

CORRESPONDENCE.

Probate was asked to confirm an arrangement which had been entered into between the parties, prior to the issuing of the writ, and in such manner as to bind a married woman and five infants. He, however, refused to do so, and gave the following as his reasons:—

"At present no action has been commenced in this division, and no issue, therefore, is pending. There has been a proceeding by caveat and warning it is true, but no writ has been issued, and under the Judicature Act the only mode of commencing an action is by issuing a writ. There is not, therefore, any litigation before the Court, and no sufficient ground upon which the Court can proceed. Moreover, in addition to this, I cannot see, if I rightly appreciate this case, any circumstances under which I should be justified in binding irrevocably infants to the consequences of any compromise into which the parties may think fit to enter, in a probate suit before me, and I am extremely unwilling to do so. I am not furnished with any materials upon which to form a judgment as to the wisdom and forethought of any compromise which the parties may have agreed upon. It is my function to determine whether a particular will is or is not the will of the deceased person. To enable me, however, to appreciate the reasons upon which counsel have arrived at the conclusion that it is prudent to effect a compromise by arrangement, it would be necessary that I should be informed, not merely of the contents of their briefs, but also of the effect created by the evidence upon those persons who have seen and examined any witnesses up to this point in the case."

Motion refused.

CORRESPONDENCE.

*Local Legislatures—Jurisdiction—
Naturalization.*

To the Editor of THE CANADA LAW JOURNAL:

SIR,—I observe in your issue for Oct. 15, some remarks in regard to the sec. 4 of the Dominion Act of last Session respecting Naturalization and Aliens, which introduces a new principle into the law, as hitherto administered in Canada.

In commenting on this subject, in my work

on Parliamentary Government in the Colonies (p. 218) I had pointed out the fact that, previous to the passing of this Act, while the Dominion Parliament was [exclusively] empowered, under our new Constitution, to legislate upon "naturalization and aliens," yet that the Legislatures of Ontario and of Manitoba had severally assumed that they were exclusively competent to authorize aliens to hold and transmit real estate. These legislatures had accordingly passed laws for this purpose. None of the other legislatures, to my knowledge, have passed similar laws. But by the omission of any provisions of this nature in previous Dominion Statutes concerning aliens, it might be inferred that the Dominion Parliament had advisedly relinquished to the local legislatures the discretion and authority of such legislation, as affecting "property and civil rights."

Now, by the 4th section of the recent Dominion Act, the Parliament of Canada steps in and proceeds to legislate on this very question, by providing that aliens may hold, convey, and transmit property of any kind, in all respects as natural-born British subjects, subject to certain restrictions therein stated.

The point might be raised, whether this new provision in the Dominion law was at variance with Provincial rights of legislation. But no difficulty on this score presents itself to my mind. Before reading your observations upon it I had appended a manuscript note to page 218, in these words, "it being understood that the concurrent rights of legislation in the several provinces are not thereby infringed." This distinction was fully brought out in the Debates on the statute of 1881, as a reference to pp. 1342 and 1369 of the Debates of last Session will show.

The question of "exclusive" jurisdiction, by either the Dominion Parliament, or any Provincial Legislature, under the B. N. A. Act is sometimes difficult and uncertain. But thanks to the careful attention bestowed upon the rightful interpretation of the Imperial Statute by our Courts of law, and to the luminous decisions of some of our leading judges, it is gradually becoming easy of administration.

So far as concerns what may be termed "concurrent" rights of legislation, by both bodies, and particularly the competency of the Dominion Parliament itself to provide for the