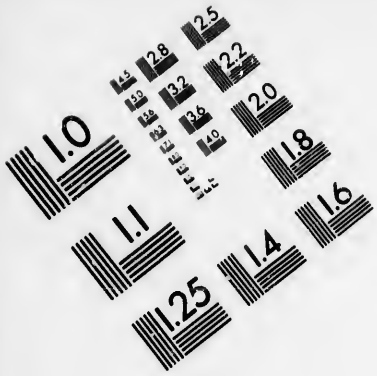


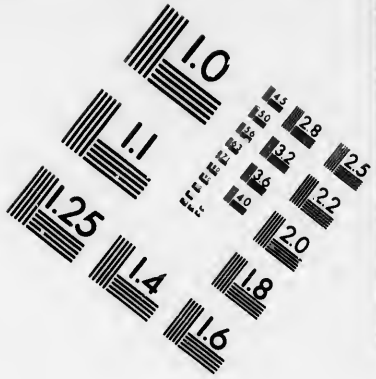
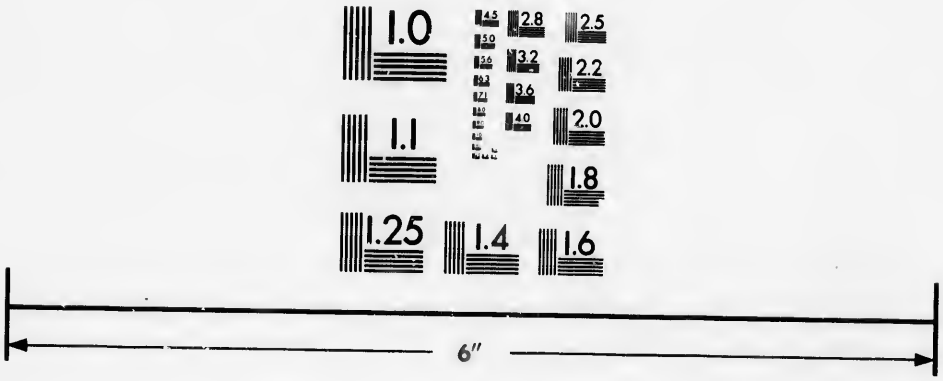
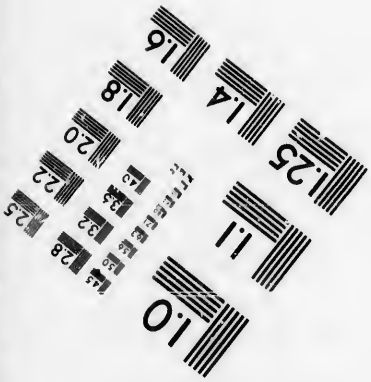
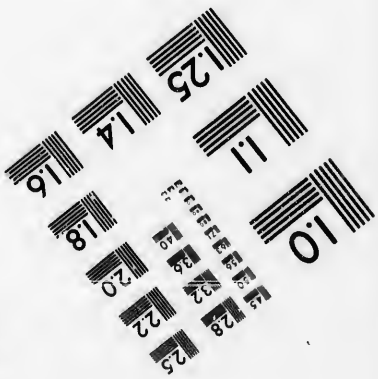


IMAGE EVALUATION
TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages/ Pages de couleur
- ☑ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
						✓					

The copy filmed here has been reproduced thanks to the generosity of:

Douglas Library
Queen's University

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:

L'exemplaire filmé fut reproduit grâce à la générosité de:

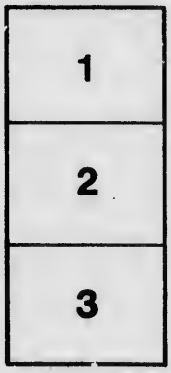
Douglas Library
Queen's University

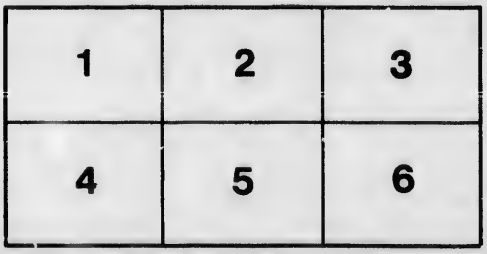
Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.





DURATION

OF THE

LEGISLATIVE ASSEMBLY

OF

ONTARIO.

BY

ALFRED H. DYMOND.

REPRINTED FROM ROSE-BELFORD'S CANADIAN MONTHLY AND NATIONAL REVIEW, FOR APRIL, 1879.

Toronto:

PRINTED BY HUNTER, ROSE & CO., 25 WELLINGTON ST.,

1879.

THE

DURATION OF THE LEGISLATIVE ASSEMBLY.

THE question at what particular date the present Legislative Assembly of Ontario should be regarded as having run its course and ceased to exist by effluxion of time, has a historical, rather than a controversial interest. It was discussed mainly in that sense during the recent session of the Legislature, and less with the view of imputing blame or censure to the responsible advisers of the Executive—for no motion was submitted to the House, which had met as usual at the season most consistent with public convenience—than as a precautionary step, having regard to the protection of public and private interests against any possible contingencies arising from the transaction of business after the termination of the four years during which the Local Parliament has a legal existence. The subsequent proceedings of the Legislature afforded of themselves a sufficiently emphatic declaration of confidence in its own vitality, and may be assumed to have removed the matter beyond all occasion for doubt, if doubt on the subject ever really existed. It is not, however, amiss in this very practical age, to refresh our minds occasionally with enquiries of this nature, and it is in a spirit of enquiry and suggestion, certainly not as one entitled to speak with personal authority, that the writer of the following pages submits the results of his investigations into the practice or usage, and law of parliament, as they bear upon the points under discussion :—

THE USAGE OF PARLIAMENT.

In Magna Charta the course to be followed in summoning the Common Council of the Kingdom is described as follows :

'And also to have the Common 'Council of the Kingdom (parliament), 'to assess and aid, otherwise than in 'the three cases aforesaid : * and for 'the assessing of scutages (taxes), 'we will cause to be summoned 'the Archbishops, Bishops, Abbotts, 'Earls, and great Barons, individually 'by our Letters. And besides, we 'will cause to be summoned in general 'by our Sheriffs and Bailiffs ALL those 'who hold of us in chief, at a certain 'day, that is to say at the distance of 'forty days (before their meeting), at 'the least, and to a certain place ; and 'in all the letters of summons, we will 'express the cause of the summons ; 'and, the summons thus made, the 'business shall proceed on the day ap-'pointed, according to the counsel of 'those who shall be present, although 'all who had been summoned have not 'come.'

We have here : (1) The declaration in express language that ALL entitled to be summoned shall be summoned. (2) Ample time allowed—any haste or emergency notwithstanding—for ALL to reach the place of meeting; and, (3) The submission to, or suspension in favour of a rule or law, of the Prerogative. No parliament could be a true and legal parliament under the Great Charter if held before the expiration of the '*forty days at least*' allowed for the notification (or election) of the members, or, in other words, until every one had a fair opportunity to attend.

