

the Supreme Court of British Columbia and is contained in R.S. B.C. 1911, ch. 67. The jurisdiction of the Supreme Court of B.C. to grant divorce was questioned but upheld in *S. v S.* (1887), 1 B.C.R. 25. It was also upheld by the Privy Council in *Watts v. Watts*, [1908] A.C. 573, 77 L.J. (P.C.) 121. The cases are tried by one Judge.

Such then was the situation in these 4 colonies when the B.N.A. Act was passed in 1867 (Imp.), ch. 3. The distribution of powers as between Dominion and the Provinces was provided for by secs. 91 and 92. Section 91 reads: "It shall be lawful for the Queen, by and with the advice and consent of the Senate and the House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:—

26. Marriage and divorce.

27. The criminal law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the classes of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces." Section 92 reads: "In each Province the Legislature may exclusively make laws in relation to the matters coming within the classes of subjects next hereinafter enumerated, that is to say,

12. The solemnization of marriage in the Province.

14. The administration of justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those Courts.

16. Generally all matters of a merely local or private nature in the Province. . . ."

Considerable discussion has taken place as to the distinction intended between 91-26 and 92-12. Clement, in *The Canadian Constitution*, points out that 91-26 refers to the question of