

the House or its committees. Colonial legislatures early claimed to possess these "powers" to the same extent as they were exercised by the Imperial Parliament, and it was in reference to this claim to powers which savour somewhat of the jurisdiction of the courts and trench somewhat upon the liberty of the subject that question was raised in colonial courts and finally debated before the Privy Council in England. The claim was negatived, as was more fully pointed out in the former paper. The Colonial Laws Validity Act, however, now confers upon every representative legislature full authority to legislate respecting its "powers," but it is manifest that in this matter of "powers" that Act does not apply to our federal parliament, because the B.N.A. Act (in sec. 18 as amended in 1875) expressly provides that the parliament of Canada must not confer upon itself or its members powers, privileges or immunities beyond those from time to time possessed by the Imperial Parliament and its members. Ours is not "full power." We may only follow in their footsteps.

A perusal of the clauses of the B.N.A. Act, which provide for the "constitution" of the parliament of Canada makes it equally clear to my mind that the "full power" mentioned in the Colonial Laws Validity Act cannot be claimed on behalf of our federal parliament. To repeat what has already been said, if we find that these clauses prescribe, step by step, what the form of organization is to be, that in what the form of organization is to be, that in some of them power to alter the form prescribed is expressly given, while in others no such power is conferred, the maxim above quoted applies, and we must conclude that where the power is not given it does not exist. To show just how this alternate insertion and omission occurs throughout these clauses I run them over shortly, italicizing the various provisions which the parliament of Canada is expressly empowered to alter.

The Parliament of Canada is to consist of the Queen, the Senate and the House of Commons. There are to be yearly sessions.

The Senate is to consist of 72 members, 24 from each of the three divisions—Ontario, Quebec and the Maritime Provinces—of which Canada is to be deemed to consist "in relation to the constitution of the Senate." Under certain circumstances the Governor-General may, upon Her Majesty's direction, appoint three or six additional senators, equally from each of the above divisions. Certain qualifications, property residential and otherwise, are prescribed for members of the Senate. Their appointment is to be by the Crown for life, subject to a possible subsequent disqualification in certain specified events. The Governor-General may from time to time appoint a senator to be Speaker of the Senate, and may remove and appoint another in his place. The presence of at least 15 senators, including the Speaker, shall be necessary to constitute a quorum. A majority vote, including that of the Speaker, is to govern, the negative when the voices are equal.

The House of Commons is to consist of elected members, elected for certain specified electoral districts. The election laws in force in the respective provinces regulating the qualifications of candidates and voters and prescribing the procedure at elections and for the trial of controverted elections are to apply to the elections of members of the House of Commons of Canada. As between the pro-

vinces the principle of representation-by-population is to govern, Quebec, with a fixed number (*sixty-five*), being the pivotal province. In order to enforce the observance of the above principle, a redistribution as between the provinces must take place every ten years, founded upon the results shown by each decennial census. The House of Commons is to be presided over by a Speaker elected by the House from among its members. In case of the absence, for any reason, of the Speaker from the chair for 48 consecutive hours, the House may elect another of its members to act as Speaker during the continuance of such absence. Twenty members constitute a quorum for the transaction of business. A majority vote is to govern, the Speaker voting only when there is a tie. Subject to the exercise of the prerogative of dissolution, the House of Commons is to continue for five years from the return of the election writs.

It will be seen that the above provisions established a well-defined form of organization, in other words, a "constitution" for the federal parliament. Power to alter that form is given only in regard to the very few details which I have placed in italics. It would be an interesting task to examine these various details with a view to unearthing the reason for giving the power of alteration in each case. For such a detailed examination there is not sufficient space in a short paper, and I must content myself with pointing out that, looking at the matter broadly, power to alter is conferred only in certain matters which lie close to the line which divides "procedure" from "constitution." In regard, however, to the particular matter which has given rise to these papers, it is of interest to note that, on comparing the provisions which relate to the Speaker of the House of Commons with those which touch the Speaker of the Senate, there is the clearest ground for applying our maxim. Power is expressly given to the Parliament of Canada to provide for the case of an absent Speaker of the Commons. None is given in the case of an absent Speaker of the Senate.

All the arguments hitherto advanced lead up to and support the one great argument against the possession of constituent powers by the Parliament of Canada, namely, that the B.N.A. Act throughout all its clauses recognizes the fact, historically indisputable, that the constitution of the federal parliament was matter of agreement between the federating provinces. We have the authority of the Privy Council for saying that "the object of the Act was neither to weld the provinces into one nor to subordinate provincial governments to a central authority, but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest." The word "federal" carries with it the idea of a central government, the constitution of which has been agreed upon by the parties to the federal compact. Among colonial constitutions that of the Parliament of Canada is unique. As yet it has no counterpart throughout the British Empire. We should, then, expect that if any alteration in the constitution of our federal parliament is at any time contemplated, the parties to the federal compact should be consulted. We certainly should not expect to find that the federal parliament has been given power to alter of its own motion the federal constitution. The same

reasoning does not apply to the provincial constitutions and consequently it is not matter of surprise that each provincial legislature is expressly empowered to amend its constitution from time to time "except as regards the office of Lieut.-Governor." The application of our maxim leads to a conclusion in consonance with our reasonable expectation; a clause conferring general power on a federal parliament to alter its constitution is just what we should not expect to find. None of the arguments in favor of giving constituent powers to those colonial legislatures which possess the sole legislative power within a single colony, (subject always, of course, to the ultimate supremacy of the Imperial Parliament) are applicable to a federal body such as the Parliament of Canada. Those who contend that our federal parliament has constituent powers other than those expressly conferred must, to be logical, carry their contention to the extent of sanctioning, for example, the abolition of the Senate by dominion legislation, or the abandonment through like legislation of the principle of representation by population, which now obtains as between the various provinces; must contend, in short, that the federal parliament can of its own motion and without reference to the provinces, subvert those features of our federal constitution which were originally carefully considered and agreed upon as the basis of confederation.

I should, perhaps, before closing this article advert to the argument lately advanced in certain quarters that the language of sec. 91 of the B. N. A. Act is sufficiently wide to confer the power in question to the parliament of Canada. This is the section which, under the heading "Distribution of legislative powers: Powers of parliament," enumerates the classes of subjects in relation to which the Parliament of Canada may pass laws. The section does not touch the question. Given the Parliament of Canada constituted in conformity with the requirements of the earlier clauses of the Act, sec. 91 proceeds to define the field for its legislative operation. "Given the machine, this is the work it may undertake." No clause of the section conveys the power to make constitutional changes, and the fact that in the following section which defines the field for the operation of provincial legislation there is an express clause conveying such power to provincial legislatures over the provincial constitutions is, as I have already pointed out, an almost conclusive argument against the possession of constituent power by the Parliament of Canada except in regard to those few details over which such power is expressly given.

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## CANADA FROM AN ARTIST'S POINT OF VIEW.—II.

In our last paper we touched on a few of the salient points of Canadian scenery in a cursory manner. Now it is proposed to particularize a little more as to the special features and characteristics belonging to the landscape of each of the Provinces of the "larger half of the continent," and it may be hoped that the adaptability of the country for the purposes of the artist in all the various fields and phases of art, will be more apparent as we progress towards the setting sun.

For, naturally, following the course of civilization and of the first settlers on the continent, we commence at the eastern coast, where