

A Manual of Reference to Authorities for the Use of the Members of The National Australasian Convention

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**A Manual of Reference to Authorities for the Use of the Members of
The National Australasian Convention**

**Which Will Assemble at Sydney on March 2, 1891, for the purpose of
Drafting a Constitution for the Dominion of Australia** by The Honble.
Barrister at Law, C.M.G., M.A., and one of the delegates of the Province of
South Australia.

Adelaide

**W. K. Thomas & Co., Printers, Grenfell Street
1891**

First Preface.

THIS work was intended only for distribution amongst the delegates to the National Australasian Convention and not for publication. I have been induced to place it before the public partly at the suggestion of many members of the Convention who have expressed their sense of the value it has been to them, and partly by the many requests received for copies—requests which I am unable to comply with as the one hundred copies originally printed have all been either distributed amongst the delegates or presented to friends.

The conclusion arrived at in Chapter V., namely, that it is desirable to adopt the “responsible ministry” form of executive, now appears to me to be erroneous, as for reasons which are fully set forth in the Hansard of the Sydney Convention, this form of executive seems incompatible with a properly constituted powerful Federal Senate. Federation will either kill “responsible ministry” or “responsible ministry” will kill federation. Happily the Commonwealth Constitution does not necessarily provide for “responsible ministry” executive.

The incomplete nature of the work is fully admitted but it must be recollected that it was printed before the deliberations of the Sydney Convention commenced.

May 1st, 1891.

Second Preface.

THE object of this Manual is to aid the members of the “National Australasian Convention,” which is to meet at Sydney on the 2nd March, 1891, in their deliberations, by a reference to authorities concerning the subjects which will have to be discussed. As it is the wish of the writer to be as concise as possible, the history of the Australian Federal movement is only glanced at¹.

It is from the study of existing Federal Constitutions and their working that we must look for guidance.

In America, Canada, and Switzerland we have three models, and a comparison of the provisions of their respective Constitutions on those points to which the deliberations of the Convention will have to be directed it is hoped will be of utility. The South African Union Act is also referred to. It is not pretended that any of these points are argued out. Information and reference only is aimed at. But in order to convey this in a readable form some remarks have had to be made and opinions expressed.

The writer regrets that the time at his disposal has been extremely limited, and that he has been unable to consult many works which he would have liked to consult, but which are unobtainable in the Colonies.

January, 1891.

(1) For History of Federal Movement in Australia see Sir Henry Parkes' Speech at Melbourne Conference in 1890 and Sir Gavan Duffy's article in *Contemporary Review*, Feb. 1890.

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Schedule of Books Cited.

Reference to Editions.

Name of Author.	Date.	Name of Book.	Where Published.	Name of Publisher.
Adams and Cunningham	1887	Swiss Confederation	London ...	McMillan & Co.
Bagehot ...	1877	The English Constitution ...	London ...	H. S. King & Co.
Bluntschli ...	1885	Theory of the State	Oxford ...	Clarendon Press
Bourinot ...	1887	Federal Government in Canada ...	Baltimore	Massey
Bourinot ...	1888	Manual of the Constitution of Canada	Montreal...	Dawson Brothers
Bryce ...	1889	American Commonwealth	London ...	McMillan & Co.
Creswell ...	1890	History of the Dominion of Canada	Oxford ...	Clarendon Press
De Tocqueville	1887	Democracy in America ...	London ...	Longman, Green, & Co.
Dicey ...	1886	England's case against HomeRule	London ...	J. Murray
Dicey ...	1887	The Law of the Constitution ...	London ...	McMillan
Dicey ...	April, 1890	The Referendum...	London ...	Contemporary Review
Forsayth ...	1869	Cases and opinions on Constitutional Law	London ...	Stevens & Haynes
Freeman ...	July, 1890	The Referendum...	London ...	Universal Review
Gavan Duffy	Feb., 1890	The Road to Australian Federation	London ...	Contemporary Review
Goldwin Smith	July, 1887	The Canadian Constitution ...	London ...	Contemporary Review
Hamilton Maddison Jay ...	1875	Federalist ... (This edition contains an epitome of the Philadelphia discussions of the Philadelphia Convention)		J. B. Lippincott & Co.
Freeman ...		On Presidential Government ...		
Hansard, (Canadian) ...	1865	British North American Debates	Quebec ...	Hunter, Rose, & Co.
Kent ...	1858	Commentaries on American Law ...	Boston ...	Little, Browne, & Co.
Lowell, G. ...	Feb., 1888	English and American Federation ...	London ...	Fortnightly Review
Monro ...	1889	Constitution of Canada ...	Cambridge	University Press
Montesquieu	—	Esprit des Lois		
Parkin ...	1890	Five Lectures on the Constitution of Canada ...	Adelaide...	Register Newspaper
Story ...	1854	On the American Constitution ...	New York	Harper Brothers
Tarring ...	1887	Laws relating to the Colonies ...	London ...	Stevens & Haynes
Todd ...	1880	Parliamentary Government in the Colonies ...	London ...	Longman, Green, & Co.
Webster, Daniel	1879	Speeches	London ...	Sampson, Low, & Co.

Manual of Reference ..

Introductory. Chapter I.

THE attention of the people of Australia has for many years been drawn to the question of the Federation of these Colonies, and in 1884 the British Parliament, at the request of the Australian Colonies, passed the Federal Enabling Act,¹ which has resulted in the present Federal Council. New South Wales having steadily refused to send representatives to such Council, and the Council itself being without an Executive or Judiciary, and its powers being of a very limited nature, it has long been felt that a more perfect Union was desirable. At the instigation of Sir Henry Parkes a “Federal Conference” was held in Melbourne in February, 1890.² After a very able debate the following resolutions were passed:—

1. That, in the opinion of this Conference, the best interests and the present and future prosperity of the Australian Colonies will be promoted by an early union under the Crown; and, while fully recognising the valuable services of the members of the Convention of 1883 in founding the Federal Council, it declares its opinion that the seven years which have since elapsed have developed the national life of Australia in population, in wealth, in the discovery of resources, and in self-governing capacity to an extent which justifies the higher act, at all times contemplated, of the union of these Colonies, under one legislative and executive Government, on principles just to the several Colonies.
2. That to the union of the Australian Colonies contemplated by the foregoing resolution, the remoter Australian Colonies shall be entitled to admission at such times and on such conditions as may be hereafter agreed upon.
3. That the members of the Conference should take such steps as may be necessary to induce the Legislatures of their respective Colonies to appoint, during the present year, Delegates to a National Australian Convention, empowered to consider and report upon an adequate scheme for a Federal Constitution:
4. That the Convention should consist of not more than seven members from each of the self-governing Colonies, and not more than four members from each of the Crown Colonies.

These resolutions have been ratified by the Parliaments of all the Australian Colonies—in some cases unanimously, in others by large majorities—who have, in pursuance thereof, each appointed seven members to attend a “National Australian Convention,” which is to be held in Sydney on the 2nd March, 1891. The delegates are instructed and authorised to consider and report upon an adequate scheme for a Federal Constitution. As Western Australia has been granted responsible government since the Melbourne Conference was held, each Australian Colony will be represented by seven delegates.¹ New Zealand, for the

present, does not desire to join the proposed Union, but her ultimate adhesion is provided for by the clause referring to the “remoter Australian Colonies.” As a matter of courtesy she sends three delegates to the Sydney Convention.

It will be seen that the Australian Parliaments have affirmed the following propositions:—

1. That it is desirable there should be a Union of the Australian Colonies,
2. That such Union should be “early,”
3. That it should be “under the Crown,”
4. That it should be “under one Legislative and Executive Government,”
5. That it should be on “principles just to the several Colonies,”

And that the “warrant” to the Delegates at the Sydney Convention precludes their discussion of these points, except so far as definition and explanation is concerned.

(1) 48 and 49 Vic., cap. 60.

(2) The names of the members of the Conference are given in Appendix A

(1) Their names, and the manner in which they were appointed, are rited in Appendix B.

Chapter II.

A Short Sketch of The Mode of Formation of The Federal Constitutions of America, Canada, and Switzerland, and A Reference to The South African Union Act.

Before contrasting the Constitutions of these three (3) Federations on the points which the Sydney Convention are likely to discuss, it may perhaps be advisable to shortly refer to the circumstances under which they were drafted, in order that due weight may be given to the reasons which led to the introduction of their various provisions.

Before the revolution actually broke out in America a voluntary association of all the States was formed called the "Continental Congress" to deliberate "on the common good and provide a suitable scheme of future operations." Each State sent representatives who collectively had one (1) vote; in September, 1774, this Continental Congress drew up the "Declaration of Rights" of the American people, the breach of which led to the revolution.

This organization was continued to prosecute the war, and in 1777 drew up the "Declaration of Independence;" it had no defined powers, but the exigencies of the time enabled it to assume, and coerced the States to accede to, its exercise of all powers necessary to carry on the struggle against foreign enemies.

It was not till 1781 that the powers of this "Continental Congress" were defined and limited by the "Articles of Confederation," which, however, had only been in force a short time when their inadequacy and effeteness became apparent. The radical vice of all Confederate forms of Government soon reduced the Confederation to such a state of debility that it threatened to expire of its own inertness¹ ; as was observed by one of the leading men of the day.

"It may make and conclude treaties, but it can only recommend the observance of them. It may appoint ambassadors, but cannot defray even the expense of their tables. It may borrow money in its own name on the faith of the Union, but cannot repay a single dollar. It may coin money but cannot import an ounce of bullion. It may make war and determine what number of troops are necessary, but it cannot raise a single soldier. In short it can declare everything but do nothing."

² The first effectual effort to relieve the country from this state of national degradation came from Virginia, who proposed a convention of delegates from the several States to "regulate commerce with foreign nations." This

proposal was well received by many of the States, and five (5) of them sent delegates to a Convention which met in Annapolis in 1786. This Annapolis Convention, feeling that a sufficient number of States were not represented, and being deeply impressed with the necessity for a complete revision of the “Articles of Confederation,” applied to Congress to call a Convention of all the States for that purpose. Congress acknowledging the wisdom of the suggestion acceded, and recommended a Convention to “review, amend, and alter” such articles. All the States except Rhode Island approved, and the¹ Convention met at Philadelphia in May, 1787; 55 members were present, of whom 39 signed the present United States Constitution.

It has been often stated, and is believed by many, that the American States were forced to federate in consequence of their struggles for freedom; that the Federation was formed to enable them to carry on the war with England; and indeed that all Federations have been formed under the coercive influence of national necessities against foreign powers.

A reference to the dates will show that it is not entirely correct so far as regards the Americans; their Federal Constitution was formed mainly in consequence of the proved inadequacy of the Confederate form of Government. They had achieved their independence in 1783, and although fear of foreign powers no doubt exercised considerable influence, the fear of domestic wars—which the Confederate form of Government has been proved not only powerless to prevent, but even active to incite—exercised more. ¹ They felt that they must form a Federation, or become a number of independent republics, either actually at or prepared for war with each other.

I am not now speaking of the ratification of the labours of the Philadelphia Convention—fear of Foreign Powers may have been mainly instrumental in securing the votes of the people for this; but of the views and opinions of the able and celebrated men who initiated the movement and secured its success.

The Philadelphia Convention sat for five months and bestowed most anxious and careful thought on the work it had assembled to consider. It was composed of the most talented and patriotic men in America, who had proved themselves in the trying and stirring times that had just gone by, who had taken leading and active parts under various forms of Government, and were consequently familiar with the different phases of the subject which they had to discuss.

Three (3) plans were placed before them.

1st. THE VIRGINIA PLAN¹ submitted by Edmund Randolph, of Virginia.

This provided for a Supreme Legislature, Executive, and Judiciary.

THE LEGISLATURE to consist of two Houses, chosen one by the people and the other by the Legislatures of the States, with power to legislate in “all cases in which the separate States are incompetent or in which the harmony of the United States may be interrupted by the exercise of individual legislation, and to negative all laws passed by the several States contravening, in the opinion of the National Legislature, the Articles of Union or any treaties subsisting under the authority of the Union.”

THE EXECUTIVE was to consist of one man chosen by the National Legislature for seven years.

THE JUDICIARY was to be constituted as it at present exists in the United States, but its powers were not so defined; they included all questions “which involve the national peace and harmony.”

2nd. THE JERSEY PLAN² was simply a revision of the Articles of Confederation, and contained its radical defects.

3rd. HAMILTON'S FIRST PLAN OF GOVERNMENT.³ This was submitted by Hamilton on June 18, 1787.

It provided that there should be a Supreme Legislature, Executive, and Judiciary.

THE LEGISLATURE was to consist of two Houses: the House of Representatives, consisting in the first instances of 100 members, elected as at present in the United States; and a Senate in which the Senators were to be elected for life, and to hold office on the same tenure as the Judges.

The elections for the Senate were to be made by “Convenient Districts.” There was not to be a direct election, but an election by electors, not more than twelve or less than six chosen for that purpose. There were not to be less than 40 Senators; if the number of the House of Representatives was increased, the number of the Senate was to be increased in the same proportion that 40 is to 100. Power was given to pass “All laws they should judge necessary to the common defence and safety, and to the general welfare of the Union.”

THE EXECUTIVE was to consist of one man—the President—to be chosen by a complicated modification of the manner in which the President is now chosen. He was to hold office for life on the same terms as the Judges.

THE JUDICIARY was to be constituted in the same manner as, and to perform the same functions (roughly) as, the present American Judiciary does.¹

The Governors of the States were to be appointed by the President. When Hamilton's plan was presented the Jersey plan was at once rejected, and it was from a modification of the Virginia and Hamilton's plans that the

present Constitution was framed.

The result, we are told by competent authorities, is a scheme¹ “which, after all deductions, ranks above every other Constitution by its intrinsic excellence, its adaptation to the circumstances of the people, the simplicity, brevity, and precision of its language, and its judicious mixture of definition in principle with elasticity in details.”

“It is the American system in its most essential features which forms the natural object for the imitation of other communities of Englishmen beyond the seas. It is for them to seize on the leading principles of the immortal work of Washington and Hamilton, to alter such of its general provisions as experience has shown to be defective, and to work in such change in detail as may be needed by any particular Commonwealth. The American Constitution with its manifest defects still remains one of the most abiding monuments of time and wisdom, and it has received a tribute to its general excellence such as no other political system has ever received. The States which have seceded from its Government—the States which look with the bitterest hatred on its actual administration—have re-enacted it for themselves in all its essential particulars.”¹

² “It is one of the most skilful works which intelligence ever created. It is one of the most perfect organizations which ever governed a free people.”

The federation of Canada was foreshadowed by Lord Durham in 1838.³ He urged that a Federal Union “would enable the provinces to co-operate for all common purposes, and above all it would form a great and powerful people, possessing the means of securing good and responsible government for itself, and which, under the protection of the British Empire, might in some measure counterbalance the preponderant and increasing influence of the United States on the American Continent.”

Acting under the impulse given by, and actuated by the reasons referred to in, Lord Durham's dispatch in 1840, Ontario (Upper Canada) and Quebec (Lower Canada) obtained an Imperial Act, amalgamating them into one Province with one Legislature.

⁴ The Act provided that there was to be a Legislative Council (nominated) consisting of not less than 20 members, and a Lower House of 84 members, of whom 42 should be elected by each old Province. In 1856 the Constitution of the Legislative Council was altered, and it became a body whereof each old Province was entitled to elect an equal number. This amalgamation did not work well; there was a distinct cleavage as to race, language, institutions, religion, and ideas between the two populations thus supposed to be united into one Province with one Legislature and one Government. There arose not only two Parliaments, but practically two Ministries, with separate Premiers, Attorney-Generals,

&c., &c.

Sir J. McDonald stated¹ —“Although we sit in our Parliament, supposed constitutionally to represent the people without regard to sections or localities, yet we know that in matters affecting Upper Canada solely, members from that section claimed and generally exercised the right of exclusive legislation, while members from Lower Canada legislated in matters affecting only their own section.”

Another member of the Canadian Parliament stated—“² Over this usage, and in connection with it, we have developed all those double majority and double minority notions and practices which again of late years are so constantly leading us into all manner of constitutional difficulties. It has been found again and again impossible to constitute a satisfactory ministry of two sections, because one or other of the two sections if they come together on any basis of real political agreement was so very likely not to be able to command a majority of its sectional representatives in this House. It was practically a division of the House as well as of the Government into two sections—practically all but a Government by two Ministries and with two Houses.”

This state of affairs rendered all government impossible. The antagonism between the two sections was so pronounced that between May 21, 1862, and the end of June, 1864, no less than five Ministries had been formed, none of which could do anything. At this critical juncture the leaders of the two sections formed a Coalition Government for the purpose of arranging for a federation of the British-American provinces, or, if that proved impossible, of putting an end to the disunited unity which existed between the two Canadas, by forming a federation between them alone.¹

In the Maritime provinces (Nova Scotia, New Brunswick, Prince Edward's Island, and Newfoundland), Nova Scotia took the first step towards federation. In 1861 its Legislature passed a resolution favourable to Union which was forwarded to the Home Government. The result of this was that the Legislatures of¹ three of the provinces passed resolutions authorizing their Governments to appoint delegates not exceeding five (5) each to confer with delegates from the other provinces “for the purpose of discussing the expediency of a Union of the three provinces under one Government and Legislature.” Delegates were appointed, and it was arranged that the Conference should meet at Charlotte Town on 1st September, 1864.

By a lucky accident before they met the Coalition Government in Canada was formed for the purposes above detailed. The Government of Canada at once asked for and obtained permission to send delegates from that province, which was granted.

By a Legislative Union the Maritime Provinces seem to have intended an amalgamation: as this was the very thing that the Canadians were trying to get rid of, their delegates were authorised to consider the question of Federation only.

After discussion, it was decided that the amalgamation of the Maritime Provinces was impracticable, and it was agreed that the delegates from all the provinces should meet again at Quebec on 10th October to discuss the question of Federation.

They did so meet, and, after having sat for eighteen days, agreed to the seventy-two resolutions on which the British North American Act forming the constitution of the Dominion of Canada was based.¹

The proceedings of the Quebec Convention were in secret, and if they have been subsequently published I have not seen them, and can only conjecture the influences at work on the minds of the members. It is, however, certain that the war between the North and the South in the United States was then raging. A war between the Northern States and Great Britain if not imminent was far from improbable.² A minority in the various Canadian Provinces, far from inconsiderable in number, “looked to Washington,” and advocated incorporation with the United States. Most of the provinces were geographically divided and disconnected. Some of them were in antagonism on grounds which have been before referred to. The “preponderant and increasing influence of the American Union” referred to by Lord Durham rendered it necessary to take some steps. The British Government had in various ways both direct and indirect been continually urging Federation on them as the only possible means to secure their own safety and prevent their absorption in the United States, and, above all, “the deadlock into which the faction fight with forces equally balanced had brought the position of the united but unassimilated Canadas” rendered it necessary to do something and to do it quickly, and what was practicable was more considered than sound principles or lasting results.

No doubt they had before them the American Constitution, and were enabled to learn lessons from its working during a period of over eighty years, but the question is, did they do so?¹ Sir J. McDonald, in introducing the seventy-two resolutions of the Quebec Convention to the consideration of the Canadian Parliament, stated that they had adopted all the provisions of the American Constitution suitable to the circumstances which time and experience had proved to be good, and rejected all that the same tests had proved to be bad. But he did not prove this; he did not even attempt to prove it, nor did anyone else. The truth is, the war between the North and South was attributed to the too great prominence of the doctrine of States rights, and consequently States rights were relegated into insignificance.¹

No doubt States rights were the pretext for that war;² but when have ever men or nations whose interests are constantly in antagonism, and who feel that it is vital to preserve them, been at a loss for a pretext?

The question of “slavery, or no slavery,” was the cause of the war, and if the States rights doctrine had never been heard of this war would have taken place all the same. It was the cancer which nearly made impossible the initiation, embittered the life, and well nigh proved fatal to the existence of the American Union. Cold steel, and cold steel alone, was an effectual remedy; and whether you call the pretext for the operation “States Right,” or any other name, it matters not.

The seventy-two resolutions agreed upon by the Quebec Conference were submitted for ratification to the Legislatures of the different Provinces. Their subsequent history, and also the history of the ratification by the American people, of the Constitution drafted by the Philadelphia Convention, will be shortly detailed in a subsequent chapter, under the title “Ratification.”

A few words will suffice concerning the formation of the Swiss Constitution.

It has been of such slow growth and development, so moulded by wars and events of long gone by history; the manners and customs of the people are so different from those of ourselves and our kinsfolk in America and Canada, and have so important a bearing on its working, that except perhaps as to the mode of the appointment of the executive and the peculiar institution of the “referendum,” which will be dealt with hereafter, it is feared few useful conclusions can be obtained from either its history or its text. As it at present exists it is an adaptation of the American Constitution to the circumstances of the Swiss people, and in adaptation it has been so modified by provisions borrowed from the Constitution it replaced, and by the systems of the Cantonal Governments, the Lands gemeinden and other Swiss ideas, as to have lost some of its salient features.

It retains, however, some of the most important. A Senate called the Council of the States with equal representation from each Canton and a House of Representatives called the National Council elected on a population basis by the Cantons—AND IT IS A FEDERATION PROPERLY SO-CALLED: that is, its laws are enforced as against the individuals forming part of the Swiss nation¹. Prior to 1848 there had for many centuries been leagues, alliances, confederations, and other sorts of Unions between many of the Cantons. They had even forced upon them for a short time by the Emperor Napoleon an unitarian form of Government—the “Helvetic Republic, one and indivisible.” Their history had been of a most stirring character, and the various Cantons had been frequently at war

with one another, either on their own account or on account of other nations. Even as late as 1847 the fundamental flaw which has ruined all confederations showed itself—revolutions broke out in several Cantons, and war between various groups of Cantons took place.

They then “looked to America,” and in 1848 a Convention of 14 members was appointed to adopt the Federal Constitution of that country. The Constitution framed by the Convention was then submitted to the Cantons and at once adopted by 131/2; others joined shortly afterwards, and on the 12th September it was finally promulgated with the assent of all the Cantons. It was further revised in 1874 submitted for ratification to a referendum, adopted, and continues unaltered to the present date.

The impulse which led to the passing of the ¹ South African Union Act proceeded not from the Colony so much as from the British Government. The Act itself, so far as it is in any way definite, follows the Canadian² model, but a perusal will show that the division of powers between the Central and Provincial Governments; the seat of the Central Government; the divisions into which South Africa was to be formed; the Constitution of the Senate, &c. &c., are left to be settled as the Queen by order in Council may direct. It may be described as a Federal Constitution “in nubibus.”

(1) Story 29.

(2) On the motion of Hamilton the Legislature of New York in July, 1782, passed resolutions requesting Congress to call a General Convention, to revise the Constitution but no action seems to have been taken.

(1) See Story 26 to 36. Kent 211 to 230. Also the Introduction to the Federalist, for elaborate details. See also Bryce 16 to 26.

(1) Fed. VI., VII., VIII., Pages 76 to 96.

(1) Fed. Introduc., LV.

(2) Fed. Introduc., LVII.

(3) Fed. Introduc., LXII. to LXXII. For complete text of Hamilton's first plan of Government see Fed., page 31.

(1) Of course this is too short to be a complete analysis of these plans of Government, it is only an analysis of their main points.

(1) Bryce, 37.

(1) Freeman on Presidential Government. Select Historical Essays, 333.

(2) Sir John McDonald, B.N.A. Deb., 32.

(3) Bourinot Constitution of Canada, 53.

(4) At the time this consolidation took place Ontario had a population of about 460,000, who were chiefly English speaking and Protestant; and Quebec had a population of 700,000, chiefly French speaking and Catholic. In 1861 the balance of population had been altered. Ontario had 1,396,000 inhabitants. Quebec had 1,111,000. See Bourinot, *Constitutional History*, 50. Creswell, 194.

(1) B.N.A. Deb., 30.

(2) B.N.A. Deb, 498.

(1) So far back as 1858 this had formed part of the policy of the Cartier-McDonald Ministry, and was referred to in the Governor's speech. Bourinot, *Constitution of Canada*, 54.

(1) Newfoundland refused, and still refuses, to join the Federation. In 1866 the previous question was carried when the subject was introduced to the Legislature. Monro 38. Monro 37. Bourinot, *Constitution of Canada*, 54. Bourinot, *Fed. Gov in Canada*, 25.

(1) For text of these seventy-two resolutions, see Appendix E.

(2) "The more powerful (such is more powerful than dread of the United States) influence was that of the deadlock into which a faction fight had brought the politics of the two united but unassimilated Canadas, and from which the leaders sought to escape by merging the politics of the two Canadas in those of a more extended confederation." Goldwin Smith 5.

(1) "They had before them the example and experience of the United States, though the experience was by them misread."—*Goldwin Smith*, 5.

(1) "More power (in the Dominion Constitution) is given to the Central Legislature and Government. This was done in the belief that American secession had been occasioned by want of power in the Central Government, whereas American secession was caused by slavery alone."—*Goldwin Smith*, 7.

(2) The celebrated "nullification" doctrine, under which the Southern States justified their secession, was mainly promulgated by Vice-President Calhoun, and is as follows:—"The constitution is a compact to which the States were parties in their sovereign capacities. Now, when a compact is entered into by parties which acknowledge no tribunal above their authority to decide, in the last resort, each of them has a right to judge for itself in relation to the nature, extent, and obligations of the instrument." Daniel Webster, in his celebrated speech in support of the Union, in the United States Senate, combated this view, and showed that there was no such compact as alleged; that it was the people of the United States who had delegated to the Union Government certain powers, and to the States Governments certain other powers; that the Constitution itself commenced by, "We, the people of the United States, do ordain and establish this Constitution." This doctrine was promulgated, and speech made concerning the question of slavery which was then festering. Webster no doubt was right, and got the best of the argument, but that did not prevent the Southern States from using this doctrine as a pretext, even after it was

shown to be untenable. De Tocqueville, 420; Federalist XXII., 193. See Daniel Webster's Speeches, page 287, also Fed. XXXIX., 305.

(1) This is not universally true, and difficulties have occurred in consequence.

(1) Act 47 of 1877. It is printed as an appendix for what it is worth. See Todd 322.

(2) It is true that clauses 33 and 34 follow clauses 91 and 92 of the Canadian Act and define the respective powers of the Union and Provincial Governments, but by clause 37 these can be altered.

Chapter III.

Union Under The Crown—What Is Meant By.

It may be advisable to shortly consider what is meant by a “Union under the Crown.” Union and Unity are two different things, and it is Union and not Unity that is asked for and desired. Our sense of common interest and our National feelings are strong enough to impel us to desire Union, but not strong enough to¹ desire us to wish for Unity. We wish for many purposes to form an Australian Nation, but we wish for other purposes to remain independent colonies, and we desire to form a Government which will reconcile these two wishes. To do this our delegates are asked to frame a Constitution welding Australia into one nation so far as our common interests are concerned, and leaving us all our present powers of Home Rule so far as regards all matters which cannot be better dealt with by the Union or Federal Government. This Federal form of Government, says Professor Freeman “may be looked upon as one form of Government among others having its own advantages and its own disadvantages suited for some times and places and not suited for others, and which like all other forms of Government may be good or bad, strong or weak, wise or foolish, as just may happen.”

A distinction¹ has been drawn by a celebrated writer between Federation and Confederation. By the one is meant that form in which the Central Government legislates for and acts upon the people as individuals, who for the purposes and so far as the jurisdiction of the Central Government extends form one nation, no matter in which of the constituent States they live; and by the other that form in which the Central Government legislates for and directly acts upon the constituent States or Provinces as such. There have been only three Unions of the first form (Federations)—America, Canada, and Switzerland, all of which are in existence and working well. The pages of history are strewn with the ruins of the latter (Confederations)—ruins mainly caused by dissensions, jealousies, and wars between their constituent States.

History and experience have shown that neighbouring States in course of time either drift into open enmity with each other—actual war alternating with armed preparations for war—or form Federations. Intermediate forms of Unions, treaties, leagues, alliances, confederations, have all proved futile; and Federation has been shown to be not only a means, but the only practical means by which lasting Unions can be formed.

¹ “The great, the radical, vice in the construction of a Confederation is in

the principle of Legislation for States or Governments in their corporate or collective capacities as distinguished from the individuals of whom they consist.”

² “A sovereignty over sovereigns, a government over governments, a legislation for communities as distinguished from individuals, as it is a solecism in theory, so in practice it is subversive of the order and ends of political polity, by substituting violence in the place of law or the destructive coercion of the sword in the place of the mild and salutary coercion of the magistracy.”

It is true that even Federations do not always prevent dissensions or even actual war between their constituent States, but all human institutions are imperfect, and in the only case in which actual war has happened (the war between North and South in America) the question of slavery which led to the war festered for eighty years before it broke out, and was one of those questions which might well, as in fact it nearly did, make the existence of a Federation impossible. And it is also true that no one would nowadays advocate the formation of a Confederation, but there are many intermediate forms between the “Unitarian,” the “Federation,” and the “Confederation” form of Government, partaking partly the attributes of one and partly of the other or others, and prominence is given to the radical defects of the latter in order that the principle which underlies the difference should never be lost sight of. The Dominion Constitution is not a true Federation. It sometimes trenches on the “Unitarian” and sometimes on the “Confederation” form. The Australian people have already decided not only that a Federation of the Australian Colonies is possible, but that it is desirable, and that the time and place are suitable. These points have been settled and are beyond discussion, and it is for the delegates at the Sydney Convention to frame a Federal Constitution which shall form a Union of the Australian Colonies that shall be “good,” “strong,” and “wise.”

It is not suggested that the Australian people should give up any of the rights or powers of self-government which they now possess, but, on the contrary, that they should be increased, and that the exercise of such increased rights and powers should be delegated partly to a National or Federal Government and partly to the present Provincial Governments.

As we still are and (I hope long may continue) a part of the British Empire, the Imperial Parliament must be the machinery by which this will have to be done, but it is the Australian people who must decide which of their rights and powers are to be delegated to the Union and which to the provincial Governments.

(1) Dicey, 131 to 138. England's case against Home Rule. Dicey, 178.

(1) Bluntschli. Theory of the State.

(1) Federalist XV., 141.

(2) Federalist XX., 178.

Chapter IV.

Governor-General

As the Union is to be under the Crown, it must follow that there is to be a Governor-General appointed by the Crown, as in Canada. The instructions to the Governors of the Australian Colonies are contained in a circular despatch from the Colonial Office, sent out in 1877.¹ Although many difficulties have arisen concerning the powers and position of Australian Governors under these instructions, they have never been altered.

² In 1878 the Dominion Government objected to the instructions to the Governor-General then in force, and argued that, as Canada possessed greater powers of self-government than had been given to any of the other Colonies, and consisted not of one province, but of seven (7), the widest possible powers consistent with the provisions of the Dominion Constitution should be conferred on the Governor-General. This was acceded to, and, on the appointment of the Marquis of Lorne, important changes were introduced into his commission and instructions³ The important differences between Canada and the Australian Colonies are as follow:—

In Canada—

(a) ¹ The right of reservation of Bills for the assent of the Crown has been almost abandoned. The Imperial Government are content to rely upon the right of disallowance within two years as a sufficient surety against the enactment of any measure by the Parliament of Canada that would be of such a character as to call for the interposition of the Royal veto.

(b) It is only when the obligations of the Empire to foreign countries are affected, or an Act is repugnant to an Imperial Act within the meaning of 28 and 29 Vic., cap. 63, that the right of disallowance will be exercised.²

(c) The prerogative of pardon is to be exercised by the Governor-General³ —

1st—As to capital cases, with the advice of the Privy Council.

2nd—As to other cases, with the advice of at least one of his ministers.

3rd—As to cases in which pardon or reprieve might directly affect the interests of the Empire, or any country or place beyond the jurisdiction of the Government of the Dominion, the Governor-General is, before deciding, to “take those interests specially into his own personal consideration, in conjunction with such advice as aforesaid.”

¹ The right of the Dominion to be represented in the discussion of treaties with foreign powers, when the interests of Canada are directly concerned,

is admitted. The clause in the Governor-General's instructions, forbidding him to assent to Bills imposing differential duties, has been revoked.

In all local cases, including disallowances of Acts of the Provincial Legislatures,² the Governor is to act on the advice of his Ministers.

The tendency of the British Government has been for many years to give more complete “autonomy” to the British Colonies, and the instructions to the Governor-General of Canada almost sweep away the last faint vestiges of Imperial control (except when Imperial interests manifestly conflict), and gives to the Dominion—as will, no doubt, be given to Australia—all the advantages of a republican form of government; whilst the appointment of a Governor-General preserves Canada, as it will preserve us, from one of the greatest disadvantages of a republic—the necessity for the election, at more or less frequent intervals, of a head of the Executive Government. ¹ There is no part of the plan of the framers of the American Constitution which has so little realised the expectations of its friends as that which regards the choice of a President.

No doubt the problem of the appointment of the head of the Executive in a Republic is one of extreme difficulty, and it is a matter for congratulation that the task of attempting to solve such problem is not imposed upon the Sydney Convention.

The question may be well raised—Ought the instruction to any one holding so important a position as Governor-General of Australia to emanate from the Colonial Office? It has been stated that the Royal instructions to a Governor² “are part of the constitutional law of the colony.” If this is so, ought we not in framing the Federal Constitution to give effect—to a certain extent at all events—to the well-known and long-held views of the Chief Justice of Victoria, and therein limit and define the powers and duties of the Governor-General. I do not mean all his powers and duties. It would be impossible (and probably impolitic if possible) to do this, but such of his powers and duties as form part of the constitutional law of the Union and are capable of being contained in instructions. On looking at¹ the Dominion Constitution we see that such of his powers and duties as refer to assent to or reservation of Acts of the Legislature are defined.² Why should not the example thus set be still further followed?

The power of the Governor-General (if any) over Provincial Governors, and his veto (if any) over the Acts of Provincial Parliaments and other powers and duties of a similar nature must undoubtedly be conferred and defined by the Constitution, and there seems no valid reason why a different course should be adopted in reference to such of his powers and duties of the nature indicated above as have hitherto been conferred and defined by a circular from the Colonial Office.³

(1) Todd, 82; see Appendix C.

(2) Monro, 162; Todd, 76, et seq.

(3) Monro, 325; see Appendix D.

(1) Bourinot: Fed. Gov. in Canada, 36–41.

(2) Monro, 171; Todd, 251 to 274.

(3) Todd, 130, et seq.

(1) Sir J. McDonald, in 1871, and Sir C. Tupper, in 1878, represented Canada in the Washington negotiations concerning Fisheries. And in the negotiations between Canada, France, and Spain, the Imperial Government specially appointed a Canadian representative. The 132 sec. of the B.N.A. Act provides—“The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada towards foreign countries arising under treaties between the Empire and such foreign countries.”—Bourinot: Fed. Gov. in Canada, 43.

(2) Can. Sess. Paper, 1879, No. 181. Todd, 322, et seq.

(1) Story, 166.

(2) Dispatch from Sir George Bowen, Governor of Queensland. See Todd, 152.

(1) Todd 152.

(2) B.N.A. Act, Clauses 55 to 57.

(3) For a long eulogy on the utility and functions of a Governor see Todd 574. For a true definition of his legal position see Forsayth 80.

Chapter V.

The Executive.

There are three different systems of Executive open for consideration.

The British or Responsible Government.

The Swiss.

The American.

The British system has been in force in these colonies ever since we have had power of self-government granted to us, and is so well known as to need no description. This system is in force in the Canadian Federation.

In Switzerland the members of both Houses sitting and voting together elect an Executive of seven to hold office for three years called the Federal Council. The Federal Council cannot dissolve either branch of the Legislature, neither can either or both branches dismiss any member of the Council. Although the Executive so chosen must be members either of the National Council or Council of the States they lose by election the right of voting in the Chamber to which they belong; they, however, have the right of speaking in either Chamber. No similarity of views on even the most important question is required of them, and it sometimes happens that one member will strongly denounce the view just expressed by his colleague. The Legislature also chooses from amongst them a Chairman, who holds office for a year and is not re-eligible for next year, and who is called the President, but who really is nothing more than the Chairman of the Board.¹ The Council alone has the right of presenting Bills² to the Legislature. Instructions are given to the Council by the Legislature by what are called "formulats" or motions. The so-called President is paid a salary of £540 per annum, the other members £480. This fact alone shows a wide divergence between the state of affairs in Switzerland and Australia.

