The Legal News.

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POWERS OF COURT OF QUEEN'S BENCH.

Incidentally, in the case of *Mallette & City of Montreal*, noted in our last issue, (p. 370), a question of considerable interest has presented itself. An appeal has been taken from the judgment of Mackay, J., but the City, Respondent, having been about to execute the sentences which had been pronounced against the butchers, plaintiffs and appellants, an application was made to a Judge of the Court of Queen's Bench in Chambers for an order to the Recorder's Court, to suspend the execution of the sentences until the appeal should be determined. Mr. Justice Rainville had granted a temporary injunction while the case was proceeding in the Court below; but that order had lapsed. The application was rejected, both Mr. Justice Monk and the Chief Justice doubting whether the authority of the Court of Queen's Bench extended to such a case. The learned Judges, however, did not hold, apparently, that the Court would not interfere under any circumstances whatever, but only that the case presented did not justify interference. The damage apprehended by appellants was not irremediable, the appellants having the option of relieving themselves by payment of the fines imposed on them; and further, it was suggested that the Superior Court, probably having jurisdiction, might be disposed to exercise it in this matter.

RIGHT OF ACTION.

The decision in *Gnaedinger* v. *Bertrand*, noted in the present issue, is almost identical, as far as the first point in the case is concerned, with the ruling of the Court of Review some years ago in *Lapierre* v. *Gauvreau*, 17 L. C. J. 241, which has since been generally accepted as conclusive upon the question decided. In that case it was held that where an order is obtained in another district by the travelling agent of a Montreal firm, subject to the approval of his principals, and the order is accepted by the firm in Montreal and the goods are delivered there, at the railway or steamboat, the right of action originates in the district of Montreal. In the case of *Gnaedinger* v. *Bertrand*, the action was on notes, for which the merchandise sold as above stated was the consideration, and the notes, though bearing date at Montreal, were really signed in Kamouraska. This raised another question on which the decisions are not so clear. In one of the latest cases, *The Railway and Newspaper Advertising Co.* v. *Hamilton*, 20 L. C. J. 28, the Court considered that the dating of a contract at Montreal which was really made elsewhere, did not constitute a cause of action originating at Montreal. The special circumstances of *Gnaedinger* v. *Bertrand* seem to have taken it out of that rule; or, at all events, present important points of difference. The notes, being made for goods sold and delivered at Montreal, as above mentioned, were sent to the debtor with place of date in blank, and by him signed and returned in blank. He had an opportunity to date the notes in Kamouraska (the place of his domicile), if he wished; but instead of doing so, he signed them and sent them back to Montreal with place of date in blank, and the Court held that, by doing so, he authorized his creditor to complete them by filling in the place of the creditor's residence, where also they were payable.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Nov. 14, 1879.

GNAEDINGER et al. v. BERTRAND.

Cause of action—Goods sold on an order obtained by a travelling agent subject to approval of employer in Montreal—Delivery at railway station—Notes signed by debtor with place of date in blank.

JOHNSON, J. This is a plea to the jurisdiction of the Court—an exception *déclinatoire* by defendant.

He says that his domicile is at *Isle Verte*, in the District of Kamouraska, and that the cause of action arose there; that the notes on which the action was brought were signed there, and the merchandize which was the consideration of them was delivered there. There is evidence of record and also an admission, from which it would appear that the goods were bargained for at *Isle Verte*, between the defendan

and the plaintiffs' traveller, the order to be subject to the plaintiffs' approval. They were delivered here—the delivery at the railway, and on the steamboat, being a delivery to the defendant, who paid the freight. Then, as to the notes: they bear date at Montreal; but the fact is, they were sent to the defendant in blank, and he signed them and sent them with the blank to be filled up.

This being the state of the facts, all the argument and authority offered by the defendant appear to me to have been thrown away. It is not a case where the cause of action can be said to have originated in Kamouraska. The debt was incurred in Montreal for merchandize which was delivered there. The notes are the evidence of the debt, and they are also made payable here (at the Molsons Bank). As to the place named in the note as the place of date, if the defendant chooses to sign notes with blanks for other people to fill up, that has always been held as a power of attorney from the sender to the recipient to fill it up for him. There can be no doubt, from the decided cases, that we have jurisdiction, and that upon these facts the declinatory plea must be dismissed, and it is dismissed with costs.

