

INTRODUCTION

In 1904 a proposal was made by the Public Archives to edit and print a series of documents relating to the constitutional history of Canada between 1759 and 1867. Three volumes have been published, illustrative of developments to 1818. In the present volume the story is continued to 1828, a period closing with the Report of the Canada Committee.

The documentary material for a study of Canadian constitutional history is necessarily varied, since it must cover both that dealing with the Colonial Office as well as with internal development. It consists in the first place of statutory law, both British and Canadian, and in very close relationships, court decisions, the opinions of law officers and of the legal adviser to the Colonial Office. In a second category may be placed Proclamations and Orders in Council. From these two classes may be drawn the legal framework of the constitutional structure.

Aside from the actual law of the constitution, there exists a body of precedent built up through executive and administrative action. In order to understand this, one must be conversant with the commissions and instructions of the Governors, Lieutenant-Governors and other officials charged with the administration of Colonial affairs, as well as with the correspondence between the Governors, Colonial Secretaries and other departmental officials.

The reports, resolutions, addresses and debates of legislative bodies, while not a part of the constitutional law, are none the less of great importance. They constitute a body of considered and responsible opinion upon which both statutory and administrative law has, in many instances, been based. Of a like nature are the opinions given by individuals whose advice carried weight with the executive or legislative branches of Government. Finally there remains a body of miscellaneous material, comprising petitions representative of the wishes of large sections of the country, private correspondence, and opinions expressed in the public prints. A careful examination of all these sources has been the first step in the preparation of this book.

Passing to a more detailed analysis of this period one finds a marked structural change as a result the British statute, 1 & 2 Geo. IV, cap. 66 (printed at page 36), whereby civil jurisdiction was extended to the western territory. Statutes of this nature require little by way of commentary. Difficulties of a constitutional nature creep in however, when considering the statutes of Upper and Lower Canada. The question of *ultra vires* must be borne in mind, and it will be seen that this problem was raised frequently during these years. One instance of disallowance of legislation on such grounds may be seen in the document dealing with the Parochial Subdivisions Bill (pp. 287-290). In considering this case, it becomes apparent that Colonial legislative power was restricted during this period by the provisions of the Constitutional Act of 1791. Since this document has been printed in an earlier volume, it may be well to recapitulate here those clauses which define the legislative power. By clause 2