The fundamental idea which actuated the framers of the American Constitution was to keep the Executive entirely apart from, and uncontrolled by, the Legislature. They were also greatly afraid of giving the President³ or his Ministers any opportunity of corrupting the Legislatures. They could not have adopted the responsible Ministry system, because it was not in existence (except, perhaps, in a germ state in England), and even had it been in existence it is more than doubtful if they would have adopted it.⁴ The irresponsible nominal head of the Executive being absent, disarranges all the machinery by which Responsible Government can be made to work.

Be that as it may the Americans certainly succeeded and succeeded only

too well.¹

“They builded better than they knew.”

“They disassociated the Executive so completely from the Legislature as to make each not only independent, but weak in its own proper sphere.² The administration does not even work as a whole; it is not a whole; it is a group of persons each individually dependent on and amenable to the President, but with no joint policy and no collective responsibility; its branches are unconnected, their efforts are not devoted to one aim, do not produce one harmonious result.”

The Legislature has to raise the revenue by taxation and appropriate the manner in which it shall be spent. As the members of the Executive have no seats or votes in either branch of the Legislature and no responsibility to it, and as they may hold and sometimes do, opinions totally at variance with the majority of Congress on the vital political questions of the day, a practice arose which long ago became settled, and still continues, of managing the finances of the country by means of Standing Committees of both Houses which meet and discuss in secret.

In the House of Representatives, one Committee (the Committee of Ways and Means) raises the revenue. Two other Committees (the Committee on Appropriation and the Committee on Rivers and Harbours) spend the money; neither has any responsibility or connection with each other, and the matter is still more complicated by the Senate which has the power of altering Money Bills (which it frequently exercises) having also its Committees of Ways and Means and of Appropriations.

Mr. Justice Story says:—“¹ By our system in force (in America) the heads of departments are precluded from preparing or conducting their own measures in the face of the nation in the course of debate and are compelled to submit them to other men who are either imperfectly acquainted with the measures or are indifferent to their success or failure. Thus that open and public responsibility for measures which properly belongs to the executive of all Governments and especially to a Republican Government as its greatest security and strength is completely done away.”

² “So long as the debit side of National account is managed by one set of men and the credit side by another set, both working separately and in secret, without public responsibility and without intervention on the part of the official who is nominally responsible, so long as these sets, being largely composed of new men every two years, give no attention to business except when Congress is in session, and then spend in preparing plans the whole time which ought to be spent in public discussion of plans already matured, so that an immense budget is rushed through in a week or ten days; just so long the finances will go from bad to worse no matter by

what name you call the party in power. No other nation attempts such a thing or could attempt it without soon coming to grief. Our salvation thus far consists in our enormous income with practically no drain for military expenditure.”

It is not in financial matters alone that the evils of this too great severance of the Executive from the Legislature is felt, but in all legislation under this system.

There were, in 1888, 54 Standing Committees, in the House of Representatives, to one or other of whom each Bill introduced is referred. No discussion takes place on the second reading. The proceedings of the Standing Committees are secret. If the Committee does not like the Bill it is not reported; if it does, immediately it is reported (as a rule) the Chairman moves a notice which precludes amendment.

The evil effects which have resulted from this mode of procedure are as follow:—¹ It

1. Destroys the unity of the House as a Legislative body.
2. Prevents the capacity of the best members from being brought to bear on any one piece of Legislation however important.
3. Cramps debate.
4. Lessens the cohesion and harmony of Legislation.
5. Gives facilities for the exercise of underhand and even corrupt influences.
6. Reduces responsibility.
7. Prevents Press discussion and lessens the interest of the nation in the proceedings of Congress.
8. Deprives the country of the opportunity of being informed and enlightened by debates in Congress.
9. Throws power into the hands of irresponsible Chairman of Committees.

It is true that Professor Bryce goes on to detail some advantages gained, but they are few and of small importance² .

The Americans themselves do not approve of this mode of conducting public business, but they contend that it is the only mode possible under the present form of Executive¹ . Some of them have cast longing eyes on England and advocate the introduction of responsible Government as the only cure for the evils under which they are suffering. It is not easy, however, to alter one part of a delicately balanced system of checks and counter checks without altering the whole.

We are well aware of all the good and all the bad points of Responsible Government. Some, both in these Colonies and in England, disgusted with its bad, advocate the introduction of the Swiss form of Executive. In the first place we know very little about it. It is said to work well in

Switzerland, but even if that is so it would be rashest of assumptions to conclude that it would work well in Australia. Montesquieu after twenty years study of the political institutions of all times and nations came to the conclusion that they were the products of “soil and climate² .” The soil, the climate, the physical and political environment of Switzerland, the history, feelings, and sentiments of its people are so different from ours, and must exercise so important an influence on the working of its political institutions that any conclusions drawn from them, is to say the least, hazardous.

In the past, experience has shown that all political institutions which have been lasting are of slow growth; that the ideas and sentiments which give rise to such institutions, and ensure their utility, must be as it were engrained in the people; and that imported and transplanted exotics have never flourished.

Neither the Swiss, American, nor British forms of executive have any special bearing on the question of Federation. They are all as applicable to a “Unitarian” as to a “Federal Government”; but if the Swiss system were adopted, and proved a failure, the failure would be attributed to Federation, and the whole cause would suffer. If the Swiss experiment is to be tried, let it be tried somewhere where it will do less harm if it does not succeed; and let us adhere to the system of responsible Government, under which we have been born and bred, and which with all its faults and imperfections has worked at least as well as any other system adapted to Republican institutions.

(1) Freeman on Presidential Government: Short Historical Essays, 296.

(2) This necessitates a peculiar Swiss institution called the “Initiative,” by which either branch of the Legislature or a Canton, or a certain number of citizens, can demand that the Council shall introduce a Bill dealing with any given subject.

(3) Bryce, 82.

(4) Bryce, 87.

(1) Bryce, 278, 279.

(2) Bryce, 287.

(1) Story 96.

(2) Bryce 177.

(1) Bryce, 155 et seq.

(2) Bryce 158

(1) See Congressional Government by Woodrow Wilson.

(2) The widest possible meaning must be given to the soil, as the word is used by Montesquien. It includes the physical configurations of the country, and of the surrounding countries, and the action and re-action of neighbouring nations, whose feelings, ideas, and institutions have been formed and modified by their respective “soils and climates.”

Chapter VI.

The Legislature.

THERE can be little doubt but that there must be two Houses of Parliament (which for convenience may for the present be called the Senate and the House of Representatives).

¹ All experience, both ancient and modern, clearly proves this, and in all cases where it has been attempted to carry on a democratic form of Government with one House, the result has been either anarchy and the abandonment of the attempt, or the institution of some other form of Government.²

Three of the States of America (Pennsylvania, Georgia, and Vermont) tried the uni-cameral, or one House system, but all gave it up.

Kent remarks, “³ The instability and passion which marked their proceedings (Legislatures of Pennsylvania and Georgia) was very visible at the time, and the subject of much public animadversion; and in the subsequent reform of their Constitution the people were so sensible of this defect, and of the inconvenience they had suffered from it, that in both States a Senate was introduced.” ¹ With these trifling exceptions (Pennsylvania, &c.), the bi-cameral system is the “quod semper, quod ubique, quod ab omnibus” of American constitutional doctrine.

It is true that three of the Canadian Provinces (Ontario, British Columbia, and Manitoba) and most of the Swiss Cantons have adopted the uni-cameral system, but the power of the Legislatures of the Provinces in Canada are so restricted, and such large powers are (in theory) given to the Federal Government to veto their acts, that it was thought the functions of a second Chamber could be exercised by the Dominion Government; and in Switzerland the “referendum,” to a certain extent, exercises such functions.

In the first American Constitution (the Confederation) there was only one Chamber, each State being allowed to send any number of delegates (not less than two or more than seven), the delegates jointly having only one vote; this was considered² one of its most prominent defects, and was one of the chief reasons which led to the Philadelphia Convention, and the Constitution there framed.

³ A somewhat similar state of things existed in Switzerland up to 1848, but it did not work satisfactorily, and by the Constitution framed in that year a bi-cameral legislature was adopted.

There is an evident growing impatience in these Colonies over the

salutary checks provided by Upper Chambers, a desire to, as it is termed, “make them more amenable to public opinion,” but¹ “as the cool and deliberate sense of the community ought in all Governments, and actually will in all free Governments, prevail over the views of its rulers, so there are particular moments in public affairs when the people, stimulated by some irregular passion or some illicit advantage, or led by the artful misrepresentations of unprincipled men, may call for measures which they themselves will be afterwards most ready to lament and condemn. In this critical moment how salutary will be the interference of some temperate and respectable body of citizens in order to check the misguided career and to suspend the blow meditated by the people against themselves until reason, justice, and truth can regain their authority over the public mind.”

All the reasons and arguments in favour of the bi-cameral system in “Unitarian” Governments hold with increased force and effect when applied to Federal Governments. The problem is then further complicated by the necessity of securing the smaller States from the usurpation or tyranny of the larger, whilst at the same time giving due weight and power to the population and wealth of the larger States. This can only be done by two Houses, in which the one (the Senate) represents the States, each State being represented by the same number of representatives, and the other (the House of Representatives) represents the people in States according to their numbers.

The American Constitution framed on this system has been in existence for over 100 years, and no conflict has ever arisen between the two branches of the Legislature (although they are jealous and combative and frequently come into collision), founded on the difference of their constitutions.¹ The House of Representatives has never become the organ of large States nor prone to act in their interests, so neither has the Senate been the stronghold of the small States. The United States became a federation in respect of the Senate, a nation in respect of the House of Representatives, and so it has remained, the Constitution providing that ² “no State can be deprived of its equal suffrage in the Senate without its consent,” and, notwithstanding the fact that the population of some States has increased most enormously, whilst that of others has remained comparatively stationary, and that many contests in other matters have arisen between the different States, and between individual States and the Federation, no contest has arisen between the great States and the small ones as such.¹ Another advantage is that this system strongly differentiates the members of the Senate from the members of the House of Representatives by the mode of their choice and character of their representation.

In Switzerland the Senate is called the Council of the States. It consists of two² delegates from each Canton elected in the manner and for the term fixed by the Canton. The House of Representatives is called the National Council, and is elected for three years on a population basis. The two Houses sometimes sit together as one body. This has worked most harmoniously since 1848, and no antagonism has arisen between the large and small States as such.

In Canada there is a Senate and a House of Commons. The Senate consist of members nominated for life.³ Although nominated by the Governor-General the Senators are supposed to represent provinces or groups of provinces, and the principle is admitted, although somewhat imperfectly, of equal State representation in the Senate. Each Senator is obliged to hold a property qualification in the province for which he is appointed. The House of Commons is elected on the same basis as the United States and Swiss Lower Houses, viz., each province elects representatives proportionate to its population.

(1) Sparta, Carthage, Rome, England, Sweden, Norway, United States, British North America, Germany, Italy, Austria, Spain, and South American Republics all have had or have two or more Houses. The Parliament of Sweden consisted of four Chambers, and the States General of France of three.

(2) See cases cited by Kent, 231, 232.

(3) Kent, 230.

(1) Bryce, 461.

(2) Story 49.

(3) Adams 20.

(1) Federalist LXIII., 476.

(1) Bryce, 182.

(2) Article, 5.

(1) The population of New York in 1880 was 5,082,871, of Rhode Island 276,531, they both send two representatives to the Senate. Some of the Western States have still smaller populations. Montana was admitted as a State when its population was 39,157, but that was because it was considered certain to rapidly increase.

(2) At the last census the population of Berne was 536,182, of Nidewald 12,558. They each elect two representatives to the Council of the States.

(3) The maximum number is 84. There are at present 78 members B.N.A. Act, 21 to 36. Bourinot, Fed. Gov. 97.

Chapter VII.

- (a) AS TO A NOMINATED SENATE.
- (b) AS TO AN ELECTED SENATE
- (c) MODE OF ELECTION OF SENATE.
- (d) EQUAL REPRESENTATION OF STATES IN SENATE.
The Senate.

THE Senate must be either nominated by the Crown or elected by the people. There are advantages and disadvantages inherent to both systems; let us consider and contrast them, and learn what lessons we can from the two rival systems in Canada and America.

(a) As to a Nominated Senate.

The members of the Senate in Canada, as we have seen, are nominated by the Crown for life.¹ The influence of the Senate, as might have been expected, has steadily declined. In a Republic a Legislature, to be strong, must be elected. Nominated, the Senators do not not really represent Provinces, and no nominated Senators will ever be looked upon by States or Provinces as being their representatives.

Every State in the American Union feels that a disrespect to the Senate is a disrespect to itself; but this can never be the case in a nominated Senate. It has all the inherent weakness of the British House of Lords, and none of the prestige which attaches to high rank and hereditary privileges. Its utility as “a ceremony” is practically nil, its power as a co-ordinate branch of the Legislature will steadily decline. In Canada there is a maximum number (eighty-four) fixed for its members. There is no means of preventing a deadlock in case the two Houses come into collision; this was pointed out, when the federation of Canada was under consideration, in a despatch from the Colonial Office.

¹ “The second point which Her Majesty's Government desires should be reconsidered is the constitution of the Legislative Council. They appreciate the considerations which have influenced the Conference (Quebec Conference of 1864) in determining the mode in which this body, so important to the constitution of the Legislature, should be composed. But it appears to them to require further consideration whether, if the members be appointed for life, and the number be fixed, there will be any sufficient means of restoring harmony between the Legislative Council and the popular Assembly, if it shall ever unfortunately happen that a decided

difference of opinion should arise between them.”

It was absolutely necessary, according to the scheme of the Ontario Convention, that the numbers should be fixed, because it was proposed that the Senate should represent the Provinces,¹ which precluded an unlimited addition to its numbers.

² In introducing the Quebec resolutions to the Canadian (Upper and Lower Canada) Parliament, Sir John Macdonald undertook to show that they avoided the defects which time and experience had shown to exist in the American Constitution, and adopted all those provisions which had proved their own excellence. But he advanced no (what may be called) “Federal arguments” in favour of a nominated Senate, and the powerful arguments of Mr. Dukin³ against a nominated Senate were never satisfactorily answered either by Sir John Macdonald or anyone else.

Mr. Goldwin Smith wonders how¹ “the barefaced proposal that the leader of a dominant party should have the uncontrolled appointment of the members of one branch of the Legislature” could ever have been acceded to.

The position in Canada was such that it was necessary to do something, and to do that something, quickly. What wonder is it that any scheme which was practicable was welcomed, and that cleverness in framing a system which would be acceptable was more considered than wisdom in adopting one which would stand the test of criticism and time?

A nominated Senate smoothed the way. ² Clause 14 of the resolutions provided that so far as practicable all members of the Federal Senate should be chosen from the Upper Houses of the various Provinces.³ Great stress was laid upon the fact that most of the members of the Upper House of the various Provinces who joined the Union would either in the first instance, or shortly afterwards, be appointed Senators for life in the Federal Senate; this, to say the least of it, prepossessed the Upper Houses not only to vote, but also to use their influence, which in the aggregate must have been great, in favour of the scheme.

The stock argument that two co-ordinate elected Houses might cause a deadlock in legislation was used in favour of a nominated Upper House, but no one attempted to meet the point raised by the dispatch from the Colonial Office, and the argument that in the case of a difference of opinion arising between the two Houses, the fixed determination of the people would by the periodical elections to the Senate be certain in due course to prevail, whilst a Senate appointed for life, and with a fixed number of members, afforded no provision whatever to meet the case, was never answered.

As has been before observed the influence of the Senate in Canada, and

its usefulness, has steadily declined not because of the lack of talent in its members, but because of the inherent defect in its constitution.

It has been contended that the power to add from three to six members to the Senate was intended to provide a means to swamp that body, if it ventured to disagree with the Dominion House of Commons, and the Secretary of State for the Colonies has put it on record “that, after careful examination, he was satisfied that it was intended that the power vested in Her Majesty should be exercised in order to provide a means of bringing the Senate into accord with the House of Commons, in the event of an actual collision of opinion between the two Houses.” If this be true, all I can say is, that the remedy is most ridiculously inadequate and contemptible, and that it precludes the very fiction, even, of the existence of a body representing the Provinces, as such, in Canada.—See despatch from Lord Kimberley, dated 18th February, 1874, to Canadian Gov., and Todd, 164.

“¹ A nominee Senate, even without a basis of landed wealth, such as is provided by the House of Lords, or any guarantee either for its reasonable agreement with public opinion, or its independence of Government influence, has not, nor does it deserve to have, any sort of authority. The consequence is, that whereas in the United States power is really divided between the two Houses, and the Senate with perfect freedom controls and revises the acts of the popular House, in Canada power centres entirely in the Commons. It (the Senate) initiates nothing. It adjourns till business comes up from the Commons, and only shows it is alive about once each Session by the rejection of some secondary Bill the ignominious failure of the Senate is not the only flaw which an experience of 20 years has revealed.”²

Mr. Bourinot remarks³ : “The system of nomination by the Crown practically by the Government of the day tends to fill it (the Senate) with men drawn from one political party whenever a particular Ministry has been long in office, and fails to give it that peculiar representative character which would enlarge its usefulness as a branch of the Legislature, and give it more influence in the country. It is a question worth considering whether the adoption of such changes as would make it partly nominated and partly elected would not give it more weight in public affairs.”

As some of the leading members in the Quebec Convention were in favour of a Legislative Union, notably Sir J. Macdonald,¹ it may be that the Legislative body which was supposed to represent the provinces was purposely made weak, and the idea is further warranted by the restricted powers given to, and the desire shown to provide for only one Legislative body in the provinces, and the extensive power of veto over their Acts that

was given to, and was originally intended should be exercised by the Dominion Government.

As to an Elected Senate.

The stock argument against an elected Senate is well put by Mr. Bagehot² The evil of two co-equal Houses of distinct natures is obvious. Each House can stop all legislation, and yet some legislation may be necessary. Most Constitutions have committed this blunder; the two most remarkable Republican institutions in the world commit it. Both in the American and Swiss Constitutions³ the Upper House has as much authority as the second. It could produce the maximum of impediment—the deadlock if it liked; if it does not do so, it is owing, not to the goodness of the Legal Constitution, but to the discretion of the members of the Chambers.”

There is, no doubt, some truth in the last observation, but it may be made, and made truly, about all forms of Parliamentary Government. If it were not for the “discretion,” not only of the members of both branches of the Legislature, but also of all others who form portions of its delicate machinery, all such forms of Government would be impossible. The tacit understandings of the British Constitution, the obedience to which depends on the “discretion” of members of the Legislative and Executive, and which are only enforced by the sanction of public opinion, are so numerous and so important as to form the greater part of the constitution itself. For instance, what law is there which obliges a Ministry to retire when they have lost the confidence of Parliament? Or the Crown to dismiss them if they refuse to retire? We have to rely on the “discretion” of the Crown, of the Ministry, and of both Houses to carry out Parliamentary Government, and we do not rely in vain.

¹ “Every political Constitution in which different bodies share the supreme power is only enabled to exist by the forbearance of those amongst whom this power is distributed.”

A deadlock may happen in any form of Government except an autocracy; the chance of it happening is the price we have to pay for our freedom and our liberties.

In all cases in which the people have fully made up their minds and finally expressed their matured wishes the elective Legislative Councils in these Colonies have given effect to those wishes, and there is every reason to suppose that a Federal elected Council will be equally discreet.

Neither does Mr. Bagehot give sufficient importance to the sentiments and feelings of the people which alone make a Federation possible or desirable.

If the Australian people desired unity it would perhaps be a question open to discussion whether the Senate should or should not be an elected body, but when they desire Union only it is essential that there should be in the Federal Government some body representing the Provinces as such. Some body sufficiently strong, from the nature of its constitution, to uphold the rights of the Provinces whom it represents. What other body than an elected Senate can be suggested? It is no answer to point out objections to an elected Senate, unless you are prepared to suggest some other mode of appointment which is open to less objections.

If there is to be some outward and visible sign of the recognition of State rights, if the “natural” desire of the small States is to be given effect to, how can it be better effected than by equal representation in the Senate? Their “desires” will have to be ascertained and consent obtained before any Union can be formed, and we must never forget the saying of Solon, who, when asked if he had given the Athenians the best possible laws, replied, “I have given them the best they can bear.”

¹ As Mr. Bagehot himself remarks, a Federal Senate, a second House which represents State unity has this advantage; it embodies a feeling at the root of society—a feeling which is older than complicated politics, which is stronger a thousand times over than common political feeling; the local feeling “my shirt,” says the Swiss State patriot, “is nearer to me than my coat.”

An elected Senate in which each State is equally represented is a guarantee that no law will be passed, not only without the consent of the majority of the people, but also without the consent of a majority of the States.

By the election of Senators by each State for each State you insure the respect and attachment of the State as a whole, not only for the particular Senators they have elected, but also for the whole federal Constitution of which they form a part.

There is no doubt a feeling in such of these Colonies as possess two elective Chambers, of impatience that the momentary impulses of the people are not more quickly responded to by the Upper Houses, and it may be feared by some that a similar impatience will arise if an elected Senate is provided for, but it is more than probable that the other feelings and impulses before alluded to which will arise in respect of a Federal Senate will counterbalance such impatience. Such certainly has been the case in America.

¹ No doubt in America quarrels between the two Houses are frequent. The Senate largely exercises its right of altering Money Bills, which the other House resents. Each House is jealous and combative, but no serious

deadlock has ever happened. “Both Houses are servants of the same master, whose word of rebuke will quiet them.”

If the Senate is nominated and the number of its members are limited it is open to the objections already pointed out. If its numbers are unlimited, liable at any time to be indefinitely increased by the Executive (which is itself the servant of the other House), perhaps for the express purpose of passing some measure inimical to the rights of the smaller States, it cannot by any possibility be a safe guardian of their rights, neither can it be what every second Chamber ought to be, a good, revising, regulating, and retarding House. ² “The Republican system demands that the deliberate sense of the community should govern the conduct of those to whom they entrust the management of their affairs, but it does not require an unqualified complaisance to any sudden breeze of passion or to any transient impulse which the people may receive from the arts of those who flatter their prejudices to betray their interests. It is a just observation that the people commonly intend the public good. This often applies to their very errors. When occasions present themselves in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed to be guardians of their interests to withstand the temporary delusion, in order to give them time and opportunity for more cool and solid reflection.”

An unlimited nominated Senate would be powerless to perform the duties so eloquently described.

Mode of Elections of Senators.

Senators can be elected directly or indirectly.

If directly, the provinces must either constitute one Electoral District for all the Senators, or it must be divided into different districts, each represented by one or more Senators. The Constitution of South Australia, as originally drawn, provided that the whole province should be one Electoral District for the Legislative Council, and for many years the members of the Legislative Council were so elected.¹

It seems certain that for a Federal Legislature in which Senators represent States they should be elected either directly or indirectly by the State as a whole. In Canada we have seen the Senators are nominated. In² Switzerland Senators are, in nearly all cases, elected by the Legislature of the Canton, but in some cases they are elected by the whole Canton by ballot or in the Landsgemeinden; in no case by any division of the Canton.

In the United States the Constitution provides that “the Senate” “of the United States shall be composed of two (2) Senators from each State

chosen by the Legislature thereof”³ and that⁴ “the times, places, and manner of holding elections for Senators shall be prescribed in each State by the Legislature thereof, but that Congress may at any time by law make or alter such regulations except as to the place of choosing Senators.”

Concerning these two clauses, Kent remarks,¹ “The election of the Senate by the States Legislatures is also a recognition of their (the States) separate and independent existence, and renders them absolutely essential to the operation of the National Government. There were difficulties some years ago as to the true construction of the Constitution in the choice of Senators. They were to be chosen by the States Legislatures, and the Legislatures were to prescribe the times, places, and manner for holding elections for Senators, and congress was authorised to make and alter such regulations, except as to place. As the Legislature may prescribe the manner, it has been considered and settled in New York that the Legislature may prescribe that they shall be chosen by joint vote or ballot of the two Houses, in case the two Houses cannot separately concur in a choice, and then the weight of the Senate is lost and dissipated in the more numerous vote of the Assembly. This construction has become too convenient, and has been too long settled by the recognition of Senators so elected to be now disturbed, though I should think, if the question were a new one, that when the Constitution directed that the Senators should be chosen by the Legislature, it meant not the members of the Legislature per capita, but the Legislature in the true technical sense, being the two Houses acting in their separate and organized capacities with the ordinary constitutional right of negation on each other's proceedings. This was a contemporary exposition of the clause in question, and was particularly mentioned in the well-known letters of the Federal Farmer, who surveyed the Constitution with a jealous and scrutinizing eye.”

As the uncertainty of the meaning of the Constitution, and the different modes of election adopted in different States gave rise to much intrigue and friction, the Congress in 1866 passed a law enacting that each House of the State Legislature should first vote separately for a Federal Senator, and that if the choice of both Houses should not fall on the same person, both Houses in joint meeting should proceed to a joint vote; this arrangement has not, however, abated the evils which previously existed; and quite recently ¹ three States—Illinois, Indiana, and New Jersey have fought for months over the election of a Senator. There is one other possible mode of election, and that is by a Convention in each Province, chosen for the purpose, and for the purpose alone, of electing a Senator. ¹ This is the method adopted in America for the election of President, and it is so universally admitted, even by the warmest admirers of the American

Constitution, to have proved a failure, that it need not be discussed. There remain, therefore, the two alternatives of election—by the Legislature or by the people. There is no doubt that the Senate in America is, and always has been, vastly superior to the House of Representatives, and De Tocqueville, who wrote in 1833, attributed this solely to their mode of election. Having first pointed out the great superiority of the Senate, he says: “² What then is the cause of this strange contrast, and why are the most able citizens to be found in the one Assembly more than the other? Why is the former body remarkable for its vulgarity and its poverty of talent, whilst the latter seems to enjoy a monopoly of intelligence and sound judgment? Both of them emanate from the people; both of them are chosen by Universal Suffrage; and no one has hitherto been heard to assert in America that the Senate is hostile to the interests of the people: from what cause then does so startling a difference arise? The only reason that appears to me to adequately account for it is that the House of Representatives is elected by the populace directly, and the Senate is elected by elected bodies. * * * * * Men who are chosen in this manner accurately represent the majority of the nation which governs them, and they represent the elevated thoughts which are current in the community, the propensities which prompt its nobler actions rather than the petty passions which disturb and the vices which disgrace it.”

De Tocqueville, however, in attributing the result to this one cause alone did not give due weight to many other elements. In America the Senate is elected for six years, the other branch of the Legislature for two only. A Senator represents a State; some of them speak for and are responsible to millions of men; he has much greater dignity, influence, patronage, and importance than a member of the other House; he belongs to a body smaller in numbers, ¹ co-ordinate in Legislative powers and possessing treaty making and administrative functions which have not been conferred upon the House of Representatives. Each Senator has arrogated to himself, and by long practice has acquired, the right of dictating to the President who shall be appointed to fill the Federal offices in his particular State. What wonder is it then that the best men strive for a seat in the Senate. The mode of election no doubt, however, has a good deal to do with the result. Professor Bryce who wrote in 1888 tells us ² that the same influences which have entirely swept away the intention of the framers of the American Constitution in regard to the election of the President by Convention are showing themselves in the election of Senators by the Legislature, that the tendency is¹ for the functions of the States Legislature in that respect to become little more than to register and finally complete a choice already made by the party managers and perhaps ratified by the

party Convention.

It must not be forgotten, however, that in the American States the members of the Upper Houses (Local Senators) are elected for only two years, those of the Lower Houses for only one year. In Australia where the Legislative Councillors are either nominated for life or elected for long periods, and the members of the Lower Houses are elected for three years, we need not fear that the members of either House will become mere nominees elected for the express purpose of voting for a particular Senator or Senators, and we may safely entrust the election of Senators to our Provincial Legislatures.

(d) Equal Representation of Provinces in Senate.

Bagehot remarks,² “It is said that there must be in a Federal Government some institution, some authority, some body possessing a veto, in which the separate States composing the Federation are all equal. I confess this dictum, to me, has no self-evidence, and it is assumed but not proved. The State of Delaware is *not* equal in power and influence to the State of New York, and you cannot make it so by giving it an equal vote in an Upper Chamber. The history of such an institution is indeed most natural; a little State will like, and must like, to see some token, some memorial made, of its old independence preserved in that Constitution by which its old independence is extinguished; but it is one thing for an institution to be natural, and another for it to be expedient.”

No one contends that, in a Federation, a small State should or could be made “equal in power and influence” to a large one. The superior power and influence of the larger State is admitted, and evidenced by the larger number of representatives it sends to the Lower House.

The best test of the “expediency” of any institution must be the test of experience; and no institution has worked so well, and shown itself so well fitted to perform the functions allotted to it, as the American Senate, to which each State, no matter what its size or population, sends two representatives. No political institution has more thoroughly justified the expediency of its mode of constitution.

The equal representation in the Senate is a warrant and a guarantee to the smaller States that no laws will be passed in which their interests will be sacrificed to those of the larger—nay, more, if we may judge by the history of the United States—that no such laws will be even introduced.

Hamilton, who perhaps more largely than any other man induced the Americans to adopt the present Constitution, originally proposed that the States should be divided into districts on a population basis, for the election

of Senators.¹ These districts were to choose electors—not more than twelve or less than six—who were to elect Senators for the district. The question was long and ably debated, and, when the division came, five States voted for Hamilton's plan and five against; the State of Maryland was equally divided.² To meet the emergency, a committee of compromise was appointed, consisting of one member for each State, whose report declared that the first branch of the Legislature should represent the people, and that in the second “each State shall have an equal vote.” Hamilton's plan has been highly commended, and no doubt,³ as a part of a scheme for a Legislative amalgamation, is worthy of consideration. But our Australian Colonies do not desire “unity,” they desire only “union,” and the American system has the great advantage of not only securing for the smaller Provinces a proper weight and consideration in the Federal Government, but also of providing a basis of representation as unlike as possible (within republican limits) from that of the other House.

Professor Dicey defines a Federation to be “A political contrivance intended to reconcile national unity and power with the maintenance of State rights;” and it has been argued that the Dominion of Canada is not a true Federation, as by the non-recognition of the States, as such, their rights have been unduly subordinated to the national unity and power.

As to the number of members of the Senate, it will probably be found convenient to allow each Province to elect nine Senators. The difficulties which have arisen in America, as to mode of election by Legislatures, can be met by providing that each Upper House should elect three, and each Lower House six. The Philadelphia Convention fixed the number of Senators for each State at two, but there were even then thirteen States, and it was seen the number would soon increase. The prime reason, however, why the number was not made larger was, that the Senate was considered to be more of an Executive and Judicial body than a Legislative one; the power of the Senate to make treaties with foreign nations, to declare war or peace, to try persons who were impeached by the House of Representatives, made it necessary to limit its numbers. None of these considerations affect us, and it is submitted that, as there are only six Provinces who can join the Union, nine Senators from each Province would be a convenient number. If the tenancy of office is fixed at nine years, this would enable each Legislative Council to elect one Senator, and each Lower House two Senators, every third year.

(1) Monro, 12.

(1) Despatch from British Gov. to Canada: B N A Debate, 534.

(1) The numbers were apportioned as follows:—

Upper Canada	24
Lower Canada	24
Nova Scotia	10
New Brunswick	10
Prince Edward Island	4
Newfoundland	4
	76

Resolutions 8 and 9 of Quebec Conference: B.N.A. Deb. 1,027. The B.N. American Act slightly modified the scheme as to numbers, and fixed a maximum of 78, which has been still further altered into a maximum of 84; this is in consequence of the formation of new Provinces. The numbers are now apportioned as follows:—

Upper Canada	24
Lower Canada	24
Nova Scotia... ..	12
New Brunswick	12
Manitoba	3
British Columbia	3
North West Provinces	2
	80

Newfoundland refused to join, and still remains outside the Union.

(2) B.N.A. Deb., 35 to 41.

(3) B.N.A. Deb., 494, et seq.

(1) Goldwin Smith, 6.

(2) British N.A. Deb., 1028.

(3) Prince Edward Island was omitted from these provisions. It did not join the Dominion till 1873, see Monro, 318.

(1) Goldwin Smith, 8 and 10.

(2) One of the other flaws which Mr. Goldwin Smith then enlarges upon is the appointment of Lieutenant-Governors, which will be dealt with in another chapter.

(3) Bourinot, Fed. Gov. 98.

(1) "I have again and again stated in the House that, if practicable, I thought a Legislative Union would be preferable." Sir J. Macdonald, B.N.A. Deb, 29.

(2) Bagehot, 97.

(3) This is not quite correct; the provision in Switzerland as to the two Houses sitting and voting as one House has a material bearing on this point.

(1) Despatch of Lord John Russell, dated 14th October, 1837, to Canada, see Creswell 295.

(1) Bagehot 98.

(1) Bryce 183.

(2) Federalist 533.

(1) It is true that some years ago, finding the system of elections cumbersome, the S.A. Legislature divided the colony into four districts—not for the purpose of enabling members to represent localities—because it was explicitly stated that this was not so, but solely to simplify and cheapen to the colony the cost of election. I am afraid a mistake was then made, as the element of locality has lately shown itself in the discussions and votes of the Legislative Council, an element which previously never raised its pernicious head, each member claiming to represent the whole Colony, and to study its interests as a whole.

(2) Adams 43.

(3) Article 1. Sec. 3.

(4) Article 1. Sec. 4.

(1) Kent 234. Story 70.

(1) Bryce, 95.

(1) Bryce, 38.

(2) De Tocqueville, 204

(1) With the trifling exception that “all bills for raising revenue” must originate in the House of Representatives, subject, however, to be altered by the Senate.

(2) Bryce 95 and 96.

(1) Bryce 113.

(2) Bagehot, 98.

(1) Hamilton's First Plan of Government: Fed. 32.

(2) Fed. Introduce., LXXV.

(3) Hamilton really desired “unity,” not “union.” He proposed that “the Legislature of the United States shall have the power to pass all laws which they judge necessary to the common defence and safety, and to the general welfare of the Union.”—Hamilton's First Plan of Gov., Article VII., Fed. 36.

Chapter VIII.

House of Representatives.

The Constitution of the House of Representatives is one of the very few points concerning which the three modern Federal Republics—America, Canada, and Switzerland—essentially concur. In each case it is established on a population basis, readjusted by a census every 10 years, the population—not of the whole Federation, but of each separate Province—being the basis of representation.

1. In Switzerland, each 20,000 citizens in any one Canton are entitled to elect one member to the National Council. Fractions over 10,000 are considered as 20,000. No Canton is to have less than one member. Thus, prior to the last census, Nilderwald, with a population of 12,558 elected one member; Berne with a population of 536,182 elected 27 members. The members are elected for three years. In 1889 there were 145 members.

2. In Canada, it was provided that the House of Commons should consist of 131 members apportioned as therein provided, and that a decennial readjustment should take place on the basis that Quebec was to always have 65 members, and each other Province was to be entitled to such a number of members as should bear the same proportion to the number of its population as the number 65 would bear to the number of the population of Quebec. The members are elected for five years; there were in 1889 215 members.

In working out this sum any fraction over one-half of the number of electors entitled to return a member is to be considered as equal to a whole.

3. In America the Constitution states that

“Representatives shall be apportioned amongst the States according to their respective numbers.”

“The number of representatives shall not exceed one in every 30,000, but each State shall have at least one representative.” In 1787 there was one representative for every 30,000, in 1880 one for every 154,325 of the population. Total number of representatives in 1880, 330.