Macmaster, Hall & Greenshields for plaintiffs.
D'Amour & Dumas for defendant.

SUPERIOR COURT.

SHERBROOKE, October, 1879.

BÉLANGER v. ROY, and DORION, opposant.

Saisie-Gagerie—Exemption from seizure claimed by third party, of effects garnishing leased premises.

DOHERTY, J. Action for rent, with *saisie-gagerie*. The opposant claims one stove, one bedstead and one table as being her property, and as such exempt from seizure, these being the only articles of the kind she had. The plaintiff contested the opposition upon the ground that the articles had been brought into his house by the defendant himself, and that they garnished the premises as such, and that in such a case the exemption from seizure could only be claimed by the debtor himself, and not by a third party. The opposant could not stop the sale as owner of the property liable for rent; still less could she claim exemption established by law in favor of the debtor only.

Opposition dismissed with costs.

L. C. Bélanger for plaintiff.
H. C. Cabana for opposant.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 20, 1879.

SIR A. A. DORION, C.J., MONK, RAMSAY, TESSIER, CROSS, JJ.

MAHER, appellant; and AYLMER, respondent.

Appeal—Motion to order party alleged to be the real appellant to take up instance.

SIR A. A. DORION, C.J. A motion was made on the part of respondent, on the last day of last term, to compel the Eastern Townships Bank to intervene, and to become appellants in this cause instead of Maher; on the ground that Maher, although nominally appellant, is really appealing for the Eastern Townships Bank. But Maher was the party in the Court below, and he has appealed, and this Court has no power to order the Eastern Townships Bank to come in. The motion is, therefore, rejected.

Brooks, Camirand & Hurd for appellant.
T. W. Ritchie, Q.C., for respondent.

COURT OF QUEEN'S BENCH.

[Crown Side.]

MONTREAL, September 26, 1879.

REGINA v. MEYERS.

MONK, J.

Indictment—"No Bill"—Sending bill back to Grand Jury.

The Grand Jury having found "No bill" in the case of Jacob Meyers, charged with murder,

St. Pierre moved for the discharge of the prisoner.

B. Devlin opposed the application, and moved that the bill be sent back to the Grand Jury, as there was evidence which had not been brought under their notice.

MONK, J., said that while the Court had a right to refer the bill back to the Grand Jury, he was of opinion, after taking time to consider, that the new evidence referred to was insufficient to warrant such a proceeding in this case, and the application would, therefore, be dismissed.

B. Devlin for the Crown.
St. Pierre for the prisoner.

COURT OF QUEEN'S BENCH.

[In Chambers.]

MONTREAL, November 17, 1879.

MONK, J.

MALLETTE et al., Appellants, and CITY OF MONTREAL, Respondents.

Jurisdiction of Court of Queen's Bench—Application for order to Recorder's Court—1177 *C.C.P.*

The appellants having appealed from the judgment noted at 2 LEGAL NEWS, p. 370, presented a petition to Monk, J., in Chambers, setting out that while the case was pending in the Court below, they had obtained an injunction from Rainville, J., enjoining the respondents to suspend execution of the sentences pronounced by the Recorder against the appellants and other butchers keeping private stalls, in pursuance of the by-laws regulating the keeping of such stalls, until judgment should have been rendered in the case; that their action had been dismissed on November 7th, and a writ of appeal from the judgment had been issued the same day; that appellants were now threatened with execution of the sentences; and they prayed for an injunction ordering the respondents to suspend the execution of the sentences until judgment should have been rendered on the appeal.

Roy, Q.C., opposed the application, raising the question of jurisdiction, and citing Art. 1177 C. P.

