

THE CRIMINAL JURISDICTION OF THE CHANCERY DIVISION.

follow that it could not do so by the mere process of amalgamating that court with the other two courts.

The High Court, so far as the addition of the Chancery Division is concerned, is not only in name, but also as far as criminal jurisdiction is concerned, in substance to all intents and purposes a new court of criminal jurisdiction; and though the process of amalgamation might very reasonably be held not to deprive the Queen's Bench and Common Pleas Divisions of any criminal jurisdiction which they possessed before the amalgamation, it would not by any means follow that the amalgamation had the effect of extending the jurisdiction those two courts possessed to the Court of Chancery. It is true the Judicature Act assumes to give to the Court of Chancery, as one of the component parts of the High Court, the like jurisdiction in all respects as that previously exercised by the other two divisions of the High Court, but whether that was not *ultra vires* of the Ontario Legislature, so far as criminal jurisdiction is concerned, seems open to the doubt we have expressed.

No Act has been passed by the Dominion Parliament since the Judicature Act conferring on the Chancery Division the same co-ordinate criminal jurisdiction as that exercised by the other two divisions. The Revised Statutes of Canada, however, appear to recognize the High Court of Justice generally as having criminal jurisdiction. In chap. 174, s. 2, the High Court of Justice for Ontario is defined to be the court for Crown cases reserved. Sec. 3 enacts that every Superior Court of criminal jurisdiction shall have power to try any treason, felony, or other indictable offence, and if this were the consolidation of any Act passed subsequent to the Judicature Act, it would undoubtedly confer on the Chancery Division jurisdiction to try such offences. This latter provision, however, is a con-

solidation of prior enactments, and it is open to argument whether it has the effect of conferring on a court constituted subsequent to the passing of the enactments here consolidated a criminal jurisdiction which it did not previously have. In other words, "every Superior Court of criminal jurisdiction" might be argued to mean every such court existing when the Acts consolidated were passed, and not necessarily every such court thereafter constituted, or existing at the time of the consolidation of the statutes. See 49 Vict. c. 4, s. 8 (R. S. ch. xii.), which provides that the Revised Statutes are not to be held to operate as new laws.

R. S. C. ch. 174, s. 269, provides that any judge of the High Court may reserve his decision at a trial; section 270 provides that the practice and procedure in all criminal cases in the High Court shall be the same as before the establishment of the High Court; and section 271 provides that if any commissions are issued for holding assizes they shall contain the names of the justices of the Supreme Court; these provisions are the consolidation of 46 Vict. c. 10, an Act passed subsequent to the Judicature Act, and so far as they go no doubt have the effect of conferring on the individual judges of the Supreme Court the particular criminal jurisdiction therein expressed. But the doubt we have is whether as a court or part of the High Court, the Chancery Division has, by any statutory enactment of the Dominion, yet had vested in it a general co-ordinate jurisdiction in criminal matters with that of the other two divisions.

Considering the importance of the question, this is a point which deserves careful attention, and if there be any technical defect in the legislation on the subject it should be remedied ere it has occasioned a failure of justice.