

Senator POULIOT: Yes. Now we have the B.N.A. Act which says that civil rights are given exclusively to the provincial legislatures, with one exception—well, two exceptions, because there is bankruptcy. But with regard to marriage and divorce it is exclusive, and then there is an exception to the exception for the solemnization of marriage. Do you take it that way, that that is what it said in the judgment?

Mr. HOPKINS: What I would like to say is this, that the words which you quoted from the judgment include the words:

...the exclusive jurisdiction *as to its validity* conferred upon the Dominion,...

and those words, I think, are not without significance. This bill does not relate directly or specifically to the validity of marriage; and therein lies the doubt:

Senator FARRIS: It would be a very simple matter for the Government to refer this to the Supreme Court of Canada.

Mr. HOPKINS: May I just quote from the headnote to that case, which clearly indicates what they were considering was whether the ceremony of marriage operated as an exception to the validity of marriage, which was conceded to be within the jurisdiction of the Parliament of Canada. The remaining question is whether "marriage" has a broader meaning than merely legislation with respect to its validity. It was raised in the adoption case by Chief Justice Duff, who said it was not necessary to the decision and he would not deal with the question of whether there might not be some ancillary jurisdiction of the federal Parliament arising out of validity. But so far as the clear judicial precedents are concerned, it has been left open, and in this case the Privy Council was addressing itself exclusively to the question of validity, and the headnote so indicates.

The CHAIRMAN: I am sorry I have not the quotation here, but there is one judgment of the Supreme Court which was rendered about eight years ago, and not dealing with the validity of marriage, in which one of the judges said that in so far as the civil consequences of marriage are concerned they are exclusively within the jurisdiction of the province. I will find that judgment, and when the committee meets next I will put it before the committee. It was not a matter which was decided by the court, but it was *obiter dictum* by the court at that time, to the effect civil consequences of marriage fall within the jurisdiction of the provinces.

Senator MACDONALD (*Cape Breton*): What court was that?

The CHAIRMAN: The Supreme Court.

Mr. HOPKINS: Mr. Chairman, Senator Pouliot was good enough to give me the headnote to which I referred. It reads as follows:

... the exclusive power conferred on the provincial Legislature to make laws relating to the solemnization of marriage in the province operates by way of exception to the exclusive jurisdiction ...

And here are the words again:

*as to its validity* conferred upon the Dominion ...

So I do not think they went beyond that.

Senator POULIOT: Well now, Mr. Hopkins, you will agree that there are similarities and differences between this bill and the bill that was referred to the Supreme Court?

Mr. HOPKINS: Yes.