MONK, J., said the first question was whether an irremediable injury would be inflicted by the refusal of the Court to interfere. It was true that imprisonment would be without remedy, but the parties could be relieved from imprisonment by the payment of the fine. The enforcement of payment of a fine was not an irremediable damage. Then, as to the jurisdiction of the Court of Queen's Bench to grant such an application. It was not to stop anything that was being done in the Superior Court. Judgment had been rendered by that Court, and the present application had reference to proceedings in the Recorder's Court. The petitioners asked that it be ordered that no proceedings be taken before the Recorder's Court to enforce these fines pending the appeal to the Queen's Bench. It was a matter of great doubt whether this Court had power to issue an order to the Recorder's Court; and even assuming that the Court could interfere under very exceptional circumstances, this did not appear to be a case justifying such an exercise of power. The damage, as had been observed, was not irremediable. His Honor did not wish to pronounce any opinion upon the validity of the by-law at this stage, but it might be remarked that if the by-law appeared manifestly illegal, it might afford some ground for saying that the Court should interpose its authority. But the presumption was the other way. The by-law was sustained by judgments of the Superior Court, and in another case, that of Bourdon, Mr. Justice Sanborn and himself had inclined to a similar view, though the question was not expressly decided. The presumption was, therefore, in favor of the by-law. Under the circumstances the application would be rejected, without, however, deciding as to the constitutionality of the Act of the Legislature.

Sir A. A. DORION, C.J., who was present at the hearing, concurred in thinking that the Court of Queen's Bench had no power to issue such an order. The Superior Court, however, might have jurisdiction. In the Bourdon case, he had simply expressed the opinion that the matter could not be brought up by *habeas corpus*. The constitutionality of the Provincial Act authorizing the by-law would come up for consideration when the appeal was decided in the regular course.

Doutre, Joseph & McCord for appellants.

R. Roy, Q.C., for respondent.

SUPREME COURT OF CANADA.

VALIN & LANGLOIS et al.

[Concluded, from p. 376.]

By 31 Vic., cap. 10, for regulating the Postal Service, the enactments of Acts respecting Customs, more especially for the protection of officers, are extended and applied to the officers employed in the Post Office.

In the Public Works Act, 31 Vic., cap. 12, sec. 48, all costs in awards made by arbitrators under that Act, where the award is in favor of the claimant, shall be taxed by the proper officer of the Court of Queen's Bench, Supreme Court, or Common Pleas, in the Provinces of Ontario, Nova Scotia and New Brunswick, and in Quebec by a judge of the Superior Court.

So by 31 Vic., cap. 15, sec. 7, of the Act to prevent unlawful training to the use of arms,

provision is made for the protection of justices and others acting under this Act, which regulates in a very special manner the procedure in all the Courts where such actions may be brought.

So by 31 Vic., cap. 17, an Act for the settlement of the affairs of the Bank of Upper Canada, authority was given to the Court of Chancery, or a judge thereof, to make orders and directions with reference to the trust therein referred to.

By 31 Vic., cap. 23, an Act to define the privileges, &c., of the Senate and the House of Commons, and to give the necessary protection to persons employed in the publication of Parliamentary papers, provision is made on the certificate of the Speaker of either House for the immediate stay of and putting a final end to all civil and criminal proceedings in any Court in Canada.

Under the Trade Mark and Designs Act of 1868, in case any person not being the lawful proprietor of a design be registered as proprietor thereof, the rightful owner is authorized to institute an action in the Superior Court in Quebec, and the Court of Queen's Bench in Ontario, and in the Supreme Courts of Nova Scotia and New Brunswick, and the course of procedure is pointed out and specially regulated.

Under 31 Vic., cap. 61, respecting fishing by foreign vessels, special provisions are made for the protection of officers by regulating the issuing of writs, and otherwise regulating the proceedings in informations and suits brought under the Act.

With respect to the Act relating to aliens and naturalization, 31 Vic., cap. 66, duties are imposed on judges of any Court of record in Canada, and on Provincial Courts therein named, as to admitting and confirming aliens in all rights and privileges of British birth, and directing the mode of procedure in such cases.

By the Railway Act of 1868, 31 Vic., cap. 68, sec. 15, the duty of appointing arbitrators is imposed on a judge of one of the Superior Courts in the Province in which the place giving rise to the disagreement is situated. So also by sub-section 13, as to ordering notices, and by section 15, as to appointing sworn surveyors, 19, as to taxing costs, 22, appointing on the death of one arbitrator another, 24 and 25, vesting in the judge the summary power of determining the validity of any cause of disqualification urged against an arbitrator, 27 and 28, empowering the judge to issue a warrant to the sheriff to put the company in possession of land under the award or agreement, and in many other matters in said Act quite distinct from jurisdiction and procedure in ordinary civil cases.

