

firming two Acts of the Canadian Parliament, that the former Act, 31 & 32 Vic. c. 105, did not give the Dominion Parliament full power to legislate for the North-West Territory. The former Act provided for the admission of Rupert's Land and the North-Western Territory into the Dominion, but was silent as to the division of the Territory so admitted, into Provinces, or as to their representation in parliament. That it was doubts on these matters which the Act was intended to remove is shown by the preamble. It is in these words, "Whereas doubts have been entertained respecting the powers of the Parliament of Canada to establish provinces in Territories admitted, or which may hereafter be admitted into the Dominion of Canada, and to provide for the representation of such provinces in the said Parliament; and it is expedient to remove such doubts and to vest such powers in the said Parliament." The second and third sections then provide for the establishment of provinces, for, in certain cases, the alteration of their limits, and for their representation in Parliament. The fourth section, in general terms, says, "the Parliament of Canada may from time to time make provision for the administration, peace, order, and good government, of any territory, not for the time being included in any province;" a power which Parliament already had in the most ample manner. Then follows a confirmation of the Canadian Acts 32 & 33 Vic. c. 3, and 33 Vic. c. 3. That the Act should contain such a confirmation is easily accounted for. The Imperial Act 31 & 32 Vic. c. 105, s. 5, provided that it should be competent for Her Majesty, by Order in Council, "to declare that Rupert's Land shall, from a date to be therein mentioned, be admitted," &c., and "thereupon it shall be lawful for the Parliament of Canada, from the date aforesaid," to make laws, &c.

The Order in Council was made on the 23rd of June, 1870, and the date therein mentioned was the 15th of July, 1870. Now, a reference to the two Canadian Acts shows, that the 32nd and 33rd Vic., c. 3, was assented to on the 22nd of June, 1869, and the 33rd Vic. c. 3, on the 12th of May, 1870. So, in fact, they were both passed before the time arrived at which the Parliament of Canada had the right to legislate respecting the North-West. But they had been acted upon, and the Province of Manitoba actually organized; therefore they were confirmed and declared valid from the date at which they received the assent of the Governor General.

Acting under the authority given in the most ample manner by these Acts of the Imperial Parliament, and, as it seems to me, in the exercise not of a delegated authority, but of plenary powers of legislation, the Dominion Parliament enacted the North-West Territories Act, 1880 (43 Vic., c. 25) which provides, among other things, for the trial of offences committed in these Territories in the manner there pointed out.

The appointment of stipendiary magistrates, who must be barristers-at-law or advocates of five years' standing, is provided for by the 74th section.

By the 76th section, each stipendiary magistrate shall have power to hear and determine any charge against any person for any criminal offence alleged to have been committed within certain specified territorial limits. These words are quite wide enough to include the crime of treason. The various sub-sections of section 76 provide for the mode of trial in certain classes of offences. Those specified in the first four sub-sections are to be tried by the stipendiary magistrate in a summary way without the intervention of a jury. Then the 5th sub-section says, "In all other criminal cases the stipendiary magistrate and a justice of the peace, with the intervention of a jury of six, may try any charge against any person or persons for any crime." Again the words are quite wide enough to cover the crime of treason.

Counsel for the appellant contended that from the word treason being used in the 10th sub-section, and no where else in the Act, it must be inferred that the Act did not intend to deal with the crime of treason, except in the matter of challenging jurors, which is dealt with in that sub-section. The suggestion made by Mr. Robinson is, however, the more reasonable one, namely, that treason is there named advisedly, to put beyond doubt, there being only 36 jurors summoned, that a prisoner charged with that particular crime should not be entitled to exercise the old common law right, which a prisoner charged with treason had, of challenging, peremptorily and without cause, thirty-five jurors.