The wording of the American Constitution has given rise to a great deal of trouble; it was soon found impossible to work out the problem set. If any given number of electors were decreed by Congress entitled to a representative, there was always a fraction, sometimes small, sometimes great, left over in each State, so that in fact there has never been any representation in each State apportioned in exact proportion to its numbers as the Constitution requires¹. The Canadian plan has avoided the difficulty

into which the American has fallen and lays down a rule by which the numbers of the House of Representatives cannot become unwieldy, which is not only self-acting, but which is also capable of being accurately applied. If say Victoria is fixed upon as the basis, and say 30 members are allotted to it, upon each census a simple rule of three sum fixes the number of members for all the other Provinces and this without any friction with or interference by the Federal Parliament.

It is open to doubt whether the time, place, and manner of the election of members should be fixed by the Federal or by the Provincial Governments.

¹ In Switzerland the electoral divisions for each Canton are fixed by the Federal Government.

² In Canada the British North American Act itself formed the electoral divisions until otherwise provided by the Dominion Parliament, and ³ decreed that until so otherwise provided the qualifications for members, electors, proceedings at elections, &c., in force in the various Provinces for elections to the Provincial Legislatures should apply to elections for the House of Commons.

In America the Constitution provides that “⁴ The time, place, and manner of holding elections for Senators and representatives shall be prescribed in each State by the Legislature thereof, but the Congress may at any time by law make or alter such regulations except as to the place of choosing Senators.”

It is contended that as every Government¹ “ought to contain within itself the means of its own preservation,” it is absolutely essential that the machinery to form itself should be under its own control; that to give the Provinces the right to control the election for the House of Representatives would enable any one of them, by not fixing electoral districts, or in many other ways, of preventing the election of Representatives for their State, and thus render the Federal Government incomplete. That the Federal Government alone should have the right of controlling and regulating elections to its Parliament, as the Provincial Governments should alone have the right of so doing for their Parliaments, and that it would be just as monstrous and illogical to provide that the Federal Government should have the control of the Provincial elections for the Provincial Parliaments as that the Provincial Parliaments should have the control of the Federal elections for the Federal Parliament.

I believe that as a matter of fact the American Government has never yet exercised the power given to it; and that the elections have always been arranged and controlled by the States, and that in Canada a re-distribution of the qualifications of electors by the Dominion Government has caused great discontent and jealousies.

It is clearly advisable in a Federal Government to use, wherever practicable, all the local institutions, and not to interfere more than is absolutely necessary with the Provincial Governments. It seems, therefore, wise to leave the electoral districts, franchise, and other details of election to the Provincial Parliaments, power to act, as in America, being given to the Federal Government, which need never be exercised unless the necessity arises.

By the provisions of the American Constitution a member is required to be an inhabitant of the State, and custom and usage have carried this still further, and require that he shall be an inhabitant of the electoral district. The Canadians have not fallen into this error, and do not by any legislation unnecessarily restrict the choice of the electors.¹

(1) Story 61.

(1) Adams 39

(2) B.N.A. Act 40.

(3) B.N.A. Act 41.

(4) Article 1 clause 4.

(1) Federalist 4, XIX.; page 448.

(1) The advantage of this was shown in 1878, when the Premier, Sir J. Macdonald, who had been rejected in Ontario, was returned for Manitoba.

Chapter IX.

As to Duration in Office of Senators and Members of the House of Representatives.

THE Canadian House of Commons is elected for five years (Senate nominated for life); the Swiss National Council for three years. The Council of the States is composed of Senators who are elected for varying terms, each Canton fixing the term of its own Senators. The American Senate is elected for six years, the House of Representatives for two years. The South Australian Legislative Council was originally elected for twelve years, but as this was when the whole colony was one electoral district for the Council, deaths, resignations, &c., reduced the term in practice to nine years. It is now elected for nine years (the colony being divided into four districts, each district returning six members), but in practice, owing to deaths, resignations, &c., the term will probably be not much more than six years. The Victorian Legislative Council is elected for six years, the colony being divided into fourteen districts, and each district returning three members. The Tasmanian Legislative Council is elected for six years, the colony being divided into fifteen districts, of which each district returns one member, except Hobart, which returns three, and Launceston, which returns two members. All the Lower Houses in the Australasian Colonies are elected for three years, and in all cases not named above the members of the Upper House are nominated for life. The British House of Commons is elected for seven years. In the Cape of Good Hope the Upper House is elected for seven years, the Lower for five years. Cape Colony is divided into eight districts for election of Legislative Councillors, of which seven return three members and the eighth one member. Nearly all the Senators in the American States are elected for two years, and the members of the House of Representatives for one year.¹ The system of renewing one-third of the State every two, three, or four years has been adopted from the American Senate in all the elected Upper Houses above named, except the Cape, where they all retire together. The continuity, the gradual change and renewal secured by this system is so generally approved that arguments in its favour are unnecessary.

Experience has shown us that three years is certainly not too long, and is probably too short, a tenure for members of the House of Representatives, and that six years is probably too short a tenure for members of the Senate.²

At the time the American Constitution was framed the people were hardly conscious of their own powers, and were dreadfully afraid of

tyranny,¹ even from Legislatures of their own creating. This accounts for the short tenure of office fixed for the members of these Legislatures.

It is suggested that five years, as in Canada, for a House of Representatives and nine for the Senate, one third renewable every three years would be a happy mean.

(1) As to evils which have arisen from these short terms see De Tocqueville 152. Bryce 193.

(2) Bryce 98 and 193.

(1) "The tyranny of the Legislature is the danger most to be feared, and will continue so for many years." Letter from Jefferson to Madison. De Tocqueville, 274.

Chapter X.

Division of Powers Between the Federal and Provincial Governments.

(a) POWERS TO BE VESTED IN THE FEDERAL GOVERNMENT ALONE.

(b) POWERS TO BE FORBIDDEN TO THE FEDERAL GOVERNMENT.

(c) POWERS TO BE EXERCISABLE BY EITHER THE FEDERAL OR A PROVINCIAL GOVERNMENT.

(d) POWERS TO BE VESTED IN THE PROVINCIAL GOVERNMENTS ALONE.

(e) POWERS TO BE FORBIDDEN TO THE PROVINCIAL GOVERNMENTS.

THE Canadian Constitution vests in the Dominion Legislature power and jurisdiction over all matters not exclusively delegated to the Provincial Legislature. The Dominion Parliament has power to ¹ “make laws for the peace, order, and good government of Canada in relation to all matters not assigned exclusively to the Legislatures of the Provinces, 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 legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereafter enumerated, that is to say:” Twenty-nine (29) subjects are then enumerated, which will be dealt with hereafter. The clause goes on to enact that—“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.”

Clauses 92 and 93 of the Act then give exclusive jurisdiction to the Provinces over certain matters which are enumerated, and will be referred to later on (seventeen in number). The meaning of the word exclusive in these clauses is exclusive of the Dominion or Provincial Governments as the case may be. The Imperial Parliament still retaining the power of overruling both Dominion and Provincial Statutes by legislation intended to apply to Canada.¹ Some of the classes of subjects exclusively assigned to the Provincial Legislatures are included in some of the classes of subjects enumerated in section 91 as exclusively assigned to the Dominion Parliament, and it is by no means easy to reconcile the conflict which

arises. The Judicial Committee of the Privy Council have felt this.² “It could not have been the intention that a conflict should exist, and in order to prevent such a result the two sections (91 and 92) must be read together and the language of one interpreted, and, where necessary, modified by that of the other. In this way it may in most cases be found possible to arrive at a reasonable and practicable construction of the language of the two sections, so as to reconcile the respective powers they contain, and give effect to all of them. In performing this difficult duty it will be a wise course for those on whom it is thrown to decide each case which arises as best they can without entering more largely upon the interpretation of the Statute than is necessary for the decision of the particular question in hand.”

The framers of the Dominion Constitution may have thought that, by specific enumeration of the respective powers of the Federal and Provincial Legislatures, they would avoid the conflict of jurisdiction which has so frequently been the subject matter of judicial proceedings in the United States, but it is evident that they did not succeed; and although it is possible in Australia to avoid some of the difficulties which, owing to religious and radical differences could not be avoided in Canada, and consequently more clearly define the limits of the respective Federal and Provincial powers, it is impossible, owing to the overlapping of the subjects which have to be defined, to avoid giving concurrent jurisdiction or to entirely prevent conflict of jurisdiction.

The American Constitution was founded on an entirely different basis; the American people delegated to the Federal Government powers to do certain things, and prohibited them from doing certain other things; they delegated to the States Governments powers to do all things which were not exclusively delegated to the Federal Government, or which the States were not prohibited from doing by the express words of the Constitution or by necessary implication therefrom. Concurrent jurisdiction was given or has arisen in certain cases.

The exclusive powers to and prohibitions imposed on the National Government are set forth in sections 8 and 9, Article 1, of the Constitution, and have been added to by amendments.

As all the “residuum” of powers was delegated to the States, no enumeration was desirable or possible. To place the fact beyond all doubt, the tenth (10) amendment of the Constitution specifically states that (which was implied in the Constitution itself)—“the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.”

The powers prohibited to the States are enumerated in section 10 of

Article 1 of the Constitution, and have been added to by amendments.

The limitations of the respective powers of the National and Cantonal Governments of Switzerland are so vaguely defined and so difficult to understand; they have been so moulded by historical and local sentiment, and by the practice of the two Houses exercising certain powers when sitting separately, and certain others when sitting together, as to make them inapplicable to Australia. It is proposed not to consider the Swiss Constitution on this point.

The details of provisions of the Canadian and American Constitutions will be contrasted and considered under different headings. As illustrative of the fundamental difference between the two systems, it may be observed that, in America, proof has to be given¹ that a power is vested in the National Government; in Canada, proof has to be given that it is vested in the Provincial Government.

In considering the question of what powers should be assigned to the National, and what to the Provincial Governments, the paramount importance of providing that the National shall have as few transactions as possible with the Provincial Governments should never be lost sight of. If we wish to form a stable Union, the points of contact, and consequently the chances of friction of the two bodies, should be reduced to the “irreducible minimum.” The great men who drafted the United States Constitution saw this, and applied the principle, so far as they possibly could, and it is greatly to this they owe their success.

It is to be hoped that the draftsmen of the Australian Constitution will be able still further to apply this great principle; it certainly appears that in one case at all events they can do so.

The jealousy of standing armies which circumstances had so strongly engrained into the American people in 1787 coerced the framers of the American Constitution to divide the control of part of the military forces between the Central and Provincial Governments. We have no such jealousy to contend with.

No doubt the Provincial Parliaments must be content to be shorn of some of their powers, but they must not forget that they are only a “means” to an “end”—only a “machinery” to bring about a certain result; and if the end can be better obtained by other means, the result aimed at by other machinery, they should cheerfully acquiesce in the proposed changes. As Washington wrote, when forwarding the American Constitution to Congress,¹ “It is obviously impracticable in the Federal Government of these States to secure all the rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest; the magnitude

of the sacrifice must depend as well on situation and circumstances as on the objects to be attained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be retained.”

There are five classes of powers which have to be considered—

- (a) Powers to be vested in the Federal Government alone.
- (b) Powers to be forbidden to the Federal Government.
- (c) Powers to be exercisable by either the Federal or a Provincial Government.
- (d) Powers to be vested in the Provincial Governments alone.
- (e) Powers to be forbidden to the Provincial Governments.

Powers to be Vested in the Federal Government Alone.

Taxation for Federal Purposes.

In both the Canadian and American Federations the power of the National Government to levy taxes is unlimited, both in amount and as to subject matter of taxation.¹

¹ “Every power ought to be commensurate with its object; there ought to be no limitation of a power destined to effect a purpose which is of itself incapable of limitation.”

The Federal Government being the agent and trustee of the people to carry out certain objects must be entrusted by its principal with funds sufficient to obey its mandate. As the mandate is itself incapable of limitation, so the power to call for funds should not be limited as to amount, neither should it be limited as to the subject matter.

As it is necessary to give the Provincial Governments concurrent powers of taxation (except as to Customs duties) the Provincial Governments may, if particular subject matters of taxation only are reserved to the National Government, by levying heavy taxes on such particular subject matters, render the taxes levied by the National Government almost or entirely unremunerative;² whilst, on the other hand, to meet exigencies that may arise, the National Government may be obliged to levy heavy taxes on any particular subject matter, and the results may be most injurious if the Constitution limits their powers in this respect. The converse of the proposition is also true.

In the United States Constitution it is provided that¹ “The Congress shall have power to levy and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;” and that “direct taxes shall be apportioned

amongst the several States which may be included within this Union according to their respective numbers.”²

The “residuum of powers being vested in the States gives them the right to levy whatever taxation they think proper, subject to the restrictions imposed by the Constitution, which are³ —“No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for the executing of its inspection laws, and the net proceeds of any or all duties and imposts laid by any State on imports or exports shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall without consent of the Congress lay any duties of tonnage.”

“⁴ In Canada the raising of money by any mode or system of taxation” is one of the matters exclusively delegated to the Dominion Government, but the Provincial Governments have the right exclusively delegated to them of making laws concerning “Direct taxation within the Provinces in order to the raising of a revenue for Provincial purposes.”

The only limitation imposed is that “¹ All articles of the growth, produce or manufacture of any one of the provinces shall from and after the Union be admitted free into each of the other Provinces.” Provision was made for the importation of other articles and the levying of duties on same until the Dominion Parliament passed a General Customs Law² .

Federal Custom duties are collected on the borders of Switzerland, and there are no Customs barriers between the Cantons.

It will be seen that, so far as Customs duties are concerned, it has been considered necessary in all the models under our consideration to weld the constituent parts into one nation; and it is difficult to conceive how a Federation otherwise constituted could exist. A power to impose and collect revenue without the intervention of any Foreign Power is of the essence of the existence of a Government, the sine qua non not only of Federal but of every other form of Government. From what more convenient or fitting source than Customs revenues can it be suggested that Federal revenues can be raised? If this is conceded can it be contended that the Federal Government should impose and raise revenue from hostile tariffs between its own constituent parts?

According to calculations which have lately been published by a Melbourne gentleman who has thoroughly investigated the matter, the yearly loss in the aggregate revenues by the adoption of intercolonial free trade would only amount to £390,000 out of an aggregate Custom revenue for all the Colonies of over £8,000,000 per annum. What the saving will be on the aggregate cost of collection I cannot say, but it certainly will be very

considerable. The only question which is open for difference of opinion at the Sydney Convention is “Shall there or shall there not be intercolonial Free Trade.”

The question of “Protection or Free Trade” need not be discussed so far as “Australia” is concerned. It is a question which will have to be settled by the people of Australia as a whole, through the mandate given to them at the polls to a Federal Parliament. As a believer in Free Trade, I am sorry to say that in all probability such mandate will be in favour of Protection; but the larger area over, and the greater the divergencies of soil, climate, products, and manufactures of the several parts of the domain where Free Trade hoists its flag, the less the injury done; and all freetraders must and will rejoice to see hostile tariffs and the artificial barriers between the different parts of this our country of Australia swept away.

Regulation of Trade and Commerce.

This, as a matter, of course, must be given to the Federal Government if a Federal Customs Tariff is provided for.

¹ It does not appear to require any reasons to be stated to show that the following powers should be given exclusively to the Federal Government:

THE BORROWING OF MONEY FOR FEDERAL PURPOSES.

THE PAYMENT OF FEDERAL DEBTS AND SALARIES.

NAVIGATION AND SHIPPING.

NATURALIZATION AND ALIENS.

COPYRIGHT.

PATENTS.

SEA FISHERIES.

CURRENCY AND COINAGE.

WEIGHTS AND MEASURES.

Jurisdiction over all these matters except “copyright” is exclusively conferred both in America and Canada on the Central Government, and the want of jurisdiction as regards copyright in America is a scandal and a crying shame.

Postal.

Both in America and Canada there are Federal Post Office services, but the Australian Colonies are not quite similarly situated. Our Governments own (which those Governments do not) all the railways, telegraphs, and telephones, and these have to be worked (especially the two latter) in connection with the Post-offices, and at all events these two latter will have to be acquired if the Postal Services are to be conducted by the National

Government. There is much to be said on both sides.

Probate.

LAWS RELATING TO MARRIAGE AND DIVORCE.

The American Constitution leaves these matters to be dealt with by the States. The Canadian¹ confers exclusive powers on the Dominion Government to deal with “marriage and divorce, and then² confers exclusive power on the Provincial Governments to deal with “the solemnization of marriage within the Provinces.” There is little substantial diversity in the United States concerning the laws of marriage, but a most surprising diversity concerning the laws of divorce. ³ It is probable that the religious and racial difficulties in Canada made it necessary to⁴ confer on the provinces the right to regulate the solemnization of marriages—we have no such difficulties here—and marriages and divorces are proper subjects to be exclusively dealt with by the Central Government.

Probate.

The Australian Colonies are day by day coming closer together, and property is more and more held in different Colonies by the same persons. The trouble, expense, and annoyance of taking out Probate in three or four Colonies will be avoided if this matter is placed under the jurisdiction of the Federal Government, and the expense of collecting what will, in the aggregate, be the same revenue will be materially diminished. The matter is not mentioned in either the American or in the Canadian Constitutions, but is probably included in the powers delegated to the Canadian Provinces under the heading of “Civil Rights.” The Probate Courts of Nova Scotia and New Brunswick are the only Superior Courts to which the Judges are not appointed by the Dominion Government.”¹

Criminal Law.

² When the jurisdiction over the Criminal or Civil Law is given to one, and the other to another power, there must be ancillary jurisdiction given to the power having jurisdiction over the Civil Law. In America the Criminal Law was delegated to the States; but the Federal Government, having exclusive jurisdiction over Admiralty and Postal matters, Federal forts, Reserves, &c., has been obliged to pass Criminal Statutes to carry into effect such jurisdiction. It has been considered that the legal maxim “Whenever an end is required the means are authorised” enables them to do this. The Federal Judges, however, will not exercise any Criminal

jurisdiction even in Admiralty matters, or others of a like nature, unless specially authorised and required so to do by an Act of Congress.¹

In Canada the Dominion Parliament has exclusively delegated to it² the duty of dealing with Criminal Law (except as to the constitution of Courts of Criminal jurisdiction), whilst the Provincial Governments, in aid of the powers assigned to them to deal with Civil matters, are empowered to³ “impose fines, penalties, or imprisonments for infringing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this Section.” (They have also the duty cast upon them of organizing Criminal Courts.)

⁴ The Swiss Cantons enact their own Criminal Laws.

At present there are very few divergences in the Criminal Laws of the Australian Colonies, and it is suggested that we shall do well to keep it so by following the example set by the Canadian Constitution in this respect.

Penitentiaries and Gaols.

The establishment, maintenance, and management of Penitentiaries is vested in the Dominion Parliament. This is a necessary corollary to the exercise of Criminal jurisdiction; a Federal criminal must necessarily be sent to a Federal Penitentiary.

Bankruptcy Laws.

The American Constitution conferred upon Congress the power to establish¹ “uniform laws on the subject of Bankruptcies throughout the United States.” This power has never been exercised. Mr. Story says² this is greatly to be regretted.³

The Dominion Government have exclusive jurisdiction over Bankruptcy and Insolvency. This is one of those matters in which, if jurisdiction is given to the Central Government, and jurisdiction in Civil matters to the Provincial, there must be an overlapping.⁴

To Provide for Defences.

It is a paramount duty of a Federal Government to provide for the Federal defence. For this purpose, and indeed for all matters connected with foreign nations, the Federation should be one nation, and the Federal Government should be entrusted with supreme and uncontrolled powers. It would not be necessary to discuss this matter were it not for the difficulties that have arisen in America concerning the militia, and for differences of opinion that may arise concerning the volunteers.

The Dominion Government has jurisdiction over¹ “militia, military and naval service, and defence.” No mention is directly made of volunteers, but as service in the militia is compulsory it is presumed there are none. The whole of the Dominion is divided into twelve (12) military districts, and the Provincial Governments have nothing whatever to do with the defence forces.

The American Constitution gives the Federal Government power to “raise and support armies, provide and maintain a navy, to make rules for the government and regulation of the land and naval forces, to provide for calling forth the militia to execute the laws of the Union, suppress insurrection and repel invasions, to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, *reserving to the States respectively the appointment of the officers, and the authority of training the militia* according to the discipline prescribed by Congress.¹ The President of the United States is to command the militia when called out. This division of jurisdiction was provided for on account of the great fear the Americans were in at the time of the passing of their Constitution of the effect of a Standing Army, or of the effect of giving undivided control to any one of the military forces; ² and it (coupled with the use of too many words), has given rise to ³ great difficulties, and to collisions between the National and States Governments.

“It was contended by the State of Connecticut that the militia could not be called out upon the requisition of the General Government except in a case declared and founded upon the existence of one of the specified exigencies; that when called out they could not be taken from under the command of the officers duly appointed by the States, or placed under the immediate command of an officer of the army of the United States; nor could the United States lawfully detach a portion of the privates from the body of the company to which they belonged, and which was organized with proper officers.” A similar contention was put forward by the State of Massachusetts, and they both, acting on this contention, refused to provide detachments of militia for frontier service.

As was observed by one of the Presidents in his message to Congress: “If the authority of the United States to call into service and command the militia could be thus frustrated the United States were not one nation for the purposes most of all requiring it.”

Attention is called to this in order that we may not fall into the same error.

If we are to be one nation for defence purposes, all our defence forces of whatever sort and description must be National forces, officered, manned,

equipped trained and paid by the Nation. Exclusive jurisdiction must also be given to the National Government over all forts, arsenals, powder magazines, and other military depôts or stations.

Treaties with Foreign Powers.

In¹ 1871 the Australian Colonies made a formal application to the Imperial Government for liberty to form a Commercial Union between themselves, and demanded that no treaty should be concluded with any foreign power inconsistent with this right, and that Imperial interference with intercolonial fiscal legislation should cease.

After correspondence with the British Government a Conference was held in Sydney in February, 1873, between delegates from the colonies, at which the claim was somewhat modified. The result was the passing of the "Australian Colonies Duties Act, 1873," which empowers the colonies to establish or remit differential or preferential or other duties as between themselves, but does not remove the prohibition as to other countries. This Act has, however, remained a dead letter. The power to make commercial treaties by the Australian Colonies has hitherto been confined to making treaties with each other.

Canada¹ has, however, made good a claim to exercise much larger powers in this respect Her right to be represented in the discussion of treaties with foreign powers when her interests are either directly or indirectly concerned is admitted.

Sir J. Macdonald in 1871, and Sir C. Tupper in 1878, represented Canada in the Washington negotiations concerning fisheries, and in the negotiations between Canada, France, and Spain the Imperial Government specially appointed a Canadian representative.² The 132 Sec. of the B.N.A. Act provides that "the Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada towards foreign countries arising under treaties between the Empire and such foreign countries." ¹ We are told that Canada "is now assuming the power of making her own commercial treaties under the formal control of the Foreign Office." ² The Canadian Government also contends that all extradition treaties entered into by Great Britain should be given effect to by means of local Legislation pursuant to this section.

So long as we remain part of the British Empire our action in this matter cannot be entirely uncontrolled, but the example of Canada shows that we will probably obtain much extended power. As many of the treaties between Great Britain and foreign nations are shortly about to expire, it is important that as little delay as possible should take place in obtaining such

power.

Formation of New Provinces.

As the whole of Australia is included in one or other of the existing provinces, and as in America the addition of new territories as States only is provided for, the provisions of their Constitution are no guide to us, no power being given for the alteration of boundaries of States.

The original Dominion Constitution did not provide either for the addition of new territories or for the alteration of the boundaries of provinces, but this was secured by a subsequent Act¹ which, before being introduced to the British Parliament, was submitted to and approved by the Dominion Government.²

Clause 3 provides —

“The Parliament of Canada may from time to time with the consent of the Legislature of any province of the said Dominion increase, diminish, or otherwise alter the limits of such province upon such terms and conditions as may be agreed to by the said Legislature, and may with the like consent make provisions respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any such province affected thereby.”

This matter has to be very delicately handled. If we simply adopt the Canadian provisions nothing can be done without the consent of the Provincial Legislature, so that even if a large minority of the whole population of any Province, constituting a large majority in the portion wishing for change (as in Queensland) wish to be formed into a new province nothing can be done. That the necessity to divide some of the existing provinces will soon arise there can be no doubt. The great difference in the climates and the geographical disconnection (at all events in one case—South Australia) of the constituent parts will inevitably force this result. It may be as well to consider whether somewhat greater powers than have been given to the Dominion Parliament might not be advisable. Say, if a majority of three-fourths (3/4) of the inhabitants of a district (containing not less than 100,000 people and not less than 300,000 square miles) were to petition for separation, whether the Federal Parliament should not be empowered to consider the matter.

This is only thrown out as a suggestion, as the absolute necessity of avoiding friction between the Central and Provincial Governments is strongly felt.

All the powers given to Congress have been commented on (except as to declaring wars, conferring titles, &c, which must be exclusively dealt with

by the Imperial Government), and all the powers expressly mentioned as bestowed upon the Dominion Government (except the following, which it is considered may just as well be left to the Provincial Governments, and except public debt and finance, which are treated of in a separate chapter) have been referred to.

THE CENSUS—STATISTICS.

BEACONS, BUOYS, AND LIGHTHOUSES.

QUARANTINE.

FERRIES BETWEEN PROVINCES (WE HAVE NONE).

BANKING, INCORPORATION OF BANKS, AND ISSUE OF PAPER MONEY.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

INTEREST.

LEGAL TENDER.

Concerning all or any of these, however, there is room for difference of opinion and scope for discussion.

The suggestion that Legislation concerning all matters involving change of “status” should be exclusively dealt with by the Union Parliament requires careful consideration. This involves legislation not only concerning “Aliens,” “Bankruptcy,” “Probate,” “Marriage,” and “Divorce,” but also “Lunacy,” and some other subjects. If the Provinces are to legislate concerning “civil rights and property” the granting of power to the Union to legislate on the subjects above-named will inevitably lead to overlapping and conflict of jurisdiction. Much thought and discussion is required herein. (b) Powers to be Forbidden to the Federal Government.

The Dominion Parliament cannot do any one of the following things:—

1. Alter its own Constitution (except as to qualification of electors and regulations of elections.)

¹ 2. After it has granted a Constitution to any new Province, it cannot alter such Constitution.

² 3. Impose any duties as between Provinces on “Articles of the growth, produce, or manufacture of the Province.”

³ 4. Tax any lands or property belonging to Canada or any Province.

⁴ 5. Repeal, alter, or abolish any Statute of the Imperial Parliament which was in force in the respective Provinces at the time of the foundation of the Dominion so far as such Province is concerned.

⁵ 6. Alter the seat of Government, which can be done by the Crown alone.

1. *Alteration of its own Constitution.*—It is evident that although it may be quite right to give to the citizens of any one Colony, acting through their representatives, the right (subject to certain restrictions as to majorities and

reservation for assent of the Queen) to alter their Constitution, it would be a source of alarm and danger to the smaller Colonies if similar powers were given to the Union Parliament.

The Australian people agree that certain powers shall be delegated to the Union Parliament and certain others to the Provincial Governments, and request the British Parliament to give effect to such agreement. If alteration is required, a similar agreement should be arrived at, and effect given thereto by the same authority. It might appear at first sight that it would be advisable to—as has been done in America and Switzerland¹—define in what manner the wishes of the people in reference to any alteration of the Constitution should be ascertained.

But as our Constitution is to be contained in an Act of the British Parliament, and as the British Parliament is a sovereign body it would not and cannot fetter itself by any declaration of what it will or will not do hereafter, no matter how or by whom requested.

It cannot and will not attempt to bind future Parliaments. Even a negative declaration that no alteration of the Australian Federal Constitution shall be made unless * * * * * (detailing the mode in which the Australian people are to request an alteration) * * * * would be such an attempt. Mr. Goldwin Smith is incorrect¹ in stating that in Canada that there is no power to call a convention to consider a revision of the Constitution. It is true there is no legal power set forth in the Constitution, but the Philadelphia, Quebec and Sydney Conventions were called without any such power, and if the Australian people require a revision of the Federal Constitution means will soon be found to make known their demands to the British Parliament, although for the reasons before stated the Constitution itself must be silent on the subject.

The British Parliament on three occasions has been called upon to alter or explain the provisions of the British North American Act.

¹ In 1871 as to the establishment of new, and alteration of the boundaries of old, Provinces.

² In 1875 as to the powers and privileges of the Canadian House of Commons.

³ In 1886 as to the representation of territories.

2. *Alteration of the Constitution of a Province after the same has once been granted by the Dominion Parliament.*—It is the people of the new Province who should have the right, subject to proper restrictions, of altering its Constitution.

3. *Imposition of taxes, duties, and imposts between Provinces.*—This necessarily follows as a Federal tariff was imposed.

4. *Taxing the public lands belonging to any Province.*—It is not

necessary to adduce arguments in support of this prohibition.

5. *Repeal, alteration, or abolition of any Statutes of the Imperial Parliament which were in force in the respective Provinces at the time of the formation of the Union.*—In Canada, as the civil law is exclusively within the jurisdiction of the Provinces therefore as to such of the Imperial Statutes as are part of the civil law, it is obvious that the prohibition was rightly made, it is not at all so clear as regards criminal law, which is exclusively delegated to the Dominion Government. It could never have been intended that the Dominion Government should not have power to alter such part of the criminal law as existed by virtue of any Imperial Statute in any of the Provinces at the time of the formation of the Union.

6. *Alteration of the seat of Federal Government.*—If this is fixed by the Constitution, the remarks and reasons concerning any alteration of the Constitution itself, apply.

In the United States Constitution there are many prohibitions such as “conferring titles of nobility” those relating to slavery, &c., which need not be considered, and there are others which our connection with Great Britain render unnecessary. We may, however, consider some of the prohibitions mentioned in Section 9, clause I.

7. “No capitation or other direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken.”

We are not at all likely to levy any capitation tax, and all direct taxes will most probably be levied by Provincial Governments. The object of the clause, however, is fair and right; it is in support of the enactment, “that all duties, imposts and excises shall be uniform throughout the Union,” and was intended to prevent the inhabitants of any one State from being unfairly treated.¹ Difficulties might arise, however, in applying the principle to direct taxes, such as a land tax. We might adopt this.

8. “No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another, nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.”

9. “No tax or duty shall be imposed on articles exported from any State.”

If considered necessary both 8 and 9 might be adopted.

(c) Powers To Be Exercisable By Either The Federal or A Provincial Government.

(d) Powers To Be Vested In The Provincial Governments Alone

As it is suggested that—subject to the powers exclusively given to the Federal and to the prohibitions imposed upon the Provincial Governments—the Provinces shall retain and exercise, either exclusively or concurrently, all the powers they at present possess, and as we have

already considered the powers proposed to be exclusively given to the Federal Government, we have now only to consider the powers to be forbidden to the Provinces. (e) Powers To Be Forbidden To The Provincial Governments.

Of course, all prohibitions necessary to enable the Federal Government to alone and completely exercise the powers exclusively delegated to it must be imposed, if the suggested scheme of leaving all the powers not so exclusively delegated to the Provincial Governments is adopted; there are only a few cases not included in this general description which need to be mentioned.

As in Canada the provinces are prohibited from exercising any of the powers not specifically delegated to them there was no need to set out any list of prohibitions.

The American Constitution contains a number of prohibitions on the States, but most of these (such as concerning declaring war, conferring titles of nobility, slavery, &c., need not be considered. There are also a class of prohibitions on both the Union and States Governments (most of which are contained in amendments to the Constitution) in the nature of a declaration of the rights of the people; but, as we Australians have our rights of a similar nature declared over and over again by Imperial statutes, we need not consider these.

The following prohibitions contained in the American Constitution may be pointed out as “discussable”:

1. *No State shall pass any Bill of Attainder or ex post facto law.*—None of the Colonies are likely to pass a Bill of Attainder, even if they had power to do so. The expression “ex post facto law” is frequently confounded with the retrospective law. Now, although every ex post facto law is retrospective, every retrospective law is not ex post facto. An ex post facto law has been tersely defined as¹ “a law which renders an act punishable in a manner in which it was not punishable when it was committed.”

It is questionable if this prohibition is necessary.

2. *No State shall pass any law impairing the obligation of Contracts.*—No prohibitory clause in the American Constitution has given rise to more varied and able discussion or more protracted litigation than this, but it has undoubtedly exercised a most salutary and powerful influence over the States Legislatures in America. If a clause embodying this principle is to be included in the Federal Constitution, a clearer and more accurate definition of what is meant should be given.

3. *“No State shall lay any duty on Tonnage.”*—This is an indirect method of imposing Customs duties, and is perhaps included in general class of

prohibitions mentioned as necessary to enable the Federal Government to exercise its exclusive powers.

4. “*No State shall enter into any Agreement or Contract with another State.*”—I do not see why one province should not enter into an agreement with another, nor do I see how the prohibition can be enforced, if the two provinces carry out the agreement they enter into without recourse to the Law Courts. This was probably imposed to prevent two or more States from conspiring to upset the Union. As events have shown it has proved futile.

(1) B. N. A. Act, clause 91.

(1) R. v. College of Physicians and Surgeons of Ontario 44, U.C.Q.B., 564. Smiles v. Bedford, 1 Ontario, app. cases, 456.

(2) Citizens Insurance Co. v. Parsons L.R. 57, app. cases 95.

(1) Bryce, 368

(1) B.N.A. Debate 680.

(1) With the exception that in Canada the Dominion Government cannot tax public lands belonging to any province. B.N.A. Act, Sec 125.

(1) Hamilton Fed. Introduc. LXVIII.

(2) The reader is referred to Federalist Nos. 30 to 36, inclusive, also Art. XL. XLIV. Kent Commentaries, pages 207 and 381. Story 101–107. Kent contends that under the peculiar wording of the United States Constitution taxes would have to be paid in priority of State Taxes. Kent 437.

(1) Article I., Sec. 8.

(2) Article I, Sec 2.

(3) Article I., Sec. 10.

(4) B.N.A. Act, Secs. 91, 92.

(1) Section 121.

(2) The B.N.A. Act, Sec. 125. As to the amount of Customs duties, &c., see Monro 199.

(1) As to meaning of powers to regulate trade and commerce see Kent 481 et seq, see also Monro 253, as to decisions in Canada.

(1) B.N.A. Act, Sec. 91.

(2) B.N.A. Act, Sec. 92.

(3) Bryce, 338.

(4) Bourinot, Fed. Gov. 56.

(1) Monro, 88.

(2) Bryce, 371.

(1) Kent, 400.

(2) B.N.A. Act, Sec. 91.

(3) B.N.A. Act, Sec. 92.

(4) Adams, 32.

(1) Article 1, Sec. 8.

(2) Story, 114.

(3) The right of the States to pass any law on the subject was for a long time considered doubtful, as it was argued that although the Constitution did not in express terms prohibit them so doing, it prohibited them from “passing any law impairing the obligations of contract.” After the most ample argument, it has been at length settled by a majority of the Supreme Court that the States may undoubtedly pass such laws operating upon future contracts, although not upon past.—*Story*, 156.

(4) Monro, 252. *Cushing v. Dupuy*, L. R. App. Case, 409

(1) Monro, 212.

(1) Article 1, Clause 8.

(2) *Federalist*, XXIX., page 230 et seq.; XLI., page 323.

(3) See Kent 285, where the matter is gone into at length, and the occurrences fully detailed. See also Kent, 434; *Story*, 125 et seq.

(1) Todd, 195.

(1) Todd, 200 to 215.

(2) Sir John Gault, the Canadian representative in London. Bourinot, Fed. Gov. in Canada 43.

(1) Goldwin Smith, page 3; *Contemporary Review*, July, 1887.

(2) Todd, 206.

(1) 34 and 35 Vic. Cap. 28.

Todd, 146.

(1) 31 and 35 Vic., cap. 28, sec. 2.

(2) B.N.A. Act, Sec. 121.

(3) B.N.A. Act, Sec. 125.

(4) B.N.A. Act, Sec. 129.

(5) B.N.A. Act, Sec. 16.

