

to empower not only Queen's Counsel but retired judges of any of the Superior Courts to hold sittings of assize and nisi prius and oyer and terminer and general gaol delivery, upon being requested by any of the chief justices or judges of the Superior Courts so to do. And by s. 28 a retired judge as well as a Queen's Counsel was empowered to hold sittings of the Court of Chancery, on the request of the Chancellor or either of the Vice-Chancellors, and judicial powers were purported to be conferred on such retired judge or Queen's Counsel so holding a sitting.

These or similar provisions were perpetuated in the Ont. Jud. Act, R.S.O. (1897), c. 51, ss. 10, 11, 188, and they are continued in the revised Judicature Act recently passed.

With all due respect, we think this is a mistake. We have, we submit, given very sufficient reasons why the right of both retired judges, and King's Counsel, to act as judges under authority purported to be conferred by pre-Confederation statutes or by Ontario statutes, is open to the gravest doubt; and suitors ought not to be exposed to the dilemma of having either to admit a jurisdiction which is to say the least doubtful, or to be put to the expense of contesting it. Such a matter as the jurisdiction of the person assuming to act as judge ought to be removed from the realm of controversy.

This subject was very carefully considered in 1905 by a Committee of the Law Society whose report is to be found in vol. 4 of the proceedings of Convocation, p. 51 et seq. The conclusions of the committee, we think, in the main agree with what has been heretofore stated, at the same time, it must be admitted, hardly with that definiteness which could be wished. With regard to the legislation authorising the appointment of K.C.C., to act as judges, the committee made no suggestion, but they seem to stand on a similar footing to retired judges. With regard to retired judges the committee recommend that the Attorney-General of Ontario should introduce legislation to repeal every statutory duty assumed to be assigned to a retired