excluded Her Majesty from exercising that prorogative, and the constitution of the country had equally excluded the Governor General from exercising any such power, even though it should have beendelegated to him by Her Majesty. His Excellency must govern within the limits of the powers which were set out in the constitution, and under that power he could not appoint magistrates to perform duties which were incident to the ordinary Provincial Courts.

Mr. CAMERON (Victoria) said the hon. gentleman who had just sat down was disposed to rebuke the suggestion that the matter should be referred to the Supreme Court, because, as he said, that Court was one of appellate jurisdiction, and it would be incompetent for it to consider any question which might be brought before it as a court of primary jurisdiction. The Statute creating the Supreme Court, which was passed by the Government in which the hon. member for Bothwell afterwards held a seat, gave the Supreme Court primary jurisdiction in such questions as the one now before the House. The 52nd clause of the Supreme Court Act was as follows:—

"It shall be lawful for the Governor in Council to refer to the Supreme Court, for hearing or consideration, any matters whatsoever as he may think fit; and the Court shall thereupon hear and consider the same, and certify their opinions thereon to the Governor in Council: Provided that any Judge or Judges of the said Court who may differ from the opinion of the majority may in like manner certify his or their opinion or opinions to the Governor in Council."

So that manifestly it was quite competent for the Governor General to refer a question of this character respecting the construction of the Confederation Act to the Supreme Court, and it would be within the province of that Court to determine it. The hon. gentleman thought a case should first be raised by some private individual, and that, after passing through the Courts below, it should finally come before the Supreme Court in appeal. But surely it would not be fair that a private individual should be subjected to the costs which would be involved in such a process, and he (Mr. Cameron) feared that if they waited until some individual, for the purpose of settling this question, should see fit to carry a case through the various stages of litigation to the ultimate Court of Appeal, at his own expense, they would wait a long time. The question had been raised in Ontario—indeed he had raised it himself in a case of perjury alleged to have been committed before a justice of the peace. The learned Judge had reserved the question, but as his (Mr. Cameron's) client had been, and very properly, acquitted, there was an end of the question in that particular case. It could only be on a matter of comparatively trifling importance that such a question could be raised, because the cases which were brought before magistrates were generally those in which a small amount was involved, as their jurisdiction was very limited. Still as the matters which came before them were those connected with the every-day affairs of the people it was important that the question of the validity of their appointments should be settled, and he therefore agreed with his hon. friend from Prince Edward (Mr. McCuaig), that the Government should take steps to have the question decided by the Supreme Court, of whether the power of appointing magistrates lay in the hands of the Local Governments or in the Government of the Dominion. The fact that the Lieutenant Governors in Council of the various Provinces had assumed that they had the power to pass Statutes, taking that power proved nothing, unless it could be shown that the Confederation Act gave them such power. He did not think that the members of this Government or the members of this House would be very anxious to obtain the additional patronage which this power would give them—he for one would not—nor was he prepared to say that if that power were thrown upon them their appointments would be more satisfactory than those which the hon. member for Hamilton (Mr. Robertson) had so strongly condemned. No doubt there were many of the magistrates appointed who were inefficient and unfit for the discharge of their duties—men who encouraged litigation and gave very absurd decisions; but, on the other hand, there were many intelligent men who properly and efficiently fulfilled the functions to which they were appointed. That, however, was beside the real question, which was an important constitutional question, and one regarding which no doubt should be left on the minds of the people as to the validity of those who had such important duties to discharge.

Mr. BLAKE. I think there is one point which should not be lost sight of in reference to the suggestion of the hon. member for Prince Edward, and that is that in a written Constitution like ours, embracing within a few lines provisions which required for their interpretation a very extended commentary, we should not overlook the question of what has been the settled practice under an interpretation of that Constitution. It seems to me that this is of the utmost importance, as throwing light upon the real meaning and intention of the Constitution, and that neither judges, nor lawyers, nor members of Parliament, nor Governments, can ignore a settled practice for many years. Now, with reference with this particular matter the Local Legislatures assumed, rightly or wrongly, that they were possessed of the power of dealing with this portion of the administration of justice from, I think, the first year that this Constitution was inaugurated. Their acts were subject to disallowance if they were *ultra vires*, and it was obviously a case for disallowance because it was a direct assumption, on the theory that this was beyond their power, of the executive power of this Government, and it was calculated to produce the greatest degree of confusion that there should be a double set of officers of justice. No attempt has been made by the general Government under either party to exercise the supposed right of appointing justices of the peace, save perhaps by exceptional legislation in districts under Canadian control. We have, then, a practice of thirteen or fourteen years interpreted by the Local Legislatures and Governments, and by the action and inaction of the general Legislature as to the meaning of this clause of the Constitution, and I say that while no Judge can well ignore that in interpreting the Constitution, and it is conclusive against the propriety of this Parliament moving this Government now to take steps to upset that settled reading of the Constitution. If there be an error in this settled reading it is not for us to endeavor to establish that error. The Courts are open to all. The humblest subject can seek them, and if there has been an error he can seek redress. But at this time of day, and speaking of this in the political sense, I maintain that the relative powers of the general and local authorities are settled by our practice, and ought not to be upset or subverted by us; and any action of ours ought rather to be in the direction of establishing than of changing that settlement.

Mr. MACDOUGALL. I think it is very inconvenient to discuss so important a question as is raised by the hon. gentleman (Mr. McCuaig) in his speech, rather than in his motion, without due consideration, because however much reflection one may have given to these nice constitutional points, one is not ready at a moment's notice to express a decided opinion one way or the other. However, I would not like to have it said afterwards that by silence my consent was given to any doctrines that may be laid down in this House with respect to that Constitution. As a member of this House, and as having had something to do with the framing of the Constitution, I would say that I do not assent to the view expressed by the hon. gentleman opposite with reference to the liberty enjoyed by members of this House, and by Parliament as a body, in raising questions or in assenting to a principle which may