

ment of Nova Scotia, and he declared that the constitutional question had not been raised before the inferior court, that he did not expect it would be raised, that he did not intend to discuss it, and that he was not prepared to do so. None of the provinces had received notice, or knew that such an important question would be raised, and none was represented. This question was not the one dependent upon the issue, although this *ex parte* judgment, on a collateral issue not in point, given by a divided tribunal, without hearing the interested parties, has sufficed to reverse all precedents; to annul, virtually, all the local statutes passed; to supersede all the deliberate opinions, formally expressed, by the law officers of England, as well as by those of the Dominion. I might here quote the correspondence exchanged between the right hon. leader of this House and Lord Kimberley. After having quoted section 92, paragraph 14, of the British North America Act, omitting therefrom the word "exclusively," he says:

"Under this power, the undersigned is of opinion that the Legislature of a Province, being charged with the administration of justice and the organization of the courts, may, by statute, provide for the general conduct of business before those courts; and may make such provision with respect to the bar, the management of criminal prosecutions by counsel, the selection of those counsel, and the right of precedence as it sees fit. Such enactment must, however, in the opinion of the undersigned, be subject to the exercise of the royal prerogative, which is paramount, and in no way diminished by the terms of the Act of Confederation."

Lord Kimberley answered, on the 1st February, 1872, very politely confirming or accepting the views taken and submitted to him by the right hon. the Premier:

"I am advised, he says, that the Governor General has now power, as Her Majesty's representative, to appoint Queen's Counsel, but that a Lieutenant Governor, appointed since the Union came into effect, has no such power of appointment. I am further advised that the Legislature of a Province can confer by statute on its Lieutenant Governor the power of appointing Queen's Counsel; and with respect to precedence or precedence in the Courts of the Province, the Legislature of the Province has power to decide as between Queen's Counsel appointed by the Governor General and the Lieutenant Governor, as above explained."

I must protest against those *ex parte* cases

submitted to the Home Government. In all such instances, the interested parties, the Provinces, should be invited to join and submit their own views in a joint case. I will not discuss the question as to whether a statute is necessary or not, to authorise the exercise of the royal prerogative in appointing the Queen's Counsel. Before the Union, even before Confederation, I know of no Quebec statute providing for those appointments, which, however, were freely made by the representative of the Crown, advised by his counsel as exercising a royal prerogative. The authorities in Canada appointed them by virtue of the public law of England, which became for us the common law of the land by the cession of this country to England. The more important point which I want to elucidate is this one: Does the Queen form part of the local Governments? If she does not, the appointments of magistrates, coroners, justices of the peace, sheriffs, gaolers, constables, and hundreds of others are null, because every one of these appointments is equally of royal prerogative: the Queen being the source, the fountain of all honors and powers. More than that, all our local statutes would be void, because they are all enacted by "Her Majesty, with the advice," etc. In the beginning of the Confederation, the dual mandate existed. I see here hon. members who were present when the first of those statutes was enacted for the Province of Quebec, it might even have been at their suggestion that the first statutes were so phrased. None of those statutes have ever been disallowed for such phraseology. Have all the public and leading men of Canada, all the judges, all the Bar of the Dominion been so long in error on such a point? Some of our statutes have been discussed before the Privy Council. Never has it occurred to the mind of any one that they were wrongly enacted. But let us examine the law more closely. By the 31st Geo. III (1791), chapter 31, section 2, it is provided:

"That there shall be within each Province of Upper and Lower Canada a Legislative Council and an Assembly to make laws, etc., and that such laws will be assented to by His Majesty or in His Majesty's name, by such person as His Majesty shall, from time to time, appoint to be the Governor or Lieutenant-Governor of such Province."