

House of Assembly or Legislative Assembly in the several Provinces, the voters at elections of such members, the oaths to be taken by voters, the returning officers, their powers and duties, the proceedings at elections, the periods during which elections may be continued, the trial of controverted elections and proceedings incident thereto, the vacating of seats by members, and the execution of new writs in the case of seats vacated otherwise than by dissolution, shall respectively apply to the elections of members to serve in the House of Commons for the same several Provinces."—B. N. A. Act, sec. 41.

By the 31 Vic., cap. 23, it is enacted that:—

"The Senate and the House of Commons respectively, and the members thereof respectively, shall hold, enjoy, and exercise such and the like privileges, immunities, and powers as at the time of the passing of the British North America Act, 1867, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof, so far as the same are consistent with, and not repugnant to, the said Act. Such privileges, &c., shall be deemed part of the general and public law of Canada, and it shall not be necessary to plead the same, but the same shall in all Courts in Canada, and by and before all judges, be taken notice of judicially."

In England, as is well known, before 1770 controverted elections were tried and determined by the whole House of Commons, or, for a time, by special Committees and by Committees of Privileges and Elections. This was succeeded by the Grenville Act, the principle of which was to select committees for the trial of election petitions by lot. This Act in 1773 was made perpetual, but not without the expression of very strong opinions against the limitations imposed by it upon the privileges of Parliament (17 Parl. Hist., 1071; L. C. Campbell's Chan., vol. 6, page 98). In 1839 an Act was passed—Sir Robert Peel's Act—establishing a new system upon different principles, and it was not till 1868, after Confederation, that the jurisdiction of the House of Commons in the trial of controverted elections was transferred by statute to courts of law.

Very much the same course of procedure up to and after the time of Confederation prevailed

in some, if not all, the Provinces, but in 1873 the Dominion Parliament passed an Act to make better provision respecting election petitions and matters relating to controverted elections of members of the House of Commons, and established Election Courts, the judges of which were to be judges of the Supreme or Superior Courts of the Provinces, provided the Lieutenant-Governors of the Provinces respectively should, by order made by and with the advice and consent of the Executive Council thereof, have authorized and required such judges to perform the duties thereby assigned to them—the intervention of the Legislature not being required or apparently deemed necessary. This Act was repealed by 37 Vic., cap. 10, "An Act to make better provision for the trial of controverted elections of members of the House of Commons, and respecting matters connected therewith." This last Act, it is now contended, is *ultra vires*. The constitutionality of the Act of 1873, though questioned, as I understand, by one judge in Quebec, is, I believe, admitted by all those who now think the Act of 1874 to have been *ultra vires* of the Dominion Parliament.

In determining this question of *ultra vires* too little consideration has, I think, been given to the Constitution of the Dominion, by which the legislative power of the Local Assemblies is limited and confined to subjects specifically assigned to them, while all other legislative powers, including what are specially assigned to the Dominion Parliament, are conferred on that Parliament, differing in this respect entirely from the Constitution of the United States of America, under which the State Legislatures retained all the powers of legislation which were not expressly taken away from them. This distinction, in my opinion, renders inapplicable those American authorities which appear to have so much weight with some learned judges who have discussed the question, and as a consequence too much importance has, I humbly think, been attached to section 101, which provides for the establishment of any additional Court for the better administration of the laws of Canada, and to sub-sections 13 and 14 of section 92, which vests in the Provincial Legislatures exclusive powers as to property and civil rights in the Provinces, and "the administration of justice