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FEDERAL AND UNIFIED CONSTITUTIONS

UNIVERSITY OF LONDON HISTORICAL SERIES

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FEDERAL AND UNIFIED CONSTITUTIONS

A COLLECTION OF CONSTITUTIONAL DOCUMENTS
FOR THE USE OF STUDENTS

EDITED, WITH A HISTORICAL INTRODUCTION
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PREFACE.

THIS collection of documents relating to Federal and Legislative Unions has been prepared, in the first place, for the use of students in the Honours School of History in the University of London who are working on the special subject, "The Unification of South Africa."

Certain constitutions are among the most familiar of political documents, and there are numberless commentaries upon them; but comprehensive collections of documents of this sort are lacking, and the assembling together in one volume of most of the historically important federal constitutions of modern times may, perhaps, be of general use to students of political institutions. In certain cases the device of legislative union has been preferred to federation, and some constitutional instruments embodying this device have been included for purposes of comparison. Some federal constitutions have had no long-continued existence, but are historically important as expressing particular points of view, or as directed to cope with particular dangers. Such are the New England Confederation of 1643, the Constitution of the Confederate States of America of 1861, and the abortive New Zealand Provincial Constitution of 1852. The Constitution of the Republic of the United States of Brazil has been included as an example of the important but comparatively little known constitutions of Latin America. The latest example of constitution-making, the constitution of the

German *Reich* may profitably be compared with its predecessor, the constitution of the North German Confederation of 1867, which served the German Empire from 1871 to the revolution of November, 1918.

Certain extracts from the speeches of the statesmen concerned in the setting-up of the new constitutions have been included in order to shew something of the ideas that moved them. Considerations of space have severely limited such selections, but students who are desirous of extending their reading in this direction, may be referred to Elliot's *Debates on the Federal Constitution*, Alexander Hamilton's arguments in the *Federalist*, and Messrs. Egerton and Grant's *Canadian Confederation*, which contain much valuable material of a similar kind in relation to the United States and the Dominion of Canada. Responsible government in the British Empire is so closely bound up with federation that no apology is necessary for the inclusion of extracts concerning it.

My acknowledgments are due to my former pupil Mr. Laurence Hollingsworth, B.A., now of the Department of Education, Zanzibar, for his patient and skilled assistance in preparing the various documents for the press.

A. P. N.

University of London,
King's College,
29 *September*, 1923.

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HISTORICAL INTRODUCTION.

§ 1.

"By a *Sovereign State*," says Bernard,[1] "we mean a community or number of persons permanently organized under a sovereign government of their own; and by a *sovereign government* we mean a government, however constituted, which exercises the power of making and enforcing law within a community, and is not itself subject to any superior government. These two factors, one positive, the other negative—the exercise of power and the absence of superior control—compose the notion of *sovereignty*, and are essential to it." The idea of a State necessarily implies a fixed abode within territory definitely belonging to and occupied by its citizens, who pay habitual obedience to those persons in whom superiority is vested. This obedience is rendered in deference to the so-called "internal sovereignty," which is vested in the rulers of the state either by traditional usage or by the provisions of a written constitution. The "external sovereignty" of the state consists in its independence in respect to all other political societies, and this is in theory restricted only by a body of usages that have received the general assent of mankind and are termed International Law. The sovereignty of a state, both internal and external, has either become vested in it in the course of far-back ages when civil society was gradually shaping itself, or it has been acquired in modern times by a definite act. Internal sovereignty was formally

[1] Bernard, M., "Neutrality of Great Britain during the American Civil War," p. 107.

assumed upon the completion of the written instrument whereby the citizens of the new state declared their independence of the political community to which they formerly owned allegiance. But external sovereignty became full and complete only when that political community formally acquiesced in the separation.

A state is a fluctuating body as to the individual members of which it is composed, but as to the society it is one and the same body whose existence is perpetuated by a constant succession of new members. It differs from other states in having a different origin, and its existence continues either until society is completely dissolved into anarchy, or until it is merged into some other state. The merging may be complete either by conquest or by voluntary absorption, in both of which cases the existence of the merged state has come to an end. Within modern times states have in certain cases formed permanent associations one with another wherein, while still retaining some part of their own sovereign power and separate existence, they have resigned a portion of their sovereignty into the hands of a common authority. To such an act of association the term "federation" is applied, while a more complete but still voluntary association, by which the existence of two or more states is merged in that of a newly founded state, is called "unification." The written instrument whereby these changes are made of legal effect and the new relations of the citizens to the sovereign power are regulated are called respectively "federal" and "unified constitutions." A federal constitution only regulates the relations of the associated states with one another and of them and their citizens with the central power. The relations of the citizens with the surviving state[1] government remains after federation

[1] In some federations the word *state* is used in two different senses; in the first place to represent the whole political community, and in the second the associates who have resigned a portion of their sovereignty. This usage is employed in Germany, the United States of America, Australia, and the federations of Latin America. In Canada the associates are called "provinces" and in Switzerland "cantons."

still regulated to a considerable extent by its own constitution. When the associating states merge their existence under a unified constitution, their earlier constitutions are destroyed save in so far as is provided by the new instrument. This now becomes the fundamental law regulating the relation between the sovereign power and the citizens.

In every case where federation or voluntary unification of previously independent states has taken place, an enquiry into their history shows that they have long been in closer political contact and have had far more interests in common than is usual between independent states. Their act of permanent association is the result of causes that have long been at work, and it is precipitated by some sudden access of difficulty or danger that has a common effect upon all the associates. In certain cases, however, a federal relation between separately governed political communities may be reached in an opposite direction. A centralized or unitary state may attempt to cope with political difficulties by the grant of a separate and inalienable legal status to groups of citizens living in an outlying portion of its territory whose administration from the centre is inconvenient. Such cases have been frequent in the British Empire, and in the United States and Canada newly settled territories, which were at first administered from the centre, have, after a time, been erected into full States of the Union or Provinces of the Dominion, and thus placed upon a footing of equality with the originally associating states. All these cases are of modern date, and their consideration lies rather beyond that of the essential principles of federation.

Simple states have in the course of history become linked together in many ways and in varying degrees of intimacy, and this linking may considerably affect their relations with other powers. Unions are usually classified under three heads: (1) Personal Unions, (2) Real Unions, and (3) Federal Unions. The typical "*personal*" *union* was that which existed between Great Britain and Hanover between 1714 and 1837. The

sovereignty of each state remains unimpaired though each is ruled over by the same prince; their relations with other powers are distinct, and the states are in no sense regarded as one corporation in international law. A "*real*" *union* exists when two or more sovereign states, each preserving its internal sovereignty with distinct fundamental laws and political institutions, merge their external sovereignty and appear as one in their relations with foreign powers. Scotland and England were in such a *real union* under a single monarch between 1603 and 1707; Austria and Hungary, though separate sovereign states, were in real union from the Pragmatic Sanction of 1723 down to 1849, and again from 1867 to 1918, appearing in international affairs as a single power, the Austro-Hungarian Empire. Sweden and Norway were in like situation from 1815 to the Treaty of Karlstad in 1905, by which their separation was effected. In practically every case real and personal unions have come about between monarchies and their union has generally been effected by dynastic causes. Federal unions are more complex in their development and must be approached from a different angle.

Independent states may enter into contracts with one another to accomplish certain purposes of common interest without in any way derogating from their complete sovereignty. Such contracts are called "treaties." As a rule treaties of alliance are temporary in character and are directed to a particular purpose, but some are of a much more sweeping kind and bind the contracting powers in stipulated circumstances to give unlimited aid one to the other, including assistance in the waging of offensive or defensive war. Such treaties of alliance may be so comprehensive in their provisions as to compel the allies to undertake common action in almost all their foreign relations but, as a rule, any such alliance does not exist for long. It either develops into a permanent and closer association, or is dissolved in favour of some fresh grouping of allies. In certain instances in past centuries where the association between the states lasted for a long period and especially where the

allies were individually weak but collectively strong, the alliance was called a *league*. More than one such league developed into a permanent association and acquired machinery for common action. It thus became what is known as a "confederation," a *Staatenbund*, wherein the associates were no longer such fully independent states as before, for they had certainly resigned some portion of their sovereignty into the hands of the central body. The states are connected together by a compact which does not essentially differ from an ordinary treaty of alliance, and the internal sovereignty of each state remains unimpaired, for the resolutions of the federal body are not enforced upon individual citizens, but through the agency of each state government which gives to them the force of law. But the external sovereignty of the confederated states is as a rule diminished, as in the case of a real union. The confederates bind themselves not to enter into relations with foreign powers independently of one another, and resign the greater part of their external sovereignty into the hands of the confederation. Confederate unions have differed widely in the extent to which this resignation of power has been carried, and it is therefore difficult to distinguish them in the beginning from close alliances. They have not as a rule proved satisfactory to their members for long, and have either broken up, or passed into the closer form of association called "federal union," or have become completely merged into a single unitary state.

