that their protests have been disregarded both by the Imperial and by the Dominion Governments. May not this have arisen because their censures and complaints were too sweeping, and because they denied the existence of powers which, in the opinion of others, had been undertaken within constitutional limits? Had the Judges been satisfied with pointing out the possibly injudicious exercise of their lawful powers by the Local Legislature, their criticisms and remonstrances would doubtless have received becoming attention.

As regards the Local Judicial District Act of 1879, which claims to fix the places of abode of the Judges, it is doubtful whether this is not an undue assumption of provincial authority. Under the 130th clause of the B. N. A. Act, taken in connection with clauses 96 to 100, which are made substantially applicable to British Columbia by clause 146, we may assume the Judges of the Provincial Courts to be Dominion officers. If so it would seem to appertain to Dominion authority to define their position, abode, personal service and responsibility, subject, of course, to the provisions of the Imperial Statute. But this Local Act of 1879 was virtually repealed by the Local Act of 1881, which admits the right of the Governor-General in Council to determine the residences af the Judges.

It is otherwise as regards the sphere of judicial operations and the duties of the Judges in relation thereto. These matters, as forming part of the local "administration of justice," have been advisedly subjected to the control of the Provincial Legislatures. This, I think, is evident from the Imperial Act of 1865, known as the Colonial Laws Validity Act. But independently of this Act, the decision in *Valin* v. *Langlois*, to which I have already adverted, establishes the principle that the Dominion Parliament is competent, for Dominion purposes, to prescribe additional duties to the Judges in their capacity as Dominion officers, and in the performance of such duties only to frame rules and prescribe procedure for their guidance whilst sitting as a Dominion Court, for the determination of questions affecting Canada as a whole. This exercise of authority on the part of the Dominion Parliament serves to mark with greater clearness the limits of local and federal authority over "Provincial Courts," and to confirm the view contended for in this paper as to to the right of the Local Legislature to regulate the procedure of the Courts when engaged in the administration of justice within the Province.

If, in providing for the local administration of justice, the Legislature were to enact anything that would hinder or interfere with Dominion judicature, the Governor-General in Council would naturally interpose to veto the Act. If not disallowed the Court itself would so construe the Act as to reconcile apparently conflicting jurisdictions and not permit the action of the Court when sitting for Dominion purposes, under a Dominion Statute, to be frustrated.

The Courts are sometimes required to fulfil Dominion functions in addition to their ordinary duties of administering provincial law. In the former event they are under Dominion control. In the latter they are exclusively subject to Provincial Legislation. The superior as well as the inferior Courts in all the Provinces of Canada are equally organized, constituted, maintained and regulated by provincial enactment in every respect, save only when they are required by special Dominion law to undertake certain exceptional duties on behalf of the Dominion. The position of the Courts towards the Local Legislature is in no wise affected by the consideration that the Judges themselves are appointed by Dominion authority, and are personally amenable to the jurisdiction of the Dominion Parliament. The position of the Judges, however anomalous at first sight it may appear, is analogous to that of the provincial Lieutenant-Governors, who, though appointed by the Governor-General and subject to his instructions, are nevertheless limited to a sphere of duty which is essentially provincial.

Further reasons of public policy might be adduced in support of the arguments urged in this paper, but enough has probably been said to justify the interpretations I have endeavoured to put upon so much of the B.N.A. Act as comes under review in the decision of the Supreme Court of British Columbia upon the *Thrasher Case*.

ALPHEUS TODD.

Ottawa, 21st April, 1882.