

took so well that some four hundred grocers insured, when suddenly about a month ago, the State Insurance Commissioner issued his fiat, demanding immediate closure of the business.

"The association is putting up some fight, and declares that if forced out of California, it will open an office at Tia Juana, the nearest town in Mexico, and do business from thence, where it is stated there are no such cruel legislative laws on the statute books. *"Mais nous verrons,"* says Mr. W. R. Gilson, our esteemed Los Angeles correspondent in this matter.

THE DOMINION INSURANCE ACT DECLARED ULTRA VIRES.

In a very carefully reasoned and elaborate judgment, Police Magistrate Leet has declared the Insurance Act, in certain points at least, to be *ultra vires* of the Dominion Parliament. The decision, if upheld, is of great importance, not only to the public, but to every insurance company transacting business in the Dominion, whether it be fire, life, accident, liability or any kind whatever. The issue arises out of the case of the King versus Willis Faber & Co., Montreal, representatives of the Lloyds of London, England. The defendants were prosecuted under the Insurance Act "underground" clause, for having delivered receipts and policies and having collected premiums for a non-licensed company. The accused raised three points of defence: First, that they represented, or were the agents of the insured, and not of the insurer.

Second—That The Lloyds is not a company within the meaning of the Insurance Act.

Third—That the Insurance Act is *ultra vires* and especially the prohibitions therein prohibiting any person from delivering receipts, or policies, or collecting or receiving premiums for an insurer who has not been licensed under the Insurance Act.

The court held that both of the first points were badly taken, but upheld the third and thereupon dismissed the complaint.

Judge Leet holds that if the Insurance Act is *intra vires* of the Dominion Parliament it can only be so under the sub-section of Section 91 of the British North America Act, which gives Parliament the exclusive right to legislate concerning "The Regulation of Trade and Commerce." Addressing himself to this phase of the question, he first puts a restricted interpretation upon the phrase, and secondly questions whether insurance is to be regarded as coming under the head of Trade and Commerce. He quotes, with reference to the first point, from the Privy Council judgment in the Parsons case:

"The words 'regulation of trade and commerce' in their unlimited sense, are sufficiently wide, if uncontrolled by the context and other parts of the act, to include every regulation of trade ranging from political arrangements in regard to trade with foreign governments, requiring the sanction of Parliament, down to minute rules for regulating particular trades. But a consideration of the act shows that the words were not used in this unlimited sense. In the first place, the collocation of No. 2 with classes of subjects of national and general concern affords an indication that regulations relating to general trade and commerce were in the mind of the Legislature when conferring this power on the Dominion Parliament. If the words had been intended to have the full scope of which in their literal meaning they are susceptible, the specific men-

tion of several of the other classes of subjects enumerated in section 91 would have been unnecessary: as, 15, banking; 17, weights and measures; 18, bills of exchange and promissory notes; 19, interest; and even 21, bankruptcy and insolvency."

In this connection it may be remarked that insurance is so intimately identified with trade and commerce that no trade or commerce of any importance could be carried on without it. Insurance is as essential to trade and commerce as banking, for no bank would advance money on uninsured merchandise.

With reference to the second point, Judge Leet quotes from the same judgment, but not with any conclusive effect; the words of the judgment on this point being:

"Whether the business of fire insurance properly falls within the description of a 'trade' must, in their lordships' view, depend upon the sense in which that word is used in the particular statute to be construed; but in the present case their lordships do not find it necessary to rest their decision on the narrow ground that the business of insurance is not a trade."

Judge Leet thinks it suggestive although not conclusive, that when the Department of Trade and Commerce was created the Insurance Department was not put under its control.

Upon the whole he maintains that because the whole Dominion may be interested in a subject, or because a business may be carried on in all the provinces of the Dominion, does not of itself bring it within section 91; and further that an insurance contract is always a local one and not of any inter-provincial character. Here we must respectfully take issue with His Honour. An insurance contract is not always a local one. As a matter of fact there are a great many insurance contracts which cover property in more than one province and some which cover property in all or nearly all the provinces. Take, for instance, the property of banks, railways, milling companies and very many other important industries.

The weak point in this most interesting and important judgment seems to be this. Granting, for the sake of argument, that insurance is not one of the subjects specially reserved for the Dominion Parliament and does not come under the heading of Trade and Commerce, neither is it specially reserved to the Provincial Legislatures, unless it comes under sub-section 16: "Generally all Matters of a merely local or private nature in the Province." The best clause in the whole B. N. A. Act is section 91, which reserves to the Dominion Parliament all the residuary powers not specially assigned to the Provincial Legislatures. The spirit of the Act, unlike that of the Constitution of the United States, is national rather than provincial, and in that spirit it will be interpreted by the highest court in the Empire. It seems to us that the whole question after all is in a nut-shell. Is an insurance company doing business throughout the length and breadth of the Dominion and abroad to be regarded as engaged in operations of "a merely local and private nature" in each province? To ask the question would seem to be to answer it.

However, it is now necessary for the Dominion Government to ascertain and define its position, as to whether it has a right to demand deposits from, regulate the investments of, and generally supervise the business of the insurance companies. We are distinctly under the impression that it has this right; and absolutely certain that if it has not the right, it should get