By 32 and 33 Vic., cap. 11, "Patents for Inventions," provision is made for actions for infringement and impeachment of a patent, and for the power of the Courts and procedure and pleading in such cases.

By the first Insolvent Act of 1869 and the Act in amendment thereof of 1870, summary jurisdiction is given to judges and Courts, and appeals to judges and from judges to Courts, and Provincial Courts are clothed with powers, and modes of procedure are given them, which the Local Legislatures could have no right to confer, as they have no right to legislate on the subject matter of insolvency. In Ontario the judges of the Superior Courts of common law and of the Court of Chancery, or any five of them, including the Chief Justice of Ontario, or the Chancellor, or the Chief Justice of the Common Pleas, shall and are required to make and settle such forms, rules, and regulations as shall be followed in the proceedings in Chancery; and in Nova Scotia an entirely new jurisdiction is given in insolvency to Probate Courts or judges of Probate, which they never in any way before possessed.

And as to banks and banking, by 34 Vic., cap. 5, jurisdiction in a summary manner is given to Superior Courts of Law and Equity to adjudicate as to parties legally entitled to shares, and the mode of procedure is there pointed out.

As to the Public Lands of the Dominion, by 35 Vic., cap. 23, a summary power is given to the judge of any court having competent jurisdiction in cases respecting real estate, to grant an order which shall have the force of a writ of *hab. fac. pos.*, and upon proof to his satisfaction that the land forfeited should properly revert to the Crown, to deliver up the same, &c., and the mode of procedure is provided by this Act.

By 37 Vic., cap. 45, for the inspection of staple articles, as to actions or suits against any person or anything done in pursuance of this Act, limitations and restrictions are imposed

and directions given as to procedure before and at trial, and on giving judgment.

I do not, of course, put forward this legislation as in itself in any way determining, or even as confirmatory of, the right of the Dominion Parliament so to legislate; for it is too clear that if they do not possess the legislative power, neither the exercise nor the continued exercise of a power not belonging to them could confer it, or make their legislation binding. But I put forward these acts as illustrative of the powerlessness, or perhaps I should rather say helplessness, of the Dominion Parliament if they have not the right to legislate without control in the most full and ample manner over all matters specially or generally confided to them by the Imperial Parliament, and over which all must admit they have sole control, without being met by so effectual an obstruction in giving effect to such legislation as by closing the Queen's Courts against the administration of laws so enacted by and under the authority of the Parliament of Great Britain, by virtue of which the Dominion and Provincial constitutions now exist, and also as illustrative of the utter want in the Dominion —if the Dominion Parliament does not possess it—of any legislative power to meet emergencies requiring legislative control in matters so unequivocally affecting the peace, good order and government of Canada, so clearly taken from Provincial Assemblies and confided to the Parliament and Government of Canada.

But I have had no great difficulty in arriving at the conclusion that this Act substantially establishes, as the Act of 1873 did, as respects elections, a Dominion Court, though it utilizes for that purpose Provincial Courts and their Judges. In considering the British North America Act in the view just presented, as also the Dominion Act on the point to be now discussed, the following extract from the judgment of Turner, L. J., in *Hawkins* v. *Gathercole*, 31 L. and Eq., 312, may not be inapplicable here. He says:—

"But in construing Acts of Parliament the words which are used are not alone to be regarded. Regard must also be had to the intent and meaning of the Legislature. The rule on this subject is well expressed in the case of *Stradling* v. *Morgan* in Plowden's reports, in which case it is said at page 204:—'The Judges of the law in all times past have so far pursued the intent of the makers of statutes that they have expounded Acts which were general in words to be but particular where the intent was particular.' And after referring to several cases, the report contains the following remarkable passage at page 205:—'From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend but to some things, and those which generally prohibit all people from doing such an act, they have interpreted to permit some people to do it, and those which include every person in the letter, they have adjudged to reach to some persons only, which expositions have always been founded upon the intent of the Legislature, which they have collected sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances, so that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion.' The same doctrine is to be found in *Eyeston* v. *Studd*, same reports, p. 465, and the note appended to it, and many other cases. The passages to which I have referred I have selected as containing the best summary with which I am acquainted of the law upon this subject."

