

'Marriage and Divorce'. Whatever may be the extent of that jurisdiction, we are not concerned with it here and I mention it only to put it aside."

In such circumstances, as I have said before, the formulation of a constitutional opinion becomes an exercise in studied speculation; and, in the words of Oliver Wendell Holmes "law is what the courts will do next".

My conclusion therefore is that, since the present bill does not deal in any way with the validity of a marriage contract, there exists a real doubt as to its constitutionality,—a doubt which could be finally resolved only by the Supreme Court of Canada.

That is his conclusion, and I would like to table this opinion so it may be printed in the report that will be made to the Senate.

*(For Text of Opinion, See Appendix "E")*

Senator POULIOT: I have just a question to ask you, Mr. Hopkins. You say in that opinion you have found no jurisprudence about a similar case.

Mr. HOPKINS: No square judicial precedent.

Senator POULIOT: Are you familiar with a reference of 1912—

Mr. HOPKINS: Yes, I have considered it fully.

Senator POULIOT: —To the Supreme Court of Canada—

Mr. HOPKINS: Yes, I have considered it fully.

Senator POULIOT: —and the Privy Council—

Mr. HOPKINS: Yes, I have considered it fully.

Senator POULIOT: —and what was said by Lord Haldane?

Mr. HOPKINS: Yes, I have it right here in my opinion.

Senator POULIOT: That is very good. If you have it there, do you believe that the summary of the judgment, as reported in Appeal Cases and in Olmsted, gives a good idea of the tenor of the judgment?

Hr. HOPKINS: An excellent idea.

Senator POULIOT: It says:

Under ss. 91 and 92 of the British North America Act, 1867—  
Before I go any further, will you please tell me if there is any reference in your notes to this judgment of the Privy Council?

Mr. HOPKINS: I have a full reference to it.

Senator POULIOT: You have a full reference?

Mr. HOPKINS: Yes, Senator.

Senator POULIOT:

...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 as to its validity conferred upon the Dominion, and enables the provincial Legislature to enact conditions as to solemnization, and in particular as to the right to perform the ceremony, which may affect the validity of the contract.

Mr. HOPKINS: Senator, I quote that in full in my opinion.