A "federal state" (compositive state, *Bundesstaat*) is a perpetual union of several sovereign states based first upon a treaty between those states or upon some historical status common to them all, and secondly upon a federal constitution accepted by their citizens. The central government acts not only upon the associated states but also directly upon their citizens. Both the internal and external sovereignty of the states is impaired, and the federal union in most cases alone enters into international relations. This is not, however, invariably the case, for under the strictly federal union of the German Empire,

which existed from 1871-1918, the member states retained some of their external sovereignty and some power of entering into treaty relations with one another and with foreign states. On the other hand, in the typical federal union, that of the United States of America under the Constitution of 1789, the external sovereignty of the associate states has been entirely absorbed by the Federal State, and only their internal sovereignty remains. But even this is rather a matter of legality and convenience of government than of fundamental importance; since the close of the Civil War, in which it was proved conclusively that the Union was one and indivisible, the Federal government has completely overshadowed the states in all political matters.

§ 2.

Most writers on Federalism have devoted a considerable part of their attention to the federal unions that were formed among certain of the city states of Ancient Greece. To the student of political theory they afford much interest and a basis for comparison with modern federations, but there is no historical connexion, and the historian must trace the beginnings of the European associations of to-day amid the happenings of the Middle Ages. Two sharply distinct lines of descent are to be traced among modern federal unions, the first leading from the mediæval Empire to the Swiss and German Confederations, the second in quite a different way to the federations and unions of the English-speaking world which have exercised so considerable an influence on constitutional development in Latin America. These lines of descent demand attention in turn, and, since the continental line has much the earlier origin, it may be considered first.

The nominal sovereignty of the Carolingian emperors over the whole of Christendom, that was a fundamental conception under Charlemagne and his immediate successors, had completely broken down by the end of the eleventh century. It had been to some extent revived under the Saxon emperors, but even

at the height of their power the little effective suzerainty that could be exercised embraced only Germany, Switzerland, Burgundy and the Low Countries, and the ancient Lombard kingdom in North Italy. But the rise of the great feudal vassals broke down the control of the central power in these regions under weak emperors, and every part of the empire strove to free itself from all outside interference. By the middle of the twelfth century the cities of the Lombard Plain had become practically independent states, and it is among them that the first sign of re-grouping into new combinations is found in the growth of the Lombard Leagues to withstand the reassertion of Imperial control. Milan, Lodi, Piacenza, and Cremona first leagued together as early as 1093 against the Emperor Henry IV, but the great League was formed in 1167 to oppose joint military resistance to the designs of Frederick Barbarossa, who attempted to enforce ancient Imperial restrictions in Italy. The decisive struggle began in 1174 and lasted till 1183, when at the Peace of Constance Frederick acknowledged defeat and the Imperial power in Italy became merely nominal. But the struggle was renewed when Frederick II intervened in Italian affairs and fresh leagues were formed to resist him between 1226 and the final downfall of the Hohenstaufen about 1250. While the dangers to be faced were acute, the association between the members of the Lombard Leagues was very close and almost amounted to "confederation" under the rule of a congress meeting at irregular intervals and known as the *Rectores Societatis Lombardiæ*, but the attacks of the emperors were beaten off in so comparatively short a time that their menace was insufficient to hammer the temporary leagues into a permanent confederation.

The exhaustion of the Hohenstaufen emperors in their Italian struggles and the weakness of those who succeeded them threw all centralized power in Germany into almost complete abeyance, leaving the richer and more powerful cities as practically independent powers, though all acknowledged the nominal

sovereignty of the Emperor. But the decay of government went so far during the thirteenth century as to form a serious menace to all commerce and even to civilization. Under these circumstances neighbouring cities or those having common interests began to associate themselves together into leagues, the most important of which was the Rhenish Confederation (*Rheinischer Städtebund*), formed in 1254 among the towns of the Rhine valley from Basle to Cologne. The league not only had a commercial purpose in safeguarding common economic interests, but also was of great political importance in withstanding the attacks of hostile princes. Its constitution was very loose, but the representatives of the associated city states met together in assemblies called *Colloquia* at stated intervals to decide upon common policy and to apportion the military quotas to be provided by each member of the league. There was a rudimentary federal court to act as arbiter in disputes between members, though it had little effective power to enforce its decisions. The Rhenish Confederation lasted for about a century, but it broke up before the rising power of the Habsburgs; various leagues of lesser strength and less cohesion were formed in South Germany, and the northern cities joined the more formidable and longer-lived Hanseatic League, which not only had purposes of defence but a real and fairly effective federal organization.

While Italian and German city states were entering into association to withstand the exercise of the Imperial power, a similar process of rudimentary confederation was going on among the petty rural communities of central Switzerland for defence against the encroachments on their liberties and the domination of their neighbour the Count of Habsburg. Three remote districts in the heart of the Swiss mountains, Schwyz, Uri, and Untenwalden, had in the course of the struggles between the Hohenstaufen emperors and the Papacy secured their freedom from their lords, and in one way or another had come to hold immediately of the Emperor, who was, as a rule, too pre-

occupied to interfere. This *reichsfreiheit* gave them many valuable privileges, and they defended it only with much difficulty and repeated assistance one to another from 1231 to 1291, when Rudolf III, the Habsburg emperor, died. His death relieved the immediate pressure upon them, and at once the men of the Forest communities determined upon a renewal of their earlier alliances in a more complete and solemn form. The resulting perpetual league was solemnly concluded on 1 August, 1291, and forms the earliest constitutional document of the Swiss Confederation and the earliest federal pact of modern times.

The league thus formed might have been no more permanent than those between the Suabian or Italian towns had it not been for the continual menace of the Habsburg power. The attack of Leopold of Austria was beaten off at Morgarten in 1315 and the pact of confederation renewed, the original league of three states being joined in 1339 by the city of Lucerne. The constant hostilities between Austria and her neighbours during the fourteenth century drove other communities one by one to seek the help of the confederates of the four Forest Cantons and to enter into league with them. Bern, Zurich, Glarus, and Lug were included, and by the *Pfaffenbrief* of 1370 and the Covenant of Sempach of 1393 the confederation received a rudimentary political constitution that marked it off from a mere temporary alliance, for the principle of decision by a majority was introduced. On many occasions during the fifteenth century divergencies of policy between the confederates led to civil war and threatened the break up of the league, but in the long run the danger from external enemies proved too menacing for the disruptive tendencies to succeed. The war against Charles the Bold of Burgundy involved prolonged action in common, and though it was followed by serious quarrels which seemed to threaten the immediate dissolution of the Confederation, at last a complete understanding was reached in the Covenant of Stans, 1481, whereby the control of the federal

Diet over the confederates was strengthened and the *Sonderbund* or separate alliance of five cities within the confederation was brought to an end. Fribourg and Solothurn were at the same time admitted as new members, Basle and Schaffhausen in 1501, and Appenzell in 1513, thus completing the list of free communities within the *Bund*. On the constitutional basis of the four instruments mentioned all the relations of the confederates were governed until 1798, though with constant internal friction. The agreements on which the confederacy was based were concluded between the governments of the various cantons and not between their citizens. No such thing as a Swiss people could be said to exist, political rights were most unevenly distributed, and there were repeated revolts against oligarchical tyranny. But community of interest generally compelled the cantons to common action towards outsiders, as it did in the similar but lesser League of the Grisons communities and the republic of the Valais, which in the sixteenth century came to associate regularly with the Swiss cantons in foreign affairs. Confederation was clearly a matter of prolonged growth induced by common interests in the face of external menace.

While in the south-west the Swiss confederation was slowly being consolidated under the threat of Habsburg tyranny, the great commercial cities of North Germany were being urged in the direction of a federal association more by economic than by political causes. The Hanseatic League took its rise at the beginning of the thirteenth century in various associations of merchants to control the Baltic trade, but it only became important after the alliance of the three cities, Lübeck, Rostock, and Wismar for the protection of their traders in the wild countries of the north and east. These alliances were at first of a temporary character and were negotiated after the fashion of an ordinary treaty, but in face of the exactions of the King of Denmark upon their commerce and his attacks upon their trading factories, the association of the towns became much

closer and took on a political character, since it provided for a common military force. External menace acting along with community of economic interest welded the cities into a confederation from 1367 onwards in a somewhat similar fashion to what was going on among the Swiss cantons. At the height of its prosperity the Hanseatic League was a real confederation, governed in common matters by an assembly of instructed delegates called the *Bundestag* or *Hansetag*, in which a decision could be reached by a majority vote. But the greater cities could not always be relied upon to obey the mandates of the *Bundestag*, and they steadily refused to accept the terms *societas* or *universitas* as correct descriptions of the League. It was to them merely *firma confederatio*, and they always retained their freedom to secede from it. With the complete break-up of the Empire in the later sixteenth century and the convulsions of the Thirty Years' War, the inherent weakness of the League, that resulted from the geographical dispersion of its members, accelerated its collapse. Political interests in the long-run proved themselves more powerful than economic, and owing to differing geographical circumstances they were necessarily disruptive. Only Lübeck, Bremen, and Hamburg remained in alliance in 1629, and by the time of the Peace of Westphalia (1648) the League had ceased to exist.

