

It is to be regretted that attacks of this kind should be made, as they are calculated to create a want of confidence in the tribunal, which we believe to be altogether undeserved.

Mr. Marsh takes as his text a quotation from this journal, in which we expressed the opinion that the decision of the Judicial Committee in *The London & Canadian Loan and Agency Co. v. Duggan* was one of the cases which are calculated to induce a sense of thankfulness that there is a Privy Council.

Mr. Marsh says that the decision of the Judicial Committee in that case is merely the law because there is no higher tribunal to which an appeal can be carried, and not because it is by any means clear that the decision can be supported on legal principles.

This remark appears to be based on the erroneous assumption that the ultimate court of appeal is, or ought to be, bound by the decisions of inferior courts, which establish "the legal principles" to which Mr. Marsh refers—a proposition which seems to us to be altogether unsound. It is the highest function of the ultimate court of appeal to be able to determine causes free from any restraint imposed by the decisions of inferior tribunals, and to be free to reject the precedents of those tribunals which appear to be based on unwise or injudicious principles. Law, after all, is merely the best and most judicious exercise of reason applied to human affairs, and this is especially the case with our judge-made law. In the particular case referred to, the decision of the Supreme Court had practically led to the conclusion that, in order to deal with the shares of a company, it would be necessary for a purchaser, on each transaction, to require a regular chain of title to be deduced from the original issue of the shares, and to employ a solicitor, and go through all the trouble and inconvenience and expense of an investigation of title, such as is customary on a transfer of land. From such an absurd and inconvenient result the Privy Council has delivered us.

Mr. Marsh insinuates that the Privy Council has not been always consistent with itself. It is possible he may be correct, but the instances which are selected as justifying the observation are not happily chosen.

Cases decided under the B.N.A. Act must, almost of necessity, sometimes involve apparent inconsistencies, but that is due to the Act itself, rather than to the court which interprets it.