

## THE CRIMINAL JURISDICTION OF THE CHANCERY DIVISION.

every Division Court a court of criminal jurisdiction, and to confer on such courts unlimited powers in criminal cases, *e.g.*, to try capital felonies. We think this would be clearly opposed to the spirit and intention of the B. N. A. Act; and, if so, it goes to show that the right to constitute a court of criminal jurisdiction does not necessarily include the right to define the particular jurisdiction in criminal proceedings which the court may exercise.

Prior to Confederation the Courts of Queen's Bench and Common Pleas had an exclusive criminal jurisdiction, and the Court of Chancery had an exclusive civil jurisdiction. By the B. N. A. Act, s. 129, these courts were continued, subject to being altered by the Provincial Legislature.

Turning to the Judicature Act we find that section 3 provides that the Courts of Appeal, the Court of Queen's Bench, the Court of Chancery, and the Court of Common Pleas shall be united and consolidated together and constituted one Supreme Court of Judicature. Sub-section 2 goes on to provide, that the Supreme Court shall be divided into two permanent divisions; and that the Courts of Queen's Bench, Chancery, and Common Pleas are to constitute one of such divisions, to be called the High Court of Justice for Ontario; and the Court of Appeal is to constitute the other division. Section 9 defines the jurisdiction of the High Court, and it provides that it shall have the jurisdiction which, at the commencement of the Act, was vested in, or capable of being exercised by the Court of Queen's Bench, the Court of Chancery, the Court of Common Pleas and Courts of Assize, Oyer and Terminer, and gaol delivery (whether created by commission or otherwise), and shall be deemed to be, and shall be, a continuation of the said courts respectively (subject to the provisions of the Act), under the name of the High

Court of Justice. This jurisdiction by the following sub-section is also defined to include (subject to the exceptions thereafter contained) the jurisdiction which at the commencement of the Act was vested in, or capable of being exercised by, all or any one or more of the judges of the said courts respectively, sitting in court, or chambers, or elsewhere, when acting as judges, or a judge, in pursuance of any statute or law; and all powers given to any such court, or to any such judges or judge by any statute; and also all ministerial powers, duties, and authorities incident to any and every part of the jurisdiction.

The effect of this Act was therefore to make the Court of Chancery, which was formerly a court of civil jurisdiction only, a part of a court having criminal jurisdiction. It was, no doubt, within the power of the Provincial Legislature to have made the Court of Chancery a court of criminal jurisdiction. It could, no doubt, have legislated in this respect for the Court of Chancery alone, and could have enacted that henceforth it should be a court not only of civil but also of criminal jurisdiction. Such legislation, however, in order to give the Court of Chancery the same powers in criminal matters as the Queen's Bench and Common Pleas had, would have to have been supplemented, it appears to us, by an Act of the Dominion Parliament defining the nature of the criminal jurisdiction which the Court of Chancery might exercise. If this is correct, then it seems to follow that the same kind of legislation is equally necessary in order to confer criminal jurisdiction on the Chancery Division of the High Court of Justice. In other words, if the Ontario Legislature could not, as we think it could not, by its own unaided efforts give the Court of Chancery co-ordinate criminal jurisdiction with the former Courts of Queen's Bench and Common Pleas, it seems to