THE REMOVAL OF THE IMPERIAL LIMITATIONS
FROM THE CANADIAN CONSTITUTION

by

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A Thesis Submitted for the Degree of MASTER OF ARTS
In The Department of ECONOMICS

The University of British Columbia April, 1925.
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CHAPTER I.

INTRODUCTION.

The powers of the Canadian Government are limited to those granted to it by the British North America Act of 1867 and its amendments. This is widely acknowledged and has been definitely expressed in the judicial decision of Farwell L. J. (1910), who said "Such Assemblies (speaking of colonial governments) derived their powers from the Imperial Act creating them and had no power beyond those given expressly or by implication by such Act." What then are the powers given to the Canadian Government by the act creating it? They are set forth clearly in section 91 of the British North America Act of 1867 and cover the following subjects:

"(1) The Public Debt and Property.
(2) The Regulation of Trade and Commerce.
(3) The raising of Money by any mode or System of Taxation.
(4) The borrowing of Money on Public Credit.
(5) Postal Service.
(6) The Census and Statistics.
(7) Militia, Military and Naval Service and Defence.

(8) The fixing and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

(9) Beacons, Buoys, Lighthouses and Sable Island.

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(20) Legal Tender.

(21) Bankruptcy and Insolvency.

(22) Patents of Invention and Discovery.

(23) Copyrights.

(24) Indians and Lands for Indians.

(25) Naturalization and Aliens.

(26) Marriage and Divorce.

(27) The Criminal Law, except the Constitution of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

(28) The Establishment, Maintenance and Management of Penitentaries.
(29) Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces." (1)

Certain subjects, however it could not legislate on as they were fixed by the Act. Some of these were; the frequency and date of the taking of the census; the alteration of provincial boundaries; the alteration of the composition of the houses, and several other matters. Most of these restrictions have since been removed by the various amendments of the B. N. A. Act. The Amendment of 1871 removed the restriction on the alteration of provincial boundaries. In 1886 an amendment was passed to make it possible to change the composition of the houses to permit the representation of newly joined territories. An amendment in 1915 altered the constitution of the Senate and the House of Commons. In 1916 an amendment was passed to extend the duration of the 12th Parliament of Canada.

(1) The British North America Act, 1867, 30 Victoria, Chapter 3, Section 91.
(2) British North America Act 1871, 34-35 Victoria, Chapter 28.
(3) British North America Act 1886, 49-50 Victoria, Chapter 35.
(4) British North America Act 1915 5-6 George V, Chapter 45.
(5) British North America Act 1916 6-7 George V, Chapter 19.
All these amendments to the British North America Act show that the Imperial Parliament has a very definite power over the Canadian Parliament. The legislating body of the Mother Country does not limit itself to making amendments on the restrictions set forth in the creating Act. It exercises its power in other ways and does so on the authority of section 9 of the B. N. A. Act, which states, "The Executive Government and Authority of and over Canada is hereby declared to continue to be vested in the Queen." The power so held has rarely been used to interfere with the internal workings of the country, unless internal legislation was passed, which was repugnant to Imperial Statutes. This moderation in the use of power has been especially true in the case of taxation. Legally and theoretically the Mother Country could tax any of her colonies actually she refrains, from doing so. Once this practice was broken and an attempt was made by George III upon the advice of his minister Grenville, to tax the American colonies. The result proved so disastrous on this occasion that the experiment was not repeated.

In looking back at the list of matters that the Dominion Parliament of Canada can legislate on it would

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seem that it had supreme authority over all subjects except the changing of those already settled by the Act. This is not so however because the Imperial Parliament, on the strength of section 9 of the B. N. A. Act, can legislate on any subject regarding the Dominion. It has confined itself to certain subjects concerning external relations and matters of such a nature that they can best be handled by the larger government. These subjects lie along the following lines:

1. Allegiance, nationality, naturalization and aliens.
2. Exclusion, expulsion and extradition.
3. Army and navy.
4. Merchant Shipping.
5. Miscellaneous other matters such as; Copyright, Bankruptcy.

The greater number of these topics can be found in the list of the Dominion's legislative powers. Then both the Canadian and Imperial Parliaments must exercise joint powers of legislation on a number of subjects. Since the Imperial Parliament has this power how does it use it? In two ways; one by direct declaration, two by statutes making null and void, repugnant legislation. It is hard to say which is the more important. The former is used to introduce new measures controlling Dominion affairs. The latter is used to enforce Statutes already passed. Concerning direct declaration little need be said by way of
explanation other than that any statute passed by the Imperial Parliament can be made applicable to the colony by adding words to that effect.

Britain frequently exercises her control over colonial legislation by making it null and void. This power is based chiefly on the Colonial Laws Validity Act 1865, Sections 2 and 3 of this act clearly show what powers it gives over colonial legislation.

"2. Any colonial law which is or shall be repugnant to the provisions of any Act of Parliament extending to the colony to which such law any relate, or repugnant to any order or regulation made under authority of such Act of Parliament or having in the colony the force or effect of such an Act shall be read subject to such Act, order or regulation, and shall to the extent of such repugnancy, but not otherwise be and remain absolutely void and inoperative. (1)

"3. No colonial law shall be or be or be deemed to have been, void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order or regulation, as aforesaid."

(1) Colonial Laws Validity Act 1865, 28-29 Victoria, Chapter 63, Sections 2 and 3.
Section 5 of this act, or at least part of it, is very important in that it shows what is considered, by the Imperial Parliament, the rightful extent of colonial legislative powers. This section reads thus:

"(and) Every representative Legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had full power to make laws respecting the constitution, powers, and procedure of such Legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required, by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the colony." No additional power is given to Canada by this section because it's constitution, powers and procedure are already defined and fixed by the British North America Act. The statute was only passed with a view to limiting colonial powers and not increasing them. The meaning of this act was clearly expressed in the decision of the case of Rex v. Marias (1902) when it was said: "The obvious meaning of the Colonial Laws Validity Act 1865 is to preserve to the Imperial Parliament a right to legislate for a colony to which a local legislature has been assigned and to forbid the local legislature to enact anything repugnant to Imperial Legislation so effected but not

(1) Colonial Laws Validity Act 1865, 28-29 Victoria, Chapter 63, Section 5.
otherwise to derogate from the general powers of colonial legislatures. Acts and portions of acts are frequently made inoperative by judicial decisions rendered on the authority of this act. When British Columbia passed two acts, discriminating against Orientals they were rendered null and void, because, on account of this act, they became repugnant to Imperial Legislation.

These limitations can be increased or decreased at the will of the Imperial Parliament. So far, however, they have tended to be removed and have always been chained along certain well defined lines of topics. Although in theory every act of the English Parliament extends to the colonies, in practice a definite limitation is placed in the form of a section of the Colonial Laws Validity Act, which states: "An Act of Parliament, or any provision thereof, shall, in construing this Act be said to extend to any colony when it is made applicable to such colony by express words or necessary intendment of any Act of Parliament." This power of making any of its statutes applicable to the colonies has been used, quite sparingly by the Mother Country, rather to guide their policies than to interfere

(2) S. C. R. 1921 Employment of Aliens.
(3) Colonial Laws Validity Act 1865, 28-29 Victoria, Chapter 63, Section 1.
with their internal affairs. Interference has taken place chiefly where matters regarding the Empire as a whole were in question, and in such matters as could best be handled by the larger government. Internal interference is used in case discriminatory measures are passed by colonial governments, which are liable to lead to a disruption of foreign relations. This policy of slight interference has been necessary in order to preserve amicable relations between the colony and the Mother Country. As the dominion becomes more mature and gains greater political experience it becomes more restless under superior control. It is the aim of this thesis to show that a gradual removal of these limitations has been taking place. In order to trace this development it will be necessary to treat each of the subjects or groups of subjects of limitation in separate chapters.
CHAPTER II.

ALLEGIANCE, NATIONALITY, ALIENS AND NATURALIZATION.

Over the closely allied subjects of Allegiance, Nationality, Aliens and Naturalization a joint control is exercised both by Canadian and Imperial governments. The Dominion Parliament has, by the B. N. A. Act of 1867 and the Imperial Naturalization Act of 1870, been given powers over Naturalization and Aliens. There is a residue of power left in the hands of the Crown which is very important because it deals with these affairs in relation to the Empire as a whole. Prior to 1914 considerable uncertainty existed as to the exact powers of the colonial governments concerning these matters. Much of this confusion and uncertainty was removed by the British Nationality and Status of Aliens Act of 1914. This act was uniform throughout the Empire and was the result of the deliberations of the Imperial Conference of 1911. At the time this conference was held conditions and qualifications for naturalization differed between the Mother Country and the colonies and between the colonies themselves. One of the greatest drawbacks of this confused system was that a naturalized subject of one colony was not a subject of another until naturalized there. The conditions of

(1) Sect. 91 B. N. A. Act 1867, 30 Victoria, Chapter 3.
(2) Sect. 16; Naturalization Act, 33 Victoria, Chapter 14.
residence required by the Naturalization Act of 1914 could be fulfilled by living five years in any part of His Majesty's dominions. The real importance of this Act will be shown later in the individual development of Allegiance, Nationality, Aliens and Naturalization.

ALLEGIANCE.

Allegiance is the mutual tie between Crown and subject. It may be of two kinds: natural and local. Natural, or national, allegiance, depends on either of two things: (1) that the parents are under actual obedience to the King; (2) that the birth place is within the King's dominions. Local allegiance is that which is demanded of an alien in the country of his residence. Before 1870 any one who was born or naturalized a British subject could never resign or lose that status except by Act of Parliament or by secession, or recognition of independence of the part of the British territory where he was born or naturalized. This was changed for Canada as well as the rest of the Empire when it was enacted that, "Any British subject, who has at any time before or after the fourth day of July, one thousand eight hundred and eighty-three, when in a foreign state and not under any disability, voluntarily become naturalized in such foreign state be deemed, within Canada, to have ceased to be a British subject and shall be
regarded as an alien."