In determining the question before us, we have, therefore, to consider, not merely the words of the Act of Parliament, but the intent of the Legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts, and from foreign meaning and extraneous circumstances, so far as they can justly be considered to throw light upon the subject in seeking to discover the intention of the Dominion Parliament. If Parliament had no power to add to the jurisdiction of a Provincial Court, or in any way interfere with its procedure, one is struck at the outset with the strong, if not irresistible inference that this raises, that the intention of Parliament must have been to establish an independent tribunal of the nature of a Dominion Court, and not to add to the jurisdiction or affect the procedure of Provincial Courts, because it must, I think, be assumed that Parliament in-

tended to do what they had a right to do—to legislate legally and effectively—rather than that they intended to do what they had no right to do, and which, if they did do, must necessarily be void and of no effect. And having established a Court by the Act of 1873, which, it seems to be admitted, is *intra vires*, is it reasonable to suppose that Parliament would repeal a valid enactment, and for the accomplishment of substantially the same object substitute in its place a law beyond their powers to enact, and which therefore could be nothing but a dead letter on the statute book? But as, for the reasons I have stated, I think, even if a distinct and independent Court is not created, the Act is not beyond the power of Parliament, I cannot invoke this inference, as it appears to me those holding the contrary opinion might and should do. But independent of this the Act seems to contain within itself everything necessary to constitute a Court. The jurisdiction is special and peculiar, distinct from and independent of any power or authority with which any of the Courts or judges referred to in it were previously clothed. The Act conferring this jurisdiction provides all necessary materials for the full and complete exercise of such jurisdiction in a very special manner, wholly independent of, and distinct from, and at variance with, the exercise of the ordinary jurisdiction and procedure of the Courts. The rights which are to be determined through the instrumentality of this new jurisdiction are political rather than civil rights, within the usual meaning of that term, or within the meaning of that term as used in the British North America Act, which, as I have said, applies, in my opinion, to mere limited civil rights, and thus we find them treated in the case of *Theberge* v. *Landry*, 2 L. R. App. Cas. 102, which was an application to the Privy Council for special leave to appeal from the decision of the Superior Court of Quebec, under the Controverted Elections Act of 1875, declaring an election void, which was refused. The Lord Chancellor in that case speaks of the Quebec Controverted Election Acts thus:—

"These two Acts of Parliament, the Act of 1872 and 1875, are Acts peculiar in their character. They are not Acts constituting or providing for the decision of mere ordinary civil rights. They are Acts creating an entirely new, and up to that time unknown, jurisdiction in a peculiar Court of the Colony, for the purpose of taking out, with its own consent, of the Legislative Assembly, and vesting in that Court that very peculiar jurisdiction which up to that time had existed in the Legislative Assembly of deciding election petitions, and determining the status of those who claimed to be members of the Legislative Assembly. A jurisdiction of that kind is extremely special, and one of the obvious incidents or consequences of such a jurisdiction must be that the jurisdiction, by whomsoever it is to be exercised, should be exercised in a way that should as soon as possible become conclusive, and enable the constitution of the Legislative Assembly to be distinctly and speedily known. Now the subject matter, as has been said, of the law is extremely peculiar. It concerns the rights and the privileges of the electors, and of the Legislative Assembly to which they elect members. Those rights and privileges have always in every Colony, following the example of the Mother Country, been jealously maintained and guarded by the Legislative Assembly. Above all, they have been looked upon as rights and privileges which pertain to the Legislative Assembly in complete independence of the Crown so far as they properly exist; and it would be a result somewhat surprising and hardly in consonance with the general scheme if, with regard to rights and privileges of this kind, it were to be found that in the last resort the determination of them no longer belonged to the Superior Court which the Legislative Assembly had put in its place, but belonged to the Crown and Council, with the advice of the advisers of the Crown at home, to be determined without reference either to the judgment of the Legislative Assembly or of that Court which the Legislative Assembly had substituted in its place."

