

CORRESPONDENCE.

"to make laws in relation to matters coming within the classes of subjects enumerated in the sub-sections." Sub-section 14 enumerated "the administration of justice, including the constitution, maintenance and organization of Provincial Courts, and including procedure of these Courts." The Supreme Court of British Columbia, (omitting reference to other Courts), was "constituted" long before the union of the province with the confederation. It was "organized" before confederation by Imperial authorities, and after such union by the Governor General. It is "maintained" under the *Terms of Union*, sec. 10, by the Dominion. The Supreme Court of B. C., therefore, is not within the description of "those" Courts in which alone procedure is controllable by the Local Legislature. And, not being within sub-section 14, it is not within section 92 at all; and, therefore, *by the sweeping force of sec. 91 is reserved exclusively to the authority of the Dominion Legislature.*

The judgments in the main affirmed, among other things, that the foregoing contention was correct. And yet Mr. Todd says not a word about section 91. Has he forgotten what Lord Carnarvon said in the House of Lords on the passing of the B. N. A. Act, upon section 91?

I am aware that the resolutions and speeches which preceded and accompanied the passing of the Act are merged in the Act, still it is interesting reading in days when, as I believe, Ritchie, C.J., remarked, section 91 is so much neglected by expounders of constitutional law:—"Just as the authority (Lord C. says) of the Central Parliament will prevail when it comes into conflict with the Local Legislature, so the residue of legislation, if any, unprovided for in the specific classification (which he had just explained) will belong to the central body. It will be seen under the 91st clause that the classification is not intended 'to restrict the generality' of the powers previously given to the central Parliament, and that those powers extend to all laws made 'for the peace, order and good government' of the Confederation; terms which, according to all precedents, will, I understand, carry with them an ample measure of legislative authority."

In *The Canada Insurance Company v. Parsons*, in appeal before the Privy Council in the last English Law Reports, Sir Barnes Peacock says, as our judges do, that section 91 cannot be

taken without section 92, or section 92 without section 91.

Our Chief Justice, Sir M. B. Begbie, in the *Thrasher* judgment, (see pamphlet, page 13), after citing section 92 and its sub-sections, adds:—"It must throughout be borne in mind that by the immediately preceding section (91) every topic of legislation was swept into the power, the exclusive power of the Parliament of Canada, (viz., the Crown, the Senate and Commons of Canada), except only such matters as by this Act (not any one section of it but the whole Act) are exclusively assigned to the Local Legislature."

Mr. Justice Crease, in the same judgment on the *Thrasher Case*, (pamphlet, pages 40, 41, 42 and 43), cites numerous authorities, and enters very fully on the effect of section 91, as he terms it, "the sweeping character of section 91," and after setting forth the theory of the Attorney-General (almost identical with that of Mr. Todd: one might imagine they had borrowed their views from each other), he adds:—"In order to construe such a theory it became necessary to ignore section 91 and the Imperial Vancouver Island Act of 1859, and that the learned Attorney-General effectually did. But then what is the value of an argument on the British North America Act, which entirely ignores section 91?"

Hear Mr. Justice Gray (same judgment, pamphlet, page 63), on the same subject:—"As must necessarily be the case, the discussion turns mainly on the 91st and 92nd sections of the B. N. A. Act." Then, after showing that the Supreme Court of B. C. was not in "those" Courts mentioned in sub-section 14 of section 92, that learned judge goes on to say, (page 68:—"The general authority conferred by 91 being to legislate on all matters, and coming exclusively within 92, the 129th section steps in authorizing legislation as to the existing Courts in the Province by the Parliament of Canada or the Local Legislature, as one or the other under the B. N. A. Act is entitled," adding:—"The Parliament of Canada has legislated on the subject." And yet in the face of these authorities, and the judgment *passim*, Mr. Todd makes no reference whatever in his comments, to the value placed by the judgment under his review to section 91 of the Great Constitutional Act of Canada.

Of the uncalled for reflection Mr. Todd makes,