* To redeem the King's person ; to make the King's eldest son a knight ; and, once to marry the King's eldest daughter.

The provision of the Great Charter above referred to was embodied in the Statute 7 and 8 William III., which enacted that forty days should elapse between the teste and the return of the writs of summons for the election of a new parliament. But when, by the Act of Union of England and Scotland, 6 Anne, c. ii., the Parliament of England became the Parliament of Great Britain, by reason of the remoteness of some of the constituencies in Scotland, it was provided that the space of fifty days should be allowed for the return of the writs summoning the first United Parliament, and it became the custom to allow fifty days at least thereafter. On the Union of the Parliament of Ireland with that of Great Britain, sixty-one clear days were allowed by the first summons, fifty-two days by the second and third, and fifty-five days by the fourth. Means of travel and communication having been greatly improved and facilitated, the time was, by the 15th Victoria, c. 23, reduced to, and is still fixed for Great Britain and Ireland, at thirty-five days. So, from the earliest period of British Parliamentary Government to the present day, the curtailment of the prerogative right of the Sovereign to summon Parliament—no matter how pressing the occasion—in favour of the right of ALL to be represented has been tolerated and legalized.

The legislation of Canada is based on the same principle. By the Union Act for Canada (3 and 4 Vic., c. 35, Imp.), fifty days were to be allowed until otherwise provided by the Parliament of Canada. And, by the 14th and 15th Vic., c. 87 (Canada), the time was expressly enlarged in favour of Gaspé, and Chicoutimi and Saguenay to ninety days. It may here be remarked that not only has no instance occurred in which Parliament has met before the elections for the constituencies just mentioned have been held, but, having regard to the jealousy with which the due apportionment of representation between Upper and Lower Canada was viewed, and the often very evenly-balanced state of parties in the old Canadian Assembly, it is impossible that any legislation should have contemplated the meeting of the House with three Lower Canadian Electoral Districts unrepresented.

By the British North America Act, 30 and 31 Vic., c. 3., the District of Algoma first received representation. And, by the 32 Vic. c. 21 (Ontario), while forty days was the period assigned for the return of the writs generally, ninety days were allowed at certain seasons for the return for Algoma. The clause relating to Algoma is as follows :—('Sec. 18, sub-sec. 4.) 'There shall be forty days between 'the teste and the return of every 'writ of election : Provided always 'that in the case of the District of 'Algoma there shall be ninety days 'between the teste and return of any 'writ of election issued between the 'fifteenth day of October and the 'fifteenth day of March following . '. . . and that such polls shall be 'opened and held only at the following places, ... and (in case 'the polling shall take place between 'the first day of May and the first day 'of November following), at Fort 'William.' By the 38 Vic., c. 3, sec. 21, it was provided that 'no nomination or poll should be held in the 'District of Algoma except during 'the months of June, July, August, 'September, or October.' By the 39 Vic., c. 10, sec. 13, the provisions of the Electoral Law in regard to Algoma were somewhat further modified. The section reads as follows :—'The nomination in the Electoral District of 'Algoma shall not take place less than 'fifteen days nor more than twenty 'days after the proclamation was 'posted up ; and the day for holding 'the polls shall be the fourteenth day 'next after the day fixed for the 'nomination of candidates. . . . 'The nomination, or polling, may be 'held in any year at some time from

'the twentieth day of May to the end 'of November, and between those 'days only.'

The spirit or intention of all three Statutes was evidently the same—namely, that all possible means should be used to secure the representation of Algoma in the Legislative Assembly, either by allowing a lengthened period to elapse between the issue and return of the writ, or by holding the election only at a time of year when all parts of the territory were accessible.

By the Dominion Elections Act of 1874 (37 Vic., c. 9, sec. 2), it was, for the first time, provided, that—with certain exceptions (specially named)—all the elections in the Dominion should (at a general election) take place on one and the same day. The exceptions were—the several electoral districts in the Provinces of Manitoba and British Columbia; the electoral districts of Muskoka and Algoma, in the Province of Ontario; and the electoral districts of Gaspé, and Chicoutimi and Saguenay, in the Province of Quebec. By section 14, it was enacted that, within twenty days after the reception of the writ in the electoral districts in British Columbia, and in the electoral districts of Muskoka and Algoma, in Ontario, and Gaspé, and Chicoutimi and Saguenay, in Quebec, and within eight days in the other electoral districts of the Dominion, the Returning Officer shall issue his proclamation, &c. The nomination in any of the aforesaid electoral districts, excepting Chicoutimi and Saguenay, is not to take place less than fifteen days, nor more than thirty days after the proclamation has been posted up. In Chicoutimi and Saguenay, the time allowed is to be not less than eight nor more than fifteen days, the same space of time being allowed for the appointment of the polling. In other electoral districts 'at least eight days' is to be allowed for notice of the nominations, and the polling is to be seven days thereafter. The object in this legislation was clearly the same as in that of the Province of Ontario—namely, to secure the representation of ALL in the Parliament to be elected. And in all these arrangements we see just the same abridgment of the Prerogative that was implied in the forty days' notice secured by Magna Charta.

PARLIAMENTARY PRECEDENTS.

On the 9th day of February, 1820, Mr. James Monk, then acting as Administrator of the Government of Lower Canada, dissolved the Legislature of that Province, and, by the same proclamation, directed the calling of a new Legislative Assembly. The proclamation concluded as follows:—

'And we do, hereby, further de-'clare, that we have this day given 'orders for issuing our writs in due 'form for calling a new Provincial 'Parliament in our said Province, 'which writs are to bear *teste* on Tues-'day the 22nd day of February inst. 'and to be returnable on Monday the 'eleventh day of April next, for every 'place except the County of Gaspé, 'and for the County of Gaspé on 'Thursday the first day of June next.' Notwithstanding the exceptional appointment as to Gaspé, the Houses were called together on the 11th of April. Whereupon, on the motion of Mr. Blanchet, seconded by Mr. Bureau, the Clerk of the Crown was ordered to appear and lay before the House copies of the proclamation, the writ for Gaspé, and returns to the several writs received. By this means the Assembly was officially seized of the fact, that the return for Gaspé had not been received, but that the date for its return had been anticipated by the calling together of the House at the earlier day above-mentioned. Having gone into Committee of the Whole to consider whether the House was competent to proceed constitutionally to the despatch of business,

