

An editor speaks

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AN EDITOR SPEAKS.

By PIERRE BÉGUIN.

“Rights, and political opportuneness”.

In a direct democracy it may happen that the Sovereign People take a decision, but this same decision does not appear to be sufficiently orthodox to the jurists. The controlling body, which is charged with the task of estimating the constitutionality of the laws, may then find itself facing a very thorny dilemma: whether to adopt the point-of-view of strict law and annul a decision taken by the people, or whether to overlook certain juridistical considerations and to respect the will of the people. A problem of this kind has just arisen in the Federal Parliament. The solution given to it shows that the jurists have triumphed. Here are the facts:

For some time past the Federal Authorities have been experiencing the greatest difficulty in finding on our territory suitable exercise grounds for armoured cars. Each time that they have fixed their choice on this or that terrain, considerations of a local order have upset their plans. Fear is expressed regarding the nuisance that would be caused as a result of the noise resulting from firing exercises. The need for quiet, on the part of the inhabitants, is invoked, as well as the exigencies of the tourist traffic. Above all, stress is laid on the reluctance of the farmers to give up the land which they are farming. As a matter of fact, it is not surprising that reactions of this kind should occur in a country which is as densely populated as ours is, in which every square metre of land is precious and in which waste land is rarely to be found, or else is situated at such altitudes that there could be no question of establishing any military exercise ground.

One Commune, however, in the Canton of Vaud, had consented to sell some ground to the Army. Immediately, opposition arose in the neighbouring Communes. A Popular Initiative was launched by the citizens, with the object of establishing a new rule, whereby ground, in the Canton of Vaud, could not be alienated for the purpose of military exercises unless all the adjoining Communes were in agreement. This Initiative proved successful. It was approved by the people of Vaud, and has now become a new Article in the Constitution of one of our Cantons.

Nevertheless, the Cantons are not the absolute masters of their Constitutional right. It is also

necessary for the Central State, *i.e.* the Confederation, to give its consent and see to it that the new regulation is not in contradiction to the Federal Law. It is Parliament which decides in the last instance, and it is at that stage that the jurists take a hand in the matter.

In the present case they have discovered that the interdiction passed on a Commune to sell its land to the Army without the consent of the neighbouring Communes was contrary to Federal Law, in the sense that it is not permissible to limit the property rights of a Public Law corporation, when the same rule is not applicable to other, private, owners of land. It is possible that this thesis is right and that all the jurists will rally to it. But it would also appear quite clear that the average citizen, the man in the street, in this particular case the Vaudois voter who voted in favour of this rule because he was convinced of its opportuneness, will not agree with this argument. He will be inclined to think that the Law has not furnished a reason, but a pretext for the purpose of annulling the decision.

The Federal Government had realised this and intended to give a Federal guarantee to this constitutional text, which might possibly inconvenience it, later on. However, in the Federal Chambers majorities were formed which sided with the jurists. This would appear to be somewhat regrettable. However convinced one may be that respect for the Law is the major principle of all liberal democracies, one must avoid doing anything which will foster the popular feeling that the law always provides the means for not respecting the will of the people. Anyway, such juridistical rigour should only manifest itself in regard to important questions. When it has for its object merely an affair of minute importance it does more harm than good.

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