The organization of the Holy Roman Empire during its last three centuries of decay (1526-1806) is of little or no importance to the student of federalism, for despite its nominal form of a loose confederation, any little cohesion that it had derived only from feudal conceptions. The states were independent one of another, and entered into fresh groupings and alliances that usually overstepped the Empire's borders, and were guided according to the general changes of the European situation. No real central power existed, and the only way of securing obedience was by undertaking war. Neither community of race nor of language has much influence in welding together a confederation when political and economic causes are adverse.

The last and in some ways the most significant European confederation before the nineteenth century arose among the cities and little feudal states on the extreme north-western confines of the Empire. There during the fourteenth and fifteenth centuries there was built up, partly from territories owing nominal allegiance to the Empire and partly from non-Imperial lands, a composite group of states that though they had many similar political privileges, held them independently one of another as the achievements of gradual historic growth. Only one political obligation became common to them all, allegiance to the same sovereign—the Duke of Burgundy, but about the middle of the fifteenth century the Dukes when they required the grant of subsidies began to appeal not to individual provinces, but to delegates from them all summoned to meet in Estates-General. No merging of power was involved, but community of allegiance led to the development of a common political organ and thus to rudimentary confederation. After a time the meetings of the States-General were not solely confined to the apportionment of responsibility for grants to the prince, but took to the discussion of matters of common interest like the appointment of a regent. Though the growth of a sense of community throughout the seventeen provinces of the Netherlands was very rapid during the hundred years between 1450 and 1550, the provinces jealously preserved their independence one of another, and there was little in common save the princely power.

When in the middle of the sixteenth century the place of overlord came to be filled by a King of Spain who was entirely despotic in temper, the men of every province found themselves threatened with the loss of their historic privileges or their drastic modification to bring about an artificial uniformity. The menace was economic as well as political, for the prosperity of the cities was impaired by the imposition of excessive taxation to meet the heavy military expenses and the frequent embargoes on commence that were necessitated by Spain's adventurous

foreign policy. These political and economic causes were brought to a head and their effects made more acute by the rigours of religious persecution, until finally the troubles culminated in 1568 in the outbreak of revolt against Spanish authority and the opening of the war that was to last for eighty years.

The war led at first to no breach in the continuity of political development, for the fiction that the struggle was merely one against evil ministers and not against the power or rights of the prince, the sole institution common to them all, was preserved for many years. Of necessity this involved the exercise of sovereignty in the prince's absence and the carrying on of government within each province by the only other existing political organ, the provincial estates. Owing to the circumstances of the struggle, this withdrawal from the princely power was much more complete in the northern provinces than in Brabant and Flanders, which were occupied by Spanish troops and where obedience could therefore be enforced. The estates of the northern provinces became habituated to the exercise of sovereignty by officials chosen by themselves, or, as in Holland, and Zealand by a stadholder who, though royally appointed, was their leader in revolt. It was impossible, however, for a similar habituation to take place in the States-General, where all the provinces were represented, for their meetings were only summoned at rare intervals when Spain was attempting to find some basis of pacification. Even when they did meet deeply rooted divergencies of opinion at once appeared between the southern and the northern provinces, those who lay open to military occupation by the Spanish forces and those who were able to hold it off by the exertions of their armies. The seventeen provinces that in 1550 had seemed well on the road to achieve some sort of federal union, had twenty-five years later been cleft in two by the ravages of war, each part being hammered by adversity into closer and closer association independently of the other.

But this crucial fact did not appear clearly to the actors in

the struggle for many years. What was in reality the irreversible step towards separation was taken in the north, and involved a real confederation of the modern sort. Each of the two provinces of Holland and Zealand was really an association of municipalities, that were as independent one of another as any of the towns of the mediæval empire. They had become accustomed, however, to working together for more than a century, and they were all strongly affected by common economic interests. Under the lead of their stadholder, William of Orange, the estates of Holland and Zealand, i.e. the delegates of the municipalities of the provinces, met together in joint session at Delft, in April, 1576, and determined to make their league perpetual by a resignation of a large part of their powers into the hands of a single over-riding authority, the stadholder, who was invested not only with all the ancient powers of the sovereign in external affairs, but also with a much larger measure of internal control. This Act of Federation not only united the provinces, but also went far in the direction of unification of the municipal republics of which each province was composed. It was not in the least dictated by theoretical considerations, but was a practical measure of defence devised to cope with imminent military danger. It went so much further than any previous federal agreement in modern times that it marked a very real step forward. Only among adjacent communities closely affected by similar political and economic circumstances of acute difficulty was its achievement possible.

For the moment the importance of the Act of Federation was obscured by the wave of indignation against Spanish excesses that swept over all the provinces at the news of the "Spanish Fury" in Antwerp in November, 1576. External attack once more precipitated union, and in the Pacification of Ghent a scheme was agreed upon between the delegates of all the seventeen provinces that, if it had endured, would have led to a federation of them all with a common States-General. But unity of feeling was short-lived. Differences of religion, political

and economic interest proved too deep-seated to admit of effective common action, and at length on 5 January, 1579, the deputies of the southern provinces of Hainault, Douai, and Artois bound themselves in a defensive league at Arras as a preliminary to effecting a reconciliation with the King of Spain. The provinces of the north at once replied by gathering round the federation of Holland-Zealand. In the Union of Utrecht, signed by the associates on 29 January, 1579, they bound themselves "as though they were one province" to resist all foreign enemies, including the King of Spain. The confederacy of the United Provinces was thus brought into being to deal with the enormously enhanced military danger that they feared from the south, and its provisions bear full evidence of its preparation to cope with a particular political situation. Owing to the protraction of the struggle for seventy years more the provisions of the union became the permanent constitution of the confederacy, and were supplemented by the Act of Abjuration of 26 July, 1587, whereby the representatives of the United Provinces solemnly absolved themselves from their allegiance to the King of Spain, and thus assumed the full sovereignty they had long possessed in all but name. The long and exhausting struggle that had to be sustained before the Spanish danger was finally repulsed welded the confederacy into a permanent federal union, but it was not until the upheaval of 1795 that the next step forward to complete unity was accomplished.

§ 3.

The growth of federalism in the English-speaking countries has been brought about by similar causes and under generally similar conditions to those that have furthered it on the continent of Europe. But historical conditions have made the manner of growth and the resulting associations very different. In the English constitutional theory of the eighteenth century all sovereignty belonged to the King, but the monarchy was

carefully limited and balanced. The sovereignty of the King over all Englishmen was indefeasible wherever they might be, but, on the other hand, they, too, had indefeasible rights, and, above all, that of being consulted in representative assembly before the executive power was exerted in matters that directly concerned them.

When, at the beginning of the seventeenth century, Englishmen had gone oversea to establish colonies in Virginia, Bermuda, St. Christoper's, Barbados, Massachusetts, and so on, they took their rights to representation with them, and in each colony an assembly was set up to take counsel with the governor concerning the internal affairs of the community. Each colony was independent of every other, their only common link in theory being the allegiance that every one of their individual citizens owed to the King. The sovereignty of the King was exercised for the good of the Empire as a whole, and every colony accepted as necessary the arrangement whereby the relations between different parts of the empire, especially in matters of trade, were regulated by the King in Parliament, i.e. by the King's ministers in counsel with his subjects in the representative assembly of the central part of his realm. But from the very beginning the constitutional doctrine was held that the sovereign power within a colony, mostly evidenced by the power of taxation, lay in the King in the assembly of the colony, and not in the Parliament of England, in which the colonists had no representation.

Just as independent states may enter into alliance for the accomplishment of a common purpose, so the New England colonies, when faced with great danger of attack by Indian tribes in 1643, agreed to enter into a confederation for mutual defence, and pledged themselves to contribute in proportion to their numbers. The agreement bears some signs of having been influenced by Dutch precedents, which were familiar to the colonists. It was never of great importance, for the threatened external dangers were too soon removed to have much effect in

consolidating the confederation at the expense of the individual colonial governments. The high-handed scheme of James II. for sweeping away all colonial boundaries in New England and merging the whole into a single province under Sir Edmund Andros was also only of temporary interest, for it had not come into effective operation before the Revolution of 1688 came to restore the old arrangements.

