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*June 7.

*Dec. 13.

IN RE COUNTY COURTS OF BRITISH COLUMBIA.

SPECIAL CASE REFERRED BY GOVERNOR-GENERAL IN COUNCIL.

Constitutional law—Administration of justice—Criminal procedure—Speedy trials Act—Constitution of provincial courts—Appointment of judges—B.N.A. Act s. 92 ss. 14.

The power given to the provincial governments by the B.N.A. Act, s. 92, ss. 14 to legislate regarding the constitution, maintenance and organization of provincial courts includes the power to define the jurisdiction of such courts territorially as well as in other respects, and also to define the jurisdiction of the judges who constitute such courts.

The acts of the legislature of British Columbia, C. S. B. C., c. 25, s. 14, authorizing any county court judge to act as such in certain cases in a district other than that for which he is appointed, and 53 V. c. 8, s. 9, which provides that until a county court judge of Kootenay is appointed the judge of the county court of Yale shall act as and perform the duties of the county court judge of Kootenay, are *intra vires* of the said legislature under the above section of the B.N.A. Act.

The Speedy Trials Act, 51 V. c. 47 (D.) is not a statute conferring jurisdiction but is an exercise of the power of parliament to regulate criminal procedure.

By this act jurisdiction is given to "any judge of a county court" to try certain criminal offences.

Held, that the expression "any judge of a county court," in such act, means any judge having, by force of the provincial law regulating the constitution and organization of county courts, jurisdiction in the particular locality in which he may hold a "speedy trial." The statute would not authorize a county court judge to hold a "speedy trial" beyond the limits of his territorial jurisdiction without authority from the provincial legislature so to do.

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* PRESENT :—Strong, Taschereau, Gwynne and Patterson JJ.
(Sir W. J. Ritchie C.J. was present at the argument but died before judgment was delivered.)

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Held, Per Taschereau J.—It is doubtful if Parliament had power to pass those sections of the act 54 & 55 V. c. 25 which empower the Governor-General in Council to refer certain matters to this court for an opinion.

SPECIAL CASE referred to the Supreme Court of Canada by the Governor-General in Council, pursuant to section 4, of chapter 25 of 54 & 55 Vic.

The special case referred was as follows :—

"Important questions affecting the jurisdiction of the judges of the several county courts in British Columbia and the power of the legislature of the province to pass laws regarding the territorial jurisdiction of county court judges as well as the constitutionality of certain legislation of the Parliament of Canada, having been raised on the hearing of a writ of error before the Supreme Court of British Columbia, in the case of Piel Ke-ark-an against Her Majesty the Queen (1) (cor. Sir Matthew Baillie Begbie, Chief Justice, and Justices Crease, McCreight, Walkem and Drake) the opinion of the Supreme Court of Canada is desired upon the following case: "

"1. By section 5 of the provincial statute, cap. 25, Consolidated Acts of B. C., the 'County Courts Act,' the following provision is made: "—

"A county court shall be and is hereby established within and for the Cache Creek, Kamloops, Nicola Lake, Okanagan and Rock Creek polling divisions of the electoral district of Yale, to be called the 'county court of Yale,' having jurisdiction throughout the said polling divisions of the electoral district of Yale."

"2. The polling divisions referred to in the said section were the divisions of the district of Yale for the purposes of provincial elections to the legislative assembly for the province of British Columbia."

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"3. Section 7 of the same act provides that a county court shall be and is hereby established within and for the electoral district of Kootenay, to be called the 'county court of Kootenay,' having jurisdiction throughout the electoral district of Kootenay."

"The electoral district of Kootenay referred to in the last quoted section was the electoral district for the purposes of elections for the provincial legislature."

"4. Section 12 of the same statute (cap. 25) enacts that 'each such court shall be holden before a judge, to be called and known by the name and style of the judge of the county court of Yale, or the judge of the county court of Kootenay,' as the case may be; each such judge shall, from time to time, be nominated and appointed by the Governor-General of Canada.

"5. By section 14 of the last mentioned act, as amended by 54 Vic. cap. 7, section 1, the 'County Court Amendment Act, 1891,' it is enacted that 'any county court judge appointed under this act may act as county court judge in any other district upon the death, illness or unavoidable absence of, or at the request of, the judge of that district, and while so acting the said first mentioned judge shall possess all the powers and authorities of a county court judge in the said district: provided, however, that the said judge so acting out of his district shall immediately thereafter report in writing to the provincial secretary the fact of his so doing and the cause thereof."

