

## CORRESPONDENCE.

those of the present Chief Justice of the Supreme Court whom he goes out of his way often to bespatter with fulsome adulation. His pages too, are full of turgid involved periods, wearisome redundancy and badly constructed sentences. In fact his composition is far worse than his ideas, which to do him justice are in many branches of the subject, in my opinion, very clear and correct; and, notwithstanding the serious and numerous faults in the work, there can be no doubt that its arguments are often cogent and convincing and its conclusions sound. That Mr. Travis has not only written from the standpoint of a Federalist in the sense in which Mr. Justice Lorranger uses that term but that he has also written as an *advocate* for maintaining the paramount power of the Dominion Parliament as against the power of the Provincial Parliament must be quite clear to any impartial reader of his book.

To be a good judge a man, who being a Tory or Grit but yesterday, and notwithstanding his elevation to the bench, still feeling strong sympathy with one or other of those great parties, must sink his party sympathies entirely, and must be able to decide between man and man or between Province and Dominion, entirely unaffected by his former feelings and associations, and so with the author who undertakes to give the public the proper interpretation of so all-important a statute as the one before us. As for myself I am confident that what follows, whether it shall be sound or unsound reasoning, whether the conclusions at which I have arrived are correct or erroneous, will at all events be far from any political bias and the result of the best considerations which my poor powers are capable of.

The readers of the LAW JOURNAL need not be afraid that I am going to write a book on this subject. My idea is merely to discuss briefly a few of the questions that have come up, not in any scientific or set order, but just as they occur, or as I may have the presumption to think I can throw some light upon them. For example: take the much-debated problem of the proper limitations of the jurisdiction of the respective Parliaments upon subjects excepted out of a larger class of subjects.

"Marriage" is a subject assigned to the Dominion. "The solemnization of marriage in the Province" is assigned to the Province. Mr. Travis contends that the Dominion can make a general law respecting marriage, which would affect the solemnization of marriage in every Province, and that thereafter no Provincial Legislature could legislate so as to repeal the Dominion law on the subject. This is an instance of his excessive zeal for the maintenance of the paramount power of the Dominion and in this in my opinion he is clearly wrong. There

is a clear principle by which this question can be decided and I will state it a little further on.

The subjects of "Property and Civil rights in the Province" are assigned exclusively to the Provincial Legislature, but "Bankruptcy and Insolvency," "Copyrights," "Patents of Invention," "The regulation of trade and commerce," "Weights and Measures" and other subjects which are all branches or sub-classes of the general subject of "Property and Civil rights" are assigned exclusively to the Dominion.

The Dominion Parliament can undoubtedly legislate effectually on all these sub-classes and its jurisdiction occupies their whole territory, so to speak, and the local Legislature cannot in any manner trench upon them.

These two examples will suffice to illustrate my principle, which is this, that when a general subject is given to either Legislature, and an exception or sub-class is taken out of it and given to the other Legislature, the authority of the latter is supreme and exclusive within that excepted class. Therefore the Dominion can in no way legislate to affect the solemnization of marriage in any Province. A portion of territory is as it were fenced off and the Dominion, whilst it may roam unchallenged over the rest of the territory, must not encroach on this in any way whatever.

"Marriage and Divorce" are themselves parts of the larger class of "Civil Rights in the Province" and so the Provincial Legislature must be careful not to trench upon them in any way.

"The criminal law except the constitution of Courts of criminal jurisdiction," is assigned to the Dominion, and so the constitution of such Courts is a subject within the absolute control of the Province, and no matter how much the Dominion may legislate upon criminal law and criminal procedure, it is powerless to enact one word which shall affect the constitution of the Courts. By legislating on Bankruptcy and Insolvency or Interest or Patents, the Dominion necessarily legislates respecting property and civil rights in the Province, but that does not matter, the former being exceptions carved out of the general subject of property and civil rights.

If this principle is applied to the determination of other points similarly arising, I think it will be found to furnish a safe rule and one which is consistent with what our friend Mr. Travis is pleased to refer to so frequently as the "well-decided cases." I hope to be able in future numbers to point out some of the statutes of the respective Parliaments which in my opinion are *ultra vires* and to give my reasons for so thinking.

Winnipeg.

GEORGE PATTERSON.