

Governor was the Queen's representative in assenting to the Act "on the part of the Crown."

The judgment of the Privy Council is in harmony with the common law respecting the legislative prerogative of the Crown. "There is no Act of Parliament," says Sir Edward Coke, "but must have the Royal Assent of the King:" 4 Co. Inst. 24. "The Sovereign," says Sir William Blackstone, "is a constituent part of the supreme legislative power:" 1 Bl. Com. 261. "The making of statutes is by the King with the assent of Parliament:" Bacon's Abr. tit. Prerogative 487. "The King has the prerogative of giving his assent, as it is called, to such bills as his subjects, legally convened, may present to him, that is, of giving them the force and sanction of a law:" *Ibid.* 489.

In addition to the Crown's ordinary executive prerogatives, the sovereign, on the conquest and cession of Canada, acquired the prerogative power of legislation, which may be exercised in respect of conquered colonies with or without the assistance of the Imperial Parliament: 2 Peere Williams, 75. But on the grant of a representative assembly with the power of making laws, this separate prerogative could only be exercised with the advice and consent of the newly-created legislative authority: *Chapman v. Hall*, Cowper 204.

The Constitutional Acts of 1791 and 1840, which created the legislative powers over what are now Ontario and Quebec, and authorized them to make laws with reference to the classes of subjects, some of which are now within the legislative authority of the provinces, expressly provided that the Provincial laws of Upper and Lower Canada should be made by "His Majesty," and those of Canada by "Her Majesty," by and with the advice and consent of the other legislative bodies created by the Acts.

The Constitutional Act of 1791 (31 Geo. III. c. 31), after providing that there should be a Legislative Council and Assembly in each of the Provinces of Upper and Lower Canada, enacted that, "In each of the said provinces respectively, His Majesty, his heirs or successors, shall have power during the continuance of this Act, by and with the advice and consent of the Legislative Council and Assembly of such Provinces respectively to make laws for the peace, welfare, and good government thereof" (s. 2).

The Imperial Act further authorized the enactment of special laws on the following classes of subjects now within the legislative authority of the Provinces, viz.: Elections (ss. 15, 16, 18, 23 and 25); Courts of Civil Jurisdiction (s. 34); Tithes (s. 35); Clergy Reserves and Rectories (ss. 41 and 42); and Tenure of Lands in Free and Common Socage (s. 43). And it provided that, in each case, the legislation should be by an "Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, his heirs or successors."

The Union Act of 1840 (3 and 4 Vic. c. 35) repealed only so much of the Act of 1791 as related to the Legislative Council and Assembly, and the making of laws by the Provinces; united them into one Province; and provided that within the united Province "Her Majesty shall have power by and with the advice and consent of the Legislative Council and Assembly to make laws for the peace, welfare, and good government of the Province of Canada." The Act describes the new