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**Compilation of primary documents to assist  
in interpreting Property and Civil Rights in Section  
92(13) of the *Constitution Act, 1867***

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*92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say, —*

[...]

*12. Property and Civil Rights in the Province.*

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**PART 1:**

## **Section 92(13) in Successive Drafts, from the Quebec Resolutions, 1864 to the *Constitution Act, 1867***

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### **[The Quebec Resolutions \(1864\)](#)<sup>1</sup>**

#### **October 24, 1864: Amended Provincial Division of Powers**

That it shall be competent for the local legislature to make laws respecting:–

[a list of powers follows]

5. Property and civil rights, excepting those portions thereof assigned to the general legislature.

(Source: George Brown Papers, Drafts of the Quebec Resolutions, Amended Provincial Division of Powers, October 24th, 1864 (MG 24, B 40, Vol. 21, p. 3747). Click [HERE](#).)

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#### **October 26, 1864: John A. MacDonald Papers, Working Draft No. 1**

That it shall be competent for the Local Legislatures to make Laws respecting: --

[a list of powers follows]

5. Property and civil rights, excepting those portions thereof assigned to the General Legislature.

(Source: John A. Macdonald, Drafts of the Quebec Resolutions, Working Draft No. 1, October 26th, 1864, MG 26 A, Vol. 46, pp. 18164-18168. The text is found on p. 18166. Click [HERE](#).)

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#### **October 26/27, 1864: John A. MacDonald Papers, Working Draft No. 2**

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<sup>1</sup> All transcriptions, formatting, and footnotes from the Quebec Resolutions are from Charles Dumais, [The Quebec Resolutions: Including Several Never-Published Preliminary Drafts by George Brown and John A. Macdonald, and a Collection of all Previously-Published Primary Documents Relating to the Conference](#) (CCF, 2021).

## SECTION 92(13), PROPERTY AND CIVIL RIGHTS (PROVINCIAL)

~~That it shall be competent for the Local Legislatures to make Laws respecting:~~

[a list of powers follows]

~~[renumbering illegible] 5. Property and civil rights, excepting those portions thereof assigned to the General Legislature.~~

(Source: John A. Macdonald, Drafts of the Quebec Resolutions, Working Draft No. 2, October 26th-27th, 1864, MG 26 A, Vol. 46, pp. 18142-18155. This text is found on p. 18151. Click [HERE](#).)

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### October 27, 1864: John A. MacDonald Papers, Working Draft No. 3

The Local Legislatures shall have power to make Laws respecting the following subjects:

[a list of powers follows]

Property and civil rights, excepting those portions thereof assigned to the General Legislature.

(Source: John A. Macdonald, Drafts of the Quebec Resolutions, Working Draft No. 3, October 27th, 1864, MG 26 A, Vol. 46, pp. 18156-18158. This text is found on p. 18157. Click [HERE](#).)

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### October 27, 1864: John A. MacDonald Papers, Working Draft No. 4

[43.] ~~That~~ the Local Legislatures shall have power to make Laws respecting the following subjects:

[a list of powers follows]

[15.] Property and civil rights, excepting those portions thereof assigned to the General Legislature [Parliament].

(Source: John A. Macdonald, Drafts of the Quebec Resolutions, Working Draft No. 4, October 27th, 1864, MG 26 A, Vol. 46, pp. 18136-18138. This text is found on p. 18137. Click [HERE](#).)

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### October 29, 1864: Edward Whelan's (PEI) Draft of Quebec Resolutions, as corrected in Montreal<sup>2</sup>

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<sup>2</sup> *Supra* footnote 1. The following footnote from Charles Dumais is attached to this version, "According to Edward Whelan, this is the draft of the Quebec Resolutions as amended at Montreal on October 29th, 1864. It is found published in the *Examiner* (Charlottetown, PEI) newspaper, November 14th, 1864. This version (above) does not include the amendments and three resolutions added in what we titled Macdonald's "Working Draft No. 4" in this compilation. This version however does seem to work off the base text of "Macdonald's "Working Draft No. 4" (without the amendments). Like the base text, this draft above does not feature numbered provisions. The three provisions missing in this draft (above), and found in the final text of the Quebec Resolutions are the following:

## SECTION 92(13), PROPERTY AND CIVIL RIGHTS (PROVINCIAL)

The Local Legislature shall have power to make laws respecting the following subjects: --

[a list of powers follows]

Property and civil rights, excepting those portions thereof assigned to the General Parliament.