The object of the Act of 1873 and that of 1874 was the same: the recitals in both are precisely alike, and the provisions are in many respects substantially the same. That object was to establish and substitute entirely new tribunals for the trial of election petitions in lieu of the House of Commons, theretofore dealing with such matters, and both Acts alike contained all the provisions necessary not only to give such new tribunals full jurisdiction, but also all necessary and suitable provisions to en-

able them and the judges thereof effectually to exercise such jurisdiction, not only with reference to principles, but also to rules especially by which they should be governed and act in dealing with election petitions. The object of the two Acts being then precisely the same, the accomplishment of the desired result being by instrumentalities substantially much the same, if, as I understand, it is generally conceded by those who hold the Act of 1874 *ultra vires* that the Act of 1873 established an independent Dominion Court, and was within the power of the Dominion Parliament, I am somewhat at a loss to understand how it can be said that the tribunals established by the Act of 1873 are not equally within the power of the Dominion Parliament. The judges cannot sit in controverted election matters under the general jurisdiction of their respective Courts, for those Courts have no jurisdiction in such cases, and therefore in discharging duties imposed by the Act they do not, cannot, do as judges of the respective Courts to which they belong, but they act as election judges appointed by and under the Act, outside of and distinct from the jurisdiction they exercise in their respective Provincial Courts, which is left untouched by this Act.

Without relying too much on the statute of 1873, which, though a repealed statute, being *in pari materia* with that of 1874, might properly be referred to for the purpose of construing the latter,—see *ex parte Copeland*, 2 De. G. M. & G. 920, 1 Burr. 44, where Lord Justice Knight Bruce says :—

"Although it has been repealed, still, upon a question of construction arising upon a subsequent statute on the same branch of law, it may be legitimate to refer to the former Act."

Lord Mansfield, in the case of the *King* v. *Lozdale*, thus lays down the rule :—

"Where there are different statutes *in pari materia*, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other."—

I think a careful and critical examination of the Act of 1874 will exhibit an evident intention that as the first did, so does the last establish an independent Dominion Election Court. This is more especially noticeable with reference to the enactments under the headings "Interpretation Clauses," "Procedure," "Jurisdiction and Rules of Court," "Reception and Jurisdiction of Judge," "Witnesses," and the provision as to who may practice as agent or attorney or as counsel in such Courts in case of such petitions, and all matters relating thereto, before Court or Judge. I will only notice more particularly some of them :—(1) The power given to make rules. It provides that Judges of the several Courts in each Province respectively, or a majority—which in Ontario would include Judges of the Court of Error and Appeal, Queen's Bench, Common Pleas and Court of Chancery—shall make such rules; and until such rules are made the principles, practice and rules on which the petitions touching the election of members of the House of Commons in England are at the passing of this Act dealt with, shall be observed, &c. (2) As to the reception, expenses and jurisdiction of the Judge: The Judge is to be received, not as a Judge of the Superior Court in that character but as a Judge of the Election Court, in like manner as if he were about to hold a sitting at *Nisi Prius*, or a sitting of the Provincial Court, of which he is a member, showing that the Legislature did not contemplate that he was then actually about to sit as a member of the Provincial Court, but as being about to try an election petition, and when about to do this, he is to be treated as if he were about to hold a sitting of the Provincial Court of which he is a member. And when his powers in such a trial and in other proceedings under this Act are defined, he is not treated simply as a Judge of one of the Superior Courts, upon whom, as such, further jurisdiction is conferred, but similar powers as such Judge are given him. He is declared to be a Court of Record, indicating, I think, very clearly that the Court was treated by the Legislature as distinct from a Provincial Court, and required this statutory declaration to make it a Court of Record, and that the the Judge was not to be considered as then acting as a Judge of a Provincial Court, nor the trial as a trial in such a Court. The words of the clause are these :—

"Sec. 48.—On the trial of an election petition, and in other proceedings under this Act, the Judge shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority as a Judge of one of the Superior

Courts of Law or Equity for the Province in which such election was held, sitting in term, or presiding at the trial of an ordinary civil suit, and the Court held by him for such trial shall be a Court of Record."