What then are the differences between the position of an alien and a subject? Both are subject to the same law. (2)

In the case of Kirsterman v McLellan it was decided that:

"It is of no consequence where the domicile of a person may, or to what country he is (sic be) bound by allegiance as a subject or citizen if he come to Ontario, and reside there and contract debts, and is (sic be) about to quit the country with the intent to defraud his creditors he is subject to arrest as it prevails in Ontario." The law of the land does not apply to resident aliens only but also to those who are passing through the country. It was held to be lawful to arrest an alien in British Columbia on a cause of action (3) arising outside the country. Although aliens (of friendly countries) are in principle equal at law with British subjects they have certain disabilities. Chief among these is the inability to own a British ship or a share in one. Allegiance, however, is not the only test of nationality as will be seen in the next section.

(1) 44 Victoria, Chapter 13, Section 9. Taken from R. S. C. Chapter 112, Section 7.

(2) Kirsterman v McLellan, 1883, 10 P. R. 122.

(3) Macauly v O'Brien (1897) B. C. Reports 510.

(4) Merchant Shipping Act 1894, Section 1.
NATIONALITY AND ALIENS.

Before 1870 it was fairly certain who a national was because nationality could only be got by birth within His Majesty's dominions. This led to many peculiar results. A man born in England, whether of British or foreign parents was a British subject even if he did not continue to reside there. Yet a man born of a British father in a foreign country was not considered a British subject even if he came and lived in England. Nationality thus acquired was impossible either to resign or to lose. The act of 1870 made it possible to acquire or throw off British nationality for political purposes.

Not till the passage of the Naturalization Act of 1914 was the subject clearly set forth. This Act defines British nationality clearly and gives the qualifications necessary for a subject:

"(a) Any person born within His Majesty's dominions and allegiance.

(b) Any person born out of His Majesty's dominions whose father was a British subject at the time of that person's birth and either was born within His Majesty's allegiance or was a person to whom a certificate of naturalization was granted.

(c) Any person born on a British ship whether in foreign territorial water or not;"
Provided that the child of a British subject, whether that child was born before or after the passing of this Act, shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitation, grant, usage, suffrancce, or other lawful means, His Majesty exercises jurisdiction over British subjects."(1) Previous acts did not give any such definition but this is apparently an embodiment of the opinions expressed in decisions rendered in cases along these lines.

As a result of the war an amendment was made to the naturalization Act of 1914. This amendment was an Imperial Act. No similar Canadian Act was passed as the Dominion accepted the act as being quite sufficient to amend its 1914 Act. Among other things this act made an addition to paragraph (b) of section (1) of Part (1), already quoted. This addition, which came after the words "had been granted," was as follows: "or become a British subject by reason of any annexation of territory, or was at the time of that person's birth in the service of the Crown." (2)

In 1921 the Canadian parliament passed an act defining what a Canadian National was. This act was the first of its kind because previous to this time no such nationality

(1) Section 1, part 1, British Nationality and Status of Aliens Act 1914, 4 & 5 George V, Chapter 17 (Imperial).
(2) 8-9 George V, Chapter 38, Section 2, (Imperial).
had been clearly stated. By this statute a Canadian National was defined thus:

"(a) Any British subject who is a Canadian citizen within the meaning of The Immigration Act, Chapter twenty-seven of the statutes of 1910.

"Canadian Citizen" means--

1. a person born in Canada who has not become an alien.

2. a British subject who has a Canadian domicile; or,

3. a person naturalized under the laws of Canada who has not subsequently become an alien or lost Canadian domicile."

(b) The wife of any such citizen.

(c) Any person born out of Canada, whose father was a Canadian National at the time of that person's birth or, with regard to persons born before the passing of this Act, any person whose father at the time of such birth, possessed all the qualifications of a Canadian National, as defined by this Act.

In addition this statute provides means whereby Canadian Nationality can be resigned. Two methods of resignation are possible: (1) by becoming the national of another Dominion or of the United Kingdom during minority

(1) Section 2, Paragraph (f) 9-10 Edward VII, Chapter 27.
(2) 11-12 George V, Chapter 4, Section 1.
or (2) by renouncing nationality by declaration made before a notary public.

**NATURALIZATION.**

This is one of the three ways of becoming a British subject. The other two are: by denization, and by annexation or cession to the Crown of the country of residence and birth. Exercise of the first of these two is a prerogative of the Crown, which can grant all privileges of a native born subject to an alien. This is clearly set forth in the case of *Fourdrin v Gowdey (1834)* where an alien purchased an equitable interest in freehold lands and a lease for a long term of years. Afterwards he obtained letters of denization, which gave him the right to hold and acquire lands. It was held that: (1) the Crown was entitled to make a grant retrospective; (2) the grantee could devise the freehold and chattel interest in land previous to getting his letters of denization.

Of the class of subjects, who acquire their nationality because of the fact that they are inhabitants of a conquered or ceded territory, little need be said. Once received under the King's protection they become his subjects.

Nationality got by naturalization is the most important from the point of view of Canada, because she can

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(1) The same section 2.
(2) Calvin's case.
(3) *Fourdrin v Gowdey (1834)* 3 Mylene and Keen's Reports 383.
not exercise the prerogative of denization and is not likely to conquer territory or have it ceded to her. The Dominion is now highly interested in making use of her powers over naturalization. It will be shown later within what limits these powers are confined.

Before 1844 an alien could only get the rights of a natural born subject by denization or by Act of Parliament. The idea that British nationality could be acquired by naturalization was not recognized before the passage of the Naturalization Act of 1844. Provision was made by this statute whereby an alien might obtain British nationality by naturalization. The status thus acquired was subject to many drawbacks in the form of disabilities.

The British North America Act of 1867 gave Canada control of naturalization and aliens. What was the extent of this control? Mr. Justice Clement answers this question when he makes the statement that: "The status of an alien must be determined by the law of England, while the consequence of that status would depend on local law." In spite of the control over these subjects granted by the Act, the Canadian parliament was content to enforce the Imperial Statutes for a good many years. Three years after the passing of the B. N. A. Act the Parliament of Great Britain and Ireland passed the Naturalization Act of 1870.

(1) Clement's Canadian Constitution, page 179.
This statute was particularly notable for the fact that it removed many of the disabilities under which naturalized subjects had labored since the passing of the Act of 1844. A naturalized subject was now permitted to hold land in the United Kingdom but not outside. One section was of great importance to Canada, it enacted that: "All laws, statutes, and ordinances which may be duly made by the legislatures of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be enjoyed by such persons within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner, and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession." This section is no doubt the origin of Mr. Justice Clement's statement, already quoted, that colonial governments had only the powers of deciding the consequences of the status given to a naturalized alien.

The truth of this statement no longer holds since the passage of the Act of 1914, concerning nationality and status of aliens. This Act was the result of deliberations carried out by the Imperial Conference of 1911. A scheme

(1) Victoria Chapter 14 (Imperial Statute) Section 16.

(2) 33 Victoria, Chapter 14 (Imperial Statute) Section 16.
was decided upon, by this conference, for the granting of Imperial citizenship. This plan was based on five propositions:

1. Imperial nationality was to be world-wide and uniform.

2. A five years residence period was to be universal. Five years in any port of the Empire being equal to five years in England.

3. The grant of Imperial nationality was to be discretionary, to be exercised by authority of Dominions concerned.

4. Imperial Act to be framed so that it could be adapted by self-governing dominions.

5. The Act should not affect validity or effectiveness of local laws regulating immigration or differentiating between classes of British subjects.

The resultant act of 1914 fulfilled all these propositions except the first and third. The fact than an Imperial nationality had not come into being for naturalized subjects is shown by a case in 1918 namely that of Rex v Francis ex parte Markwald. Shortly the case was

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(1) The Imperial Conference of 1911 From Within" by the Hon. Sir John Findlay; Constable & Co. London 1912.

(2) Rex v Francis ex parte Markwald (1918) 87 L. J. K. B. 20.
this: Markwald a German by birth, settled in Australia in 1878 and carried on business there until 1909. In 1908 he had received a certificate of naturalization under the Commonwealth of Australia. In 1909 he came and lived in England and carried on business there. In December 1917 a charge was brought against Markwald that he had failed to register himself in accordance the Alien's Restriction Ordinance of 1916. He contended that he was not an alien. It was decided that although an alien might obtain a certificate of naturalization in one part of His Majesty's dominions it was not a necessary consequence that the naturalization had any effect elsewhere and wherever the certificate had no effect, there, the person to whom the certificate had been granted was an alien. Thus in spite of the uniformity of the Act it did not give a uniform nationality throughout the Empire to naturalized subjects. This Act of 1914 was of great importance and, in its amended state, is in force at present.

In 1918 the first amendment was made to the Naturalization Act of 1914. This was in the form of an Imperial statute, which was suitable for colonial adoption. (1) Section seven of this amendment, relating to the obtaining of certificates under false representation was changed

(1) 8–9 George V, Chapter 38, Naturalization Act 1918.
and amplified. Provisions were made for the forfeiture of naturalization certificates for certain acts such as:
being imprisoned for 12 months or over, and; becoming resident outside His Majesty's dominions for over 7 years.
The Secretary of State was also empowered to make enquiry to see if a naturalized subject had done anything to cause the removal of his certificate. Section 3 of the same act of amendment provided for the removal of certificates for other reasons namely; for cases where the certificate of naturalization had been granted at the time when the grantee was a subject of a country at war with His Majesty.

During the following year an act was passed, by the Dominion Legislature entitled: "An Act to amend and consolidate the Acts relating to British Nationality, Naturalization and Aliens." (1919) In composition the act consists of sections taken from both the Imperial and Dominion Naturalization Acts of 1914 and the Imperial amendment of 1918 as well as some new sections. The basis of the Statute is of course the 1914 Act but the greater part of the 1918 amendment has been adopted with the exception of sections 3 and 4, which concern the effect of a certificate

(1) 8-9 George V Chapter 38, Section 7.
(2) 8-9 George V Chapter 38, Section 7.
(3) 8-9 George V Chapter 38, Section 3.
(4) 9-10 George V Chapter 38.
of naturalization and special certificates for cases where there is doubt as to the existence of British Nationality. The new sections (20; 21; 25) concern themselves with procedure and evidence. In effect this consolidating act put Canadian legislation on the subject on a level with the corresponding Imperial legislation.

