

CANADIAN CASES BEFORE PRIVY COUNCIL.

the will, the interest of third parties, however, being carefully protected.

This complete the March number of the Law Reports, and brings our review up to date, and we may hope shortly to be able to take up the LAW JOURNAL Reports for the current year, so as to notice such cases as have not been reported in the Law Reports.

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The English *Law Times* publishes the following short *resume* of the decisions which have been given by the Judicial Committee of the Privy Council, in cases where questions as to the powers of Provincial Legislatures under the British North America Act have come before it. The working out of our complex constitution, is undoubtedly full of instruction to students of politics everywhere. The article is published under the title of "Powers of Provincial Legislatures," and is as follows:—

"The case of *The Citizens' Insurance Company of Canada v. Parsons* (45 L. T. N. S. 721) raises again a question which has been several times discussed by the Judicial Committee—namely, the distribution of legislative power between the Parliament of Canada and the legislatures of the various provinces comprised in the Dominion; and at the present time the practical working of such a constitution as that of Canada is not without interest and instruction both for lawyers and politicians, in reference to possible proposals for the extension of the principle of local self-government in the United Kingdom.

The matter is provided for by sects. 91 to 95 of the British North America Act of 1867 (30 Vict. c. 3), by which the Dominion of Canada was created. The scheme of this legislation is to give to the Dominion Parliament authority to make laws for the good government of Canada in all matters not coming within such classes of subjects as are assigned exclusively to the Provincial Legislatures; but "for greater certainty and not so as to restrict the generality of the foregoing terms of this section," sect. 91 assigns to the Dominion Parliament exclusive authority in twenty-nine enumerated classes of subjects, and concludes as follows:—"Any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the

classes of subjects by this Act assigned exclusively to the Legislatures of the provinces." Similarly sect. 92 gives to the provincial Legislatures exclusive power to make laws in relation to sixteen enumerated classes of subjects.

It must, however, have been foreseen that no sharp and definite line had been or could be drawn, and the words of sect. 91 seem to endeavour to provide for the case of an apparent conflict. The fact, however, that the question has been raised in as many as six different appeals before the Judicial Committee, and that in two of them the decisions of the courts below were reversed, shows the matter is not left free from doubt. In the first case (*L' Union St. Jacques de Montreal v. Belisle*, L. Rep. 6 P. C. 31; 31 L. T. Rep. N. S. 111) it was held that an Act of a provincial Legislature, passed to relieve a benefit society which was in a state of financial embarrassment, related to "a matter merely of a local or private nature in the province," within sect. 92 of the Act, and not to "bankruptcy and insolvency," within sect. 91, and was therefore not *ultra vires*. Similarly in *Dow v. Black* (L. Rep. 6 P. C. 272; 32 L. T. Rep. N. S. 274) an Act empowering the majority of the inhabitants of a parish to raise, by local taxation, a subsidy for the promotion of the construction of a railway already authorised by statute, was held to relate to a local matter within the province, though the railway was intended to extend beyond the province, and "railways extending beyond the limits of the province" are expressly excepted from the control of the Provincial Legislatures. In both these cases the courts below had taken the opposite view.

The case of *The Attorney-General for Quebec v. The Queen Insurance Company* (3 App. Cas. 1090; 38 L. T. Rep. N. S. 897) decided that the imposition of a stamp duty on policies of assurance, renewals and receipts, was not "direct taxation within the province," and was *ultra vires*.

In *Valin v. Langlois* (5 App. Cas. 115; 41 L. T. Rep. N. S. 662) leave to appeal was refused on petition, on the ground that "the administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts," which was reserved to the Provincial Legislature, did not relate to election petitions.

In *Cushing v. Dupuy* (5 App. Cas. 409; 42 L. T. Rep. N. S. 445) it was decided that sect. 91, by reserving to the Dominion Parliament questions of "bankruptcy and insolvency," give power to interfere to that extent with "property and civil rights in the province," though sect. 92 assigned them to the Provincial Legislature. But in the last case (*The Citizens' Insurance Company v. Parsons*) referred to above, the Judicial Committee held that those words covered a provincial statute "to secure uniform con-