

of England), and especially laws respecting the following subjects . . .

And Subject 31 is "Marriage and Divorce".

**Hon. Mr. Roebuck:** On what page is that?

**Hon. Mr. Pouliot:** It is at page 1029, at the end of the book. If my honourable friend desires it I will be glad to pass the book to him.

**Hon. Mr. Roebuck:** I have a copy.

**Hon. Mr. Pouliot:** On the following page, Resolution No. 43 reads as follows:

The Local Legislatures shall have power to make laws respecting the following subjects . . .

And subject No. 15 is:

Property and Civil Rights, excepting those portions thereof assigned to the General Parliament.

The whole matter was referred to the Supreme Court in the first place and then to the Privy Council in 1912. It was decided then by the highest tribunal that marriage and divorce are exclusive to the federal Parliament, with the exception of the solemnization of marriage which is exclusive to the provinces. The court added that everything concerning marriage and divorce belonged exclusively to the Parliament of Canada, with the exception of the solemnization of marriage reserved exclusively to the provinces.

It would be superfluous to read section 91 and 92 of the Constitution of 1867 concerning respectively the powers of the Parliament of Canada and the provincial legislatures, because you know them by heart.

As we have nothing with regard to the debates or deliberations of the Quebec Conference, we must have a look at the Confederation Debates, where the aforementioned resolutions have been discussed by the Fathers of Confederation.

At that time the Prime Minister of Canada, who was also Receiver General and Minister of Militia, was the Honourable Colonel Sir Etienne Pascal Taché. He was a delightful gentleman and was a very good family doctor. I do not believe that he had made any special study of law; when he spoke on marriage and divorce he read a paper which had been presented to him to read. It is reported as follows at page 344:

Remarks have also been made about the laws of divorce and marriage, and the honourable member for the division of DeLanaudière (Hon. Mr. Olivier) told us that the Conference had done well in transferring the power of divorce to the General Government. On his part, I think

this was a wise view of the question, and I am glad to have the opportunity of now telling him so. He was, however very uneasy about the word "marriage". Well, I will try to put him right and at his ease on that point; and I will give him the answer as I find it put down in writing, so that no possible misunderstanding may continue to exist. If the honourable gentleman will but take his pen, he will be able to note my answer:—

This is the paper which he read:

"The word 'marriage' has been inserted to give the General Legislature the right to decide what form of marriage will be legal in all parts of the Confederation, without in any way interfering with the rules and prescriptions of the Church to which the contracting parties belong."

It was the first mention of the rules and prescriptions of the church, in that reference or explanation about marriage.

Then, a few pages further on, at page 388, Sir Hector Louis Langevin, who was a member of several governments before and after Confederation and who at that time was Solicitor General East, spoke as follows:

I will now answer the honourable gentleman as categorically as possible, for I am anxious to be understood, not only in this House, but also by all those who may hereafter read the report of our proceedings. And first of all I will prove that civil rights form part of those which, by article 43 (paragraph 15) of the resolutions, are guaranteed to Lower Canada. This paragraph reads as follows:—

"15. Property and civil rights, excepting those portions thereof assigned to the General Parliament."

Well, amongst these rights are all the civil laws of Lower Canada, and among these latter those which relate to marriage; now it was of the highest importance that it should be so under the proposed system, and therefore the members from Lower Canada at the Conference took great care to obtain the reservation to the Local Government of this important right, and in consenting to allow the word "marriage" after the word "divorce," the delegates have not proposed to take away with one hand from the Local Legislature what they had reserved to it by the other.

Strangely enough, it was exactly what they did. It is for everybody to decide whether it