

the trustee, being resident within the jurisdiction of the court, was subject to the authority of the court. But what an absurd doctrine, seriously, to broach to any court! It might have been well enough were the land vested in Her Majesty in her own right as an individual, but when it is by Act of the Colonial Legislature vested in her in right of the Crown, the argument entirely fails. Queen Victoria, the woman, is resident in Great Britain, but the body corporate, the Crown, of which Queen Victoria is the *locum tenens*, if resident anywhere is as much resident in Canada as in Great Britain, and for the purposes of the application on the facts laid before the court much more resident in Canada than in Great Britain.

The following is the language of V. C. Wood in disposing of this argument, "assuming that a trust existed, that the claim was not merely legal, and that Courts of Equity could exercise jurisdiction in matters relating to lands in a foreign country, still it is necessary that the trustee should be within the jurisdiction to give any operation in this court. The land was unquestionably vested in Her Majesty by the Act of 1856 for the benefit of the Province, and in that point of view Her Majesty was just as much present in Canada as in England. For the purposes of the Act and the doctrine of this court acting in *personam*, Her Majesty could not be taken to be within the jurisdiction of this court in respect of lands situate in Canada and held by her, not in virtue of her prerogative, but under the Act of the Colonial Legislature."

The decision in a colonial point of view is important. We apprehend there can be no doubt of its soundness. It squares with the dictates of reason. We are glad of it. It acknowledges the permanent authority of our Colonial Legislature in matters of local concern, and refers petitioners to our Colonial Courts, whose authority in such matters is also abundantly acknowledged.

JUDICIAL CHANGES.

We believe there is no doubt of the fact, that the Chief Justice of Upper Canada, Sir J. B. Robinson, Bart., has tendered his resignation to the government. The step was one which, after a long, most useful and brilliant career, was due to himself and his family, but one which will be learnt with regret by all who have had the good fortune to have had professional intercourse with him. Great was the responsibility of the step, and very great will be the responsibility of supplying the gap created by it. It will require a man of no ordinary ability to take the place of so distinguished a judge.

It is rumored that the present Chief Justice of the Common Pleas will be his successor. We hope the rumor

is well founded. We know of no man in Upper Canada so fitted for the place.

It is also rumored that Mr. Justice McLean, after a long and faithful career, contemplates retirement at an early day. We should like to see him before the close of his judicial career, promoted to the office of Chief Justice of one or other of the courts. Such a step would be a proper tribute to the worth of that venerable and much respected judge.

Sir J. B. Robinson will no doubt be enabled to retain his seat in the Court of Error and Appeal. The country will in that, the highest court of Upper Canada, still continue to have the benefit of his great learning, only equalled by his extraordinary industry. We hope the divine dispenser of events will for many years yet to come be pleased to spare Sir J. B. Robinson to his family and to his country. Too often we fail to appreciate the services of a really great or good man till deprived of them.

WORK FOR PARLIAMENT.

In Upper Canada there are two common law courts of co-ordinate jurisdiction, the Queen's Bench and the Common Pleas. Both command great respect, and, as a general rule the proceedings of both are harmonious.

There are, however, at present at least three questions about which the two courts are at issue. The first is the effect of a bill of sale or chattel mortgage filed within the five days mentioned in the statute upon an execution placed in the hands of the sheriff during the five days. The second is the effect of either party calling his opponent as a witness in the cause, so far as regards the consequent right of cross-examination. The third is as to the right to try questions of boundary in actions of ejectment.

As to the first: The Queen's Bench hold that the filing of a bill of sale or chattel mortgage within the five days allowed by the statute has relation to the date of the instrument, so as to protect the chattels assigned from the effect of intermediate writs of execution. The Common Pleas hold the reverse.

As to the second: The Queen's Bench hold that if either party to a cause call his opponent as a witness, that the right of cross-examination is restricted to the subject matter of the examination in chief. The Common Pleas hold the reverse.

As to the third: The Queen's Bench hold that a question of boundary may be properly tried in an action of ejectment. The Common Pleas hold the reverse.

It is really a matter of little consequence, so far as these questions are concerned, which side is supported as law, but it is a matter of great consequence that the law should be settled one way or the other, and that without delay.