(Source: [Charlottetown] *Examiner*, November 14, 1864, Click [HERE](#).)

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### **March 14, 1865: Quebec Resolutions as adopted in the Legislature of the Province of Canada**

43. The Local Legislature shall have power to make laws respecting the following subjects: --

[a list of powers follows]

15. Property and civil rights, excepting those portions thereof assigned to the General Parliament.

(Source: John A. Macdonald, *The Quebec Resolutions, 1864 as Adopted in the Legislature of the Province of Canada*, Vol. 46, pp. 18210-18216. This text is found on pp. 18213-18214. Click [HERE](#).)

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### **[The London Resolutions \(1866\)](#)**

#### **December 4, 1866: Version No. 1, Copy 1**

43. The Local Legislatures shall have power to make Laws respecting the following subjects:

[a list of powers follows]

15. Property and civil rights, excepting those portions thereof assigned to the General Parliament.

(Source: John A. Macdonald *Fonds, Drafts of the London Resolutions – Version No. 1, Copy 1, December 4th, 1866* (MG 26 A, Vol. 46, pp. 18184-18190). This text is found on p. 18187. Click [HERE](#).)

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#### **December 13-14, 1866: Version No. 2, Copy 1**

43. The Local Legislatures shall have power to make laws respecting the following subjects: --

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“35. The Judges of the Courts of Lower Canada shall be selected from the Bar of Lower Canada.”

“58. All assets connected with such portions of the Public Debt of any Province as are assumed by the Local Governments shall also belong to those Provinces respectively.”

“71. That Her Majesty the Queen be solicited to determine the Rank and Name of the Federated Provinces.”

## SECTION 92(13), PROPERTY AND CIVIL RIGHTS (PROVINCIAL)

[a list of powers follows]

15. Property and civil rights, excepting those portions thereof assigned to the General Parliament.

(Source: John A. Macdonald Fonds, Drafts of the London Resolutions – Version No. 2, Copy 1, December 13-14th (MG 26 A, Vol. 46, pp.18176-18183). The text is found on pp. 18179. Click [HERE](#).)

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### December 14, 1866: Version No. 3, Copy 1

43. The Local Legislatures shall have power to make laws respecting the following subjects:—

[a list of powers follows]

15. Property and civil rights, excepting those portions thereof assigned to the General Parliament.

(Source: John A. Macdonald Fonds, Drafts of the London Resolutions – Version No. 3, Copy 1, December 14th, 1866 (MG 26 A, Vol. 46, pp. 18197-18209). The text is found on pp. 18204-18205. Click [HERE](#).)

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### December 28, 1866: Final Version

41. The Local Legislatures shall have power to make laws respecting the following subjects :—

[a list of powers follows]

15. Property and civil rights (including the solemnization of marriage) excepting portions thereof assigned to the General Parliament.

(Source: London Resolutions as found in Joseph Pope (ed), *Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act* (Toronto: Carswell Co. Ltd., 1895) at 98-110. This text is found on pp. 105-106. Click [HERE](#).)

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## [Constitution Act, 1867](#)

### n.d. (probably early January, 1867): Rough Draft

42. The Legislatures shall have exclusive power to make laws respecting the following subjects, with the exception of Agriculture and Immigration, in regard to which Parliament shall have concurrent jurisdiction.

