

as are conferred by section 92 of the British North America Act, and that all other powers are vested in the Parliament of Canada. It may be that such Statutes as that regarding the Parish Courts are *infra vires* the Provincial Legislature, without the disallowance Statute being so, but if they are *infra vires*, it can hardly be from the weight of the New Brunswick decision just quoted or from the reasoning given by the majority of the Court.

Another of the Statutes referred to in the Order in Council, and being similar to the disallowed Act, is one passed by the Legislature of Ontario, and which conferred jurisdiction on Stipendiary Magistrates in Territorial and temporary Judicial Districts.

The undersigned has, however, already shown that the provisions of this Act were distinctly excepted to in the report of the Honorable Mr. Laflamme, and that a request was made that it should be repealed before the time for disallowance should expire; that this request was unheeded, and that a subsequent enactment of a like character, but going a little further in conferring jurisdiction, was disallowed. Legislation of that kind has not been continued in Ontario, but the Legislature has, in recent years, avoided doubtful ground, by establishing the Court merely, and leaving the appointment of the Judge to the Dominion Executive.

The Order in Council now under consideration, after presenting the reasoning which has been herein reviewed, with regard to the constitutionality of the Disallowed Act, proceeds to give a statement of facts which seems to the undersigned to have no bearing upon the question and no relevancy to the question of disallowance. It refers to the fact that in 1887 the Legislature of Quebec authorized the appointment of two additional Judges of the Superior Court, and calls Your Excellency's attention to the fact, according to a principle acknowledged by the Dominion authorities, and especially by the Right Honorable the First Minister, in a speech in Parliament, in 1880, that the wish of the Provincial Legislature on such a subject should be respected. On this point there need be no controversy. A representation made by a Provincial Legislature as to the necessity for an increase in the number of Judges, or on any other subject is entitled to very great respect, and it was not necessary, in order to obtain this admission, that the speech of the First Minister, made under widely different circumstances from those presented in the Province of Quebec, and in relation to a state of affairs in British Columbia on which the opinion of the Provincial Legislature was peculiarly important as there was but little question as to the facts (the controversy turning largely on a matter of opinion as to the best policy to be pursued in organizing the judicial staff of that Province), should be referred to.

Without digressing into a consideration of the weight which the representations of the Provincial Legislatures should have, under various sets of circumstances that may arise, the undersigned would suggest that, inasmuch as the authority for the appointment of Judges of the rank provided for in the Quebec Act of 1887, is vested in Your Excellency, and the provision for the salaries, allowances and pensions for such Judges can alone be made by Parliament, the responsibility of recommending the necessary provision to Parliament is not wholly removed from Your Excellency.

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