The Legal News.

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CHANGE OF VENUE.

A point of some interest was noted in our last issue, in *Reg.* v. *Corwin*, p. 364. Under the Act respecting Procedure in Criminal Cases, 32-33 Vict. cap. 29, s. 11, "Whenever it appears to the satisfaction of the Court or Judge hereinafter mentioned, that it is expedient to the ends of justice that the trial of any person charged with felony or misdemeanor should be held in some district, county or place other than that in which the offence is supposed to have been committed, or would otherwise be triable, the Court at which such person is or is liable to be indicted, may at any term or sitting thereof, and any Judge who might hold or sit in such Court, may at any other time order, either before or after the presentation of a bill of indictment, that the trial shall be proceeded with in some other district, county or place within the same Province, to be named by the Court, or Judge in such order."

Under this Statute, an application for change of venue was made on behalf of Corwin, a railroad official, who had been charged with manslaughter on the finding of a Coroner in Three Rivers; but instead of going before the Court or Judge who would try the case in the District of Three Rivers, the petitioner made his application before the Court of Queen's Bench sitting in appeal at Montreal. The Court did not find anything in the Statute or in the circumstances of the case to support such an application. Ramsay, J., said: "We have no reason given us why the Court at Three Rivers should not take cognizance of the matter." Monk, J., was disposed to go even further, for he doubted whether the Court of Queen's Bench sitting as a Civil Court, could take cognizance of such an application. This point, however, remains open, as the judgment went no farther than to say that, even assuming the jurisdiction of the Court to exist, it had not been shown that it was a case for the Court to exercise its discretion. In Mr. Brydges' case, which was referred to, one Judge of the Court, sitting in Chambers, granted an application for change of venue, but the circumstances were somewhat different. Mr. Brydges, then General Manager of the Grand Trunk Railway, was charged with manslaughter on the finding of a Coroner at Quebec, and he was arrested at Montreal, where he resided. He applied to Mr. Justice Badgley, in Chambers at Montreal, for change of venue, and the learned Judge granted the application. Mr. Justice Badgley, however, had jurisdiction, for he was one of the Judges who might have held the Court at Quebec, at which the defendant might have been indicted, and it was simply a question whether he should exercise his discretion under the Statute.

APPOINTMENT OF QUEEN'S COUNSEL.

The Supreme Court, on the 4th instant, in giving judgment in *Lenoir* v. *Ritchie*, an appeal from Nova Scotia, held that the Governor-General alone has the right to confer the rank or dignity of Queen's Counsel in Canada. The effect of this decision is to annul the appointments of about one hundred Queen's Counsel in the various Provinces of the Dominion. This, we believe, is in accordance with the opinion entertained by Sir John A. Macdonald after Confederation. Mr. Blake, and other able lawyers, on the other hand, maintained the right of the Lieutenant-Governors to make such appointments. The question is one of difficulty, and the views of the Judges of the Supreme Court seem to differ considerably, but Henry, Taschereau and Gwynne, JJ., constituting a majority of the five Judges who took part in the judgment, concurred in claiming for the Governor-General the right of conferring this honor.

The decision has been received with a degree of satisfaction by the profession throughout Canada. This feeling is, no doubt, to be attributed to the fact that the dignity of Q. C. has been conferred with too great liberality. We do not think that the appointments which have been made by the Provincial Governments are so open to reproach as some have imagined; but when it is considered that Her Majesty has been more abundantly supplied with Counsel in Canada than in all England, it is clear that the dignity has fallen considerably in its value. The excess in the number of appointments was, in fact, almost inseparable from the system. The tendency is to confer the rank of Q. C. as a reward for political service, as a compliment to

friends, or worse still, as an acknowledgment of sudden conversion to a different political faith. If six or seven Provincial Governments have each the right of making Queen's Counsel, it is inevitable that every Province will have almost as many as the central government would have appointed in all.

THE QUEBEC CABINET.

