

CORRESPONDENCE.

have adopted, and which at our own request has been sanctioned and embodied by the highest authority known to British subjects, in an Act of the Imperial Parliament.

It is not incompatible that on the first branch of such a constitution an author may be of the very highest authority, as involving the exercise of research, erudition, unwearied industry, vast historical knowledge, and accurate powers of deduction; while on the second, which more properly is limited to an analysis of a written instrument—the construction of a statute—his views, from the want of long years' of legal training, may not be equally correct. The first has probably given to his mind, a broader range it may be, but coupled with it a tendency to look at expediency or policy; the latter involves a mental process of reasoning under fixed legal rules leading to the necessary logical sequence.

The distinction will be seen at once by reference to that part of Mr. Todd's letter, at page 182, asserting the competency of the Local Legislature to regulate procedure in the Supreme Court of British Columbia, which assumes, that because the Imperial Parliament in 1870 and 1875 claimed this power, and because the Australian Colonies exercised it in their legislation with reference to their courts when they so desired, therefore "a similar power must be admitted to exist in all Colonial Legislatures that have been authorized to regulate the administration of justice in the particular Colony or Province." The "omnipotence of Parliament" may well apply in both those instances. The Imperial Parliament is under no restraint save that its judgment dictates.

The Australian Colonies, as to their internal legislation, are autonomous save so far that it may not conflict with Imperial Legislation or sovereignty. They have entered into no compact by which, as between each other, and subject to a general union their powers are limited, there is no agreement ratified by the highest authority by which they have severally relinquished rights they otherwise possessed. The very use by Mr. Todd of the expression "that have been authorized" shows the inapplicability of his illustration, because the term itself indicates a concession and limitation of authority which must be sought for in the instrument that concedes it. Thus such legislation by the Imperial Parliament, or by the Australian colonies, is no argument that similar legislation would consequently be legal in the Local Legislatures of the Dominion; nor is a similar deduction necessarily to be drawn from the fact that the Legislature of Ontario has exercised such a power. The statutes of that Legislature are entitled to the greatest respect on account of the many able and distinguished men who form it, but it does not necessarily follow, nor can it be conclusively assumed, that their legislation in that direction is nowhere in the Dominion to be questioned. The validity of their acts in that line can only be determined when the point is

raised in the Courts of Ontario, and disposed of either by those courts or the Supreme Court of Canada.

Nor is it clearly perceptible what the Imperial "Colonial Laws Validity Act," referred to by Mr. Todd, has to do with the question. That statute was passed in 1865, previous to Confederation, and had reference to Colonies acting independently of each other, in direct communication with the Imperial Government, and subjection to its immediate supervision, not to the subordinate sub-divisions of a colony acting under powers specifically detailed in a subsequent Imperial Statute, and subject to the control of an intervening authority between themselves and the Imperial Government, the powers and duties of which intervening authority are again specified and detailed in the same subsequent Imperial Statute. However much that Colonial Laws Validity Act may apply to the general Government of Canada and the Legislature of the Dominion Parliament, it can have no possible bearing upon the Legislation of the separate Provinces since Confederation. What they do not find in the British North America Act, 1867, they need not look for in that. Coming from a lesser authority than Mr. Todd, to a legal mind, such a reference would seem like a blind—the semblance of learning without its substance.

It will not be necessary to follow the writer through his article. It is obvious that he has given to the several judgments but a very cursory reading, and with a preconceived opinion in the opposite direction. He asserts but does not reason, and entirely ignoring the fact that there had been no previous decision by any Court on the immediate point raised, boldly assumes that *Falvin v. Langlois* disposed of it, though in that able judgment the point was not even under advisement; I doubt, indeed, if the distinguished Chief Justice of Canada who presided in that case would himself have treated the question in so lofty and summary a way. Whether right or wrong the judgments delivered by the several judges in the *Thrasher Case* are sufficiently explicit. If they cannot be sustained by what is therein contained, those judges must be manifestly in error. The legal estimate of the Courts and Bars of the several Provinces and the final opinion of the Supreme Court of Canada must ultimately decide.

Though Mr. Todd has not deemed it necessary to quote any authority, there really is one to which he might have referred as apparently leading to a conclusion different from that of the B. C. Judges, not in the immediate adjudication itself, but in the line of reasoning urged by the Court; I mean *The Citizens Insurance Co. v. Parsons*, L. R. 7 App. cases, which judgment was delivered in November last, but only lately received in this Province. I have said "apparently leading" because I think it capable of explanation. In delivering judgment Sir Monague Smith referring to the distribution of