An Act of considerable importance was passed, in 1920 by the Dominion Parliament, to repeal the Act of 1919 and revive the Naturalization Act of 1914, with some amendments. Section 7 of the 1914 Act, concerning the powers of the Secretary of State to revoke certificates was changed so as to permit the Governor-General to exercise this power. Sections 19 and 20, regarding methods of application were revised.

All the foregoing matter shows a great deal of development. Canada has moved from a position where she did not make use of her limited powers to a point where she probably exercises the maximum of control that is possible. Her independence in legislating on nationality is clearly shown by the Canadian Nationality Act of 1921, which is inconsistent with the idea of uniform nationality for the Empire, put forward at the Imperial Conference of 1911. It may be better to leave the deductions that could be drawn on the subject to the concluding chapter. There, it will be treated along with the other subjects, which follow, in

(1) 10-11 George V, Chapter 52, Section 3.
a more complete and general discussion.
Extradition, Exclusion and Expulsion were once exercised as prerogative powers by the king. Gradually this was replaced in England by statutory enactment on the subjects. One of the earliest of these statutes was the Extradition Act of Upper Canada (1833). A considerable number of other extradition acts of minor importance were passed in other parts of the Empire. It was not till 1870, however, that important legislation was enacted. In that year an Extradition Act was passed by the British Parliament which was to extend to the whole of Her Majesty's dominions.

This Act is very important not only because it was the first of its kind but also because it is still in force, in a slightly amended form. Its wide and general application is shown clearly in section 17 which states: "This Act, when applied by Order in Council shall, unless it is otherwise provided for by such order, extend to every British possession in the same manner as if throughout this Act the British possession were substituted for the United Kingdom or England as the case may require.- --- ---."

(1) 3 William IV, Chapter 6 Upper Canada.
(2) 33-34 Victoria, Chapter 52, Section 17. (Imperial)
In section 3 of this Act rules were set forth for the surrender of fugitives, which exist today with slight changes. On account of their importance in this Act and following (Canadian) ones it might be well to quote them:

"(1) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on habeas corpus, or to the Secretary of State, that requisition for his surrender has in fact been made with a view to try to punish him for an offence of political character:

(2) A fugitive criminal shall not be surrendered to a foreign state, or by arrangement, that the fugitive criminal shall not, until he has been restored or has had an opportunity of returning to His Majesty's dominions, be detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded:

(3) A fugitive criminal who has been accused of some offence within English jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom shall not be

(1) 33-34 Victoria, Chapter, 52, Section 3. (Imperial.)
surrendered until after he has been discharged, whether
by acquittal or by expiration of his sentence or otherwise:

(4) A fugitive criminal shall not be surrendered until
the expiration of fifteen days from the date of his being
committed to prison to await his surrender."

This Extradition Act of 1870 was used by Canada for
16 years, in spite of the fact that the federal government
was given implied powers of control regarding this matter
by subsection 29 of section 91 of the B. N. A. Act of 1867.
In 1886 the Canadian parliament passed an Extradition Act.
This was sanctioned and made operative in 1888 by an
Imperial Order in Council, on the authority of section 18
of the Extradition Act of 1870 which states:

"If by any law or ordinance, made before or after the
passing of this Act by the Legislature of any British
Possessions provision is made for the carrying into effect
within such possession the surrender of fugitive criminals,
who are in or are suspected of being in such British
possession, Her Majesty may, by the Order in Council applying
this Act in the case of any foreign state, or by sub-
sequent order, either

suspend the operation within any such British
possession of this Act, or any part thereof so far as it
relates to such foreign state, and so long as such law or
ordinance continues in force there and no longer." This
section, then, provides for the suspension of the Imperial
Act in favour of that of a colony. Yet at the same time the Imperial Act is to come into force again if the colony puts its own Extradition Act out of existence.

The Canadian Extradition Act of 1886 differed from the Imperial Act chiefly in the fact that it was narrower in scope. There were no fundamental differences however, till the Revision of the Canadian Statutes of 1906. Then a new part was introduced into the Act, which provided for extradition irrespective of treaty. This part of the Act is only to come into force for any state when expressly declared to do so by the Governor-General, who has also power to put this part out of operation for any state when he wishes to make declaration to that effect.

In 1909 an unimportant amendment was made to the Extradition Act of 1906. This concerned the taking of depositions for use in a foreign state, in the absence of accused, also for summoning witnesses and enforcing of subpoena. This Act in itself is of little importance or interest but the fact that it has not been (permitted by Imperial Order in Council) is unusual as all former amendments were recognized by Order in Council. Mr. Justice Clement holds the view that no Extradition Act or amendment

(1) Chapter 155 Revised Statutes of Canada 1906.
(2) 8-9 Edward VII, Chapter 14, Section 30A amending Section 30A. (Canadian)
is legal without recognition by an Imperial Order in Council. This opinion is based on section 18 (already) quoted of the 1870 Extradition Act, which has not been since amended. This Act of 1886 was recognized by an Order in Council on the 17th of November 1888. Similarly the Act of 1906 was recognized on the 6th of July 1907. There has been no Order recognizing the 1909 amendment and no recognition is made of it when mention is made of the 1906 Act in Imperial Orders in Council extending the British Act to a foreign country. Therefore the natural conclusion seems to be that the 1909 amendment is not legal or at least ineffective till it is recognized.

All the foregoing has related to extradition outside the Empire. Extradition within the Empire is governed by a different code or law. This code as it has been called is composed of the various — Fugitive Offender's Acts. The basis of this is the Fugitive Offender's Act of 1881. In Part 1 of this Imperial Act rules are laid down, which govern the arrest and return of a fugitive to the part of the Empire where the offence was committed. The first part is intended to have wide application to all the Empire but this is not so in the case of the second part, which concerns the endorsing or backing of warrants. An Order

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(1) Clement's "Canadian Constitution" page 197.
(2) Sections 2-11 Fugitive Offender's Act 1881, 44-45 Victoria, Chapter 69. (Imperial)
in Council mentioning specifically the colonies to which it is to apply is necessary to bring it into force for them. By section 32 definite provision was made for giving the colonies power to pass acts and ordinances on the defining of offences and determining court or person to exercise power given by Act. All these acts and ordinances had to be permitted by Imperial Order in Council in order to be legal.

In 1882 Canada passed her first Fugitive Offender's (1) Act. This Act did not differ fundamentally from the Imperial Act of the previous year. Such similarity was necessary or the Act would be null and void through its (2) repugnancy to the British Statute. The differences that do exist are merely in scope, the Canadian Act being limited to Canadian fugitives while the Imperial Act covers all fugitives within the Empire. Little change was brought with the 1906 Act. The only difference if it could be called (3) a difference was the definition of fugitive. The conditions of apprehension and return still remained the same as the 1882 Act, which was the same as the Imperial Act of 1881.

Canada has been given control over her own

(1) 45 Victoria, Chapter 21. (Canadian).
(3) Revised Statutes of Canada, Chapter 154, Section 2, Clause D.
immigration. This is shared by both provincial and federal governments but provincial legislation is null and void if repugnant to Dominion statutes. The Dominion's powers of legislation on immigration are limited by either of two things: (1) Repugnancy to an Imperial Act or (2) Repugnancy to a treaty of the Mother Country accepted by her. More will be said of these limitations after the growth of Canadian immigration legislation has been traced.

As early as 1869 an immigration act was passed by the Canadian parliament. This Act was simple and merely concerned itself with regulations as to the types that were to be excluded (feeble-minded, diseased, professional beggars, prostitutes and criminals). Regulations were made more stringent in the Revised Statutes of Canada 1906. Also the Governor-General was given discretionary power of exclusion. Section 30 stated:

"(1) The governor in Council may, by proclamation or order, whenever he considers it necessary or expedient, prohibit the landing in Canada of any specified class of immigrants, of which due notice shall be given to the transportation companies."

(1) Section 91, subsection 25, B. N. A. Act 1867. (Imperial)
(2) 32-33 Victoria, Chapter 10. (Canadian)
(3) Revised Statutes of Canada (1906) Chapter 93.
"(2) The Governor in Council may make such regulations as are necessary to prohibit the entry into Canada of any greater number of persons from any foreign country than the laws of such country permit to emigrate to Canada."

Part (1) of this section 30 gives power to exclude any race or class of people. In practice this power has not been exercised. A good example of the limitations that could be placed on the Canadian Immigration Act was the first Japanese Treaty. Article one declares: "The subjects of each of two High Contracting parties shall have full liberty to enter, travel, or reside in any part of the dominions and possessions of the other Contracting Party, and shall enjoy full and perfect protection for their persons and property. They shall not be compelled under any pretext whatsoever, to pay any charges or taxes other or higher than those that are or may be paid by native subjects or citizens of the most favoured nation." This clearly prevented Canada from excluding Japanese or placing a head tax on them.

This was not the case in the new "Act respecting a certain Treaty of Commerce and Navigation between His Majesty the King and His Majesty the Emperor of Japan."

(1) 6-7 Edward VII, Chapter 50 an Act respecting a Treaty between Canada and Japan. (Canadian)

(2) 3-4 George V, Chapter 27. (1913), (Canadian)
Here clear provision was made to prevent the interference of the Treaty with the Canadian Immigration Act. Section 2 stated "(a) nothing in the said Treaty (between King of England and Emperor of Japan) or in this Act shall be deemed to repeal or affect any of the provisions of the Immigration Act." From this it would seem that Canada is free to exclude whom she will as far as treaties are concerned. There is still the chance that the Immigration Act may be limited at any time by its becoming repugnant to Imperial legislation.

An advance in the legislative powers of the Dominion is not so clearly evident in either Extradition or Exclusion. Canada's right to exercise her own free will in changing her Extradition and Fugitive Offender's Acts is decidedly limited. No sign of the removal of these limitations can be seen in a study of the subject up to 1923. In the case of Exclusion, looking only at the statutes, it would seem that there was no advance as Canada already had powers of Exclusion. It must be remembered however that the Mother Country controlled Canada's immigration policy (which was an international matter) to a considerable extent. Now that Canada has made a treaty, by herself, and may make more, the control of the Mother Country must naturally decrease still further. This

(1) Section 2, 3-4 George V, Chapter 27. (Canadian)
development will be treated more fully in the concluding chapter.
CHAPTER IV

THE ARMY AND NAVY.

