

from the way sec. 91 is framed in favour of a liberal interpretation of the B.N.A. Act, (s): "The Confederation Act was passed with the object of conciliating the interests and rights of a pre-existing Province; this Act should be liberally interpreted. . . . If it had been desired to limit the powers of the Provincial Legislatures to certain particular subjects, why not have defined those powers, and then said afterwards that 'all other powers belonged to the Federal Parliament.' On the contrary, it has been necessary to specify in sec. 91 the special powers of this Parliament in certain cases, as in a treaty between two independent parties, which specifies the rights belonging to each of the two."

There is one important exception from what we may call the general residuary legislative power of the Dominion Parliament specially provided for in the B.N.A. Act. The right of legislation as to property and civil rights in each of the Provinces is conferred on the Legislature of that Province: see per Strong, V.C., in *re Goodhue* (1872), (t). But though the power of Provincial Legislatures is strictly confined to property and civil rights "in the Province," nevertheless the Dominion Parliament has not power by itself to pass laws as to property and civil rights generally over the Dominion, for sec. 94 specially provides that any such law shall not have effect in any Province unless and until adopted and enacted as law by the Legislature thereof.

And of course the Dominion Parliament, as well as the Local Legislatures, is subject to the express provisions of the British North America Act. For example, as put by O'Connor, J., in the case of *Gibson v. McDonald*, (u): "The exclusive right to appoint the judges is reserved to and vested in the Government of the Dominion, and even the Parliament of the Dominion cannot divest the Government of that power, for it cannot so change the British North America Act." And we are reminded of a further limitation to the residuary legislative power of the Dominion Parliament in the argument of Mr. Edward Blake, Q.C., in the case of *the St. Catharines Milling and Lumber Co. v. The Queen* (commonly known as the Ontario Lands Case), who observes: "As to the legislative powers, a residuum—I do not say the residuum, but a residuum—a part not specifically reserved to the Provinces, is granted generally to the Dominion. I say 'a part,' because inherent in the Federal form there is with its advantages, great as they are, what may be deemed a defect—it has the 'defects of its qualities'; and there are some things which cannot at all be done, or at any rate done by the central authority in a Federal union—which cannot at all be done *modo et forma*, which they may be done in a legislative union" (v).

Again, as Wilson, J., says in *Reg. v. Taylor* (1875), (w): "The Dominion may be said to have general jurisdiction, or, in the language of constitu-

(s) *Bank of Toronto v. Lambe* (1885), 1 Mont. L.R., Q.B., at p. 166; 4 Cart. at p. 60.

(t) 19 Gr. at p. 452; 1 Cart. at p. 573.

(u) 7 O.R. at p. 419; 3 Cart. at p. 328.

(v) This argument has been printed by the press of *The Budget*, 64 Bay St., Toronto, 1888. The passage quoted will be found at p. 8.

(w) 36 U.C.R. at p. 191.