The professions are strongly represented in the new Provincial administration. Four advocates are members of the Cabinet. The Premier, Mr. Chapleau, was called to the Bar in 1861, and appointed a Q C., in 1873. Mr. L. O. Loranger, the Attorney-General, the youngest of three talented brothers, of whom the eldest has just retired from the Bench of the Superior Court, was born in 1837, called to the Bar in 1858, and was first elected for Laval, his present seat, in 1875. The new Solicitor-General is Mr. W. W. Lynch, who was born in 1845, and called to the Bar in 1868. He was first elected to the legislature in 1871, for Brome. Mr. E. J. Flynn, the Commissioner of Crown Lands, is also a member of the legal profession. He was born in 1847, and admitted to the Bar in 1873. He has been Professor of Roman Law in Laval University since 1874.

One of the three remaining members of the Cabinet, Mr. E. T. Paquet, is a notary. He was born in 1850, and was first returned for Levis in 1875. The President of the Council, Mr. J. J. Ross, is a physician, who was Speaker of the Legislative Council from 27 Feb., 1873, to August, 1874. The Provincial Treasurer, Mr. J. G. Robertson, is the only member of the Administration unconnected with the professions. He is a merchant, and was Treasurer from 1869 to 1874, and again from 1874 to 1876.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Oct. 31, 1879.

EVANS et al. v. MCLEA et al.

Principal and Agent—C. C. 1715—Mandatary not liable to third parties, when acting in the name of the mandator and within the bounds of the mandate.

JOHNSON, J. The plaintiffs are wood and coal merchants, and allege a sale to them by the defendants of a cargo of coal to consist of about 600 tons, to be shipped by sailing vessel, at a stated price, and they further allege that the default by the defendants to deliver within a reasonable time has occasioned them a damage of $750. There was a demand and a protest by the plaintiffs on the 12th of December—they holding that the defendants had had plenty of time to deliver—the navigation being closed, and the undertaking having been to deliver here by a sailing vessel. But I do not go into this, or any other point of the case, except the single one presented by the plea, which is that this contract was not one that could bind the defendants personally, or render them personally liable to damages for the breach of it; that the true and real parties to the contract were the plaintiffs on one side, and Richards & Co., of Swansea, in Wales, on the other, who were perfectly well known to the plaintiffs as the principal parties they were transacting with, and the coals not being in the defendants' possession; in fact, that they, the defendants, acted merely as mandataries or agents. I shall not go into a discussion of the elementary principles of the law applicable to cases of this kind. They appear at great length, but without additional light in the report of the case of *Crane & Nolan*: 19 L.C. Jur. 309; and I am bound by the authority of the Court in that case. Under the evidence here, it is quite clear that the defendants were not factors, and equally clear that they disclosed the name of their principals. Personally I should have been with the dissenting Judge in that case; but I must exercise my office in conformity with authority, and the judgment of the Queen's Bench is authority. I rule, therefore, that in the circumstances of this case, it comes under Art. 1715, and not under the Art. 1738; and the action is dismissed with costs.

Belle for plaintiffs.

L. N. Benjamin for defendants.

MONTREAL, Nov. 7, 1879.

MALLETTE v. CITY OF MONTREAL.

Powers of Provincial Legislature—Act authorizing the City of Montreal to make By-law imposing license tax on Butchers' Stalls not ultra vires.

MACKAY, J. This case was argued before me as an injunction case, but has been put before

me not on an injunction, except very incidentally, but on the merits of an action by a number of individual butchers joining together as plaintiffs irregularly to sue the City to have a by-law of the 22d December, 1875, of the city, in so far as imposing on the plaintiffs a license tax of $200 each, declared null, and the City forbidden from collecting the tax. All the plaintiffs are butchers, selling away from public market. Misjoinder is not pleaded by the City, so I will not say anything on that subject. The defendants plead a general denial, and no more. I see no answer to the injunction. The questions to be decided by the Court are therefore not difficult. Have the plaintiffs proved their allegations, and are their law propositions stated in their declaration sound? Are the by-laws (for there really are two) complained of null upon the principles enunciated by the plaintiffs? They say that the City has imposed upon them a business tax and a license tax, and that these ought to be declared null as violating the principle of equality, and also the rule that no persons or things can be taxed twice for the same object. The declaration sets forth certain provisions of the City Charter, 37 Vict., c. 51, sec. 123, upon which the by-laws attacked are founded, and claims that by common law no Legislature or corporation has right to establish inequality of taxation, whether by name of tax, license, or duty between persons of the same class or occupation. The plaintiffs complain of the by-law prohibiting persons selling meat, fish, etc., at other places than on the public markets, if within 500 yards of a market, unless the persons so selling have a license. This is the one of December, 1875. At the argument it was urged that the by-law is an excess of power, being a regulation of trade and commerce, trade and commerce being, by the B. N. A. Act of 1867, exclusively to be regulated by the Dominion Parliament.

