

paragraph (13), "Property and Civil Rights in the Province" is under the exclusive jurisdiction of the provincial legislatures, with the following reservation:

In virtue of section 91 of the same act, paragraph (26), "Marriage and Divorce" are under the exclusive jurisdiction of the Parliament of Canada, with the following exception: In virtue of section 92 paragraph (12), "The Solemnization of Marriage in the Province" is under the exclusive power of provincial legislatures.

It is to be noted that the Civil Code of Lower Canada had been in force since August 1 of the previous year (1866).

Therefore, the Fathers of Confederation knew the contents of the Civil Code nearly one year before the B.N.A. Act came into force.

INTERPRETATION OF THE B.N.A. ACT, 1867, BY THE PRIVY COUNCIL:

In 1912 the Supreme Court of Canada and the Privy Council have decided that paragraph (12) of section 92 "operates by way of exception to the exclusive jurisdiction as to its validity conferred by paragraph (26) of section 91 upon the Dominion". Those most important provisions of sections 91 and 92 of the B.N.A. Act and those judgments of the highest tribunals about the jurisdiction respectively exclusive concerning Marriage and Divorce have been ignored by all the provincial legislatures of Canada for nearly a century.

To conclude, the Parliament of Canada and the provincial legislatures have entirely different fields of jurisdiction and, when they by-pass the scope of their own field, such legislation is invalid and null.

ARTICLES OF THE CIVIL CODE ON MARRIAGE IN THE COLLATERAL LINE (1866):

Chapter I of Title V of Book I of the Civil Code, entitled "Qualities and Conditions Necessary for Contracting Marriage" contains 13 articles (115 to 127 inclusive).

Any amendment to any one of those articles is under federal jurisdiction.

Articles 125 and 126 read as follows:

125. In the collateral line, marriage is prohibited between brother and sister, legitimate or natural, and between those connected in the same degree by alliance, whether they are legitimate or natural.
126. Marriage is also prohibited between uncle and niece, aunt and nephew.

FEDERAL LEGISLATION ON MARRIAGE IN THE COLLATERAL LINE SINCE 1882:

With regard to that legislation concerning the marriage between in-laws, there are precedents to the effect that the Parliament of Canada has overruled the provisions of the Civil Code by permitting the marriage between a widower and the sister of his deceased wife (1882)—when Sir John A. Macdonald was Prime Minister of Canada—between a widower and his niece, the daughter of his deceased wife's sister (1890); between a widower and his niece, the daughter of a sister or a brother of his deceased wife (1923); between a widow and the brother of her deceased husband and between a nephew and his aunt, a son of a brother or sister of a deceased husband and the widow (1932).