## SECTION 92(13), PROPERTY AND CIVIL RIGHTS (PROVINCIAL)

[a list of powers follows]

15. Property and civil rights, including the solemnisation of marriage, excepting those portions thereof assigned to the General Parliament.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Rough Draft, n.d. (MG 26, A, Vol. 48, pp. 18768-18793). This text is found on pp. 18783-18785. Click [HERE](#).)

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### January 23, 1867: 23rd January Draft

37. In each Province the Superintendent may, by and with the Advice and Consent of the Provincial Assembly, make Ordinances in relation to Matters coming within the Classes of Subjects next herein-after enumerated, which Ordinances exclusively (subject to the Provisions of this Act) shall in relation to those Matters have the Force of Law in and for the Province, that is to say,--

[a list of powers follows]

(13.) Property and Civil Rights in the Province:

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 23rd January Draft, J.W. Ritchie's Copy, January 23rd, 1867 (MG 26, A, Vol. 48, pp. 18971-18988). This text is found on pp. 18980-18982. Click [HERE](#).)

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### January 30, 1867: 1<sup>st</sup> Draft

*Only a partial copy survives of this draft, consisting of the first twenty sections of the draft Bill. Therefore, the wording of the relevant section in this draft is unknown.*

(Source: National Archives of Canada. John A. Macdonald Fonds, Drafts of the *British North America Act*, 1867 – 1st Draft, January 30th, 1867 (MG 26 A, Vol. 48, pp. 19017-19021. Click [HERE](#).)

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### January 31, 1867: 2<sup>nd</sup> Draft

54. In each Province, the Lieutenant-Governor may, by and with the advice and consent of the Legislature, make Laws in relation to matters coming within the classes of subjects next hereinafter enumerated: --

[a list of powers follows]

(13.) Property and Civil Rights.

## SECTION 92(13), PROPERTY AND CIVIL RIGHTS (PROVINCIAL)

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 2nd Draft, January 31st, 1867 (MG 26, A, Vol. 48, pp. 19022-19039). This text is found on pp. 19036-19037. Click [HERE](#).)

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### January 31, 1867: 2<sup>nd</sup> Draft with Handwritten Provisions and Notes

[66] 54. In each Province, the Lieutenant-Governor may, by and with the advice and consent of the Legislature, make Laws in relation to matters coming within the classes of subjects next hereinafter enumerated: --

[a list of powers follows]

(13.) Property and Civil Rights.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 2nd Draft, January 31st, 1867 with Handwritten Provisions and Notes (MG 26, A, Vol. 48, pp. 19040-19082). This text is found on pp. 19068, 19071. Click [HERE](#).)

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### n.d. (between Jan. 31 & Feb. 2, 1867): 3<sup>rd</sup> Draft, Early Copy

66. In each Province, the Lieutenant-Governor may, by and with the advice and consent of the Legislature, make Laws in relation to matters coming within the classes of subjects next hereinafter enumerated:--

[a list of powers follows]

(13.) Property and Civil Rights.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 3rd Draft, Early Copy, n.d. (MG 26, A, Vol. 48, pp. 19101-19124). This text is found on pp. 19119-19120. Click [HERE](#).)

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### February 2, 1867: 3<sup>rd</sup> Draft, Revised Copy

66. In each Province, the Lieutenant-Governor may, by and with the advice and consent of the Legislature, make Laws in relation to matters coming within the classes of subjects next hereinafter enumerated:--

[a list of powers follows]

(13.) Property and Civil rights *[but excepting such portions thereof assigned ~~illegible~~ to the Parliament.]*

## SECTION 92(13), PROPERTY AND CIVIL RIGHTS (PROVINCIAL)

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 3rd Draft, Revised, February 2nd, 1867 (MG 26, A, Vol. 48, pp. 19125-19148). This text is found on pp. 19143-19144. Click [HERE](#).)

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### **n.d. (1867): 4<sup>th</sup> Draft, Early Version**

*No clause relating to the management and sale of public lands exists in this draft.*

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 4th Draft, Early Version, n.d. (MG 26, A, Vol. 49/1, pp. 19150-19181). Click [HERE](#).)