For the purposes of this thesis it is necessary to go into the whole history of the Army Act. It is quite enough to say that since the revolution of 1688 the Army of England has been governed by a yearly act. Prior to 1879 this was known as the "Mutiny Act," but since 1881 it has been known as the "Army (Annual) Act. This Act governs the British Army and, in some cases, the colonial forces.

The Army of a colony may be either of two types: (1) forces raised by the order of His Majesty or (2) forces raised by the government of a colony. These forces raised by different authorities come under different rules. Those raised by his Majesty are subject to the British Army (Annual) Act. Those raised by the colony as a rule come wholly under colonial law. There are exceptions to this. In the case where the colony has no legislation governing its army, the British Army (Annual) Act is applied. When Colonial forces, serving with Imperial forces, have not a complete military law the British Act is used to make up the discrepancy.

Canada has been given power to raise an army and navy for defence or offence if it chose by the B. N. A. Act.

This is however limited by the control exercised over Canada's foreign policy by the British Government. Certainly in earlier times offensive action was not likely on the part of Canada defence was the chief matter of importance. Such was still the case when Sir Wilfred Saurier (1910) expressed the opinion, that all nations recognized the fact that Canada did not want any aggrandisement, but sought only to protect her own interests.

As we have seen the military forces in Canada may be under the Militia Act of Canada or under the Imperial Act Army Act. It would be well to look into the two statutes and see what control or limitation the Imperial Act places on the Dominion and conversely what authority of the Imperial government is recognized by the Dominion Act.

The Army Act of Great Britain is the Act of 1881. This Act, as has already been stated, does not run on as an ordinary act but is brought into force annually for the period of one year. Regulations and discipline are governed chiefly by the original Act (1881) while such matters as the size of the forces by minor amendments to the Act. While the Army (Annual) Act states definitely that "The Army Act, while in force, shall apply to persons

(1) Subsection 7 of section 91, 30-31 Victoria Chapter 3, (Imperial)

(2) "Yesterday and Today in Canada " Duke of Argyll."
subject to military law, whether within or without His Majesty's Dominions." Mr. Justice Clement claims that the Army Act deals only with the British Army.

Section 177 of the Imperial Act of 1881 is of great importance as it shows the extent to which colonial law governs colonial forces. It is as follows;

"177 Where any force of Volunteers; or Militia, or any other force, is raised in India or in a Colony, any law of India or the Colony may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without the limits of India or the Colony; and where any such force is serving with part of Her Majesty's regular forces, then so far as the law of India or the Colony has not provided for the government and discipline of such force, this Act and any other Act for the time amending the same shall, - - - , apply to officers, non-commissioned officers, and men of such force, - - - "

From this it can be seen that forces raised by Canada are under her control and law so far as that law extends. The Army Act is only intended to amplify the colonial law in so far as it is incomplete. Of course nominally the Crown has the ultimate power in this as in other matters.

(1) Section 2, 3 George V Chapter 2 (Imperial) also 7 George V, Chapter 9. (Imperial)

(2) Clement's, "Canadian Constitution" page 202.

(3) Section 177; 44-45 Victoria, Chapter 58. (Imperial)
Section 9 of the B. N. A. Act 1867 states "The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen." Also section 15 which has direct bearing on the matter "The Command-in-chief of the Land and Naval, Militia and of all Naval and Military forces of and in Canada is hereby declared to continue and be vested in the Queen." By these clauses of Imperial Acts it can be seen that the British government does not want to exercise a close control of the details of Canadian military forces. At the same time a certain amount of authority is retained that will enable the Mother Country to control the policy of the Canadian government in dealing with its military forces. Whether this is rather theoretical or practical will be discussed later.

Having seen what limitations the Imperial government has placed on Canada's authority over her military forces we can now turn to the Dominion Militia Act to see to what extent these limitations are recognized. The Militia and Defence Act of Canada (1906) grants that: "The Command-in-Chief of the Militia is declared to continue and be vested in the King, and shall be exercised and administered by His Majesty or by the Governor-General as his representative."

(1) Section 4, Chapter 41, Revised Statutes of Canada (1906).
This fully recognizes the authority of the Crown as put forth in section 15 of the B. N. A. Act. While this gives the Crown no new power it recognizes the power already established.

Provision is made by section 72 for placing the Militia under the command of one of the Imperial officers, when it is serving conjunctly with His Majesty's regular forces. Recognition is given to the Imperial Army Act by section 74; which states: "The Army Act for the time being in force in the United Kingdom, the King's regulations, and all other laws applicable to His Majesty's troops in Canada and not inconsistent with this Act or regulations made thereunder, shall have force and effect as if they had been enacted by the Parliament of Canada for the government of the Militia." This is not only in agreement with section 177 of the 1881 Act (Imperial), applying the Army Act to colonial forces abroad (when not fully governed by their own law) but extends this to apply to the Canadian Militia at home when not fully governed by Dominion Law.

The powers of Commander-in-Chief held by the King are not likely to be used so long as Canada holds to the principle of using the Militia only as a means of defence. Powers of placing the Militia on active service are held

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(1) Revised Statutes of Canada (1906) Chapter 41, Section 72.
(2) Section 74, Chapter 41 Revised Statutes of Canada (1906).
by the Governor in Council but these powers are limited to use of the Militia for defence purposes only. The Canadian government also retains the real control of the Militia by reason of the fact that it may refuse to vote the necessary funds to carry on projects disagreeable to them.

In considering the naval forces of Canada it is necessary to go back to the Colonial Naval Defence Act of 1865. This Act was to "Enable the several colonial possessions of Her Majesty the Queen to make better provision for naval defence." By section 3 of this Act colonies were permitted, through their legislative bodies, with the assent of the Crown to: (1) provide and maintain war vessels (2) raise and maintain seamen for these vessels (3) raise and maintain a body of volunteers for service in the Royal Navy (4) appoint officers (5) obtain officers from the Royal Navy (6) enforce discipline and (7) make men subject to discipline of the Royal Navy if necessary. This extended the privilege to all colonies to raise and maintain naval forces so with the passing of the B. N. A. Act (1867) no new powers were given to Canada in this respect. It might rather be said that the powers were slightly United by section 15, which gives the Crown the position of Commander-

(1) 28-29 Victoria, Chapter 14. (Imperial)
(2) Prefix to 28-29 Victoria, Chapter 14, (Imperial)
in-chief of Military and Naval forces.

In spite of this right to have and control a naval force nothing was done until 1910. Prior to this time it was commonly considered that the Mother Country should undertake all naval defence. The encouragement of enlistment of its fishers and seamen in the Royal Navy was all that was thought might be expected from a colony. The change, which culminated in the Act of 1910, began when the Imperial government withdrew her garrisons from Halifax and Esquimalt. This was done because the United Kingdom considered that Canada was then in a position to garrison her own bases.

In the year 1910 an Act was passed, known as the "Naval Service Act." This Act was quite complete and covered such matters as command administration and control of Canada's naval forces. Section 4 recognized the right of the Crown through his representative, the Governor-General to be Commander-in-chief of the Naval force. This is not really doing more than recognizing section 15 of the B. N. A. Act. The Governor-General is given quite considerable powers of control over the naval forces. For instance by section 2. "The Governor in Council may make regulations for the government of the Naval Reserve Forces.

(1) Section 15, 30-31 Victoria, Chapter 3. (Imperial)
(2) "Yesterday and Today in Canada" by Duke of Argyll.
(3) Section 4; 9-10 Edward VII, Chapter 43. (Canadian)
(4) Section 2; 9-10 Edward VII, Chapter 43. (Canadian)
Again by section 11 "The Governor in Council may organize and maintain a permanent naval force. In order to see how much of this authority can be exercised by the Governor it might be well to see what powers the governor has over his council. Section 11 of the B. N. A. Act clearly shows this, it states: "There shall be a Council to aid and advise the Government of Canada to be styled the Queen's Privy Council for Canada: and the persons who are to be members of that Council shall be from time to time chosen and summoned by the Governor-General and sworn in as Privy Councillors, and members these may be from time to time removed by the Governor-General." Then the Governor can appoint and dismiss his councillors at will. By this means he can exercise great power over them. The Crown in turn may exercise this power by its right to appoint the Governor-General. All this however is rather theoretical than practical as the Governor in Council including the Cabinet reduced his power of dismissal. In addition to those powers already mentioned the Governor in Council has others such as the placing of naval forces on active service. Other sections give the Governor further powers, which need not be discussed here.

(1) Section 11; 9-10 Edward VII, Chapter 43. (Canadian)
(2) Section 13, 30-31 Victoria, Chapter 3. (Imperial)
(3) Section 22, 9-10 Edward VII, Chapter 43. (Canadian)
The war brought forth both Colonial and Imperial war measures namely:

(1) "Defence of the Realm Act 1914."
(2) "Defence of the Realm Act (No. 2) 1914."
(3) "Defence of the Realm Consolidating Act 1914."

These cannot be said to be of much importance as they only gave His Majesty in Council certain powers to issue regulations for defence of the realm for the duration of the war.

A great advance can be seen along this line. Although Imperial limitations have not been removed by statutory enactment since 1867 they have been removed in practice. The first great step in this direction, after the Colonial Naval Defence Act of 1865, was the removal of Imperial garrisons from Canadian Bases (Esquimalt and Halifax.) in 1902. This was a plain hint on the part of the Mother Country that she thought Canada was quite able to exercise the powers she had been given to control her Naval and Military forces.

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(1) 4-5 George V, Chapter 29. (Canadian)
(2) 4-5 George V, Chapter 63. (Canadian)
(3) 5 George V, Chapter 8. (Canadian)
CHAPTER V.

MERCHANT SHIPPING.

