

concur, in my humble opinion, depends the stability and ultimate success of this great Confederation."

So likewise the Privy Council decisions upon which our leading proposition is based, by affirming that within their sphere the jurisdiction of Provincial Legislatures is indeed exclusive, finally dispose of the surprising opinion, stated by Wilson, C.J., in *re Niagara Election Case*, *infra*, to have been expressed by Johnson, J., in the *Montreal Centre Election Case*, *Ryan v. Devlin*, (j), that because the Parliament have by sec. 91 of the B.N.A. Act the power "to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by the Act assigned exclusively to the Legislatures of the Provinces"; and because "for greater certainty, but not so as to restrict the generality of the foregoing terms of the section," it is declared that, "notwithstanding anything in this Act, the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects" therein next enumerated, therefore, the Parliament might legislate on matters assigned by the Act exclusively to the Legislatures of the Provinces; because the grant of that exclusive jurisdiction, it is said, is not to "restrict the generality of the foregoing terms," and because the *non obstante* clause overrides the whole of that section.

As Wilson, C.J., says (referring to this judgment of Johnson, J.) in *re Niagara Election Case* (1878): (k) "The words 'and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section,' relate to the preceding terms, 'peace, order, and good government of Canada,' qualified by non-control over the exclusive jurisdiction of the Provinces, just as if the section had read, 'except in relation to those classes of subjects assigned exclusively to the Legislatures of the Provinces.'" And he adds: "I am also of opinion that the words 'notwithstanding anything in this Act' apply only to 'the classes of subjects next hereafter enumerated,' and that their meaning is, if there is nothing in the classes of subjects over which the Provinces have exclusive jurisdiction inconsistent with the exclusive control of the Dominion over the classes of subjects specially assigned to the Dominion Parliament, or over matters which relate to the 'peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces,' then the Dominion Parliament shall have full authority to legislate." And Johnson, J., in the case we have already referred to of *Ryan v. Devlin* (1875, (l)), himself seems to correctly paraphrase sec. 91 where he says: "As it was obviously impossible for any foresight to provide beforehand and in every detail for every case in which Dominion legislation might be required, the Imperial Act seems in effect to have said: 'Notwithstanding anything in this Act, notwithstanding that we have enumerated the most salient subjects upon which the Dominion

(j) 20 L.C.J. 77. But, *quære*, whether the dicta of Johnson, J., in this case are intended to be so understood, or go any further than is indicated in the quotation from his judgment (at p. 83) cited a little further on.

(k) 29 C.P. at p. 295-6.

(l) 20 L.C.J. at p. 83.