

Sir JOHN THOMPSON. Irrespective of any question as to our right to confer or impose jurisdiction, I am endeavoring to deal with the subject as in the line of procedure altogether. I think, if the hon. gentleman will give his attention to the suggestion that I endeavored to explain a few moments ago, he will find that we will accomplish that result. If we come to the view the hon. gentleman has just expressed, that it is not in our power at all to create a tribunal—

Mr. MILLS (Bothwell). I did not say that.

Sir JOHN THOMPSON. I thought that was one of the hon. gentleman's objections.

Mr. MILLS (Bothwell). I stated that we have expressly conferred upon us the power to create courts for the better administration of the laws of Canada. But we are not doing that. We are undertaking to confer jurisdiction upon a provincial court, and to state in what court the criminal shall be tried. Now, what I am calling the attention of the Minister of Justice to is, that by the British North America Act, so far as provincial courts are concerned, it is for the provincial Legislatures to say what shall be the jurisdiction of each court, and it is for them to say in what court the criminal offence shall be tried.

Sir JOHN THOMPSON. If the hon. gentleman has no difficulty about the right to create a criminal court, I think there can be no objection to the Bill at all. It is true that these courts, as now created, are constituted by the provincial authority; but the committee will remember that we have the power, under the British North America Act, to impose our jurisdiction and our business upon the provincial courts as established by the provincial authority. That, I think, is clear. It is on that principle that legislation has proceeded all along. But we intend, in principle, to avoid any conflict of that kind by the amendment, as I explained.

Mr. MILLS (Bothwell). In the case the hon. gentleman refers to, I think the decision of the Privy Council goes to show that we created a new court. It became a court created by the Parliament of Canada, and it was only a mode of designating those who were to be the judges in that court—if my recollection of the decision be correct. But this is a wholly different matter, and I do not see how the hon. gentleman can make a jurisdiction expressly given to the court to try a particular case, a matter of procedure. It is something altogether apart from procedure. If you were to lay down that rule in every case, you would simply take power to determine what the procedure should be and to determine where a criminal should be tried, and then this provision of subsection 14 of section 92 would be inoperative—the administration of justice in the Province, and the maintenance and organisation of provincial courts, both of civil and criminal jurisdiction. Now, if the provincial Legislature were to say—and I think this would be a fair test of the question of jurisdiction—that a criminal shall be tried in a particular court that it names, and not elsewhere, could the hon. gentleman or could the House, by the Bill of the hon. gentleman, give jurisdiction to one of these courts in this way? I do not think so. It seems to me clear that we cannot do so. It would be, in effect, rendering nugatory this provision of the constitution concerning criminal jurisdiction, including procedure in civil matters in those courts. The hon. gentleman goes much beyond that, and designates the court in which the crime shall be tried.

Sir JOHN THOMPSON. I do not think it makes the slightest difference by what name we call the method we adopt. This Parliament has power to regulate the mode of trying controverted elections, and it took the Superior

Courts of the Provinces and imposed upon them—without any provincial enactment whatever, those courts having been created and organised by provincial enactment—the jurisdiction to try controverted elections. It was held that that was *intra vires* of the Parliament of Canada. It was one of two things—it seems to me to be a matter of perfect indifference which it was—either we were creating a new tribunal for the purpose of wielding a jurisdiction which we had power to create, and the procedure of which we had power to regulate, or we were imposing that jurisdiction upon a court already created by another authority. It was declared that we had power to do that, and that is expressly what I propose to do by this Bill. I think it is immaterial whether we are, in effect, creating a new tribunal for the purpose of dealing with criminal procedure, or whether we are imposing the new procedure upon an existing tribunal created by the Province.

Mr. MILLS (Bothwell). I think, in the case the hon. gentleman refers to, and the decision in that case, there is this point made by the Judicial Committee. They state that the jurisdiction conferred upon the court was not an ordinary civil jurisdiction, but it was one that belonged to Parliament, and was specially vested in Parliament; and that Parliament, in designating a particular tribunal for the purpose of trying controverted elections, was simply conferring upon that tribunal a part of its own authority which it exercised itself for a special purpose, and that in doing so, while it stated that the judges of certain courts should be constituted a tribunal for this trial, it was creating a tribunal for that special purpose. That did not interfere with the jurisdiction of the Provinces in creating the courts; it did not deal with the civil or criminal law at all, it dealt with the law of Parliament. It was creating a special tribunal outside these functions that were mentioned as belonging to the Local Legislature under the head of civil and criminal jurisdiction; it was the institution of a court by a special Act, the members of which are designated in a particular way; and I do not see that that has any bearing at all upon the case that is now before us. Here we are dealing with a matter that is specially within the powers of the Local Legislatures. It is not a law of Parliament, such as the matter dealt with in that Act and decided by the Judicial Committee. This is a power within the jurisdiction of the Parliament of Canada, or the Local Legislatures of the respective Provinces, and the Act says that it includes "the administration of justice in the Provinces, including the constitution, maintenance and organisation of provincial courts." Now, how is the court constituted? Not simply by saying that it shall be composed of four or five judges, but by stating, in addition to the number of judges that shall constitute the court, what their jurisdiction is to be. If you create what you call a court, and do not confer upon it any jurisdiction, why, it would not be a judicial tribunal; the Act itself would be a mockery. You designate the power which the court is to possess. Now, the powers that the Local Legislatures may designate a court to possess, are everything relating to the criminal and civil law of the Dominion as well as everything relating to the civil law, both of the Dominion and of the Legislature. If you are not satisfied with the manner in which that power is exercised, there is a special power conferred upon you to create courts of your own. You cannot, by creating these courts, take away the jurisdiction belonging to the provincial courts. If you introduce a Bill to declare that all the laws of Canada shall be administered by special courts, while you may confer concurrent jurisdiction on those courts, you cannot take away from the provincial courts the power already conferred upon them. The present Bill goes beyond the question of procedure and deals with the constitution of the court: it states in what court the trial should be had, and in so doing