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### PROVINCIAL TORYISM.

THE question as to the limits of Dominion and Provincial powers, respectively, is undoubtedly the one that more than any other now engages public attention in Canada. A few years ago the issue between Protection and Free Trade stood at the front, and on that issue alone a change of Government was ordered by a large majority of the popular vote. But it has gone somewhat to the background since, not because its intrinsic importance is counted any the less, but chiefly because of a prevailing belief that it is practically settled—for Canada. This belief will probably turn out a mistaken one, the fact being that Canada is so much weighed upon by old country influences—political, financial, social, and literary—that our free traders here have always a solid stronghold of English opinion for their base of operations, and will ever and anon be encouraged to renew the fight. The fight for the establishment of a Canadian Pacific Railway is practically over, though the question as to Government control over all railways is still to be disposed of. It so happens that at the present time the question as to what Provincial rights are or should be is the most absorbing one of all before the people of Canada.

In the discussion of this question, so far, the view has been strongly advanced, and widely accepted too—that there exists a natural and necessary alliance between Toryism and the extreme Dominion position on one hand, and between Liberalism and the extreme Provincial position on the other. It is probable that a considerable majority of the people, in Ontario, at all events, fully believe that, while it is and must be Conservative policy to exaggerate the powers of the Dominion, it is and must be Liberal policy to push to the utmost the powers of the Provinces. Now, this a profound mistake, having its origin in a remarkable misreading of history, or oftener, perhaps, in no reading of history at all.

It is an utter mistake to suppose, as some do, that the famous little States of ancient Greece were republics, in the modern acceptance of the term. They were in reality slaveholding aristocracies, in which the working bees of the hive—the large majority of the whole—had no rights that their masters were bound to respect. They carried provincialism to the length of political insanity, and the result was their subjugation by Philip of Macedon. There was no king in Athens or Sparta; only what our North American Indians might call a war chief, as the occasion demanded. Gillies in his history teaches that classic Greece fell for want of a king; but he would have been nearer the truth had he said that Athens and Sparta fell victims to the craze for Provincial Rights and Provincial Toryism. The Greeks had their heads so full of the Local Parliament idea that they failed to realize the idea of Greece as a nation. It may truly enough be said, applying a new designation to a fact of ancient history, that classic Greece fell for want of a national policy—because the Greeks thought too much of the province and too little of the nation.

The great French Revolution burst the fetters under which continental Europe had been bound for centuries. The revolutionists were not always friends of liberty, and some of their atrocious deeds well justified the remark that "revolutions are not made with rose-water." But the political earthquake of that time gave to the old feudal Toryism a shock from which it will never fully recover; and the net result is a gain to the cause of human liberty the world over. One most remarkable thing there is to be observed in the history of France during that period. While differing seriously on many other points, the good and the bad among the revolutionists agreed in making war against Provincial Rights, and in rendering the national authority supreme over all. They believed that Provincial Toryism was and must continue to be bitterly opposed to the Republic; and one of their most important acts was to blot out the very names of the Provinces, and to substitute new territorial names of Departments, instead. The Tory historian, Alison, calls this Radical tyranny, and so it unquestionably was from his point of view. But from their point of view—that of the safety of the Republic—they were just as unquestionably in the right, as was seen in the desperate resistance maintained for a time by the royalists of La Vendee, who would have none of the Republic, and fought to restore the monarchy and the aristocracy. All the old provincial bodies were abolished by the revolutionists, for the plain reason that they were nearly all hot-beds of Toryism, and opposed to the revolution.