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### **n.d. (1867): 4<sup>th</sup> Draft, Later Version**

*No clause relating to the management and sale of public lands exists in this draft.*

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 4th Draft, Later Version, n.d. (MG 26, A, Vol. 49/1, pp. 19337-19367). Click [HERE](#).)

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### **n.d. (1867): 4<sup>th</sup> Draft, Later Version, Revised Copy**

92[0].—In each Province, the Legislature may make Laws in relation to matters coming within the classes of subjects next hereinafter enumerated:—

[a list of powers follows]

(13.) Property and Civil Rights but excepting such portions thereof hereby assigned to Parliament.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 4th Draft, Later Version, Revised Copy, n.d. (MG 26, A, Vol. 49/1, pp. 19399-19450). This text is found on p. 19434. Click [HERE](#).)

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### **n.d. (1867): 4<sup>th</sup> Draft, Final Version**

90.—In each Province, the Legislature may make Laws in relation to matters coming within the classes of subjects next hereinafter enumerated:—

[a list of powers follows]



## SECTION 92(13), PROPERTY AND CIVIL RIGHTS (PROVINCIAL)

(13.) Property and Civil Rights but excepting such portions thereof hereby assigned to Parliament.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 4th Draft, Final Version, n.d. (MG 26, A, Vol. 49/2, pp. 19614-19664). This text is found on pp. 19648-19649. Click [HERE](#).)

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### **n.d. (1867): House of Lords Bill**

92. In each Province the Legislature may exclusively make laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say, —

[a list of powers follows]

13. Property and Civil Rights in the Province.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – H.L. Bill (Floor), n.d. (MG 26, A, Vol. 49/2, pp. 19665-19711). This text is found on pp. 19689-19690. Click [HERE](#).)

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## **Local Constitutions Drafts Package (1866-1867)**

### **n.d.: Early Package**

~~6-~~ [7] The Local Legislatures shall have power to make laws respecting the following subjects:--

[a list of powers follows]

15. Property and civil rights (including the solemnisation of marriage) excepting portions thereof assigned to the General Parliament.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Local Constitutions Drafts Early Package, n.d. (MG 26, A, Vol. 49/2, pp. 19451-19461). This text is found on pp. 19452-19453. Click [HERE](#).)

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### **n.d.: Early Package with Reilly's Notes<sup>3</sup>**

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<sup>3</sup> Reilly's document may also be a revised package. Revised Package ([MG 26, A, Vol. 49/2, pp. 19500-19518](#)), Revised Package, Copy 4 ([MG 26 A, Vol. 49/2, pp. 19576-19594](#)), and Revised Package, H.B. Morse's Copy ([MG 26 A, Vol. 49/2, pp. 19595-19613](#)) contains the same amendments to it (other than the renumbering of the clause).

## SECTION 92(13), PROPERTY AND CIVIL RIGHTS (PROVINCIAL)

[93] ~~19-106.~~—In each Province, ~~the Lieutenant Governor may, by and with the advice and consent of the Legislature~~ *[may]* make Laws in relation to matters coming within the classes of subjects next hereinafter enumerated:--

[a list of powers follows]

(13.) Property and Civil Rights but excepting such portions thereof hereby assigned to Parliament.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Local Constitutions Drafts Early Package with Reilly’s Notes, n.d. (MG 26, A, Vol. 49/2, pp. 19462-19480). This text is found on pp. 19466-19467. Click [HERE](#).)

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**PART 2:**

**Debates on Section 92(13) from the  
Quebec Conference (1864) &  
*Confederation Debates in the  
Province of Canada (1865-1866)***

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**[Quebec Conference \(1864\)](#)<sup>4</sup>**

**October 11, 1864<sup>5</sup>: Edward Whelan’s (PEI) Informal Record at Quebec (click [HERE](#))**

As to the powers and duties to be committed to the Local Governments, there is also room for much discussion. Manifestly, however, Lower Canada will insist that all judicial and legal matters — in fact the whole body of Civil and Municipal Law, with the exception of Criminal Law — must be vested in the Local Legislatures.