So in like manner are witnesses treated as being subpœnaed, sworn and treated, not as being actually within the jurisdiction of the Provincial Courts; but section 49 declares that they shall be subpœnaed and sworn in the same manner, as nearly as circumstances will admit, as in cases within the jurisdiction of the Superior Courts of Law or Equity in the same Province, and shall be subject to the same penalties for perjury.

So, again, in the provision made for regulating persons entitled to practise as attorneys or barristers before the tribunal thus established, such tribunal is very clearly distinguished from Provincial Courts. The clause is thus:—

"Sec. 67.—Any person who, according to the law of the Province in which the petition is to be tried, is entitled to practise as an attorney-at-law or solicitor before the Superior Courts of such Province, and who is not a member of the House of Commons, may practise as attorney or agent; and any person who, according to such law, is entitled to practise as a barrister-at-law or advocate before such Courts, and who is not a member of the House of Commons, may practise as counsel in the case of such petition, and all matters relating thereto, before the Court or Judge in such Province."

Reading these special provisions in connection with the Act of 1873, and what has been said of the Act generally, I think it is not arriving at a forced or unnatural conclusion to say that Parliament intended to establish Dominion tribunals exceptional in their jurisdiction, perfect in their procedure, and with all materials for exercising such jurisdiction, and having nothing in common with the Provincial Courts, and that these Judges and Courts were merely utilized outside of their respective jurisdictions for giving full effect to these statutory tribunals to deal with this purely Dominion matter.

An objection has been suggested by a learned Judge, for whose opinion I have the very highest respect, and which has been treated as of much force by another learned Judge of a different Province, and on that account I will notice it. It is said that if this is a Court distinct from the Courts of which the Judges are primarily members, Judges have never been appointed thereto by Commission, nor sworn as Judges thereof, and, therefore, they are not Judges of this new tribunal, if as such it exists. But, in my humble opinion, there is no force in this objection. The Judges require no new appointment from the Crown. They are statutory Judges in controverted election matters by virtue of an express enactment by competent legislative authority. The statute makes Judges for the time being of the Provincial Courts Judges of these peculiar and special Courts. The Crown has assented to that statute, therefore they are Judges by virtue of the law of the Dominion, and with the royal sanction and approval. As to their not being sworn, the statute has not provided they should be sworn. If, being sworn Judges already, the Legislature was willing to entrust them with the power conferred by this Act, without requiring them to be sworn anew, how does this invalidate the Act, and how can Judges refuse to discharge duties thus by law imposed on them, because it may be that Parliament might or ought to have gone further, and required Judges to be specially sworn faithfully to discharge these special duties? Under the law of 1873, Judges in all the Provinces acted in what it is admitted were new Dominion Courts, without being specially appointed or sworn, the statute not requiring either, and I have yet to learn that their proceedings on that account ever have been or ever could be questioned.

As, then, I can see no reason why the Dominion Parliament should not delegate to the Judges of the several Provinces individually, or collectively, or both, whom they appoint and pay, and can by address remove, power to determine controverted elections, the doing of which not being inconsistent or in any way in conflict with their duties as Judges of their respective Courts, but on the contrary, as shown by the present legislation of all the Provinces in reference to controverted elections in the Local Legislatures, in so acting they are the most suitable and proper tribunals; and as the Imperial Parliament has left it to the Parliament of Canada to provide for the trial of controverted elections and proceedings incident thereto, and they have discharged their duty by the Statute of 1874, utilizing existing judicial officers and established Courts, by engrafting on or establishing, independent of these Courts throughout their respective Provinces, tribunals eminently qualified to discharge the important duties assigned to them, they have not in so doing, in my opinion, in any particular invaded the rights of the Local Legislatures, or brought a new jurisdiction or the procedure under it, in any way in conflict with the jurisdiction or procedure of any of the Courts of the Provinces, and, therefore, the Dominion Parliament, in enacting the Act of 1874, have not, in my opinion, exceeded the express power conferred upon them to provide for the trial of controverted elections and proceedings incident thereto, and, therefore, I think this appeal must be dismissed with costs, and the case remitted to the Court below, to be proceeded with according to the due course of law.