and the documents relating to the election having been referred to the Committee, the Committee reported the following resolutions:—'*Resolved.*—That it is the opinion of 'this Committee, that, according to 'the proclamation of His Honour, the 'President and Administrator of the 'government of this Province, bearing date the ninth day of February 'last, the representation of this Province is not as yet complete, inasmuch as the day fixed by the said 'proclamation as the return day of the 'writ of election for the County of 'Gaspé is not yet arrived. *Resolved*, 'That it is the opinion of this Committee that the writ of election for 'the County of Gaspé being dated the '22nd of February last, and returnable on the 11th of the month of 'April inst., is contrary to the said 'proclamation, and to the Provincial 'Act of the 42nd year of the reign of 'His Majesty George III., chapter '3.* *Resolved.* That it is the opinion of this Committee that, according to the enactments of the Act of 'the Parliament of Great Britain, of 'the 31st year of His Majesty George 'III., chapter 31, intituled "An Act 'to repeal certain parts of an Act 'passed in the 14th year of His Majesty's reign, intituled, 'An Act for 'making more effectual provision for 'the Government of the Province 'of Quebec, in North America,' and 'to make further provision for the 'Government of the said Province," 'this House is incompetent and can 'not proceed to the despatch of business.' The several resolutions were put separately and concurred in. They were then unanimously adopted. The House next proceeded to nominate a Committee to wait upon the Administrator and request him to appoint a time for the presentation of the resolutions. But further proceedings in the matter were suddenly arrested by the news arriving of the death of the King, which had the effect of dissolving the Parliament.

The Lower Canada Legislature did not, it will be observed, refuse to proceed merely because the representative from Gaspé was not in his place, but because the Executive in convening Parliament for the despatch of business had violated the terms of the proclamation issued under a law which ensured to Gaspé a longer and necessary interval wherein to hold the election. The case is precisely analagous to that of Algoma under the Ontario Act, by virtue of which the writs generally, for the general election of 1875, were made returnable by proclamation on the 2nd February, and the writ for Algoma on the 14th August, while the nominations and pollings were respectively held on the 11th and 18th of January in the other electoral districts. That so long a time was allowed in the case of Algoma after the 20th May may be attributed to the fact that, the Legislature having held its annual session in November and December, 1874, no necessity for haste presented itself. Had the Ontario Legislature been called for the despatch of business prior to the 14th August, a protest similar in terms to the one adopted by the Lower Canada Assembly would doubtless have followed.

The action of the Legislative Assembly of Lower Canada was fully in accordance with at least one eminent authority. In the year 1744 the Governor of New Hampshire, Mr. Benning Wentworth, acting upon his interpretation of the powers vested in him by virtue of his commission, and those of his predecessors in the same office, undertook to issue writs

* The Act provides as follows:—'Whereas, from the remote and local situation of Gaspé, it has been found from experience that the fifty days prescribed for making the returns aforesaid are insufficient for that purpose, be it enacted . . . . that it shall and may be lawful for the Governor to extend the period in which any writ for a member to serve in the Provincial Parliament for the County of Gaspé aforesaid shall be made returnable to a number not exceeding ONE HUNDRED days from the day on which the writs of election for the aforesaid County of Gaspé shall hereafter be dated, any law to the contrary notwithstanding.'

for the election of five new members to the Colonial Assembly, representing as many towns or districts that had not previously enjoyed the right of representation, although contributing to the public revenue. Whereupon the Assembly, constituted of the old members, or representatives of districts previously electing members, before even proceeding to the choice of a Speaker, refused to admit the new members, and, having excluded them, then went on with the public business. The Governor referred to London for instructions, and a statement of the case was submitted to the Attorney and Solicitor-General for the time being. The Attorney-General was Sir Dudley (afterwards Chief Justice) Ryder, and the Solicitor-General, was Sir William Murray, afterwards the great Lord Mansfield. These distinguished lawyers held, and advised the Crown, that the action of the Governor was legal and consistent with the relations of the Colony to Imperial authority. But, and this is the point bearing on our present discussion, they also submitted :—'It might be advisable for His Majesty to send positive instructions to the Governor to dissolve the Assembly as soon as conveniently may be, and when another is called, to send writs to the said towns (the new districts) to elect representatives, and support the right of such representatives when chosen.' The case is reported in 'Chalmer's Colonial Opinions,' p. 271 *et seq.* That the Assembly in this instance was allowed to continue in session at all was clearly due to the impossibility, having regard to time and distance, of prompt action, under the necessary advice, being taken by the Governor.

An episode in the Parliamentary history of Ontario, while not affording any positive precedent, still gives an indication both in its incidences and the legislation that grew out of it, of the care taken by Parliament to ensure a complete representation. After the Ontario general election of 1871, all the writs had been returned long before the new House assembled for the transaction of business. In the meantime several seats had become vacant; one by reason of a double return, one by reason of the resignation of a member-elect, and six from elections having been declared void by the judges whose intervention had been invoked for the first time for the trial of election petitions in this Province. On the first paragraph of the Address in reply to the Speech from the Throne being put from the Chair, an amendment was moved expressing censure of the Government of Mr. J. Sandfield Macdonald. This gave rise to a protracted debate, and, on the following day, an amendment to the proposed amendment was moved, with the concurrence of the Government, by Mr. McCall, member for South Norfolk, seconded by Mr. Graham, member for West Hastings, as follows :—

'That, inasmuch as one-tenth of the 'constituencies of this Province remain 'at this time unrepresented in this 'House, by reason of six of the mem- 'bers elected at the last election having 'had their seats declared void, and a 'seventh having become vacant by rea- 'son of a double return, and an eighth 'by reason of the resignation of a 'member elected thereto, it is inexpe- 'dient further to consider the question 'involved in the amendment until the 'said constituencies are duly represen- 'ted on the floor of this House.'

The House refused to accept the amendment, not so much because its proposition was on the face of it unreasonable—seeing that it was by its own defective legislation some of the seats were then vacant pending the issue of new writs—as because an adjournment was evidently suggested as the *dernier resort* of a Minister who had already admitted the competence of the Assembly by inviting it to express confidence in him by voting the Address, while, at the same time, disputing its right to condemn. Mr. Sand-

field Macdonald however refused to yield his post in face of a succession of adverse votes, until ultimately defeated by a majority equal to a majority of the whole House. And, immediately after the new Government had been installed in office and had met the Legislature, an Act was passed whereby power was given to the Speaker, or if there were not a Speaker, to the Clerk of the House, to issue his writ to the Clerk of the Crown in Chancery for a new election, immediately on the receipt of the Judge's report of an election having been declared void. (35 Vic. c. 2, s. 4.) The same provision is made in the Dominion Controverted Elections Act, 1874 (37 Vic. c. 10, sec. 36). Moreover, so jealous is Parliament of the right of constituencies to be represented, that it even prefers to allow a member charged with corrupt practices to sit and vote rather than, by permitting a trial, at which his attendance is necessary, to proceed during the session, to take him away from his duties. (38 Vic. c. 10, s. 1, Dominion Statutes; Consolidated Statutes, Ontario, c. 11, s. 48.)

THE LAW RELATING TO THE HOLDING AND DURATION OF THE LEGISLATIVE ASSEMBLY OF ONTARIO.