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**October 24, 1864: Secretary Hewitt Bernard’s Minutes of the Proceedings at Quebec (click [HERE](#), then scroll to p. 27)**

It was moved by the Honourable Mr. Mowat:—

*That it shall be competent for the Local Legislatures to make laws respecting—*

[A list of powers follows]

5. *Property and civil rights, excepting those portions thereof assigned to the General Legislature.*

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**October 25, 1864: Secretary Hewitt Bernard’s Minutes of the Proceedings at Quebec (click [HERE](#), then scroll to p. 28)**

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<sup>4</sup> *Supra* footnote 1. The Quebec Conference transcriptions are from the aforementioned Dumais text (*The Quebec Conference*). The original sources are also linked.

<sup>5</sup> *The Examiner* (Charlottetown, Prince Edward Island), October 17<sup>th</sup>, 1864.

## SECTION 92(13), PROPERTY AND CIVIL RIGHTS (PROVINCIAL)

And the adoption of certain verbal amendments, the question of concurrence being put on the motion of the Honourable Mr. Mowat (with the exception of item number 11, the consideration of which was postponed), the same was resolved in the affirmative as follows:—

*That it shall be competent for the Local Legislatures to make laws respecting:—*

[A list of powers follows]

*Property and civil rights, excepting those portions thereof assigned to the General Legislature.*

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### October 27, 1864<sup>6</sup>: Edward Whelan’s (PEI) Informal Record at Quebec (click [HERE](#))

The French desire most ardently to be left to the undisturbed enjoyment of their ancient privileges—their French institutions, civil law, literature and language. It is utterly impossible to Anglicise them—the attempt to do it, would outrage their most deeply rooted prejudices and lead to insurrection.

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### [Province of Canada \(1865\)](#)<sup>7</sup>

### February 7, 1865: George-Étienne Cartier, speaking in the Legislative Assembly of Canada (click [HERE](#) to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 60)

**George-Étienne Cartier [Montreal East, Attorney-General East]**—[...] Now, he would ask those self-styled nationalists who accused him of bartering fifty-eight

- (p. 61)

counties in Lower Canada to John Bull, and his honourable colleague beside him (Hon. Mr. Brown)—he would ask them, under what supposition could they think it possible for any injustice to be done to the French Canadians by the General Government?

**Some Hon. Members**—Hear, hear.

**George-Étienne Cartier [Montreal East, Attorney-General East]**—He came now to the subject of Local Governments. We could easily understand how a feeling against the Federation project was raised in the minds of a few of the British residents of Lower Canada by fears of such difficulties as those which occurred in the days of Mr. Papineau, relative to the passing of laws relating to commercial matters.

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<sup>6</sup> *The Examiner* (Charlottetown, Prince Edward Island), November 7<sup>th</sup>, 1864.

<sup>7</sup> Please note that there is a difference between the formatting of the original and that of the text in these reports. That is because the text portion comes from our publication, [The Confederation Debates in the Province of Canada \(CCF, 2022\)](#), which modernized the formatting of the text to current *Hansard* style. The content remains the same. However, if the user wishes to see the original, the hyperlink will bring them to the 1865 edition. Any footnotes in these passages are also from the book.

**Some Hon. Members**—Hear, hear.

**George-Étienne Cartier [Montreal East, Attorney-General East]**—These difficulties had been of a very inconvenient nature, Mr. Papineau not being a commercial man, and not understanding the importance of these measures. He considered Mr. Papineau was right in the struggle he maintained against the oligarchy at that time in power; but he had never approved of the course he took with reference to commercial matters, and in opposition to measures for the improvement of the country. But this precedent could not be urged as an objection to Federation, inasmuch as it would be for the General Government to deal with our commercial matters. There could be no reason for well-grounded fear that the minority could be made to suffer by means of any laws affecting the rights of property. If any such enactments were passed, they would fall upon the whole community.