(1) “In Switzerland, the question of the whole or partial revision of the Constitution is submitted to the ‘referendum,’ when one of the Chambers desires it but the other withholds its consent, or when it is demanded by 50,000 vote-possessing citizens; and if the people accept the principle the popular vote is again taken upon the particular measure which has been framed in consequence by the Federal Council and adopted by the Chambers.” In America, amendments of the Constitution may be initiated in either one of two ways—

(a) Two-thirds of both Houses of Congress may agree to and prepare the same;

(b) The Legislatures of two-thirds of the States may require Congress to summon a Constitutional Convention. This Congress must do, and then the proposed amendments may be agreed to and prepared by such Convention.

The amendments thus prepared may be ratified in either one of two ways—

(x) By three-fourths (3/4) of the States Legislatures;

(y) By three-fourths (3/4) of a number of Constitutional Conventions, one being elected in and for each State, for the purpose of considering the proposed amendments, and for that purpose alone.

There is one exception, however, in which no amendment can be made— “No amendment can be proposed which deprives a State without its consent of its equal representation in the Senate.” All amendments hitherto made in the American Constitution have been made under provisions *a* and *x*; that is to say, the Congress and the States Legislatures have proposed and ratified the amendments, and no Constitutional Conventions have been called.

(1) Goldwin Smith, 10.

(1) 34 and 35 Vic., Cap. 28.

(2) 38 and 39 Vic., Cap. 33.

(3) 49 and 50 Vic., Cap. 35.

(1) See Federalist, Article XXXVI.

(1) Kent, 455.

Chapter XI.

Federal Courts.

The fundamental idea of a law implies a sanction, that is to say, a penalty for disobedience.¹ Such penalty must be capable of being enforced against some body or person by some authority. In “Unitarian” Governments the penalty can only be enforced against persons. In Confederate Governments it has to be enforced against the constituent States. In Federal Governments the penalty is enforced against the individuals forming part of the Federal nation.

It may be considered as the crowning triumph of the framers of the American Constitution that they first fully appreciated the fact, that in order to establish any Federation on a firm and lasting footing the penalties for the disobedience of its laws should be enforced against the individuals comprising the federated nation; that the Federation forms one people in relation to the Federal Government; and although inside, as it were, of this people there are separate nations which, for certain purposes, are independent of the Federal Government that—as² “every Government ought to contain within itself the powers requisite to the full accomplishment of the objects entrusted to its care and to the complete execution of the trusts for which it is responsible”—the Federal Government should, and indeed must, have and exercise the power to vindicate its own existence by the enforcement on the individuals composing the Federal nation of the Federal Law. “The Judicial power must be co-extensive with the Legislative.”¹ The Philadelphia Convention fully realized and gave effect to the principle that no Government should stand in need of any power to enable it to carry out its own resolutions; that the majesty of the Federal authority must be manifested through the action of Federal Courts; and that a Federation must have all the means and have the right of resorting to all the methods of exercising all the powers of ordinary Governments.²

The powers given to the Supreme Courts in America, Canada, and Switzerland are as follows:—

³ In America it is provided that “the Judicial power of the United States shall be vested in one Supreme Court and in such inferior Courts as Congress may from time to time ordain.”⁴ “The Judicial power shall extend to all cases of law and equity arising under this Constitution, the laws of the United States, or treaties made or which shall be made under their authority; to all cases affecting Ambassadors, other public Ministers, and

Consuls; in all cases of Admiralty and Maritime Jurisdiction; to controversies to which the United States will be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State or the citizens thereof and foreign States, citizens, or subjects.”

“In all cases affecting Ambassadors, other public Ministers, and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate Jurisdiction both as to law and facts, with such exceptions and under such regulations as the Congress shall make.”

¹ Under the designation of inferior Courts, United States District, and Supreme Court Circuit, Courts have been established having original jurisdiction in “all cases at law and equity arising under the constitution and laws of the United States and treaties made under their authority.”

In consequence of the decision in the case of ² Chisholm v. the State of Georgia, which gave rise to great alarm amongst the States, the Constitution was amended, and it was enacted that¹ “the Judicial power of the United States shall not be considered to extend to any suit at law or in equity commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any foreign State.”² It will be noticed that no action can be brought against the United States. It has always been considered as an attribute of sovereignty and of universal law that no State can be sued in its own Courts without its own consent.³

The eleventh amendment therefore was, perhaps, a partial return to first principles, and it is at least doubtful if the framers of the American Constitution intended to permit private persons to sue a State without its consent. At all events, Hamilton⁴ argued that such was not the intention, and the celebrated John Marshall, afterwards Chief Justice, held the same view.

It will be seen, however, that States can be compelled to become defendants in the Supreme Court at the suit of other States, and the necessity of this to secure the harmonious working of the Union must be apparent. It seems a partial application, possible only in a Federation, of the idea of a compulsory reference to arbitration, of disputes between nations, the settlement of which by the sword, has caused such wide-spread misery, devastation and death.

The objects aimed at were¹ :—

1. To provide that so far as foreign nations were concerned the United States should be “one and indivisible.”

2. To confirm the supremacy of the Federal Constitution, thereby not only securing the enforcement of the Federal Laws but also preventing the rights of the States from being encroached upon.
3. Dealing with matters (such as Admiralty and Maritime) which could not be included within the jurisdiction of any one State.
4. Securing to the citizens of the nation the impartial tribunals for the establishment of their rights.

² The British North American Act provides that “The Parliament of Canada may notwithstanding anything in this Act from time to time provide for the Constitution maintenance and organization of a general Court of Appeal for Canada and for the establishment of any additional Courts for the better administration of the laws of Canada.”

Under the large and comprehensive provisions of this clause the following Courts have been established¹ .

A Supreme Court, a Court of Exchequer,² and a Maritime Court having jurisdiction over intra Provincial waters in Ontario. The Supreme Court is to have, hold, and exercise an Appellate, Civil, and Criminal jurisdiction throughout and within the Dominion of Canada—in addition to this it was provided that—“Whenever the Legislature of any Province forming part of Canada shall have passed an Act agreeing and providing that the Supreme Court and Exchequer Court or the Supreme Court alone shall have jurisdiction in any of the following cases:—

1. Controversies between the Dominion of Canada and Provinces.
2. Controversies between such Provinces and any other Province or Provinces which may have passed any like Act.
3. Suits, actions, or proceedings in which the parties thereto by their pleadings shall have raised the question of the validity of an Act of the Parliament of Canada when in the opinion of the Judge of the Court in which the same are pending such question is material.
4. Suits, actions, or proceedings in which the parties thereto by their pleadings shall have raised the question of the validity of an Act of the Legislature of such Province when in the opinion of the Judge of the Court in which the same are pending, such question is material.

Then this section of the Act is to be in force in the class of claim in respect of which such Act may have been passed.¹ ”

In 1 and 2 the proceedings are to be in the Court of Exchequer (with an appeal). In 3 and 4 the Judge who decides that the question is material is to order the case to be removed into the Supreme Court.

British Columbia, Ontario, and Nova Scotia have passed the requisite Acts.

The Supreme Court of Canada, therefore, has original jurisdiction in

certain cases, and it has appellate jurisdiction in all questions arising in Canada.

There is an appeal from the Provincial Courts direct to the Privy Council, or an appeal in the first place to the Supreme Court of Canada and afterwards by leave of the Privy Council to that body.¹

The Swiss have, to a considerable extent, departed from the principles upon which the American judicial system has been founded. The Federal Courts are bound to give effect to every law passed by the Federal Parliament. It might at first seem as if this made that body the sole judge of its own power, but this is not so, because the people—either tacitly by refusing to demand, or actively by demanding a “referendum”—can always exercise their sovereign power; and this fact, no doubt, principally influenced the framers of that Constitution in departing from the American system. In some instances it is not the Federal Court which has to decide upon the validity of a Cantonal Law, but the Federal Executive.

It must be borne in mind that the “referendum” is compulsory so far as regards any alteration of the Constitution. ¹ The “Swiss copy, however, seems neither so sound in theory, nor so safe in practice as the American original.”

In both America and Canada the Federal Courts have their own executive officers to enforce their decisions; but in Switzerland the Courts have to rely on the Cantonal officers for the execution of their judgments.

In Canada the Dominion Courts are the final Judges² on all cases of law and equity, arising not only under the constitution and laws of the Dominion, but also in all cases arising under the constitution and laws of the Provinces.

In America the State Courts are supreme (each in its own State) in all cases arising under the constitution and laws of the State.

In Canada all³ the Judges are appointed by the Dominion Government.

In America the Federal Judges are appointed by the Central Authority State Judges by their respective States.

In Canada the absence of Provincial authority and provincial rights is stamped and emphasized by the absence of a provincial Judiciary.

In America the Federal machinery for the execution of its laws is complete within itself, and wants no aid from the States; and the States machinery is complete within itself, and wants no aid from the Federation. Nothing can be more complete and separate than the two organizations.

The Canadian system is the more economical, the American the more logical; the Americans have carried to its full legitimate conclusion the maxim that the Judicial power should be co-extensive with the Legislative.

It was contended when the American Constitution was under

consideration that the Judiciary was placed above the Legislatures, both Federal and Provincial, that there was an appeal from both to the Judges. The answer to this was that it was not the Judiciary but the Constitution which was placed above the Legislatures; that the Constitution and all powers exercised under it, both Federal and Provincial, must in case of doubt be interpreted by some one, and that the Judiciary acted not so much as a third authority in the Government, but rather as¹ “the living voice of the Constitution, the unfold of the mind of the people whose will stands expressed in that supreme instrument.”

No doubt the power given is very great, but it is exercised in a manner and by a body which affords the least possible chance of friction and quarrels between the Central and the Provincial Governments. A veto by the central authority has to be exercised at a time when the public attention of the provincial electors is directed to the matter, at a time when perhaps party spirit runs high, when angry passions pervade both factions, and when the subject matter is invested with an importance which is not intrinsic, whereas a declaration by a Court that the Statute is invalid is withdrawn from the sphere of politics. Each individual and each State looks upon it that such declaration is given only in pursuance of the Constitution. Public attention is probably directed to other matters, and the question has in many cases shrunk into its native insignificance; and “it is to the interest of every man who wishes the Federal Constitution to be observed¹ that the judgments of the Federal tribunals should be respected, and they take it that the Courts are the protectors of the Federal compact, and that the Federal compact is, in the long run, the guarantee of the rights of the separate State.”

The judgments of a Federal Judiciary may give rise to important political results, but it is not correct to state that they exercise political functions; no new principles are laid down for application by them, no novel duties are imposed on them, they are only required to apply the principle “that any act done by an agent outside his powers is void.”

In America both the Federal and the States Governments are agents of the people for specific defined purposes. Powers of Attorney (if the term may be used) have been given. The Constitution of the United States given by the American people to the Federal Government, and the States Constitutions given by the people of the respective States to their Governments.

The former is the supreme law of the land; it limits and defines the scope of the latter, and overrides it whenever they come in conflict.

In Canada, at the request and by the consent of the people, the British Parliament have given a power of Attorney—The Constitution Act. Certain

unwritten customs and tacit understandings which may be called the maxims of British Constitutional law and Practice, supplement this written instrument, but they cannot be inconsistent with it. It is the supreme law of the land, and it regulates and defines the respective powers of the Federal and Provincial Governments.

In both cases Supreme Courts have been established not to override or alter those powers of attorney, but, as guardians of the public, to see that they are not exceeded.

In carrying out their duties, the Supreme Courts recognize various descriptions of Laws, of superior and inferior validity.

In America—

1. The Federal Constitution.
2. Federal Statutes framed in accordance with the Constitution.
3. States Constitutions.
4. States Statutes framed in accordance with their Constitutions.

In Canada—

1. The Canadian Constitution (B. N. American Act and Amendments thereof), and all other Imperial Statutes applying to the Colonies within the meaning of the Repugnancy Act.¹
2. Statutes passed by the Dominion Parliament.
3. Provincial Statutes.²

In all cases the Judges have to enquire and determine, not only whether the Act is beyond the authority conferred (except in the case of Imperial Statutes), but in many cases, where concurrent jurisdiction has been given or arisen, whether it conflicts with an Act of superior validity.

The Americans argued that it would be just as anomalous for the Central Government to appoint and pay Judges to administer States' Laws as it would be for the States' Government to appoint and pay Judges to administer the Union Laws. They saw that as, in any conflict concerning their respective powers between the Central and States' Governments, the strain and stress would lie on the expositors of the Constitution (the Judges), a Federal Government, above all other forms of Government, required its own judiciary; and they therefore determined that the Constitution, and all Federal Laws, should be interpreted by Judges appointed and paid by the Federal authority.

(1) Federalist XV., Page 143.

(2) Federalist Introduction, LXVII.

(1) Kent, 322.

(2) Federalist Introduc., LXX.

(3) Article 3, Sec. 1.

(4) Article 3, Sec. 2.

(1) Bryce, 228.

(2) This case decided what had been before a matter of controversy—that a State could be sued by a private individual without its consent.

(1) Article XI.

(2) Kent, 325.

(3) But a foreign sovereign may voluntarily become a party to a suit in the tribunals of another country and have his rights ascertained and confirmed. “He cannot however, be made a defendant without his consent for any thing done or omitted in his public capacity.” *King of Spain v Machado*; and the *Columbian Government v. Rothschild*. *Munden v. Duke of Brunswick*; *De Habro v. Queen of Portugal*.

(4) Kent, 322; Bryce, 231.

(1) Story, 186 to 228. Federalist, LXXX., LXXXI., 593 et seq.

(2) Sec. 101.

(1) 38 Vic. Canada C. 11, but see the C. 135 of the Provincial Statutes of 1886, and 50 and 51 Vic. (Canada) C. 16.

(2) The Exchequer Court possesses an exclusive and a concurrent jurisdiction. It has exclusive jurisdiction in certain claims against the Crown. It has concurrent jurisdiction in—

(a) All cases relating to revenue.

(b) In all cases in which at the instance of the Attorney-General it is sought to impeach any lease or other instrument affecting lands.

(c) In certain other cases, by or against the Crown, there is an appeal from it to the Supreme Court.

(1) *Monro*, 219. The Courts for the trial of disputed returns for the House of Commons in Canada has been provided by utilizing the Provincial Courts, each Court being a Dominion Court for that particular purpose, so far as the particular Province is concerned.

(1) The Dominion Parliament wished to make an appeal to the Supreme Court final and conclusive, but the British Government would not agree. See *Todd*, 150, 225. In the *South African Union Act, 1877*, a clause was inserted providing that no “Act of the Union Parliament shall be construed to abridge the right of Appeal to the Queen in Council from any judgment of the General Court of Appeal to be thereafter

established in South Africa.” Todd, 225.

(1) Bryce, 254. Dicey, 159. Adams, 167.

(2) Bryce, 481.

(3) Not quite all. The Judges of the Probate Courts of Nova Scotia and New Brunswick are appointed by Provincial Government.

(1) Bryce, 348.

(1) Dicey, 166.

(1) 28 and 29 Vic., cap. 63.

(2) Todd, 327.

Chapter XII.

As to Veto.

WE have to consider¹ —

Firstly—The veto (or rather disallowance) by the British Government of Federal Acts;

Secondly—The veto by the Governor-General or of disallowance of Provincial Acts;

The veto by the people, or “the referendum,” is treated of in a separate chapter.

Firstly— In Canada,² the right of the Governor-General to veto Bills of the Federal Parliament (unless by the advice of his Ministers), if it ever existed, has disappeared. The right of reservation for the opinion of the British Government has been more and more sparingly exercised, and the right of disallowance within two years is now considered sufficient to prevent the continuance in operation of Acts which interfere with the foreign obligations of the Home Government, or are directly repugnant to Acts (such as the Merchant Shipping Act) which are intended to have the force of law in the Dominion.¹

So long as we remain part of the British Empire, the Imperial Government must, in some way or other, have the power to veto or disallow Acts conflicting with Imperial obligations or seriously conflicting with the interests of other parts of the Empire. These rights have been most sparingly exercised, even in these Colonies, and in Canada still more so.

Secondly—The veto by the Governor-General or disallowance of Provincial Acts.

Maddison in the Philadelphia Convention proposed to give this right to the American Federal Government. The discussion which took place revealed many objections to the plan, and as Roger Sherman remarked, the giving of the right to the Federal Government to exercise a veto “would seem to recognize as valid the State Statute objected to, whereas, if inconsistent with the Constitution, it was really invalid already, and needed no veto.” “¹ It was pointed out that its introduction would offend the sentiment of the States, always jealous of their autonomy; its exercise would provoke collision with them; the disallowance of a State Statute, even if it did really offend against a Federal Statute, would seem a political move to be resisted by a counter political move, and the veto would often be pronounced before it could be ascertained exactly how the States Statute would work—sometimes pronounced in cases where the Statute was

neither pernicious in itself nor offensive to the Federal Constitution.”

Maddison's proposal was wisely rejected.

In Canada a right has been given to the Governor-General² (acting on the advice of his Ministers) to veto Acts of the Provincial Legislatures. This was a great error, and it was pointed out that it was sure, sooner or later, to give rise to that which in all Federations is the one thing to be specially avoided—a conflict between the Federal and Provincial Governments.

³ Soon after the Dominion was established the Canadian Government laid down the rule that an Act of the Provincial Legislatures might be vetoed on any one of the following grounds:—

1. As being altogether illegal or unconstitutional.
2. As being illegal or unconstitutional in part.
3. In cases of concurrent jurisdiction as clashing with the Legislation of the General Parliament.
4. As affecting the interests of the Dominion generally.

And also laid down the rule that the Provincial Legislatures should be communicated with and invited to omit the objectionable clauses if part only of the Act was objectionable.

Not long afterwards Chief Justice Richards¹ and Mr. Justice Fournier pointed out the dangers resulting from the exercise of this power. “It will always be difficult for the Federal Government to substitute its opinion instead of that of the Legislative Assemblies in regard to matters within their jurisdiction without exposing itself to the reproach with threatening the independence of the Province.”

“The disallowance of Statutes passed by a local Legislature after due deliberation, asserting a right to exercise powers which they claim to possess under the British North American Act, will always be considered a harsh exercise of authority unless in the case of great and manifest necessity, or when the Act is so clearly beyond the powers of the local Legislature that the propriety of interfering would at once be recognized”

Results have shown that the fears of the judiciary in Canada in reference to this power have unfortunately been proved to be true.

¹ The only serious conflict that has arisen is due to the exercise of the right of the Governor-General to veto a Provincial Act. In this respect the Governor-General exercises a power that does not belong to the Crown. The Crown may veto an Act of the Dominion, but cannot veto an Act of the Provincial Legislatures. The number of Provincial Acts vetoed by the Governor-General is comparatively small, but the mere fact that the Governor-General, acting on the advice of his ministers, may find himself obliged to veto a Provincial Act on the ground that it is contrary to the

‘policy of the Dominion,’ may give, and has in fact given, rise to a serious conflict of Provincial versus Dominion policy.”

Mr. Parkin tells us—“It must be admitted that the exercise of this right has developed serious factions in Canada, both in connection with its exercise and from the refusal of the General Government to employ it to defeat local legislation. Two examples of the latter case may be mentioned as typical:—

² In 1871 the Province of New Brunswick passed a School Act, providing for a system of unsectarian education. This was objected to by the Roman Catholics of the Province, as interfering with their right to have separate schools. Assisted by their co-religionists in Quebec, they used all forms of political pressure to induce the Government of the day to disallow this Act. The Government refused, and referred the question to the Privy Council for adjudication on its legal aspects, with the result that the Provincial Legislation was maintained as being strictly within the limit of Provincial authority.

In 1888 a different case occurred. The Roman Catholic Province of Quebec passed the Jesuits' Estate Bill, by which a large sum of money was appropriated for purposes and under conditions extremely objectionable to the Protestant population of Canada. A determined effort was made in this case by Protestants to have this Bill disallowed, but again without success. Sir John Macdonald's contention, that the Provincial Legislature had acted within its competency, being supported by an unusually large Parliamentary majority. The fact that the General Government possessed the power of disallowance was evidently what enabled religious and party passion to bring these questions into the political arena. Other cases have arisen where a Province has legislated in opposition to the general public policy, or on lines which were believed to violate the pledged faith and credit of the General Government. Of this, the railway legislation of Manitoba furnishes an interesting example. In order to induce capitalists to embark in the gigantic enterprise of building the Canadian Pacific Railway, the Dominion Government agreed that for twenty years no line should be built to the south which would bring the railway into competition with the great American systems. This agreement was made in the honest belief that for twenty years the new railway would satisfy the commercial needs of the country. The rapid flow of population to Manitoba, consequent on the building of the Canadian Pacific Railway, soon changed the situation. A popular demand arose for Southern connection, and Bills providing for it were soon passed in the Legislature. These Bills the Dominion Government were compelled to disallow, on account of its pledges to the Canadian Pacific Railway. An agitation so vehement ensued, that the

Dominion Government and the Railway Company saw that some compromise was necessary to satisfy the popular wish. The Company surrendered its monopoly of railway construction, receiving in compensation a Dominion guarantee for a very considerable amount of additional capital with which to complete its equipment and to face the competition which it dreaded.

A list of the Acts vetoed in Canada, between 1882 and 1887,¹ shows not only that the Federal Executive felt themselves obliged, in consequence of the great powers given to the Federal Government and the small powers bestowed on the Provincial Governments, to veto Statutes which seem to relate to matters of a purely local nature (such as bridges, railways, roads, dykes, and wharfage and warehouse charges), but also that the Provincial Legislatures, shorn as they are of most of their powers and restricted as their functions have become, must feel sore and irritated at Federal interference in such local matters.

Such grave complications and angry feelings between the Central and the Provincial Governments have arisen in consequence of the exercise of this power, that the Federal Government have almost felt compelled to abandon its exercise,² except in those cases where it is almost unnecessary to exercise it, viz., in those cases in which the Provincial Statute was void because the Legislature had exceeded its powers.

The relations of the Executive to the Legislature and the "referendum" so alter the complexion of affairs in Switzerland that we can draw no conclusions from the theory or practice of the Federal veto on Provincial legislation in that country. It may not, however, be amiss to shortly mention the facts.

"The Federal Council has to examine laws passed by the Cantons in order to judge whether they are in accordance with the Federal Constitution and do not conflict with the Federal laws."

If a Cantonal Government chooses to adopt a measure which the Federal Council when appealed to considers to be unconstitutional, and if it declines to submit to the Council's order to cancel or revoke such measure, the latter has not any direct way of enforcing the order. It can only send a special Commissary to expostulate and negotiate, and if this fails, the only remedy left is to quarter troops on the recalcitrant Canton until the obnoxious law is repealed. We are told, however, that the threat of so doing is generally efficacious.

If, then, it is so unwise to bestow a veto by the Federal Government on the Acts of the Provincial Parliaments, who is to exercise the power? The Provincial Parliaments undoubtedly will pass Acts coming either within one or other of the clauses of the rule laid down by the Dominion

Government, and which, therefore, call for the exercise of this power, and there must be some authority competent in some way or other to exercise it.

As it is clear that the Governor-General must alone represent the Crown in Federated Australia, and that so far not only as outside nations but even so far as Great Britain is concerned we must be one people, I see no reason why, if a Provincial Parliament passes any Act which calls for the exercise of the right of disallowance for Imperial reasons, the Crown's representative—the Governor-General—should not exercise such right. It is hardly possible to suppose that if the Legislative powers are properly divided any Provincial Legislature could pass such an Act, but if it did the Governor-General should exercise the same right in the same manner as is now in reality exercised by the Colonial Office, acting not as the constitutional head of the Federal Government, but as the representative of the Crown in Australia.

So far as regards Acts which are void as conflicting with the Federal Constitution, this being a matter of law—of the construction of written documents—the Federal Judiciary are the proper judges.

Mr. Bourinot, certainly an authority on the working of the Dominion Constitution, tell us that¹ : “Opinion is divided as to the wisdom of a provision which gives so sovereign a power to a political body, and it may be doubtful if in this respect our Constitution is an improvement upon that of the United States.” “They agreed wisely, as experience seems to show, to leave to the Judicial branch of the Constitution to determine the constitutionality of any Acts of Congress or the Legislatures. It is in the Courts of Canada, ruled by the ripe judgment and learning of the Judicial Committee of the Privy Council, we must after all mostly depend for the satisfactory working of our Constitutional Act.”

So far as regards Acts which conflict with the general policy of the Union, the difficulty has been created by the framers of the Canadian Constitution and by the rules they have laid down. No such difficulty has ever arisen in America. It has never been suggested there that any law passed by any of the States is a law contrary to the general policy of the United States. The very idea of such a thing is contrary to the whole theory of a Federation. If the powers delegated by the people to the Central and to the Provincial Governments are so divided that in all national matters, in all matters which concern the outside world, the Central authority is supreme, if the Federal Government has as few dealings as possible with the Provincial Government and no dealings at all with them on financial matters, how can the question of a conflict of policy arise ? Each is supreme in its own sphere, and no veto is either required or should be

allowed on the grounds that one Government disapproves of the action of the other on political grounds.

(1) On the assumption that the Executive is to be appointed on the British Responsible Government System, I have taken no notice of—

(a) Veto by Governor-General on Federal Acts;

(b) Veto of Provincial Governors on Provincial Acts.

The exercise of any such a veto is inconsistent with the relations of the Governor-General, or the Provincial Governor, as the case may be, to his advisers, unless exercised with their consent and advice; and if so exercised it becomes a question between the Ministry and the Parliament, and must be fought out on ordinary Constitutional lines. The veto by the Crown on Acts of the Imperial Parliament has of late years been pronounced unconstitutional. No veto in England has been exercised since 1707 (Scotch Militia Bill).

(2) Bourinot. Fed. Gov., 38.

(1) The right of the American President to veto any Bill (subject to being overruled by the majority of two-thirds of both Houses), is real and popular. "By killing more Bills than all his predecessors put together, Mr. Cleveland was generally supposed to have improved his prospects of re-election." This state of things, however, arises out of the relation of the Executive to the Legislature in America: it is only mentioned in passing.—*Bryce*, 55 and 56.

(1) *Bryce*, 257.

(2) *Monro*, 175. *Todd*, 331 et seq.

(3) *Todd*, 340.

(1) *The Constitution of Canada* by Bourinot, 114.

(1) *Monro*, 11.

(2) *Todd*, 340.

(1) For list, see *Monro*, 260.

(2) "Prudence has prevented the exercise of the power, except in cases where the Provincial Legislature was supposed to have exceeded its authority."—*Goldwin Smith*, 8; see also 91. *Todd*, 363, 375.

(1) Bourinot, Fed. Gov. in Canada 60 and 63.

Chapter XIII.

As to the Practicability and Desirability of Adopting the “Referendum” as a Part of our System of Government Whether Federal or Provincial.

The “referendum” is an institution peculiar to Switzerland—the last contrivance of political ingenuity. It has no necessary connection with a Federation, and may be introduced either into an “Unitarian” or a “Federal” Constitution.¹

As a matter of fact, in Switzerland it has been adopted by most of the Cantons forming the Federal Constitution. It is a right of veto by the people on Bills passed by the Legislature.

As to all amendments of the Constitution this veto is compulsory, that is, the Bill does not come into operation until the electors have said “Yea” or “Nay.” As to all other Bills, it is optional. 30,000 citizens or eight Cantons can demand a “referendum,” and a delay of three months is granted within which a poll is taken.

It will be seen that this is not exactly what has sometimes been stated—“direct legislation by the people.” They can prevent a Bill from becoming law which would otherwise become law, but they cannot enact a law ; it is veto and nothing more, a living popular veto, a recognition of the sovereign rights of the people ; and, so far as amendments of the Constitution are concerned, a recognition of the rights of the Cantons, as a majority of the Cantons as well as of the people must agree to all such amendments.

It forces no discussion ; it precipitates no action ; it creates no friction between any of the different branches of the Legislature, nor alters their relation to each other ; it is simply, so far as the passing of new laws is concerned, the sovereign people exercising the powers and functions of the monarchs of England as they existed when those monarchs were in deed and truth sovereigns, and vetoed Bills passed by the Legislature right and left.

So far as these colonies are concerned there seems no reason arising either out of the form of our Government or our relation to Great Britain to prevent the adoption of the “referendum.”

Its exercise would not interfere with the right of the Crown to disallow within two years for any of those Imperial reasons which now actuate the exercise of that right ; it would not prevent the reservation of Bills for the assent or dissent of the Crown, if such a right is to continue in practice.

The right of a Governor, under the responsible Ministry system, to veto Bills on the ground that they are prejudicial to the interests of the people of the colony over which he presides, if it ever existed, has certainly disappeared in practice. The “referendum” is the only veto on such grounds that under our present system of Government can be living and strong ; the people cannot complain of their own action. Above all things it provides a solution of the knot tied when two elected Houses, each claiming to express the will of the people, come to a final and long continued difference. The House taking the Conservative or negative view can give way and demand a “referendum.”

It has been argued that a General Election is practically a “referendum” concerning what are called “the burning questions of the day.” To a certain extent this is true, but the electors, in choosing representatives, are so biassed by the personal qualifications of the candidates—so many questions have generally to be considered—that they cannot exercise the same calm and deliberate judgment as if a Bill with all its details was, after full discussion and approval by majorities of both Houses, submitted for their consideration.

It has been also objected that as experience has shown that in Switzerland the electors constantly reject measures which their representatives have approved—it obstructs progress. A Conservative would reply that this was a great excellence, that we progress far too rapidly in these colonies, and frequently in the wrong direction; that our Statute Books are filled with monuments of the deficient wisdom of our legislators; that the large amount of time expended in revising, altering, amending, and repealing the works of former sessions shows that any curb on Democratic impatience, especially if imposed by the people themselves, should be welcome ; while a Democrat could hardly argue that the people were not to be trusted to express opinions on matters referred to them.

On the other hand, it is contended that it is a new institution which has not stood the test of time even in Switzerland ; that it lowers Parliamentary responsibility, and turns the Legislature into a mere Committee for the purpose only of preparing Bills for submission to the people ; that it is an appeal from those who are most capable of judging, many of whom have spent the best years of their lives in ascertaining and applying those principles which underlie sound legislation and good government, to the uninstructed; from the deliberate judgment of the judicious to the impulsive action of the multitude; that argument and criticism on both sides are necessary aids to the formation of a judgment—aids which have been enjoyed by the Legislature, but which are not within reach of the people, some of whom would never hear about it, and many if not most of

whom would not understand the measure they are asked to decide upon.

And there is in addition to this the reason which has been before dilated upon of the great necessity for caution in the introduction into our political system of foreign grafts which may not only themselves die, but which may perhaps injure the vitality of the parent stem.¹

(1) The “initiative” another peculiar Swiss institution is frequently mentioned with the “referendum,” but they have no connection with each other. The “initiative” is a right given by the Constitution to a certain number of people, or of Cantons, or of one branch of the Legislature to insist on the introduction of a Bill dealing with any particular matter, and it is rendered necessary from the mode of formation of the Swiss Executive and the fact that no Bills can be introduced except by them. If they neglect or refuse to introduce a Bill which a certain number of people or of Cantons or one branch of the Legislature think should be introduced they can be compelled to do so in order that the matter may be discussed.

(1) We have the great advantage of arguments concerning the “Referendum” within the last few months from the most competent critics. Professor Dicey in the April number of the Contemporary Review writes favourably. Professor Bryce in the Speaker of April 19, 1890, somewhat unfavourably, and Professor Freeman in the Universal Review of July, 1890, sums up. They all agree, however, that the time has arrived when adoption in England of the referendum should be seriously discussed.

Chapter XIV.

As to Public Debt and Public Works.

IT has been proposed that the Federal Government should take over all the Public Debt and all the Public Works, of all the Provinces, and stated that if this is done a large annual saving will be made in payment of interest; because the Federal Government could¹ “commute the existing Provincial Debts to a much lower rate of interest than the several Governments are at present paying,” and because the Federal Government could borrow money at a lower rate of interest than the several Governments ; and it has been stated that if this was done a saving estimated up to¹ £1,000,000 per annum could be made. In proof of this it was advanced that Canada has issued bonds bearing interest at 3 per cent. (although it was admitted that she did not receive par for such bonds). These assertions will not stand the test of investigation. The total indebtedness of the Australian Colonies (exclusive of New Zealand, whose Public Debt amounts to above £36,000,000) is £143,000,000. The greater portion of this is due by New South Wales and Victoria, South Australia and Queensland. The quotation of the prices of the various Bonds on December 22nd, 1890, shows that even if the Federated Provinces were to obtain the same prices for their Bonds as the Dominion has, we would not gain a greater advantage than from 3 per cent. to 4 per cent. on the capital value, if so much. That is to say : to raise the £143,000,000, we would have to issue only from 4½ to 6 millions less stock, the interest on which would, at 3½ per cent. be from £157,000 to £210,000 per annum less to pay instead of the million stated ; and from this would have to be deducted the interest on the commission and expenses incident to the transaction of conversion, which would be considerable. What is meant by “commuting the existing debt to a much lower rate of interest,” is not quite clear. But it is quite clear that the present bondholders will not surrender their bonds before they are due and take others at a lower rate of interest, unless they receive some equivalent which must be advantageous to them, and which must consequently be disadvantageous to us. The average currency of the Australian Bonds is about thirty-five years, and we may consider that about £4,000,000 falls due every year, so that it would take thirty-five years before the whole of even the comparatively small saving could be effected.

As to money to be borrowed in future, no doubt the Federal Government will require to borrow for Federal purposes, but this could be done without interfering with the Provincial Loans. To borrow for Provincial purposes

would be a fatal mistake, and would be to sow the seeds of the future disruption of the Union.

The small saving in interest which would accrue by the Federal Government assuming the liabilities and public works of the Provinces has been pointed out, because great disadvantages would arise from such a course of action. Let us see what was done in Canada, and what has been the result.

¹ All the revenues (except some few local taxes) are collected by the Dominion Government, which assumed all the public debts² and all or nearly all the public works of the Provinces. Inasmuch as some provinces had borrowed more per head than others, an arrangement was made that each province was to be free of debt up to 25\$ per head of the population of such province (if it had incurred a debt equal to that amount, and that if not it should be allowed to increase its debt up to 25\$ per head), interest on the amount over or under the 25\$ per head was to be paid to or by the Dominion Government. These payments or allowances being worked out resulted in the Dominion Government having to pay annually to each Provincial Government in aid of its revenue, and for the purpose of its Government, a certain annual sum fixed by the Act, and it was also arranged that an additional sum equal to 80 cents. per head of the population of each province was to be paid annually by the Dominion Government to each Provincial Government, and it was declared that¹ “such grants shall be in full settlement of all future demands in Canada.” These provisions were strongly objected to at the time, and it was observed by Mr. Dukin,² “the contrast between the financial system as a whole with which the framers of the United States Constitution started, and the financial system with which it is proposed we shall start, is as salient as it is possible for the human intellect to conceive ; and, further, the contrast between this proposed financial system and the financial system of England is just as salient too. The framers of the United States Constitution started with the principle that between the United States and the several States there should be no financial dealings at all. They were to have separate financial systems, separate treasuries, separate debts, all absolutely distinct, and ever since the time when the unhappy attempt on the part of Great Britain to tax the Colonies was given up almost as absolute a line of demarcation between the Imperial Finances and Treasury and the Colonial Finances and Treasuries has been maintained. We have our separate finances and our own separate Treasury with which the Imperial Government has nothing to do. The Imperial Government may have gone and may still go to more expense on Provincial behalf; but the British principle is that Imperial finance is as distinct from the Provincial

as is the United States Federal Finance from that of any State.” And Mr. Dukin then proceeded to point out the inevitable result of financial dealings between the Federal and the Provincial Governments.

Dissatisfaction, friction, jealousy of other Provinces who are alleged to be more favourably treated, and constant crying out for more. The result has already justified the criticism, and as the tendency is ever acting and constantly recurring there is fear of the most injurious and far-spreading results. “¹ The wisdom of this policy (that is, the financial policy) rendering direct interchange between the Federal and Provincial Governments necessary has more than once been a question since this union has been working itself out As a large portion of this revenue (revenue of the Provinces), in certain cases the largest portion, is not derived from local sources, there has not always been, it is believed, that effort for economical expenditure that would probably have been made if all funds were raised from local sources and from direct taxes as in the United States. The consequence already has been that demands have been made from time to time on the Dominion Treasury for subsidising of railways and for claims which are really Provincial undertakings, and which are assisted as a means of relieving the local treasury and satisfying the representations from that section.”