Of all the subjects of Imperial limitation, so far treated, none is of so great practical importance to Canada as that dealing with Merchant Shipping. Such was not the case in early days when foreign trading and transport work was done by English ships. Then it was of little or no concern to Canada who made laws governing merchant ships. With the growth of a mercantile fleet of her own this indifferent attitude changed. The result is that Canada now has laws governing ships registered in her own ports. But the Imperial government as Mr. Justice Clement says does not recognize any such thing as a Canadian ship.

Great Britain has always exercised control over Empire shipping. A loosening of control began with the ending of the Navigation Acts in 1849 and the passing of the Merchant Shipping Act of 1854. This Act permitted (by section 547) colonial legislatures to repeal, by Act or Ordinance approved by the Crown, any or all provisions of the Act relating to ships registered in the colonies. In 1868 an Act was passed to: "Amend the Law relating to the registration of ships in British possessions." This

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(1) Clement, Canadian Constitution, page 211.

(2) Section 1, Tricesimo primo et tricesimo secunda, Victoria Reginae. (Chapter 129.) (Imperial)
permitted governors of British Colonies to grant terminal certificates of registry to British ships.

Later by the Colonial Merchant Shipping Act 1869 (Imperial) colonies were further permitted to regulate their ships. This new extension of power was in regard to the regulation of ships employed in coast trading. In 1867 the Dominion Legislature was given power over Navigation and Shipping. Such power as was given was of course governed by the Colonial Laws Validity Act 1865, which made repugnant legislation null and void.

The Act of greatest importance in the history of Merchant Shipping legislation was passed by the Imperial government in 1894. An examination of this is necessary in order to see to what extent the Canadian government's power to legislate on mercantile matters is limited.

Part I. Registry

Qualifications for ownership, extending to the whole Empire are set down in this part of the Act. They are as follows: "A ship shall not be deemed to be a British ship unless owned by persons of the following description (in this Act referred to as persons qualified to be owners of British Ships), namely,

(1) Section 4, 32 Victoria, Chapter 11. (Imperial)
(2) Section 91, subsection 10; 30-31 Victoria, Chapter 3. (Imperial)
(a) Natural-born British Subjects:

(b) Persons naturalized by or in pursuance of an Act of Parliament of the United Kingdom, or by or in pursuance of an Act or ordinance of the proper legislative authority in a British possession:

(c) Persons made denizens by letters of denization: and

(d) Bodies corporate established under and subject to the laws of some part of Her Majesty's dominions, and having their principal place of business in those dominions:

It was recognized by this Act as it had been set down before that colonies should have the right to register ships. The governor was to execute the duties of Commissioners of Customs regarding registry. He also had the power of approving some port for registry. Further powers were also given the governor, who was permitted to issue terminable certificates of registration to small ships in the colonies. The ships to which certificates have been issued are deemed British ships as long as the certificate is in force.

(1) Section 1, 57-58 Victoria, Chapter 60. (Imperial)
(2) Acts of 1868 concerning Merchant Shipping. (Imperial)
(3) Section 89, 57-58 Victoria, Chapter 60. (Imperial)
(4) Section 90, 57-58 Victoria, Chapter 60. (Imperial)
All the rules and regulations governing the flying of
the national flag and forfeiture for non-compliance apply to
all the British dominions. So also do those for registrat-
ion.

Part II. Masters and Seamen.

The first partian of this part, which concerns the
issuance of certificates of competency deals only with ships
visiting the United Kingdom. Ships visiting the colonies
or registered there are to have certificates of competency
issued to their masters and seamen. A considerable por-
tion of this part is applicable to all the Empire that is:
the part relating to enlistment in the Navy. By section
195, "A seaman may leave his ship for the purpose of forth-
with entering the naval service of Her Majesty, and in that
case shall not by reason of so leaving his ship be deemed
to have deserted therefrom, or otherwise be liable to any
punishment or forfeiture whatsoever." The exact applic-
ation of the Act to ships registered outside the United
Kingdom is shown in section 261. This is so important
that it would be well to quote it.

(1) Section 91, 57-58 Victoria, Chapter 60. (Imperial)
(2) Section 92, 57-58 Victoria, Chapter 60. (Imperial)
(3) Section 102, 57-58 Victoria, Chapter 60. (Imperial)
(4) Section 195, 57-58 Victoria, Chapter 60. (Imperial)
This part of this Act shall, unless the context or subject matter requires a different application, apply to all sea-going British ships registered out of the United Kingdom, and to the owners, masters and crews thereof as follows: that is to say,

(a) the provisions relating to the shipping and discharge of seamen in the United Kingdom and to volunteering into the Navy shall apply in every case;

(b) the provisions relating to lists of the crew and to the property of deceased seamen and apprentices shall apply where the crew are discharged, or the final part of destination of the ship is, in the United Kingdom; and

(c) all the provisions shall apply where the ships are employed in trading or going between any port in the United Kingdom, and any port not situate in the British possession or country in which the ship is registered; and

(d) the provisions relating to the rights of seamen in respect of wages, to the shipping and discharge of seamen in ports abroad, to leaving seamen abroad and to the relief of seamen in distress in ports abroad, to the provisions, health, and accommodation of seamen, to the power of seamen to make complaints, to the protection of seamen from imposition, and to discipline, shall apply in every case except where the ship is within the jurisdiction of the government of the British possession in which the ship
is registered." From this it would appear that the British possession could make what rules it chose covering all these matters except volunteering for the Navy. Section 735 confirms this opinion as it permits repeal of all provisions of the Act, by a colony (except those governing emigrant ships), on approval of the Crown.

**Part III. Passenger and Emigrant Ships.**

Colonies are permitted to issue certificates to passenger steamers but they must be granted after a similar manner to that in practice in the United Kingdom. None of the provisions of this part can be altered by the colony.

**Part IV. Fishing Boats.**

This part does not concern Canada.

**Part V. Safety.**

Power is given to the Crown in this part to make regulations for the prevention of collision on the recommendation of the Admiralty and the Board of Trade or by Order in Council. These regulations are to apply to all masters and owners of British ships. Inland water and harbor rules are not to be affected by the rules of this part.

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(1) Section 261; 57-58 Victoria, Chapter 60. (Imperial)
(2) Section 735; 57-58 Victoria, Chapter 60. (Imperial)
(3) Section 284; 57-58 Victoria, Chapter 60. (Imperial)
(4) Section 735; 57-58 Victoria, Chapter 60. (Imperial)
(5) Section 418; 57-58 Victoria, Chapter 60. (Imperial)
(6) Section 419; 57-58 Victoria, Chapter 60. (Imperial)
(7) Section 421; 57-58 Victoria, Chapter 60. (Imperial)
importance to the colonies is the section permitting them to fix their load lines on approval of the Crown in Council.

**Part VI. Special Shipping Inquiries and Courts.**

The authority for Colonial courts to make inquiries into shipping casualties and conduct of officers is set forth in this part of the Act. Considerable powers of inquiry are given to the colonies. These cover their own ships wherever wrecked and British ships wrecked in their waters or on or near their coasts.

**Part VIII. Liability of Shipowners.**

This part extends to the whole of the Empire as section 509 states.

**Part VII. Delivery of Goods.** Part IX. Wreck and Salvage; Part X. "Pilotage;" Part XI. "Lighthouses;" and Part XII. "Mercantile Marine Fund." extend only to the United Kingdom.

**Part XIII. Legal Proceedings.**

Section 712 states: "This Part of this Act shall, except where otherwise provided, apply to the whole of Her Majesty's dominions. Jurisdiction is given by the Act to the place where the offence was committed or complained of. Also the court situate nearest the place where

(1) Section 444; 57-58 Victoria, Chapter 60. (Imperial)
(2) Section 478; 57-58 Victoria, Chapter 60. (Imperial)
(3) Section 509; 57-58 Victoria, Chapter 60. (Imperial)
(4) Section 712; 57-58 Victoria, Chapter 60. (Imperial)
(5) Section 684; 57-58 Victoria, Chapter 60. (Imperial)
the ship is has jurisdiction over it. This extends to Britishers on foreign ships and to foreign sailors on British ships. From the point of view of the colony section 711 is very important and declares as follows: "Any offence under this Act shall, in any British possession, be punishable by any court or magistrate by whom an offence of like character is ordinarily punishable, or in such other manner as may be determined by any Act or ordinance having the force of law in that possession."

Part XIV. Supplimental.

In this part two sections of great importance to Canada appear namely: sections 735 and 736. The first gives the colonies the right to repeal any part or the whole of the Act except that dealing with emigrant and passenger ships. These changes of course require the consent and approval of the Crown before becoming effective. The second section (736) provides for the regulation of coastal trade by the colonial legislature.

Mr. Justice Clement summarizes the power of repeal given to Canada very well and it is well worth quoting his summary,

(1) Section 685; 57-58 Victoria, Chapter 60. (Imperial)
(2) Section 686; 57-58 Victoria, Chapter 60. (Imperial)
(3) Section 711; 57-58 Victoria, Chapter 60. (Imperial)
"The power of repeal given to the Parliament of Canada by section 735 is limited in three ways:

(1) Only ships registered in Canada can be affected by such repealing legislation.

(2) Part III of the Imperial Act, relating to emigrant ships, is expressly excepted. To such ships, even when registered in Canada, the Imperial Act extends, so far as it purports to extend.

(3) Canadian legislation requires to be confirmed by Imperial Orders in Council i.e. by the British Government, and does not become operative until such approval has been proclaimed in Canada."

Since the Act of 1894 further amendments have been made. These were in 1906, 1907 and 1911. The 1911 one is quite extensive but like the others it can not be said to give or take away any powers from the colonial legislatures in regard to Merchant Shipping.

In view of the fact that Canada has been given certain powers over her Merchant Shipping what has she done? There is little need to go back farther than the 1906 Merchant Shipping Act. In examining this we must have in mind the points upon which the Canadian Legislature is free to formulate laws and also the other means by which

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(2) Revised Statutes of Canada (1906) Chapter 113.
it can compile a statute. These may be shortly stated as follows:

(1) Regulations regarding the registry of ships.
(2) Issue of certificates of competency.
(3) Fixing of deck and load lines.
(4) Adaption of any part of the Imperial Act of 1894.
(5) Regulation of coasting trade.
(6) Subjects covered by Imperial Act but not extending to the colonies.
(7) Any other regulations approved by the Crown might be changed except those in Part III Emigrant Ships.

