But I think that such claims are altogether too extensive, even if they do not totally fail; and that on the true construction of the British North America Act, the Judges are responsible to the Dominion authority alone, who alone may vary or repeal the powers with which the Court was invested at the time of Confederation; and in particular (what is in fact the matter in issue) that the power of regulating whatever falls strictly within the meaning of the term "procedure" in the Supreme Court here, remains where it was before Confederation, viz: in the hands of the Supreme Court itself, subject to legislation in a constitutional way by the Parliament of Canada under section 129 of the British North America Act.

The attention of the Judges has been called to the various opinions expressed by them in August and September, 1880, with regard to the first Order in Council, 16th July, 1880, purporting to establish rules of court under section 17 of the Judicature Act, 1879; viz: the case of Saunders *vs.* Reed before myself: Harvey *vs.* Corporation of New Westminster, before Mr. Justice Crease: and Pamphlet *vs.* Irving before Mr. Justice Gray, with the view of showing that we all three then affirmed the legality of the power arrogated by the executive to make rules; and that we cannot without self contradiction now deny that power. Now, in fact, that point never came up for decision at all in any of the three cases. I do not mean to say that it was denied; but neither was it affirmed. It was never raised by the suitors. All the Judges were much puzzled as to the effect of that first Order in Council (published in *Gazette* 17th July, 1880.) It came first before myself, and I changed my mind about it more than once. In order to clear my views I placed them in writing. At first I inclined to think that the Order in Council was quite unmeaning, and so established no rules at all here; in which case, under section 19 of the Act of 1879, the old practice would have remained; but I finally concluded that the Order in Council had established some rules capable of being proved in evidence, but requiring such extraneous proof; and therefore they prevented me from conducting business in Chambers according to the former practice, without informing me what practice was substituted; reducing matters to a deadlock, removable only by evidence in every case brought forward. My statement or memorandum of arguments in support of my first views got into print, I do not know how. The report, of course, reads absurdly, for the arguments in it are directly at variance with the conclusion. But there never was any question raised in that case as to the validity of section 17, (1879), nor as to the authority of the Executive to make the Order in Council, 16th July; that was assumed and acquiesced in by all parties. The next Judge, whose opinion was taken, was Mr. Justice Crease, 6th August. He seems to have come to the same conclusion as myself; and there also, the power of the Executive seems to have been acquiesced in without ever being called in question. Lastly, Pamphlet *vs.* Irving was brought on before my brother Gray. He decided according to the view I had at first inclined to, viz: that the Order in Council, 16th July, was so utterly dark and obscure as to be a nullity, and therefore that it did not prevent the continuance of the old practice in chambers. But in none of these cases was the power of the Executive to make rules of procedure, which depends on the authority of the local legislature to invest it with such powers, called in question; nor did any of the Judges, nor could they, give any binding opinion at all whether the authority existed or not; and I do not choose to inquire