That is not obscure. It is pretty clear, when we read it with care. It means, on the one hand, that marriage belongs to the Parliament of Canada, marriage and divorce; and, on the second hand, that only the solemnization of marriage is exclusively belonging to provincial jurisdiction.

There has been confusion on account of the subsection concerning the civil right, but it is unfortunate that the Constitution has been drafted in such a manner, in certain clauses of it, that it has created confusion in the minds of those who have to interpret it.

To summarize, sections 91 and 92 of the B.N.A. Act as interpreted by the Privy Council, mean that marriage and divorce belong exclusively to the Parliament of Canada, with one exception, an exception concerning the celebration of marriage—the performing of the ceremony. That constitution was drafted by English-speaking and French-speaking Canadians. What is important to note is that the distinction they made was evidently based on the Civil Code which had come into force on August 1, 1866, 11 months before the B.N.A. Act came into force. So the lawmakers of the time knew from the Civil Code what referred to the solemnization of marriage.

The fifth title of the Civil Code starts at article 115, concerning the qualities and conditions required for contracting marriage. Article 185 concerns the dissolution of marriage. It is the last article of the fifth title. The articles concerning the solemnization of marriage are in chapter 7, entitled "Of the Formalities relating to the Solemnization of Marriage". It commences at article 128 and ends at article 135. It means that the part concerning the solemnization of marriage in the Civil Code is very small compared to what relates to marriage. The sixth title refers to separation from bed and board, and contains thirty-two articles, from article 186 to article 217 inclusive. Referring to my previous remarks, when the B.N.A. Act was drafted and before it was adopted, the Fathers of Confederation knew very well what the celebration of marriage meant in the Code. They had it before them, and it was the law of the land. When they mentioned it in the Constitution as belonging to the exclusive jurisdiction of the provinces, they meant what concerned the officer celebrating the marriage and the notices that were given for the celebration of marriage, and so on, but it is very short compared to the numerous other articles concerning marriage.

The view taken by the Supreme Court was that everything concerning marriage belonged to the Parliament of Canada, with one exception, that of solemnization, which belonged to the provinces. I will quote the view held by Mr. Justice Mignault in one of his books, entitled *Le Droit Parlementaire*, in which he said:

If a provincial law is not within the terms of section 92 of the B.N.A. Act, it is *ipso facto* unconstitutional and *ultra vires*.

Besides the judgment of the Privy Council on the Supreme Court reference of the Parliament of Canada, there is a memorandum, which I have quoted in the Senate, from the late Chief Justice Rinfret, who for 30 years had been on the bench of the Supreme Court of Canada, and for 10 years as Chief Justice of Canada. This memorandum was published in Senate *Hansard* on November 8, 1963. I wonder if I should read it to you or put it on record? You may wish to ask questions about it.

Senator ASELTINE: That is not a judgment?

Senator POULIOT: No.

Senator ASELTINE: It is an opinion?

Senator POULIOT: The only judgment I have mentioned in my remarks was the Privy Council judgment concerning the Supreme Court judgment about the interpretation of the two sections.

Senator DUPUIS: Concerning the solemnization of marriage?