

APPOINTMENT OF QUEEN'S COUNSEL.

The Committee regret that the Government of Canada, entertaining the view that the opinion of the Law Officers referred to in this letter was applicable to Ontario, should not have thought fit to transmit a copy of it for your Excellency's information. Although your Excellency's Government is of the opinion that your Excellency is invested with the power to make such appointments without Legislation, yet had they been made aware of the view of the Law Officers, they would have thought it proper to propose the Legislation requisite for the removal of any possible doubt on the subject, and having now become aware of it, it is their intention to propose such Legislation during the Session which is to commence within a few weeks. It appears to the Committee that grave inconveniences and complications may arise from the proposed action of the Government of Canada.

The Committee entertain the view that appointments of this description fall properly within the local, and not within the federal jurisdiction, and they trust that having regard to their expressed intentions as to legislation, the Government of Canada may see fit to abstain at present from issuing the proposed Commissions.

Should that Government, however, be of opinion that, notwithstanding the proposed legislation, the power of issuing such Commissions would remain with and should be exercised by His Excellency the Governor General, it appears to the Committee that before acting on that view, the opinion of the judicial Committee of the Privy Council should be taken on a joint case to be argued on behalf of the respective Governments.

The Committee purposely abstain from entering into any discussion of the constitutional point, but they are bound to state that in their opinion the proposed action involves questions of local and federal jurisdiction far wider than the single question under discussion, and this renders them the more anxious that the course they propose should commend itself to His Excellency the Governor General.

The Committee advise that your Excellency should communicate this minute of Council to the Secretary of State for the Provinces.

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 13th December, 1872, and sent to the Lieutenant Governor of Ontario.

The Committee of the Privy Council to whom

was referred the despatch of the Lieutenant Governor of Ontario, dated 28th October, 1872, covering a Minute of the Executive Council of that Province, on the subject of the appointment of Queen's Counsel, beg leave to report:—

That considerably more than a year ago, the attention of the Government was called to the expediency of appointing Queen's Counsel in Nova Scotia.

It appeared that, according to the practice that obtained in that Province, criminal prosecutions are generally conducted by Queen's Counsel, and it was stated that there was not a sufficient number of professional gentlemen, holding that rank, to perform the criminal business satisfactorily.

As the question, where the power of appointment rested, had been mooted in the newspapers, and it was one that affected the Royal Prerogative, it was deemed expedient to pursue the usual course in such cases, and to submit the question for Her Majesty's consideration, and for the opinion of the Law Officers of the Crown.

This opinion was obtained, and it was to the effect that the Governor General has the power, as Her Majesty's Representative, to appoint Queen's Counsels, but that a Lieutenant Governor, appointed since the Union came into effect, has no such power of appointment.

Her Majesty was further advised in such opinion that the Legislature of a Province could confer, by statute, upon the Lieutenant Governor, the power of appointing Queen's Counsel, and of settling the practice as to precedence or pre-audience in the Courts of the Province.

No appointments of Queen's Counsel for Ontario have yet been made by the Governor General.

The Lieutenant-Governor of Ontario has given Commissions as Queen's Counsel to seven members of the Bar, as appears by the *Ontario Gazette* of the 16th March last.

The validity of these appointments was at once questioned by the profession and in the press. Had the question been merely one involving pre-audience in the Courts, the Government would have left it to the decision of those Courts, but by law a Superior Court Judge in Ontario has the power of deputing any of Her Majesty's Counsel to perform his judicial duties, both civil and criminal, at the assizes.

In case any of the Counsel who have lately received commissions from the Lieut. Governor should act for a Judge at the Assizes, and the invalidity of the Commission be afterwards established, serious consequences might ensue, as all