While, undoubtedly, the prerogative power is vested in the Lieut.-Governor of calling together, of proroguing and of dissolving the Legislature, this power is subject—as in fact is that of the Sovereign—to statutory limitations. By the 65th section of the British North America Act (30 and 31 Vic. c. 3) it is enacted:—'All 'powers, authorities, and functions, 'which, under any Act of the Parliament of Great Britain, . . . or of the 'Legislature of Upper Canada, Lower 'Canada, or Canada, were or are before or at the Union, vested in or exercisable by the respective Governors 'or Lieutenant-Governors of those 'Provinces, ... shall, so far as the 'same are capable of being exercised 'after the Union in relation to the 'Government of Ontario and Quebec 'respectively, be vested in and shall or 'may be exercised, by the Lieutenant-'Governor of Ontario and Quebec re-'spectively, . . subject nevertheless '(except with respect to such as exist 'under Acts of the Parliament of Great 'Britain), to be abolished or altered 'by the respective Legislatures of On-'tario and Quebec.' By the 92nd section of the British North America Act it is enacted, that the Provincial Legislatures may exclusively make laws in relation to certain subjects, and the first recited is: 'The amendment, 'from time to time, notwithstanding 'anything in this Act, of the Consti-'tution of the Province, except as re-'gards the OFFICE of Lieutenant-Gov-'ernor.' Read in connection with the 65th section the term '*office*' must, it is submitted, be understood as meaning the office or appointment *per se*, with which, as it is conferred by Dominion authority, the Provincial Legislatures cannot interfere. It cannot mean the 'powers, authorities and functions' *incidental* to the office, because they can, as the 65th section expressly provides, be 'abolished or altered' by the Legislatures at pleasure.

It may not be out of place here to notice, as possessing a certain significance, the different language employed in the British North America Act in regard to the summoning of the Legislatures of the present Provinces by the Lieutenant-Governors, from that of the Act of Union (3 and 4 Vic. c. 35) in defining the powers of the Governor of Canada. It may be convenient to place the respective enactments in parallel columns:

UNION ACT.	B. N. A. ACT.
3 & 4 Vic. c. 35, s. 30.	30 & 31 Vic. c. 3, s. 82.
'And, be it enacted, That it shall be lawful for the Governor of the Province of Canada, for the time being, to fix such place or places within any	'The Lieutenant-Governor of Ontario and Quebec, shall, from time to time, in the Queen's name by instrument under the Great Seal of the Province,

part of the Province of Canada and such times for holding the first and every other session of the Legislative Council and Assembly of the said Province as he may think fit, such times and places to be afterwards changed and varied, as the Governor may judge advisable and most consistent with general convenience and the public welfare, giving sufficient notice thereof; and also to prorogue the said Legislative Council and Assembly from time to time and dissolve the same by proclamation or otherwise whenever he shall deem it expedient.'

summon and call together the Legislative Assembly of the Province.'

It may be inferred that the framers of the later Act, which conferred on the Provinces of Ontario and Quebec a power to make changes and constitutional amendments, which function did not appertain to the Legislature of Canada, intended to invest the Lieut.-Governors of Ontario and Quebec with no greater prerogative powers than were essential to the free working of the constitution as it might from time to time be altered or amended, and contemplated such legislation, as, in respect of the summoning of Parliament, would make their duties purely ministerial. Hence probably the contrast between the Act of 1867 and the Act of 1841, in this particular.

The British North America Act further provides: (Sec. 85.)

'Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec, shall continue for four years from the day of the return of the writs for choosing the same (subject, nevertheless, to either being sooner dissolved by the Lieutenant-Governor of the Province), and no longer.' And, by the 86th section, it is provided:—'There shall be a session of the Legislature of Ontario and of that of Quebec, once at least in every year, so that twelve months shall not intervene between the last sitting of the Legislature in each Province in one session, and its first sitting in the next session.'

No change has been made by the Legislature of Ontario in its constitution in the foregoing respects. In regard to one constituency, Algoma, it is, as we have already seen, provided (39 Vic. c. 10, sec. 13) that the election for the Local Legislature shall be held between 'the twentieth day of May and the end of November,' while in the Dominion Act (37 Vic. c. 9, sec. 14) the peculiar circumstances of the district of Algoma are met by an enlargement of the time allowed for the issue of the proclamation by the Returning Officer and the holding of the election. Both Statutes clearly contemplate the same object, although the Provincial Act gives a greater latitude to its provisions, than does that of the Dominion. There are special reasons for this, and in these will be found a cogent argument in favour of the claim of Algoma to be represented, even at some apparent occasional inconvenience to the other portions of the Province.

SPECIAL CLAIMS OF ALGOMA.

(1) In area, Algoma probably embraces $\frac{3}{5}$ths of the whole of Ontario. (2) Its interests are mainly local, and the objects consequently of Provincial legislation. (3) Its lands are, to a large extent, unpatented, and in the hands of the Crown in Ontario. (4) Its principal sources of wealth are its minerals, timber, and fur-bearing animals—all matters of Provincial legislation. (5) It is so sparsely peopled, that its local improvements and much that, in older sections, may be effected by local municipal authority must, for some time to come, devolve upon the Provincial Executive and Legislature. (6) It is to a large extent geographically isolated during the winter months, and the progress of an election at that period, owing partly to climate but much more to the absence of internal communications, is attended with much difficulty and some personal danger. Mr. Boron, the Dominion member from 1874

to 1878, nearly lost his life during his canvass in 1874, owing to the season at which the election was held. (7) Algoma contributes a very considerable sum to the Provincial revenue, and is, moreover, the subject of special taxation in the shape of a Land Tax on patented lands not included in any municipality.

It may be observed then, (1) that, whereas the interests and circumstances of most of the older electoral districts are identical, those of Algoma are special, singular and such as to establish claims to exceptional consideration. (2) That the case of Gaspé was not in any sense so strong as is that of Algoma; and (3) that, not only by exceptional legislation as respects the holding of elections, but by an exceptional suffrage, has the importance of Algoma being duly represented been recognized. In the British North America Act (sec. 84), it is provided, that until the Legislature of Ontario shall otherwise enact, in addition to persons qualified to vote under the general law of Canada, every male householder in Algoma, twenty-one years of age, shall enjoy the franchise. The Legislature of Ontario, which has surrounded the exercise of the franchise with great precautions, and established a most perfect machinery for the preparation and adjustment of the Voters' Lists, nevertheless adopts the principle of the clause in the British North America Act above quoted, and allows every male person to vote who is the owner of real estate to the value of 200 dollars, subject to six months' residence, although the name of the voter may not be on any assessment roll. It cannot then have been intended that a Legislative Assembly of Ontario should have been complete without the member for an electoral district so expressly provided for, or that, under any circumstances, Algoma should have been disfranchised.

