

I confess that I have grave doubts as to the correctness of the recent decision concerning the apportionment of legislative powers with regard to marriage. But my doubts in this instance are not based on any considerations of a juristic character. The reason why I regard the decision as unsatisfactory is that the elements favourable and unfavourable to the conclusion finally adopted were, as Lord Haldane's judgment shews, deemed to be almost evenly balanced, and that, for some reason not apparent from the report, a certain important historical circumstance which had a bearing upon the import of the Act, and which might possibly have turned the scale in such a close case, was not brought to the attention of the Court. The circumstance I allude to is the pronounced hostility which, at the time when the Confederation Act was under discussion, prevailed between the Protestants of Upper Canada and the Roman Catholic Church. It might, I think, have been argued with some chance of success that, having regard to this hostility, the meaning of the Act should have been determined with due reference to the consideration that the former would almost certainly have refused to accept a provision which would confer upon a Legislature dominated by the latter such extensive powers in respect of the validity of mixed marriages as those which it has now been declared to possess. Manifestly, however, the omission of the Court to take this aspect of the matter into account does not imply any juristic incapacity. The fault, if any there were, of such an omission, must be attributed not to it, but to the counsel. It could scarcely be expected that an extrinsic element of this character should occur to anyone who had not some knowledge of the peculiar local antagonisms produced by religious animosity. To find a decision which is assailable on purely legal grounds is certainly a much more difficult task than Mr. Ewart supposes.

This is not the place, however, to discuss at length the general question whether it is expedient that the right of appeal to the Privy Council should be preserved on its present footing. The unrestricted exercise of that right has its advantages and disadvantages, and presumably the considerations for and against its continuance on this footing will be carefully weighed within