

## POWERS OF PROVINCIAL LEGISLATURES.

appellate system, would afford us the highest satisfaction. In no more grateful way could our Colonial *status* be recognized than in the establishment of one great Imperial Court of pre-eminent jurisdiction and paramount authority, elevation to the bench of which should be the highest goal of colonial forensic ambition.

## SELECTIONS.

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"The British North America Act, 1867," by s. 92, provides that "In each Province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say"—and then enumerates sixteen classes, amongst which are—

"8. Municipal institutions in the Province.

"14. The administration of justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those Courts.

"15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.

"16. Generally all matters of a merely local or private nature in the Province."

By s. 91 it provides that "It shall be lawful for the Queen by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (*notwithstanding anything in this Act*), the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say"—and then enumerates twenty-nine classes of subjects, amongst which is—

"27. The Criminal Law, except the constitution of courts of Criminal Jurisdiction, but including the procedure in criminal matters."

And the section closes in the following words: "And any matter coming within any of the classes of subjects enumerated in this section, shall not be deemed to come within the class of matters of a local or private nature, comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces."

A vast difference between the powers granted to the Federal Parliament and those

bestowed on the Provincial Legislatures, is apparent to any one carefully studying the sections in question.

To the Federal Parliament belongs the right of making laws, not only upon all classes of subjects enumerated in s. 91, but also upon all classes of subjects not enumerated in s. 92. To the Provincial Legislatures is allotted the right of making laws in relation to matters coming within the classes of subjects enumerated in s. 92 alone. But that right is further restricted by s. 91, which in effect provides that if there be any clashing, or conflict, between the classes of subjects allotted to the Federal Parliament and those allotted to the Provincial Legislatures, the matter, with respect to which such clashing or conflict arises, shall be deemed to come exclusively within the Jurisdiction of the Federal Parliament.

The authority, then, of the Federal Parliament, so far as the Provincial Legislatures are concerned, is supreme, save with respect to the classes of subjects enumerated in s. 92, over which the Provincial Legislatures have, to a certain extent, exclusive powers to legislate. But when a matter is presented for legislation which falls within a class of subjects enumerated in s. 91, and at the same time comes within a class of subjects enumerated in s. 92, such matter belongs exclusively to the Jurisdiction of the Federal Parliament.

The powers of the Provincial Legislatures are sharply defined by the Act creating the constitutions of the Province.

The powers of the Federal Parliament on the contrary, are general, embracing all subjects save those specially confided to the Provincial Legislatures; so that all powers of Government granted by the B. N. A. Act, 1867, save those exclusively allotted to the Provincial Legislatures, which do not clash with those specially granted by s. 91, vest in the Parliament of Canada.

One of the consequences resulting from the distribution of legislative powers between the Federal Parliament and the Provincial Legislatures is, that all persons occupying judicial positions throughout the Dominion, may, at any moment, in suits or proceedings before them, be obliged to pronounce upon the constitutionality of Federal or Provincial Statutes. In such case the duty of such persons is clear; if a Federal Statute is unconstitutional, to disregard it; and to act in like manner where a Provincial Act is *ultra vires*. A Supreme Court vested with authority to pass in review all Acts whether Federal or Local, and to declare an Act of Parliament or of a Legislature constitutional or unconstitutional, as the case may be, is an absolute necessity of a Federation such as the Dominion of Canada. Its non-creation vests in Justices of the Peace and Commissioners for the trial of small causes, the powers which should alone be vested in such Supreme Court, and confides to the most ignorant, powers which