bill to be passed during the then current session. No such bill was, however, passed.

> "XII And bee it further declared and enacted by the Authoritie aforesaid, that from and after this present session of Parlyament noe dispensation by non obstante of or *to any statute or any part thereof* shall be allowed but that the same shall be held void and of noe effect except a dispensation be *allowed of in such statute* and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of Parlyament."

It is true that in the *Case of Eton College* [57] the words "as it hath been assumed and exercised of late" were to save the validity of old dispensations. But even if those qualifying words be taken as a parliamentary view that some sort of dispensing power did exist at common law, it is well settled that the courts are not bound by mere legislative assumptions as to the law. "The rule is that Parliament does not alter the law merely by betraying an erroneous opinion of it." [58] The *Case of Eton College* could if necessary be supported on the basis that the qualifying words in the Bill of Rights actually operated to give to some or all old dispensations a validity which they would otherwise have lacked. Despite the contrast between Parliament's unqualified condemnation of the suspending power and its qualified condemnation of the dispensing power, it would be open to the courts to hold that, at common law, both were equally abuses, and that, rightly understood, the common law admitted neither dispensing power nor suspending power.

In any event, section XII makes clear that for the future there was to be no dispensing power save under statutory authority. No such bill as contemplated ever having been carried, the only source for a dispensing power can lie in the terms of particular statutes which, as has been noted in paragraph 97 of this Report occasionally do grant such a power.

The application of the Bill of Rights throughout Canada is universally accepted [59] admits of no doubt and need not be considered.

It has to be observed at once that the dispensing power had been used in connection with statutes and that the substantive provisions of section XII of the Bill of Rights speaks only of statutes, no mention being made of delegated legislation which, though not unknown (Vide Statute of Proclamations 31 Hen. VIII C.8 1539), was not common. The outlawing of the dispensing power in clause 2 of what is commonly known as the Declaration of Rights, reproduced in the preamble to the Bill of Rights, refers to "laws" and not to statutes, but is qualified by the words "as it hath beene assumed and exercised of late ...". It would be possible, therefore, to put forward the argument that it remains lawful for the Crown to dispense with delegated legislation except in the classes of case in which James II exercised the power. It is submitted that such an argument can be safely set aside and the illegality of the dispensing power extends not only to dispensing with statutes, but also to dispensing with laws, however made. This is so for several reasons. First, the qualifying words "as it hath beene assumed and exercised of late" have been construed as being for the purpose of saving the validity of old dispensations granted before the evil events of the reign of James II: *Re Case of Eton College* (1815). Secondly, subordinate legislation, if validly made, has the full force and effect of a statute, [60] *Dale's Case*, [61] *Kruse* v. *Johnson*, [62] *Institute of Patent Agents* v. *Lockwood*, [63] *Reference Re Japanese Canadians*, [64] and it would be absurd to suggest that, although having the full force and effect of a statute delegated legislation is different in quality in being subject to a royal or other power of dispensation. Thirdly, the members of the Convention and of the first Parliament of William and Mary were necessarily legislating within the frame of reference of their own time in which law was almost always made by statute, and indeed, of a time in which Parliament legislated with a particularity and attention to detail which today would be regarded as picayune. The words of section XII of the Bill of Rights cannot, therefore be confined narrowly to statutes *strictu sensu* but extend to legislation made by or under the authority of a statute. Wherefore, the principle can be asserted that the Bill of Rights abolished entirely the Crown's right to dispense with laws in advance (as distinct from the right to pardon those who offend against laws) and that any dispensation, to be lawful, must be referable to an enabling power within a statute. Thus, it is that, as has been seen, some statutes do expressly provide that there shall be a dispensing power in connection with the provisions of the respective statutes, the regulations made under them or both.

Canada Shipping Act, section 482 (1)

> "Nothwithstanding anything in this part, the Minister, on the recommendation of the Chairman of the Board of Steamship Inspection, may relieve any Canadian ship or the owner of any such ship from compliance with any of the provisions of this Part or regulations made thereunder relating to steamship inspection ... in any specific case of emergency where the Minister may deem it necessary or advisable in the public interest ..."

Aeronautics Act, section 14 (1)

> "The Commission may make regulations
>
> ...
>
> (*g*) excluding from the operation of the whole or any portion of this Part or any regulation, order or direction made or issued pursuant thereto, any air carrier or commercial air service or class or group of air carriers or commercial air services."

How then can a power to dispense with subordinate legislation be thought to exist?

The first argument that is put is that because Parliament can dispense with the laws it makes, and can enact sections which read "nothwithstanding any law, or any section of this or any other Act ..." so too can the Governor in Council (or the Minister, Regional Director, etc.) dispense from the laws he makes. This is once again to assert that the delegate is in the same position as is Parliament, to assert that subordinate law is not truly subordinate at all. It is to give to the delegate all the powers that Parliament has. This is nonsense. The Queen in Parliament is sovereign. The Governor in Council,