

That by the precedence thus given to him by his said Commission, your Memorialist humbly conceives that injustice is done to him, and that the rights and privileges conferred upon him by his Commission from Your Majesty have been infringed upon and violated, without any just cause or reason whatsoever being assigned.

Your Majesty's Memorialist most humbly represents, that his rank and position as one of the Justices of the Court in Montreal, a rank and position, as Your Majesty's Memorialist humbly conceives, which is secured to him by the law of the Province and by the universal practice followed in Your Majesty's Courts of Justice, cannot with justice be set aside without any reason or cause whatsoever. Your Majesty's Memorialist would humbly observe, that the granting such precedence is in truth a plain evasion and violation of the spirit and true meaning of the law of the Province, by which the rights and privileges of the Justices of Your Majesty's Court of Queen's Bench are secured; and that if vacancies in one Court are to be filled by the transfer of Judges from other Courts, independent of, and in no way connected with the one in which the vacancy occurs, with precedence over the remaining Justices, it would have the effect of degrading them in rank and in public estimation, and of depriving Your Majesty's subjects occupying similar positions of all hope of advancement in Your Majesty's service; and it would be, moreover, eminently detrimental to the public service and the administration of justice; and, above all, it would strike at the root of the independence of the Bench, by holding out hope of preferment from political partizanship or otherwise.

While Your Majesty's Memorialist fully recognizes the right of Your Majesty to raise to the Bench of Justice any person qualified to fill the office, and possessing the confidence of Your Majesty, Your Majesty's Memorialist humbly conceives, that the course and practice followed by Your Majesty in all Your Majesty's Courts of Justice, except in the cases of the Chief Justices, has never been, in appointing a Puisné Judge, to grant to him, by his Commission, precedence over the other Puisné Judges of the Court to which he is appointed.

Your Majesty's Memorialist therefore humbly submits his present remonstrance to Your Majesty's favourable consideration, and humbly prays that Your Majesty would disallow the Commission of Mr. Justice Bedard, in so far as the same grants to him precedence over Your Majesty's Memorialist.

And Your Majesty's Memorialist, as in duty bound, will ever pray.

(Signed,)

J. SMITH.

J. Q. B.

Montreal, 30th May, 1848.

SECRETARY'S OFFICE,

MONTREAL, 6th June, 1848.

SIR,

I have it in command from His Excellency the Governor General, to acknowledge the receipt of your letter of the 30th May ultimo, addressed to His Excellency, enclosing a Memorial to Her Most Gracious Majesty the Queen, on the subject of the appointment of Mr. Justice Bedard, which Memorial you request His Excellency to transmit to Her Majesty's Secretary of State for the Colonies, to be laid before Her Majesty.

His Excellency commands me to inform you that your Memorial will be transmitted as you desire, and at the same time to state for your information, that, at the instance of Mr. Justice Day, His Excellency has already caused the same question that you have submitted, arising out of the terms of Mr. Justice Bedard's Commission, to be transmitted to Her Majesty's Government, the decision upon which question will be communicated to you as soon as received in this country.

His Excellency commands me to say, that in transmitting your Memorial he will feel obliged to state, for the information of Her Majesty's Government, in reference to that paragraph of your Memorial which represents "that by the law of this Province the Justices of the Court of Queen's Bench hold their Commissions during good behaviour, and take rank and precedence according to the date of such Commission," that His Excellency knows of no law of this Province which makes the Justices of the Court of Queen's Bench necessarily take precedence according to the dates of their Commissions, unless such a construction can be given to the Act for securing the independence of the Judges.

I have the honour, &c.,

R. B. SULLIVAN.

Secretary.

The Honourable Mr. JUSTICE SMITH,
&c. &c. &c.

A true Copy,

E. C. PARENT,

Asst. Secy.

No. 13.

MONTREAL, PROVINCE OF CANADA,
19th May, 1848.

TO HIS EXCELLENCY THE EARL OF ELGIN AND KINCARDINE,
GOVERNOR GENERAL, &c.

THE MEMORIAL of CHARLES DEWEY DAY, Senior PUISNE JUSTICE of the COURT of QUEEN'S
BENCH for the DISTRICT of MONTREAL.

Respectfully Shews:

That by the late resignation of the Honourable Samuel Gale, your Memorialist became the Senior Puisne Judge of the said Court, and was entitled to take precedence there, next after the Chief Justice of the District.