

exclusive power. At 10 O.R., p. 392, 4 Cart., p. 635, he says: "The Dominion Parliament has, by section 91 of the British North America Act, power '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.' It is not necessary to enquire how far that enactment would enable the Dominion Parliament to legislate with respect to the appointment of justices of the peace and police magistrates in any Province of the Dominion, and to authorize the Governor-General to make such appointments, as with relation to the public works, 32-33 Vict., c. 24, s. 7 (D.), or to the management of Indian affairs, as by declaring that an Indian agent shall have the same power as a stipendiary magistrate, 45 Vict., c. 30, s. 3 (D.)." In his report on the New Brunswick Acts for 1889 the Minister of Justice, Sir John Thompson, objects to section 4 of c. 23, an Act respecting Criminal Courts, which provided that the Lieutenant-Governor in Council might appoint stipendiary or police magistrates within any county, saying: "The undersigned again desires to express his doubts as to the right of the Lieutenant-Governor to appoint or of a provincial legislature to authorize the appointment of justices of the peace or other judicial officers. The question is one of difficulty, and there have been decisions both ways, but no final court of appeal has expressly formulated a judgment upon it," and referring to a recent case, which is evidently *Reg. v. Bush* just noted, he strongly objects to the argument based in the judgments in that case on the acquiescence of the Dominion Parliament.

In *Reg. ex rel. McGuire v. Birkett*,* however; the principle of *Wilson v. McGuire*† was followed, and it was held that the provincial legislatures had power to invest the Master in Chambers at Toronto with authority to try controverted municipal election cases, for, as observed by MacMahon, J. (at p. 173): "As the provincial legislature has the exclusive right to make laws relating to municipal institutions, it carries with it the authority to create the tribunal for the trial of contested elections, and the appointment of a magistrate or other officer to hear and determine the validity thereof," subject, of course, as he intimates, to section 96

*21 O.R., at p. 162 (1891).

†2 O.R. 118, 2 Cart. 665 (1883).