

causes which the King's Ecclesiastical Courts could not dissolve marriages.

In considering the effect of Dominion and Provincial legislation, two axioms are to be remembered:

(1) All legislative power in Canada is limited by the B.N.A. Act.

(2) No legislature may make laws by reference, which it could not itself enact.

When, therefore, we come to consider the effect of the North West Territories Act (R.S.O. (1886) c. 50) s. 11, it must be remembered that the right to make laws respecting "property and civil rights" is vested exclusively in the Provincial Legislatures, and when the Dominion Parliament assumed to enact that "the laws of England relating to civil and criminal matters as the same existed on the 15th July, 1870, shall be in force in the Territories," so far as regards "civil matters" are concerned, it appears to have been exceeding the limits of its legislative powers. The 146th section of the B.N.A. Act providing for the admission of the N.W. Territories gave no jurisdiction to legislate for such Territories in civil matters and we have not come across any statute giving the Dominion Parliament that power. Mr. Thompson's argument is that the English divorce law as it existed in 1870 by s. 11 above referred to incorporated into the law of the N.W. Territories, but if "divorce" can properly be regarded as a civil matter, his argument would be untenable if, as we conceive, the Dominion Parliament had no legislative power in "civil" matters. But even if it had such power, a reasonable proper construction of the B.N.A. Act would appear to require that "divorce and marriage" shall be regarded as something separate and distinct from "civil matters" which are assigned to Provincial jurisdiction, and therefore that the Dominion Parliament by the imposition of laws concerning "civil matters" could not be held to have imposed a divorce law.

The analogy which Mr. Thompson draws between the legislation in British Columbia and that relating to Saskatchewan appears to me to fail, because the British Columbia Legislature prior to Confederation had full power to incorporate English