It was not until the beginning of the eighteenth century that the colonial system of the empire reached some degree of stability in a form that can now be recognized as essentially federal in principle. If it be granted that the essence of federalism is the separation of the powers of government over a particular community, some of the powers being placed in the hands of one authority and some in another, so that both cut concurrently on the citizens but each has its own sphere of action, then undoubtedly the old colonial system was federal in practice. The central authority or Imperial government had charge of foreign affairs, the navy and army, war and peace, the collection of customs dues, the management of unsettled lands, and the relations with the Indian tribes on the frontier. All these matters affected the life of every colonial without the intervention of his elected assembly. But the separate colonies managed their own internal police, raised their own taxes for local purposes, regulated local trade, and generally governed their citizens according in most cases to the provisions of a written constitutional instrument or charter which they regarded as a compact between them and the Crown. The system was apparently one of intricate complexity, but it was in reality very flexible, because it had grown up out of a multitude of devices used to deal with practical difficulties, only those which had succeeded being retained.

During the period down to 1763, the external menace of the power of France and Spain, with whom the colonists might at any moment find themselves at war, kept them from any sustained protest against the exercise of the Imperial power.

There were constant petty disputes especially about constitutional rights in the West Indies, but there was a general acquiescence in the system as it had grown up. The Imperial government had such engrossing problems to handle in coping with rebellion and maintaining English interests in Europe, that no attempt could be made to systematize colonial government or do more than deal with practical problems as they arose. On several occasions during the first half of the eighteenth century, proposals were made for a systematization of the relations between the continental colonies, but they never obtained any considerable measure of support. The colonies recognized that they had many common interests and valued their association as members of the Empire, but they had not yet such a sense of community of danger from without as to be willing to relinquish any of their autonomy.

Serious danger to the continuance of the opportunist system arose after the victorious close of the Seven Years' War, when schemes of reorganisation were pushed forward from the centre in an attempt to cope with the new burdens of empire that had been assumed. The resulting agitation in the colonies provoked enquiry into the whole constitutional position. But the complex system that had gradually grown up defied explanation or justification according to old theories or precedents, and for ten years incessant constitutional wrangles went on in an attempt to find some formula that would reconcile the necessary exertion of imperial sovereignty for the common good with the claim of the colonists to all the indefeasible rights to self-government that the rest of the King's subjects possessed. Out of the welter of argument two sharply opposed theories ultimately emerged and held the field. The one commended itself to the dominant party in the colonies, the other to the majority in the British Parliament, but neither estimated accurately the practical system under which the colonies had been governed for nearly a century.

In the most extreme colonial view all sovereignty in a colony rested in the King in the elected assembly of that colony, and

nothing could legally be done without the concurrence of a majority of that assembly. It was admitted that as a matter of convenience the colonies had tacitly acquiesced in the regulation of certain affairs, and notably external trade, by the British Parliament, but it was held that this was no derogation of their rights, and that they might properly modify their acquiescence when circumstances changed. The continental colonies in fact maintained the doctrine expounded at an earlier date by Jamaica, that their legislatures held the same co-ordinate position towards Parliament as had belonged to the Scottish Parliament before the Act of Union of 1707.

The advocates of the opposite theory maintained that the sovereignty of the Imperial Parliament was supreme throughout the King's realms, and that it was only for practical convenience that it did not often exercise its power to legislate for the internal affairs of the colonies. The colonial legislatures, according to this theory, were subordinate to the Imperial Parliament, as the Irish Parliament undoubtedly was, where the power of concurrent legislation from Westminster had frequently been exerted. Neither side appreciated fully the federalism of the old colonial system, though in both the rival constitutional theories there was some federal principle implicit. The differences separating them were, of course, much deeper seated than is revealed in the doctrines that are alone here considered, but when all the many combined causes led to the outbreak of armed revolt, constitutional grievances were placed in the forefront.

The Thirteen Continental Colonies solemnly abjured their allegiance to the Crown in the Declaration of Independence of 1776, and successfully vindicated their abjuration in six years of war. When by her signature of the Treaty of Versailles in 1783 Great Britain acknowledged that independence, constitutional growth began anew on either side of the Atlantic, but along sharply divergent lines. In the colonies that retained allegiance to the Crown there was no longer a doubt that supreme control

was vested in the King in the Imperial Parliament. Only such powers belonged to the colonial assemblies as were delegated to them; the colonies were really "dependencies" of Great Britain, as they were constantly called until far on into the nineteenth century. When new colonies received rights of representative government, their constitutions were embodied in Imperial Acts, though when at a later date the fuller powers of responsible government were first granted, this was effected by administrative action and sustained by constitutional convention. Such rights when once granted were indefeasible, and the colonies by acquiring them achieved practically full internal control of their affairs. In the course of time groups of such self-governing colonies would proceed to adapt to their circumstances the formal federal devices that were worked out in the United States.

In the seceding political communities, however, the constitutional position was at first not at all clear. A critical question awaited solution which may be propounded in two opposite forms. Had each of thirteen separate colonies achieved its independence of its former sovereign and so become a sovereign state that was free to determine the conditions on which it would enter into a confederacy with its neighbours? Or, on the other hand, had the people of the United States abjured their allegiance as individuals and now must enter into a new social compact? The citizens in each of the separate States made the negotiation of such a social compact one of their earliest acts after the Declaration of Independence, and eleven States established new State Constitutions on popular votes within a very short time. But no clear decision was reached as to the nature of the Confederation that all admitted to be a practical necessity. The last paragraph of the Declaration of Independence apparently gave assent to the first form of the crucial constitutional question. "These United Colonies are, and of right ought to be, free and independent states. All political connexion between them and the State of Great Britain is, and ought to be, totally dissolved. As free and independent states they have full power to levy

war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do." The same theory was expressed in the Articles of Confederation that were prepared by the Continental Congress immediately after the Declaration and finally agreed upon on 15 November, 1777. "Each State retains its sovereignty freedom, and independence and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled. The said States hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare." The Articles were signed by the delegates as representing the sovereign legislature in each State. They were ratified by the State governments on different conditions and at widely differing dates, but they were never based upon a popular vote. The system, therefore, was strictly parallel with the confederate pacts of the Swiss Cantons and the United Provinces. The Confederation was only a *Staatenbund*, though it was a great advance upon all previous confederations, for much more power was nominally placed in the hands of Congress, and there were more opportunities for real debate than in the semi-diplomatic procedure of the old Swiss Diets or the States-General of the Netherlands.

The pressure of more than ten years of the practical difficulties of government was needed to drive home to the minds of the people of the United States the essential unity of their interests, which far transcended any theoretical doctrines about the nature of the sovereignty of the States and their legislatures. The colonies had grown up and flourished under a system that was really federal though not republican; matters of common interest had been managed by an authority outside all the colonial governments, and, so long as its power was based upon the consent of the governed, the system worked. Between 1765 and 1782 the interest of opposition to the Imperial Government and the desire to achieve military success in the war were common

to all the colonies, and these interests were strong enough to ensure the transfer of external obedience from the Crown to the revolutionary leaders. General Washington had therefore sufficient popular consent behind him to act with vigour for the whole United States. But with the restoration of peace State particularism and the desire to escape common burdens became infinitely more powerful than the cumbrous and inefficient Confederation, which attracted no loyalty and could base itself on no direct popular suffrage. Things went from bad to worse. Public credit, obedience to authority and social order everywhere decayed, and it seemed as though the association of the States was certain to fall asunder.

As in other cases where forward steps towards federation have proved possible, the minds of the great majority of citizens were so disturbed by the pressure of political and economic evils that they were ripe to embark upon drastic change. The immediate troubles were of three kinds; first the external menace of a dreaded renewal of war with Great Britain and the dangers apprehended from Spanish encroachments in the Mississippi Valley; second, the dangers to public order that arose in various States from the outbreak of armed rebellion against the enforcement of taxation and the maintenance of justice; and third, the great economic distress caused by the depreciation of the currency, the lack of credit to restore foreign trade, and the general want of public confidence which hampered all enterprise. It became more and more evident to thinking men that the only hope lay in amending the Articles of Confederation so as to strengthen the central power. Matters at last came to a head in 1787, and advantage was taken of a partial conference at Annapolis on economic questions to arrange for a general Convention of delegates from all the States to meet at Philadelphia. There behind closed doors in the freest of discussion a new compact was hammered out that not only removed the dangers to the continued existence of the United States, but recorded an unprecedented advance in the application of political ideas to the machinery of government.

Some of the boldest reformers in the Convention, whose views were voiced by Alexander Hamilton, were prepared to go the whole way and form a new government which should pervade the whole United States with decisive powers and a complete sovereignty. They would establish a general and national government and annihilate the state distinctions and state operations. The ideas underlying their views were derived from the success of the Union between England and Scotland. Hamilton confessed that in his opinion the British Constitution was the best form of government which the world had produced, while on the other hand the lessons of history showed that "all federal governments are weak and distracted," and that, as in the Swiss Cantons and Germany, they cannot prevent the confusions which prevail between their members. But a unitary solution was impossible in face of the opposition of the State governments, whose annihilation it threatened. Its advocates in the Convention were in a hopeless minority, and, since "federalism" and "republicanism" were thought by many to be necessarily associated, they were suspected of cloaking under their pleas for strong government a mere desire for the restoration of monarchy.

