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LAW OF THE CANADIAN CONSTITUTION: GENERAL LEGISLATIVE POWER OF THE DOMINION PARLIAMENT.*

Secs. 91 and 92 of the British North America Act purport to make a distribution of legislative powers between the Parliament of Canada and the Provincial Legislatures, sec. 91 giving a general power of legislation to the Parliament of Canada, subject only to the exception of such matters as by sec. 92 are made the subjects upon which the Provincial Legislatures were exclusively to legislate.

The great importance of that feature of the Constitution of the Dominion of Canada whereby what may be called the general residue of legislative power is vested in the Dominion Parliament is obvious. The words of the proposition are taken from the judgment of the Privy Council in *Dow v. Black* (1875), (a); and in their judgment in *Valin v. Langlois* (1879), (b), their Lordships say again, more concisely: "That which is excluded by the 91st section from the jurisdiction of the Dominion Parliament is not anything else than matters coming within the classes of subjects assigned exclusively to the Legislatures of the Provinces." And so in *Russell v. The Queen* (1882), (c), dealing with the Canada Temperance Act, their Lordships say: "If the Act does not fall within any of the classes of subjects in sec. 92, no further question" (*sc.*, as to its validity) "will remain, for it cannot be contended, and indeed was not contended at their Lordships' bar, that if the Act does not come within one of the classes of subjects assigned to the Provincial Legislatures, the Parliament of Canada had not by its general power 'to make laws for the peace, order, and good government of Canada' full legislative authority to pass it." And in *Bank of Toronto v. Lambe* (1887), (d), they say that they adhere to the view "which has already been taken by this committee, that the Federation Act exhausts the whole range of legislative power, and that whatever is not thereby given to the Provincial Legislatures rests with the Parliament"; referring to which last dictum Osler, J.A., observes in *Clarkson v. Ontario Bank* (1888), (e), in regard to the Ontario Act respecting assignments for the benefit of creditors, 48 Vict., cap. 26, which he held to be *ultra vires*: "Another argument that was pressed upon us

* The following article is from advanced sheets of a forthcoming work upon the "Law of the Canadian Constitution," by A. H. F. Lefroy, Barrister-at-law.

(a) L. R. 6 P.C. at p. 280; 1 Cart. at p. 105.

(b) 5 App. Cas. at p. 120; 1 Cart. at p. 163.

(c) 7 App. Cas. at p. 836; 2 Cart. at p. 19.

(d) 12 App. Cas. at p. 588.

(e) 15 A.R. at p. 191.