Mr. G. R. Parkin tells us¹ “An agitation for better terms on the part of one of the Provinces necessitated a later readjustment of the scale of subsidies There has been a tendency, too, at times to make claims on the Dominion Treasury for aid to Public works on Provincial rather than of general concern, and to enforce these claims by such political pressure as the Provinces could employ.”

Both these witnesses are admirers of the Canadian Constitution. Mr. Goldwin Smith, who is not an admirer, tells us, “Politically the Provinces have been held together and a basis has been framed for a Government by means of what are called ‘better terms’—that is further subsidies out of the Federal Fund—and by a system of purchasing support of all kinds and in all the ways known to politicians.”

Every Australian who has had experience of the working of Government in these colonies must deplore the evils incident to local pressure on the public treasury for local requirements, and must appreciate how much these evils will be increased when the pressure comes from a Province exercising large powers of local self-government and containing hundreds of thousands of electors. There is one way and one way only to prevent these evils from happening, and that is to provide that there shall be as few financial dealings as possible between the Federal and the Provincial Governments, and those of the simplest possible character, and above all

things to provide that under no circumstances is money to be borrowed by the Federal Government for Provincial purposes. If the Federal Government takes over the Provincial public debts, it should also take over the works to construct which the debts were incurred. Hospitals, water and drainage works, wharves, jetties, &c., are amongst them; all of local character, which it would be an anomaly for a Federal Government to either acquire or manage. If there are any works which it is considered desirable should belong to the Union, such as the telegraph lines, post-offices, or railways, let them be purchased at a valuation and paid for, payment being made by the taking over of an equivalent amount of the Provincial debt. If there is any surplus revenue in the hands of the Federal Government it should be paid to the Provinces in ratio to the population. This reduces the financial dealings between the two to the simplest possible form.

(1) McCrossan: Proceedings at Melbourne Conference, page 68.

(1) B.N.A. Act. Sec. 102 to 120.

(2) B.N.A. Deb. 517.

(1) B.N.A. Act. Sec. 118.

(2) B.N.A. Deb. 515.

(1) Bourinot, Fed. Gov. in Canada, 74 and 75.

(1) Parkin's Articles published in *Register*, April 5, 1890.

Chapter XV.

Provincial or Lieutenant Governors.

A Provincial or Lieutenant Governor may be appointed in either one of three different ways.

1. Elected by the people (as in America).
2. Nominated by the Crown from England.
3. Nominated by the Governor-General from amongst the most distinguished citizens of the Province (as in Canada). And there is a fourth alternative.
4. Dispensing with Provincial Governors.

A Provincial Governor may be considered both as a “Ceremony” and as an “Utility.”

In Canada we find that the Provincial Governors are nominated—by the Governor-General (nominally), really by the Ministry. They are there called Lieutenant-Governors.¹

One of these Lieutenant Governors is to be appointed for each province, and they are² —“To hold office during the pleasure of the Governor-General; but any Lieutenant-Governor appointed after the commencement of the first session of the Parliament of Canada shall not be removable within five (5) years from his appointment, except for cause assigned which shall be announced to him within one month after the order for his removal is made, and shall be communicated by message to the Senate and to the House of Commons within one week thereafter if Parliament is then sitting, and if not then made, one week after the commencement of the next session of Parliament.”

¹ “The Lieutenant Governors (with some important exceptions) are to hold the same position and exercise the same functions under the Governor-General as they formerly held and exercised under the Crown.”

One of the most important exceptions is that the Prerogative of Pardon is to be no longer exercised by them.² Article 44 of the Quebec Convention Resolutions specially conferred that power, subject to any instructions that may from time to time be received from, and to any provisions that might be made in this behalf by, the General Government. This, however, was not agreed to, and the right of pardon is vested solely in the Governor-General.

In America the States Governors are elected by the people, and in some of the large States the position is eagerly sought after and highly valued. Not having any responsible advisers, he has to perform real and important

functions of which the exercise of the veto on Bills which he considers detrimental to the interests of the public is not the least. It is necessary that there should be a Governor in an American State, and under their form of Government election is perhaps the best mode in which he can be appointed.¹

The value of “Ceremonies” can be easily underrated.

The use of the Queen² (says Mr. Bagehot) “in her dignified capacity is incalculable.” He does not mean to convey the idea that in her other capacities she is not, what we all know her to be, the best and one of the most capable monarchs who ever ruled over any nation, but he wished to draw attention to the Ceremonial aspect of the case.

Now, if we wish Provincial Governors to be valuable as “ceremonies” we must adhere to the present practice, viz., appointments by Her Majesty from England. Governors so appointed (at all events of late years) have been either men of high rank and distinguished lineage and official experience of some kind or other, or they have been distinguished by long and meritorious services under the Crown. No one in the colony can have any ground of distrust against them; every one is disposed to recognise them as the representative of Her Majesty, and they can and generally do, notwithstanding that in nearly all matters they are obliged to adopt the views of their constitutional advisers, exercise a certain beneficial influence.¹

A Provincial Governor appointed or elected from amongst the people would be in a very different position. He must have been in business or engaged in politics, probably both; he must have been either a very negative sort of man or made enemies or friends; he must have mixed largely with that “familiarity which breeds contempt” (from a “ceremonial” point of view) with a large number of the inhabitants of the province, and no matter how able, popular, and talented he may be, he would in every way be unfitted for being of use as a “ceremony.”

If we look upon a Provincial Governor as an “utility” it does not appear that he has any duties to perform which cannot be just as well, if not better, performed by the Governor-General. If we are to judge from what has happened in Canada.

- (a) His right to exercise the prerogative of pardon will be taken away.
- (b) As he must be under the Governor-General all his duties and functions as a means of communication between his Government and the Colonial Office (many of which by-the-by are now performed by the Agents-General), will disappear.
- (c) He will no longer represent the Crown even in the limited sense in which Colonial Governors now do this. He has no right to veto Bills (except as the

mouthpiece of his Ministry, who could themselves just as well perform such duty when they wish to set Parliament at defiance by means of a *Gazette* notice.)

“In Canada the ¹ Provincial Governor is a puppet and his Constitutional veto a nullity.”

No doubt a class of duties and powers, as important as they are delicate remain. A class of duties and powers which must be exercised by some one under the system of Responsible Government. I allude to those which arise when the Ministry have lost the confidence of Parliament or the people, or when for other causes a Ministry desires to resign. Now, as all the colonies are connected by telegraph, all but two by rail, and all are within a few days communication by steam with any other of them, why should not the Governor-General exercise not only (as he does in Canada) the right of pardon, but also the discretion, rarely called for, of granting or refusing a final dissolution of the Legislature at the request of his Ministries, and of dismissing those Ministries when he considers they have lost the support of the Parliament or the people, or of accepting their resignation when tendered.

¹ The case of Mr. Letellier St. Just, the Deputy-Governor of Quebec, who in 1878-9 was dismissed because he took a mistaken view of his position in this matter, and dismissed his Ministry, when in the opinion of the responsible advisers of the Governor-General he ought not to have done so, shows that the Governor-General, or rather his advisers, have to consider and practically decide these matters when complications and difficulties arise. Why then should he not (as happens in ninety cases out of a hundred) consider and decide when there are no difficulties or complications.

“Whatever is unnecessary in Government is pernicious. Life makes so much complexity necessary that an artificial addition is sure to do harm; you cannot tell when the useless bit of machinery will catch and clog the hundred useful wheels² .”

There is also another, though perhaps lesser point to be considered. The introduction of Federation will certainly cause additional expense, and any economies which can be made by the abolition of unnecessary departments should be made; in this case the economies would be considerable.

It is to be hoped that, if not abolished altogether, the present practice of nomination by the Crown from England will be adhered to.

(1) *Monro*, 80, 174.

(2) *B.N.A. Act*, Clause 59.

(1) *B.N.A. Act*, Clauses 60 to 65.

(2) *B.N.A. Deb.* 1030.

(1) His merit “is usually tested by the number and boldness of his vetoes.” Bryce, 510.

(2) Bagehot, 33.

(1) Todd has a most exalted idea of their utility, and devotes twenty pages to demonstrate it. Todd, 574 to 594.

(1) Goldwin Smith, 11.

(1) Bourinot, Fed. Gov. 80.

(2) Bagehot, 107.

Chapter XVI.

Seat of Federal Government.

IN AMERICA the Constitution did not fix the seat of Government. Power was given to Congress¹ “to exercise exclusive legislation in all cases whatsoever over such district (not exceeding 10 miles square) as may by concession of particular States and the acceptance of Congress become the seat of the Government of the United States.

IN CANADA the Quebec Convention decided that² “Ottawa should be the seat of Government subject to the Royal Prerogative,” but no power was taken to exercise exclusive legislation over the seat of Government. The Dominion Constitution simply says³ “Until the Queen otherwise decrees the seat of Government of Canada shall be Ottawa.”

The chief reasons which actuated the founders of the American Constitution were⁴

- (a) That “the members of the Central Government ought not to be dependent on the State comprehending the seat of Government for protection in the execution of their duty.”
- (b) That without such exclusive power they would have no means of imposing their authority in the place when their public functionaries would be convened.
- (c) That it would never be safe to leave in the hands of any one State the power which the control of the seat of the National Legislature would give them.

And they pointed out that their fears were not imaginary, as the Continental Congress had actually been obliged to leave Philadelphia on account of violence.

These reasonings were not considered sufficiently conclusive by the Quebec Convention (probably because of the overshadowing powers given to the Dominion Government), nor we do not find the Swiss were influenced by any such reasons, either to grant exclusive powers to the Union Government over the Federal capital or to choose for the same an unimportant town, on the contrary Berne is one of the largest and most important cities in the Union.

The American plan of giving exclusive legislative power over the seat of Government (to be hereafter determined), has many recommendations, and has also this great advantage: it postpones the determination of a question which is sure to raise local jealousies and perhaps jeopardise the ratification of any scheme of Federation which may be agreed upon by the Sydney Convention. Any scheme will raise a sufficient crop of local

jealousies and interests. Above all others, this is sure to be made a burning question, and the postponement of its settlement to a more convenient season—although it may be declaimed against in many quarters—seems judicious.

(1) Article 1, Sec. 8.

(2) Resolution of Quebec Conference No. 52.

(3) Brit. N. A. Act, Clause 16.

(4) Federalist XLIII., page 339; Story 129.

Chapter XVII.

Ratification.

FEDERAL Constitutions drawn up by Conventions have been ratified and adopted in various modes.

The Quebec Convention, which framed the Constitution for the Dominion of Canada, met on 10th of October, 1864, but it was not till 1867 that the British North American Act was passed by the British Parliament. This Act recites that “the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their desire to be federally united into one Dominion.”

In the interval, in Canada and Nova Scotia, both Houses of Parliament passed resolutions approving of the scheme, and the matter was never submitted to the people. Government had been almost impossible in Canada, owing to the dissensions and jealousies which had arisen between its two component parts¹ —Ontario and Quebec—and a Coalition Government had been formed to bring about a more extended Federation, and thus end the deadlock which had for some time existed. It was, to a considerable extent, owing to this state of things that the people acquiesced in the decision of their representatives, and did not claim to be directly consulted. The Parliament of Nova Scotia for a long time resisted, but was finally influenced by the fact that both Canada and New Brunswick had agreed to the Union, and that the proposed Federation was strongly approved of by the British Government. ¹ “The Premier carried Nova Scotia into Federation, in spite of a temporary popular hostility to Union”—an hostility, however, which afterwards changed into warm approval. In New Brunswick the question was twice submitted to the people by dissolutions of Parliament; in 1865 a Parliament was returned adverse to, and in 1866 in favour of, the proposed Federation; the other North American Provinces (except Newfoundland, which still holds aloof) joined after the Act was passed.

In America² it was provided that “the ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

These Conventions were appointed in pursuance of the following resolutions of the Philadelphia Convention (dated September 17, 1787. Resolved that ³ “The preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention that it should afterwards be submitted to a Convention of delegates chosen

in each State by the people thereof under the recommendation of its Legislature for their assent and ratification, and that each Convention assenting to and ratifying the same should give a notice thereof to the United States in Congress assembled.”

The Conventions met on different dates, and each State that joined influenced others. As it was the majorities in some instances were very narrow, and New York and Virginia did not join for nearly a year, and Carolina and Rhode Island for nearly two. The fear of foreign powers greatly influenced the result. It is almost certain that if the matter had been submitted to a direct popular vote the Constitution would not have been adopted, but¹ “the Conventions were composed of able men who listened to weighty arguments, and were themselves influenced by the authority of their leaders. The judgment of the wise prevailed over the prepossessions of the multitude.”

In Switzerland the Constitution of 1848 was ratified by the Cantons (I cannot ascertain in what manner). The second Constitution of 1874 was ratified by a “referendum,” 340,197 voting for same, as against 178,013 on the other.

Legislatures are naturally loth to part with power or importance, and do not always fully realize that they are a “means” and not an “end.” Notwithstanding this, however, the wish for Federation is so strong and universal in Australia that the ratification of the work of the Convention may, perhaps, be left to the Provincial Legislatures, subject to the only “referendum” known to their Constitutions “dissolution and appeal to the people” There is, however, much to be said in favour of Constitutional Conventions which would be free from the bias of Provincial Legislatures, and free from the objections of a direct vote of the people.¹

As, however, by the resolutions already carried in the various Parliaments the Sydney Convention has to report to them direct, this is a matter which will have to be settled in each province by its Legislature.

(1) B.N.A. Deb., 498.

(1) G. R. Parkin.

(2) Article VII.

(3) Federalist, page 46 (introductory to).

(1) Bryce, page 23.

(1) For the advantages of Conventions see Bryce, appendix, page 636.

Chapter XVIII.

Conclusion.

An apology is offered for the very hurried and, imperfect manner in which this work has been done, but the hours at the disposal of a man engaged in active business are few. Opinions and conclusions, which are offered in all humility, and which it must be understood are of first impression, are more prominent than was intended, but the difficulty has been felt of conveying information in a readable form without such expression.

It may be that further light, discussion, and argument may sweep away some of the theories set up; if so, it is hoped that the presentation of the opposite view has at least done no harm.

Schedules.

Schedule A.

List of Delegates appointed to represent the Australian Colonies and New Zealand at the Federal Conference, Melbourne, 1890.

New South Wales.

The Hon. Sir Henry Parkes, G.C.M.G., Premier and Member of the Legislative Assembly.

The Hon William McMillan, Colonial Treasurer and Member of the Legislative Assembly.

New Zealand.

The Hon. Captain William Russell Russell, Colonial Secretary and Member of the House of Representatives.

The Hon. Sir John Hall, K.C.M.G., Member of the House of Representatives.

Queensland.

The Hon. Sir Samuel Walter Griffith, K.C.M.G., Member of the Legislative Assembly.

The Hon. John Murtagh Macrossan, Colonial Secretary and Member of the Legislative Assembly.

South Australia.

The Hon. John Alexander Cockburn, M.D., London, Premier and Member of the Legislative Assembly.

The Hon. Thomas Playford, Member of the Legislative Assembly.

Tasmania.

The Hon. Andrew Inglis Clark, Attorney General and Member of the House of Assembly.

The Hon. Bolton Stafford Bird, Treasurer and Member of the House of Assembly.

Victoria.

The Hon. Duncan Gillies, Premier and Member of the Legislative Assembly.

The Hon. Alfred Deakin, Chief Secretary and Member of the Legislative Assembly.

Western Australia.

The Hon. Sir James George Lee Steere, Speaker of the Legislative Council and Member of the Executive Council.

Schedule B.

List of Delegates appointed to represent the Australian Colonies and New Zealand at the National Australasian Convention, Sydney, 1891.

Showing the Mode of Appointment.

NEW SOUTH WALES.

Name.	How Chosen.
Hon. Edmund Barton, Q.C.	
Hon. Sir Patrick Alfred Jennings, K.C.M.G.	All Members of the Legislative Council; chosen by ballot of the Legislative Council on October 8, 1890.
The Hon. William Henry Suttor, Vice-President of Executive Council.	
The Hon. Sir Henry Parkes, G.C.M.G., Premier.	All Members of the Legislative Assembly; chosen by ballot of the Legislative Assembly on September 10, 1890.
The Hon. William McMillan.	
The Hon. Joseph P. Abbott, Speaker	
George R. Dibbs, Esq.	

VICTORIA.

The Hon. H. Cuthbert.	All Members of the Legislative Council; appointed on motion by Legislative Council on July 9, 1890.
Hon. N. Fitzgerald.	
Hon. A. Deakin	All Members of the Legislative Assembly; appointed on motion by the Legislative Assembly on June 10, 1890.
Hon. J. Munro, Premier.	
Hon. Lt.-Col. W. C. Smith.	
* Hon. H. J. Wrixon, Q.C.	
Hon. D. Gillies.	

SOUTH AUSTRALIA.

Hon. R. C. Baker, C.M.G.	All Members of the Legislative Council; chosen by ballot by the Legislative Council on July 2, 1890.
Hon. J. H. Gordon.	
Hon. Thomas Playford, Premier.	All Members of the House of Assembly; chosen by ballot of the House of Assembly on July 2, 1890.
Hon. C. C. Kingston, Q.C.	
Hon. Sir John Downer, K.C.M.G., Q.C.	
Hon. J. A. Cockburn.	
Hon. Sir John Bray, K.C.M.G., Chief	

Secretary.

QUEENSLAND.

Hon. A. J. Thynne. All Members of the Legislative Council; appointed by resolution of Legislative Council, August 6, 1890.

Hon. T. Macdonald Paterson.

Hon. Sir S. W. Griffith, K.C.M.G., All Members of the Legislative Assembly; appointed by resolution of the Q.C., Premier. Legislative Assembly on July 15, 1890.

Hon. Sir Thomas McIlwraith,
K.C.M.G., Treasurer.

Hon. John Donaldson.

Hon. J. M. Macrossan.

Hon. A. Rutledge.

TASMANIA.

Hon. W. All Members of the Legislative Council; chosen by ballot by the Legislative Council on October 2,
Moore. 1890.

Hon. Adye
Douglas.

Hon. W. H. All Members of the House of Assembly; chosen by ballot by the House of Assembly on October 4,
Burgess. 1890.

Hon. Andrew
Inglis Clark,
Attorney-
General.

Hon. N. J.
Brown.

Hon. Bolton
Stafford Bird,
Treasurer.

Hon. P. O. Chosen on October 10, 1890 by joint ballot of the two, Houses taken in the following manner:—
Fysh, Premier, Nominations were sent to the President of the Legislative Council. The Legislative Council
M.L.C. communicated the names to the House of Assembly. The House of Assembly took a ballot, and sent
the result, with the number of votes polled by each candidate, to the Legislative Council. The
Legislative Council then took a ballot, and added the number of votes polled by each candidate to the
number polled by him in the House of Assembly. The candidate who polled the highest total was
declared elected by the President of the Legislative Council.

WESTERN AUSTRALIA.

Hon. J. W. Hackett. Members of the Legislative Council; chosen as follows:

Hon. A. Wright.

Hon. J. Forrest, C.M.G., Members of the House of Assembly; chosen as follows: By resolution—Hon. J.
Premier. Forrest, C.M.G., Hon. Sir J. G. Le Steere, Hon. W. E. Marmion. By ballot—Alex.
Forrest, Esq., W. T. Loton, Esq.

Alex. Forrest, Esq.

Hon. Sir J. G. Le Steere,
Speaker.

W. T. Loton, Esq.

Hon. W. E. Marmion,
Commissioner of Crown
Lands.

NEW ZEALAND.

Hon. Sir H.A. Atkinson, Appointed by Government to succeed late Sir W. Fitz-Herbert, who was chosen by K.C.M.G., M.L.C. resolution of Legislative Council.

Sir George Grey, K.C.B. By resolution of House of Representatives.

Capt. W. Russell, M.H.R.

* Honble. W. Shiels, M.L.A., Attorney General, acted during absence of Hon. H. J. Wrixon.

Schedule C.

Commission of Sir W. F. D. Jervois.

Letters Patent constituting the Office of Governor and Commander-in-Chief of the Colony of South Australia.

Draft of Letters Patent passed under the Great Seal of the United Kingdom, constituting the Office of Governor and Commander-in-Chief of the Colony of South Australia and its Dependencies.

Letters Patent dated 28th April, 1877.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India. To all whom these Presents shall come: Greeting:

Preamble.

Recites Governor's Commission, 28th February, 1873.

Boundaries.

Revocation of Governor's Commission.

Office of Governor constituted.

Governor's powers and authorities.

WHEREAS We did by certain Letters Patent, under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date at Westminster, the Twenty-sixth day February, 1873, in the Thirty-sixth year of Our reign, constitute and appoint Our Trusty and Well-beloved Anthony Musgrave, Esquire, Companion of Our Most Distinguished Order of Saint Michael and Saint George (now Sir Anthony Musgrave, Knight Commander of Our said Most Distinguished Order), to be, for and during Our will and pleasure, Our Governor and Commander-in-Chief, in and over Our Colony of South Australia and its Dependencies, comprising all the territories bounded on the north by the parallel of ten degrees and fifty-five minutes of south latitude, on the south by the Southern Ocean, on the east by one hundred and thirty-eight degree of east longitude extending from the Gulf of Carpentaria as far south as the parallel of twenty-six degrees south, thence along that parallel east, until it reaches the meridian of one hundred and forty-one degrees east, and from this point along the same meridian to the Southern Ocean, and on the west by one hundred and twenty-nine degrees of east longitude, including all and every the gulfs, bays, creeks, rivers, and islands (including Kangaroo Island) adjacent to any part of the mainland within the limits aforesaid. And whereas We are desirous of making effectual and permanent provision for the office of Governor and Commander-in-Chief in and over Our said Colony of South

Australia and its Dependencies, without making new Letters Patent on each demise of the said Office. Now know ye that we have revoked and determined, and by these presents do revoke and determine, the said recited Letters Patent and every clause, article, and thing therein contained. And further know ye that We, of Our special grace, certain knowledge, and mere motion, have thought fit to constitute, order, and declare, and do by these presents constitute, order, and declare, that there shall be a Governor and Commander-in-Chief (hereinafter called Our said Governor) in and over Our Colony of South Australia and its Dependencies) (hereinafter called Our said Colony), and that the person who shall fill the said Office of Governor, shall be from time to time appointed by Commission under Our Sign Manual and Signet. And We do hereby authorize and command Our said Governor to do and execute in due manner all things that shall belong to his said command and to the trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of these present Letters Patent and of such Commission as may be issued to him under Our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him under Our Sign Manual and Signet, or by Our Order in Our Privy Council, or by Us through one of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in Our said Colony.

Public Seal.

II. And We do hereby authorize and empower Our said Governor to keep and use the Public Seal of Our said Colony for sealing all things whatsoever that shall pass the said Public Seal.

Executive Council, Constitution of.

III. And We do hereby declare Our pleasure to be that there shall be an Executive Council for Our said Colony, and that the said Council shall consist of such persons as are now or may at any time be declared by any Law enacted by the Legislature of Our said Colony to be Members of Our said Executive Council, and of such other persons as Our said Governor shall, from time to time, in Our name and on Our behalf, but subject to any Law as aforesaid, appoint under the Public Seal of Our said Colony to be Members of Our said Executive Council.

Grant of lands.

IV. And We do further authorize and empower Our said Governor, in Our name and on Our behalf, to make and execute under the said Public Seal grants and dispositions of any lands which may be lawfully granted and disposed of by Us within Our said Colony.

Appointment of Judges, Justices, &c.

V. And We do further authorize and empower Our said Governor to

constitute and appoint, in Our name and in Our behalf, all such Judges, Commissioners, Justices of the Peace, and other necessary Officers and Ministers of Our said Colony as may be lawfully constituted or appointed by Us.

Grant of pardons.

Remission of fines.

Political offenders.

Proviso. Banishment from Colony prohibited.

VI. And We do further authorize and empower Our said Governor, as he shall see occasion, in Our name and on Our behalf, when any crime has been committed within Our said Colony, or for which the offender may be tried therein, to grant a pardon to any accomplice in such crime who shall give such information as shall lead to the conviction of the principal offender, or one of such offenders if more than one; and further, to grant to any offender convicted in any Court, or before any Judge, or other Magistrate, within Our said Colony, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence passed on such offender, for such period as to Our said Governor may seem fit, and to remit any fines or forfeitures due or accrued to Us in respect thereof; Provided always that Our said Governor shall in no case, except where the offence has been of a political nature, unaccompanied by any other grave crime, make it a condition of any pardon or remission of sentence that the offender shall absent himself or be removed from Our said Colony.

Suspension or removal from office.

VII. And We do further authorize and empower Our said Governor, so far as We lawfully may, upon sufficient cause to him appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any office or place within Our said Colony, under or by virtue of any Commission or Warrant granted, or which may be granted, by Us in Our name or under Our authority.

Summoning, proroguing, or dissolving any Legislative Body.

VIII. And We do further authorize and empower Our said Governor, to exercise all powers lawfully belonging to Us in respect of the summoning, proroguing, or dissolving any Legislative Body now or hereafter established within Our said Colony.

Power of granting marriage licences and probates of wills; custody of idiots.

IX. And We do by these presents authorize and empower Our said Governor, within Our said Colony, to exercise all such powers as We may be entitled to exercise therein in respect of granting licences for marriages, letters of administration, and probates of wills, and with respect to the custody and management of idiots and lunatics and their estates.

Sucession to the Government.

Lieutenant-Governor.

Administrator.

Proviso. Lieutenant-Governor, &c., to take oaths of office before administering the Government.

X. And We do hereby declare Our pleasure to be that, in the event of the death, incapacity, or removal of Our said Governor, or his departure from Our said Colony, all the powers and authorities herein granted to him shall (subject to the proviso and condition hereinafter contained) be vested during Our pleasure in Our Lieutenant-Governor of Our said Colony, or if there be no such Office in Our said Colony, then in such person or persons as may be appointed by Us under Our Sign Manual and Signet to administer to the Government of the same. And We do hereby (subject as aforesaid) give and grant all such powers and authorities to such Lieutenant-Governor or person or persons accordingly. Provided always and subject to this condition, that before any such powers or authorities shall vest in such Lieutenant-Governor, or such other person or persons, he or they shall have taken the Oaths hereinafter directed to be taken by the Governor of Our said Colony, and in the manner of these Letters Patent provided.

Governor may appoint a Deputy during his temporary absence from seat of Government.

XI. And whereas it may be necessary or expedient that Our said Governor should absent himself occasionally for a short period from the seat of Government or from the Colony, whereby the affairs of Our said Colony might be exposed to detriment if there were no person on the spot authorized to exercise the power and authorities by these Our Letters Patent granted to Our said Governor or some of them. Now We do hereby authorize and empower Our said Governor, in every such case as occasion shall require, by an Instrument under the Public Seal of Our said Colony, to constitute and appoint Our Lieutenant-Governor for the time being of Our said Colony, or if there be no such Officer, then any other person to be his Deputy in Our said Colony during such temporary absence, and in that capacity to exercise, perform, and execute for and on behalf of Our said Governor during such absence, but no longer, all such powers and authorities vested in Our said Governor by these Our Letters Patent as shall in and by such Instrument be specified and limited, but no others. Provided, nevertheless, that by the appointment of a Deputy as aforesaid the power and authority of Our said Governor of Our said Colony shall not be abridged, altered, or in any way affected, otherwise than We may at any time hereafter think proper to direct.

Publication of Governor's Commission.

Oaths to be taken by Governor.

Imperial Act 31 and 32 Victoria, cap. 72.

XII. And We further declare Our pleasure to be, and We do direct that Our said Governor shall with all due solemnity before entering on any of the duties of his office, cause the Commission appointing him to be such Governor to be read and published at the seat of Government, in the presence of the Chief Justice or the next superior Judge of Our said Colony, and of the members of the Executive Council thereof, which being done, Our said Governor shall then and there take before them the Oath of Allegiance in the form provided by an Act passed in the Session holden in the thirty-first and thirty-second years of Our Reign, intituled an Act to amend the Law relating to Promissory Oaths; and likewise the usual Oath for the due execution of the Office of Our Governor of and over Our said Colony, and for the due and impartial administration of justice; which oaths the said Chief Justice or Judge is hereby required to administer.

Officers and others to obey and assist the Governor.

XIII. And we do hereby require and command all Our Officers and Ministers, Civil and Military, and all other the inhabitants of Our said Colony, to be obedient, aiding, and assisting unto Our said Governor, or in the event of his death, incapacity, removal, absence, or departure, to such person or persons as may from time to time, under the provision of these Our Letters Patent, administer the Government of our said Colony.

Power reserved to Her Majesty to revoke, alter, or amend the present Letters Patent.

XIV. And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us or them shall seem meet.

Publication of Letters Patent.

XV. And we do further direct and enjoin that these Our Letters Patent shall be read and proclaimed at such place or places as Our said Governor shall think fit within Our said Colony of South Australia.

In witness whereof We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster, the Twenty-eighth day of April, 1877, in the Fortieth year of Our Reign.

By Warrant under the Queen's Sign Manual,

C. ROMILLY.

Instructions to the Governor and Commander-in-Chief of the Colony of South Australia.

Draft of Instructions passed under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Colony of South Australia and its Dependencies.

Dated 28th April, 1877.

VICTORIA R.

Instructions to Our Governor and Commander-in-Chief in and over Our Colony of South Australia and its Dependencies, or in his absence, to our Lieutenant-Governor or the Officer for the time being administering the Government of Our said Colony and its Dependencies.

Given at Our Court at Windsor, this Twenty-eighth day of April, 1877, in the Fortieth year of Our Reign.

Preamble.

Recites Letters Patent, dated 28th April, 1877, constituting the Office of Governor.

Oaths to be administered by the Governor.

WHEREAS by certain Letters Patent, bearing even date herewith, We have constituted, ordered, and declared that there shall be a Governor and Commander-in-Chief (hereinafter called Our said Governor) in and over Our Colony of South Australia and its Dependencies (hereinafter called Our said Colony.) And we have thereby authorized and commanded Our said Governor to do and execute in due manner all things that shall belong to his said command, and to the trust we have reposed in him, according to the several powers and authorities granted or appointed him by virtue of the said Letters Patent and of the Commission to be issued to him under Our Sign Manual and Signet, and according to such instructions as may from time to time be given to him, under Our Sign Manual and Signet, or by Our Order in Our Privy Council, or by Us through One of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in Our said Colony. Now therefore we do, by these Our Instructions under Our Sign Manual and Signet, declare Our pleasure to be that Our said Governor for the time being shall, from time to time, by himself or by any other person to be authorized by him in that behalf, administer to all and to every person or persons, as he shall think fit, who shall hold any office or place of trust or profit, the Oath of Allegiance, together with such other Oath or Oaths as may from time to time be prescribed by any Laws or Statutes in that behalf made and provided.

Governor to communicate Instructions to Executive Council.

II. And we do hereby require Our said Governor to communicate forthwith to Our Executive Council for Our said Colony these Our Instructions, and likewise all such others, from time to time, as he shall find convenient for Our service to be imparted to them.

Executive Council not to proceed to business unless summoned by the Governor's authority. Quorum.

III. And We do hereby direct and enjoin that Our said Executive Council shall not proceed to the dispatch of business unless duly summoned by authority of Our said Governor, nor unless two members at least (exclusive of himself or of the member presiding in his absence) be present and assisting throughout the whole of the meetings at which any such business

shall be dispatched.

Governor to preside.

Governor to appoint a President.

Senior Member to preside in the absence of the Governor and President.

Seniority of Members.

IV. And We do further direct and enjoin that Our said Governor do attend and preside at the meetings of Our said Executive Council, unless when prevented by some necessary or reasonable cause; and that in his absence such member as may be appointed by him in that behalf, or in the absence of any such member the senior member of the said Executive Council actually present shall preside at all such meetings; the seniority of the members of the said Council being regulated according to the order of their respective appointments as members of Our said Council.

Journals and Minutes to be kept.

V. And We do further direct and enjoin that a full and exact journal or minute be kept of all the deliberations, acts, proceedings, votes, and resolutions of Our said Executive Council; and that at each meeting of the said Council, the minutes of the last meeting be read over and confirmed or amended, as the case may require, before proceeding to the dispatch of any other business.

Governor to consult Executive Council.

Proviso. Urgent cases.

VI. And We do further direct and enjoin that, in the execution of the powers and authorities committed to Our said Governor by Our said Letters Patent, he shall in all cases consult with Our said Executive Council, excepting only in cases which may be of such a nature that, in his judgment, Our service would sustain material prejudice by consulting Our said Council thereupon, or when the matters to be decided shall be too unimportant to require the advice, or too urgent to admit of their advice being given by the time within which it may be necessary for him to act in respect of any such matters. Provided that in all such urgent cases he shall subsequently, and at the earliest practicable period, communicate to the said Council the measures which he may so have adopted with the reasons thereof.

May act in opposition to Executive Council.

Reporting the grounds for so doing.

VII. And We do authorize Our said Governor, in his discretion, and if it shall in any case appear right, to act in the exercise of the power committed to him by Our Letters Patent in opposition to the advice which may in any such case be given to him by the members of Our said Executive Council. Provided, nevertheless, that in any such case he shall fully report to Us, by

the first convenient opportunity, any such proceeding, with the grounds and reasons thereof.

Rules to be observed in assenting to, dissenting from, or reserving Bills.

VIII. And in the execution of so much of the powers as are vested in Our said Governor by law for assenting to or dissenting from, or of reserving for the signification of Our pleasure, Bills which may have been passed by the Legislature of Our said Colony. We do direct and enjoin him to guide himself, as far as may be practicable, by the following rules, directions, and instructions (that is to say):—

Different subjects not to be mixed in the same law. No clause to be introduced foreign to what the title imports
Temporary laws.

IX. In the passing of all Laws each different matter is to be provided for by a different Law without intermixing in one and the same Law such things as have no proper relation to each other; and no clause is to be inserted in or annexed to any Law which shall be foreign to what the title of such Law imports, and no perpetual clause is to be part of any temporary Law.

Description of Bills not to be assented to.

X. Our said Governor is not to assent in Our name to any Bill of any one of the classes hereafter specified (that is to say):—

1. Any Bill for the divorce of persons joined together in holy matrimony.
2. Any Bill whereby any grant of land or money, or other donation or gratuity, may be made to himself.
3. Any Bill whereby any paper or other currency may be made a legal tender, except the coin of the realm, or other gold or silver coin.
4. Any Bill imposing differential duties (other than as allowed by the Australian Colonies Duties Act 1873).
5. Any Bill the provisions of which shall appear inconsistent with obligations imposed upon us by Treaty.
6. Any Bill interfering with the discipline or control of our forces in Our said Colony by land and sea.
7. Any Bill of an extraordinary nature and importance whereby our prerogative, or the rights and property of Our subjects not residing in Our said Colony, or the trade and shipping of the United Kingdom and its Dependencies, may be prejudiced.
8. Any Bill containing provisions to which our assent has been once refused, or which have been disallowed by Us.

Unless such Bill shall contain a clause suspending the operations of such Bill until the signification in Our said Colony of our pleasure thereupon, or unless Our said Governor shall have satisfied himself that an urgent necessity exists requiring that such Bill be brought into immediate operation, in which case he is authorized to assent in our name to such Bill,

unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed upon Us by Treaty. But he is to transmit to Us, by the earliest opportunity, the Bill so assented to, together with his reasons for assenting thereto.

Laws sent home to have marginal abstracts.

Journals and Minutes.

XI. Our said Governor is to take care that all laws assented to by him in Our name, or reserved for the signification of Our pleasure thereon, shall, when transmitted by him, be fairly abstracted in the margins, and be accompanied in such cases as may seem to him necessary with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such Laws; and he shall also transmit fair copies of the Journals and Minutes of the Proceedings of the Legislative Bodies of Our said Colony, which he is to require from the clerks, or other proper officers in that behalf of the said Legislative Bodies.

