

which cannot be delegated, and which we are inclined to think only the Imperial Parliament can effectually abrogate or restrict. And in view of the late decisions of the Privy Council and the Supreme Court there is ground for believing that all provincial attempts to abrogate the royal prerogative to entertain appeals would be nugatory. If there is power in provincial legislatures to restrict the right to appeal to His Majesty in Council, then there would be a right to abolish it in toto, and thus a provincial legislature might be able to take away important rights not only of the people within its borders, but also of people of other parts of the Empire who had occasion to seek the aid of, or who might be sued in, the courts of this province.

Before such legislation is passed we ought to be quite certain of its constitutionality. If unconstitutional, it can have no other effect than to create disaffection, whenever His Majesty in his Privy Council, in exercise of his constitutional rights and duty, shall see fit to give leave to appeal, notwithstanding provincial legislation to the contrary. It has been decided by both the Supreme Court of Canada and the Privy Council that a provincial Act purporting to take away a right of appeal to the Supreme Court which is allowed by the Supreme Court Act, is nugatory: *Crown Grain Co. v. Day* (1908) A.C. 504; 99 L.T. 746; and applying a similar principle to appeals to His Majesty in Council, must we not come to the conclusion that the Act of a provincial legislature is inoperative to affect any of the prerogatives of the Crown, which are not exercisable by the Lieutenant-Governor. His Honour can validly consent to the abrogation of any of the Royal prerogatives which he himself may exercise, but how can he validly consent to the abrogation of a Royal prerogative over which he has no power or control?

In the case of *Cuvillier v. Aylwin*, 2 Knapp. P.C. 72, it seems to have been thought that a Provincial Act might abrogate this prerogative, but that case was afterwards practically overruled in *Johnston v. St. Andrews*, 3 App. Cas. 159, and see *Cushing v. Dupuy*, 5 A.C. 409. In the more recent case, *In re Will of Wi Matua* (1908) A.C. 448, it seems to be suggested, though not actually decided, that a provincial Act by express words may