The by-law reposes on an Act of the Quebec Parliament passed since Confederation, and this Act, it is claimed, was and is *ultra vires* of the Quebec Legislature, in so far as pretending to confer right on the city to regulate trade and commerce. The by-law referred to has several times been attacked, particularly in the case of the *Attorney-General* v. *The City*, judged in 1876 by Mr. Justice Johnson, when the Attorney-General's petition was dismissed, the by-law being declared not *ultra vires* of the city, and the Act 37 Vict. being also declared not *ultra vires* of the Quebec Legislature. "The trade and commerce of the Dominion," said Mr. Justice Johnson in that case, "is a very distinct thing from the individual trades or callings of persons subject to municipal government in cities;" and he went on to observe that the Provincial Legislatures had right to make laws in relation to municipal institutions, and also in relation to shop, saloon, tavern, auctioneer, and other licenses in order to the raising of a revenue for provincial, local or municipal purposes, and he found the licenses required of butchers to be imposed to raise revenue for the city, not unlawfully. In September, 1879, Mr. Justice Jetté, in a case in which one *Levesque*, a butcher, complained of having been convicted under the by-law in question, held the conviction right, and the by-law lawful.* I look upon the by-law as partly a regulation of police, and partly a by-law to make revenue, for city purposes, by the way or in form of licenses. I consider it formal, and well founded. I see no reason for declaring it null. I can see no reason for allowing butchers to establish stalls wherever they like in the city, without regulation. A butcher's shop may very easily be made a nuisance to adjoining, or even neighboring, habitations. The tendency of butchers' shops is by many considered to be to hurt adjoining habitations. M. N. has his patrimonial residence on Dorchester street west. A butcher sets up a stall next door. May not M. N. feel hurt? May he not consider his enjoyment of his residence diminished? But suppose two butchers to set up, one on each side of M. N.!

I consider the by-law complained of reasonable, nor do I see it work inequality of taxation in a bad sense. As to favors to some butchers over others, I see that all can enjoy equally the advantages of the public markets. Action dismissed with costs.

Doutre, Branchaud & McCord for plaintiffs.

R. Roy, Q. C., for defendants.

CITY OF MONTREAL v. PERKINS.

Interest on Arrears of Assessments (2 L. N. 186).

MACKAY, J. Ann Kelly Evans was original holder of land charged with assessments, as

* See 2 Legal News, p. 306.

follows:—1873 to May 1874, 1874 to May 1875, 1875 to May 1876, $175.50 in all, and upon it interest up to 24th March, 1879, at 10 per cent., is charged by the city. $243.10 is sued for; the action is *en déclaration d'hypothèque* against Perkins. On the 9th March, 1876, Perkins bought the land. The plea of the defendant tenders $175.50 for 1873, 1874 and 1875, with $1.75 for interest, and $22.30 for costs up to plea, as in an action for $175.50. It will be seen that increase is charged by plaintiff up to 24th March, 1879—$67.60. Can any of it be struck off? That is the chief question. Yes, all can be struck off, says defendant, being interest (illegal) for default of plaintiff's creditors to pay money due. Any by-law for such interest is illegal and null. Not even the Quebec Legislature could legalize it, says Perkins. Yes, I say, the 10 per cent. can be struck off, but only from January 28th, 1874, when 14 & 15 Vic., c. 128, was repealed. I find after reading the 14 & 15 Vic., the 37th Vic., and the 41st Vic., that under the 14 & 15 Vic. the city had a right to make such charge of 10 per cent. against Perkins, as it does make. Its right ceased, however, with that act (14 & 15 Vic.), viz., on and from January 28th, 1874, when 37th Vic. repealed the 14 & 15 Vic. That repeal benefits Perkins, notwithstanding sec. 3 of the 41st Vic., which cannot work to affect the present case. Perkins stood freed from the 10 per cent. from January 28, 1874; so after that it was not running against him in all 1874, nor in all 1875, nor in any part of 1876. How could 41st Vic., of March, 1878, or two years afterwards, load Perkins with the 10 per cent., from which he was discharged by 37th Vic. of January, 1874? All the increase charged in plaintiff's account for the time from 28th January 1874, to the 24th of March, 1879, must be struck off. The account must be for the capital asked, and with increase of 10 per cent. from the 1st of November, 1873, to the 28th of January, 1874, on $49.50, viz., two months and twenty-seven days. Perkins has tendered $175.00 and $1.75, for increase, and costs as in suit for so much. So his plea and tender are declared good, and fatal to the plaintiff's action. Costs since tender against plaintiff.