At the opposite pole from Hamilton were those who insisted on the equality of all the sovereign states, and claimed that their views alone were "truly federal and republican." They desired to see all the old principles of confederation preserved, and only certain amendments made in the Articles that might strengthen the central power, but would still leave Congress in its old position of a federal diet. Between these opposing views there was what was called the "national" party, which wished to get rid of the doctrine that the Union was a mere treaty between independent states. They desired to get behind the State governments to the people of the United States as members of a single political community, who by a majority of their votes could give to the central government a more powerful sanction. This would involve of necessity a change in the principles of the Articles of Confederation, but it was really a revulsion to the

sounder principles of the division of sovereignty that had infused the government of the colonies before the schism. The objections of its advocates to what they called the "federal principle" as evidenced in Switzerland and the United Provinces of the Netherlands were just as strong as those of Hamilton. They maintained, however, that it was possible to find a compromise whereby their old colonial powers might be left to the States, while the common powers that the colonies had been accustomed to see wielded by an external authority might be entrusted to a national executive, legislature and judiciary chosen by the people at large. The debates between the advocates of these opposing schemes formed the essential part of the struggle in the Constitutional Convention, and in the event the "national" plan carried the day, as it appears, because it was the most nearly akin to the actual pre-revolutionary system. The powers placed by the new Constitution in the federal executive, legislature and judiciary, were very nearly those that had been exercised by the Imperial authorities and those which the colonial legislatures had never been accustomed to handle. Compromises of great importance had to be reached before the system could be accepted by all, and these gave to the State governments a larger weight in the national government than the original proposers of the plan had allowed them. From these compromises sprang some of the difficulties that were to lead to controversies over State Rights for seventy years. Only by the bloody struggle of the Civil War were the controversies to be settled in favour of the unchallengeable supremacy of the national government. But the compromises did not affect the essential accomplishment of the Convention, the formulation in the Constitution of the new federal principle that had slowly been shaped in the old colonial system.

From 1789 onwards the so-called "national" government of the United States began to take its place as the typical example of the federal principle. A new meaning came to be attached to the terms "federal" and "federation" that differed widely

from that attached to them before and during the Convention debates of 1787. In the United States the new implications displaced the old before the end of the century, but European publicists knew little of democratic government in America before De Tocqueville wrote in 1835, and for them "federal" continued generally to imply the form of government by Diet that prevailed in Germany and Switzerland.

§ 4.

The old federal constitution of the United Provinces was swept away by the invasion of the French Revolutionary armies in 1795, and for twenty years the Netherlands were practically subject to military rule according to French centralizing ideas. The unitary Batavian Republic that was at first set up saw many changes of constitution before the country was at last absorbed into the French Empire. When the time for reconstruction came in 1814, the wish to retain a unitary form of government was universal, for long before the Revolution the federal system had fallen into decay and had become irksome to the classes without political rights, while the power and prestige of the House of Orange had been steadily increasing. The Dutch had no desire to restore the cumbrous machinery of the estates and States-General, which was identified with inequitable privilege, and when the Prince of Orange was restored to his possessions the country accepted with unanimity his grant of a constitution for a unitary kingdom. The designs of the powers at the Congress of Vienna aimed at a further degree of unification and the inclusion of the southern provinces, but their union was only short-lived and the South achieved independence in 1830 as the new unitary kingdom of the Belgians

The Swiss confederacy in the eighteenth century was an agglomeration of almost every kind of government in great complexity. The degree of political liberty that was possessed ranged from the primitive democracy of the Forest Cantons to

such complete servitude of the subject territories under some of the cities that the people had no political rights. The confederacy abounded in inequitable privileges; many of the petty states were seething with discontent, and the prosperity of all was damaged by the many customs, barriers, and inconsistent commercial restrictions. When the French armies invaded the country in 1798, ostensibly to assist a democratic revolt, they were at first generally welcomed as deliverers. The establishment of a unitary Helvetic Republic on the French model was popular, because it swept away all privileges and inequalities of political status, but French rule proved particularly oppressive and confiscatory, and when Bonaparte withdrew his troops in 1802, the country fell asunder into two hostile parties and civil war broke out. The "centralists" favoured the retention of the constitution of the Helvetic Republic, while the "federalists" wished to return to a loose confederation as of old. To prevent a complete lapse into anarchy the French again entered the country, and an Act of Mediation was imposed upon the two parties in 1803. By this agreement a federal constitution with a central diet and an executive authority such as had not before existed was set up, the abolition of privilege was confirmed, and six new cantons, formed out of the previously subject lands, were placed on a footing of equality with the old confederates. Unification failed to secure support in Switzerland as it had done in Holland, because during the short period of its trial it had become identified with a system of foreign military oppression.

The federal system of the Act of Mediation lasted with a considerable measure of success until the overthrow of French influence in 1813. At the Congress of Vienna it was proposed to re-establish the complicated old system in its entirety, but it was realized that it was impossible to restore abolished privileges. The Swiss agreed to accept the constitution that was finally prepared by the Congress, in return for a guarantee of their neutrality by the powers; the right to political freedom of the

previously subject territories was maintained, but the reaction deprived the confederation of an executive, and all common business had to be transacted in the Diet where the cantons appeared as sovereign states and unanimous approval was necessary for important action. The removal of all internal customs barriers and oppressive commercial restrictions, however, aided in the growth of a community of feeling between the men of different cantons, and the extension of liberal ideas prepared the country for a step forward.

The defects arising from the recognition of cantons as fully sovereign states incapable of control by the confederacy, save by force of arms, were fully illustrated by the growth within the Confederation of separate *Sonderbünde* or confederations of cantons, which desired to further their own interests at the expense of their neighbours. In 1832, and again in 1845, armed action of a *Sonderbund* of Catholic cantons against the forces of a majority of the confederates was attempted. But the civil war that followed resulted, in 1847, in the complete victory of the federal forces and the overthrow of the particularist cantons, thus leading to the establishment of an entirely new constitution. The progress of liberal ideas had made great changes in the outlook of Swiss citizens, and had furthered the merging of local patriotism in a wider sense of nationality. Through the writings of Alexis de Tocqueville and others, they had become familiar with the improved devices of federal government which had achieved success in the United States of America. The committee that was entrusted after the civil war with the preparation of the new constitution determined to adapt these devices to the circumstances of Switzerland, and to accept integrally the principle of basing a greatly strengthened central power upon the popular vote throughout the country as a whole. The Swiss Confederation ceased to be a mere *Staatenbund*, and became a *Bundesstaat*, in which power resides both in the federal government and the cantons, their fields of action being clearly delimited. The fear of executive control prevented the placing of great authority in

the hands of a President as in the United States, and under the constitution of 1848 there was no federal court of justice like the Supreme Court. After a good deal of constitutional agitation, however, the distrust of the central authority was largely overcome, and at last, in 1874, the constitution was revised and assumed the form which, save for various minor amendments, has proved lasting. The growth of the sense of national unity has been encouraged, and has proved entirely compatible with the preservation of a strong cantonal patriotism. Though the old names were retained, Switzerland has since 1848 ceased to be a mere "confederation," and has become a real "federal republic."

In no part of Europe save, perhaps, in Italy did the events of the Revolutionary and Napoleonic periods result in more drastic permanent changes than in Germany. The many little Italian states that were overthrown could not be effectively restored in 1815, and at length the whole peninsula became absorbed into the unitary Kingdom of Italy that grew out of the Kingdom of Sardinia. But in Germany, though much unification has been brought about and the Prussian state has grown immensely by the absorption of its neighbours, the main changes of the nineteenth century were towards federation in the modern sense. From the Peace of Westphalia to the French Revolution the confederacy of the German states was the merest sham, and masked a far more acute rivalry between Prussia and Austria, the two most powerful members, than prevailed between either of them and the powers beyond the borders of Germany. The first results of the Revolution were the absorption of most of the small states and free cities by their powerful neighbours, and the secularization of the ecclesiastical principalities. This immensely facilitated further progress, for it reduced the number of possible partners in a confederation and provided fewer opportunities for foreign intrigues. After the complete defeat of Prussia in 1806, the newly consolidated states of Western Germany were associated at Napoleon's command in a new confederacy called the Rhenish Confederation, but it never achieved anything more

than a nominal existence, and disappeared when, in 1813, the French armies were expelled. The removal of antiquated privileges and the acquisition by the people at large of a considerable measure of equality of legal status, which was accomplished between 1806 and 1813, prepared the way for further progress.

