

Both the plaintiff and defendant are suing and being sued in their representative capacity merely, though this fact is not stated in the pleadings. This is, therefore, in my opinion, or controversy, not between Hon. Sir Alexander Campbell and the Hon. Mr. Smith, nor merely between the Dominion Attorney-General and the Provincial Chief Commissioner, but between the Dominion and the Province.

Section 54 of the Dominion Act, 1875, chap. 11, enacts that when the Legislature of any Province shall have passed an Act agreeing and providing that the Supreme Court and Exchequer Court, or the Supreme Court alone, as the case may be, shall have jurisdiction in any of the following cases, viz. :—

(1.) Of controversies between the Dominion of Canada and such Province; (2.) Of controversies between such Province and any other Province or Provinces which may have passed a like Act; (3 * * * 4.) Then this section, and the three following sections of this Act, shall be in force.

Section 55 enacts: "The procedure in the cases firstly and secondly mentioned in section 54 shall be in the Exchequer Court."

In 1882 the British Columbia Legislature passed an Act, No. 2, conforming, I think, to the requirements in section 54, above quoted; and thereupon the provisions in section 55, above quoted, came into force. In controversies between the Dominion and this Province the procedure is to be in the Exchequer Court, and I have no jurisdiction to interfere.

It was attempted to be argued that this court had concurrent jurisdiction, and section 59 was referred to. I do not see how I could possibly make an order in a case proceeding in the Exchequer Court, even if such an action were launched there, which may or may not be the case. And section 59 does not refer at all to the state of affairs after section 54 is called into force by the Provincial Legislature, but says, in effect, that whether the Local Legislature calls, or does not call, section 54 in force, the Exchequer Court is to have concurrent jurisdiction with the local court in all controversies between the Dominion and the Province. That seems quite to bear out my construction, that after sections 54 and 55 are called into force the jurisdiction of the local court is ousted as to such controversies.

It is of course open to the parties to contend that the provision in section 54 is *ultra vires*, contradictory to the British North America Act, 1867 and void; and that the local Act, by adopting these provisions, has adopted a nullity. But until they shall have established that view, I am bound by the Acts on the statute books, and I must decline to entertain any application in a controversy of this nature.

VICTORIA, B. C., 5th February, 1885.

DEAR SIR,—As soon as the Court decided that they had no jurisdiction in the action of the Attorney General, Chief Commissioner of Lands and Works, the Chief Commissioner issued the Crown grants to the several persons in the list enclosed.

I have asked Mr. Aikman to have copies of the plans prepared for you, in order that the locality of these grants may be known.

I believe them all to be within the railway belt. The issue of these grants will confer no title on the grantees if the lands are part of the reserve.

Yours truly,

M. W. T. DRAKE.

Hon. J. W. TRUTCH, Ottawa.