R. Roy, Q.C., for plaintiff.

Macmaster, Hall & Greenshields for defendant.

MILLOY v. O'BRIEN, and O'BRIEN, petitioner.

Petition by alleged insolvent for allowance pending contestation of writ of attachment.

MACKAY, J. On the 28th of June, an attachment issued against O'Brien under the Insolvency Act, and a quantity of lands and houses passed to the assignee, and also some omnibuses, horses, &c. The alleged insolvent is contesting the attachment, and pending that contestation, presented a petition to the Judge in Insolvency to be allowed to reap the crops on the lands seized, to collect patent fuel on the property, and to generally manage said property; that the assignee be ordered to allow him money to pay the laborers, and that petitioner be allowed $20 a week for the support of his family, &c. It is the first petition of the kind that I have seen. I have no power to order the petitioner $20 a week. This is over $1,000 a year; but it is sufficient that I have no power to order it. The assignee is by the petition accused of negligence in his administration, which is that only of an interim assignee, seeing that the attachment is contested, and that no meeting of creditors has been held yet. The assignee answers the petition by denying that he has been negligent; he protests that he has done all diligence; that he has been guardian over the property all the time; that the estate has only paid him $89, while the assignee has had to spend over $246; that it was impossible for him, the assignee, to do more than he has done; that petitioner himself has since the attachment collected money, which he ought to have paid over to the assignee, but which he kept; that the petitioner has refused to go with the assignee to collect money due to the estate by the Post Office, &c.

I find that the estate of petitioner that has passed to the assignee is a peculiarly difficult one to wield and take care of; it is exposed very much; it consists of farm lands beyond Monklands, outside of the city limits; it has fifteen or more unoccupied dwelling-houses on it. Since the attachment some cabbages and tomatoes have been damaged, some pieces of fences and gates may have been taken away, and some damage may have been done to gardens, but all put together are trivial, and seemingly unavoidable by any but extraordinary vigilance. As to the omnibus horses said to be maltreated

by the assignee, I do not find so. As to the petitioner's not having been allowed to dig clay (called patent fuel), I find in favor of the assignee; this part of petitioner's case is peculiarly weak. My judgment must reject the petition, as unsupported by proof, even if the Insolvent law warranted such a petition.

Quinn for plaintiff.

J. L. Morris (with him *W. B. Lambe*) for defendant, petitioner.

SUPREME COURT OF CANADA.

OTTAWA, Nov. 4, 1879.

STRONG, FOURNIER, HENRY, TASCHEREAU, & GWYNNE, JJ.

LENOIR v. RITCHIE.

The appointment of Queen's Counsel.

This was an appeal from Nova Scotia in what is generally known as the Great Seal case.

The following were the principal points held by the Court: 1. That the judgment of the Court below was one from which an appeal could be made to the Supreme Court of Canada, Fournier, J., dissenting, on the ground that the judgment was one rendered by the Supreme Court of Nova Scotia, in the exercise of the discretionary power which all courts of original jurisdiction have of regulating their affairs, and it would be impossible in the event of the Supreme Court of Canada reversing the decision of the Court below for the former Court to enforce its order, which would, therefore, remain a dead letter.

