

belief there is no defence thereto, apply to a Judge for leave to enter final judgment for the amount so verified together with interest, if any, and costs.

536. A local Judge of the Supreme Court shall, in actions brought or proceedings taken, or proposed to be brought or taken, in the Supreme Court in the Judicial District of which he is Judge or Acting Judge, possess the like powers of a Judge of the Supreme Court sitting in Chambers, save and except in respect of the matters following, etc.

541. A Master in Chambers in regard to all actions brought or proposed to be brought in the Supreme Court shall have power and be required to do all such things, transact all such business, and exercise all such authority and jurisdiction in respect to the same, as may be done, transacted, or exercised under and by virtue of these Rules, by any Local Judge of the Supreme Court, with or without the consent of the parties, except the trial of actions.

The question involved is whether the local legislature can confer, directly or indirectly, upon an official of provincial appointment, the powers described in the above Rule 275: or whether to do so infringes upon section 96 of the British North America Act, which enacts that:—

“The Governor-General shall appoint the Judges of the Superior, District, and County Courts in each province, except those of the Courts of Probate in Nova Scotia and New Brunswick.”

Even though the powers thus given by section 96 to the Governor-General would otherwise have come within the power of the provincial legislature under No. 14, section 92, to make laws in relation to:—

“The administration of justice in the province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in these Courts”—they are taken out of the latter power by section 96. This will not be disputed, for the British North America Act has to be read as a whole, as the Judicial Committee long since pointed out.

The whole question then is whether conferring upon a provincial official the powers described in Rule 275, in Superior Court actions, is, or is not, virtually appointing a Superior Court Judge?

The learned Chief Justice holds that it is not, because the Master in acting under Rule 275 “is not trying the rights of the parties. He is determining that there is no real issue to be tried. It is only when such a situation is found to exist that the Master is authorized to give a judgment in favour of the plaintiff.”

It is true that this is apparently the first decision on the precise case of a Master in Chambers, and that the constitutional position of this functionary has not been dealt with in Reports of Ministers of Justice. But the late Sir John Thompson dealt very thoroughly with the general question of intrusions by provincial legislatures and Governments on section 96, in his report of January 18th, 1889, on the subject of the disallowance of a Quebec Act respecting District Magistrates, as the Act in