

which can warrant the recent local legislation is to be found in section 92 and two of its sub-sections.

Section 92 is in these words: "In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, viz:

"Sub-section 13. Property and civil rights.

"Sub-section 14. The administration of Justice in the Province, including the constitution, maintenance and organization of Provincial Courts, both of Civil and Criminal jurisdiction, and including also Civil procedure in those Courts."

It must throughout be borne in mind that by the immediately preceding section, 91, every topic of legislation was swept into the power—the exclusive power—of the Parliament of Canada (viz: the Crown, the Senate and Commons of Canada) except only such matters as by this Act—not by any one section of it, but by the whole Act,—are exclusively assigned to the local Legislatures. If, therefore, a conflict arises between any general words in section 92, and general words in any other part of the Act, or between express words in section 92, and express words in any other part of the Act, so that any matter which might otherwise have been supposed to be included in the terms of section 92 or its sub-sections, is also equally placed under Dominion control in some other part of the Act, and thus not given exclusively to the Province, then by virtue of the sweeping force of the words in section 91 the Parliament of Canada has sole cognizance of such matter. For it would be contrary to common sense to suppose that the extremely careful framers of this British North America Act intended to permit a joint authority in two entirely differently constituted bodies (the Parliament of Canada being composed of the Queen, Senate and House of Commons of the whole Dominion, and the local Legislature, consisting merely of the Lieut.-Governor and local House of Assembly), and that, too, at the very moment when they were taking pains to distinguish and separate them. And the express words of the second branch of section 91 shows that when any authority is conferred on the Dominion Legislature, it was intended to be an exclusive authority. We must also bear in mind that the matters enumerated in the sub-sections of section 91 are not to be looked upon as limiting the power of Parliament; and that on the other hand all the sub-sections in section 92 (so far as they are exclusive) are exceptions out of the otherwise universal grant to the Parliament of Canada in the first part of section 91.

The first thing to be observed upon section 92 is, that its object and intention as well as express phraseology is to confer a legislative power on a legislative body. The words of sub-section 13 and the first part of sub-section 14 are extremely comprehensive. If they stood alone; if "civil rights and the administration of Justice" were handed over to be dealt with by any one department of the Provincial Government, the grant would cover everything that can be done by any of the three branches of civil government, the legislative, the judiciary, and the executive. But the sub-sections do not stand alone; nor do they contain any words of grant. They are entirely governed and controlled by the operative words in the body of the section; and merely enumerate the topics upon which the grant is to be exercised. And the grant is to a purely legislative body, of purely legislative functions, "to make laws" in relation to civil rights and the administration of justice; and there is no grant here