

"The Law Officers are disposed to concur with the Minister in his views of the first question stated by him, but they are unable to concur in his opinion that the authority to grant marriage licenses is now vested in the Governor-General of Canada, and that the power of legislating on the subject of marriage licenses is solely in the Parliament of the Dominion. It appears to them that the power of legislating upon the subject is conferred on the Provincial Legislatures by 31 and 32 Vic., cap. 3, section 92 under the words 'the solemnisation of marriage in the Province.' The phrase 'the laws respecting the solemnisation of marriages in England' occurs in the preamble of the Marriage Act, 4 Geo. IV, cap. 76, an Act which is very largely concerned with matters relating to banns and licenses, and this is therefore a strong authority to show that the same words used in the British North America Act, 1867, were intended to have the same meaning. 'Marriage and Divorce' which by the 91st section of the same Act are reserved to the Parliament of the Dominion, signify, in their opinion, all matters relating to the status of marriage, between what persons, and under what circumstances it shall be created, and (if at all) destroyed. There are many reasons of convenience and sense, why one law as to the status of marriage shall exist throughout the Dominion, which have no application as regards the uniformity of the procedure whereby that status is created or evidenced. Convenience, indeed, and reason would seem alike in favour of a difference of procedure being allowable in Provinces differing so widely in external and internal circumstances, as those of which the Dominion is composed, and of permitting the Provinces to settle their own procedure for themselves; and they are of opinion that this permission has been granted to the Provinces by the Imperial Parliament, and that the New Brunswick Legislature was competent to pass the Bill in question."

That opinion was acted upon, the Act was not disallowed, and other similar Acts have since been permitted to go into operation. Now it appears to me that the view taken by the law officers was correct. I do not see any other intelligible line. I do not see that we are invested with anything more than the power to decide the status of marriage, and between what persons and under what circumstances the contract of marriage may be created. I presume that the hon. the Minister of Public Works will agree that this view of our powers, though broader than what he indicated at Quebec, is nearer to his view, and more reasonable than that of the former Minister of Justice. As I read the passages to which I have alluded, it was in contemplation at Quebec that the Local Legislatures should have authority to deal with the bill on

matters here mentioned, and it was simply reserved to this Parliament to determine whether marriages good in one Province should be good in all the Provinces. More is given by the British North America Act, more, much more is given by the opinion of the law officers to this Parliament, than the hon. the Minister of Public Works expected, but not so much as his colleague claimed. I believe, however, that the true line has been found. Now, it is entirely inconsistent with the existence of any such line to insert in this Bill some of the provisions it contains. We cannot provide as to banns, dispensations, or licenses, preliminaries to the solemnisation of marriage. Contrary to the content on of the hon. the Minister of Justice, the right to legislate on these subjects was held in 1869 to reside in the Local Legislatures, and that view has been accepted for eleven or twelve years. We are now called upon to deal with the question, because the question of expediency is another and a subsequent point. If we have not the power to legislate as the hon. gentleman proposes, then the question of expediency will not arise. I believe we have not the power, and that it belongs to the Local Legislature to decide by what means marriage between those persons between whom marriage may, under the general law, be lawfully contracted, shall be contracted. Now, a serious question may arise, should a Local Legislature thwart the provisions of a general law, by declining to provide means for the solemnisation of marriages between particular classes of persons who are lawfully entitled to marry. It is obvious that, if we have not, as in fact we have not, any power to prescribe how marriages shall be solemnised, we have no power to give effect to our declaration that it shall be lawful to contract marriages between any two classes of persons. It is for the Local Legislature, in some shape, to render that possible which the Federal Parliament has declared to be lawful. And there may be a defect in our system which may lead to serious difficulties. But it is unnecessary, perhaps, to deal with such a possibility before the occasion arises. We are at present concerned only with the question as to where the power rests, and I maintain that it is an infringement on