

## Sewell *vs.* British Columbia Towing Company and Moodyville Saw Mill Company.

British North America Act, 1867—Constitutional powers of Provincial Legislatures. Constitutional position of Judges of a Superior Court in a Province of Canada.

The Provincial Legislature had by a Local Act, 1881, chapter 1, sections 23, 32, declared that the sittings of the Supreme Court for reviewing *nisi prius* decisions, motions for new trials, etc., should be held only once in each year, and on such day as should be fixed by rules of Court, and that the Lieutenant-Governor-in-Council should have power to make rules of Court.

Held, by Sir MATT. BAILLIE BEGBIE, C. J., and CREASE and GRAY, JUSTICES, (McCREIGHT, J., absent).

That the appointment of the days on which the Court should sit for such purposes is a matter of procedure, and of purely judicial cognizance, and is not within the power of the local Legislature either to fix by positive enactment, or to hand over to be fixed by any other person or persons, but belongs to the Court itself; and that the above sections are in that respect unconstitutional and void.

The power conferred by section 92 of the British North America Act on Provincial Legislatures is a legislative power, enabling them to exercise legislative functions merely, and does not enable them to interfere with functions essentially belonging to the Judiciary or to the Executive.

The Judges of the Supreme Court of British Columbia are officers of Canada, and by sections 129, 130, their power and jurisdiction remain as before Confederation, subject only to the constitutional action of the Parliament of Canada under the British North America Act, 1867.

The authority given by section 92. sub-section 14 to the local Legislature to make laws in relation to civil procedure, is confined to civil procedure in the Courts described in that sub-section, and the Supreme Court of British Columbia does not come within the meaning of that sub-section. The power to make laws in relation to criminal procedure in those Courts, *i. e.*, the Provincial Courts described in that sub-section, and as to all procedure in all other Courts is, either by the general or the particular words of section 91. reserved to the Parliament of Canada.

The local Legislature has no power to diminish or repeal the powers, authorities or jurisdiction of the Supreme Court, nor to allot any jurisdiction to any particular Judge of the Supreme Court, nor to alter or add to any of the existing terms and conditions of the tenure of office by the Judges, whether as to residence or otherwise.