

2. Upon the powers of the Imperial Parliament concerning future legislation for Canada ?

The discussion following will, therefore, be confined to these general heads, touching the question of copyright only incidentally, as the constitutional enquiry has to deal with the powers of the Dominion Parliament with respect to all the subjects enumerated in section 91 of the British North America Act.

Lord Carnarvon, Secretary of State for the Colonies, answered the first question by declaring that the Canadian Parliament never had, nor did the B.N.A. Act confer, the power to alter or repeal, without the assent of the Imperial Parliament, imperial enactments relating to Canada. And, in reply to the second, that the Imperial Parliament had not relinquished its power to pass legislation at any time that should extend to Canada. On the other hand, the contention herein made is that Canada may repeal or alter pre-Confederation imperial legislation relating to Canada ; and that the power of the Imperial Parliament to deal with Canada with reference to the subjects enumerated in the B.N.A. Act is confined to the exercise of the power of disallowance mentioned in that Act.

Before approaching the particular matters involved herein a word may be said as to the position held by Canada in the British Empire in relation to the authority of the Imperial Parliament. The cases speak without hesitation or ambiguity upon the point : "In relation to the supreme authority of the British Parliament, Canada, in its composite character, forms a complete and separate subordinate government" (*b*). Again, there is the clear-cut expression of opinion by Mr. Justice Crease that the Imperial Parliament has "an absolute and complete sovereign power" (*c*). Case after case determines the same point, and, indeed, no expression of opinion can be found to the contrary. To be entirely consonant with its colonial status Canada must ever admit that the Imperial Parliament, except as restricted by its own act, has the power and the right to enact laws that shall obtain in the colonies, the only question to be entertained by the home government being entirely one of expediency.

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(*b*) *Attorney-General for Canada v. Attorney-General for Ontario* (1890) 20 O.R. 245. See, also, per Lord Mansfield in *Campbell v. Hall*, 1 Cowp. 204.

(*c*) *The Thrasher Case* (1890), 1 B.C. (Irving) 214.