2. Per Strong, Fournier, and Taschereau, JJ., that the Acts of the Legislature of Nova Scotia were not retrospective, and must be so construed as not to disturb or take away precedence given by the patent issued to the respondent, and that the letters patent issued under the authority of those Acts were void, in so far as they attempt to interfere with the privileges of the respondent.

3. Per Henry, Taschereau, and Gwynne, JJ., that the Acts of the Legislature of Nova Scotia in question are *ultra vires*, and void, in so far as they invest the Lieutenant-Governor with the authority of appointing to the rank or dignity of Queen's Counsel, which Her Majesty, by herself, or through her representative, His Excellency the Governor-General, alone has the right to confer.

4. Per Henry and Gwynne, JJ., that the said Acts do profess to invest the Lieutenant-Governor with such authority, and are therefore *ultra vires* and void.

5. Per Henry, Taschereau, and Gwynne, JJ., that the British North America Act of 1867 "does not either expressly or by inference divest Her Majesty of this branch of her prerogative and confer it upon the Provincial Legislatures or the Lieutenant-Governors of the Provinces."

6. Per Taschereau, J., that the Act of the Legislature of Nova Scotia, 37 Vic., chap. 20, simply authorizes the Lieutenant-Governor to appoint Provincial officers connected with the administration of justice, to be known under the name of Her Majesty's Counsel, learned in the law, and that does not make them of the rank and dignity of that name granted by Her Majesty. It is a mere Provincial office under that name which the Provincial Legislature had a right to create, and the appellants are not Queen's Counsel at all in the sense attached to the name in the respondent's commission.

7. Per Henry, Taschereau and Gwynne, JJ., that Her Majesty forms no integral part of the Legislatures of the Provinces as she does of the Dominion Parliament, and is no party to the laws made by the Local Legislatures, and that no Act of any such Legislatures can, in any manner, impair or affect her right to the exclusive exercise of all her prerogative powers.

8. Per Strong and Fournier, JJ., that it is unnecessary to consider the question of the constitutionality of the Acts in question; that presumption is so much in favor of the validity of the Acts, that the Court ought not to deal with the question of their constitutionality, unless the subject matter under consideration imperatively requires it.

The Chief Justice being related to one of the parties, took no part in the judgment.

VALIN & LANGLOIS et al.

[Continued from p. 367.]

It is, I think, to Section 91, in reference to the legislative authority of the Parliament of Canada, and to Sections 18 and 41, conferring privileges on the Senate and House of Com-

mons and legislative power over the trial of controverted elections and proceedings incident thereto, that we must look in order to ascertain whether the Parliament of the Dominion in enacting 37 Vic., chap. 10, exceeded its powers; because I think all the other sections conferring legislative powers must be read as subordinate thereto, and because I cannot discover that any of the other provisions apply or were intended to apply to the particular subject matter thus legislated on, and which, I think, it was intended should be alone dealt with by the Dominion Parliament in any manner it might deem expedient for the peace, order, and good government of Canada. I think that the British North America Act vests in the Dominion Parliament plenary power of legislation in no way limited or circumscribed, and as large, and of the same nature and extent, as the Parliament of Great Britain, by whom the power to legislate was conferred, itself had. The Parliament of Great Britain clearly intended to divest itself of all legislative power over this subject matter; it is equally clear that what it so divested itself of it conferred wholly and exclusively on the Parliament of the Dominion. The Parliament of Great Britain, with reference to the powers and privileges of the Parliament of the Dominion of Canada, and with reference to the trial of controverted elections, has made the Parliament of the Dominion an independent and supreme Parliament, and given to it power to legislate on those subjects in like manner as the Parliament of Great Britain could itself legislate on them. It is a constitutional grant of privileges and powers, which cannot be restricted or taken away except by the authority which conferred it, and any power given to the Local Legislatures must be subordinate thereto. The case of the *Queen* v. *Burah*, L. R. 3 App. Cases, 904, enunciated a principle very applicable to this case. The marginal note is:—

"Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in a Provincial Legislature, they may be well exercised either absolutely or conditionally, in the latter case leaving to the discretion of some external authority the time and manner of carrying its legislation into effect, and also the area over which it is to extend."

