

I have called your lordship's attention to the first sub-section of the 91st section, in which legislative power over public property, generally, is given to the Dominion Parliament. So far as the enumeration of certain properties of the Dominion in the third schedule is concerned, the rule *expressio unius exclusio alterius* does not apply. I notice that that argument has been used elsewhere. If anything is attempted to be made of it here, I would call your lordship's attention to the fourth schedule, which enumerates provincial property, from which the same inference may be drawn, for the one is as suggestive of exclusion as the other. Mr. Justice Sanborn does not say, however, which Government has the right to act for the Queen, or if both have. That question is put on one side. Now, with reference to the judgment of the Court of Appeals for Ontario, it is unfortunate that we have not the advantage of having before us the judgment of the late learned chief justice of that court, because every lawyer in Ontario and in all the other provinces, who enjoyed the acquaintance of that learned judge, would say at once that his opinion and his authority upon a question of this character would deservedly carry very great weight. Unfortunately, by an untimely event, he has been removed from the bench which he adorned, and his judgment in this case, if formally prepared, is not accessible. It is not printed in the case, for it was not available to counsel or solicitors in the preparation of the appeal books. We have only the judgments of Mr. Burton and Mr. Patterson, two of the judges of the Court of Appeal, and I shall have to direct your lordships' attention for a few moments to some of the positions which they have taken. Mr. Justice Burton begins by laying down this proposition:—

"I find no warrant in the Act for the assertion so frequently made that all rights or property not expressly given to the Province pass to the Dominion; on the contrary, I take it to be clear that the Provinces retained all property and rights which were previously vested in them under the constitutional Acts then in force, except those which by the Confederation Act are taken from them, and transferred to the Dominion."

Now, I contend his lordship has misconceived the language, policy and intention of the Confederation Act. I feel sure that your lordships will agree that the very opposite interpretation is the clearly expressed intention of the Imperial Parliament, viz.: that jurisdiction over every possible subject of legislation is, in general words, assigned to the Dominion Parliament, and that the exception, so far as it extends, is something taken or carved out of that power, and is all that is given to the Local Legislatures. The entire legislative authority, as it existed in the various provinces before Confederation, was dealt with by the Imperial Parliament. No one can doubt the power of the Imperial Parliament to have deprived Canada (so far as an Act of Parliament could do it) of representative government altogether. It might have converted, or reconverted, our provinces into Crown colonies, with some new experimental system of colonial government, as a matter of mere legislative authority. Probably it would not have been well received. They might have found Boers in Canada, as well as in South Africa; but, as a matter of law—as a matter of argument before a court of law—I contend that the whole subject was completely within the control of the Imperial Parliament. They could assign such