

The CHAIRMAN: Not yet. However, Mr. Hopkins is going to give us his opinion on the constitutionality of the bill. I think we are entitled to have his opinion on it.

Senator MONETTE: The sponsor of this bill did not explain the law involved when he introduced the bill in the Senate. It will have to go back there to be discussed on that point.

The CHAIRMAN: Yes, of course it will have to go back to the Senate.

Senator MONETTE: In passing, may I give shortly my view on this. This is the rule of 1912. I have not covered this point before as the honourable senator has done. My impression is that this decision had a bearing on the validity of marriage, not on the power of the parties civilly to do this or to do that, to make such a contract or not make such a contract. I find that in the decision given and reported in Olmsted's "Decisions of the Judicial Committee of the Privy Council", Vol. 1 at p. 656, Viscount Haldane, L.C., is reported as follows:

In the course of the argument it became apparent that the real controversy between the parties was as to whether all questions relating to the validity of the contract of marriage, including the conditions of that validity, were within the exclusive jurisdiction conferred on the Dominion Parliament by s. 91.

The CHAIRMAN: That is it.

Senator MONETTE: From that we gather that the whole discussion seems to indicate they were discussing points as to the validity of marriage—

The CHAIRMAN: Celebration.

Senator MONETTE: Yes, the celebration or a condition of validity. The power given to the federal Parliament was the power given as to the validity of the contract.

After expressing the views of some of the lawyers who argued on different points, Viscount Haldane continued:

Notwithstanding the able argument addressed to them, their Lordships have arrived at the conclusion that the jurisdiction of the Dominion Parliament does not, on the true construction of ss. 91 and 92, cover the whole field of validity. They consider that the provision in s. 92 conferring on the provincial Legislature the exclusion power to make laws relating to the solemnization of marriage in the province operates by way of exception to the powers conferred as regards marriage by s. 91, and enables the provincial Legislature to enact conditions as to solemnization which may affect the validity of the contract.

I should not like to take up more time at the moment. It appears that what they had to discuss in relation to what was proposed by counsel on both sides was as to whether the conditions of validity were rightly to belong in one part to the federal and in one part to the provinces.

The CHAIRMAN: That is to say, that the validity of marriage depends not only upon whether a couple had the right to get married but whether they celebrated their marriage within the provisions of the provincial law. If they had missed that, the provincial law would apply and the marriage might not be valid if it had not been solemnized according to the provincial legislation.

Senator MONETTE: When we come to section 91 it appears at first sight that Viscount Haldane and the Privy Council were not too wrong because section 91 says that it shall be lawful for the Queen exclusively to make laws on certain classes of subjects—and item No. 26 is "Marriage and Divorce".