Lord Selborne, delivering the judgment of the Privy Council, said:—

"But their Lordships are of opinion that the doctrine of the majority of the Court is erroneous, and that it rests upon a mistaken view of the powers of the Indian Legislature, and indeed of the nature and principles of legislation. The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe those powers; but when acting within those limits it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large and of the same nature as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question, and the only way in which they can properly do so is by looking to the terms of the instrument by which affirmatively the legislative powers were created, and by which negatively they are restricted. If what has been done in legislation is within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited—in which category would of course be included any Act of the Imperial Parliament at variance with it—it is not for any court of justice to enquire further or to enlarge constructively these conditions and restrictions."

Whether, therefore, the Act of 1874 established a Dominion Election Court or not, I think the Parliament of the Dominion, in legislating on this matter, in which they alone in the Dominion could legislate, had a perfect right, if in its wisdom it deemed it expedient to do so, to confer on the Provincial Courts power and authority to deal with the subject matter as Parliament should enact. That legislation being within the legislative power conferred on them by the Imperial Parliament, their enactments in reference thereto became the law of the land which the Queen's Courts were bound to administer. I am at a loss to discover how the conferring of this jurisdiction on the judges of the Supreme and Superior Courts and on these Courts in any way interferes with, or affects directly or indirectly, the autonomy of the

Provinces, or the right of the Local Legislatures to deal with such property and civil rights in the Provinces, and the administration of justice in the Provinces, including the constitution, maintenance, and organization of the Provincial Courts, both of civil and criminal jurisdiction, and including procedure in such civil matters in those Courts, as Local Legislatures have a right to deal with, leaving, of course, those matters to be dealt with as subject and subordinate to the superior powers and authority of the Dominion Parliament over all subjects not assigned exclusively to the Legislatures of the Provinces, of which subjects pre-eminently prominent, as beyond the jurisdiction or control of the Local Legislatures, stands the "privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the members thereof respectively," and all rights connected with the qualifications and disqualifications of persons to sit or vote as members of the House of Commons, the voters at the election of such members, the returning officers, proceedings at elections, and trial of controverted elections and all proceedings incident thereto. Transferring this new and peculiar jurisdiction, vested in the House of Commons, to the Supreme and Superior Courts—in other words, substituting these Courts in place of the House of Commons in relation to these matters, with which the Local Legislatures have nothing whatever to do—can, in no way that I can perceive, militate against or derogate from the right of the Local Legislatures to make laws in relation to all subjects or matters exclusively reserved to them.

Nor can I discover that in so substituting the judges of the Supreme and Superior Courts the Parliament of the Dominion has in any way transcended its legislative powers. These Courts are surely bound to execute all laws in force in the Dominion, whether they are enacted by the Parliament of the Dominion or by Local Legislatures respectively. They are not mere local Courts for the administration of local laws passed by the Local Legislatures of the Provinces in which they are organized. They are Courts which were the established Courts of their respective Provinces before Confederation, existed at Confederation, and were continued with all laws in force, "as if the Union had never been made," by the 129th section of the British North America Act, and subject, as therein expressly provided, to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislatures of the respective Provinces according to the authority of Parliament, or of that Legislature under this Act. They are Queen's Courts, bound to take cognizance of and execute all laws, whether enacted by the Dominion Parliament or the Local Legislatures, provided always that such laws are within the scope of their respective legislative powers. If it is *ultra vires* for the Dominion Parliament to give these Courts jurisdiction over this matter, which is peculiarly subject to the legislative power of the Dominion Parliament, must not the same principle apply to all matters which are in like manner exclusively within the legislative power of the Dominion Parliament; and if so, would it not follow that in no such case could the Dominion Parliament invoke the powers of these Courts to carry out their enactments in the manner they, having the legislative right to do so, may think it just and expedient to prescribe? If so, would it not leave the legislation of the Dominion a dead letter till Parliament should establish Courts throughout the Dominion for the special administration of the laws enacted by the Parliament of Canada—a state of things, I will venture to assume, never contemplated by the framers of the British North America Act, and an idea to which I humbly think that Act gives no countenance. On the contrary, the very section authorizing the establishment by Parliament of such Courts speaks only of them as "additional Courts for the better administration of the laws of Canada." It cannot, I think, be supposed for a moment that the Imperial Parliament contemplated that until an Appellate Court or such additional Courts were established, all or any of the laws of Canada enacted by the Parliament of Canada, in relation to matters exclusively confided to that Parliament, were to remain unadministered for want of any tribunals in the Dominion competent to take cognizance of them.