The attempted settlement of German affairs by the Congress of Vienna in 1815 was directed towards the re-establishment in reality of the nominal confederacy that had existed before 1789. But it was impossible to reverse the acts of mediatization and secularization that had been accomplished, and the rivalries of the larger states that had come into existence provided more powerful allies for the two contestants in the struggle for dominance, so that the Federal Diet was doomed to complete impotence as before. It was little more than a congress of ambassadors, it had no executive or judiciary, and was so weak that Germany at this period can hardly be called even a *Staatenbund*. A forward movement was urged from two directions. First, there was a gradual consolidation of the Prussian State whereby the previously separate provincial estates were amalgamated into a Combined Diet, which later under Liberal pressure was based to some extent on a popular vote, and, having the power of taxation over all the Prussian territories, came to be called the Parliament. Prussia became more of a unit round which the smaller states could coalesce. Secondly, the Prussian bureaucracy gradually furthered the removal of all internal restrictions on commerce and the placing by treaty of the management of the customs system of the associated states in the hands of a common authority. By a series of steps there was formed in 1834 the *Deutscher Zoll und Handelsverein*, and its steadily growing influence through all the states of Northern Germany accustomed them to work together under the leadership of Prussia and to look forward towards a federal union. It seemed at one time as though aspirations towards the national union of Germany would be realized by the extension of the

Zollverein into a close federation of the states composing it, but the confused nature of the struggle intermingled aspirations for effective government with demands for popular suffrage in such a way as to prevent so direct a line of advance. In certain states the more extreme advocates of federal union were also in favour of republicanism, and pointed to the United States of America as the ideal form of government, wherein it had been proved that true liberty could only flourish under a federal republic based upon the votes of a widely extended electorate. Swiss precedents also exercised an influence on the minds of political reformers, but they failed to see that these were inapplicable to the case of Germany because of the way in which Prussia and Austria completely overshadowed all other members of the confederacy and dominated all other interests with their rivalry.

The tangled movements of 1847 and the early months of 1848 resulted in the summoning by the plenipotentiaries of the Federal Diet of representatives from the people of the various states to meet in an assembly or *Vorparlament* for the purpose of drafting a new federal constitution. There for the first time three opposing parties clearly took their stand against one another. The Republicans desired to introduce a constitution closely modelled on that of the United States with its necessary concomitants, the abolition of monarchy and privilege and the introduction of popular suffrage. The Conservatives, who were smaller in number but powerful in the more important states, were determined that monarchy should not be destroyed, and wished to strengthen the governments of the states by administrative reforms. The Liberals, who were by far the largest party, though little organized and having little unity of design, were willing to retain monarchy in the states and the Empire, but desired to place the supreme power in the hands of a national parliament or *Reichstag* elected by the German people as a whole.

The *Vorparlament* effected nothing amidst its dissensions,

save the summoning through the Federal Diet of a National Assembly to be elected generally to decide upon a constitution. The Assembly met in the Pauluskirche at Frankfort in May, 1848, and proceeded to set up a central executive to act for the whole of Germany in external affairs. But the turn of events was unfavourable to the accomplishment of its purpose of achieving federal union, and the victory of the Conservative forces in Prussia and Austria brought about the withdrawal of their representatives from the Assembly and its collapse. The constitution of the German *Reich* that was hammered out during long debate would have given Germany a governmental system which, while retaining the dynasties, was based upon the sovereignty of the people and infused with the federal principles of the United States. But the scheme was entirely abortive, and after an interregnum of two years reactionary and particularist forces regained control in the states, and the old Federal Diet was re-established.

During the period 1850-1866 the *Zollverein* under the leadership of Prussia steadily increased its power in commercial affairs, and the states composing it became more and more accustomed to working together. In 1866 Prussia, which under Bismarck's leadership had firmly knit her various provinces into unity, formally declared her freedom from the old confederacy, and Austria took up arms in the name of the Federal Diet to bring her back to obedience. The smaller states separated into opposing camps, and a brief but decisive struggle took place. Austria was defeated and ejected from Germany, and the territories of her ally, the Kingdom of Hanover, were incorporated in the Prussian monarchy. Before beginning the war Prussia had bound herself by treaty with her smaller allies, who had been accustomed to work under her leadership in the *Zollverein*, to establish a new federal union. The North German Confederation or *Bund* was therefore set up, and in 1867 the Diet of the representatives of the twenty-one states composing it agreed upon a close federal union, based not upon the sovereignty of

the people but upon that of the states and their rulers. In 1870 the four South German states agreed by Treaty to join the Confederation, and on 18 January, 1871, the King of Prussia assumed the dignity of German *Kaiser*, the title that had been held by the supreme head of the mediæval empire. Practically none but consequential changes, however, were made in the constitution of 1867, and this remained essentially intact down to the German revolution of 1918. Under it Germany has been a real *Bundesstaat*, with the executive power in the hands of a permanent head, the King of Prussia, sovereignty being based not upon a popular vote but on divine right.

The constitution of 1867-70 was merely the embodiment in a single document of the agreements (or treaties) that had been negotiated between different sovereign states. Their rulers resigned almost all their external sovereignty and some portion of their internal sovereignty into the hands of a common executive and legislative body. In this action the German people had no direct share, though, since they acquiesced in it, the government of the *Kaiserreich* may be said to have been based upon popular consent. Power lay in the hands of the *Kaiser* and the *Bundesrath* composed of accredited representatives of the state governments. But there was a popularly elected *Reichstag* representing the people of Germany as a whole, which had no direct power save in matters of taxation and legislation. The federal state of the *Kaiserreich* was only a very partial approximation to a federal union of the modern sort.

The revolution of November, 1918, radically changed this position, and brought about the establishment of a constitution based, like that of modern Switzerland, partly upon the suffrages of the German people, partly upon the sovereignty of popularly elected governments in the States (*Länder*). In the struggles over the framing of this constitution in 1919 the advocates of a policy of centralization and the wiping away of all State distinctions were condemned because they also were the supporters of unpopular doctrines brought in from the Russian anarchy.

The centralizers were identified with foreign influences, just as the "centralists" in Switzerland in 1802 were identified with French Jacobins, and Alexander Hamilton in 1787 with British monarchy. The result was therefore, as in those cases, a compromise between extremes, between the restoration of a government based on State sovereignty and a centralized unitary republic. The result of the compromise was to produce a real federal constitution very similar in essence to that produced by the Frankfort Assembly in 1849.

In the new constitution the sovereign power is based upon the popular vote, in part directly and to a less extent indirectly through the popular governments of the States. The same principles are exhibited as in other modern federal constitutions, and therefore for the first time all existing federative governments express their federalism in the same general way. Not only does the federal principle as worked out in the American and Swiss constitutions appear in this latest piece of political architecture, but the results of British experience in the nineteenth century have also had influence. The executive power resides in the President elected by the votes of the whole people, but he can only exercise this power on the advice of the Chancellor and Ministers of the *Reich*, on whom responsibility rests. They require the confidence of the *Reichstag* for the exercise of office, and must resign should they lose that confidence. The constitution, therefore, embodies as its essential principles not only the federalism based upon popular sovereignty that was formulated in the American Convention of 1787 as the result of political growth in the eighteenth century, but also the device of responsible government that has been one of the main achievements of British constitutional growth. No political device had a greater vogue in the latter half of the nineteenth century than this product of British invention, and its adoption by the German constitution-makers was not a mere artificial imitation, but lay directly in the line followed by liberal political thought on the Continent. It is probable, however, that the Weimar Assembly was to some

extent swayed by the examples of responsible government, combined with a popularly based federal system, which are exhibited in the self-governing dominions of the British Empire.

§ 5.

The influence of the federal precedent formulated in the United States was very powerful with the constitution-makers in the new republics of Latin America, which achieved their independence of Spain between 1810 and 1825. In almost every one of them the new constitutions were closely modelled upon that of the federal republic of the north, though the highly centralized governments of the old Spanish colonial vice-royalties had furnished no basis of self-government in their administrative divisions. The elaborate federal constitutions produced were therefore entirely artificial, and had no existence save on paper. In every case, so far as any stable government could be established, it was based upon a succession of military dictatorships, which alternated with civil war. The experience of Latin America has proved conclusively that the good government of the United States has not been a product of its federalism, but is the result of a deeper cause, the capacity of its citizens for real political responsibility. Within recent years the Argentine Confederation and the United States of Brazil have made some approach to effective federal government, but even in those countries it would appear that all real power resides in the central government, and that their constitutions are rather federal in form than in practical working.

The most important extensions of the work of the Convention of 1787 have taken place within the British Empire, where the essential conditions of federalism have been found in full measure. When the growth of a new empire began again immediately after the loss of the Thirteen Colonies, it was far more centralized than the old had been. There was none of that practical division of responsibility that was really informal federalism. The burden of the government of the colonies lay

on the shoulders of the Imperial Cabinet, and the moneys for its support had to a very considerable extent to be found by the British taxpayer. For purposes of convenience or in obedience to tradition the colonists might be permitted to have representative assemblies, but they were distinctly subordinate, like a modern county council; their legislative measures had to be submitted for the control of the Home Government, and Parliament could and did pass measures which had full legislative effect in the internal affairs of the colonies. It may be said that all sovereignty lay in the Crown in the Imperial Parliament. The system lasted in full operation for more than fifty years, but as the colonies gradually grew out from a state of extreme poverty and dependence, so the unsatisfactory results of excessive centralization became more and more apparent in the communities where there was a large majority of citizens of full political capacity.

