

slightly from the old statute of Upper Canada by expressly providing that the Q.C. to be so appointed must be one appointed for Upper Canada "or for the Province of Ontario."

It is necessary to bear this in mind, because the B.N.A. Act vests the power of appointing judges in the Governor-General: see B.N.A. Act, s. 96. And the power of appointing judges being thus vested in the Governor-General, it may be asked, can the provincial legislatures empower judges so appointed to delegate their duties? To do so would be virtually to assume in an indirect way to appoint a judge, for a temporary purpose, it is true, but still, so long as his authority lasts, to all intents and purposes a judge. That such a power is vested in the provincial legislatures seems doubtful. R.S.O. c. 45, s. 3, which empowers the Lieutenant-Governor to include Q.C.C. in commissions of assize seems open to the same objection. Assuming therefore that the provisions of the Ontario Judicature Act, 1895, enabling a judge of the Supreme Court of Judicature to appoint one of Her Majesty's Counsel to act as a judge of Assize, are ultra vires, there would still remain the provisions of the old pre-Confederation legislation, which would continue in force, and the question then would arise whether the Queen's Counsel referred to, are to be deemed to be, or to include those created by the Lieutenant-Governor, or only those created before Confederation, or since then, by the Governor-General. On the one hand, it may be argued that the Lieutenant-Governor having power to appoint Queen's Counsel, in and for the province, has power to appoint them for all purposes within the province, including the capacity to act, on request, as judges of Assize. On the other hand, it may be argued that inasmuch as the power of appointing judges is vested in the Governor-General, so also by necessary intendment must also be vested in him the appointment of those Queen's Counsel qualified to act as judges of Assize. The power of appointment of judges is plainly one to be exercised with a due regard to strictly personal qualifications, and that being the case, it may not unreasonably be contended that the power authorized to appoint the judges is the only power which can appoint