

judge and in support of that suggestion referred to *Wilson v. McGuire; Gibson v. McDonald*, supra.

In view of what has been said, we venture to think the Provincial Government if it seriously intends to maintain its right to pass Acts such as we have referred to, should in some way obtain an authoritative pronouncement of the Supreme Court of Canada as to the validity of the Provincial enactments we have called in question, or if it does not intend to maintain that position it should repeal them, or suffer them to drop from the statute book as being obsolete or ultra vires.

The appointment of judges who were appointed by His Excellency judges of the High Court of Justice, to be judges of the Court of Appeal is assumed to be within the power of the Provincial Legislature; but if it may appoint a judge of the High Court to be a judge of the Court of Appeal, why may it not also appoint a County Court judge to be a judge of the Court of Appeal? It has in fact assumed to appoint all County Court Judges to be local judges of the High Court: Ont. Jud. Act, s. 185. Is not all this a trenching on the powers of His Excellency? see *Gibson v. McDonald*, 7 Ont. 401. It may possibly be that the commission of these judges may also entitle them so to act, and if so this would be a sufficient authority even though s. 185 were ultra vires. It is also assumed that the local Legislature has power to authorise the appointment of ad hoc judges to the Court of Appeal the legality of which also seems extremely doubtful, although the authority so conferred has been many times acted on.

If the question of the right of such a judge to sit were ever called in question it might be held that the whole proceedings in which he took part by reason of the presence of such ad hoc judge was coram non iudice. In order to prevent such questions from arising in the future, it may be necessary in some way to give proper legislative authority to what has been done.

The constitution of the Railway and Municipal Board and the appointment of Drainage Referees, a Mining Commissioner and a Municipal Arbitrator to do what is strictly judicial work