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**February 13, 1865: Louis Olivier, speaking in the Legislative Council of Canada (click [HERE](#) to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 176)**

**Louis Olivier [De Lanaudière, elected 1863]**—[...] I shall now proceed to examine whether the plan of Confederation is really what it seems to be. I hear it said that Confederation, as it is proposed, will be a Federal union—but it seems to me that it will be rather a Legislative union, at least as far as regards the most important interests of Lower Canada. The [29th section](#) of the scheme submitted to us says: “The Federal Parliament shall have the power of making laws for the peace, the well-being, and the good government of the Confederate provinces, and in particular in respect of the following matters.”<sup>8</sup> The powers of the Federal Government will be in reality unlimited.

The fact of the enumeration of these thirty-seven heads does not in the least restrain the power of the Federal Government from legislating on everything. The exceptions are few. I would ask the Honorable Premier [Étienne Pascal Taché], for instance, whether the Federal Government has not the power to enact that marriage is a civil contract? He cannot deny it, and I do not believe that that clause will in any way suit Lower Canada. In a matter of divorce, I consider that the power of legislating upon it ought to be vested in the Federal Government; but as to the passing of a marriage act, we have the authority of the past to convince us that Lower Canada will never be satisfied with what is proposed in the plan of Confederation.

On a former occasion, when a member of the Parliament of Canada moved to enact that marriage should be made a civil contract, all the members for Lower Canada voted against the motion, and the whole country was opposed to it. I shall also inquire whether the Federal Government will not have the right to enact that religious corporations shall no longer exist in the country, or that they shall not be allowed to hold real property, except what is absolutely necessary for their lodging accommodation. According to the resolutions which have been submitted to us, the Federal

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<sup>8</sup> [Quebec Resolution 29](#). The opening of the clause reads, “The General Parliament shall have power to make Laws for the peace, welfare and good government of the Federated Provinces (saving the sovereignty of England), and especially laws respecting the following subjects: ...”

## SECTION 92(13), PROPERTY AND CIVIL RIGHTS (PROVINCIAL)

Government would certainly have this right. It has been said that article 15 of the 43rd resolution replies to this objection, but I can see nothing in that article which restricts the right of the Federal Government to legislate on this matter.

The [43rd resolution](#) defines the powers of the local governments, and article 15 of that resolution declares that they may make laws respecting “property and civil rights, excepting those portions thereof assigned to the General Parliament.”<sup>9</sup> That article reserves to the local legislatures nothing relative to religious corporations, and the Federal Government would have full power to decree that those corporations shall not hold immovable property.

The supreme power is that which has the right to legislate upon, and regulate the existence of, the corporations in question, and they can only possess civil rights so long as the Government permits them to exist. The same might be said of most of the institutions to which Lower Canada is attached. I am therefore right in saying that, so far as those things which Lower Canada most holds to be concerned, Confederation is in fact a Legislative union, because upon the Federal Government is conferred the right of legislating upon those subjects which Lower Canada holds most dear.

It appears to me that it is the more important not to proceed

- (p. 177)

so rapidly as it is proposed to do, because it is extremely difficult to foresee what will be the bearing of the platform which it is proposed to erect. I have just cited the rights which Confederation would confer upon the Federal Government in respect of certain points;[...]

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**February 15, 1865: John Sanborn, speaking in the Legislative Council of Canada (click [HERE](#) to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 224)**

**John Sanborn [Wellington, elected 1863]**—If my honorable friend would take that platform, or something like it, I should be happy to give it my best consideration at once; and I should be very glad if they would only give us a small part of it, of which I think they must see the justice—namely, written guarantees, so as to assure us that our rights of property shall not be overturned by the Local Parliament;

- (p. 225)

to prevent, for example, a Squatter’s bill—

**Some Hon. Members**—*Laughter.*

**John Sanborn [Wellington, elected 1863]**—being passed at the very first opportunity in the Local Parliament, demolishing all the rights of property. I see my hon. friend opposite (Hon. Mr. Crawford) look melancholy, because he foresees that, when the new Constitution is adopted, twelve months will not pass before that becomes law in Lower Canada, and all protection for proprietors, so far as that is concerned, brought to an end. But this is only one instance, significant of what will take place.