"6. By commission, under the great seal, dated the 19th of September, 1889, William Ward Spinks, Esquire, was appointed judge of the county court of Yale, and such commission is as follows:"—

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(L.S.) "W. J. RITCHIE,
"Deputy-Governor.

CANADA.

"VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, etc., etc., etc."

"*To William Ward Spinks, of the Town of Kamloops, in the Province of British Columbia, in our Dominion of Canada, Esquire, Barrister-at-Law, Greeting:*"

"Jno. S. D. Thompson, Attorney-General, Canada. } Know you that reposing trust and confidence in your loyalty integrity and ability, We have constituted and appointed and We do hereby constitute and appoint you the said William Ward Spinks, to be a judge of the county court of Yale, in the province of British Columbia."

"To have, hold, exercise and enjoy the said office of judge of the county court of Yale, unto the said William Ward Spinks, with all and every the powers, rights, authority, privileges, profits, emoluments, and advantages unto the said office of right and by law appertaining, during good behaviour, and during your residence within the territory to which the jurisdiction of the said court extends, that is to say: the polling divisions of Cache Creek, Kamloops, Nicola Lake, Okanagan and Rock Creek, in the electoral district of Yale.

"In testimony whereof, we have caused these our letters to be made patent and the Great Seal of Canada to be hereunto affixed: Witness, the Honourable Sir William Johnston Ritchie, Knight, Deputy of our Right Trusty and Well Beloved the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, in the County of Lancaster, in the Peerage of the United Kingdom; Knight Grand Cross of Our Most Honourable Order of the Bath, Governor-General of Canada; at our Government House, in the City of

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Ottawa, this nineteenth day of September, in the year of our Lord one thousand eight hundred and eighty nine and in the fifty-third year of Our Reign."

"By Command,

"J. A. CHAPLEAU,

"Secretary of State.

"7. By the 'Speedy Trials Act' (C.S. Can. cap. 175) as amended by 51 Vic. cap. 46, the expression 'judge' in the province of British Columbia, was defined to mean the chief justice or a puisne judge of the supreme court, or a judge of a county court; but by 51 Vic. cap. 47, this definition of a judge is repealed, and in lieu thereof it is provided that in the province of British Columbia the expression "judge" means and includes the chief justice or a puisne judge of the supreme court, or any judge of a county court."

"The Governor-General of Canada has not made any appointment of a judge for the county of Kootenay."

"8. By the provincial statute, 53 Vic. cap. 8, section 9, the "County Courts Amendment Act, 1890," it is enacted as follows:"

"Until a county court judge of Kootenay is appointed the judge of the county court of Yale shall act as and perform the duties of the county court judge of Kootenay, and shall, while so acting, whether sitting in the county court district of Kootenay or not, have, in respect of all actions, suits, matters, or proceedings being carried on in the county court of Kootenay, all the powers and authorities that the judge of the county court of Kootenay, if appointed and acting in the said district, would have possessed in respect of such actions, suits, matters, and proceedings: and for the purpose of this act, but not further, or otherwise, the several districts as defined by sections 5 and 7 of the county courts Act, over which the

county court of Yale and the county court of Kootenay, respectively, have jurisdiction, shall be united."

"9. By the federal statute, 54 & 55 Vic. cap. 28, the following provisions are made:"

"(1.) The jurisdiction of every county court judge shall extend and shall be deemed to have always extended to any additional territory annexed by the provincial legislature to the county or district for which he was or is appointed, to the same extent as if he were originally appointed for a county or district including such additional territory: Provided that nothing in this section contained shall, in any way, affect any litigation now pending, in the course of which any question has been raised as to the jurisdiction of a judge beyond the limits of a county or district for which he was originally appointed".

"(2.) It shall be competent for any county court judge to hold any of the courts in any county or district in the province in which he is appointed, or to perform any other duty of a county court judge in any such county or district, upon being required to do so by an order of the Governor in Council, made at the request of the lieutenant-governor of such province; and without any such order the judge of any county court may perform any judicial duties in any county or district in the province, on being requested so to do by the county court judge to whom the duty for any reason belongs; and the judge so requested or required as aforesaid shall, while acting in pursuance of such requisition or request, be deemed to be a judge of the county court of the county or district in which he is so required or requested to act, and shall have all the powers of such judge."

"(3.) Any retired county court judge of a province may hold any court or perform any other duty of a

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county court judge in any county or district of the province, on being authorized so to do by an order of the Governor in Council made at the request of the lieutenant-governor of such province; and such retired judge, while acting in pursuance of such order, shall be deemed to be a judge of the county or district in which he acts in pursuance of the order, and shall have all the powers of such judge."