It must be remembered we are dealing with a Local Legislature with very important functions and granted by its charter extraordinary powers over its own area of government, including even the right to change its own constitution. The principle of self-government is conceded all but absolutely. Such a body has a right to regard, and is certain to regard, ordinary public convenience as paramount to merely theoretical questions of prerogative. It was far more likely to ask itself what was the most suitable time for an election to be held in Algoma than to take account of possible or impossible constitutional exigencies. And even if a Statute worked inconvenience, although that may afford an argument for its repeal or amendment, it does not prove it to be *ultra vires* or avoid its consequences. Supposing, however, the whole election law were *ultra vires*—what then? Why the duty of the Lieutenant-Governor would obviously be to do without the Statute and by the exercise of his prerogative what he has now done under the Statute, and to summon Parliament at such time as would meet public convenience everywhere. His writ or proclamation was good, law or no law. It could only be questioned, if issued contrary to law. But the law relating to Algoma has, so far, been attended with no inconvenience, and the Legislature had before its eyes a state of things that forbade the presumption that it would be attended with inconvenience. When the ninety days' provision of the Act of 1868-9 was changed to one which limited the period for holding the election to the time between the 20th May and the end of November, the Provincial Legislature had been constituted nine years and had witnessed three general elections, all arising out of the regular operation of the constitution. The first election after Confederation was heralded by a proclamation bearing date August 7, 1867. The writs were returnable on the 24th September following. The House met on the 27th December and sat, with a short ad-

journment—from the 1st to 8th January—to March 4th, 1868. The Legislature elected in 1867, having run its course of four annual sessions, was dissolved by a proclamation dated February 25th, 1871. The writs, generally, for the new election were made returnable on the 7th April except the writ for Algoma, which was made returnable on the 27th May. The House met for business on the 7th December, 1871, and—with an adjournment consequent on a change of Administration from 22nd December, 1871, to 18th January, 1872—sat till March 2, 1872. The second Parliament of Ontario was dissolved by proclamation issued on the 23rd December, 1874. The writs for the elections generally were returnable on the 2nd of February, and that for Algoma was returnable on the 14th August, 1875. The House met for business on the 24th November, 1875, and sat till February 10, 1876. So that, the experience already had, and the knowledge present to every member of the House, that the Legislature must, ordinarily to suit public convenience, meet, as it had hitherto met, in the Fall or winter, made the arrangement as respects Algoma, a perfectly natural and reasonable one.

'The Legislative Assembly of Ontario,' says the B. N. A. Act, section 70, 'shall be composed of *eighty-two* members, to be elected to represent the eighty-two electoral districts set forth in the first schedule of this Act.' So stood the law until 1874, and in the Representation Act of that year (38 Vic. sec. 1, Ont.), it is enacted: 'The Legislative Assembly shall be composed of *eighty-eight* members; and the Province shall, for the purposes of the election of members to serve in the Legislative Assembly, continue to be divided into the several electoral districts established by "The British North America Act," each represented, as it now is, except where altered by this Act.'

Without Algoma the House could have been composed neither of eighty-two members under the former, nor of eighty-eight members under the latter statute, but only of eighty-one or eighty-seven.

We are, consequently, bound to assume that there was no intention on the part of the Legislature to disfranchise Algoma by any enactment that would make it possible to have an effectual meeting of the House, pending an election in due course of a representative from that district.

THE OBJECTIONS RAISED TO THE PRESENT LEGISLATIVE ASSEMBLY OF ONTARIO CONTINUING IN SESSION AFTER THE 2ND FEBRUARY, 1879.

The constitution having provided that the Legislative Assembly shall continue for four years from the day of the return of the writs for choosing the same (unless sooner dissolved), *and no longer*, it has been argued that, seeing that the writs, excepting the writ for Algoma, calling the Assembly, were made returnable on the 2nd February, 1875, the four years' limit must have expired on the 2nd February, 1879. To this it is very forcibly replied, 'The return of the writs means the return of *all* the writs; not of some but of the whole, not of eighty-seven but of eighty-eight.' The Legislature having provided that the election for Algoma shall not be held except at a period subsequent to the second of February—namely, between the 20th May and the end of November—and the writ for Algoma being, in accordance with this provision, made returnable on the 14th August, the Legislative Assembly could not be completely constituted until that date (August 14th), and, consequently, the four years' term would not expire until the 14th August, 1879.

It is not for one moment contended that every member must be in his place to give validity to Parliamentary proceedings. But the law, as we have already seen, is careful that whenever

the Crown calls together the Council of the nation, from no enfranchised portion of the nation shall the opportunity of being represented be withheld. If, by accident or negligence, the representative is absent, then his constituency must take the risk of any possible injury to its own or common interests. In the language of the Great Charter, already quoted, 'The 'business shall proceed on the day ap- 'pointed according to the counsel of 'those present, although all who had 'been summoned have not come.'

In the recent debate in the Legislative Assembly, Mr. Meredith, the leader of the Opposition, cited instances of the Parliament of Great Britain or Canada meeting while certain constituencies were unrepresented. He named the Knaresbro' case in 1805; the Carmarthen case, in 1831, both in Great Britain; and the Kent case in 1841, and the Kamouraska case in 1867–8, both in Canada. But not one of these is in the least applicable as a precedent in relation to the present discussion. It is alleged that Parliament has virtually caused the disfranchisement of Algoma in certain circumstances. In every one of the four cases mentioned there had merely been a failure to carry out the law, a matter against which no Legislature can absolutely provide. At Knaresbro' a by-election was required, owing to the sitting member having accepted the Chiltern Hundreds. A riot took place, which prevented the Returning Officer from obeying the writ, and a return was made by him accordingly. At Carmarthen, in 1831, there was also a riot arising out of the Reform Bill excitement. The Sheriffs consequently did not hold the election, and were censured by the House of Commons for failing to do their duty. At the Kent (Canada) election, in 1841, the Returning Officer refused to return the member who had the largest number of votes. This was reported to the House (the first Legislative Assembly of Canada after the Union) on the 15th June, its day of meeting, and, two days later, the excluded member took his seat, the return having been, by order of the House, amended in his favour. The election for Kamouraska, in 1867, was interrupted by a disturbance. A special return to that effect was made. The House of Commons referred the matter to the Committee on Privileges and Elections, and that body reported the facts, and declared the Returning Officer unfit to perform his duties. So that none of these cases bear at all upon the point at issue.

