It is perfectly clear, I think, that the framers of the British North America Act, 1867, had clearly in their minds that the matters comprised in the class of subjects designated "property and civil rights in the province" which were exclusively reserved to the provincial legislatures, were such matters of fundamental civil law as related to the ownership, alienation or conveyance and transfer of property, the leasing and mortgaging of property, the devolution of estates by inheritance and by will, rights arising from personal status and domestic relations, legitimacy, minority, capacity to contract or alienate, marriage, judicial separation, tutorship, curatorship and the like, as appear from the statutes and public documents of the century of our history preceding the enactment of the British North America Act.

It was this fundamental body of civil law, then definitely ascertained by the commissioners appointed for that purpose, which was placed within the legislative jurisdiction of each province by the terms of section 92, subsection 13, of the British North America Act:

> 92. In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects, next hereinafter mentioned; that is to say,—
>
> 13. Property and civil rights in the province.

The words of the statute "in relation to," as they appear in the phrase "in relation to property and civil rights in the province," with its several variations, such as laws "relating to property and civil rights" and laws "relative to property and civil rights," had been previously employed, time and time again, in English and in Canadian statutes and official documents, as meaning the dealing definitely, directly and essentially with certain fundamental laws therein indicated.

The Judicial Committee of the Privy Council have practically eliminated the words "in the province" and have failed to give to these words employed in the statute the restricted signification which was clearly intended by the framers of the British North America Act, and which was attached to them throughout a century of Canadian history. Moreover, the signification of the words "property and civil rights" has been so widely extended that, excepting the subjects specifically enumerated in section 91 of the British North America Act, they are now deemed to include almost every other subject of legislation. In fact the words "in relation to property and civil rights in the province," as now defined by the judicial committee, who have substituted for the words "in relation to" the one word "affecting"—which they employ as meaning incidentally touching upon property and civil rights, not property and civil rights in the province but property and civil rights in the widest application of those terms—have now, with the exception of those specifically enumerated in section 91, placed every conceivable subject of legislation within the provincial jurisdiction, and even the subjects specifically enumerated in section 91 have been severely restricted by their interpretations.

This grave departure from the real purpose and intention of the framers of the British North America Act occurred within fourteen years after its enactment. Sir Montague E. Smith, in 1881, in the case of The Citizens Insurance Company of Canada v. Parsons, 7 Appeal Cases, 96, at page 111, without any investigation of the original purport and application of the words "property and civil rights," based the decision of the judicial committee in that case upon the terms of The Quebec Act, 1774, 14 George 3, chapter 83. He said:

> It is to be observed that the same words, "civil rights," are employed in the act of 14 George 3, chapter 83, which made provision for the government of the province of Quebec. Section 8 of that act enacted that His Majesty's Canadian subjects within the province of Quebec should enjoy their property, usages, and other civil rights, as they had before done, and that in all matters of controversy relative to property and civil rights, resort should be had to the laws of Canada, and be determined agreeably to the said laws. In this statute the words "property" and "civil rights" are plainly used in their largest sense; and there is no reason for holding that in the statute under discussion they are used in a different and narrower one.

The judicial committee quite properly interpreted section 8 of the Quebec Act, 1774, as enacting that the inhabitants of the province of Quebec, of French descent, should enjoy their property, usages and other civil rights as they had done before the cession of 1763, but the judicial committee made no investigation of the public records to ascertain the nature and extent of the civil rights which they had enjoyed in old Quebec under the French regime, an investigation which was essential to an intelligent decision of the issue then before the judicial committee.

They properly interpreted the same section 8 of the Quebec Act as enacting that in all matters of controversy relative to property and civil rights, resort should be had to the laws in force in Quebec prior to 1763, and that such matters should be determined agreeably to said laws; but they neglected to ascertain the terms and scope of those laws which were applied during the French regime. The judicial committee were content to trust to fancy for their facts and to make an entirely