Legislature may make laws, it must be clearly understood that there is nothing at all to prevent them from legislating for the whole Dominion in matters not to be found in the list of those given to them, and not assigned to the Provinces.'"

In this sense it is that, as stated by Ritchie, C.J., in *Valin* v. *Langlois* (1879), (*m*): "The British North America Act vests in the Dominion Parliament plenary power of legislation, in no way limited or circumscribed, and as large, and of the same nature and extent, as the Parliament of Great Britain, by whom the power to legislate was conferred, itself had." Or, as Gwynne, J., expresses it in *Citizens Insurance Co.* v. *Parsons* (1880), (*n*): "The whole scope and object of the British North America Act," and "the scheme of the constitutional government which it was designed to create, was to vest in the Dominion Parliament, consisting of Her Majesty (herself the supreme executive authority) as one member and a Senate and House of Commons as the other members of the legislative body, the supreme jurisdiction to legislate upon all subjects whatsoever, except as to certain specific matters particularly enumerated, purely of a local, domestic, and private nature, which were assigned to the Provinces" (*o*).

Under this general legislative power of the Dominion Parliament, the Dominion Act (*p*), whereby authority is conferred upon courts and judges in Canada to make orders for the examination in the Dominion of any witness or party in relation to any civil or commercial matters pending before any British or foreign tribunal, was held *intra vires*: *ex parte Smith* (1872), (*q*). It was objected that it was a matter of procedure, and therefore within the jurisdiction of the Provincial Legislature; but Torrance, J., held that it was "a matter of international comity, and the Act is one which the Dominion Parliament might very properly pass."

In view, then, of the above authorities, it seems impossible not to take exception to the words of Peters, J., in *Kelly* v. *Sullivan* (1875), (*r*), where he says: "This Island had a constitution similar to that of the other B.N.A. Provinces when it entered the Confederation. The B.N.A. Act of 1867 does not abrogate these Provincial constitutions, but merely withdraws from them the power of making laws regarding certain matters enumerated in sec. 91 over which they previously had jurisdiction. But, as to all matters not so withdrawn, the Provinces remain in possession of their 'old dominion,' and retain their jurisdiction over them in the same plight as it previously existed." Whatever the intention of learned judge may have been, the above passage seems to read as though there was a residue of power in the Provinces after deducting the enumerated matters in sec. 91, whereas we have seen the residuary powers are all in the Dominion, the Provinces only having the enumerated subjects in sec. 92 under their control. But this does not destroy the force of the argument which Tessier, J., draws

(*m*) 3 S.C.R. at p. 16; 1 Cart. at p. 173.

(*n*) 4 S.C.R. at p. 333; 1 Cart. at p. 338.

(*o*) So per Fournier, J., in *Severn* v. *The Queen* (1878), 2 S.C.R. at p. 120, 1 Cart. at p. 464; per Dorion, C.J., in *ex parte Dansereau* (1875), 19 L.C.J. at pp. 231-2, 2 Cart. at p. 190.

(*p*) 31 Vict., c. 76.

(*q*) 16 L.C.J. 140; 2 Cart. 330.

(*r*) P.E.I. at pp. 91-2.