"The questions for the opinion of the court are:"

"(1.) Was section 14 of the said County Courts Act (C.S. of B.C., cap. 25, so amended as aforesaid) *ultra vires* of the provincial legislature, either in whole or in part."

"(2.) Was section 9 of the said 'County Courts Amendment Act, 1890,' (53 Vic. cap. 8) *ultra vires*, either in whole or in part?"

"If it shall be considered that the above sections, or either of them, apart from Dominion legislation, were *ultra vires*, either in whole or in part, does the federal statute, 54 & 55 Vic. cap. 28, validate them, and to what extent?"

"(3.) Is the jurisdiction of a county court judge in British Columbia, when acting under the 'Speedy Trials Act," confined to the county to which his commission extends? Or"

"(a.) May he exercise jurisdiction under the 'Speedy Trials Act' in other parts of the province, and what is the proper interpretation to be put on the term 'any judge of a county court' occurring in section (2) *a* and (5) 'Speedy Trials Act?'"

"Respectfully submitted.

(Sgd.) "JNO. S. THOMPSON,

"For Minister of Justice."

Æmilius Irving Q.C. for the Attorney-General of British Columbia.

Sedgewick Q.C. for the Attorney-General of Canada.

STRONG J.—In answer to questions 1 and 2 I am of opinion that both section 14 of the County Courts Act (Con. Stats. of British Columbia, ch. 25) as amended by 54 Vic. ch. 7, section 1 (the County Court Amendment Act, 1891) and section 9 of the County Courts Amendment Act, 1890 (53 Vict. ch. 8) were within the powers of the legislature of British Columbia, and I am of opinion that they are so *intra vires* independently of any Federal legislation.

My reasons for this opinion are that such legislation was a valid exercise of the power conferred upon the provinces by subsection 14 of section 92 of the British North America Act, whereby provincial legislatures were empowered to make laws regarding the administration of justice in the provinces including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and including civil procedure in those courts. The powers of the federal government respecting provincial courts are limited to the appointment and payment of the judges of those courts and to the regulation of their procedure in criminal matters. The jurisdiction of parliament to legislate as regards the jurisdiction of provincial courts is, I consider, excluded by subsec. 14 of sec. 92, before referred to, inasmuch as the constitution, maintenance and organization of provincial courts plainly includes the power to define the jurisdiction of such courts territorially as well as in other respects. This seems to me too plain to require demonstration.

Then if the jurisdiction of the courts is to be defined by the provincial legislatures that must necessarily also involve the jurisdiction of the judges who constitute such courts.

If this were not so it would be necessary, whenever the territorial jurisdiction of a county court was

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altered or enlarged, that recourse should be had to federal legislation, under the general reserved powers of parliament, to sanction the change, or that the judges should be re-appointed by a new commission. I think it clear that parliament in such a matter could not legislate without infringing the exclusive powers of the provincial legislature, and the notion that a new commission would be requisite in every case of an enlargement of the territorial jurisdiction of any of the courts in question is too preposterous to be entertained. It must follow, therefore, that the whole power of legislating as regards the jurisdiction of provincial courts is restricted to the provincial legislatures.

I therefore answer the two first questions in the negative.

The expression "any judge of a county court" in the "Speedy Trials Act," must, in my opinion, be taken to refer to any judge having, by force of the provincial law regulating the constitution and organization of county courts, jurisdiction in the particular locality in which he may hold a "speedy trial." This statute would not, I conceive, authorize a county court judge having no authority from the provincial legislature so to do in holding a "speedy trial" without the limits of his territorial jurisdiction. This last conclusion necessarily results from the preceding observations. I may add that I do not regard the Dominion statute known as "The Speedy Trials Act" as a statute conferring jurisdiction, but rather as an exercise of the power of parliament to regulate criminal procedure. This answers question three.

TASCHEREAU J.—I do not take part in this consultation. I have some doubts on the constitutionality of some of the enactments contained in the 54 & 55 Vic. ch. 25, and on the power of parliament to make this court

an advisory board to the executive power or its officers, or, as it seems to me to have done in some instances by that statute, a court of original jurisdiction.

GWYNNE J.—Concurred in the judgment of Mr. Justice Strong.

PATTERSON J.—I also agree with Mr. Justice Strong and scarcely understand how any doubt could have arisen among the judges in British Columbia.