

RULES OF COURT.

soon to the creation of differences in practice, which the aim of the Act was not only to abolish, but prevent in future.

While, however, it is plain that it would have been in the highest degree inexpedient to have permitted each Division to frame rules for its own particular Division, there may be a question whether the scheme which has been adopted is the best that could have been devised.

As we read the Judicature Act there are three, and there may be four, rule-making bodies. *First*, under section 54, ss. 1: The Chief Justices, the Chancellors and the Justices of Appeal, or a majority of five of them, and a majority of the puisne judges of the High Court may together make Rules; under this section, there must be at least nine judges concurring, of whom five, as we have said, must be taken from among the Chiefs, the Chancellor, and the Justices of Appeal. *Second*, under section 54, ss 5: the Chief Justice of Ontario, and the Justices of Appeal, or a majority of them, may make rules and orders for the Court of Appeal; *Third*, under the same sub-section: The Judges of the High Court, as regards matters in the High Court, have all the powers which the Judges of the Court of Chancery, and the Superior Courts of Law formerly had, for the regulation of the practice of those Courts. *Fourth*, under sec. 55, the Lieutenant-Governor in Council may authorize the Chief Justices and the Chancellor to make rules.

The first and fourth mentioned bodies are, it would seem, intended to make Rules for the Supreme Court. The second of them has power merely to make Rules for the Court of Appeal; and the third would seem to have power merely to make Rules for the High Court of Justice, or any Division thereof.

With regard to the power of the Judges of the High Court to make Rules, it seems somewhat doubtful how it must be exercised. The former power to make rules for the Superior Courts of Law, we have seen, was

vested in the Judges of those Courts, or a majority of them, of whom the Chief Justices must have been two (R. S. O. c. 49, s. 45), and in the case of the Court of Chancery, the power was vested in the Court of Chancery *eo nomine*. The effect of the 5th sub-section of section 54, is, apparently, simply to vest in the whole body of Judges of the High Court (not a mere majority of them), the powers formerly vested in the Judges of the Superior Courts of Law, and the Court of Chancery for making rules.

It may, therefore, be a question whether in order validly to frame rules for the High Court of Justice, it is not necessary that all the Judges of the High Court should concur.

With regard to Rules of the Supreme Court, it seems clear that there must be at least nine Judges concurring, of whom five must be taken from among the Chief Justices, the Chancellor, and the Justices of Appeal. If this be correct, then a question naturally arises what is the effect of Rules which are purported to be promulgated as Rules of the High Court and Supreme Court respectively, which have, apparently, not received the sanction of the necessary number of Judges.

The Rules of the High Court of 22nd and 25th August, 1881, were not sanctioned by all the Judges of the High Court, Proudfoot, J., being absent on the 22nd, and Proudfoot and Armour, JJ., being absent on the 25th. Then, again, the Rules promulgated as Rules of the Supreme Court, passed on the 17th March, 1882, did not receive the sanction of the necessary nine Judges, nor yet were there present a majority of five Judges taken from the Chief Justices, the Chancellor, and Justices of Appeal: the Chief Justice of the Q. B., and the Chancellor, and Burton and Patterson, JJ.A., alone being in attendance.

Thirteen Judges, or even the minimum number of nine, we think, are rather too many to dispose efficiently of matters of this kind. And we believe it is an open secret that there