Regulation of power of pardon.

Judge's Report to be laid before the Executive Council.

Governor to take the advice of Executive Council in such cases. may exercise his own judgment. Entering his reasons on the Council Minutes.

XII. And whereas we have by Our said Letters Patent authorized and empowered Our said Governor, as he shall see occasion, in Our name and on Our behalf, to grant to any offender convicted of any crime in any Court, or before any Judge or other Magistrate within Our said Colony, a pardon, either free or subject to lawful conditions. Now We do hereby direct and enjoin Our said Governor to call upon the Judge presiding at the trial of any offender who may be condemned to suffer death by the sentence of any Court within Our said Colony, to make to Our said Governor a written Report of the case of such offender, and such report of the said Judge shall, by Our said Governor, be taken into consideration at the first meeting thereafter which may be conveniently held of our Executive Council, where the said Judge may be specially summoned to attend with his notes as desired; and Our said Governor shall not pardon or relieve any such offender as aforesaid unless it shall appear to him expedient so to do, upon receiving the advice of Our said Executive Council therein; but in all such cases he is to decide either to extend or to withhold a pardon or relieve, according to his own deliberate judgment, whether the members of Our said Executive Council concur therein or otherwise; entering nevertheless, on the Minutes of Our said Executive Council a minute of his reasons at length, in case he should decide any such question in opposition to the judgment of the majority of the members thereof.

Promotion of religion and education amongst the natives.

Protection of person and property.

XIII. And we do further direct and enjoin that Our said Governor do, to the utmost of his power, promote religion and education among the native inhabitants of Our said Colony, or of the lands and islands thereto adjoining, and that he do especially take care to protect them in their persons and in the free enjoyment of their possessions; and that he do, by all lawful means, prevent and restrain all violence and injustice which may in any manner be practised or attempted against them.

Judges, &c., to be appointed during pleasure.

XIV. And We do further direct and enjoin that all commissions granted by Our said Governor to any persons to be Judges, Justices of the Peace, or other officers, shall, unless otherwise provided by law, be granted during pleasure only.

Blue Book.

XV. And We do further direct and enjoin that Our said Governor do forward Us punctually from year to year, through one of Our Principal Secretaries of State, such annual Returns as have been customarily transmitted to Us from Our said Colony relative to the revenue and expenditure, militia, public works, legislation, civil establishments, pensions, population, schools, course of exchange, imports and exports, agricultural produce, manufactures and other matters in the said "Returns" more particularly specified, with reference to the state and condition of Our said Colony.

Governor's absence.

Temporary leave of absence.

XVI. And whereas great prejudice may happen to Our service and to the security of Our said Colony by the absence of Our said Governor therefrom. Now We do hereby direct that he shall not quit Our said Colony without having first obtained leave from Us for so doing under Our Sign Manual and Signet, or through one of Our Principal Secretaries of State, except for the purpose of visiting any neighbouring Colony for periods not exceeding one month at any one time, not exceeding in the aggregate one month for every year's service in the Colony.

Governor's absence and departure from the Colony. Interpretation clause.

XVII. And whereas We have in Our said Letters Patent declared Our pleasure to be that in the event of the death, incapacity, or removal of Our said Governor, or his departure from Our said Colony, all the powers and authorities therein granted to him should (subject to the proviso and condition thereafter contained) be vested during Our pleasure in Our Lieutenant-Governor of Our said Colony, or if there be no such officer in

Our said Colony, then in such person or persons as may be appointed by Us, under Our Sign Manual and Signet, to administer the Government of the same. Now We do hereby declare that no temporary absence of Our said Governor for any period not exceeding one month previously stated by him to the Executive Council of the Colony, in writing to be so intended by him, shall be deemed a departure from Our said Colony within the meaning of the Clause in that behalf above recited.

V. R.

Commission appointing Colonel Sir William Francis Drummond Jervois, R.E., K.C.M.G., C.B., to be Governor and Commander-in-Chief of the Colony of South Australia.

Draft of a Commission passed under the Royal Sign Manual and Signet, appointing Colonel Sir William Francis Drummond Jervois, R.E., K.C.M.G., C.B., to be Governor and Commander-in-Chief of the Colony of South Australia and its Dependencies.

Dated 4th July, 1877.

VICTORIA R.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India: To Our trusty and well - beloved Sir Francis William Drummond Jervois, Colonel in Our Corps of Royal Engineers, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Companion of Our Most Honorable Order of the Bath, Greeting:

Appointment of Sir W. F. D. Jervois as Governor.

Recites Letters Patent dated 28th April, 1877, constituting the office of Governor.

WE do by this Our Commission under Our Sign Manual and Signet appoint you, the said Sir William Francis Drummond Jervois, until Our further pleasure shall be signified, to be Our Governor and Commander-in-Chief in and over Our Colony of South Australia and its Dependencies during Our Will and pleasure, with all and singular the powers and authorities granted to the Governor of Our said Colony in Our Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland constituting the Office of Governor, bearing date at Westminster, the Twenty-eighth day of April, 1877, in the Fortieth year of Our Reign, which said powers and authorities We do hereby authorize you to exercise and perform, according to such Orders and Instructions as Our said Governor for the time being hath already or may hereafter receive from Us. And for so doing this shall be your Warrant.

Officers, &c., to obey the Governor.

II. And We do hereby command all and singular Our Officers, Ministers, and loving subjects in Our said Colony and its Dependencies, and all others

whom it may concern, to take due notice hereof, and to give their ready obedience accordingly. Given at Our Court at Windsor, this Fourth day of July, 1877, in the Forty-first year of Our Reign.

By Her Majesty's Command.

CARNARVON.

Schedule D.

DRAFT OF INSTRUCTIONS passed under the Royal Sign-Manual and Signet to the Governor-General of the Dominion of Canada.

Dated 5th October, 1878.

VICTORIA R.

Instructions to Our Governor-General in and over Our Dominion of *Canada*, or, in his absence, to Our Lieutenant-Governor or the Officer for the time being administering the Government of Our said Dominion.

Given at Our Court at *Balmoral*, this. Fifth day of October, 1878, in the Forty-second year of Our reign.

WHEREAS by certain Letters-Patent bearing even date herewith, We have constituted, ordered and declared that there shall be a Governor-General (hereinafter called Our said Governor-General) in and over Our Dominion of *Canada* (hereinafter called Our said Dominion), And we have thereby authorized and commanded Our said Governor-General to do and execute in due manner all things that shall belong to his said command, and to the trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of the said Letters-Patent and of such Commission as may be issued to him under Our Sign-Manual and Signet, and according to such Instructions as may from time to time be given to him, under Our Sign-Manual and Signet, or by Our Order in Our Privy Council, or by Us through one of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in Our said Dominion. Now, therefore, We do, by these Our Instructions under Our Sign-Manual and Signet, declare Our pleasure to be, that Our said Governor-General for the time being shall, with all due solemnity, cause Our Commission, under Our Sign-Manual and Signet, appointing Our said Governor-General for the time being, to be read and published in the presence of the Chief Justice for the time being, or other Judge of the Supreme Court of Our said Dominion, and of the Members of the Privy Council in Our said Dominion: And We do further declare Our pleasure to be that Our said Governor-General, and every other Officer appointed to administer the Government of Our said Dominion, shall take the Oath of Allegiance in the form provided by an Act passed in the Session holden in the Thirty-first and Thirty-second Years of Our Reign, intituled, "An Act to Amend the Law relating to Promissory Oaths;" and likewise that he or they shall take the usual Oath for the due execution of the Office of Our

Governor-General in and over Our said Dominion, and for the due and impartial administration of justice; which Oaths the said Chief Justice for the time being, of Our said Dominion, or, in his absence, or in the event of his being otherwise incapacitated, any Judge of the Supreme Court of Our said Dominion shall, and he is hereby required to tender and administer unto him or them.

II. And We do authorize and require our said Governor-General from time to time by himself or by any other person to be authorized by him in that behalf, to administer to all and to every person or persons as he shall think fit, who shall hold any office or place of trust or profit in our said Dominion, the said Oath or Allegiance, together with such other Oath or Oaths as may from time to time be prescribed by any Laws or Statutes in that behalf made and provided.

III. And We do require Our said Governor-General to communicate forthwith to the Privy Council for Our said Dominion these Our Instructions, and likewise all such others from time to time, as he shall find convenient for Our service to be imparted to them.

IV. Our said Governor-General is to take care that all laws assented to by him in Our name, or reserved for the signification of Our pleasure thereon, shall, when transmitted by him, be fairly abstracted in the margins, and be accompanied, in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such Laws; and he shall also transmit fair copies of the Journals and Minutes of the proceedings of the Parliament of Our said Dominion, which he is to require from the clerks, or other proper officers in that behalf, of the said Parliament.

V. And We do further authorise and empower our said Governor-General, as he shall see occasion, in Our name and on Our behalf, when any crime has been committed for which the offender may be tried within Our said Dominion, to grant a pardon to any accomplice, not being the actual perpetrator of such crime, who shall give such information as shall lead to the conviction of the principal offender; and further to grant to any offender convicted of any crime in any Court, or before any Judge, Justice, or Magistrate, within our said Dominion, a pardon, either free or subject to lawful conditions or any respite of the execution of the sentence of any such offender, for such period as to our said Governor-General may seem fit, and to remit any fines, penalties, or forfeitures, which may become due and payable to Us. Provided always, that Our said Governor-General shall not in any case, except where the offence has been of a political nature, make it a condition of any pardon or remission of sentence that the offender shall be banished from or shall absent himself from Our said

Dominion. And We do hereby direct and enjoin that our said Governor-General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of the Privy Council for our said Dominion, and in other cases the advice of one, at least, of his Ministers; and in any case in which such pardon or reprieve might directly affect the interests of Our Empire, or of any country or place beyond the jurisdiction of the Government of our said Dominion, Our said Governor-General shall, before deciding as to either pardon or reprieve, take those interests specially into his own personal consideration, in conjunction with such advice as aforesaid.

VI. And whereas great prejudice may happen to Our service and to the security of our said Dominion, by the absence of our said Governor-General, he shall not, upon any pretence whatever, quit Our said Dominion without having first obtained leave from Us for so doing under Our Sign-Manual and Signet, or through one of Our Principal Secretaries of State.

V. R.

DRAFT OF A COMMISSION passed under the Royal Sign-Manual and Signet, appointing the Right Honourable the Marquis of *Lorne*, K.T., G.C.M.G., to be Governor-General of the Dominion of *Canada*.

Dated 7th October, 1878.

VICTORIA R.

Victoria, by the Grace of God, of the United Kingdom of *Great Britain and Ireland*, Queen, Defender of the Faith, Empress of *India*, To Our Right Trusty and Well-beloved Councillor Sir JOHN DOUGLAS SUTHERLAND CAMPBELL (commonly called the Marquis of *Lorne*), Knight of Our Most Ancient and Most Noble Order of the Thistle, Knight Grand Cross of Our Most Distinguished Order of *St. Michael and St. George*, Greeting:

WE do, by this Our Commission under Our Sign-Manual and Signet, appoint you, the said SIR JOHN DOUGLAS SUTHERLAND CAMPBELL (commonly called the Marquis of *Lorne*), until Our further pleasure shall be signified. to be Our Governor-General in and over Our Dominion of *Canada* during Our will and pleasure with all and singular the powers and authorities granted to the Governor-General of Our said Dominion in Our Letters-Patent under the Great Seal of Our United Kingdom of *Great Britain and Ireland*, constituting the office of Governor, bearing date at *Westminster* the Fifth day of October, 1878, in the Forty-second Year of Our Reign, which said powers and authorities We do hereby authorise you to exercise and perform, according to such Orders and Instructions as our said Governor-General for the time being hath already or may hereafter receive from Us. And for so doing this shall be

your Warrant.

II. And we do hereby command all and singular Our officers, Ministers, and loving subjects in Our said Dominion, and all others whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

Given at Our Court at *Balmoral*, this Seventh day of October, 1878, in the Forty-second Year of Our Reign.

By Her Majesty's Command,

M. E. HICKS BEACH.

Schedule E.

Resolutions Passed by the Quebec Convention.

1. The best interests and present and future prosperity of British North America will be promoted by a Federal Union under the Crown of Great Britain provided such union can be effected on principles just to the several provinces.

2. In the Federation of the British North American Provinces the system of Government best adapted under existing circumstances to protect the diversified interests of the several provinces and secure efficiency, harmony, and permanency in the working of the Union, would be a General Government charged with matters of common interest to the whole country, and Local Governments for each of the Canadas, and for the Provinces of Nova Scotia, New Brunswick, and Prince Edward Island, charged with the control of local matters in their respective sections, provision being made for the admission into the Union, on equal terms, of Newfoundland, the North-West Territory, British Columbia, and Vancouver.

3. In framing a Constitution for the General Government, a Conference, with a view to the perpetuation of our connection with the Mother Country, and the promotion of the best interests of the people of these provinces, desire to follow the model of the British Constitution, so far as our circumstances permit.

4. The Executive Authority or Government shall be vested in the Sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well-understood principles of the British Constitution, by the Sovereign personally, or by the Representative of the Sovereign duly authorized.

5. The Sovereign or Representative of the Sovereign shall be Commander-in-Chief of the Land and Naval Militia Forces.

6. There shall be a General Legislature or Parliament for the Federated Provinces, composed of a Legislative Council and a House of Commons.

7. For the purpose of forming the Legislative Council, the Federated Provinces shall be considered as consisting of three divisions: 1st, Upper Canada; 2nd, Lower Canada; 3rd, Nova Scotia, New Brunswick, and Prince Edward Island; each division with an equal representation in the Legislative Council.

8. Upper Canada shall be represented in the Legislative Council by 24 members, Lower Canada by 24 members, and the three Maritime

Provinces by 24 members, of which Nova Scotia shall have 10, New Brunswick 10, and Prince Edward Island 4 members.

9. The Colony of Newfoundland shall be entitled to enter the proposed Union with a representation in the Legislative Council of 4 members.

10. The North-West Territory, British Columbia, and Vancouver shall be admitted into the Union on such terms and conditions as the Parliament of the Federated Provinces shall deem equitable, and as shall receive the assent of Her Majesty; and in the case of the Province of British Columbia or Vancouver, as shall be agreed to by the Legislature of such province.

11. The Members of the Legislative Council shall be appointed by the Crown under the Great Seal of the General Government, and shall hold office during life; if any Legislative Councillor shall, for two consecutive sessions of Parliament, fail to give his attendance in the said Council, his seat shall thereby become vacant.

12. The members of the Legislative Council shall be British subjects by birth or naturalization, of the full age of thirty years, shall possess a continuous real property qualification of four thousand dollars over and above all incumbrances, and shall be and continue worth that sum over and above their debts and liabilities; but in the case of Newfoundland and Prince Edward Island the property may be either real or personal.

13. If any question shall arise as to the qualification of a Legislative Councillor, the same shall be determined by the Council.

14. The first selection of the members of the Legislative Council shall be made, except as regards Prince Edward Island, from the Legislative Councils of the various Provinces, so far as a sufficient number be found qualified and willing to serve; such members shall be appointed by the Crown, at the recommendation of the General Executive Government, upon the nomination of the respective Local Governments; and in such nomination due regard shall be had to the claims of the members of the Legislative Council of the opposition in each province, so that all political parties may, as nearly as possible, be fairly represented.

15. The Speaker of the Legislative Council (unless otherwise provided by Parliament) shall be appointed by the Crown from among the members of the Legislative Council, and shall hold office during pleasure, and shall only be entitled to a casting vote on an equality of votes.

16. Each of the twenty-four Legislative Councillors representing Lower Canada in the Legislative Council of the General Legislature shall be appointed to represent one of the twenty-four Electoral Divisions mentioned in Schedule A of Chapter I. of the Consolidated Statutes of Canada, and such Councillor shall reside or possess his qualification in the Division he is appointed to represent.

17. The basis of representation in the House of Commons shall be Population, as determined by the Official Census every ten years, and the number of members at first shall be 194, distributed as follows:—

Upper Canada	82
Lower Canada	65
Nova Scotia	19
New Brunswick	15
Newfoundland	8
Prince Edward Island	5

18. Until the Official Census of 1871 has been made up, there shall be no change in the number of representatives from the several sections.

19. Immediately after the completion of the Census of 1871, and immediately after every decennial census thereafter, the representation from each section in the House of Commons shall be readjusted on the basis of population.

20. For the purpose of such readjustments, Lower Canada shall always be assigned sixty-five members, and each of the other sections shall, at each readjustment, receive, for the ten years then next succeeding, the number of members to which it will be entitled on the same ratio of representation to population as Lower Canada will enjoy according to the Census last taken, by having sixty-five members.

21. No reduction shall be made in the number of members returned by any section, unless its population shall have decreased relatively to the population of the whole Union to the extent of five per centum.

22. In computing at each decennial period the number of members to which each section is entitled, no fractional parts shall be considered unless when exceeding one-half the number entitling to a member, in which case a member shall be given for each such fractional part.

23. The Legislature of each province shall divide such province into the proper number of constituencies, and define the boundaries of each of them.

24. The Local Legislature of each province may, from time to time, alter the Electoral Districts for the purpose of representation in such Local Legislature, and distribute the representatives to which the province is entitled in such Local Legislature in any manner such Legislature may see fit.

25. The number of members may at any time be increased by the General Parliament, regard being had to the proportionate rights then existing.

26. Until provisions are made by the General Parliament, all the laws which, at the date of the Proclamation constituting the Union, are in force

in the provinces respectively, relating to the qualification and disqualification of any person to be elected, or to sit or vote as a member of the Assembly in the said provinces respectively, and relating to the qualification or disqualification of voters, and to the oaths to be taken by voters, and to Returning Officers and their powers and duties, and relating to the proceedings at elections, and to the period during which such elections may be continued, and relating to the Trial of Controverted Elections, and the proceedings incident thereto, and relating to the vacating of seats of members, and to the issuing and execution of new writs, in case of any seat being vacated otherwise than by a dissolution, shall respectively apply to election of members to serve in the House of Commons, for places situate in those provinces respectively.

27. Every House of Commons shall continue for five years from the day of the return of the writ choosing the same, and no longer, subject, nevertheless, to be sooner prorogued or dissolved by the Governor.

28. There shall be a Session of the General Parliament once, at least, in every year, so that a period of twelve calendar months shall not intervene between the last sitting of the General Parliament in one session and the first sitting thereof in the next session.

29. 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:—

1. The Public Debt and Property.
2. The regulation of Trade and Commerce.
3. The imposition or regulation of Duties of Customs on Imports and Exports, except on exports of Timber, Logs, Masts, Spars, Deals, and Sawn Lumber from New Brunswick, and of Coal and other Minerals from Nova Scotia.
4. The imposition or regulation of Excise Duties.
5. The raising of money by all or any other modes or systems of taxation.
6. The borrowing of money on the Public Credit.
7. Postal Service.
8. Lines of steam or any other Ships, Railways, Canals, and other works, connecting any two or more of the provinces together, or extending beyond the limits of any province.
9. Lines of Steamships between the Federated provinces and other Countries.
10. Telegraph Communication and the Incorporation of Telegraph Companies.
11. All such works as shall, although lying wholly within any province, be specially declared by the Acts authorizing them to be for the general advantage.
12. The Census.
13. Militia—Military and Naval Service and Defence.
14. Beacons, Buoys, and Lighthouses.

15. Navigation and Shipping.
16. Quarantine.
17. Sea Coast and Inland Fisheries.
18. Ferries between any Provinces and a Foreign country, or between any two provinces.
19. Currency and Coinage.
20. Banking—Incorporation of Banks, and the issue of Paper-money.
21. Savings Banks.
22. Weights and Measures.
23. Bills of Exchange and Promissory Notes.
24. Interest.
25. Legal Tender.
26. Bankruptcy and Insolvency.
27. Patents of Invention and Discovery.
28. Copy Rights.
29. Indians and Lands reserved for Indians.
30. Naturalization and Aliens.
31. Marriage and Divorce.
32. The Criminal Law, excepting the Constitution of Courts of Criminal Jurisdiction, but including the procedure in Criminal matters.
33. Rendering uniform all or any of the laws relative to property and civil rights in Upper Canada, Nova Scotia, New Brunswick, Newfoundland, and Prince Edward Island, and rendering uniform the Procedure of all or any of the Courts in these provinces; but any statute for this purpose shall have no force or authority in any province until sanctioned by the Legislature thereof.
34. The establishment of a General Court of Appeal for the Federated Provinces.
35. Immigration.
36. Agriculture.
37. And generally respecting all matters of a general character, not specially and exclusively reserved for the Local Government and Legislatures.

30. The General Government and Parliament shall have all powers necessary or proper for performing the obligations of the Federated Provinces, as part of the British Empire, to foreign countries, arising under Treaties between Great Britain and such countries.

31. The General Parliament may also, from time to time, establish additional Courts, and the General Government may appoint Judges and officers thereof, when the same shall appear necessary or for the public advantage, in order to the due execution of the laws of Parliament.

32. All Courts, Judges, and officers of the several provinces shall aid, assist, and obey the General Government in the exercise of its rights and powers, and for such purposes shall be held to be Courts, Judges, and Officers of the General Government.

33. The General Government shall appoint and pay the Judges of the Superior Courts in each province, and of the County Courts in Upper

Canada, and Parliament shall fix their salaries.

34. Until the consolidation of the laws of Upper Canada, New Brunswick, Nova Scotia, Newfoundland, and Prince Edward Island, the Judges of these provinces, appointed by the General Government, shall be selected from their respective Bars.

34. The Judges of the Courts of Lower Canada shall be selected from the Bar of Lower Canada.

36. The Judges of the Court of Admiralty now receiving salaries shall be paid by the General Government.

37. The Judges of the Superior Courts shall hold their offices during good behaviour, and shall be removable only on the Address of both Houses of Parliament.

38. For each of the Provinces there shall be an Executive Officer, styled the Lieutenant-Governor, who shall be appointed by the Governor-General in Council, under the Great Seal of the Federated Provinces, during pleasure, such pleasure not to be exercised before the expiration of the first five years, except for cause, such cause to be communicated in writing to the Lieutenant-Governor immediately after the exercise of the pleasure aforesaid, and also by message to both Houses of Parliament, within the first week of the first session afterwards.

39. The Lieutenant-Governor of each Province shall be paid by the General Government.

40. In undertaking to pay the salaries of the Lieutenant-Governors, the Conference does not desire to prejudice the claim of Prince Edward Island upon the Imperial Government for the amount now paid for the salary of the Lieutenant-Governor thereof.

41. The Local Government and Legislature of each Province shall be constructed in such manner as the existing Legislature of each Province shall provide.

42. The Local Legislature shall have power to alter or amend their constitution from time to time.

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

1. Direct taxation, and in New Brunswick the imposition of duties on the export of Timber, Logs, Masts, Spars, Deals, and Sawn Lumber; and in Nova Scotia, of Coals and other Minerals.
2. Borrowing money on the credit of the Province.
3. The establishment and tenure of local offices, and the appointment and payment of local officers.
4. Agriculture.

5. Immigration.
6. Education; saving the rights and privileges which the Protestant or Catholic minority in both Canadas may possess as to their denominational schools, at the time when the Union goes into operation.
7. The sale and management of Public Lands, excepting lands belonging to the General Government.
8. Sea Coast and Inland Fisheries.
9. The establishment, maintenance, and management of Penitentiaries and Public and Reformatory Prisons.
10. The establishment, maintenance, and management of Hospitals, Asylums, Charities, and Eleemosynary Institutions.
11. Municipal Institutions.
12. Shop, Saloon, Tavern, Auctioneer, and other Licenses.
13. Local Works.
14. The incorporation of Private or Local Companies, except such as relate to matters assigned to the General Parliament.
15. Property and Civil Rights, excepting those portions thereof assigned to the General Parliament.
16. Inflicting punishment by fine, penalties, imprisonment, or otherwise, for the breach of laws passed in relation to any subject within their jurisdiction.
17. The Administration of Justice, including the constitution, maintenance, and organization of the Courts, both of Civil and Criminal Jurisdiction, and including also the procedure in civil matters.
18. And generally all matters of a private or local nature, not assigned to the General Parliament.

44. The power of respiting, relieving, and pardoning prisoners convicted of crimes, and of commuting and remitting of sentences in whole or in part, which belongs of right to the Crown, shall be administered by the Lieutenant-Governor of each Province in Council, subject to any instructions he may, from time to time, receive from the General Government, and subject to any provisions that may be made in this behalf by the General Parliament.

45. In regard to all subjects over which jurisdiction belongs to both the General and Local Legislatures, the laws of the General Parliament shall control and supersede those made by the Local Legislature, and the latter shall be void so far as they are repugnant to, or inconsistent with, the former.

46. Both the English and French languages may be employed in the General Parliament and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal Courts and in the Courts of Lower Canada.

47. No lands or property belonging to the General or Local Governments shall be liable to taxation.

48. All Bills for appropriating any part of the Public Revenue, or for imposing any new Tax or Impost, shall originate in the House of Commons or House of Assembly, as the case may be.

49. The House of Commons or House of Assembly shall not originate or pass any Vote, Resolution, Address, or Bill for the appropriation of any part of the Public Revenue, or of any Tax or Impost to any purpose, not first recommended by Message of the Governor-General or the Lieutenant-Governor, as the case may be, during the session in which such Vote, Resolution, Address, or Bill is passed.

50. Any Bill of the General Parliament may be reserved in the usual manner for Her Majesty's assent, and any Bill of the Local Legislatures may, in like manner, be reserved for the consideration of the Governor-General.

51. Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years as in the case of Bills passed by the Legislatures of the said Provinces hitherto; and, in like manner, any Bill passed by a Local Legislature shall be subject to disallowance by the Governor-General within one year after the passing thereof.

52. The seat of Government of the Federated Provinces shall be Ottawa, subject to the Royal Prerogative.

53. Subject to any future action of the respective Local Governments, the seat of the Local Government in Upper Canada shall be Toronto; of Lower Canada, Quebec; and the Seats of the Local Governments in the other Provinces shall be as at present.

54. All Stocks, Cash, Bankers' Balances and Securities for money belonging to each Province at the time of the Union, except as hereinafter mentioned, shall belong to the General Government.

55. The following Public Works and Property of each Province shall belong to the General Government, to wit:—

1. Canals.
2. Public Harbours.
3. Lighthouses and Piers.
4. Steamboats, Dredges, and Public Vessels.
5. River and Lake Improvements.
6. Railway and Railway Stocks, Mortgages and other debts due by Railway Companies.
7. Military Roads.
8. Custom Houses, Post-offices, and other Public Buildings, except such as may be set aside by the General Government for the use of the Local Legislatures and Governments.

9. Property transferred by the Imperial Government, and known as Ordnance Property.

10. Armories, Drill-sheds, Military Clothing and Munitions of war; and

11. Lands set apart for public purposes.

56. All Lands, Mines, Minerals, and Royalties vested in Her Majesty in the Province of Upper Canada, Lower Canada, Nova Scotia, New Brunswick, and Prince Edward Island, for the use of such Provinces, shall belong to the Local Government of the territory in which the same are so situate, subject to any trusts that may exist in respect to any of such lands or to any interest of other persons in respect of the same.

57. All sums due from purchasers or lessees of such lands, mines or minerals at the time of the Union shall also belong to the Local Governments.

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 Governments respectively.

59. The several Provinces shall retain all other Public Property therein, subject to the right of the General Government to assume any Lands or Public Property required for Fortifications or the Defence of the Country.

60. The General Government shall assume all the Debts and Liabilities of each Province.

61. The Debt of Canada, not specially assumed by Upper and Lower Canada, respectively, shall not exceed, at the time of the Union, \$62,500,000; Nova Scotia shall enter the Union with a debt not exceeding \$8,000,000; and New Brunswick with a debt not exceeding \$7,000,000.

62. In case Nova Scotia or New Brunswick do not incur liabilities beyond those for which their Governments are now bound, and which shall make their debts, at the date of Union, less than \$8,000,000 and \$7,000,000, respectively, they shall be entitled to interest at 5 per cent. on the amount not so incurred, in like manner as is hereinafter provided for Newfoundland and Prince Edward Island; the foregoing resolution being in no respect intended to limit the powers given to the respective Governments of those Provinces by Legislative authority, but only to limit the maximum amount of charge to be assumed by the General Government, provided always that the powers so conferred by the respective Legislatures shall be exercised within five years from this date, or the same shall then elapse.

63. Newfoundland and Prince Edward Island, not having incurred debts equal to those of the other Provinces, shall be entitled to receive, by half-yearly payments, in advance, from the General Government, the interest at 5 per cent. on the difference between the actual amount of their respective

debts at the time of the Union, and the average amount of indebtedness per head of the population of Canada, Nova Scotia, and New Brunswick.

64. In consideration of the transfer to the General Parliament of the powers of taxation, an annual grant in aid of each Province shall be made, equal to 80 cents per head of the population, as established by the Census of 1861, the population of Newfoundland being estimated at 130,000. Such aids shall be in full settlement of all future demands upon the General Government for local purposes, and shall be paid half-yearly in advance to each Province.

65. The position of New Brunswick being such as to entail large immediate charges upon her local revenue, it is agreed that for the period of ten years from the time when the Union takes effect, an additional allowance of \$63,000 per annum shall be made to that Province. But that so long as the liability of that Province remains under \$7,000,000 a deduction equal to the interest on such deficiency shall be made from the \$63,000.

66. In consideration of the surrender to the General Government by Newfoundland of all its rights in Mines and Minerals and of all the ungranted and unoccupied lands of the Crown, it is agreed that the sum of \$150,000 shall each year be paid to that province by semi-annual payments, provided that that Colony shall retain the right of opening, constructing, and controlling roads and bridges through any of the said lands, subject to any laws which the General Parliament may pass in respect of the same.

67. All engagements that may, before the Union, be entered into with the Imperial Government for the defence of the country, may be assumed by the General Government.

68. The General Government shall secure, without delay, the completion of the Intercolonial Railway from Rivière du Loup, through New Brunswick, to Truro in Nova Scotia.

69. The communications with the North-Western Territory, and the improvements required for the development of the trade of the Great West with the seaboard, are regarded by this Conference as subjects of the highest importance to the Federated Provinces, and shall be prosecuted at the earliest possible period that the state of the finances will permit.

70. The sanction of the Imperial and Local Parliaments shall be sought for the Union of the Provinces, on the principles adopted by the Conference.

71. That Her Majesty the Queen be solicited to determine the rank and name of the Federated Provinces.

72. The proceedings of the Conference shall be authenticated by the

signatures of the Delegates, and submitted by each Delegation to its own Government, and the Chairman is authorized to submit a copy to the Governor-General for transmission to the Secretary of State for the Colonies.

Schedule F.

The British North America Act, 1867.

ANNO TRICESIMO ET TRICESIMO-PRIMO VICTORIÆ REGINÆ
Cap. III.

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof, and for Purposes connected therewith.

[29th March, 1867.]

WHEREAS the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament, it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual admission into the Union of other Parts of British North America:

Be it therefore enacted and declared by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I.—Preliminary

1. This Act may be cited as the British North America Act, 1867.

Application of Provisions referring to the Queen.

2. The Provisions of this Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland.

II.—Union.

Declaration of Union.

3. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after

the passing of this Act, the Provinces of Canada, Nova Scotia, and New Brunswick shall form and be One Dominion under the name of Canada; and on and after that Day those Three Provinces shall form and be One Dominion under that Name accordingly.

Construction of subsequent Provisions of Act

4. The subsequent Provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the Day appointed for the Union taking effect in the Queen's Proclamation; and in the same Provisions, unless it is otherwise expressed or implied, the Name Canada shall be taken to mean Canada as constituted under this Act.

Four Provinces.

5. Canada shall be divided into Four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick.

Provinces of Ontario and Quebec.

6. The Parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada, shall be deemed to be severed, and shall form Two Separate Provinces. The Part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

Provinces of Nova Scotia and New Brunswick.

7. The Provinces of Nova Scotia and New Brunswick shall have the same limits as at the passing of this Act.

Decennial Census.

8. In the General Census of the Population of Canada, which is hereby required to be taken in the year one thousand eight hundred and seventy-one, and in every tenth year thereafter, the respective populations of the four Provinces shall be distinguished.

III.—Executive Power.

Declaration of Executive Power in the Queen.

9. The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

Application of Provisions referring to the Governor-General.

10. The Provisions of this Act referring to the Governor-General extend and apply to the Governor-General for the time being of Canada, or other the Chief Executive Officer or Administrator for the time being carrying on the Government of Canada on behalf and in the name of the Queen, by

whatever title he is designated.

Constitution of Privy Council or Canada.

11. There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the persons who are to be members of that Council shall be from time to time chosen and summoned by the Governor-General and sworn in as Privy Councillors, and Members thereof may be from time to time removed by the Governor-General.

All Powers under Acts to be exercised by Governor-General with advice of Privy Council or alone.

12. All Powers, Authorities and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice, or with the advice and consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any number of members thereof, or by those Governors or Lieutenant-Governors individually, shall as far as the same continue in existence and capable of being exercised after the Union, in relation to the Government of Canada, be vested in and exercisable by the Governor-General, with the advice, or with the advice and consent of or in conjunction with the Queen's Privy Council for Canada, or any members thereof, or by the Governor-General individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.

Application of Provisions referring to Governor General in Council.

13. The Provisions of this Act, referring to the Governor-General in Council, shall be construed as referring to the Governor-General acting by and with the advice of the Queen's Privy Council for Canada.

Power to Her Majesty to authorise Governor General to appoint Deputies.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorise the Governor-General from time to time to appoint any person or persons jointly or severally to be his Deputy or Deputies within any part or parts of Canada, and in that capacity to exercise during the pleasure of the Governor-General such of the powers, authorities, and functions of the Governor-General as the Governor-General deems it necessary or expedient to assign to him or them, subject to any limitations or directions expressed or given by the Queen; but the appointment of such a Deputy or Deputies shall not affect the exercise by the Governor-General himself of

any power, authority, or function.

Command of Armed Forces to continue to be vested in the Queen.

15. The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

Seat of Government of Canada.

16. Until the Queen otherwise directs, the seat of government of Canada shall be Ottawa.

IV.—Legislative Power.

Constitution of Parliament of Canada.

17. There shall be one Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Privileges, &c., of Houses.

18. The Privileges, Immunities, and Powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.

First Session of the Parliament of Canada.

19. The Parliament of Canada shall be called together not later than six months after the Union.

Yearly Session of the Parliament of Canada.

20. There shall be a session of the Parliament of Canada once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

The Senate.

Number of Senators.

21. The Senate shall, subject to the provisions of this Act, consist of seventy-two members, who shall be styled senators.

Representation of Provinces in Senate.

22. In relation to the constitution of the Senate, Canada shall be deemed to consist of Three Divisions:—

- (1.) Ontario;
- (2.) Quebec;

(3.) The Maritime Provinces, Nova Scotia, and New Brunswick, which three divisions shall (subject to the provisions of this Act) be equally represented in the Senate as follows: Ontario by twenty-four Senators; Quebec by twenty-four Senators; and the Maritime Provinces by twenty-four Senators, twelve thereof representing Nova Scotia, and twelve thereof representing New Brunswick.

In the case of Quebec, each of the twenty-four Senators representing that Province shall be appointed for one of the twenty-four electoral divisions of Lower Canada specified in Schedule A, to Chapter One of the Consolidated Statutes of Canada.

Qualifications of Senator.

23. The qualifications of a Senator shall be as follows:—

(1.) He shall be of the full age of thirty years.

(2.) He shall be either a natural-born subject of the Queen, or a subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of one of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union.

(3.) He shall be legally or equitably seized as of Freehold for his own use and benefit of lands or tenements held in free and common socage, or seized or possessed for his own use and benefit of lands or tenements held in franc-alleu, or in roture, within the Province for which he is appointed, of the value of four thousand dollars over and above all rents, dues, debts, charges, mortgages, and incumbrances due or payable out of, or charged on or affecting the same;

(4.) His real and personal property shall be together worth four thousand dollars over and above his debts and liabilities.

