

## CORRESPONDENCE.

restored to the paper, for further hearing, until the report of the referee had been confirmed.

*Beaumont*, for the motion.—The plaintiff has treated the report of the official referee as a final report, and set down the action for hearing. This he ought not to have done until after a summons, or a motion to confirm the report had been heard: *Munro v. Randall*, L. R. W. N., 1878, p. 41.

KAY, J.—It may well be that if the Court directs a reference in the usual form of a reference to a chief clerk, and reserves further consideration, there ought to be a formal adoption of the report by the Judge before the trial comes on. But in such a case the adoption is the merest form. There is no argument before the Judge; it is the most formal thing possible, unless a summons to vary has been taken out. No summons is required, and the only way by which a report can be confirmed, but to vary the certificate. Here I am asked to introduce an entirely new practice, and to delay the hearing of the action until a summons has been taken out to confirm the report, upon the hearing of which the party who does not like the report is to have the opportunity of disputing it before it can be confirmed. If there is to be any formal adoption of the report, let it be done as in the case of a chief clerk's certificate. I look upon this application as nothing but an attempt, by a side-wind, to get rid of the report. I dismiss the motion with costs.

[See note to last case.]

## CORRESPONDENCE.

*The Supreme Court of British Columbia.*  
To the Editor of the LAW JOURNAL.

SIR,—I have read with much interest the judgment of the Supreme Court of British Columbia in the *Thrasher Case*, and the correspondence which has appeared in your columns on the subject. The question therein discussed is one of considerable importance in its bearing upon the interpretation of the British North America Act, I therefore invite the attention of your readers to some further comments upon it from a constitutional point of view.

Notwithstanding my high respect for the learned judges who concurred in the decision upon the *Thrasher Case*—who have already

rendered valuable service to Canada by their judgments upon various doubtful and intricate questions of constitutional law—I regret to be obliged to differ from them in their conclusions upon the present occasion.

The point principally involved in this decision is the question whether the Supreme Court of British Columbia is or is not a "Provincial Court" within the meaning of the 14th sub-section of clause 92 of the B. N. A. Act. If it be a "Provincial Court" the Local Legislature is clearly empowered under that sub-section, coupled with clause 129 of the statute, to control and regulate its procedure, and either itself make rules for that purpose, or else delegate the framing of such rules to some other competent authority.

By the 129th clause of our Constitutional Act the Imperial Parliament obviously intended to convey to the Provincial Governments and Legislatures in Canada exclusive jurisdiction over all juridical matters, which are not of Dominion concern, without regard to the particular antecedent authority which had previously legislated thereupon.

This provision, taken in connection with clauses 130 and 135 of the same statute, secures the unbroken continuity, jurisdiction and operation, within each province, of all laws, courts of justice, legal or executive institutions or tribunals which were previously in existence in any part of the new Dominion; except as otherwise provided by the statute itself.

It only remains to ascertain what courts, situate within the particular Provinces, are expressly subject to provincial legislation under the 14th sub-section of the 92nd clause of the B. N. A. Act. The words of this section are definite and explicit. They assign to the "exclusive" control of the Provincial Legislature all matters concerning "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" therein. What Courts do actually exist in the several Provinces other than "Provincial Courts?" None, except the Dominion Supreme Court and the Maritime Court of Ontario, both of which were created by Dominion enactments; the first as a Court of Appeal for the whole Dominion, the other as a step towards the establish-