

REASONS submitted by Mr. Justice BEDARD, in obedience to the Order in Council bearing date the 12th February, 1845, shewing the grounds upon which he dissented from the "Determination, Rule or Order," pronounced by his Honorable Colleagues on the first of July last, and for the reversal, rescinding, and declaring null of which he has applied to Her Majesty the Queen.

*First.*—As to the course adopted by Mr. Justice Bedard, who, on the first day of the Term, claimed his precedence in virtue of Letters Patent, (the Chief Justice being of opinion that it was not the right course,) Mr. Bedard observes, that no other course was left to him, except the abandonment of his legal right, without even consulting the Judges. Entertaining no doubt on that point, he had to assert his legal claim either publicly on the Bench, or better, as he thought, in Chambers. Mr. Bedard's legal right of taking precedence could not be exercised against the will of the Judges, and the very seat which he was to occupy on the Bench became a preliminary question, which such of the Judges as felt themselves competent, were bound to decide. No other course was suggested by any of the Judges, save the proposition made by Mr. Justice Bedard, that he might take the rank he claimed, reserving to Messrs. Day and Smith their right of appeal, a proposition which did not meet with the concurrence of these gentlemen, or to take the opinion of the Chief Justice of the Province, and the Quebec Judges, a proposition which did not meet with the approbation of the Honorable Mr. Chief Justice Rolland.

*Secondly.*—As to the Determination, Rule or Order adopted, dissentiente Mr. Justice Bedard, it is to be observed, that it was never admitted by him, as stated in the Determination, that Mr. Justice Day and Mr. Justice Smith were his seniors on the Bench of Montreal. That statement assumes to be true the very question in controversy. Attempting to prove a proposition that is denied, by assuming the truth of the proposition itself, is what is termed in the schools "a vicious circle," nor can a claim of right be dealt with upon the bare assertions of either party. Had a Member of the Bar been placed over Messrs. Day and Smith, some plausible reasons of expediency might be given against such a nomination, as affecting the loss of rank, stated to be an incident of the Judicial office. But such is not the case. The present case is that of the removal of a Judge of the Court of Queen's Bench from one District to a similar Court in another. As to the exercise of that right by the Crown, we find the following citation in 1st Archbold's Practice of the Court of King's Bench, London Edition of 1826, p. 5:—"In the *Articuli super cartis*, (28 Ed., 1 c. 5,) it is provided, that the 'Justices of this Court shall follow the King, 'so that he may have always near unto him some that be learned 'in the laws.' For some centuries past, however, they have usually sat at Westminster, an ancient Palace of the Crown; but they would of course be obliged to follow the King into any part of the kingdom, if he should think proper to command them to do so; and there is even an instance, in the reign of Edward the First, of this Court having sat at Roxburgh, in Scotland.—M. 20, 21, Ed. 1. Hal. Hist. C. L. 200."

The question then is, which of the Judges is to take rank and precedence as senior? The answer is obvious. The one whom the law acknowledges to be so, either by its own operation, or through the exercise of a legal power in the Crown.

Either of these two propositions being proved, Mr. Bedard's right to take precedence is established. The principles according to which these propositions are to be decided are eminently those of the English Law. They involve a question of Public Law. But were it not so, it will be found that both the old French Law, as administered in certain matters in this country, and the present code in France, are in perfect accordance with English principle on this branch of the law.

First, as to the legal power of the Crown to establish rank and precedence amongst the Judges.

Passing by the old cases in England, such as that of *Master Richard de Abynlon*, to whom Edward the Second gave, by Letters Patent, the same place or precedence in the Court of Exchequer as he had in the time of his predecessor, Edward the First, (History and Antiquities of the Exchequer, p. 57,) it is now a settled principle, that "The King may grant place or precedence to any of his subjects as shall seem good to his Royal wisdom.—" 4 Inst. p. 361, and 1st Blackstone, p. 271. The King, by the Common Law, could have created a Duke, Earl, &c., and could have given him precedence before all others of the same rank, a prerogative not unfrequently exercised in ancient times, but it was restrained by 31 H. 8 c. 10, which settles the place or precedence of all the nobility or great officers of State. This statute does not extend to Ireland, where the King still retains his prerogative without restriction. Christian's note to 1 Black. p. 272." If, therefore, the King could at Common