

That your Memorialist has this day had communication of Letters Patent under the Great Seal of the Province, appointing to the office of Judge of the said Court the Honourable Elzéar Bedard, formerly Junior Puisné Judge of the Court of Queen's Bench for the District of Quebec, and assigning to him, in terms, precedence over your Memorialist.

That the order of precedence of Puisné Judges, according to usage and law, ought to be regulated by the dates of their respective Commissions; and any disturbance of this order, by conferring upon one Judge a special rank at the expense of another, is an interference with an acquired right inconsistent with the spirit of the Statute made for securing the independence of the Judges; and as your Memorialist humbly submits, is an unusual, if not an excessive, exercise of Executive power.

That the reason assigned in the said Letters Patent for depriving your Memorialist of his right of precedence, by thus preferring the Honourable Elzéar Bedard, is, in his humble opinion, unsound and insufficient. Mr. Justice Bedard has never heretofore held Judicial authority in any Court of original jurisdiction in this District—and moreover by his resignation of the office of Puisné Judge for the District of Quebec, as announced in the *Official Gazette*, he ceased to possess any Judicial rank or character whatever, and can now claim them by virtue and from the date only of the said Letters Patent.

That your Memorialist is aggrieved by this unexpected degradation from his rank of seniority. Upon a careful review of his Judicial conduct, he is unconscious of any act which has merited from the Provincial Government the indignity of which he complains; and he relies upon Your Excellency's sense of justice, and familiar acquaintance with the institutions of a country, where it is seldom claimed in vain, to extend a favourable consideration to his remonstrance, and to aid his endeavours to obtain redress.

Your Memorialist therefore prays, that Your Excellency will be pleased to transmit to the Imperial Government this his Memorial, (with such other documents and information as may be deemed necessary,) to be submitted to the proper authorities there, and for the decision of Her Most Gracious Majesty the Queen; and your Memorialist further prays that, in order to avoid the indecorum of a contest between Judges as to their right of precedence in Court, Your Excellency will be pleased to grant, either to your Memorialist or to Mr. Justice Bedard, if he desire it, leave of absence from the duties of the Superior Courts, until Her Majesty's pleasure in the premises be made known.

And your Memorialist has the honour to be, with profound respect,

Your Excellency's most humble servant,

(Signed.) CHS. D. DAY.

A true Copy,

E. C. PARENT,  
*Asst. Secy.*

(COPY.)

SECRETARY'S OFFICE,

MONTREAL, 27th May, 1848.

SIR,

I have the honour to acknowledge the receipt of your letter of the 23d May instant, which was placed in my hands on the 25th, inclosing a Memorial to the Governor General on the subject of the order of precedence of the Puisné Judges of the Court of Queen's Bench for the District of Montreal, as the same is affected by the Commission lately granted to the Honourable Mr. Justice Bedard.

I have laid the Memorial before His Excellency, and am commanded to convey to you His Excellency's pleasure regarding the complaint you have addressed to His Excellency.

You complain that the Honourable Elzéar Bedard, formerly Junior Puisné Judge of the Court of Queen's Bench for the District of Quebec, has had assigned to him by his Commission precedence over you—you being, on the resignation of Mr. Justice Gale, Senior Puisné Judge of the Court of Queen's Bench at Montreal.

You say that, according to usage and law, the precedence of Puisné Judges ought to be regulated by the dates of their respective Commissions, and that any disturbance of this order, by conferring upon one Judge a special rank at the expense of another, is an interference with an acquired right, inconsistent with the spirit of the Statute made for securing the independence of the Judges, and an unusual if not an excessive exercise of Executive power.

You further state that Mr. Justice Bedard has never heretofore held Judicial authority in any Court of original jurisdiction in the District of Montreal; and moreover by his resignation of the office of Puisné Judge of the District of Quebec he ceased to possess any Judicial rank or character whatever, and can now claim them only by virtue of and from the date of his present Commission.

You pray His Excellency to transmit your Memorial, with such other documents and information as may be deemed necessary, to Her Majesty's Government in England, to be submitted to the proper authorities there, and for the decision of Her Most Gracious Majesty the Queen; and that in order to avoid the indecorum of a contest between Judges as to their right of precedence in Court, leave of absence may be granted to you or Mr. Justice Bedard until Her Majesty's pleasure shall be made known.

His Excellency commands me to say, that before deciding upon giving to the Court of Queen's Bench, in the District of Montreal, the advantage of the Judicial talents and experience of Mr. Justice Bedard, whose Commission as Judge of the Court of Queen's Bench for Quebec bears a much earlier date than yours for the District of Montreal, His Excellency considered whether this object could be accomplished without placing that gentleman in a lower position with regard to precedence than he was entitled to expect from his rank and length of service, relatively to others with whom he might exercise the functions of a Judge in this District; and being advised that the prerogative of the Crown intrusted to him, permitted the arrangement of rank and order of precedence in the Court, the place of Judge in the Court of Queen's Bench in the District of Montreal, with the precedence designated in his present Commission, was offered by His Excellency's command to Mr. Justice Bedard.

His Excellency sees no reason to doubt the correctness of the legal advice by which he was guided; but nevertheless he sees no objection to the transmission of your Memorial, with all necessary documents and information, to Her Majesty's Government; which transmission His Excellency commands me to inform you will take place without delay.