A short survey of the 1906 Act will show the extent to which Canada has used her powers. It is only possible then to get an idea of what limitation has actually been exercised on the Dominion by the Imperial restrictions.

Part I. "Registration and Classification of Ships."

This part has no doubt been built on the authority

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(1) Section 89; 57-58 Victoria, Chapter 60. (Imperial)
(2) Section 102; 57-58 Victoria, Chapter 60. (Imperial)
(3) Section 444; 57-58 Victoria, Chapter 60. (Imperial)
(4) Section 736; 57-58 Victoria, Chapter 60. (Imperial)
(5) Section 735; 57-58 Victoria, Chapter 60. (Imperial)
of the section in the Imperial Act, which permits the
colonies to register their ships, or on the navigation and
shipping clause of the B. N. A. Act.

Parts II, III and V.

Cover masters, seamen and the issue of certificates
to them. All this comes under Part II of the Imperial Act,
which permitted colonies by section 102 to make regulations
and conditions governing certificates of competency. The
rest is quite permissible by the Imperial Act so long as
it is not repugnant to it. The extent of such repugnancy,
if any, cannot be seen till cases have arisen and been de­
cided on the matter.

Parts IV and XIV.

Dealing with "Shipping of Seamen on Inland Waters"
and "Navigation on Canadian Waters" treat matters not cover­
ed by the Imperial Act and thus would be quite legal so long
as they displayed no repugnancy to British statutes express­
ed to extend to Canada or did not interfere with the rights
of British subjects. Also the Imperial Act definitely states
that rules of navigation in harbors and inland waters are
not to be affected by Act.

Parts VII and VIII.

Dealing with "Steamboat Inspection - Examination and
licensing of Engineers" and Inspection of Ships" are left

(1) Section 89; 57-58 Victoria, Chapter 60. (Imperial)
(2) Section 421; 57-58 Victoria, Chapter 60. (Imperial)
to the colonies by section 727 of the Act of 1894. (Imperial)

Parts IX and X.

"Safety of Ships etc." and "Wrecks, Salvage and Investigation" do not resemble the Imperial Act part V and are taken from chapters 77 and 81 of the Revised Statutes of Canada (1886). What authority are they based on? This authority if any rests in section 735 of the Imperial Act which permits the repeal of any provisions except those relating to emigrant ships.

Part XI.

Lighthouses, Buoys and Beacons and Sable Island. Of this little need be said as Canada was given power to legislate on these matters by the B. N. A. Act.

Parts XII and XIII.

"Public Harbors and Harbor Masters" and "Port Wardens." These are evidently matters of purely domestic concern and so long as no repugnancy to Imperial statutes arises would be quite valid. The 1894 Act does not deal with this anyway.

Part XV. "Deck and Load Lines."

This subject has been given to the colonial legislatures by section 444. Section 950 of the Canadian Act says of this part: "This Part shall not take effect until His Majesty, by order in council published in the Canada Gazette,

(1) Section 727; 57-58 Victoria, Chapter 60. (Imperial.
(2) Subsection 9, Section 91; 30-31 Victoria, Chapter 3 (Imp)
(3) Section 444; 57-58 Victoria, Chapter 66. (Imperial)
has made the declaration prescribed under section four hundred and forty-four of the Merchant Shipping Act, 1894, nor until a proclamation bringing it into effect has also been published in the Canada Gazette."

Part XVI. "Coasting Trade of Canada."

This subject is specially granted to the colonial governments to legislate on by section 736, which provides: "The Legislature of a British possession may, by any Act or Ordinance, regulate the coasting trade of that British Possession-- - - " This is of course subject to Crown approval.

Part XVII. "Liabilities of Carriers by Water."

Here the provisions of the Canadian Act differ from those of the Imperial Act, which are to extend to the whole of the Empire. The Canadian Act, on this part, is based on chapter 82 of the Revised Statutes of Canada for 1886. In this case as in others the Canadian Legislature, on the authority of section 735 (of 1894 Act) no doubt repealed the Imperial provisions in favour of their own. The repeal need not be expressed. This is quite justifiable so long as no repugnancy arises.

(1) Section 950; Revised Statutes of Canada, Chapter 113, (1906)
(2) Section 736; 57-58 Victoria, Chapter 60. (Imperial)
(3) Section 509; 57-58 Victoria, Chapter 60. (Imperial)
Part XVIII. "Supplemental."

This only deals with tonnage dues and duties and methods of discharging cargo and is an entirely unimportant part of the Act.

From this summary of the 1906 Act it seems that Canada has kept within the powers of legislation on Merchant Shipping, granted her by the Imperial Act of 1894. Since the passing of this Act (1906) Canada has not passed further legislation on the matter. The legislation was quite full and covered apparently everything but regulations governing emigrant ships and joining the Imperial Navy. Neither of these could well be interfered with, one on account of the fact that it was specifically stated that colonies could (1) not interfere with it, the other for evident reasons. The right of Canada to have Canadian ships has not been conceded and she only has the privilege to register ships. This right could not make much difference. Although these present limitations are few the British government might conceivably by amending its Act increase or remove them at any time.

(1) Section 735; 57-58 Victoria, Chapter 60. (Imperial)
CHAPTER VI.

COPYRIGHT AND MISCELLANEOUS OTHER IMPERIAL STATUTES.

A consideration of Imperial limitations would not be complete without discussing, in addition to the chief limitations already mentioned, numerous others imposed by statutes extending to Canada. Of these statutes the most important are those relating to copyright. Yet there are others of sufficient importance to merit a mention in passing.

The copyright Act of 1842, Mr. Justice Clement claims, was intended to extend to the whole of the British Empire. He bases his claim on section 29 of the Imperial Copyright Act of 1842. Following the passing of this Act, the Legislature of the Province of Canada passed numerous resolutions asking that the Imperial Copyright Act be repealed or modified. In 1847 an Act was passed by the English Parliament permitting the Crown to suspend, by Order in Council, the provision of the 1842 Act, preventing importation of foreign reprints into Colonies, if they protected works of British authors.

With the passing of the B. N. A. Act, copyright was given to the Dominion Parliament as one of its powers. No bill, however, was passed on the matter till 1872. The Governor-General reserved this. Then a bill was drawn

(1) Clement's "Canadian Constitution" page 252.
(2) 30-31 Victoria, Chapter III:subsection 23, section 91(IMP)
(3) Keith's "Responsible Government in the Dominion" Page 1218
up by the Imperial Government and sent around to the colonies. This did not meet with the approval of the Canadian Legislature, who wished their own bill to receive Royal consent. A discussion of the matter was held between the Dominion Government and Lord Carnarvon, Secretary of State. This resulted in the drawing up of a new bill, by the Canadian Legislature in 1875. This bill really made it possible for English authors to have their books protected in Canada as well as in England by copyrighting in Canada also. The curious thing about this act is that, by section one, the Minister of Agriculture is given, executive control over the matter. Royal consent was given to the bill by Her Majesty Queen Victoria, but before this was possible, an Act was passed by the Imperial Parliament, permitting Her Majesty in Council to assent to the Canadian Copyright Act.

In 1886 the International Copyright Act was passed by the Imperial government. The self-governing colonies reserved the right to abolish the Act for themselves at any time. By subsection 4 of section 8 provision was made that "Nothing in the Copyright Acts or this Act shall prevent the passing in a British possession of any Act or Ordinance respecting the copyright, within the limits of such possess-

(1) Keith's "Responsible Government in the Dominions, page 1219.
(2) 38 Victoria, Chapter 88. (Canadian)
(3) 49-50 Victoria, Chapter 33. (Imperial)
ion, of works first produced in that possession." This recognized Canada's right of legislating on the copyright of works produced in the Dominion. Yet a book first published in a British possession was protected throughout the Empire.

Various attempts were made to consolidate the Imperial Copyright Law. Bills for this purpose were introduced in the English Parliament in 1898, 1899 and 1900. None of these were passed and it was not until 1911 that the Imperial Acts were consolidated. In this year "An Act to amend and consolidate the Law relating to Copyright" was introduced and passed. This Act is of great importance because it expresses on the latest law/copyright existing in the Empire, except the 1916 Act (Trading with the Enemy Copyright Act). Of this statute sections 25-27 inclusive are the most important for the colonies. "It shall not extend to a self governing dominion, unless declared by the legislature of that dominion to be in force therein either without any modifications and additions or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion as it may be enacted by such Legislature." The legislatures of any

(1) Keith's "Responsible Government in the Dominions, page 1231.
(2) 1-2 George V, Chapter 46.
(3) 1-2 George V, Chapter 46. (1911) (Imperial)
(4) 1-2 George V, Chapter 46, section 25, (1). (Imperial)
of the self-governing dominions may repeal any part or all of the Act so far as they are operative within the dominion. In case a colony has adopted all or any of the provisions of the Act they will continue in effect there even if the Imperial Government repeals the original Act. His Majesty in Council can by Order in Council extend the Act to protect the works of a particular author in any of the colonies if no proper protection is afforded by the Colonial Act, but, in a self-governing dominion like Canada, this power is to be exercised by the Governor-General. The 1916 Act was purely a war measure and comes into effect only in time of war.

From this it may be seen that there has been a considerable removal of the limitations on Canadian powers of controlling copyright. From a status having no Copyright Act of her own, and no power to make one, Canada has risen to a position where she controls the matter completely. Imperial Copyright Acts have effect in Canada if the Dominion chooses to adopt them.

