

powers is the principal reason that Sir Frederick Pollock assigns in support of his position that they do not legislate, when he says: "A legislator is not bound to conform to the known existing rules or principles of law; statutes may not only amend, but reverse the rule or they may introduce absolutely novel principles and remedies like the Workmen's Compensation Act. Still less, if possible, is he bound to respect previous legislation." If no one could be a legislator who had not all these powers, then Sir F. Pollock might be said to have proved his point, but, as is well known, many bodies as a matter of fact have legislative powers and do legislate within a certain limited area without such powers. A familiar instance is to be found in our municipal corporations and other private and public bodies to whom a limited power of legislation is delegated, and who make laws which, so far as they are within the delegated power, are as binding upon all whom they may concern as though they had emanated from the legislature itself; since the Dominion Parliament itself is not a sovereign legislature, but exercises only delegated powers.

In a similar way judges have by the constitution, impliedly, a delegated power to legislate *sub modo*. As Sir F. Pollock says: "They are bound to find a decision for every case however novel it may be; and that decision will be authority for like cases in the future: therefore it is part of their duty to lay down new rules if required." But to lay down new rules of law, is, whatever may be said to the contrary, to make a new law; and to make a law is, we conceive, in fact to legislate—notwithstanding that the mode of legislating may be *sui generis* and not the ordinary way of making laws. And it does not appear to us to be any reason why such new rules made by judges can be said not to be legislation merely because in making such rules the judges have to proceed upon certain well defined principles in laying down such rules. In making by-laws corporations are similarly limited.

But, as we have already intimated, the point necessary to be first settled is "What is meant by a legislator?" If you mean by a legislator, one who makes laws, then *sub modo* judges make