The most advanced colony was Upper Canada, and there the difficulties between the representative Assembly and the Imperial Government culminated in 1837 in the outbreak of rebellion. The acute discontent that prevailed in the maritime provinces sprang to a considerable extent from the same desire for self-government; while the revolt in Lower Canada, though influenced to some extent by this cause, was induced more by racial strife. The demand for responsibility from those who had not taken part in the revolts became so insistent as to demand some drastic measure of reform from the Imperial authorities. Lord Durham, the statesman sent out to plan such reform, insisted, in his report, with great emphasis on the influence of the proximity of self-governing communities in the United States in fostering the colonists' discontent with their dependent situation. He set himself to consider how far the systems on either side of the border could be assimilated and to find the causes of the comparative success of American methods. He discerned the essential cause in the extent to which the citizens of the States were responsible for their own good government through the

machinery of popular elections, and he propounded as the necessary remedy for Canada's troubles a relaxation of the minute Imperial control over the internal affairs of the colonies that had prevailed since 1776. He urged a division of powers; the colonists were to be responsible for their own government in matters of internal concern, and the Imperial Government in matters of common concern to the whole Empire. This was unmistakably a federal solution by a division of sovereignty. The fact that Lord Durham also proposed the addition of the device whereby colonial governors should avoid difficulties in the management of internal concerns by choosing ministers acceptable to the elected assemblies, should not obscure the fact that an essential of his plan for responsible government was a return towards the opportunist federal system that had been evolved in the practical government of the colonies during the first half of the eighteenth century.

The assimilation of the British system to that of the United States, which was desired by reformers of the liberal school, is brought out clearly in a speech of Sir William Molesworth. Speaking in 1850 he said, "I maintain that whenever the local circumstances of a colony will admit the existence of a colonial parliament, the colonial parliament ought to possess powers corresponding with those of the British Parliament, with the necessary exception of Imperial powers. Our colonial empire ought to be a system of colonies clustered round the hereditary monarchy of England." By the gradual adoption during the period 1840-50 of the policy first worked out by Lord Durham, a federal system was restored to the Empire, which, though nowhere rigidly formulated, has been the essential of dominion government since that date. Internal power over their own affairs has been placed fully in the hands of popular governments in the self-governing colonies (or dominions as they are now called); external sovereignty and control over matters of common concern have remained in the hands of the Imperial Government. That further developments are foreshadowed in the most recent period in the

growth of the importance of Imperial conferences and in other ways merely indicates that the political growth of the Empire continues. It does not controvert the truth of the statement that since the middle of the nineteenth century the relation of the Imperial Government to the dominions has been essentially federal.

Lord Durham, however, never used the term "federalism" to describe the new Imperial relations that he proposed. He reserved the term to describe the relations of the North American colonies with one another if certain other measures of reform were decided on. A federal form of government was not unknown to the British Empire, for the colonies in the Leeward Islands had been associated together in this way as early as 1689. Not merely was there a legislative assembly in each of the islands, there was also a general legislature for the whole of the group, which consisted of two houses, a nominated Council and an elected Assembly. The system did not work well, it led to a great deal of friction, and the meetings of the General Assembly fell into abeyance between 1710 and 1798, when it was abolished. The islands were placed under the rule of a single governor in 1833, but the separate legislatures were still maintained, and during the years 1833-1837 the Imperial authorities were debating the advisability of restoring the old General Legislature for the group and thus re-establishing a federal system. This step was not taken, however, till 1871. The importance of the discussions of the thirties concerning the Leeward Islands, and of other debates upon this sort of federation which were going on at the same time, lies in their influence upon Lord Durham's mission. Before he arrived in Canada (he tells us) he favoured a federal solution for the troubles of the colonies, and contemplated the establishment of a General Legislature for all British North America, while still retaining the colonial assemblies. But he changed his opinion for reasons which he clearly expressed. "A federal union would produce a weak and rather cumbrous government; a colonial federation must have, in fact, little

legitimate authority or business, the greater part of the ordinary functions of a federation falling within the scope of the imperial legislature and executive; and the main inducement to federation, which is the necessity of conciliating the pretensions of independent states to the maintenance of their own sovereignty, could not exist in the case of colonial dependencies, liable to be moulded according to the pleasure of the supreme authority at home." He therefore decided strongly in favour of complete legislative union, which, he believed, alone would give vigorous control of the rebellious French minority in Lower Canada and an efficacious government for the whole of the colonies.

No forward step was possible until the full development of Durham's real contribution to colonial government and the growth of responsibility in the colonies had made them no longer "liable to be moulded according to the pleasure of the supreme authority at home." The extent of the powers granted to the self-governing colonies between 1840 and 1860 was much greater than that recommended by Lord Durham, and they became possessed of almost complete internal power. They also acquired some small measure of the powers usually included in external sovereignty, for by the grant of complete commercial freedom they could enter individually into commercial treaties with foreign powers according to their own desires and without dictation from the Imperial government. By 1860, therefore, the colonies were even freer than had been the original thirteen American States under the Articles of Confederation. Their internal authority was fully vested in governments based upon the popular vote, and the way was clear for a final step towards federal union in the same direction as that taken in the United States. The first achievement of this step came in the colonies of British North America, where the influence of the political precedents of their great neighbour was most potent and the necessary conditions were most fully satisfied.

The colonies were geographically contiguous, they were all in the same stage of political development, their sense of com-

munity of national interest was rapidly growing, they were menaced in 1864-67 by a very real danger of annexation by the great military power which the United States had developed during the Civil War, and they were troubled by similar and very acute economic difficulties.

Federation came about in much the same way as it had done in 1787-89, and though the final sanction had to be given by an Act of the Imperial Parliament, that sanction was really based not upon the consent of the British electorate, but upon that of the citizens of British North America as a whole. So, too, when the people of the Australian colonies decided to establish a federal union, the path lay open to them without impediment from the Imperial Government. In each case popular governments, possessing practically full internal sovereignty, decided to resign either the whole or a portion of their powers into the hands of a central federal government, whose authority was based upon the votes of the whole community. In Canada the Dominion Government, having acquired the whole power, resigned a portion of it into the hands of the provincial governments; in Australia the States still retained the residue of power, but in both cases the principle was essentially the same.

When a federal union successfully fulfils its purpose of providing the people with an orderly and efficacious government, its importance grows at the expense of the State governments. They are gradually overshadowed and the electors come to take more interest in national than in local questions. Parties are formed upon a national basis, and by degrees the federal union, though still maintained in form, comes to differ very little in practice from a legislative union with subordinate provincial assemblies. When the people of South Africa determined upon a political change to adapt their institutions more closely to their needs, they contemplated at first a federal union according to the Canadian and Australian precedents. But the discussions that took place in the constitutional convention ultimately

brought about a change in this design, and it was decided instead to take a step that followed the Anglo-Scottish precedent of 1707, to sweep away all the existing governments and to place internal power in South Africa wholly in the hands of a new central government. A complete legislative union was thus effected by a process that was similar to that which had preceded federal unions in the other English-speaking countries. Where full political sovereignty is based upon the votes of the people, there is no vital difference between the two forms of union, and it is only a matter of practical convenience and political expediency as to which is adopted in a particular case.

THE PERPETUAL LEAGUE BETWEEN THE THREE SWISS FOREST COMMUNITIES. 1 AUGUST, 1291.

["Amtliche Sammlung der ältern eidgenössischen Abschiede," Lucerne, 1839, vol. i. Beilagen, pp. iii.-iv. Original in Latin.[1] German translation in W. Oechsli, "Quellenbuch zur Schweizergeschichte," Zurich, 1886, pp. 49-50. French translation in B. van Muyden, "Histoire de la Nation Suisse," Lausanne, 1896, vol. i. pp. 206-207. The same sources may also be consulted for the other important fundamental acts of the old Swiss Confederation—The Priest's Charter, 1370, the Convention of Sempach, 1393, the Convention of Stans, 1481.]

IN the name of the Lord. Amen. It is a good thing and will be profitable for the public good that our treaties be made secure in a state of quiet and peace. Let it therefore be known to all that the men of the valley of Uri, and the commune [*universitas*] of the valley of Switz and the community [*communitas*] of the mountain men of the lower valley, considering the malice of the times and in order that they may better defend themselves and preserve themselves better in their rightful status, have promised in good faith to assist each other mutually with help and counsel both as regards persons and goods, within the valleys and beyond, in all they can and with all their efforts against all and singular who shall intend violence, molestation or injury against them or any one of them in persons and goods by contriving any ill whatsoever.

In every event whatsoever each commune [*universitas*] promises to come to the aid of the other at its own expense as need may be with all that may be necessary for their succour

[1] The translation here given adheres closely to the original in order to bring out the peculiar turns of phrase and mixture of persons employed.

to resist the attacks of their enemies and to avenge their injuries. And concerning these things they have sworn their corporal oath without guile; renewing by this oath and these presents the ancient form of confederation. Nevertheless every man shall be held to be under his lord and shall serve him in seemly fashion according to his obligations [*iuxta sui nominis conditionem*].