The subject of Marriage is the second in importance of these miscellaneous limitations. British Acts (English) were passed as early as 1823 to validate marriages performed abroad. Of primary importance among these was the 1890

(1) 1-2 George V, Chapter 46, Section 26. (Imperial)
(2) 6-7 George V, Chapter 32. (Imperial)
(3) Clement's Canadian Constitution, page 263.
Marriage Act. By this statute any marriage solemnized abroad in the house of any British ambassador or minister between any man and woman of whom one was a British subject would be deemed to be legal. Also a marriage solemnized under local law and recognized by a consul to be in accordance with this Act could be registered by that consul. The following year an act was passed to amend and explain the 1849 and 1890 Marriage Acts. Canada, had, in 1882, passed an Act to legalize the marriage of a man to his deceased wife's sister. Later, in 1890, an Act was passed to legalize the marriage of a man with his deceased wife's niece. Doubt as to the legality of these Acts must have arisen for in 1900 the Imperial government passed an Act, to legalize colonial marriages with deceased wife's sister. It was stated in this Act that: "Where a man has, whether before or after the passing of this Act, married his deceased wife's sister, and at the date of the marriage each of the parties was domiciled in a part of the British Possessions in which at that date such a marriage was legal, the marriage if legal in other respects shall be, and shall be deemed, always to have been, legal for all

(2) 54-55 Victoria, Chapter 74. (Imperial)
(3) 45 Victoria, Chapter 42.
(4) 53 Victoria, Chapter 56.
(5) Section 1; 6 Edward VII. Chapter 30.
(1) 53-54 Victoria, Chapter 47. (Imperial)
purposes including the right of succession to real property and to honors and dignities in the United Kingdom." This section seems to show that the purpose of the Act was to legalize this form of marriage for succession purposes in Great Britain, rather than to interfere with colonial powers of regulating marriage. From this it might be inferred that colonial laws were considered legal and Imperial Acts did not extend to colonies. Mr. Justice Clement, however, says: "In the Acts of 1890, 1891 and 1892 the expression (describing where the marriages are to be solemnized) is, 'within the United Kingdom.' Reading all these Acts as in pari materia, however, and in the light of the fictional idea underlying them all, the intent would seem to be of Imperial scope." In spite of this opinion there is nothing to show that the Imperial government exercises any real control over the Canadian Legislature in the matter. It must be concluded then that Dominion government has free exercise of the powers of legislating on marriage, given by the B. N. A. Act.

Acts by the Imperial government concerning demise of the Crown naturally extend to the colonies. By the Statute of 1901 it was provided that, "The holding of any office under the Crown within or without His Majesty's dominions,

(1) Clement's "Canadian Constitution, page 264.

(2) Subsection 26 of section 91, 30-31 Victoria, Chapter 3.
shall not be affected, nor shall any fresh appointment there-to be rendered necessary- (1)

Likewise statutes regarding the buying and selling of offices extend to colonies. No recent Imperial Acts have been passed on the subject but Mr. Justice Clement says: "The statute of Edward VI against trafficking in public offices was expressly extended to the colonies by an Act of George III." (2)

The Act, calling for masters and commanders of British ships to report derelicts naturally extends to the ships registered in the colonies. This is so because all ships, whether registered in the United Kingdom or the colonies, are British ships. Masters are obliged to report derelicts sighted to a Lloyd's agent. In default a fine is imposed. (3)

The Act of 1911, renacting the Official Secrets Act of 1889, was to extend to all the British dominions but section 11 provided that. "If by any law made before or after the passing of this Act, by the legislature of any British possession provisions are made which appear to his Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend

(1) Section 1; Edward VII, Chapter 5.
(2) Clement's Canadian Constitution page 249.
(3) 59-60 Victoria, Chapter 12.
(4) 1-2 George V, Chapter 28.
the operation within that British possession of this Act, or of any part thereof, so long as that law continues in force there, and no longer, and the Order shall have effect as if it were enacted in this Act." The suspension of the Act in any colony, does not affect the power of the Crown over officials appointed by it in that colony.

The "Act to amend the Trading with the Enemy Acts (1) (1914 and 1915)" extended to the Dominion although the former two did not. It was only as regards the matter of paying interest on government debts, in the United Kingdom, that the Act did extend to the colonies. The later amendments in the same and the following year did not extend to the dominion or the other colonies.

Exactments concerning the Pacific Cable were peculiar. They provided for an undertaking, the expense of which was to be shared by the United Kingdom and the various colonies concerned. The cost of construction as well as profits were to be shared in set ratios. This could not be rightly called an Imperial limitation as the Acts were the result of mutual agreement.

Numerous Acts were passed by the Imperial government to protect seals in the Behring Sea and other parts of the Pacific Ocean adjacent to it. These statutes, which were

(1) 5-6 George V, Chapter 79.

(2) 1 Edward VII, Chapter 31.
passed as early as 1891, extended to all British ships. This means that the Dominion was under a limitation as her ships are all British ships and not Canadian ships.

Privy Council Appeals placed quite an important limitation on Canada. Both Mr. Keith and Mr. Justice Clement agree that the Crown has the undoubted right of prerogative to hear appeals from the colonies. This opinion is based on judicial decisions. These decisions in their turn are based on the Judicial Committee Act, 1844.

Canada has, at different times, been anxious to limit appeals to the Privy Council in criminal cases. To this end an Act was passed in 1888 by the Dominion Parliament to "amend the law respecting procedure in Criminal cases."

Section one enacted that, "Notwithstanding any royal prerogative or anything contained in 'The interpretation Act' or in 'The Supreme and Exchequer Courts Act,' no appeal shall be brought in any criminal case from any judgment or order of any court in Canada to any court of appeal or authority, by which in the United Kingdom appeals or petitions to Her Majesty in Council may be heard."

Mr. Berriedale Keith claims that the prerogative has not been limited by this and legally, in view of the 1844

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(1) Cushing v DuKey; Appeal Cases 409, and in re Lord Bishop of Natal; 11 Jur. N. S. 353.
(2) 7-8 Victoria, Chapter 69, Section 1.
(3) 51 Victoria, Chapter 43.
(4) Section 1; Victoria 51, Chapter 43.
(5) Keith's Responsible Government in the Dominion page 1359.
Act, it can still be extended to Canada. The practice, of not hearing criminal cases, has been developed by the Privy Council so, it may be said that a convention has come into being, that the Privy Council will not hear appeals on criminal cases. Then there has been a removal of control over the Dominion in deciding finally certain cases. Now only civil cases involving large sums are brought before the Privy Council.

The Imperial Government has the right to have Prize Courts in all the British possessions. This matter is governed by the Acts of 1894, 1914 and 1915. Section two (1) of the 1894 Act shows the extent of the Act. It states:

"2 - (1) Any commission, warrant, or instructions from Her Majesty the Queen or, the Admiralty for the purpose of commissioning or regulating the procedure of a prize court at any place in a British possession may, notwithstanding the existence of peace, be issued at any time, with a direction that the court shall act only upon such proclamation hereinafter mentioned being in that possession." That proclamation may be issued by Order in Council or by a rear admiral of the possession, if he receives information from the Secretary of State that war has broken out with a foreign country. After war these courts continue so long as they have business to transact. The jurisdiction to act as a

(1) Section 2 (1), 57-58 Victoria, Chapter 39.
Prize Court may be given to a Colonial Court and the Exchequer Court has this jurisdiction in Canada. Amendments were made to rules of procedure in 1914 and in 1915 "An Act to amend the enactments relating to Prize Courts." was passed. This permitted the transfer of proceedings from one court to another and also gave power to Prize Courts to make their orders enforceable in other Prize Courts. In this matter the Imperial government exercises considerable control over Canada, yet this limitation has been lessened in a way since the Imperial government acts in this matter through the medium of the Dominion government.

There are numerous other Imperial statutes which concern the Dominion but they place no limiting control on her. Chief among these are the acts dealing with Bankruptcy, Companies, Probate and Colonial Solicitors. These rather extend privileges to than place limitations on, Canada.

(2) 4-5 George V, Chapter 13.
(3) 5-6 George V, Chapter 57.
(4) Section 2, 5-6 George V, Chapter 57.
CHAPTER VII.

Conclusion.

It has been definitely shown, in the preceding chapters, what limitations are imposed by the Imperial government on the Canadian government. The development of these has also been traced. But this has not been done in a comprehensive and general way and it is the aim of this concluding chapter to show how far this development has led to a removal of these limitations. Also an attempt will be made to show the change in the attitude of the Mother Country to the colony. This may best be done by summarizing the foregoing matter.

Both the Imperial and Dominion governments exercise control over the subjects of: Allegiance, Nationality, Aliens and Naturalization. By the B. N. A. Act of 1867, Canada was given powers over the subjects of Naturalization and Aliens. This of course was limited to the Dominion. An alien naturalized in Canada was not necessarily a British subject in any other part of the Empire. Prior to the passing of the 1914 Act on Naturalization 1r. Justice Clement made this statement: "The status of an alien must be determined by the law of England, while the consequence of that status would depend on local law." This opinion was based on the Naturalization Act of 1870, which recognized that colonies could make naturalization acts, but emphasized the

(1) Clement's "Canadian Constitution." Page 179.
limitations that it placed on this power by stating that any laws might be disallowed by the Crown.

The passing of the Naturalization Act of 1914, which was adopted by both the Imperial government and self-governing colonies as a result of the deliberations of the 1911 Conference, changed the situation completely. This Act was to be adopted by the colonies if they wished it and was not to interfere with local laws. Residence in any one part of the Empire would qualify for naturalization in any other part. It would seem from this act and the way in which it was drawn up that the Imperial government had reduced its limitations on the Canadian powers of legislation on: Nationality, Naturalization and Aliens. Canada appears to have thought this as she passed (in 1921) a Nationality Act, in which a Canadian National was defined. While this Act is inconsistent with the desire for uniform Imperial nationality, it probably shows the extent to which Canada exercises her authority over this subject of Nationality. At least it shows that if she can do such a thing there has been a great removal of Imperial limitation in this respect.

In regard to Extradition, Exclusion and Expulsion, Canada has risen from the position where she had only implied powers in these matters (by section 91 subsection 29 of the B. N. A. Act 1867) to a position where she can

(1) Section 16, 33 Victoria, Chapter 14. (Imperial)
legislate on the matter for herself. Express powers were given, in 1870, to all self-governing dominions to make their own extradition laws, which were to be made effective by the suspension of the Imperial Act. This gave the Dominion power in the matter of extradition, a subject over which she had no definite authority before this time. Canada took advantage of this permission and passed the 1886 Act. While this Act remained in force, after the suspension of the Imperial Act, it appears that the English government could do nothing to affect it. Any new Extradition Act requires to be recognized by Order in Council. In this way there is a real limitation placed on the Dominions powers. Yet there has been a removal of Imperial limitation in two ways. First that the Canadian government has more power in this matter now, than prior to 1870. Second that it is very improbable that the Imperial government would not recognize an important Canadian Act, in spite of the fact that it has not recognized the 1909 amending Act.

