13. Property and Civil Rights in the Province.

and

16. Generally all Matters of a merely local or private Nature in the Province."

It will be immediately apparent that the present bill falls within Head 13, and perhaps Head 16, of the said section 92. Accordingly, at least *prima facie*, it would be within the exclusive legislative competence of the provincial legislatures. However, as I have said, if it is nevertheless legislation in respect of "Marriage" as that word is used in the context of section 91, the legislation would fall within the exclusive competence of the Parliament of Canada.

If paramount regard is had to the context, "Marriage" would mean "the substantial validity of marriages"; that is to say, the conditions precedent, other than purely ceremonial conditions, that must be satisfied before a marriage is valid. I say this because the word "Marriage" does not appear in isolation in section 91, but together with the word "Divorce", which latter word connotes the dissolution or invalidation of marriages. This would suggest that "Marriage" might be taken to relate to the establishment or validation of marriages. Moreover, it must be read against "Solemnization of Marriage" in section 92 which would again appear to suggest that whereas the provincial legislatures have jurisdiction over the formal or ceremonial validity of marriages, the federal Parliament has jurisdiction over the substantial validity of marriages. This would give the word "Marriage" a limited meaning and would render the present bill unconstitutional. I am not suggesting that this contextual approach is necessarily conclusive, but it is an approach which might well be taken if the issue were squarely raised before the courts.

As to the importance of the context in the construction of statutory words, see Maxwell on Interpretation of Statutes, 11th Edition, 1962, at pp. 16 to 30, both inclusive.

I now turn to a consideration of the judicial precedents bearing upon this question.

In the Marriage Reference to the Supreme Court in 1912, the issue was simply whether the heading "Marriage" as it appears in section 91 extends to the whole field of validity or whether "Solemnization of Marriage" in section 92 operates as an exception thereto, so that the formal or ceremonial conditions for the validity of a marriage are exclusively a provincial responsibility. The issue was well summarized in the Headnote to the decision of the Judicial Committee appearing in 1912 A.C. at p. 880. It reads as follows:—

> "Under ss. 91 and 92 of the British North America Act, 1867, the exclusive power conferred on the provincial Legislature to make laws relating to the solemnization of marriage in the province operates by way of exception to the exclusive jurisdiction as to its validity conferred upon the Dominion, and enables the provincial Legislature to enact conditions as to solemnization, and in particular as to the right to perform the ceremony, which may affect the validity of the contract."

This was also made clear by the argumentation advanced by Messrs. Nesbitt, Lawrence and Lafleur in support of the jurisdiction of Parliament.