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<sup>9</sup> [Resolution 43 \(15\).](#)

## SECTION 92(13), PROPERTY AND CIVIL RIGHTS (PROVINCIAL)

It is perfectly well known, and none can realize it better than those who have a much greater horror of the progress of popular sentiments than I have, that the tendency in the popular mind is to break down monopolies of every kind, and to go to extremes in dealing with vested rights, even those which are established and founded on substantial principles of justice. Now, these rights, at the very least, ought certainly to be confided to the highest legislative authority. I go further and maintain that guarantees for those rights ought to be placed in the written Constitution, that they ought to be beyond the power of interference by the legislative authority, and that they should be guarded by the judicial decisions of the highest courts in the country.

In that case there would be a protection for property, but in this Constitution there is no such protection for property either in Upper or Lower Canada. And here is the point to which I ask the attention of my honorable friends of all parties—a point which I think all of them have been too little concerned about, and which applies just as well to Upper as to Lower Canada. For I say that, if some security is not given to the people in one of those ways for maintaining vested rights and interests of this character, the most disastrous results will arise in every Local Parliament; because, when these parliaments are constructed, they will necessarily consist of a different class of men from those who now compose the legislatures of the various provinces. There will be such inducements to men of the highest order to get elected to the Central Parliament, that the consequence will necessarily and naturally be the result to which I point.

**Some Hon. Members**—Hear, hear.

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**March 2, 1865: Joseph Cauchon, speaking in the Legislative Assembly of Canada (click [HERE](#) to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 575)**

**Joseph Cauchon [Montmorency]**—[...] But here is the point to which I wish to draw the attention of this House. Among all the things guaranteed to Lower Canada in the Constitution, and in fact to all the provinces, we find their own civil laws. Lower Canada has been so tenacious of its civil code, that it is laid down in the project before us that the Federal Parliament shall not even be able to suggest legislation by which it may be affected, as it will have the right to do for the other provinces—The reason is obvious; the civil laws of the other provinces are nearly similar; they breathe the same spirit and the same principles; they spring from the same source and the same ideas. But it is not so with regard to those of Lower Canada, with their origin from almost entirely Latin sources; and we hold to them as to a sacred legacy; we love them because they suit our customs, and we find under the protection for our property and our families.

**Some Hon. Members**—Hear, hear.

**Joseph Cauchon [Montmorency]**—The Conference has understood and respected our ideas on this point. However, if a Court of Appeal should one day be placed over the judiciary tribunals of all the provinces, without the exception of those of Lower Canada, the result would be that those same laws would be explained by men who would not understand them, and who would, involuntarily perhaps, graft English jurisprudence upon a French code of laws.—

SECTION 92(13), PROPERTY AND CIVIL RIGHTS (PROVINCIAL)

**Some Hon. Members**—Hear, hear.

**Joseph Cauchon [Montmorency]**—Such was the spectacle presented in Canada after the conquest, and no one, I am sure, would wish to see a repetition of the scene.

**Some Hon. Members**—Hear, hear.

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***PART 4***

**Post-Confederation Debates on  
Section 92(13)**

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March 20, 1882, Debate in the House of Commons. (Click [HERE](#) to view a PDF of the Debate as recorded in *Hansard*.)

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April 4, 1883, Debate in the House of Commons. (Click [HERE](#) to view a PDF of the Debate as recorded in *Hansard*.)

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April 14, 1882, Debate in the House of Commons. (Click [HERE](#) to view a PDF of the Debate as recorded in *Hansard*.)

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