

THE JUDGMENTS OF VICE-CHANCELLOR MALINS.

exclusively to the legislatures of the Provinces." The matter of the public lands is especially assigned to the Provincial Legislature.

An amendment of the British North America Act by the Imperial Parliament is the only legal means to remedy the evil. Each Provincial Legislature can change or amend its own constitution without the sanction of the Parliament of Great Britain agreeably to section 92. par. 1; but these changes can affect only its local political organization as established by ss. 58-90, for instance the abolition of the Legislative Council, and they cannot extend to its jurisdiction or the distribution of the legislative powers. These can be changed only by means of an Imperial Statute, sect. 129. This mode of procedure may be slow and troublesome, but it is prudent at the least, if not absolutely necessary.—*La Revue Critique*.

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If a Judge is disposed to take eccentric views of law and fact, and to decide in a way which courts of appeal find it impossible to approve, it is hard to conceive any remedy for the evil. In this respect experience does not always teach, and we believe there are not many Judges who take reversals of their decrees by our courts of appeal much to heart.

We are certain that no court of common law would regard as a matter of the least importance the fact that the Exchequer Chamber failed to take the same view as itself, and we quite understand that Vice-Chancellor Malins does not feel himself in any way prejudiced by the circumstance that Lord Hatherley comes to diametrically opposite conclusions on similar statements of fact, and in the construction of the same Act of Parliament.

It is somewhat an invidious task to discuss who is right in this conflict, and we shall perhaps be excused if we simply place the divergence of judicial opinion on record. The most recent instance in which it occurs, is in the case of *Turner v. Collins*, decided by Lord Hatherley on the 22nd instant. A voluntary settlement had been made by a son in favour of his father, which the son sought to set aside on the following grounds:—That the plaintiff was a young man, and was ignorant of the nature of the instruments he was induced to execute; that no proper explanation of the effect of what he was doing was given to him; that his interest throughout the transaction was not regarded, and that there had been an entire absence of that independent legal advice and protection which would justify the court in sustaining this voluntary settlement by which plaintiff had given up a large portion of his fortune. In an elaborate judgment, delivered on the 8th July last, Vice-Chancellor Malins came to the conclusion that the litigation was altogether unjustifiable, inasmuch as the deeds in question dated in 1855 simply

carried into effect the deliberate, well-considered intentions of the plaintiff; that he had ample independent advice, which put him in possession of a distinct knowledge of what he was about to do, and that the arrangement, having regard to the situation of the family and the relative circumstances of the father and son at the time, was a reasonable and proper one; and that, in addition to all the other objections, the delay of fourteen years in filing the bill, and, admittedly, seven years after the plaintiff had full knowledge of his rights, was fatal to the bill, which, so far as it sought to impeach the transactions of 1855, must be dismissed with costs. From this decision plaintiff has appealed.

Now on the material point as to the due execution of the settlement, the Lord Chancellor differed from the Vice-Chancellor, and concurred alone on the ground of the delay.

He was "unable to agree with Vice-Chancellor Malins that the provision made by this young man for his father, and his father's family, was either a prudent or a reasonable arrangement for a young man circumstanced as he was to have made." The Lord Chancellor then adds this extraordinary remark: "The Vice-Chancellor seemed to be influenced by one or two considerations which, with great respect for his Honour, *had nothing whatever to do with the case*." This is very startling, but as the case was one in which individual opinion of the operation of particular motives upon a man's mind would be likely to differ, the illustration of judicial conflict is not so striking as in a case where the construction of an Act of Parliament is in issue.

As we stated at the outset, we have an instance of this also, the judges being the same.

In *Pemberton v. Barnes* (25 L. T. Rep. N. S. 577) the Lord Chancellor reviewed and overruled a decision of Vice-Chancellor Malins dealing with the Partition Act of 1868 (31 & 32 Vict. c. 40). The judgment of the Lord Chancellor opens in a manner quite as extraordinary as the passage in his judgment in *Turner v. Collins*, to which we have referred. "It appears to me," said his Lordship, "that in this case the Vice-Chancellor has adopted a construction of the Partition Act which entirely destroys the effect of the 4th section." The suit was for partition of a large estate. The plaintiffs, who were devisees in trust under a will of one equal undivided moiety, asked for a sale instead of a partition, under the aforesaid sect. 4. The Vice-Chancellor held that a large estate like the one in question was not within the purview of the Act, and made a decree for partition. The Lord Chancellor said that the difficulty of partition was dealt with in sect. 3, and that there is not in sect. 4 a single word about the size of the estate or the difficulty of partition—it simply speaks of a case where half the parties interested desire a sale, and it provides that they shall have a prepond-