

If the circumstances which warrant the Governor in council in acting under sec. 9 of the Franchise Act, 1898, never existed, I would have little doubt of such jurisdiction. One of the foremost duties of this Court is the prevention of the exercise of usurped judicial power. It can hardly be doubted that if any one, without colour of right, should usurp the judicial functions pertaining to the preparation of voters' lists, the power and duty to prohibit must rest somewhere; and I know of no other Court than this in which such power and duty exist, in respect of such an usurpation within this Province.

But it is said that in the North Perth Case, 21 O. R. 538, there was a decision of a Divisional Court to the contrary. With that statement I am unable to agree. The two cases are widely different. When that case was decided there existed officers and Courts appointed and constituted under Federal legislation for the very purpose of dealing with the whole subject of voters' lists for Parliamentary elections: the whole of that legislation has been repealed: no such officers or Courts now exist. The holding in the North Perth Case was that this Court could not interfere with such Federal Courts in respect of such voters' lists. In this case the main question is, does any Federal Court exist? Have the respondents any authority whatever in law for the exercise of any judicial functions in respect of such lists? If not, there must be power somewhere to prohibit, and that power can be found in this Court only.

Whether the respondents have, or have not, any such power depends upon the proper interpretation of sec. 9 of the Franchise Act, 1898. That Act entirely repealed the Electoral Franchise Act, under which the Federal Courts were constituted. It changed completely the whole law in regard to the preparation of the voters' lists, adopting the provincial lists, instead of having parliamentary lists prepared, as provided for in the repealed enactment. But, to provide against the possibility of there being no sufficiently recent provincial lists in some of the electoral districts, the 9th section of the Act was passed: it is—as amended—in these words:—

“Where under the laws of a province the voters' lists for any provincial electoral district or division or any of them are prepared not at regular intervals, but at such times as are fixed by the Lieutenant-Governor in council or some other provincial or local authority or only from time to time