

CORRESPONDENCE.

The Court under said section 3 did make a general order (No. 196); but in their wisdom they made eleven exceptions to the jurisdiction of the referee instead of four. For example, the judges withheld "*ex parte* injunctions" from the referee, also "opposed applications for administration orders."

Not content with this the Legislature in 1885 has withdrawn the safeguard of a general order of the Court, and now the Queen's Bench Act, section 54, enacts directly that "the referee in chambers may do any such thing," etc., the rest, as in section 3 of the Act of 1881, with only the same four exceptions. Accordingly, the referee can entertain, and does entertain, motions for *ex parte* injunctions, and exercises many other judicial functions. If this legislation is *intra vires*, what is there to prevent the Local Legislature from transferring other judicial powers to the same officer—such as granting writs of *habeas corpus* or writs of arrest, hearing cases in the first instance, motions to continue injunctions, hearing *pro confesso*, and a score of other matters no whit more important than some of those now entrusted to him? As master he now has to adjudicate from time to time on matters of the highest importance, and in many cases the chief contest on the law and the facts takes place in his office. Questions of pedigree, legitimacy, heirship, fraud, title to land, rights of lien, and a hundred other questions of fact or law, involving the very pith and marrow of the suit, no matter what the amount at stake, are constantly referred to the master. Upon his report the judge bases his formal decree or order. These adjudications, whether in chambers or in the master's office, are final, unless appealed from. The time for appealing is strictly limited, and the mode of appealing prescribed must be carefully followed or the litigant is concluded.

The same authority which assumed to confer this jurisdiction upon these officers and provided for such appeals, could equally provide that there should be no appeal. Similarly, if the legislation in question is *intra vires*, provision might be made for the appointment of an officer to exercise all the powers now exercised by the judges in common law chambers, to take trials of causes, to take accounts and references between parties, etc., etc., and to relieve the judges of a great proportion of the work now done by them, and it would be all right if only the officer so appointed be not styled a *judge*. These considerations give rise to a grave doubt whether the Acts of the Local Legislature referred to are not *ultra vires* and void, and whether every judicial act performed by those officers is not without jurisdiction, and therefore unwarranted. Even in Ontario it may be questioned

whether it is competent to confer any new judicial powers upon the referee or master in any of the Courts as has been done by the Judicature Act and Orders; because if that could be done, where must the line be drawn, and what judicial powers cannot be legally conferred upon them?

There is another Manitoba statute which seems to me unconstitutional for a similar reason. I refer to the statute of 1883, known as the Master and Servant Act, which, as amended in 1885, assumes to confer jurisdiction upon a police magistrate or justice of the peace appointed by the Local Government to adjudicate upon any claims for wages up to the limit of one hundred dollars, and that too in a summary manner, and by proceedings of a *quasi*-criminal character. This jurisdiction is not taken away from the County Courts. Of course the Legislature can constitute any new Courts it pleases, either to try civil or criminal matters; but the point I make is that the person who presides in the Court which entertains such a matter as a claim for wages is really a judge, and must be appointed by the Governor-General before he can adjudicate at all in such a matter. In fact it is a serious question whether, in any of the cases referred to, the local legislation would be any protection to a master or a magistrate who should be sued for damages for any act done by him under colour thereof.

In anything I have here said, of course, no word of disparagement is intended for any of the officers personally, it is only the legislation that is criticised. Several decisions have been given holding that the Provincial authorities have the right of legislating with respect to the appointment of police magistrates and justices of the peace; but, so far as I am aware, the questions raised in this paper have not yet come up for judicial consideration.

Yours, etc., GEORGE PATTERSON.

Winnipeg, Oct., 1885.

PAPER TITLES.

To the Editor of the LAW JOURNAL:

DEAR SIR,—It is very provoking in dealing with titles to come across so many title deeds, abstracts and probates of wills written on this wretched straw paper. The profession ought to boycott any stationers dealing in such trash. The saving effected by purchasing these forms is so very infinitesimal that surely no practitioner or even unlicensed conveyancer would consider the price for a moment, compared with the satisfaction of