(5.) He shall be resident in the province for which he is appointed.

(6.) In the case of Quebec, he shall have his real property qualification in the electoral division for which he is appointed, or shall be resident in that division.

Summons of Senator.

24. the Governor-General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon qualified persons to the Senate; and, subject to the provisions of this Act, every person so summoned shall become and be a member of the Senate and a senator.

Summons of First Body of Senators.

25. Such persons shall be first summoned to the Senate as the Queen by warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their names shall be inserted in the Queen's Proclamation of Union.

Addition of Senators in certain cases.

26. If at any time, on the recommendation of the Governor-General, the Queen thinks fit to direct that three or six members be added to the Senate,

the Governor-General may, by Summons to three or six qualified persons (as the case may be), representing equally the three divisions of Canada, add to the Senate accordingly.

Reduction of Senate to normal number.

27. In case of such addition being at any time made, the Governor-General shall not summon any person to the Senate, except on a further like Direction by the Queen on the like recommendation, until each of the three divisions of Canada is represented by twenty-four Senators, and no more.

Maximum number of Senators.

28. The number of Senators shall not at any time exceed seventy-eight.

Tenure of place in Senate.

27. A senator shall, subject to the provisions of this Act, hold his place in the Senate for life.

Resignation of place in Senate.

30. A Senator may, by writing under his hand, addressed to the Governor General, resign his place in the Senate, and thereupon the same shall be vacant.

Disqualification of Senators.

31. The place of a Senator shall become vacant in any of the following cases:—

- (1.) If for two consecutive sessions of the Parliament he fails to give his attendance in the Senate;
- (2.) If he takes an oath or makes a declaration or acknowledgment of allegiance, obedience or adherence to a Foreign Power, or does an act whereby he becomes a subject or citizen, or entitled to the rights or privileges of a subject or citizen of a Foreign Power;
- (3.) If he is adjudged bankrupt or insolvent, or applies for the benefit of any law relating to insolvent debtors, or becomes a public defaulter;
- (4.) If he is attainted of treason, or convicted of felony or or any infamous crime;
- (5.) If he ceases to be qualified in respect of property or of residence; provided that a Senator shall not be deemed to have ceased to be qualified in respect of residence by reason only of his residing at the seat of Government of Canada while holding an office under the Government requiring his presence there.

Summons on vacancy in Senate.

32. When a vacancy happens in the Senate by resignation, death, or otherwise, the Governor-General shall, by summons to a fit and qualified person, fill the vacancy.

Questions as to qualifications and vacancies in Senate.

33. If any question arises respecting the qualification of a Senator or a vacancy in the Senate, the same shall be heard and determined by the

Senate.

Appointment of Speaker of Senate.

34. The Governor-General may from time to time by instrument under the Great Seal of Canada, appoint a Senator to be speaker of the Senate, and may remove him and appoint another in his stead.

Quorum of Senate.

35. Until the Parliament of Canada otherwise provides, the presence of at least fifteen Senators, including the speaker, shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

Voting in Senate.

36. Questions arising in the Senate shall be decided by a majority of voices, and the speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

The House of Commons.

Constitution of House of Commons in Canada.

37. The House of Commons shall, subject to the provisions of this Act, consist of one hundred and eighty-one members, of whom eighty-two shall be elected for Ontario, sixty-five for Quebec, nineteen for Nova Scotia, and fifteen for New Brunswick.

Summoning of House of Commons.

38. The Governor-General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon and call together the House of Commons.

Senators not to sit in House of Commons.

39. A Senator shall not be capable of being elected, or of sitting or voting as a member of the House of Commons.

Electoral Districts of the four Provinces.

40. Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia and New Brunswick shall, for the purposes of the election of members to serve in the House of Commons, be divided into electoral districts as follows:—

I.—Ontario.

Ontario shall be divided into the Counties, Ridings of Counties, Cities, parts of Cities, and Towns enumerated in the first schedule to this Act, each whereof shall be an electoral district, each such district as numbered in that schedule being entitled to return one member.

II.—Quebec.

Quebec shall be divided into sixty-five Electoral Districts, composed of the sixty-five Electoral Divisions into which Lower Canada is at the passing of this Act divided under Chapter Two of the Consolidated Statutes of Canada, Chapter Seventy-five of the Consolidated Statutes for Lower Canada, and the Act of the Province of Canada of the Twenty-third year of the Queen, Chapter One, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the purposes of this Act an Electoral District entitled to return one member.

III.—Nova Scotia.

Each of the eighteen counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled to return two members, and each of the other Counties one member.

IV.—New Brunswick.

Each of the fourteen Counties into which New Brunswick is divided, including the City and County of St. John, shall be an Electoral District. The City of St. John shall also be a separate Electoral District. Each of those fifteen Electoral Districts shall be entitled to return one member.

Continuance of existing Election Laws until Parliament of Canada otherwise provides.

41. Until the Parliament of Canada otherwise provides, all laws in force in the several Provinces at the Union relative to the following matters or any of them, namely—the qualifications and disqualifications of persons to be elected to sit or vote as members of the House of Assembly or Legislative Assembly in the several Provinces, the voters at elections of such members, the oaths to be taken by voters, the Returning Officers, their powers and duties, the proceedings at elections, the periods during which elections may be continued, the Trial of Controverted elections and proceedings, incident thereto, the vacating of seats of members, and the execution of new writs, in case of seats vacated otherwise than by dissolution,—shall respectively apply to election of members to serve in the House of Commons for the same several Provinces.

Proviso as to Algoma.

Provided that, until the Parliament of Canada otherwise provides, and any election for a member of the House of Commons for the District of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject, aged twenty-one years or

upwards, being a householder, shall have a vote.

Writs for first Election.

42. For the first election of members to serve in the House of Commons, the Governor-General shall cause writs to be issued by such person, in such form and addressed to such returning officers as he thinks fit.

The persons issuing writs under this section shall have the like powers as are possessed at the Union by the officers charged with the issuing of writs for the election of members to serve in the respective House of Assembly or Legislative Assembly of the Province of Canada, Nova Scotia or New Brunswick; and the returning officers to whom writs are directed under this section shall have the like powers as are possessed at the Union by the officers charged with the returning of writs for the election of members to serve in the same respective House of Assembly or Legislative Assembly.

As to Casual Vacancies.

43. In case a vacancy in the representation in the House of Commons of any electoral district happens before the meeting of the Parliament, or after the meeting of the Parliament before provision is made by the Parliament in this behalf, the provisions of the last foregoing Section of this Act shall extend and apply to the issuing and returning of a Writ in respect of such vacant District.

As to Election of Speaker of House of Commons.

44. The House of Commons, on its first assembling after a general election, shall proceed with all practicable speed to elect one of its members to be Speaker.

As to filling up vacancy in office of Speaker.

45. In case of a vacancy happening in the office of Speaker, by death, resignation, or otherwise, the House of Commons shall, with all practicable speed, proceed to elect another of its members to be Speaker.

Speaker to preside.

46. The Speaker shall preside at all meetings of the House of Commons.

Provision in case of absence of Speaker.

47. Until the Parliament of Canada otherwise provides, in case of the absence, for any reason, of the Speaker from the Chair of the House of Commons for a period of forty-eight consecutive hours, the House may elect another of its members to act as Speaker, and the member so elected shall, during the continuance of such absence of the Speaker, have and execute all the powers, privileges, and duties of Speaker.

Quorum of House of Commons.

48. The presence of at least twenty members of the House of Commons shall be necessary to constitute a meeting of the House for the exercise of its powers; and for that purpose the Speaker shall be reckoned as a

member.

Voting in House of Commons.

49. Questions arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote.

Duration of House of Commons.

50. Every House of Commons shall continue for five years from the day of the return of the Writs for choosing the House (subject to be sooner dissolved by the Governor-General), and no longer.

Decennial Readjustment of Representation

51. On the completion of the census in the year one thousand eight hundred and seventy-one, and of each subsequent decennial census, the representation of the four Provinces shall be readjusted by such authority, in such a manner, and from such time as the Parliament of Canada from time to time provides, subject and according to the following rules:—

- (1.) Quebec shall have the fixed number of sixty-five members.
- (2.) There shall be assigned to each of the other provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the population of Quebec, (so ascertained).
- (3.) In the computation of the number of members for a province, a fractional part not exceeding one-half of the whole number requisite for entitling the province to a member shall be disregarded; but a fractional part exceeding one-half of that number shall be equivalent to the whole number.
- (4.) On any such readjustment the number of members for a province shall not be reduced unless the proportion which the number of the population of the province bore to the number of the aggregate population of Canada at the then last preceding readjustment of the number of members for the province is ascertained at the then latest census to be diminished by one-twentieth part or upwards;
- (5.) Such readjustment shall not take effect until the termination of the then existing Parliament.

Increase of number of House of Commons.

52. The number of members of the House of Commons may be from time to time increased by the Parliament of Canada, provided the proportionate representation of the province prescribed by this Act is not thereby disturbed.

Money Votes; Royal Assent.

Appropriation and Tax Bills.

53. Bills for appropriating any part of the public revenue, or for imposing

any tax or impost shall originate in the House of Commons.

Recommendation of money votes.

54. It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose, that has not been first recommended to that House by message of the Governor-General in the Session in which such vote, resolution, address, or bill is proposed.

Royal assent to Bills, &c.

55. Where a bill passed by the Houses of the Parliament is presented by the Governor-General for the Queen's Assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the bill for the signification of the Queen's pleasure.

Disallowance by Order in Council of Act assented to by Governor-General.

56. Where the Governor-General assents to a bill in the Queen's name, he shall by the first convenient opportunity send an authentic copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council within two years after receipt thereof by the Secretary of State thinks fit to disallow the Act, such disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor-General, by speech or message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the day of such signification.

Signification of Queen's pleasure on Bill reserved.

57. A bill reserved for the signification of the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's Assent, the Governor-General signifies, by speech or message to each of the Houses of the Parliament or by Proclamation, that it has received the assent of the Queen in Council.

An entry of every such speech, message, or proclamation shall be made in the journal of each House, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the Records of Canada.

V.—Provincial Constitutions.

Executive Power.

Appointment of Lieutenant-Governors of Provinces.

58. For each province there shall be an officer, styled the Lieutenant-

Governor, appointed by the Governor-General in Council by instrument under the Great Seal of Canada.

Tenure of office of Lieutenant-Governor.

59. A Lieutenant-Governor shall hold office during the pleasure of the Governor-General; but any Lieutenant-Governor appointed after the commencement of the first session of the Parliament of Canada shall not be removable within five years from his appointment, except for cause assigned, which shall be communicated to him in writing within one month after the order for his removal is made, and shall be communicated by message to the Senate and to the House of Commons within one week thereafter if the Parliament is then sitting, and if not then, within one week after the commencement of the next session of the Parliament.

Salaries of Lieutenant-Governors.

60. The salaries of the Lieutenant-Governors shall be fixed and provided by the Parliament of Canada.

Oaths, &c., of Lieutenant-Governor.

61. Every Lieutenant-Governor shall, before assuming the duties of his office, make and subscribe before the Governor-General or some person authorized by him, oaths of allegiance and office similar to those taken by the Governor-General.

Application of provisions referring to Lieutenant-Governor.

62. The provisions of this Act referring to the Lieutenant-Governor extend and apply to the Lieutenant-Governor for the time being of each province or other the Chief Executive Officer or Administrator for the time being carrying on the Government of the province, by whatever title he is designated.

Appointment of Executive Officers for Ontario and Quebec.

63. The Executive Council of Ontario and Quebec shall be composed of such persons as the Lieutenant-Governor from time to time thinks fit, and in the first instance of the following officers, namely the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, within Quebec, the Speaker of the Legislative Council and the Solicitor-General.

Executive Government of Nova Scotia and New Brunswick

64. The constitution of the executive authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the Union, until altered under the authority of this Act.

Powers to be exercised by Lieutenant Governor of Ontario or Quebec with advice or alone

65. All powers, authorities, and functions which under any Act of the

Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice, or with the advice and consent, of the respective Executive Councils thereof, or in conjunction with those Councils or with any number of members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant-Governor of Ontario and Quebec respectively, with the advice, or with the advice and consent of, or in conjunction with the respective Executive Councils or any members thereof, or by the Lieutenant-Governor individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland), to be abolished or altered by the respective legislatures of Ontario and Quebec.

Application of provisions referring to Lieutenant-Governor in Council.

66. The provisions of this Act referring to the Lieutenant-Governor in Council shall be construed as referring to the Lieutenant-Governor of the Province acting by and with the advice of the Executive Council thereof.

Administration in absence &c., of Lieutenant-Governor.

67. The Governor-General in Council may from time to time appoint an administrator to execute the office and functions of Lieutenant-Governor during his absence, illness, or other inability.

Seats of Provincial Government.

68. Unless and until the Executive Government of any province otherwise directs with respect to that province, the seats of Government of the provinces shall be as follows, namely,—of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

Legislative Power.

1.—Ontario.

Legislature for Ontario.

69. There shall be a Legislature for Ontario, consisting of the Lieutenant-Governor and of one house, styled the Legislative Assembly of Ontario.

Electoral Districts.

70. The Legislative Assembly of Ontario shall be composed of eighty-

two members, to be elected to represent the eighty-two electoral districts set forth in the first schedule to this Act.

2.—Quebec.

Legislature for Quebec.

71. There shall be a Legislature for Quebec, consisting of the Lieutenant-Governor and two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

Constitution of Legislative Council.

72. The Legislative Council of Quebec shall be composed of twenty-four members, to be appointed by the Lieutenant-Governor in the Queen's name by instrument under the Great Seal of Quebec, one being appointed to represent each of the twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding office for the term of his life, unless the Legislature of Quebec otherwise provides under the provisions of this Act.

Qualification of Legislative Councillors.

73. The qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec

Resignation, Disqualification, &c.

74. The place of a Legislative Councillor of Quebec shall become vacant in the cases, *mutatis mutandis*, in which the place of Senator becomes vacant.

Vacancies.

75. When a vacancy happens in the Legislative Council of Quebec by resignation, death, or otherwise, the Lieutenant-Governor, in the Queen's name, by instrument under the Great Seal of Quebec, shall appoint a fit and qualified person to fill the vacancy.

Questions as to Vacancies, &c

76. If any question arises respecting the qualification of a Legislative Councillor of Quebec, the same shall be heard and determined by the Legislative Council.

Speaker of Legislative Council.

77. The Lieutenant-Governor, may, from time to time, by instrument under the Great Seal of Quebec, appoint a member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his stead.

Quorum of Legislative Council.

78. Until the Legislature of Quebec otherwise provides, the presence of at least ten members of the Legislative Council, including the Speaker,

shall be necessary to constitute a meeting for the exercise of its powers.

Voting in Legislative Council

79. Questions arising in the Legislative Council of Quebec shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal, the decision shall be deemed to be in the negative.

Constitution of Legislative Assembly of Quebec.

80. The Legislative Assembly of Quebec shall be composed of sixty-five members, to be elected to represent the sixty-five electoral divisions or districts of Lower Canada in this Act referred to, subject to alteration thereof by the Legislature of Quebec: Provided that it shall not be lawful to present to the Lieutenant-Governor of Quebec for assent any Bill for altering the limits of any of the electoral divisions or districts, and the assent shall not be given to such Bill unless an address has been presented by the Legislative Assembly to the Lieutenant-Governor, stating that it has been so passed.

3.—Ontario and Quebec.

First Session of Legislatures.

81. The Legislatures of Ontario and Quebec respectively shall be called together not later than six months after the Union.

Summoning of Legislative Assemblies.

82. The Lieutenant-Governor of Ontario and of Quebec shall, from time to time, in the Queen's name, by instrument under the Great Seal of the province, summon and call together the Legislative Assembly of the province.

Restriction of election of holders of offices.

83. Until the Legislature of Ontario or of Quebec otherwise provides, a person accepting or holding in Ontario or in Quebec, any office, commission or employment, permanent or temporary, at the nomination of the Lieutenant-Governor, to which an annual salary, or any fee, allowance, emolument or profit of any kind or amount whatever from the province is attached, shall not be eligible as a member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this section shall make ineligible any person being a member of the Executive Council of the respective Province, or holding any of the following offices, that is to say, the offices of Attorney-General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec, Solicitor-General, or shall disqualify him to sit or vote in the House for

which he is elected, provided he is elected while holding such office.

Continuance of existing election laws.

84. Until the Legislatures of Ontario and Quebec respectively otherwise provide, all laws which at the Union are in force in those Provinces respectively, relative to the following matters or any of them, namely, the qualifications and disqualifications of persons to be elected or to sit or vote as members of the Assembly of Canada, the qualifications or disqualifications of voters, the oaths to be taken by voters, the Returning Officers, their powers and duties, the proceedings at elections, the periods during which such elections may be continued, and the trial of controverted elections and the proceedings incident thereto, the vacating of the seats of members, and the issuing and execution of new writs in case of seats vacated otherwise than by dissolution, shall respectively apply to elections of members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Provided that until the Legislature of Ontario otherwise provides, at any election for the member of the Legislative Assembly of Ontario for the District of Algoma, in addition to persons qualified by the Law of the Province of Canada to vote, every male British subject aged twenty-one years or upwards, being a householder, shall have a vote.

Duration of Legislative Assemblies.

85. Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for Four years from the day of the return of the writs for choosing the same (subject, nevertheless, to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant-Governor of the province), and no longer.

Yearly Session of Legislature.

86. There shall be a session of the Legislature of Ontario and of that of Quebec, once at least in every year, so that twelve months shall not intervene between the last sitting of the Legislature in each province in one session and its first sitting in the next session.

Speaker, uorum, &c.

87. The following provisions of this Act respecting the House of Commons of Canada, shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say,—the provisions relating to the election of a speaker originally and on vacancies, the duties of the speaker, the absence of the speaker, the quorum, and to the mode of voting, as if those provisions were here re-enacted and made applicable in terms to each such Legislative Assembly.

4.—Nova Scotia and New Brunswick.

Constitutions of Legislatures of Nova Scotia and New Brunswick.

88. The Constitution of the Legislature of each of the provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the union until altered under the authority of this Act; and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the period for which it was elected.

5.—Ontario, Quebec, and Nova Scotia.

First Elections.

89. Each of the Lieutenant-Governors of Ontario, Quebec, and Nova Scotia, shall cause writs to be issued for the first election of members of the Legislative Assembly thereof in such form and by such person as he thinks fit, and at such time addressed to such returning officer as the Governor-General directs, and so that the first election of Member of Assembly for any electoral district or any subdivision thereof shall be held at the same time and at the same places as the election for a member to serve in the House of Commons of Canada for that Electoral District.

6.—The Four Provinces.

Application to Legislatures of provisions respecting money votes, &c.

90. The following provisions of this Act respecting the Parliament of Canada, namely—the provisions relating to Appropriation and Tax Bills, the recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in terms to the respective Provinces and the Legislatures thereof, with the substitution of the Lieutenant-Governor of the Province for the Governor-General, of the Governor-General for the Queen, and for a Secretary of State, of one year for two years, and of the Province for Canada.

VI. Distribution of Legislative Powers.

Powers of the Parliament.

Legislative Authority of Parliament of Canada.

91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order,

and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the 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 legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated, that is to say:—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The Raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country, or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of the Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

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.

Exclusive Powers of Provincial Legislatures.

Subjects of exclusive provincial Legislation.

92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subject next hereinafter enumerated; that is to say:—

1. The amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the office of Lieutenant-Governor.
2. Direct taxation within the Province in order to the raising of a revenue for provincial purposes.
3. The borrowing of money on the sole credit of the Province.
4. The establishment and tenure of provincial offices, and the appointment and payment of provincial officers.
5. The management and sale of public lands belonging to the Province, and of the timber and wood thereon.
6. The establishment, maintenance, and management of public and reformatory prisons in and for the Province.
7. The establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions in and for the province, other than marine hospitals.
8. Municipal institutions in the province.
9. Shop, saloon, tavern, auctioneer, and other licences, in order to the raising of a revenue for provincial, local, or municipal purposes.
10. Local works and undertakings, other than such as are of the following classes—
 - a.* Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings, connecting the province with any other or others of the provinces, or extending beyond the limits of the province.
 - b.* Lines of steamships between the province and any British or foreign country.
 - c.* Such works as, although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the general advantage of two or more of the provinces.
11. The incorporation of Companies with provincial objects.
12. Solemnization of marriage in the province.
13. Property and civil rights in the province.
14. The administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal

jurisdiction, and including procedure in civil matters in those courts.

15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section.

16. Generally all matters of a merely local or private nature in the Province.

Education.

Legislation respecting education.

93. In and for each Province the Legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

1. Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province of the Union;

2. All the powers, privileges, and duties at the Union by law conferred and imposed in Upper Canada on the separate schools and the school trustees of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec;

3. Where in any province a system of separate or dissentient schools exists by law at the Union or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General in Council from any Act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education;

4. In case any such provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this Section is not made, or in case any decision of the Governor-General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor-General in Council under this section.

Uniformity of Laws in Ontario, Nova Scotia, and New Brunswick.

Legislation for uniformity of laws in three provinces.

94. Notwithstanding anything in this Act, the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick, and of the procedure of all or any of the courts in those three provinces, and from and after the passing of any Act in that behalf, the power of the Parliament of Canada to make laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted;

but any Act of the Parliament of Canada making provision for such uniformity, shall not have effect in any province unless and until it is adopted and enacted as law by the Legislature thereof.

Agriculture and Immigration.

Concurrent powers of Legislation respecting agriculture, &c.

95. In each province the Legislature may make laws in relation to agriculture in the province, and to immigration into the province; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to agriculture in all or any of the provinces, and to immigration into all or any of the provinces; and any law of the Legislature of a province, relative to agriculture or to immigration, shall have effect in and for the province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

VII.—Judicature.

Appointment of Judges.

96. The Governor-General shall appoint the judges of the Superior, District, and County Courts in each province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

Selection of Judges in Ontario, &c.

97. Until the laws relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick, and the procedure of the Courts in those provinces, are made uniform, the Judges of the Courts of those provinces appointed by the Governor-General shall be selected from the respective Bars of those provinces.

Selection of Judges in Quebec.

98. The Judges of the Courts of Quebec shall be selected from the Bar of that province.

Tenure of office of Judges of Superior Courts.

99. The Judges of the superior Courts shall hold office during good behaviour, but shall be removable by the Governor-General on address of the Senate and House of Commons.

Salaries, &c., of Judges.

100. The salaries, allowances, and pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick) and of the Admiralty Courts in cases where the Judges thereof are for the time being paid by salary, shall be fixed and provided by the Parliament of Canada.

General Court of Appeal, &c.

101. The Parliament of Canada may, notwithstanding anything in this Act, from time to time, provide for the constitution, maintenance, and organisation of a General Court of Appeal for Canada, and for the establishment of any additional Courts for the better administration of the laws of Canada

VIII.—Revenues; Debts; Assets; Taxation.

Creation of Consolidated Revenue Fund

102. All duties and revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick before and at the Union, had and have power of Appropriation, except such portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special Powers conferred on them by this Act, shall form one Consolidated Revenue Fund, to be appropriated for the public service of Canada in the manner and subject to the charges in this Act provided.

Expenses of collection, &c.

103. The Consolidated Revenue Fund of Canada shall be permanently charged with costs, charges, and expenses incident to the collection, management, and receipt thereof, and the same shall form the first charge thereon, subject to be reviewed and audited in such manner as shall be ordered by the Governor-General in Council until the Parliament otherwise provides.

Interest of Provincial public debts.

104. The annual interest of the public debts of the several provinces of Canada, Nova Scotia, and New Brunswick at the Union shall form the second charge on the Consolidated Revenue Fund of Canada.

Salary of Governor-General.

105. Unless altered by the Parliament of Canada, the salary of the Governor-General shall be ten thousand pounds sterling money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of Canada, and the same shall form the third charge thereon.

Appropriation from time to time.

106. Subject to the several payments by this Act charged on the Consolidated Revenue Fund of Canada, the same shall be appropriated by the Parliament of Canada for the public service.

Transfer of stocks, &c.

107. All stocks, cash, bankers' balances, and securities for money

belonging to each province at the time of the Union, except as in this Act mentioned, shall be the property of Canada, and shall be taken in reduction of the amount of the respective debts of the provinces at the Union.

Transfer of property in Schedule.

108. The public works and property of each province enumerated in the third schedule to this Act shall be the property of Canada.

Property in lands, mines, &c.

109. All lands, mines, minerals, and royalties belonging to the several provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all sums then due or payable for such lands, mines, minerals, or royalties, shall belong to the several provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any trust existing in respect thereof, and to any interest other than that of the province in the same.

Assets connected with Provincial debts.

110. All assets connected with such portions of the public debt of each province as are assumed by that province shall belong to that province.

Canada to be liable for Provincial debts.

111. Canada shall be liable for the debts and liabilities of each province existing at the Union.

Debts of Ontario and Quebec.

112. Ontario and Quebec conjointly shall be liable to Canada for the amount (if any) by which the debt of the Province of Canada exceeds at the Union sixty-two million five hundred thousand dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

Assets of Ontario and Quebec.

113. The assets enumerated in the fourth schedule to this Act, belonging at the Union to the Province of Canada, shall be the property of Ontario and Quebec conjointly.

Debt of Nova Scotia.

114. Nova Scotia shall be liable to Canada for the amount (if any) by which its public debt exceeds at the Union eight million dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

Debt of New Brunswick.

115. New Brunswick shall be liable to Canada for the amount (if any) by which its public debt exceeds at the Union seven million dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

Payment of interest to Nova Scotia and New Brunswick.

116. In case the public debts of Nova Scotia and New Brunswick do not at the Union amount to eight million and seven million dollars respectively, they shall respectively receive, by half-yearly payments in

advance from the Government of Canada, interest at five per centum per annum on the difference between the actual amounts of their respective debts and such stipulated amounts.

Provincial public property

117. The several provinces shall retain all their respective public property not otherwise disposed of in this Act, subject to the right of Canada to assume any lands or public property required for fortifications or for the defence of the country.

Grant to Province

118. The following sums shall be paid yearly by Canada to the several provinces for the support of their Government and Legislature.

	DOLLARS.
Ontario	Eighty thousand.
Quebec	Seventy thousand.
Nova Scotia	Sixty thousand.
New Brunswick	Fifty thousand.
	Two hundred and sixty thousand.

and an annual grant in aid of each province shall be made, equal to eighty cents per head, of the population as ascertained by the census of one thousand eight hundred and sixty-one, and in the case of Nova Scotia and New Brunswick, by each subsequent decennial census until the population of each of those two provinces amounts to four hundred thousand souls, at which rate such grant shall thereafter remain. Such grant shall be in full settlement of all future demands on Canada, and shall be paid half-yearly in advance to each province: but the Government of Canada shall deduct from such grants, as against any province, all sums chargeable as interest on the public debt of that province in excess of the several amounts stipulated in this Act.

Further grant to New Brunswick.

119. New Brunswick shall receive, by half-yearly payments in advance from Canada, for the period of ten years from the Union, an additional allowance of sixty-three thousand dollars per annum; but as long as the public debt of that province remains under seven million dollars, a deduction equal to the interest at five per centum per annum on such deficiency shall be made from that allowance of sixty-three thousand dollars.

Form of payments.

120. All payments to be made under this Act, or in discharge of liabilities created under any Act of the provinces of Canada, Nova Scotia, and New Brunswick respectively, and assumed by Canada, shall until the Parliament

of Canada otherwise direct, be made in such form and manner as may from time to time be ordered by the Governor-General in Council.

Canadian manufactures, &c.

121. All articles of the growth, produce, or manufacture of any one of the provinces shall, from and after the Union, be admitted free into each of the other provinces.

Continuance of customs and excise laws.

122. The Customs and Excise Laws of each province shall, subject to the provisions of this Act, continue in force until altered by the Parliament in Canada.

Exportation and importation as between two provinces.

123. Where Customs duties are, at the Union, leviable on any goods, wares, or merchandises in any two provinces, those goods, wares, and merchandises may, from and after the Union, be imported from one of those provinces into the other of them, on proof of payment of the Customs duty leviable thereon in the province of exportation, and on payment of such further amount (if any) of Customs duty as is leviable thereon in the province of importation.

Lumber dues in New Brunswick

124. Nothing in this Act shall affect the right of New Brunswick to levy the lumber dues provided in chapter fifteen of title three of the Revised Statutes of New Brunswick, or in any Act amending that Act before or after the union, and not increasing the amount of dues; but the lumber of any of the provinces other than New Brunswick shall not be subject to such dues.

Exemption of public lands, &c.

125. No lands or property belonging to Canada or any province shall be liable to taxation.

Provincial consolidated revenue fund.

126. Such portions of the duties and revenues over which the respective Legislatures of Canada, Nova Scotia and New Brunswick had, before the Union, power of appropriation, as are by this Act reserved to the respective Governments or Legislatures of the provinces, and all duties and revenues raised by them in accordance with the special powers conferred upon them by this Act, shall in each province form one Consolidated Revenue Fund to be appropriated for the public service of the province.

IX.—Miscellaneous Provisions.

General.

As to Legislative Councillors of Provinces becoming Senators.

127. If any person, being, at the passing of this Act, a member of the Legislative Council of Canada, Nova Scotia, or New Brunswick, to whom a place in the Senate is offered, does not within thirty days thereafter, by writing under his hand, addressed to the Governor-General of the province of Canada or to the Lieutenant-Governor of Nova Scotia, or New Brunswick (as the case may be), accept the same, he shall be deemed to have declined the same; and any person who, being at the passing of this Act a member of the Legislative Council of Nova Scotia or New Brunswick, accepts a place in the Senate, shall thereby vacate his seat in such Legislative Council.

Oaths of allegiance, &c.

128. Every member of the Senate or House of Commons of Canada shall, before taking his seat therein, take and subscribe before the Governor-General or some person authorized by him, and every member of a Legislative Council or Legislative Assembly of any province shall, before taking his seat therein, take and subscribe before the Lieutenant-Governor of the province, or some person authorized by him, the oath of allegiance contained in the fifth schedule to this Act; and every member of the Senate of Canada and every member of the Legislative Council of Quebec shall also, before taking his seat therein, take and subscribe before the Governor-General, or some person authorised by him, the declaration of qualification contained in the same schedule.

Continuance of existing laws, courts, officers, &c.

129. Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the union, and all Courts of Civil and Criminal Jurisdiction, and all legal commissions, powers and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the union, shall continue, in Ontario, Quebec, Nova Scotia, and New Brunswick, respectively, as if the union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective province, according to the authority of the Parliament or of that Legislature under this Act.

Transfer of officers to Canada.

130. Until the Parliament of Canada otherwise provides, all officers of the several provinces having duties to discharge in relation to matters other than those coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, shall be officers of

Canada, and shall continue to discharge the duties of their respective officers under the same liabilities, responsibilities, and penalties, as if the Union had not been made.

Appointment of new officers.

131. Until the Parliament of Canada otherwise provides, the Governor-General in Council may from time to time appoint such Officers as the Governor-General in Council deems necessary or proper for the effectual execution of this Act.

Treaty obligations.

132. The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries.

Use of English and French languages.

133. Either the English or the French language may be used by any person in the debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those languages shall be used in the respective records and journals of those Houses; and either of those languages may be used by any person or in any pleading or process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages.

Ontario and Quebec.

Appointment of executive officers for Ontario and Quebec.

134. Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant-Governors of Ontario and Quebec may each appoint under the Great Seal of the province the following officers to hold office during pleasure, that is to say,—the Attorney-General, the Secretary and Registrar of the province, the Treasurer of the province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and, in the case of Quebec, the Solicitor-General, and may, by order of the Lieutenant-Governor in Council from time to time prescribe the duties of those officers and of the several departments over which they shall preside, or to which they shall belong, and of the officers and clerks thereof, and may also appoint other and additional officers to hold office during pleasure, and may from time to time prescribe the duties of those officers, and of the several departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof.

Powers, duties, &c., of executive officers.

135. Until the Legislature of Ontario or Quebec otherwise provides, all rights, powers, duties, functions, responsibilities, or authorities at the passing of this Act vested in or imposed on the Attorney-General, Solicitor-General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works and Minister of Agriculture and Receiver-General, by any law, statute, or ordinance of Upper Canada, Lower Canada, or Canada, and not repugnant to this Act, shall be vested in or imposed on any officer to be appointed by the Lieutenant-Governor for the discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the duties and functions of the office of Minister of Agriculture at the passing of this Act imposed by the law of the Province of Canada as well as those of the Commissioner of Public Works.

Great Seals.

136. Until altered by the Lieutenant-Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same or of the same design as those used in the Provinces of Upper Canada and Lower Canada respectively before their union as the Province of Canada.

Construction of temporary Acts.

137. The words “and from thence to the end of the next ensuing session of the Legislature,” or words to the same effect used in any temporary Act of the Province of Canada not expired before the union, shall be construed to extend and apply to the next session of the Parliament of Canada, if the subject-matter of the Act is within the powers of the same as defined by this Act, or to the next sessions of the Legislatures of Ontario and Quebec respectively, if the subject-matter of the Act is within the powers of the same as defined by this Act.

As to errors in names.

138. From and after the union, the use of the words “Upper Canada” instead of “Ontario,” or “Lower Canada” instead of “Quebec,” in any deed, writ, process, pleading, document, matter, or thing shall not invalidate the same.

As to issue of Proclamations before Union, to commence after Union.

139. Any proclamation under the Great Seal of the province of Canada, issued before the Union, to take effect at a time which is subsequent to the Union, whether relating to that province or to Upper Canada, or to Lower Canada, and the several matters and things therein proclaimed, shall be and continue of like force and effect as if the Union had not been made.

As to issue of Proclamations after Union.

140. Any proclamation which is authorized by any Act of the Legislature

of the province of Canada, to be issued under the Great Seal of the province of Canada, whether relating to that province or to Upper Canada, or to Lower Canada, and which is not issued before the Union, may be issued by the Lieutenant-Governor of Ontario or of Quebec, as its subject-matter requires, under the Great Seal thereof; and from and after the issue of such proclamation, the same and the several matters and things therein proclaimed, shall be and continue of the like force and effect in Ontario or Quebec as if the Union had not been made.

Penitentiary.

141. The penitentiary of the province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the penitentiary of Ontario and of Quebec.

Arbitration respecting debts &c.

142. The division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada shall be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada, and the selection of the arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or Quebec.

Division of records.

143. The Governor-General in Council may from time to time, order that such and so many of the records, books, and documents of the province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the property of that province; and any copy thereof or extract therefrom, duly certified by the officer having charge of the original thereof, shall be admitted as evidence.

Constitution of townships in Quebec.

144. The Lieutenant-Governor of Quebec may from time to time, by proclamation under the Great Seal of the province, to take effect from a day to be appointed therein, constitute townships in those parts of the Province of Quebec in which townships are not then already constituted and fix the metes and bounds thereof.

X.—Intercolonial Railway.

Duty of Government and Parliament of Canada to make railway herein described.

145. Inasmuch as the Provinces of Canada, Nova Scotia, and New Brunswick have joined in a declaration that the construction of the

intercolonial railway is essential to the consolidation of the union of British North America, and to the assent thereto of Nova Scotia and New Brunswick, and have consequently agreed that provision should be made for its immediate construction by the Government of Canada: Therefore, in order to give effect to that agreement, it shall be the duty of the Government and Parliament of Canada to provide for the commencement, within six months after the union, of a railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the construction thereof without intermission, and the completion thereof with all practicable speed.

XI.—Admission of Other Colonies.

Powers to admit Newfoundland, &c., into the Union.

146. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those colonies or provinces, or any of them, into the Union, and on address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such terms and conditions in each case as are in the addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

As to representation of Newfoundland and Prince Edward Island in Senate.

