

granted. The present difficulty, however, is not to be so disposed of. A claim of right cannot be dealt with merely upon the unreasoned assertions of official authority. The question raised is a grave and important one, and is to be settled, not by any show of contempt for one opinion or of confidence in another, but by the sober application of the principles of reason and law. My conviction of the soundness of my pretension, formed after much reflection and research, is at least sincere; and it is a source of gratification and encouragement to me to know, that I am sustained in it by not a few of the best legal opinions in the country. Another reason assigned for the refusal of my request is, that my "rights cannot be compromised in any way by the order of precedence to be observed in accordance with the Commission of Mr. Justice Bedard, during any time which may intervene between this period and the final settlement of the question." This is, I must confess, a doctrine quite new to me, and would sound oddly enough in a Court of Justice. How stands the proposition? It is incontrovertible that before the appointment of Mr. Justice Bedard I held rank as Senior Puisné Judge of the Court of Queen's Bench at Montreal: it is equally so, that by his special precedence I am deprived of this rank. I challenge his title to this precedence, declaring the Letters Patent granting it to be illegal and void—if I be right then his Commission gives him no title to occupy for an instant my Judicial place, and his doing so is an intrusion upon my office. To say then that, with the title of Seniority and actual possession in my favour, no right is compromised by being thrust from my seat and rank in Court for weeks or months by a stranger, upon a bad or at least a doubtful title, is certainly a view of the subject which an impartial mind will find it difficult to justify.

I allude no further to this portion of the letter, beyond saying that if it implies a charge that I have originated "personal contests on the subject of precedence," I most distinctly repel the imputation. The contest has not been sought by me, but forced upon me. I suggested to the Provincial Government a mode by which the indecorum of such a contest might be avoided.—Your Excellency's Advisers have not thought proper to act upon the suggestion: the responsibility therefore rests with them, not with me. The right to grant or refuse the leave of absence asked, is not to be questioned. I submit to the decision, but I also have rights which I am not disposed to surrender.

I proceed to offer a few observations upon the advice given to Your Excellency in Mr. Secretary's letter. As a legal question, the only distinct legal proposition announced in justification of the course adopted is, that "the prerogative of the Crown entrusted to Your Excellency permitted the arrangement of rank and order in the Court." Before going on to show that this is a doctrine untenable in law, I advert to certain passages in the letter which seem to me to be urged rather in aid of the main proposition than as containing in themselves any matter of legal justification. It is said that Mr. Justice Bedard, by virtue of a Commission long anterior in date to mine, took precedence of me in the Provincial Court of Appeals, and whenever we were brought together in the Court of Queen's Bench for the District of Three Rivers and St. Francis. This is true; but I do not see how it bears upon the question. Because that gentleman had a right of precedence over me in certain Courts, it surely does not follow as a logical or a legal consequence that the precedence in other Courts to which heretofore he had no shadow of claim should be taken from me and given to him. The constitution of our Courts is without doubt peculiar and anomalous, but there is nothing in it to warrant such a pretension. The Judicial authority in the three Courts just named, is incidental to the Commission and office of Judge of the Court of Queen's Bench for the District of Montreal or Quebec, and the order of precedence there is of course regulated by the date of such Commission; but the Courts of Queen's Bench for Montreal and Quebec are perfectly distinct and independent tribunals; they are created by Statute with different local jurisdiction, and the authority of the one does not extend into the District of the other. The Commission of Mr. Justice Bedard as a Judge of the Queen's Bench for Quebec gave him no Judicial character in the same Court for Montreal; and his pretension to take rank by seniority here from his Commission in the former, is no better than would be that of a Judge of the Court of Canada West, or of any other of Her Majesty's Colonial or Metropolitan Courts, to claim precedence from his Commission in such Court. As a legal argument, therefore, the fact adverted to is of no value, and indeed it does not seem to be relied upon as such. But if it had been of a nature to affect the question, it would receive a ready and conclusive answer from Mr. Justice Bedard's resignation of office: by this resignation he ceased for a time to be a Judge at all; and having thus voluntarily annulled his former Commission, he can now claim no benefit of judicial rank under it. It may be said that he had an understanding and special agreement with the Government: but whatever may have been the nature of that agreement, it is evident that it cannot in any respect diminish or control my rights. All Mr. Justice Bedard's claims as a Judge must now be regulated by his last Commission, and it is only from its date that he can take rank in any Court. Nevertheless, had he been content with the precedence which he had under his former Commission, and not sought to degrade me from my place in my own Court, I should have raised no difficulty, as my object is not to obtain an advantage, but simply to protect myself in an acquired right, essentially connected with the independence of my office, and which as such I am bound to defend. But to return to the question, It is true that it is a prerogative of the Crown to grant a special precedence to one Puisné Judge over another, without reference to the respective dates of their Commissions? admitting the general principle that the Crown, as the fountain of justice and honour, was entitled by the Common Law to an absolute controul over the rank of its officers, including the Judges, it will not be difficult to show that this controul has by the Statute Law been qualified and limited, and does not now extend beyond a power to appoint and to remove in the cases especially provided. My business is to treat the subject as governed by our Colonial Laws, but I have no doubt that the Laws and usages of England will be found at least equally favourable with our own. By the Provincial Statute 34 Geo. III., c. 6, a Court of King's Bench is erected in each of the Districts of Quebec and Montreal, to consist of a Chief Justice, and three Puisné Judges, in each District. Since the passing of that Act, and up to the present time, mention is frequently made in our Statutes of the Senior Puisné Justice, in connection with the business of the Courts. Thus, for instance, by the 41 Geo. III., c. 7, all Writs of Summons are to be tested by him in the absence of the Chief Justice. The same provision is to be found in a recent Statute, 7 Vic., c. 17, with respect to Writs issuing in the District of Gaspé; and by another Statute, passed in the same year, establishing a Provincial Court of Appeals, the Senior Justice is made the presiding officer of the Court in case of the absence of both Chief Justices. It would be tedious, and is unnecessary, to multiply examples on this point; they have been cited to show that the rank and precedence of the Senior Puisné Judge is something recognised by Statute, and that particular functions devolve upon him in consequence, while no word is to be found of a Junior Judge assuming the same functions by virtue of a special precedence under Letters Patent, and it is certain that such an occurrence is no where contemplated in our Statute Book.

But the law which chiefly controls the Prerogative, in this matter, is to be found in the Provincial Statute 7 Vic., chap. 15, which secures to the Judges their tenure of office during good behaviour, restricting the Crown from removing them, except upon an address from both Houses of the Legislature. It is substantially the same with that passed in England, first in the Reign of William III., and afterwards in a more perfect form in the beginning of the Reign of Geo. III. The only material difference between the two laws is, one suggested by our position as a colony and consists in giving to a Judge who considers himself aggrieved by removal, an appeal within six months to Her Majesty in Privy Council. It would be idle to expatiate on the value and importance of this statute; every man must regard it as an inestimable part of our constitutional laws. Upon its fair legal construction and its application to my case I am content to rest.