

RAILWAY GRANTS.

The intention of the Imperial Parliament appears to have been to ensure the permanency of the local revenues and to put the lands beyond the reach of great corporations, religious or otherwise, like those railway companies which in the United States have become mighty political potentates through the aid of numerous land grants. There can be no doubt that it is the highest degree dangerous to abandon the public domain in favor of any corporation which is not under the exclusive control of the Government. This question of high political importance,—can have no place in the pages of a legal review. But it cannot be denied that the aim of the framers of the constitution was to prevent these grants, seeing that the prohibition bears only upon the public lands and forests, and does not touch the mines, minerals and other royal reserves or the Provinces, nor the property of the Dominion, over which the respective legislatures have absolute and unlimited control. It may be said that the intention of the Imperial Parliament was to confer upon the Dominion Parliament and the Provincial Legislatures the whole of the powers formerly enjoyed by the legislature of the Province of Canada. We can only say of the legislature with Lord Ellenborough in *Rex v. Shone*, *quod voluit non dixit*.* “If the Legislature intended more,” said Lord Denman in *Haworth v. Ormerod*, “we can only say, that according to our opinion, they have not expressed it.”†

“A *casus omissus*,” said Dwaris,‡ “can in no case be supplied by a court of law; for that would be to make laws. Judges are bound to take the Act of Parliament as the Legislature have made it.”

The grant of public lands by the Imperial Parliament to the Provinces must be strictly interpreted; it must, in fact, be regarded as a grant by the Crown; that is, most favorably to the Imperial Parliament and against the Provinces. “A grant made by the King,” says Blackstone, (lib. II., p. 347.) “at the suit of the grantee, shall be taken most beneficially for the King and against the party. . . . The King’s grant shall not enure to any other intent than that which is precisely expressed in the grant.” “The King’s grants,” says Cruise, vol. 5, p. 53, “are construed in a very different manner from conveyances made between private subjects; for being matter of record, they ought to contain the utmost truth and certainty; and as they chiefly proceed from the bounty of the Crown, they have at all times been construed most favorably for the King and against the grantee, contrary to the manner in which all other assurances are construed.”

Story lays down as a rule of interpretation of the American Constitution—similar to ours in so many respects—the following principle: “A rule of equal importance is, not to enlarge the construction of a given power beyond the fair scope of its terms, merely because the restriction is inconvenient, impolitic or even

mischievous. If it be mischievous the power of redressing the evil lies with the people by an exercise of the power of amendment.”* Further on (sec. 207) the learned commentator remarks: “It is often said that in an instrument a specification of particulars is the exclusion of another. Lord Bacon’s remark that as exception strengthens the force of a law in cases not excepted, so enumeration weakens it in cases not enumerated, has been perpetually referred to as a fine illustration.”

It has been also said, that a statute must be construed, if possible so as to give sense and meaning to every part, and the maxim *expressio unius est exclusio alterius* is never better applicable than in the interpretation of a statute.†

Dwaris, p. 605, says: “The maxim is clear, *expressum facit cessare tacitum*, affirmative specification excludes implication.”

It was on the same principle that the statutes by which our Courts were invested with jurisdiction in civil and criminal causes, were recently construed, in the *Guibord* case, as limitative and exclusive of ecclesiastical matters.

Coleridge in *re The Queen v. Ellis*,‡ observed: It is an inflexible rule that under a special power, parties must act strictly on the conditions on which it is given.”

It has been intimated that the restriction could be evaded by making a sale to the Railway Companies for a merely nominal consideration. But the Legislatures, any more than individuals, are not allowed thus to trifle with the laws of their country. Land grants are either constitutional or unconstitutional. If they are unconstitutional, they cannot be made in an indirect manner and in fraud of the law. Mr. Justice McLean, for the Supreme Court of the United States, said: “The power must not only be exercised *bonâ fide* by a State, but the property, or its product, must be applied to public use. . . . The public purpose for which the power is exerted must be real, not pretended.”||

Judge Woodbury said in the same cause: “If on the face of the whole proceedings it is manifest that the object was not legitimate, or that illegal intentions were covered up in forms, or the whole proceedings a mere pretext, our duty would require us to uphold them.”

How is this want to be remedied? The Constitution has wisely withheld from the Parliament of the Dominion all control over the Provincial lands; it has been conferred expressly and it is certain that it has not been granted impliedly by section 91, declaring that the Parliament of Canada “for the peace, order and good Government of Canada” has general jurisdiction “in relation to all matters not coming within the laws of subjects assigned

* 6 East 518.

† 6 Q. B. 307.

‡ p. 598.

* Const. of U. S., § 193.

† Brown’s Legal Maxims, p. 592; 9 Johns, U. S., 349.

‡ 6 Q. B. 501, 1844.

|| West River Bridge Co., v. Dix et al., 6 Howard, T. S. 537.