What has been at the bottom of all the Carlist agitations and wars that have distracted Spain during half a century and more? This, namely—

the existence in the Basque Provinces of a race of hardy mountaineers, half soldiers and half brigands, who are determinedly opposed to liberal government of any kind, and who, if they could, would speedily put some Don Carlos or other on the throne, against the wishes of the great majority of Spaniards—in fact of the nation. These mountaineers are clamorers for Provincial Rights which were granted them long ago by the Spanish kings, as a means of keeping them quiet. These Provincial Rights consisted mainly of certain exemptions from taxation, and from regular military service, the granting of which to them was an injustice to all Spaniards besides. In this case, as in many others, it was the Tory provinces against the Liberal nation—or the nation that would be Liberal, to the extent that its circumstances might permit.

Is it necessary to say much about that great modern instance, the American Civil War? The slaveholders of the South, who were Tories to a man, in principle, made war upon the Radical nation, in order to perpetuate human slavery. The Nationalists were Radical, Reform, Liberal, or what you please of that sort; the States Rights men were just as certainly Tories of the most pronounced kind. That lesson ought to stick; it is surely too momentous and too recent to be already forgotten.

These few recollections of history may for the present suffice to give pause to those who think that it is and must necessarily be true Liberalism to sustain extreme views of Provincial Rights, and that defenders of National Rights and powers must be Tories. Precisely the reverse of this is the solemn truth of the matter, as will very clearly appear ere Confederation has completed its twenty-fifth year—its first quarter of a century. The situation in Ontario, which has blinded the eyes of many, is not according to the rule of history; but is a mere temporary exception—a result of accident and circumstance. Its true and inward political meaning is hidden by certain outward and visible circumstances, which can be of but ephemeral duration, and must soon be brushed aside by the hand of time. And then must the real character of the contest between Provincial Toryism and National Liberalism stand revealed, even to those who now refuse to see it.

"What fools we mortals be!"—or have been—Ontario Reformers will be saying some day, when they realize how blindly they have been led into a huge political blunder. Let it be hoped that they may hasten to retrace their steps, while there is yet time.

JOHN MACLEAN.

### JUDGES AND JUDGES.

THE translation of 'Chief Justice Hagarty to the Court of Appeal has deprived the Common Law Division of the High Court of Justice of its brightest ornament. It is not yet known who may be chosen to fill the vacancy amongst the *puisse* judges, but no little curiosity, and much anxiety, exists in legal circles on the subject. A few years ago, a leaning towards "Trial by Judge," as distinguished from "Trial by Jury," was perceptible in legal practice, and various reasons were assigned for the new departure. By some, it was attributed to the higher scale of fees incident to Chancery practice; others suggested the decline and fall of forensic ability at the Bar; and a third class contended that Juries were unreliable, and less competent than a Judge to dispense justice. Whatever the cause may have been, its effect has been short lived. A reaction has set in, very marked indeed, and trial by Jury to-day is, in Civil actions, as in Criminal prosecutions, regarded by nine-tenths of the legal profession as the soundest and safest tribunal for their clients. The mass of "non-suits" reversed in Term in these days has become to the profession too monotonous to be amusing, and are only tolerable because not objectionable from a pecuniary point of view. True it is that these may have been, to a considerable extent, the product of trials by Jury, but trial by Jury should, and under experienced guidance would, practically render "non-suits" and "new-trials" things of the past. To secure this desirable end, Jury trials must be assigned to Nisi Prius Judges, in the true sense of the term. It is unlawful to speak lightly of the Bench, and nothing of the kind is here meant; but is it frivolous to say that a Barrister, whose experience at Nisi Prius has embraced three briefs in twenty years, has pretty much the same capacity, or, call it, facility, for skilfully guiding a Jury trial as the ship-builder at the Admiralty Dockard has for directing the Channel Fleet in action? The conflict may develop the former into a Brougham, and the latter into a Nelson, but the chances are a little the other way. *Ne sutor ultra crepidam* was not meant to apply only to cobblers. Jury lawyers are neither as plentiful nor as brilliant as in days of yore, albeit the grosser metal brings now a better price; and Jury Judges are becoming smaller by degrees, and beautifully less. The spectacle of a non-Jury Judge wrestling with a mass of complicated facts, incident to the