

enumerated in that section. With the same object, apparently, the paragraph at the end of section 91 was introduced, though it may be observed that this paragraph applies in its grammatical construction only to No. 16 of section 92." The paragraph at the end of section 91 can have no signification beyond its grammatical construction. It is a totally unnecessary enactment, for a general power is limited by a special, and the supremacy of the Dominion powers, when, or if, they clashed with those of the Local Legislatures, was already provided for. Their Lordships continue: "Notwithstanding this endeavour to give pre-eminence to the Dominion Parliament in cases of a conflict of powers, it is obvious that in some cases where this apparent conflict exists, the Legislature could not have intended that the powers exclusively assigned to the Provincial Legislature should be absorbed in those given to the Dominion Parliament." The idea seems to be this, that where a power, very special by its nature, is given by either enumeration, it will absorb so much of any power, more general by its nature, given to the other enumeration, as is necessary for the exercise of the more special power. Several cases have arisen where in the exercise of a Dominion power a conflict arose with regard to a local power, as, for instance, in the case of the limit of the right of appeal in insolvency. This, it was contended, was *ultra vires*; that Parliament could only lay down the principles of insolvency, but could not prescribe the procedure. From what has been said it is evident that the decision of such a question did not necessarily involve the case of a local law coming in conflict with a Dominion power; nevertheless, the form of the decision in the case of *Cushing & Dupuy* seems to be dictated by the wider view of the statute, now more definitely expressed. The Judicial Committee held, "that it is a necessary implication that the imperial statute in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency, intended to confer upon it legislative powers to interfere with property, civil rights and procedure within the Provinces, so far as a general law relating to those subjects might affect them."

The principle invoked seems reasonable and convenient; but it is not an ordinary rule of interpretation. The two cases offered as an illustration are not well chosen. The former is

an instance of ordinary interpretation of the meaning of words as used. Although in one sense the words "marriage and divorce" may be said to cover "solemnization of marriage," in another sense they have a different signification. Marriage is used in its relation to divorce, and not as meaning all matters connected with marriage, at any rate not such as come within the meaning of solemnization. This was the view adopted by the law officers of the Crown on a question submitted to them on the suggestion of Sir John Macdonald. (Doutre, Const. of Can., p. 238.)

The other example is where the two powers can co-exist. The power of raising money by any system of taxation for Dominion objects does not directly or necessarily clash with direct taxation, or the imposing of taxes by way of license for the purpose of raising a revenue for local, provincial or municipal purposes.

The next question which the opinion discusses is the meaning of "Property and civil rights in the Province." It seems it was contended in the Privy Council that "civil rights" meant status. This pretention is of Downing street growth. Owing probably to the sterility of the colonial imagination, it did not bud here. Their Lordships, however, at once repudiate this interpretation. "They find no sufficient reason in the language itself, nor in the other parts of the act, for giving so narrow an interpretation of the words 'civil rights.'" And they proceed to demolish the heresy of the appellants with a vigour and a thoroughness which leaves nothing to be desired. It is well to preserve unimpaired those few conquests of science, of which we are perfectly assured. Indeed, without being taxed with an over zeal in determining the general meaning of the Confederation Act, their Lordships might have gone even further, and have said, that if there was anything the words "civil rights" in section 92 did not particularly mean, it was personal status. What they obviously mean are all those rights derived from the civil law not embraced in the word "property," subject, be it always understood, to the modifications of the enumeration of section 91.

The opinion next proceeds to deal with the question of trade and commerce. Their Lordships avoid deciding whether the business of insurance against fire be "a trade"; but they deal with the general scope of the words "regu-