

DOMINION CONTROL OVER PROVINCIAL LEGISLATION—THE JUDICATURE ACT.

lic Works on the subject. The report then goes on to say :

"The whole tenor of this report shows, that Mr. Page apprehends that the projected work would cause serious charges of a prejudicial character in the navigation of the river, and might be *the means of injuring private property* to an extent which cannot now be calculated. "After such a report, *and without reference to the constitutionality of the Act*, the undersigned is of opinion that it would not be safe, in the public interests, to allow the Bill to become Law."

This report was approved by the Privy Council and Governor-General on July 10, 1868 (ib. p. 28).

This precedent appears to be in point only so far as it refers to injury to private property that would be done if the Act went into force as one reason for its disallowance, thus putting a circumscribed interpretation on B. N. A. sec. 92, sub-s. 13, which gives the Provincial Legislatures the power of exclusively making laws as to "Property and Civil Rights in the Province." That, indeed, this subsection must be understood in a limited sense is insisted on in the judgments in the Supreme Court in *Valin v. Langlois*, 3 S.C. 1.

(To be Continued.)

THE JUDICATURE ACT.

We continue the criticisms referred to in a previous page (p. 178), holding responsible therefor the advance sheets of Messrs. Taylor and Ewart's forthcoming work.

ORDER XVII.—1 (b). What is the use of filing a copy of the writ? Where the writ was issued a copy was probably filed (see O. III. r. 15), but the word "may" in this latter rule has been substituted for "shall" in the corresponding English rule. The words "if not already filed," should have been inserted as in rule 2 of same order (XVII).

O. XXI. "As soon as either party *has joined issue* * * * the pleadings shall be decreed to be closed *without any joinder*." etc.

O. XXIV. 5. The old and now inapplicable phraseology crops up here. There is no such

thing as a *plea* under the new practice. It is a *statement of defence* : see O. XV. r. 1 (a).

Who is the Registrar referred to in O. LVI. r. 3? It cannot mean the Registrar of the Court of Chancery, for he is the Accountant (see O. LVI. r. 6), and it could hardly be intended that the same officer should draw cheques and countersign them.

O. II. r. 5 requires that "every writ of summons, *and every other writ* . . . shall require the defendant to appear thereto in ten days after service." Subpœnas and *fi. fas.* are writs.

Under O. XXXVI. r. 8 any party may apply for such order as he may upon any admissions in the pleadings or the examination of the other party be entitled to. "Any such application may be made by motion as soon as the right of the party applying to the relief claimed *has appeared from the pleadings*."

Under O. XXXV. r. 8 "on the argument of an order to shew cause, the counsel of the party supporting the application shall begin, and shall state fully the grounds of the application, and shall have the reply." This will necessitate three speeches from counsel applying for a new trial, and the Court will have to hear the first address repeated a second time before hearing the other side.

O. XLVI. r. 4. Section 17 should be section 19.

O. VII. r. 1 (e), is an extraordinary provision, inasmuch as it provides that no matter where a contract is made, or where the plaintiff or defendant resides, an action may be brought in Ontario if the defendant has assets to the value of \$200 within the jurisdiction.

By section 43 appeals to the Supreme Court are limited in various ways. Is this *intra* or *ultra vires*? The B. N. A. Act, sec. 101, provides that the Parliament of Canada may provide for the constitution, maintenance, and organization of a General Court of Appeal for Canada." By the Dominion Statute, 38 Vict., c. 11, the Supreme Court was erected, and sec. 17 provides that "subject to the limitations and provisions hereinafter made, an appeal shall lie to the Supreme Court from *all final judgments* of the highest court of final resort.....now or hereafter established in any province of Canada." The two acts assume to deal with the same subject, and are in conflict.

Form No. 125 is of an order to produce, to be made *in Chambers*. It can be obtained on præcipe. See O. XXVII. r. 4.