

on it because the power may be used unwisely, as all powers may, would be an error, and would lead to insuperable difficulties, in the construction of the Federation Act.

Their Lordships have been invited to take a very wide range on this part of the case, and to apply to the construction of the Federation Act the principles laid down for the United States by Chief Justice Marshall. Every one would gladly accept the guidance of that great Judge in a parallel case. But he was dealing with the Constitution of the United States. Under that Constitution, as their Lordships understand, each State may make laws for itself, uncontrolled by the Federal power, and subject only to the limits placed by law on the range of subjects within its jurisdiction. In such a Constitution, Chief Justice Marshall found one of those limits at the point at which the action of the State Legislature came into conflict with the power vested in Congress. The appellant invokes that principle to support the conclusion that the Federation Act must be so construed as to allow no power to the Provincial Legislatures under Section 92, which may by possibility, and if exercised in some extravagant way, interfere with the objects of the Dominion in exercising their powers under Section 91. It is quite impossible to argue from the one case to the other. Their Lordships have to construe the express words of an Act of Parliament which makes an elaborate distribution of the whole field of legislative authority between two legislative bodies, and at the same time provides for the federated provinces a carefully balanced constitution, under which no one of the parts can pass laws for itself, except under the control of the whole acting through the Governor General. And the question they have to answer is whether the one body or the other has power to make a given law. If they find that on the due construction of the Act a legislative power falls within Section 92, it would be quite wrong of them to deny its existence because by some possibility it may be abused, or may limit the range which otherwise would be open to the Dominion Parliament.

It only remains to refer to some of the

grounds taken by the learned Judges of the lower Courts, which have been strongly objected to at the bar. Great importance has been attached to French authorities who lay down that the *impôt des patentes*, which is a tax on trades, and which may possibly have afforded hints for the Quebec law, is a direct tax. And it has been suggested that the Provincial Legislatures possess powers of legislation either inherent in them, or dating from a time anterior to the Federation Act and not taken away by that Act. Their Lordships have not thought it necessary to call on the respondents' counsel, and therefore possibly have not heard all that may be said in support of such views. But the judgments below are so carefully reasoned, and the citation and discussion of them here has been so full and elaborate, that their Lordships feel justified in expressing their present dissent on these points. They cannot think that the French authorities are useful for anything but illustration. And they adhere to the view which has always been taken by this Committee, that the Federation Act exhausts the whole range of legislative power, and that whatever is not thereby given to the Provincial Legislatures rests with the Parliament.

The result is that, though not wholly for the same reasons, their Lordships agree with the Court of Queen's Bench. And they will humbly advise Her Majesty to affirm their decree, and to dismiss the appeal of the Bank of Toronto.

The other three cases possess no points of distinction in favour of the appellants. That of the Canadian Bank of Commerce is exactly parallel. The Merchants' Bank of Canada has its principal place of business in Montreal, and to that extent, loses the benefit of one of the arguments urged in favor of the other Banks. The Insurance Company is taxed in a sum specified by the Quebec Act, and not with reference to its capital, and so loses the benefit of one of the arguments urged in favor of the Banks. The cases have been treated as substantially identical in the Courts below, and their Lordships will take the same course with respect to all of them.