

designate them), under the B. N. A. Act. We propose with other cases, to examine a number of cases that have been decided in the Supreme Court of N. B., not because that Court, since it lost the benefit of the presence of its late Chief Justice, (the present Sir WM. J. RITCHIE), to give shape, with his great legal knowledge, to its judgments, is of any very high authority, for it must be frankly admitted that it is not; but rather because we find a variety of cases there well fitted for examination, in connection with the decisions of the Supreme Court of Canada, and of the Privy Council Board, to enable us to come to an intelligent conclusion as to what is the law on the vexed, and confessedly, intricate, questions, involved in the cases decided under the not very clear language of the Act.

#### THE DIFFICULTIES STATED.

Perhaps, except for lawyers already familiar with the leading points in the discussion, it would be plunging *in medias res*, to a greater extent than might be judicious, to take up these cases without some preliminary explanation, which we will, therefore, first make, as briefly as possible; reserving a fuller discussion of the points involved until the cases which we shall cite shall come under examination.

The Constitutional difficulties which have arisen, have mainly been under the 91st and 92nd sections of the Act, which are within that division of the Act providing for the "Distribution of Legislative Powers." And the difficulties which have arisen have been from two causes: *first*, that the subjects named in the 92nd section of the Act, as the subjects within the "*Exclusive Powers of Provincial Legislatures*", are very largely in direct conflict with many of the subjects named in the 91st section, as within the "*Powers of Parliament*." Thus, while it is declared in the 92nd section of the Act, under the head too of "*Exclusive Powers of Provincial Legislatures*," that "In each Province the legislature may *exclusively* make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say";—naming sixteen different "*classes*" of subjects, among which are, for instance,—

"9. Shop, saloon, tavern, auctioneer, and other licenses, in order to the raising of a revenue for provincial, local, or municipal purposes.

"12. The solemnization of marriage in the Province.

"13. Property and civil rights in the Province;"

under the 91st section, under the heading of "*Powers of the Parliament*," are given as among the subjects or matters, within