It has also been suggested as *prima facie* evidence, at all events, of the Government of Ontario having regarded the present Legislature as complete on the 2nd February, 1875, that they had advised the issue of a proclamation summoning the new Assembly to meet on that day, and it is claimed that they had thus given life to the Legislature, and so had put themselves 'out of court.' No proclamation, however, can change the law, or be valid unless within the four corners of the law. No illegality or error of the Executive, or officer of the Executive, can be set up as a plea for over-riding a Statute. But an examination of this particular proclamation, and of the circumstances under which it was issued, as well as of the practice in regard to such proclamations in the past, will show that the argument founded upon its issue is worthless. Nothing is clearer than that the proclamation fixing the 2nd February, 1875, as the day for the Legislature to meet was a mere compliance with custom or usage, and was never intended to bring those of the members-elect, of whose elections returns had been made, to Toronto. The previous Legislative Assembly had voted the supplies for 1875, and no emergency called for the summoning of its successor, which, as a matter of fact, did not meet until November, 1875. So that it is utterly absurd to suppose that, by issuing the proclamation in

question, any meeting of the House was intended. But, in the next place, the proclamation bears on its face the proof that it was a merely formal document. Even the words which occur in some subsequently issued, but equally inoperative—'therein do as may seem necessary,' and the injunction, 'Herein fail not'—are omitted. It is a bald, meagre notification only. There is not the slightest indication that 'the despatch of business' was contemplated. The subsequent proclamations proroguing the House from the 2nd of February to the 15th of March, from the 15th of March to the 24th of April, from the 24th of April to the 3rd of June, from the 3rd of June to the 12th of July, from the 12th of July to the 21st of August, from the 21st of August to the 30th of September, and from the 30th of September to the 9th of November, do contain the words just quoted but omitted in the first proclamation, although no intimation is given that 'the despatch of business' is contemplated. But the final proclamation, fixing the 24th of November as the day of meeting, concludes as follows: 'That personally you be and appear FOR THE DESPATCH OF BUSINESS, to treat, act, do and conclude upon those things which in our Legislature of the Province of Ontario, by the Common Council of our said Province, may, by the favour of God, be ordained.' The contrast between the language of the proclamation just quoted and its predecessors supplies an inference far stronger against the presumption that any meeting of the House on the 2nd of February was intended, than any that can be drawn from the mere issuing of the proclamation of the 2nd of February, in order to justify an argument in its favour. The fiction thus preserved in the issuing of these proclamations calling together a Legislature that never responds to the command is analagous to that which the old Chancery summons bore on its face when it ordered 'that laying all other matters aside, and notwithstanding any other excuse, you *personally* appear before Us in Our said Chancery the day of inst., wheresoever it shall then be, to answer,' &c. There is just this difference, however, that whereas some simple-minded folks did actually and at much inconvenience now and then present themselves personally to the Court of Chancery on the day named, no legislator was ever known to arrive at the place of meeting until ordered to do so 'for the despatch of business.'

A reference to the past practice in regard to these proclamations corroborates the view we have thus far taken of them. By the Act of Union, as already mentioned, *fifty days* were allowed in all cases between the *teste* and the day named for the return of the writs for a general election. Up to 1851-2 no exception was made on behalf of any remote constituencies, the fifty days being apparently regarded as sufficient for all. *And on no occasion was Parliament convened without a complete return.* In 1841 the writs bore teste February 19th, and were returnable on the 8th April. The first proclamation called Parliament together for the 8th April, it was then prorogued to the 26th May, and then to the 14th June, when it was summoned to meet 'for the despatch of business.' In 1844 the writs bore *teste* Sept. 24, and were returnable on the 12th November. The proclamation summoned the new Parliament to meet on the 12th November; it was prorogued to the 28th Nov., and was then summoned to meet 'for the despatch of business.' In 1847 the writs bore teste Dec. 6. They were returnable on the 24th January, 1848, and the proclamation summoned Parliament for that day. It was prorogued to the 4th March, but afterwards called together 'for the despatch of business' on the 25th February. In 1851 the writs were issued on the 6th November, and made

returnable on the 24th December, *except those for Gaspé and Saguenay*, which were made returnable on the 2nd February, 1852. Yet Parliament was formally called for the 24th December. But did anybody dream of the House proceeding to business on that day while the elections for the excepted districts had not come off? The Legislature, after several prorogations, was at length summoned 'for the despatch of business' on the 19th August, 1852. The Gaspé election was held on the 24th January, 1852, and the Saguenay election on the 26th January, 1852, the returns being received on the 4th and 9th February respectively, or after Parliament had been twice formally prorogued as above described. In 1854 the writs were returnable on the 10th August, except Saguenay and Gaspé, and Chicoutimi and Tadoussac, which were returnable on the 1st September. Yet Parliament was formally summoned for the 10th August. But no one, we may be sure, supposed it could actually meet with Gaspé and Saguenay, and Chicoutimi and Tadoussac still to be heard from. Parliament was prorogued to the 5th Sept., when it was called together 'for the despatch of business.' The excepted returns were made as follows :—

	Return of Members.	Receipt of Returns.
Gaspé	Aug. 21	Aug. 31
Chicoutimi and Tadoussac..	Aug. 22	Aug. 25
Saguenay.....	Aug. 4	Aug. 28

So that, although there was a meeting of Parliament very early after the elections, care was taken that the three remote constituencies should be afforded the opportunity of being represented. In 1857 the writs generally were made returnable on the 13th January, 1858, and those for Gaspé, and Chicoutimi and Saguenay, and Charlevoix, on the 10th of February. But Parliament was formally summoned to meet on the 13th January. It was prorogued, first to the 18th February, and then to the 25th February, when it met 'for the despatch of business.' The excepted elections took place after the day named in the formal proclamation for the meeting of Parliament as follows :—

	Return of Members.	Receipt of Returns.
Gaspé	Jan. 13	Feb. 3
Chicoutimi and Saguenay ..	Jan. 28	Feb. 9
Charlevoix	Jan. 19	Jan. 27

Here again, although an early meeting took place, ample time was allowed to elapse between that event and the latest returns. In 1861 the writs were made returnable on the 15th July, except those for Gaspé, and Chicoutimi and Saguenay, which were made returnable on the 31st August. But Parliament was, as usual, called for the earlier day, namely, the 15th July, although only to be several times prorogued, being ultimately summoned 'for the despatch of business' on the 20th March, 1862. The excepted elections took place as follows :—

	Return of Members.	Receipt of Returns.
Chicoutimi and Saguenay ..	July 16	July 22
Gaspé	July 22	July 29

In 1863 the writs were returnable on the 3rd July, except Gaspé, and Chicoutimi and Saguenay, which were returnable on the 15th July. But Parliament was formally called for the 3rd July, and, having been twice prorogued, met on the 15th August 'for the despatch of business.' The excepted elections were held as follows:—

	Return of Members.	Receipt of Returns
Chicoutimi and Saguenay ..	July 14	July 20
Gaspé	July 20	July 27

Thus, during the whole history of United Canada, from the Union in 1841 to the last Parliament before Confederation, we find (1) that it was the all but invariable custom to issue a formal proclamation summoning Parliament to meet on the day on which the main body of the writs were returnable, and (2) that in no single instance was Parliament convened 'for the despatch of business' until the time for holding and

making due returns of the whole of the elections had passed.