The Imperial limitation on the passing of Fugitive Offender's Acts is somewhat the same as that placed on extradition. Canada has by the British Act of 1881 been given power to make Acts regarding fugitive offenders but they had to be recognized by Order in Council. The Canadian Fugitive Offender's Acts are further limited by the fact

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(1) Section 18, 33-34 Victoria, Chapter 52. (Imperial)
that they may at any time be deemed repugnant to the Imperial Acts and thus be invalidated. Here as in the case of Extradition, the development has been a giving of limited power rather than the removal of limitations on existing powers.

The matter of Army and Navy legislation has not and is not yet of great importance to Canada. What decrease in Imperial limitation on this matter has taken place has been rather in practice than in the legal sense. The restrictions are rather for the prevention the use of forces in independent offensive action than for other reasons. While the British Army Act brought into force yearly states that it is to extend to all those under military law within or without His Majesty's dominions, Mr. Justice Clement held that the British Act dealt only with the British Army. This opinion no doubt is based on section 177 of the Army Act of 1881, which provides that in case a force is raised in a colony the law of that colony is to extend to it. Yet the ultimate control of the forces was left in the hands of the Crown and thus of the Imperial government. This limitation is clearly recognized in the Canadian Militia Act of 1906. A parallel condition exists in the case of naval legislation. Power was given to the colonies to legislate for the provision of navies in 1865. This power was rather limited than augmented, in the

(1) Section 15. 30-31 Victoria, Chapter 3. (Imperial)
case of Canada, by the passing of the B. N. A. Act of 1867, with its provisions as to the control of Canadian military and naval forces by making the Crown Commander-in-Chief.

From a purely legal point of view there appears to have been little if any removal of the Imperial limitations in respect of these two subjects. But from a practical point of view such is not the case. His Majesty is Commander-in-Chief of the Military and Naval forces of Canada. It would seem from this that the Imperial government could use these forces in any war it chose to follow. Legally it could but practically it could not because the Canadian government could refuse the necessary financial appropriations. Then, legally the Imperial government could tax the Canadian people for necessary money. This might have been permitted at an early stage in Canadian history but such a thing attempted at the present time would be highly dangerous as it would in all probability lead to Empire disruption. The case of the attempt to tax the American colonies is a good example of this. With the growing power of Canada and its gradual development the British government has not seen fit to endanger its friendly relations with the Dominion by being too restrictive.

The history of Imperial navigation, since 1849, has been one of loosening control over colonial shipping. Here if anywhere there seems to have been a decided removal of Imperial limitations, in spite of the fact that some remain
still. Power was given to the Dominion, legislature by the B. N. A. Act (1867), to pass acts on navigation and shipping. These however could not differ greatly from the Imperial Acts or they would be declared invalid through their repugnancy. The limitations placed on the colonial governments in their shipping legislation is clearly set forth in the 1894 Act. Shortly they are: (1) Ships registered in Canada alone, can be controlled by Dominion legislation. (2) Safety provisions on immigrant ships cannot be changed. (3) Canadian shipping legislation has to be confirmed by Order in Council. (4) All British ships must receive the same treatment. This shows a vast difference from the time when Canada could only pass navigation acts, (1867) which conformed closely to the Imperial Acts on the matter. There can be no doubt that these limitations still remaining are great but they are greater in theory than in practice. Take the first for instance, it seems in no way unnatural that the Canadian Merchant Shipping Law should cover other than British Ships registered in Canada. The second seems in no way burdensome. While it is a limitation it is not a very grievous one. The third is apparently the greatest limitation. But is it as restricting in practice as it appears to be on paper? It seems not. Canada has now reached a position in her political development, which makes the Imperial government unwilling to interfere unduly with her lest Empire disruption should result from this interference. The Imperial govern-

ment is almost as unlikely to withhold consent from such a Canadian bill as the House of Lords is to withhold its consent from an Imperial Bill. The fourth limitation has been pointed to by many as being a very grievous - restriction on Canadian shipping legislation. This may appear to be so but it could be easily got around. Say for instance Canada wants to build up her mercantile fleet by preferential treatment. She cannot do so by direct legislation but other methods could be used. For example all shipping could be taxed equally and then the proceeds truend over in the form of bounties to the Canadian Mercantile Marine. In the face of all this it does not seem unreasonable to say that Canada has had many of the limitations removed from her in this respect.

Copyright legislation is much freer for Canada now than in 1867. The B. N. A. Act gave the Dominion parliament the right to legislate on copyright. However the exact extent of this power was not seen till a bill was passed on the matter in 1872. This bill was reserved by the Governor-General because he did not think it would be suitable to the Imperial government. Here a limitation, on the legislative powers of the Dominion parliament in the matter appeared. Further restriction was shown by the fact that the British government passed a special bill to permit the Queen to give her consent to the Canadian Act on Copyright of 1875. By 1886 a change came about. The International Copyright Act
was passed in this year by the English parliament. A certain loosening of limitation appears from the wording of this Act. By section 4 a self-governing colony was to have the right to make any Act or ordinance regarding the works of any author, first produced in that possession. This means that a book produced in any part of the Empire could be protected in that colony notwithstanding its laws to the contrary.

Real development is shown in the removal of Imperial limitations by the 1911 Act of the English parliament. Section 25 (already quoted) is of great importance. It declares that the English Act shall not extend to the self-governing colonies, unless they wish to declare it in force there and in such event they may make what changes they choose. The only apparent limitation is that His Majesty may, by Order in Council, protect the works of a particular author in any colony where it appears that insufficient protection is given by the colonial act. Thus a most decided removal of Imperial limitation took place with the passing of the 1911 Act. So that now the only apparent limitation is that exercisable in the protection of a particular author's works.

No great limitation has been exercised on Canada's power to legislate on marriage since the passing of the B. N. A. Act (1867). Such Imperial Acts as do extend to Canada on this matter are usually for the purpose of giving succession benefits in England.
Little or no development or removal can be shown in the case of a number of limitations (in the form of statutes) extending to Canada. Chief among these are acts concerning: "Buying and Selling Offices," "Demise of the Crown," "Derelict Vessels," "Official Secrets," and "Trading with the Enemy." These are, in a way, of no great importance because they do not place any great limitations on Canadian legislation.

Certain decided limitations exist on the judicial powers of Canada. These are in the matters of appeal to the Privy Council and the establishment of Prize Courts. A great deal of discussion has gone on about both of these, especially the former. But in spite of the desire for the abolition of Imperial powers in these, in so far as they affect the Dominion, little has been done.

From all the foregoing matter it can be seen that a general movement, for the removal of Imperial limitations from the Canadian constitution has been going on. This is true, as has been shown, from a purely legal standpoint, and is still truer from a practical standpoint. Many limiting powers yet remain, by statute, that the English government would be very unlikely to exercise in practice. These powers go to such an extent that the Imperial government could repeal the B. N. A. Acts and take Canada again directly under her control and legislate on all matters for her. Convention in this as in many other matters would prevent
such an occurrence. The statutory removal of limitation seems always to have followed the conventional removal and it is not unlikely that this development may go on till all limitations have been removed by statute.

Many have demanded that this removal of Imperial limitation be accomplished rapidly. Their strongest argument is probably that the powers of limitation placed in the hands of unwise Imperial ministers might cause Empire disruption. This is very true but at the same time these powers have not been used greatly to Canada's disadvantage. The reverse is true as Canada gains greatly from the necessary service that frequently accompanies these limitations.

As has been seen, most of the limitations concern matters related to International Affairs. Limitations existing on such matters can be justified on two grounds. First that unity of the Empire is necessary for purposes of International Law. Second that a consular and diplomatic service has to be kept up, which could not be afforded by any of the dominions. It is not, however, the purpose of this thesis to consider the merits or demerits of preserving Empire unity. Yet, there can be no doubt that the loss to Canada (at her present state of immaturity) of both consular service and Empire prestige would be a very serious one. In view of all this the present system of gradual removal of Imperial limitations from Canadian legislative powers seems both reasonable and wise.

End.
BIBLIOGRAPHY.
(General)

I "Canadian Constitutional Development"
by: H. E. Edgerton
and W. L. Grant.
Published: Toronto,
The Macdonald Book Co.,
Limited. (1907)

II "Responsible Government in the Dominions"
by: Arthur Berriedale Keith,
Volume 3.
Published: Oxford,
at the Clarendon Press.
1912.

III "The Law of the Canadian Constitution"
by: The Honorable W. H. P. Clement,
Third edition.
Published: Toronto,
by the Carswell Company Limited.
1916.

IV "The Law and Custom of the Constitution"
by: Sir William R. Anson.
Volume 2,
The Crown Part II,
Third Edition.
Published: Oxford,
at the Clarendon Press.
1908.

V "The Constitutional History of England"
by: Sir Thomas Erskine May.
Edited and continued to 1911
by Francis Holland.
Volume 3,
by: Francis Holland.
1860 - 1911.
Published: Longmans, Green and Co.,
39 Paternoster Row, London.
1912.

VI "The Imperial Conference"
by: Richard Jebb.
Volume 2.
Published: Longmans, Green and Co.,
39 Paternoster Row, London.
1911.
II "The English and Empire Digest"
  with
  Complete and Exhaustive
  Annotations.
  Volumes II and III.
  Published: London
  1919.

III "Yesterday and Today in Canada"
  by: The Duke of Argyll.
  Published: London,
  George Allen and Sons,
  44 & 45 Rathbone Place,
  1910.
BIBLIOGRAPHY.

(Statutory)

I Imperial Statutes in Prefix of the Statutes of Canada. 1923.

II Revised Statutes of Canada, volumes 1 & 2. 1886.

III Revised Statutes of Canada, volumes 1 & 4 inclusive. 1906.

IV Statutes of Canada. 1923.