

LEADING CASES
IN
CANADIAN CONSTITUTIONAL LAW

INTRODUCTION

Mr. Thomas introduces his 'Leading Cases in Constitutional Law,' referred to in the Preface, with the words:—"Where there exists a body of laws regulating the distribution and exercise of the supreme power in a community, and a Court entrusted with its interpretation, the term constitutional law has a very definite application. That is the case, for example, in the United States." The same is, also, the case in a lesser degree in Canada. So far as the constitutional law of this Dominion is governed by the British North America Act, these words apply to us; but so far as it is pure English, as it is in fundamentals other than the distribution of legislative power within Canada, Mr. Thomas' next sentence applies to us, as well as to England:—"In England, on the other hand, where there is no written Constitution, this law exists in a much looser shape, and can only be collected from legal decisions, parliamentary precedents, and actual practice."

But even so far as our constitutional law is governed by the British North America Act, it could no more than the Constitution of the United States, be developed and applied without the assistance of the Courts. When the text of our written organic instrument, — the Federation Act — is explicit, it is conclusive; when it is ambiguous, recourse must be had for