

was debated by both sides, and if held good would have been fatal to the conviction. The Privy Council might indeed have disposed of the objection by refusing to allow argument upon any point not taken in the rule and so left the case as to such point undetermined, but every one surely will agree that it is better to completely dispose of a case when it is possible to do so; and, when no embarrassment can accrue, not to bind down either party to the objections originally put forward.

Upon the main question, viz: whether under the B. N. A. Act the Legislatures have power to decree imprisonment with hard labor, all four journals agree that the Privy Council is wrong. With a good deal of industry they have shown that jurists and judges have always treated imprisonment with hard labor as something more severe than simple imprisonment. And we hardly think they will find in the Privy Council a lord who would wish to dispute this point with them. With similar care they have also proved "that no court can impose hard labor as a condition of punishment unless this power be specially granted by statute". This too is no doubt sound, but neither it nor the former proposition in any way conflicts with the judgment of the Privy Council.

Sec. 92 of the B. N. A. Act is as follows:—"In each Province the Legislature may exclusively make laws in relation to matters coming within the *classes of subjects* next hereinafter enumerated, that is to say:—

(15). The imposition of punishment by fine, penalty or imprisonment, for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section."

*The Legal News* therefore is quite correct when arguing that "It was comparatively easy to indicate in *general* terms the powers of each government and this is what was done. No one ever seriously contended that even the catalogues of sections 91 and 92 were perfectly conclusive. Therefore there must exist a doctrine resulting from, but undeveloped in, the words of the Act". This quotation is not, of course,