

Legislatures of the Provinces, and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive—

Note the word “exclusive” occurs there—

Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

...

26. Marriage and Divorce.

...

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

What I read previously referred to the exclusive jurisdiction of the Parliament of Canada. This section 92 deals with the exclusive powers of provincial legislatures and says:

In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated: that is to say,—

...

12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.

Apparently there is a contradiction there. I will explain it, according to the jurisprudence.

There was an interesting case in 1912. It was a bill sponsored by Mr. Brown, I think, in the House of Commons, concerning the solemnization of marriage. There was a lengthy discussion about it and the matter was submitted by the Department of Justice to the Supreme Court of Canada to decide whether the Parliament of Canada had any right to legislate about the solemnization of marriage.

In the Supreme Court Reports of 1912 there is a lengthy judgment of the Supreme Court of Canada with the opinions of all the judges and also the arguments of the lawyers on both sides. The Supreme Court decided that the bill was not constitutional because it was not within the jurisdiction of the Parliament of Canada, as the solemnization of marriage was provincial, exclusively provincial.

Here I have a resume or summary of the judgment, which is reported in Olmsted's “Decisions of the Judicial Committee of the Privy Council”, Vol. 1, page 650.

I will not read the whole judgment. The reference is 1912. A.C. p. 880. It has been summarized here. It says:

Under sections 91 and 92 of the British North America Act, 1867, 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.