

service, is a breach of the conditions of his appointment, and in violation of Constitutional Law and Practice.

The British North America Act is the fundamental Law and defines with clearness the tenure of the judicial office. The Parliament of Canada has passed no Law in contravention of or trenching on this definition. A Local Legislature cannot confer on the Government of the Dominion power which the British North America Act or Canadian Parliament itself has not given. At page 54 Cooley says, "The constitution of the state "is higher in authority than law, direction or order made by any "body or "any officer assuming to act under it. In any case of conflict the "fundamental Law must govern and the Act in conflict with it must be "treated as of no legal validity. The courts have thus devolved upon "them the duty to pass upon the Constitutional validity sometimes of "Legislative and sometimes of executive acts (55)."

In the notes at page 26., "It is idle to say that the authority of each "branch of the Government is defined and limited by the constitution if "there be not an independent power able and willing to enforce the "limitations. Experience proves that the Constitution is thoughtlessly but "habitually violated and the sacrifice of individual rights is too remotely "connected with the objects and contests of the masses to attract their "attention. The judges ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental."

Nor is it necessary, says he at pages 210 and 11. "That the Courts "in every case, before they can set aside a law as invalid, should be able "to find in the Constitution some specific inhibition which has been disregarded, or some express command which has been disobeyed. Prohibitions are only important when they are in the nature of exceptions "to a general grant of power, and if the authority to do an act has not "been granted by the sovereign to its Representative it cannot be necessary to prohibit its being done."

The British North America Act is the fundamental Law; it gives power to the Governor-General to appoint the Judges and to remove them from office on address of the senate and House of Commons, but nowhere when once appointed without condition or limitation as to residence save that it be within the Province to which they may be appointed, does it give the power to order the Judges to change their residences to particular sections of that Province, at the dictation of the Local Legislature contrary to the terms of their Commission and the law under which their appointments were made. It was not necessary therefore to inhibit the exercise of such a power, for it never was granted. A fortiori where such change is in no way essential to the efficient discharge of the duties attached to the appointment. The privileges conferred by the British North America Act and the Dominion Legislature are statutory inducements. The power which confers, may remove, should public exigency demand, but that Power has not yet spoken, and, should it do so, it will take care that the exercise of any authority it gives shall not work injustice.

In the case of *Calder vs. Bull*, 390 Chas. J. says "every law "that takes away or impairs rights vested, agreeably to existing Laws is "retrospective, and is generally unjust, and may be oppressive."

Cooley at page 325, speaking of ex-post facto laws, says. "If it shall "subject an individual to a pecuniary penalty for an act which when "done involved no responsibility, or if it deprives a party of any valua-