

diction, is a matter, to my mind, of no great importance, as I think while they have clearly the power of establishing a new Dominion Court, they have likewise the power, when legislating within their jurisdiction, to require the established Courts of the respective Provinces, and the judges thereof, who are appointed by the Dominion, paid out of the Treasury of the Dominion, and removable only by address of the House of Commons and Senate of the Parliament of the Dominion, to enforce their legislation.

If the Dominion Parliament cannot pass this Act this startling anomaly would be produced, that though with respect to the rights and privileges of Parliament the Dominion of Canada is invested with the same powers as at the passing of the Act pertained to the Parliament of Great Britain, and though exclusive jurisdiction over and exclusive right to provide for the trial of controverted elections is specially conferred on the Dominion Parliament, and though the constitution of the Dominion is to be similar to that of Great Britain, there are in connection with these privileges and these elections matters with which there is no legislative power in the country to deal. For it is very clear that as there is no pretence for saying that the Local Legislatures have any legislative power or authority over the subject matters dealt with by the Act, so nothing the Local Legislatures might say or do could affect the question, and therefore, however desirable, it might be universally admitted, that just such a tribunal for settling these questions should be established in the very terms of this Act, the Dominion would be in this extraordinary position—that no legislation in the Dominion could accomplish it, for the simple reason that if legislated on as has been done by the Dominion Parliament the legislation would be *ultra vires*. Any legislation by the Local Legislatures would, if possible, be even more objectionable, they not having a shadow of right to interfere with the rights and privileges of Parliament or the election of members to serve therein, or to establish any tribunal whatever to deal with or affect either, as the whole and sole legislative power to intermeddle or deal with such rights, and with elections and controverted elections, is conferred on and vested in the Dominion Parliament alone.

To hold that no new jurisdiction or mode of procedure can be imposed on Provincial Courts by the Dominion Parliament in its legislation on subjects exclusively within its legislative power, is to neutralize, if not to destroy, that power, and to paralyze the legislation of Parliament. The statutes of Parliament from its first session to the last show that such an idea has never been entertained by those who took the most active part in the establishment of Confederation, and who had most to do in framing the British North America Act, the large majority of whom sat in the first Parliament. A reference to that legislation will also show what a serious effect and what unreasonable consequences would flow from its adoption. There is scarcely an Act relating to any of the great public interests of the country which has been legislated on since Confederation that must not in part be held *ultra vires* if this doctrine is well founded, for in almost all these Acts provisions are to be found not only vesting jurisdiction in the Provincial Courts, but also regulating in many instances and particulars the procedure in such matters in those Courts, as a reference to a number I shall cite will abundantly show.

In the first session of the Dominion Parliament, in an Act respecting Customs, 31 Vic., cap. 6, by section 100 all penalties and forfeitures relating to Customs or to trade and navigation, unless other provisions be made for recovery thereof, are to be sued for by the Attorney-General, or in the name or names of some officer of Customs, or other person thereunto authorized by the Governor in Council; and if the prosecution be brought before any County Court or Circuit Court, it shall be heard and determined in a summary manner upon information filed in such Court. By other sections special provisions are made for the mode of procedure in reference to cases of this description, as also for the protection of the officers, entirely different from the procedure in ordinary civil cases.

So also by the Act respecting inland revenue, 31 Vic., cap. 8, provisions are made for the protection of officers of inland revenue whereby the proceedings in the Provincial Courts are restrained and regulated.

[To be concluded in next issue.]