In 1867 the writs for the Dominion elections were made returnable on the 24th Sept., except those for Gaspé, and Chicoutimi and Saguenay, which were returnable on the 24th October. Parliament was summoned for 24th Sept., but prorogued, and finally met 'for the despatch of business' on the 6th November. The date of the return of the member for Chicoutimi was the 16th, and for Gaspé the 24th Sept. The date of the receipt of the respective returns was 24th Sept. and 2nd October respectively.

In 1872 Manitoba and British Columbia had joined the Dominion. So the writs were made returnable, generally, on the 3rd Sept., except those for Gaspé, Chicoutimi and Saguenay, Manitoba and British Columbia, which were made returnable on the 12th October, on which day, also, Parliament was formally called together. It was, however, as usual, prorogued, and finally called 'for the despatch of business' 5th March, 1873. The excepted elections took place as follows :—

	Return of Members.	Receipt of Returns.
Chicoutimi and Saguenay ..	Sept. 10	Sept. 14
Gaspé	Aug. 21	Sept. 4
Manitoba.		
Selkirk	Sept. 26	Oct. 9
Provencher.....	Sept. 14	Sept. 28
Lisgar	Sept. 19	Sept. 30
Marquette	Sept. 19	Sept. 30
British Columbia.		
Cariboo...	Sept. 6	Oct. 2
New Westminster.....	Aug. 23	Sept. 12
Vancouver	Aug. 28	Sept. 18
Victoria	Sept. 3	Oct. 10
Yale	Oct. 11	Nov. 12

All the elections consequently were over before the writs were 'returnable,' although, probably from local difficulties, it would have been impossible in some cases for a return to have been received and the members elect sworn in on or previous to the 12th of October, had the House then met.

In 1874, precisely the same course was followed as in 1872, the writs generally being returnable on the 21st of February, and those for the excepted districts on the 12th of March, the day of the formal summons. But, as the writ for Algoma was, apparently from inadvertence, not classed with the excepted returns, a fresh proclamation was issued, making that writ also returnable on the 12th of March. Parliament was prorogued from the 12th to the 26th of March, and then met 'for the despatch of business.'

In Ontario, all the writs for the first Legislature after Confederation were made returnable on the 24th of September, 1867, and, by proclamation, the House was convened for that day. It was ultimately called 'for the despatch of business' on the 13th of December. All the elections had been held before the end of September, *but no less than four—namely, Bothwell, Cardwell, North Middlesex, and North York—were held on or after the 24th of September, the day named in the formal proclamation, while the receipt of no less than 21, or more than one-fourth of the whole number of writs, was delayed until subsequent to the 24th of September.* Now, it will be recollected that, in 1867, the date of each separate election was fixed by the Government, and no one can suppose that so experienced a parliamentarian as Mr. J. Sandfield Macdonald, then Premier, really intended to open his first session *while twenty-one returns were still incomplete and several members not even elected.* That, surely, gives the finishing stroke to any argument founded on the wording of these formal proclamations.

In 1871 the writs were made returnable on the 7th of April, except the writ for Algoma, which was returnable on the 27th of May, and, for the first time, a day for all the elections (except Algoma) was named in the proclamation. The Legislature was called for the 7th of April, but, having been repeatedly prorogued, met 'for the

'despatch of business' on the 7th of December. The nominations and pollings (except in Algoma) were respectively held on the 14th and 21st of March, 1871, and for Algoma the date of the return is given as the 5th of May, the return being received on the 15th of May, 1871. In 1875, as already observed, the writs were generally returnable on the 2nd of February, and for Algoma on the 14th of August. The House stood prorogued from time to time to the 24th of November, 1875. The practice which long obtained in Canada of naming as the day of meeting, the day on which the writs generally were returnable, was doubtless copied from that of Great Britain, where no exceptional conditions existed. It does not, however, follow by any means that the Parliament of Great Britain always meets on the day first appointed. May says on this point (p. 52): 'The interval 'between a dissolution and the assembling of the new Parliament varies 'according to the period of the year, 'the state of public business, and the 'political conditions under which an 'appeal to the people may have become 'necessary. When the session has 'been concluded, and no question of 'ministerial confidence or responsibility is at issue, the recess is generally continued by prorogation until 'the usual time for the meeting of 'Parliament.'

THE ALLEGED INVASION OF THE PREROGATIVE.

It is alleged that, by virtually prohibiting or precluding the assembling of a new parliament, pending the election for Algoma, the prerogative is violated. In answer to this it may be observed that, while the summoning, prorogation and dissolution of Parliament are undoubtedly attributes of the prerogative, they are nevertheless subject to the restraints and limitations of law. Every Act must have the assent of the Crown, and if the Crown thus be a consenting party to an abridgement of the prerogative, no wrong is done to the rights of the Crown by such legislation. The forty days secured by the Barons in Magna Charta for the summoning of the 'Common Council of the Kingdom,' virtually suspended the prerogative for that space of time. So did the forty days statutory provision of William III. So did the fifty days of the Scotch Union Act. So did the fifty days of the Union Act of Canada. So did the ninety days allowed by the Ontario Act of 1868-9 for Algoma in the winter season. So has nearly every statutory limitation or security which has been considered by the Crown as advised by Parliament, essential to the privileges of the electorate.

By the Act of 36th Edward III. it was enacted that 'Parliament shall be holden every year.' The Triennial Act, 6 & 7 William & Mary, c. 2, enacted that 'from henceforth Parliament shall be holden once in three years, at the least.' By the Septennial Act, 1 Geo. I, c. 38, the duration of Parliament was limited to seven years, so that the Sovereign might not be able by the aid of a servile or corrupt Parliament to abuse the prerogative. The Canadian Acts providing for the annual convening or duration of the Parliament or Legislatures, are but reflections of the British Statutes. The most potent influence over the acts of the Crown and an all-powerful check on the abuse of the prerogative is, however, the voting of supplies. The granting of these for one year only compels the summoning of Parliament annually quite as effectually as any law. The fact is that, interpreted by modern practice, usage and ideas, the prerogative is simply a power held in trust by the Crown for the people, a power, consequently, that may be enlarged or contracted by the joint action of the Crown and the people, and which has been subject to both in many ways. Hence it is not to be argued that if, by the joint ac-

tion of the Crown and the people, it has been decided that there shall be no session of a new parliament during certain months in the year or for a given period of time, this would be an unlawful or improper infringement upon the prerogative, especially by a body that has a right to alter or amend the constitution.

