

Mr. Lefroy and myself, his Lordship was merely employing a rather loose metonymy in which the legislature is treated as identical with the political entity which it represents seems to me quite inevitable when I read the following passage taken from the second paragraph of the judgment (the italics are mine):

"It must also be borne in mind that there is a broad distinction between proprietary rights and legislative jurisdiction. The fact that such jurisdiction in respect to a particular subject matter *is conferred on the Dominion legislature*, for example, affords no evidence that any proprietary rights *were transferred to the Dominion*. There is no presumption that, because legislative jurisdiction *was vested in the Dominion Parliament*, proprietary rights *were transferred to it*."

The confusion between the Dominion and its Parliament here becomes quite obvious, owing to the juxta-position of the two sentences in which it occurs. But that the sentence discussed in Mr. Lefroy's article presents another example of the same verbal laxity, is, to my mind, almost too clear for argument when I find in an earlier part of the same paragraph the statement that "their lordships were of the opinion that the British North America Act did not convey to the Dominion of Canada any proprietary rights in relation to fisheries." The only difference between the two cases is that in the latter the error is somewhat less patent, owing to the fact that the correct and incorrect expressions are separated by several sentences.

The objections to the explanation thus offered for the purpose of bringing Lord Herschel's remark into harmony with the normal conceptions and terminology of constitutional jurisprudence, as well as with the earlier rulings of the Privy Council itself, seem to be quite imponderable. There is nothing at all startling in the assumption that a judge, however eminent, may sometimes, to borrow a phrase from Mr. Silas Wegg, "decline and fall" into language which does not satisfy the stricter standards of technical accuracy. *Aliquando bonus dormitat Homerus*. To most lawyers, I think, the supposition of a momentary lapse of this character will appear infinitely preferable to the alternative theory that, in this single sentence, the judgment breaks away from the conception which dominates it, viz., that the extent of the power of