

Courts of Law or Equity for the Province in which such election was held, sitting in term, or presiding at the trial of an ordinary civil suit, and the Court held by him for such trial shall be a Court of Record."

So in like manner are witnesses treated as being subpoenaed, sworn and treated, not as being actually within the jurisdiction of the Provincial Courts; but section 49 declares that they shall be subpoenaed and sworn in the same manner, as nearly as circumstances will admit, as in cases within the jurisdiction of the Superior Courts of Law or Equity in the same Province, and shall be subject to the same penalties for perjury.

So, again, in the provision made for regulating persons entitled to practise as attorneys or barristers before the tribunal thus established, such tribunal is very clearly distinguished from Provincial Courts. The clause is thus:—

"Sec. 67.—Any person who, according to the law of the Province in which the petition is to be tried, is entitled to practise as an attorney-at-law or solicitor before the Superior Courts of such Province, and who is not a member of the House of Commons, may practise as attorney or agent; and any person who, according to such law, is entitled to practise as a barrister-at-law or advocate before such Courts, and who is not a member of the House of Commons, may practise as counsel in the case of such petition, and all matters relating thereto, before the Court or Judge in such Province."

Reading these special provisions in connection with the Act of 1873, and what has been said of the Act generally, I think it is not arriving at a forced or unnatural conclusion to say that Parliament intended to establish Dominion tribunals exceptional in their jurisdiction, perfect in their procedure, and with all materials for exercising such jurisdiction, and having nothing in common with the Provincial Courts, and that these Judges and Courts were merely utilized outside of their respective jurisdictions for giving full effect to these statutory tribunals to deal with this purely Dominion matter.

An objection has been suggested by a learned Judge, for whose opinion I have the very highest respect, and which has been treated as of much force by another learned Judge of a different Province, and on that account I will notice it. It is said that if this is a Court distinct from the Courts of which the Judges are primarily members, Judges have never been appointed thereto by Commission, nor sworn as Judges thereof, and, therefore, they are not Judges of this new tribunal, if as such it exists. But, in my humble opinion, there is no force in

this objection. The Judges require no new appointment from the Crown. They are statutory Judges in controverted election matters by virtue of an express enactment by competent legislative authority. The statute makes Judges for the time being of the Provincial Courts Judges of these peculiar and special Courts. The Crown has assented to that statute, therefore they are Judges by virtue of the law of the Dominion, and with the royal sanction and approval. As to their not being sworn, the statute has not provided they should be sworn. If, being sworn Judges already, the Legislature was willing to entrust them with the power conferred by this Act, without requiring them to be sworn anew, how does this invalidate the Act, and how can Judges refuse to discharge duties thus by law imposed on them, because it may be that Parliament might or ought to have gone further, and required Judges to be specially sworn faithfully to discharge these special duties? Under the law of 1873, Judges in all the Provinces acted in what it is admitted were new Dominion Courts, without being specially appointed or sworn, the statute not requiring either, and I have yet to learn that their proceedings on that account ever have been or ever could be questioned.

As, then, I can see no reason why the Dominion Parliament should not delegate to the Judges of the several Provinces individually, or collectively, or both, whom they appoint and pay, and can by address remove, power to determine controverted elections, the doing of which not being inconsistent or in any way in conflict with their duties as Judges of their respective Courts, but on the contrary, as shown by the present legislation of all the Provinces in reference to controverted elections in the Local Legislatures, in so acting they are the most suitable and proper tribunals; and as the Imperial Parliament has left it to the Parliament of Canada to provide for the trial of controverted elections and proceedings incident thereto, and they have discharged their duty by the Statute of 1874, utilizing existing judicial officers and established Courts, by engrafting on or establishing, independent of these Courts throughout their respective Provinces, tribunals eminently qualified to discharge the important duties assigned to them, they have not in so doing, in my opinion, in any particular invaded the rights of the Local Legislatures, or brought a new jurisdiction or the procedure under it, in any way in conflict with the jurisdiction or procedure of any of the Courts of the Provinces, and, therefore, the Dominion Parliament, in enacting the Act of 1874, have not, in my opinion, exceeded the express power conferred upon them to provide for the trial of controverted elections and proceedings incident thereto, and, therefore, I think this appeal must be dismissed with costs, and the case remitted to the Court below, to be proceeded with according to the due course of law.