But does the Algoma proviso really prejudice the prerogative? We have seen that it has not done so in the past, nor is likely to do so. The case is supposed of a political crisis, say in the Fall, necessitating a dissolution. The Legislature might, it is suggested, refuse to vote supplies, and no appeal to a new House could be had until the July following at the earliest. Is the Crown to be thus deprived of the means for carrying on the government for some seven or eight months? The answer is that, while the Crown would have the right to dissolve, harmony between the Crown and the Legislature could be secured by a change of Ministers. The prerogative is not an arbitrary instrument, but one always to be used judiciously and solely in the public interest. A Governor may have to decide between a change of Ministers and a stoppage of the Queen's business. In that case he must act on his best judgment. Supposing, however, by forcing him to accept, as the result of an appeal to the country, the will of a partially constituted House only, and Ministers in whom a majority of the country, if represented by a complete House, would have no confidence, what would then become of the rights of the Crown? It might get supplies, it is true, but at the price of the prerogative.

THE ARGUMENT OF CONVENIENCE.

In the foregoing remarks the question of convenience has been incidentally referred to. It is argued that the inconvenience of the arrangement which limits elections in Algoma to certain months in the year, is to have great weight in considering the intentions of the Legislature, when framing the Statute. Mr. Scott, M.P.P., in his argument, quoted from 'Maxwell's Interpretation of the Statutes,' in support of this view. Maxwell, in his 'Interpretation of the Statutes,' page 166, says 'An argument drawn from an inconvenience, it has been said, is forcible in law, and no less force is due 'to any drawn from an absurdity or 'injustice.' But 'inconvenience' alone is not sufficient to invalidate a Statute that is clear and unmistakable in its terms. The law books are full of decisions, some of which are to be found in 'Maxwell' (p. 5), distinctly insisting on adherence to the express letter of the Statute, no matter what the consequences, or, in other words, the 'inconvenience' may be. In 'Maxwell' p. 4, occurs the following passage: 'If 'the words go beyond what was the intention, effect must nevertheless be 'given to them. They cannot be construed contrary to their meaning 'merely because no good reason appears why they should be excluded 'or embraced. However unjust, arbitrary or inconvenient the intention 'may be, it must receive its full effect. 'When once the intention is plain, it 'is not the province of a court to scan 'its wisdom or its policy.' The plea of inconvenience in the present instance has no practical weight. A possible difficulty can only arise at a General Election. The practice of Ontario is against the presumption that such an inconvenience will arise. It was for the Legislature in framing the Election Law to balance inconveniences. They decided, it must be assumed, that it would be less inconvenient, perhaps once in a great many years, for public business to have to await the election of a complete Assembly than to recognise as a valid and effectual meeting of Parliament one from which a portion of the representation was, per force, excluded. However to guard against a most improbable eventuality it has now been

provided that should such a contingency as that suggested arise the old member shall retain his seat until a new one is elected for Algoma.

ENACTMENTS RELATING TO THE LEGISLATIVE ASSEMBLY.

First, in order, we have the British North America Act, sec. 41, continuing, in the case of the Dominion, the Election Laws of the several Provinces until otherwise provided. (2) In section 65, powers are given to the Local Legislatures 'to abolish or alter' 'powers, authorities and functions' exercised by the Lieut.-Governors. (3) The 70th section declares that the Legislative Assembly of Ontario shall be composed of eighty-two members to represent the eighty-two electoral districts set forth in the first schedule to the Act (Algoma being one). (4) Section 84 contains a provision for the temporary continuance of the existing electoral laws of Canada in respect of the two Provinces of Ontario and Quebec. (5) Section 85 provides, that the Legislative Assembly shall last four years and no longer (subject to earlier prorogation). (6) The 86th section enacts that there shall be a session once at least in every year. (7) The 92nd section gives power to the Provinces to amend their constitutions except as regards the office of Lieut.-Governor.

We have now exhausted the list of the several provisions in the British North America Act bearing upon the subject under consideration. Reading them together as we are bound to do, we must come to the conclusion: (1) That in every sense (save in the one exception relating to the office of the Lieutenant-Governor) the Local Legislatures were to have full power to alter or amend their constitutions, including those constitutional provisions above mentioned and expressly enacted under the 3rd, 5th, and 6th heads. (2) That the 70th section fixing the number of members at 82, could have no less force than the 85th and 86th relating to the duration and holding of parliament. If it be held that parliament would lapse, and its Acts be void if the Statute were infringed by the session lasting one day over the four years, surely it must be equally void if constituted of only 81 members instead of 82.

We come next to the Ontario Acts. The Act of 1868-9 (32 Vic. c. 21, s. 18, sub-sec. 4) extends the period for making the Algoma writ returnable, to ninety days in the winter season. Then, in the Representation Act of 1874 (38 Vic. c. 2, sec. 1), the number of members is increased to eighty-eight, and by the 38 Vic. c. 3, sec. 21, the period for holding an election in Algoma is limited to the months of June, July, August, September and October. This is slightly enlarged and more precisely stated in 39 Vic. c. 10, s. 13, which provides, that the nomination or polling shall be held in any year at some time from the 20th day of May to the end of November, and between those days only.

Now, how, in a legal sense, does this last enactment contravene any we have quoted preceding it in order of time? Not certainly the first (sec. 41, B. N. A.), for it does not relate to the Dominion Law; not the second (sec. 65, B. N. A), for it is of the very essence of that clause that the Legislature should abolish or alter any of those prerogative rights, which, without express direction to the contrary, the Crown would exercise independently of such a check or regulation; not the third (sec. 70, B. N. A.), because it gives aid to the effectual constitution of the Assembly by naming a time suitable for the election of the full complement of members; not the fourth (sec. 84, B. N. A.), because that is a mere continuance of former Acts, pending such provisions as the later Act comprises; not the fifth (sec. 85, B. N. A.), for the four years' date will run as easily from the return of the

Algoma writ as from any other; not the seventh, for that gives express powers to pass just such a law as the one in question. We have omitted to consider the effect of the enactment on the section quoted under the sixth head (86 sec., B. N. A.), as the several sections have been passed in review, and for this reason: it is the only one that might, by a remote contingency, be negatived or voided by the Algoma clause. The case is put thus: If the Lieutenant-Governor were advised to dissolve the Legislature at a date, say in October, too late to allow an election in Algoma to be legally held that year, while the Legislature had been prorogued in March or April, no election could take place in Algoma until June or July of the following year, or, contrary to the Statute, fifteen or sixteen months instead of a year from the last sitting of the Legislature at its previous session.

The guarantee against such an event from caprice or without absolute necessity, is the need the Executive has of obtaining supplies, of which it would have none without a Legislature at or immediately after New Year's Day. But, if an emergency of the kind arose then it is submitted that, as no penalty nor disability would attach to the holding of the Legislature *after* the expiration of the year dating from the last sitting of the previous Legislature, so, if in providing for the general convenience, and ensuring the due constitution of the Legislature (a fundamental principle in the constitution), the Algoma clause came into collision under wholly exceptional conditions with the annual-meeting clause, then the last enacted Statute must prevail over the earlier one, and in so far as may be necessary to the carrying out of the latest expressed intention of the Legislature be held to have repealed it. But the Act which has just become law removes even this possible if improbable source of difficulty.