

The disallowed Act not only empowered the Lieutenant Governor in Council, as before stated, to abolish the Circuit Court, but to appoint, instead of Judges of the Superior Court, *quod* the Circuit Court, officers who would be, in every sense, Judges, in relation to matters within the Jurisdiction of the Circuit Court, as fully as the Judges of the Superior Court had been, although bearing the name of District Magistrates.

As to Judges of the Circuit Court, therefore, the appointing power was taken from the hands of Your Excellency and transferred to the Lieutenant Governor in Council of Quebec.

The prohibition against the new Judges sitting in the Senate and House of Commons is so obviously beyond Provincial powers, that it would seem impossible that the Legislature of Quebec really designed, by the third section of the disallowed Act, to declare that the District Magistrates should be ineligible to be Senators and Members of the House of Commons. It is easier to believe that the intention was that the new Judges should lose their offices if they became Members of Parliament, although such meaning failed to find expression.

The provisions of section 4 of the disallowed Act, in so far as the tenure of office was made to depend on good behavior, is the same as section 99 of the British North America Act, but while section 99, of the British North America Act had the effect of making the Judges of the Circuit Court removable by Your Excellency, on the address of the Senate and House of Commons, section 4 of the disallowed Act declared that they could not be removed from office except on the address of the Legislative Council and Legislative Assembly of Quebec.

Section 5 of the disallowed Act fixed the salaries and emoluments of the new Judges and made them payable out of the Consolidated Revenue Fund of Quebec, although section 100 of the British North America Act declared that those salaries and emoluments should be fixed and provided by the Parliament of Canada.

At the time of the passing of the disallowed Act, the Judges appointed by Your Excellency's predecessors, under section 98 of the British North America Act, were sitting in the Circuit Court;—Section 6 of the disallowed Act professed to strip them of all their powers, relieve them of all their duties, and impose both powers and duties on the newly created Magistrates, who, in the opinion of the undersigned, if the Act was valid, by necessary implication were made Judges, although called Magistrates, and although appointed by the Lieutenant Governor.

The Legislature of Quebec, however, did not suffer the matter to rest upon implication, but in one of the concluding sections of the Act under consideration declared that the words "Judges of the Superior Court", "Judge" and "Judges", wherever used in reference to the Circuit Court, should mean the District Magistrates of Montreal attempted to be created by that Act.

If such powers can be exercised by a Provincial Legislature, it is difficult to see what is to prevent the Legislature from asserting the power to appoint Judges of all the Provincial Courts and regulate their qualifications for office, their salaries and their tenure of office.