

And, therefore, it is not conferred by the gift to a legislative body of a power to make laws in reference to civil rights and the administration of justice. . . . If the Imperial Parliament may, and does, from time to time, thus interfere beyond its proper legislative functions, that is by virtue of its universal sovereignty. No derivative legislature may do so, unless specially authorized in that behalf."

The Supreme Court of Canada, however, upon the question being referred to it by the Governor-General in Council, held that the legislature of British Columbia could make rules to govern the procedure of the Supreme Court of the Province in all civil matters, and could delegate this power to the Governor-General in Council, and they also held that the provincial Act, 44 Vict., c. 1, was *intra vires* of the Legislature of British Columbia.* Their lordships, unfortunately, as has hitherto been usual in such cases, did not give their reasons for this decision.†

However, in the recent British Columbia case of *Burk v. Tunstall*,‡ Drake, J., seems to have held that the provincial Act in question in that case, authorizing the appointment of Gold Commissioners of Mining Courts, was *ultra vires*, not only because the intended Gold Commissioners were, in effect, Superior Court judges under another name, but also because: "It is a prerogative of the Crown to appoint all judges, and such prerogative cannot be taken away except by express words. This prerogative has been delegated to the Governor-General, and there is nothing in the Act taking this right away and vesting it in the Lieutenant-Governor," a view which, as will be more clearly seen

* See the answers to the Supreme Court of Canada reported in the footnote to the report of the Thrasher Case, 1 B. C. (Irving), at pp. 243-4; also Cass. Sup. Ct. Digest, at p. 480.

† But see now 54-55 Vict., c. 25, s. 4 (D.). It may be here noted that in his report to the Governor-General of July 10th, 1889, in regard to a petition presented to the latter for the reference of The Jesuits' Estates Act to the Supreme Court of Canada, Sir John Thompson, then Minister of Justice, reviews the different precedents for such references, and also for similar references, in England, by the Government to the Judicial Committee of the Privy Council, arriving at the conclusion that the object and scope of the enactments allowing such references are "not to obtain a settlement, by this summary procedure, of legal questions even of great public interest, or to obtain an adjudication upon private rights, but solely to obtain advice which is needed by the Crown in affairs of administration." This report was published in full in the *Toronto Empire* for August 12th, 1889.

‡ 2 B.C. (Hunter), at p. 14 (1890).