147. In case of the admission of Newfoundland and Prince Edward Island or either of them, each shall be entitled to a representation, in the Senate of Canada, of four members, and (notwithstanding anything in this Act) in case of the admission of Newfoundland, the normal number of Senators shall be seventy-six and their maximum number shall be eighty-two; but Prince Edward Island, when admitted, shall be deemed to be comprised in the third of the three divisions into which Canada is, in relation to the Constitution of the Senate, divided by this Act, and accordingly, after the admission of Prince Edward Island, whether Newfoundland is admitted or not, the representation of Nova Scotia and New Brunswick in the Senate shall, as vacancies occur, be reduced from twelve to ten members respectively, and the representation of each of those provinces shall not be increased at any time beyond ten, except under the provisions of this Act, for the appointment of three or six additional Senators under the direction

of the Queen.

34 and 35 Victoria.

Chap. XXIII.

An Act respecting the establishment of Provinces in the Dominion of Canada.

[29th June, 1871.]

WHEREAS doubts have been entertained respecting the powers of the Parliament of Canada to establish provinces in territories admitted, or which may hereafter be admitted into the Dominion of Canada, and to provide for the representation of such provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament:—

Short title.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same as follows:—

1. This Act may be cited for all purposes as “The British North America Act, 1871.”

Parliament of Canada may establish new provinces and provide for the constitution, &c., thereof.

2. The Parliament of Canada may from time to time establish new provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such province, and for the passing of laws for the peace, order, and good government of such province, and for its representation in the said Parliament.

Alteration of limits of provinces.

3. The Parliament of Canada may from time to time, with the consent of the Legislature of any province of the said dominion, increase, diminish, or otherwise alter the limits of such province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any province affected thereby.

Parliament of Canada may legislate for any territory not included in a province.

4. The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not

for the time being included in any province.

Confirmation of Acts of Parliament of Canada, 32 & 33 Vict. (Canadian) cap. 3, 33 V, Canadian), cap 3.

5. The following Acts passed by the said Parliament of Canada, and intituled respectively: “An Act for the temporary government of Rupert's Land and the North Western Territory when united with Canada,” and “An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of the Province of Manitoba,” shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor-General of the said Dominion of Canada.

Limitation of powers of Parliament of Canada to legislate for an established Province.

6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last mentioned Act of the said Parliament, in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new provinces in the said dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said province.

38-39 Victoria.

Chap. XXXXIII.

An Act to remove certain doubts with respect to the powers of the Parliament of Canada under Section Eighteen of the British North America Act, 1867.

[19th July, 1875.]

30 and 31 Vict c. 3.

WHEREAS by Section Eighteen of the British North America Act, 1867, it is provided as follows:—

“The privileges, immunities and powers to be held, “enjoyed, and exercised by the Senate and by the House “of Commons, and by the members thereof respectively, “shall be such as are from time to time defined by Act of “the Parliament of Canada, but so that the same shall “never exceed those at the passing of this Act, held, “enjoyed, and exercised by the Commons House of “Parliament of the United Kingdom of Great Britain and “Ireland and by the members thereof.”

And whereas doubts have arisen with regard to the power of defining by an Act of the Parliament of Canada, in pursuance of the said section, the

said privileges, powers, or immunities: and it is expedient to remove such doubts.

Be it, therefore, enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Substitution of new Section for Section 18 of 30 and 31 Vict, c. 3.

1. Section Eighteen of the British North America Act, 1867, is hereby repealed without prejudice to anything done under that section, and the following section shall be substituted for the section so repealed.

The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof, respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or power exceeding those at the passing of such Act, held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof.

Confirmation of Act of Canada in Parliament.

2. The Act of the Parliament of Canada passed in the thirty-first year of the reign of Her present Majesty, chapter twenty-four, intituled “An Act to provide for oaths to witnesses being administered in certain cases for the purposes of either House of Parliament” shall be deemed to be valid, and to have been valid as from the date at which the Royal assent was given thereto by the Governor-General of the Dominion of Canada.

3. This Act may be cited as “The Parliament of Canada Act, 1875.”

49 and 50 Victoria (I).

Chap. XXXV.

An Act respecting the representation in the Parliament of Canada of Territories which for the time being form part of the Dominion of Canada, but are not included in any Province.

[25 June, 1886.]

WHEREAS it is expedient to empower the Parliament of Canada to provide for the representation in the Senate and House of Commons of Canada, or either of them, of any territory which for the time being forms part of the Dominion of Canada but is not included in any Province:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same as follows:—

Provision by Parliament of Canada for representation of territory

1. The Parliament of Canada may from time to time make provision for the representation in the Senate and House of Commons of Canada or in either of them of any territories which for the time being form part of the Dominion of Canada but are not included in any Province.

Effects of Acts of Parliament of Canada.

2. Any Act passed by the Parliament of Canada before the passing of this Act for the purpose mentioned in this Act shall if not disallowed by the Queen be and shall be deemed to have been valid and effectual from the date at which it received the assent in Her Majesty's name of the Governor-General of Canada.

34 and 35 Vic. c. 28. 30 and 31 Vic. c. 3.

It is hereby declared that any Act passed by the Parliament of Canada whether before or after the passing of this Act for the purposes mentioned in this Act or in the B. N. A. Act 1871 has effect notwithstanding anything in the B. N. A. Act 1867 and the number of Senators or the number of members of the House of Commons specified in the last mentioned Act is increased by the number of Senators or of members as the case may be provided by any such Act of the Parliament of Canada for the representation of any provinces or territories of Canada.

Short title.

3. This Act may be cited as the British North America Act, 1886.

This Act and the British North America Act, 1867, and the British North America Act, 1871, shall be construed together, and may be cited as the British North America Acts, 1867 to 1886.

DRAFT OF LETTERS PATENT passed under the Great Seal of the

United Kingdom, constituting the office of Governor-General of the Dominion of Canada.

Letters Patent,

Dated 5th October, 1878.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India, to whom all these Presents shall come, Greeting:

WHEREAS we did, by certain Letters-Patent under the Great Seal of our United Kingdom of Great Britain and Ireland, bearing date at Westminster the twenty-second day of May, 1872, in the Thirty-fifth year of our Reign, constitute and appoint our Right Trusty and Right Well-beloved Cousin and Councillor, Frederick Temple, Earl of Dufferin, Knight Commander of our most Honourable Order of the Bath (now Knight Grand Cross of our most Distinguished Order of Saint Michael and Saint George), to be our Governor-General in and over our Dominion of Canada for and during our will and pleasure; and whereas by the 12th section of "The British North America Act, 1867, certain powers, authorities, and functions were declared to be vested in the Governor-General, and whereas we are desirous of making effectual and permanent provision for the office of Governor-General in and over our said Dominion of Canada, without making new Letters-Patent on each demise of the said office. Now know ye that we have revoked and determined, and by these presents do revoke and determine, the said recited Letters-Patent of the twenty-second day of May, 1872, and every clause, article, and thing therein contained; and further know ye that we, of our special grace, certain knowledge, and mere notion, have thought fit to constitute, order, and declare, and do by these presents constitute, order, and declare that there shall be a Governor-General (hereinafter called our said Governor-General) in and over our Dominion of Canada (hereinafter called our said Dominion) and that the person who shall fill the said office of the Governor-General shall be from time to time appointed by Commission under our Sign-Manual and Signet. And we do hereby authorize and command our said Governor-General to do and execute, in due order, all things that shall belong to his said command, and to the trust we have reposed in him, according to the several powers and authorities granted or appointed him by virtue of "The British North America Act, 1867," and of these present Letters-Patent and of such Commission as may be issued to him under our Sign-Manual and Signet, and according to such instructions as may from time to time be given to him under our Sign-Manual and Signet, or by our Order in our Privy Council or by us through one of our principal Secretaries of State, and to such laws as are or shall hereafter be in force in our said Dominion.

II. And we do hereby authorize and empower our said Governor-General to keep and use the Great Seal of our said Dominion for sealing all things whatsoever that shall pass the said Great Seal.

III. And we do further authorize and empower our said Governor-General to constitute and appoint, in our name and on our behalf, all such Judges, Commissioners, Justices of the Peace, and other necessary officers and Ministers of our said Dominion, as may be lawfully constituted or appointed by us.

IV. And we do further authorize and empower our said Governor-General, so far as we lawfully may upon sufficient cause to him appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any office within our said Dominion, under or by virtue of any Commission or Warrant granted, or which may be granted, by us in our name or under our authority.

V. And we do further authorize and empower our said Governor-General to exercise all powers lawfully belonging to us in respect of the summoning, proroguing, or dissolving the Parliament of our said Dominion.

VI. And whereas by “The British North America Act, 1867,” it is amongst other things enacted that it shall be lawful for us, if we think fit, to authorize the Governor-General of our Dominion of Canada to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of our said Dominion, and in that capacity to exercise, during the pleasure of our said Governor-General, such of the powers, authorities, and functions of our said Governor-General as he may deem it necessary or expedient to assign to such Deputy or Deputies, subject to any limitations or directions from time to time expressed or given by us. Now we do hereby authorize and empower our said Governor-General, subject to such limitations and directions as aforesaid, to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of our said Dominion of Canada, and in that capacity to exercise, during his pleasure, such of his powers, functions, and authorities, as he may deem it necessary or expedient to assign to him or them, provided always that the appointment of such a Deputy or Deputies shall not affect the exercise of any such power, authority, or function by our said Governor-General in person.

VII. And we do hereby declare our pleasure to be that, in the event of the death, incapacity, removal, or absence of our said Governor-General out of our said Dominion, all and every the powers and authorities herein granted to him shall, until our further pleasure is signified therein, be vested in such person as may be appointed by us under our Sign-Manual and Signet to be

our Lieutenant-Governor of our said Dominion; or if there shall be no such Lieutenant-Governor in our said Dominion, then in such person or persons as may be appointed by us under our Sign-Manual and Signet to administer the Government of the same; and in case there shall be no person or persons within our said Dominion so appointed by us, then in the Senior Officer for the time being in command of our regular troops in our said Dominion, provided that no such powers or authorities shall vest in such Lieutenant-Governor, or such other person or persons, until he or they shall have taken the oaths appointed to be taken by the Governor-General of our said Dominion, and in the manner provided by the instructions accompanying these our Letters Patent.

VIII. And we do hereby require and command all our Officers and Ministers, Civil and Military, and all other the inhabitants of our said Dominion to be obedient, aiding, and assisting unto our said Governor-General, or in the event of his death, incapacity, or absence, to such person or persons as may, from time to time, under the provisions of our Letters-Patent, administer the Government of our said Dominion.

IX. And we do hereby reserve to ourselves, our heirs and successors, full power and authority from time to time to revoke, alter, or amend these our Letters-Patent as to us or them shall seem meet.

X. And we do further direct and enjoin that these our Letters-Patent shall be read and proclaimed at such place or places as our said Governor-General shall think fit within our said Dominion of Canada.

In witness whereof we have caused these our letters to be made Patent. Witness Ourselves at Westminster, the fifth day of October, in the Forty-second year of our Reign.

By Warrant under the Queen's Sign-Manual.

C. ROMILLY.

Schedule G.

Constitution of the United States of America.

WE, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I.

Section 1.

1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Section 2.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and, until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight,

Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The house of representative shall choose their speaker and other officers, and shall have the sole power of impeachment.

Section 3.

1. the senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments, until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The vice-president of the United States shall be president of the senate, but shall have no vote unless they be equally divided.

5. The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section 4.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time, by law, make or alter such regulations, except as to the place of choosing senators.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They, shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office

under the United States, shall be a member of either house during his continuance in office.

Section 7.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

2. Every bill which shall have passed the house of representatives and the senate shall, before it becomes a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8.

The congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish an uniform rule of naturalisation, and uniform laws on the subject of bankruptcies, throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post-offices and post-roads:

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the supreme court:

10. To define and punish piracies, and felonies committed on the high seas, and offences against the law of nations:

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years:

13. To provide and maintain a navy:

14. To make rules for the government and regulation of the military and naval forces:

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

16. To provide for organising, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress:

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square), as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: And

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation, or other direct tax shall be laid, unless in proportion to the *census*, or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Section 10.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II.

Section 1.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and together with the vice-president, chosen for the same term, be elected as follows:—

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then, from the five highest on the list the said house shall in like manner choose the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of president; neither shall any person be eligible to that office

who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall then act accordingly, until the disability be removed, or a president shall be elected.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

9. Before he enter on the execution of his office, he shall take the following oath or affirmation:

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Section 2.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present shall concur; and he shall nominate, and, by and with the advice and consent of the senate shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments herein are not otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

Section 3.

1. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed and shall commission all the officers of the United States.

Section 4.

1. The president, vice-president, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III.

Section 1.

1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the congress may from time to time ordain and establish. The Judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section 2.

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a states and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such

exceptions, and under such regulations, as the congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Section 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture of life except during the life of the person attained.

Article IV.

Section 1.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. A person charged in any state with treason felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.

Section 3.

1. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other

state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

2. The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4.

1. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Article V.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states or by conventions of three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: Provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Article VI.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both

of the United States and of the several states, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Article VII.

1. The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Amendments to the Constitution.

Article I.

CONGRESS shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article II.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Article III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by the law.

Article IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual

service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall he be compelled, in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence.

Article VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Article VIII.

Excessive bail shall not be required, no excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Article X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Article XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any

foreign state.

Article XII.

1. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in the ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person having a majority, then from the two highest numbers on the list, the senate shall choose the vice-president: a quorum for the purpose shall consist of two-thirds of the whole number of senators, a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

Article XIII.

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

Article XIV.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-Presidents of the United States, Representatives in Congress, the executive and judicial officers of the State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President or Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of the Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation,

the provisions of this article.

Article XV.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, colour, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

Schedule H.

South African Union Act, 1877.

An Act for the Union under one Government of such of the South African Colonies and States as may agree thereto, and for the Government of such Union; and for purposes connected therewith.

[10th August, 1877.]

WHEREAS proposals have been made for uniting under one Government under the Crown of the United Kingdom of Great Britain and Ireland those colonies and states of South Africa which may voluntarily elect to enter into such Union:

And whereas such Union would conduce to the welfare of the said colonies and states and promote the interests of the British Empire, and it is expedient to make provision for any two or more of the said colonies or states to unite at such time as may be found convenient:

And whereas it is expedient to declare and define the general principles on which the constitution of the legislative authority and of the Executive Government in the Union may be established, and to enable the details of the said constitution and of the administrative establishments thereunder to be provided for after the wishes and opinions of the said colonies and states with respect to such details have been duly represented to Her Majesty through their respective Legislatures:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I.—Preliminary.

Short title.

1. This Act may be cited as the South Africa Act, 1877.

Application of provisions referring to the Queen.

2. The provisions of this Act referring to Her Majesty the Queen extend also to her heirs and successors.

II.—Union.

Declaration of union and provision for its completion.

3. It shall be lawful for the Queen, by and with the advice of Her

Majesty's Most Honourable Privy Council, to declare by Order in Council that, on and after a day therein appointed, any two or more of the colonies or states of South Africa whose respective Legislatures may so agree shall be joined or confederated together in Union under one general Government and Legislature, with such name and designation as to Her Majesty may seem fit; and on and after that day the said general Government and Legislature of the Union shall have full power and effect within the said colonies or colonies and states which shall have so agreed.

It shall be lawful for the Queen, by and with the advice of Her Majesty's Privy Council, by any subsequent order in Council issued before the first assembling of the Union Parliament, to alter or amend the said order in Council, or to provide for any matters or things as to which Her Majesty is authorised by this Act to make provision, and which are not provided for in the said Order in Council; but no such Order in Council shall be issued under the provisions of this section after the first assembling of the Union Parliament.

In any such Order in Council as aforesaid the Queen may make provision for all or any of the matters as to which she is by this Act empowered to give directions, as well as on any other matters necessary to the due establishment of the Union, and before making such provision shall have regard to any representations that may be made to Her Majesty by or by the authority of the Legislature of any state or colony concerned, or by any committee or other body duly appointed by any two or more of the said Legislatures jointly to consider the subjects mentioned in this Act.

Construction of subsequent provisions of Act.

4. The subsequent provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the day appointed for the Union taking effect; and in the same provisions, unless it is otherwise expressed or implied, the words "the Union" shall be taken to mean the Union of South African colonies or colonies and states provided for by this Act.

Union to be divided into provinces.

5. The Union shall be divided into such provinces, with such names and boundaries, as the Queen may direct.

III.—Executive Power.

Executive power vested in the Queen.

6. The Executive Government and authority of and over the Union is hereby declared to be vested in the Queen and may be exercised on Her Majesty's behalf by the Governor General or the officer appointed to

administer the Government by or by authority of Her Majesty's Royal Letters Patent.

Application of provisions referring to Governor General.

7. The provisions of this Act referring to the Governor General extend and apply to the Governor General for the time being of the Union, or other the Chief Executive Officer or Administrator for the time being carrying on the Government of the Union on behalf and in the name of the Queen by whatever title he is designated.

Great Seal.

8. There shall be a Great Seal for the Union, of such device as Her Majesty may approve.

Constitution of Privy Council of the Union.

9. There shall be a council to aid and advise in the government of the Union, to be styled the Privy Council of the Union; and the persons who are to be members of that council shall be from time to time chosen and summoned by the Governor General, and sworn in as privy councillors, and may be from time to time removed by the Governor General.

All powers under Acts to be exercised by Governor General with advice of Privy Council, or alone.

10. All powers, authorities, and functions which are at the Union lawfully vested in or exercisable by the respective Governor, Lieutenant-Governor, Administrator, or President of a colony or state, with the advice, or with the advice and consent of the Executive Council or other administrative body thereof, or in conjunction with such council or body, or with any number of members thereof, or by the said Governor, Lieutenant-Governor, Administrator, or President individually, or by Her Majesty's High Commissioner for South Africa, shall (as far as the same continue in existence and capable of being exercised after the admission of such colony or state into the Union), in relation to the Government of the Union, be vested in and exercisable by the Governor General, with the advice, or with the advice and consent of, or in conjunction with the Privy Council of the Union, or any members thereof, or by the Governor General individually, as the case requires, subject nevertheless to be abolished or altered by the Union Parliament.

Application of provisions referring to Governor General in Council.

11. The provisions of this Act referring to "the Governor General in Council" shall be construed as referring to the Governor General acting by and with the advice of the Privy Council of the Union, and where "the Governor General" alone is mentioned the provision shall be construed as referring to the Governor General acting on his own discretion and without such advice.

Power to Her Majesty to authorise Governor General to appoint deputies.

12. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorise the Governor General from time to time to appoint any person or any persons jointly or severally to be his deputy or deputies within any part or parts of the Union, and in that capacity to exercise during the pleasure of the Governor General such of the powers, authorities, and functions of the Governor General as he may deem it necessary or expedient to assign to him or them, subject to any limitations or directions expressed or given by the Queen in conformity with the constitutional laws of the Union; but the appointment of such a deputy or deputies shall not affect the exercise by the Governor General himself of any power, authority or function.

Command of armed forces.

13. The command-in-chief of the land and naval militia, and of all naval and military forces, of and in the Union is hereby declared to be vested in the Queen.

Seat of Government.

14. The seat of Government of the Union shall be such place as the Queen may direct.

IV.—Legislative Power.

Constitution of Union Parliament.

15. There shall be one general Legislature for the Union, (in this Act called “the Union Parliament”), consisting of the Queen, an Upper House hereinafter styled the Legislative Council, and a House of Representatives, hereinafter styled the House of Assembly; provided that either of the said Houses may receive such other designation as the Queen may direct.

Definition of privileges, &c., of Legislative Council and House of Assembly.

16. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Legislative Council and by the House of Assembly and by the members thereof respectively shall be such as are from time to time defined by Act of the Union Parliament, but so that the same shall never exceed those at the time of the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof; and until the passing of such Act the said privileges, immunities, and powers shall be the same as those at the time of the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.

First session of the Parliament.

17. The Union Parliament shall be called together not later than twelve months after the Union.

The Legislative Council.

Number and constitution of Legislative Council.

18. The Legislative Council shall, subject to the provisions of this Act, consist of such number of members, representing such divisions of the Union, and shall be so constituted, as the Queen may direct.

The House of Assembly.

Constitution of House of Assembly.

19. The House of Assembly shall, subject to the provisions of this Act, consist of elected members, representing in fair proportions the various provinces of the Union; and until the Union Parliament otherwise provides, the provinces shall for the purposes of the election of members to serve in the House of Assembly be divided into such electoral districts returning such number of members respectively, and the electors and members shall have such qualifications, and the elections shall be conducted according to such rules and regulations, as the Queen may direct: Provided always, that in the apportionment of members, and in the determination of the qualifications of electors and members, provision shall be made for the due representation of the natives in the Union Parliament and in the Provincial Councils, in such manner as shall be deemed by Her Majesty to be without danger to the stability of the Government.

Summoning of House of Assembly.

20. The Governor General shall from time to time, but at least once a year, in the Queen's name, by instrument under the Great Seal of the Union, summon and call together the House of Assembly.

Decennial readjustment of representation.

21. A census of the Union shall be taken in the year one thousand eight hundred and ninety-one, and at the end of each subsequent period of ten years, and on the completion of every such decennial census, the representation of the provinces may be readjusted by such authority, in such manner, and from such times as the Union Parliament from time to time provides, subject and according to such rules as the Queen may direct.

Such readjustment shall not take effect until the termination of the then existing Parliament.

As to increase of members of House of Assembly.

22. The number of members of the House of Assembly may be from time to time increased by the Union Parliament, provided that the proportionate representation for the time being in force of the provinces is not thereby

disturbed.

Money Votes, Royal Assent.

Appropriation and Tax Bills.

23. Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Assembly.

Recommendation of money votes by Governors General.

24. It shall not be lawful for the House of Assembly to adopt or pass any vote, resolution, address, or Bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to that House by message from the Governor General in the session in which such vote, resolution, address, or Bill is proposed.

Royal Assent to Bills, &c.

25. Where a Bill passed by the Houses of the Union Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in the Queen's name, or that he withholds such assent, or that he reserves the Bill for the signification of the Queen's pleasure, or that he will be prepared to assent thereto, subject to certain amendments to be specified by him.

Disallowance by Queen in Council of Act assented to by Governor General.

26. Where the Governor General assents to a Bill in the Queen's name, he shall, by the first convenient opportunity, send an authentic copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council, within two years after receipt thereof by the Secretary of State, thinks fit to disallow the Act, such disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor General, be speech or message to each of the Houses of the Union Parliament or by proclamation, shall annul the Act from and after the day of such signification.

Signification of Queen's pleasure on Bill reserved.

27. A Bill reserved for the signification of the Queen's pleasure shall not have any force unless and until, within two years from the day on which it was presented to the Governor General for the Queen's Assent, the Governor General signifies, by speech or message to each of the Houses of the Union Parliament or by proclamation, that it has received the assent of the Queen in council.

An entry of every such speech, message, or proclamation shall be made in the Journal of each House, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the records of the Union.

V.—Provincial Government.

Appointment of Presidents of provinces.

28. Each province shall be presided over by a Chief Executive Officer bearing such title and appointed and removable in such manner as the Queen shall direct.

Salaries of Presidents.

29. Until altered by Act of the Union Parliament, the salaries of such officer shall be such as the Queen may direct.

Oaths, &c., of Presidents.

30. Every such officer shall, before assuming the duties of his office, make and subscribe before the Governor General, or some person authorised by him, oaths of allegiance and office similar to those taken by the Governor General.

Application of provisions referring to Presidents.

31. The provisions of this Act referring to such officer shall extend and apply to the Chief Executive Officer or Administrator for the time being carrying on the Government of any Province, by whatever title he is designated.

Provincial Councils.

Council for each province.

32. There shall be a Council or Parliament for each province, consisting of the Chief Executive Officer and a House or two Houses of Legislature, and of such number of councillors, or councillors and members of Assembly, elected in such manner and for such term as the Queen may direct.

VI.—Distribution of Legislative Powers.

Powers of the Union Parliament.

Legislative authority of Parliament.

33. It shall be lawful for the Queen, by and with the advice and consent of the Legislative Council and House of Assembly, to make laws for the peace, order, and good government of the Union, in relation to all matters not coming within the classes of subjects by this Act assigned to the councils of the provinces; and for greater certainty it is hereby declared that (notwithstanding anything in this Act) the legislative authority of the Union Parliament extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say,

1. The qualification of electors and members of the Legislative Council and House of Assembly, and other questions relating to the constitution, privileges, and proceedings of either of the said bodies, but always subject to the provisions of this Act relating to the representation of natives.
2. The public debt and property.
3. The regulation of trade and commerce.
4. The raising of money by any mode or system of taxation.
5. The borrowing of money on the public credit of the Union.
6. Postal service and telegraphs.
7. The census and statistics.
8. Militia, military and naval service, and defence, saving all matters and things relating to the troops, ships, property, and prerogatives of the Crown not heretofore placed under the jurisdiction of the Colonial Governments.
9. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of the Union.
10. Beacons, buoys, lighthouses.
11. Navigation and shipping.
12. Quarantine and the establishment and maintenance of marine hospitals.
13. Fisheries.
14. Bridges or ferries between a province and a foreign state or between two provinces.
15. Currency and coinage.
16. Banking, incorporation of banks, and the issue of paper money.
17. Savings banks.
18. Weights and measures.
19. Bills of exchange and promissory notes.
20. Interest.
21. Legal tender.
22. Bankruptcy and insolvency.
23. Patents of invention and discovery.
24. Copyrights.
25. Affairs of native tribes or peoples who are not included under the laws applicable to the general community.
26. Naturalization and aliens.
27. Marriage and divorce.
28. The criminal law.
29. The establishment, maintenance, and management of gaols, hospitals, asylums, and other public institutions for the use of the Union generally.
30. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the councils of the provinces.
31. Such other subjects herein assigned to the councils of the provinces as the council of any province may by law declare to be within the competency of the Union Parliament in respect of such province.

Exclusive Powers of Provincial Councils.

Subjects of exclusive Provincial Legislation.

34. In each province the council may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, and not included among the subjects hereinbefore assigned to the Union Parliament; that is to say,

1. The qualification of electors and members of the Provincial Council, but always subject to the provisions of this Act relating to the representation of natives.
2. Direct taxation within the province in order to the raising of a revenue for provincial purposes.
3. The borrowing of money on the sole credit of the province.
4. The establishment and tenure of provincial offices and the appointment and payment of provincial officers.
5. The management and sale of the public lands belonging to the province, and of the timber and wood thereon.
6. Education.
7. The establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions in and for the province other than marine hospitals.
9. Municipal institutions in the province.
10. Licenses for trading and other purposes in order to the raising of a revenue for provincial, local, or municipal purposes.
11. Local works and undertakings other than such as are of the following classes:
 - a.* Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province:
 - b.* Lines of steamships between the province and any British or foreign country:
 - c.* Such works as, although wholly situate within the province, are before or after their execution declared by the Union Parliament to be for the general advantage of the Union or for the advantage of two or more of the provinces.
12. The incorporation of companies with provincial objects.
13. The solemnization of marriage in the province.
14. Property and civil rights in the province.
15. The administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both civil and of criminal jurisdiction, and including procedure in civil matters in those courts.
16. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section.
17. The registration of titles to land.
18. Generally all matters of a merely local or private nature in the province.

Concurrent powers of legislation respecting immigration.

35. In each province the council may make laws in relation to immigration into the province; and it is hereby declared that the Union Parliament may from time to time make laws in regard to immigration into all or any of the provinces; and any law of a provincial council relative to immigration shall have effect in or for the province as long and as far only as it is not repugnant to any Act of the Union Parliament.

As to votes, &c., for appropriation of provincial revenue.

36. It shall not be lawful for the council of any province to adopt or pass any vote, resolution, address, or law for the appropriation of any part of the provincial revenue, or of any tax or impost, to any purpose that has not first been recommended to the council by the chief executive officer.

Distribution of legislative powers may be varied.

37. The distribution of legislative powers between the Union Parliament and the councils of the provinces provided in the four last preceding sections of this Act may be varied by any Order in Council issued in pursuance of section three of this Act, and nothing in this Act shall be deemed to affect or limit in any way the power of the Queen, with the advice and consent of the Lords Spiritual and Temporal, and the Commons, of the United Kingdom of Great Britain and Ireland, in Parliament assembled, to make any law relating to the Union.

Allowance or disallowance of provincial laws.

38. Every law made by a provincial council shall be forthwith transmitted to the Governor-General, who shall proceed with regard to such law in the same manner as is hereinbefore provided with respect to Bills passed by the Union Parliament.

VII.—Revenues; Debts; Assets; Taxation.

Creation of Consolidated Revenue Fund.

39. All duties and revenues lawfully raised within the Union, except such portions thereof as are reserved to the respective Councils of the Provinces, or are raised by them in accordance with the special powers conferred on them, shall form one Consolidated Revenue Fund, to be appropriated for the public service or the Union in the manner and subject to the charges in this Act provided.

Expenses of collection, &c.

40. The Consolidated Revenue Fund of the Union shall be permanently charged with the costs, charges, and expenses incident to the collection, management, and receipt thereof, and the same shall form the first charge thereon, subject to be reviewed and audited in such manner as shall be

ordered by the Governor-General in Council, until the Union Parliament otherwise provides.

Interest of provincial public debts.

41. The annual interest of the public debts of each colony or state joining the Union shall, so far as they are in this Act declared to be a charge upon the Union, form the second charge on the Consolidated Revenue Fund of the Union.

Salary of Governor General.

42. Unless altered by Act of the Union Parliament, the salary of the Governor-General shall not be less than eight nor more than ten thousand pounds per annum sterling money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of the Union, and the same shall form the third charge thereon.

Appropriation of revenue.

43. Subject to the several payments by this Act charged on the Consolidated Revenue Fund of the Union, the same shall be appropriated by the Union Parliament for the public service.

After due provision has been made for the public service of the Union, any surplus of the consolidated revenue of the Union which may in any year be so appropriated by the Union Parliament shall be divided among the provinces in such proportions as the Queen may direct or the Union Parliament may provide.

Union may become liable to provincial debts.

44. The Union shall be liable for so much of the public debt of each province existing at the Union as the Queen may direct, and the said provincial debts may, by Act of the Union Parliament, be consolidated into one stock.

Property for defence.

45. The Union may assume any lands or public property required for fortifications or for the defence of the country.

Form of payments under Act.

46. All payments to be made under this Act, or in discharge of liabilities created under any law of the colonies, states, or province respectively, and assumed by the Union, shall, until the Union Parliament otherwise enacts, be made in such form and manner as may from time to time be ordered by the Governor-General in Council.

Articles duty free within the Union.

47. All articles of the growth, produce, or manufacture of any one of the provinces shall, from and after the Union, be admitted free into each of the other provinces.

Provincial Consolidated Revenue Fund.

48. All duties and revenues raised or received by the respective governments or councils of the provinces, in accordance with the special powers conferred upon them by this Act, shall in each province form one Consolidated Revenue Fund to be appropriated for the public service of the province.

VIII.—Miscellaneous Provisions.

Oath of allegiance by members, &c.

49. Every member of the Legislative Council or House of Assembly of the Union, and every member of a council of any province shall, before taking his seat therein, take and subscribe before the Governor-General, or some person authorised by him, the oath of allegiance contained in the schedule to this Act.

Continuance of existing laws, courts, officers, &c.

50. Except as otherwise provided by this Act, or by any Order in Council issued under section three of this Act, all laws in force in the colonies and states respectively at the Union, and all courts of civil and criminal jurisdiction, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the Union, shall continue in the provinces situate within what at the said Union are the boundries of those colonies and states respectively, as if the Union had not been made; subject nevertheless to be repealed, abolished, or altered by the Union Parliament, or by the council of the respective province, according to the authority of the Parliament or of that council under this Act.

General Court of Appeal, &c.

51. The Union Parliament may, notwithstanding anything in this Act, from time to time provide for the constitution, maintainance, and organisation of a Supreme Court of Judicature and of a General Court of Appeal for the Union and for the establishment of any additional courts for the better administration of the laws of the Union: Provided always, that no Act of the said Union Parliament shall extend or be construed to extend to take away or abridge the undoubted right and authority of Her Majesty, her heirs and successors, upon the humble petition of any person or persons aggrieved by any judgment, decree, order, or sentence of the said General Court of Appeal, to admit his, her, or their appeal to Her Majesty in Council from any rule, judgment, decree, order, or sentence upon such terms and securities, limitations, restrictions, and regulations as Her Majesty in Council, her heirs or successors, shall think fit.

Transfer of officers to the Union

52. Until the Union Parliament otherwise provides, all officers of the several provinces having duties to discharge in relation to matters other than those coming within the classes of subjects by this Act assigned exclusively to the councils of the provinces shall be officers of the Union, and shall continue to discharge the duties of their respective offices under the same liabilities, responsibilities, and penalties as if the Union had not been made.

Appointment of new officers.

53. Until the Union Parliament otherwise provides, the Governor-General in Council may from time to time appoint such officers as the Governor-General in Council deems necessary or proper for the effectual administration of the affairs of the Union in accordance with this Act.

Treaty obligations with foreign countries.

54. The Parliament and Government of the Union shall have all powers necessary or proper for performing the obligations of the Union or of any province thereof, as part of the British Empire towards foreign countries, arising under treaties between the Empire and such foreign countries.

Laws respecting natives to be reserved for Her Majesty's pleasure.

55. All laws passed by the Union Parliament or by the Provincial Councils relating to the natives or to native affairs, or relating to immigration, and all laws passed by the Provincial Councils relating to tenure of land, shall be reserved by the Governor-General for the signification of Her Majesty's pleasure thereon, unless, owing to some urgent emergency, it is necessary for any such law to have immediate operation; but in such case the law shall be transmitted for Her Majesty's pleasure thereon at the earliest possible opportunity.

Amendment of Act, or Order made thereunder.

56. No Act of the Union Parliament shall be deemed to be void or inoperative on the ground that it is repugnant to this Act or to any Order in Council made hereunder, but any such Act containing provisions differing from the provisions of this Act shall be reserved for the signification of Her Majesty's pleasure thereon, and shall not have effect until Her Majesty's pleasure in that behalf has been duly signified.

Power to Her Majesty to admit new members into the Union.

57. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on addresses from the Houses of the Union Parliament, and from the Legislature of any colony, state, or province not at the date of such addresses included in the Union, to admit the colony, state, or province into the Union, and on address from the Houses of the Union Parliament to admit any territory, not at the date of such addresses included in any colony, state, or province, into the Union,

on such terms and conditions expressed in the addresses as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been contained in this Act.

Power to Her Majesty to authorise annexation to the Cape of certain territories.

58. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, to authorise the Governor for the time being of the Cape of Good Hope by proclamation, to declare that the whole or any portion or portions of any territories in South Africa forming part of Her Majesty's possessions, but not already included in that colony, shall be annexed to and form part of such colony, and the said territories or portions shall be annexed accordingly; provided always that no such proclamation shall be issued until the Legislature of the Cape of Good Hope shall have passed a law providing that the said territories shall become part of the colony.

As to representation of new members of Union.

59. In case of the admission into the Union of any colony, state, or province not originally included in the Union, it shall be entitled to a representation in the Legislative Council and in the House of Assembly proportioned to the representation granted under this Act to the other provinces of the Union, and calculated in the same manner.

Powers conferred upon Her Majesty as to first establishment of Union not to be exercised after 1st August, 1882.

60. The powers hereby conferred upon Her Majesty with reference to the first establishment of the Union shall not be exercised after the first day of August, one thousand eight hundred and eighty-two, and no such Order in Council made in pursuance of this Act shall have any force or effect unless duly published in the "London Gazette" on or before that date.

Interpretation

61. In this Act—

The words "as the Queen may direct" mean as Her Majesty may direct by any Order in Council issued in pursuance of section three of this Act, but not otherwise.

Schedule.

Oath of Allegiance.

I, *A.B.*, do swear, That I will be faithful and bear true allegiance to Her Majesty Queen Victoria.

NOTE.—*The name of the Sovereign of the United Kingdom of Great Britain or Ireland for the time being is to be substituted from time to time*

with proper terms of reference thereto.
