

and notwithstanding the demise of the Crown, became part of the law of Upper Canada by reason of the aforesaid legislation of 1792, which introduced therein the English laws as they existed on the 15th October, 1792, as regards property and civil rights, in so far as they were not inapplicable to the state and condition of the Province. The enactment found in Con. Stat. U.C., c. 10, s. 11, is simply declaratory of the old law in this behalf, and raises no repeal by implication of the Imperial legislation. It was in no sense contrary to the latter, but, within the meaning of the authorities, had simply a "concurrent efficacy." See Maxwell on Stats., pp. 216, 227; Steph. Com., 13th ed., vol. I., pp. 40, 47; *Foster's case*, 11 Rep. 63; *Conservators of the Thames v. Ball*, S.R., 1 C.P. 415; *Fitzgerald v. Champneys*, 2 J. & H. 31. The B.N.A. Act, 1867, s. 99, in enacting that the judges of the Superior Courts shall hold office during good behaviour, does not repeal the then existing law of Ontario to the effect that the judge's commissions shall not be affected by the Crown's demise. It simply leaves untouched the old provision as to the effect of the Crown's demise. This proposition is based upon two grounds: first, because it is a canon of statutory construction that the legislature does not intend to make any alteration in the existing law beyond what it explicitly declares, or fairly implies (Maxwell, p. 113); and secondly, because s. 129 of the B.N.A. Act, 1867, expressly declares that except as otherwise provided therein all laws in force in the Province of Canada, and the other Provinces, at the union, should continue in force. And, furthermore, this very section expressly prohibits any repeal by the Parliament of Canada, or by the Legislatures of the Provinces, of any laws existing at the union by virtue of Imperial statutes. So, whether or not it was within the competence of the Ontario Legislature in 1877 to repeal s. 11 of c. 10, Con. Stat. U.C. (and we think it was not), that enactment being merely auxiliary to and declaratory of the Imperial statute of 1 Geo. III. c. 23, s. 1, the latter is maintained in full force and effect by the section of the B.N.A. Act last above quoted, so far as the Province of Ontario is concerned.

The Imperial statute last referred to was re-enacted in the other provinces of Canada, before Confederation, but these provincial enactments are now repealed by the Revised Statutes of Canada. It is doubtful, to say the least, whether this Imperial statute obtained in Quebec, Nova Scotia, New Brunswick or Prince Edward Island before Confederation; and so ex abundanti cautela, it would be well for the Parliament of Canada to legislate upon the subject, and silence doubts as to the effect of the Crown's demise on the judicial tenure of office, for all time.