able to find bearing upon the subject, I am not prepared to say that I discover in them any principle, save that it is to be settled by Judicial and not by Executive authority, which materially affects it; either as tending to confirm or disturb the view I have already taken. But had it been otherwise, I am free to declare, that my opinion, resting on the authority and reasoning derived from our Colonial Laws would not have been changed.

The practice in England has grown up under a particular system, and amid circumstances peculiar to that system. The difference of origin and constitution of the Courts in the two countries, presents an obvious objection to reasoning from the one to the other. In England, there is an intimate connection and intermixture of the powers and jurisdiction of the higher Courts, their authority extends over the same locality and the same things, although each has a certain jurisdiction peculiar to itself; their Judges meet to settle points which arise before any of the Courts, not on appeal, but in the exercise of original jurisdiction; and on looking to their history, we find that in former times they were not so much separate and independent tribunals, as convenient divisions of one original Court. All these are features which distinguish the Courts at Westminster from those in this country, and show that the precedents and usage there, cannot be implicitly received as a rule for the settlement of the point under discussion.

I pursue the subject no further. Should the question, as I have raised it, be submitted merely for the opinion of the Law Officers of the Crown in England, I am not sanguine as to the result. It will of course be deemed inexpedient, particularly at this period of time, to interfere with an act of the Provincial Government; and I mean no disrespect to the gentlemen who hold those high offices there, when I say that an opinion on a law point, arising in a remote Colony, and turning upon the institutions which exist there, formed without hearing counsel, or the other aids which Judges