Whether, then, this Act is to be treated as declaring the Courts named as Dominion Election Courts, or whether it is to be treated as merely conferring on particular Courts already organized a new and peculiar juris-

diction, is a matter, to my mind, of no great importance, as I think while they have clearly the power of establishing a new Dominion Court, they have likewise the power, when legislating within their jurisdiction, to require the established Courts of the respective Provinces, and the judges thereof, who are appointed by the Dominion, paid out of the Treasury of the Dominion, and removable only by address of the House of Commons and Senate of the Parliament of the Dominion, to enforce their legislation.

If the Dominion Parliament cannot pass this Act this startling anomaly would be produced, that though with respect to the rights and privileges of Parliament the Dominion of Canada is invested with the same powers as at the passing of the Act pertained to the Parliament of Great Britain, and though exclusive jurisdiction over and exclusive right to provide for the trial of controverted elections is specially conferred on the Dominion Parliament, and though the constitution of the Dominion is to be similar to that of Great Britain, there are in connection with these privileges and these elections matters with which there is no legislative power in the country to deal. For it is very clear that as there is no pretence for saying that the Local Legislatures have any legislative power or authority over the subject matters dealt with by the Act, so nothing the Local Legislatures might say or do could affect the question, and therefore, however desirable, it might be universally admitted, that just such a tribunal for settling these questions should be established in the very terms of this Act, the Dominion would be in this extraordinary position—that no legislation in the Dominion could accomplish it, for the simple reason that if legislated on as has been done by the Dominion Parliament the legislation would be *ultra vires*. Any legislation by the Local Legislatures would, if possible, be even more objectionable, they not having a shadow of right to interfere with the rights and privileges of Parliament or the election of members to serve therein, or to establish any tribunal whatever to deal with or affect either, as the whole and sole legislative power to intermeddle or deal with such rights, and with elections and controverted elections, is conferred on and vested in the Dominion Parliament alone.

To hold that no new jurisdiction or mode of procedure can be imposed on Provincial Courts by the Dominion Parliament in its legislation on subjects exclusively within its legislative power, is to neutralize, if not to destroy, that power, and to paralyze the legislation of Parliament. The statutes of Parliament from its first session to the last show that such an idea has never been entertained by those who took the most active part in the establishment of Confederation, and who had most to do in framing the British North America Act, the large majority of whom sat in the first Parliament. A reference to that legislation will also show what a serious effect and what unreasonable consequences would flow from its adoption. There is scarcely an Act relating to any of the great public interests of the country which has been legislated on since Confederation that must not in part be held *ultra vires* if this doctrine is well founded, for in almost all these Acts provisions are to be found not only vesting jurisdiction in the Provincial Courts, but also regulating in many instances and particulars the procedure in such matters in those Courts, as a reference to a number I shall cite will abundantly show.

In the first session of the Dominion Parliament, in an Act respecting Customs, 31 Vic., cap. 6, by section 100 all penalties and forfeitures relating to Customs or to trade and navigation, unless other provisions be made for recovery thereof, are to be sued for by the Attorney-General, or in the name or names of some officer of Customs, or other person thereunto authorized by the Governor in Council; and if the prosecution be brought before any County Court or Circuit Court, it shall be heard and determined in a summary manner upon information filed in such Court. By other sections special provisions are made for the mode of procedure in reference to cases of this description, as also for the protection of the officers, entirely different from the procedure in ordinary civil cases.

So also by the Act respecting inland revenue, 31 Vic., cap. 8, provisions are made for the protection of officers of inland revenue whereby the proceedings in the Provincial Courts are restrained and regulated.

[To be concluded in next issue.]