Also by common consent and unanimous favour we promise, agree and ordain that in the aforesaid valleys we will not recognise nor accept in anywise any judge who shall have bought his office for a price whether in money or in any other way or who is not our native and fellow-countryman. If indeed dissension should arise between the confederates [*conspiratos*] the more prudent of the confederates are bound to intervene [*debent accedere*] to settle the difference between the parties as to them it shall seem expedient. And if one party should reject that ordinance the other confederates are bound to declare themselves against them.

Over and above all these things there is agreement that he who wrongfully and without cause shall have killed another, if he is arrested shall lose his life according to his deserts unless he can show his innocence of the said crime. And if he have departed the land he shall never be permitted to return. As for the receivers and protectors of the aforesaid malefactor they must be banished from the valleys until they are recalled by the confederates.

If any man either by day or in the silent night shall have wrongfully caused waste by fire to any of the confederates he shall never be held as a fellow countryman [*pro conprovinciali*]. And if any man shields and defends the said malefactor in the valleys he shall pay satisfaction for the damage done. And if any one of the confederates shall have spoiled another in his goods or shall have damaged him in any way, if the goods of the guilty can be found in the valleys they must be taken possession of in order to procure satisfaction to those injured according to justice.

Besides this no one ought to take a pledge of another unless he is manifestly a debtor or a surety and then it must be done by the permission of his own special judge. And besides this

each man must obey his judge and if he need he must indicate the judge in the valley before whom he would rather appear in course of law. And if any one shall have rebelled against a judgment and by his contumacy shall have damaged any one of the confederates all the contracting parties [*iurati*] shall be bound to compel him to give satisfaction for the aforesaid contumacy.

If indeed war or discord shall have arisen between any of the confederates, if one party of the contestants [*litigantium*] refuses to receive satisfaction by the adjudgement of a composition, the confederates are bound to defend the other party.

All the above written things having been agreed upon for common utility and having been ordered in seemly wise, and since they are by the grace of God to endure perpetually, the present instrument has been drawn up in evidence thereof at the request of the above-named and it is fortified with the impression of the seals of the aforesaid three communes and valleys.

Done in the year of the Lord MCCLXXXXI.
At the beginning of the month of August.

THE ACT OF UNION OF THE UNITED PROVINCES OF THE NETHERLANDS. THE UNION OF UTRECHT. 23 JANUARY, 1579.

[Jean Dumont, "Corps Universel Diplomatique du Droit des Gens," Amsterdam, 1736, tom. v. pt. i. pp. 322-328. The version here given is translated from the French of Dumont and compared with the original Dutch. The Union of Utrecht was preceded by the federal union of Holland and Zealand, 25 April, 1576, the terms of which can be found in Pieter Bor, "Nederlantsche Beroerten," ix. fol. 138.]

As it is notorious, since the Pacification made at Ghent, by which the Provinces of the Netherlands were bound to succour one another with body and goods, and to expel the Spaniards and their adherents from the said country, that the said Spaniards, with Don John, and other Commanders and Captains, have sought in every manner (as they continue daily) to reduce

the said Provinces, in general as well as in particular, under their tyranny, and by arms and other means to divide and dismember them, breaking the Union made by the said Pacification, to the total ruin of the said Countries; and as continuing in their said design, they have of late solicited some of the Towns and Quarters of the said Provinces, and have sought to make an irruption into the country of Gueldres.

Wherefore the people of the Duchy of Gueldres and County of Zutphen, of the Countries of Holland, Zealand, Utrecht, and the Frisian Ommelands between the rivers Ems and Lauwers, have thought it expedient and necessary to join and unite themselves more strictly together; not to abandon the Union made at the Pacification of Ghent, but the better to confirm it, and to provide themselves against all inconveniences into which they might fall by the practices, surprises and attempts of their enemies, and to see how they may preserve and defend themselves in such occurrences, and also to prevent any further division of the said Provinces and of the members thereof: the said Union and Pacification of Ghent remaining still in force.

Accordingly the Deputies of the said Provinces having sufficient authority for this purpose from their principals, have concluded and set down the points and articles which follow, provided always that they mean not in any way to estrange nor withdraw themselves from the Holy Roman Empire.

I. First, that the said Provinces make an alliance, confederation and union together, as by these presents they are allied, confederated and united together forever to remain in every way and manner as if all were but one single Province, and that they may never hereafter separate nor let themselves be separated, neither by Testament, Codicil, Donation, Cession, Exchange, Sale, Treaties of Peace or of Marriage, nor by any other occasion whatsoever; without any prejudice to the particular Privileges, Liberties, Exemptions, Rights, Statutes, praiseworthy and ancient Customs, Uses, and all other Rights which any of the said Provinces, Towns, Members and Inhabitants thereof may have. Wherein they will not only forbear to prejudice or occasion any hindrance to each other, but will assist each other in all ways, even with their lives and possessions, if there is need,

to maintain and strengthen, and also to defend and maintain them against all men, whosoever they be, who shall seek to inflict upon them any actual breach thereof. It being understood that all such disputes as shall arise between the said Provinces, Members and Towns of this Union, touching their Privileges and Franchises, Exemptions, Rights, Statutes, praiseworthy and ancient Customs, Uses, or other Rights, shall be decided by the ordinary Court of Justice, or by arbiters or by some amicable arrangement, and that none of the other Countries, Provinces, Towns or Members (as long as both parties submit to the course of law) shall in any manner interfere, except by intercession tending to an Agreement.

II. That the said Provinces, in confirmation of the said Alliance and Union, shall be bound to aid and succour one another with all their possessions, shedding of their blood, and hazard of their lives against all attempts, and violence which shall be made against them under the name, or under pretext of the name, of the King of Spain or upon his part. . . .

. . . . . .

III. That the said Provinces shall in like manner be obliged to succour and defend one another against all foreign or domestic Lords, Princes and Potentates, Countries, Towns or Members thereof, whether in general or particular, that would molest, hurt, or make war against them, in such wise that the assistance shall be decreed by the Generality of this Union after knowledge and according to the conditions of the case.

IV. And the better to assure the said Provinces, Towns and Members thereof against all violence: the Frontier Towns, and also others in case this be regarded necessary, in whatever Province they be, shall, by the advice and ordinance of these United Provinces, be fortified at the expense of the Towns and Province wherein they are situated, being assisted to the extent of one half by the Generality. But if it be found expedient to build any new forts, or to demolish any in the said Provinces, it shall be done at the charge of the Generality.

V. And to provide for the expenses entailed by the defence of the said Provinces, it has been agreed that throughout all the said United Provinces there shall be imposed and publicly

farmed out from three months to three months, to those persons offering the most, certain excises on all sorts of wine, inland and foreign beer, upon the grinding of corn, upon salt, upon cloth of gold, silver, woollen cloth, upon cattle that shall be killed, upon all horses or oxen that shall be sold or exchanged, upon all goods that shall be subject to the great balance, and upon all other goods which by common consent shall be thought fit, according to the Ordinances which shall be set down: and that to the like end they shall employ the revenues of the King of Spain, the ordinary charges being deducted.

VI. The which means may be augmented or diminished according to the exigence of affairs, and will be furnished only to secure the common defence, and for purposes that the Generality shall be obliged to support, nor shall they be applied to any other use whatsoever.

VII. That the said Frontier Towns and all others where need shall require, shall be at all times bound to receive such Garrisons as the said United Provinces shall think fit, and shall order them to take by the advice of the Governor of the Province where a garrison is to be placed, and they shall not be allowed to refuse.

VIII. [Temporary provision.]

IX. No Agreements, Treaties of Truce or of Peace, may be made, no war commenced, no imposts or contributions imposed concerning the generality of this Union, save by the common advice and consent of all the said Provinces, but in other things touching the conduct of this Confederation, and of that which depends thereon, they shall be guided by what is advised and resolved by the majority of votes of the Provinces comprised in this Union, which shall be collected as has been done hitherto in the Generality of the Estates, and that, provisionally, until it shall be otherwise decreed by the general consent of the Confederates. But if it so happen that in Treaties of Truce, Peace, War, or Contributions, these Provinces cannot agree together, the dispute shall be referred provisionally to the Stadtholders, who are at present in the said United Provinces, and they shall effect a compromise or give a decision as they shall find most reasonable. And if the said Stadtholders could not agree to-

gether, they shall call to assist [them] such impartial assessors and adjuncts as they please: and the parties [in contention] shall be bound to perform and maintain whatsoever is determined by the said Stadtholders.

X. That none of the said Provinces, Towns or Members thereof may make any Confederations or Alliances, with any neighbouring Princes or Countries, without the consent of these United Provinces and Confederates.

XI. It is agreed that if any neighbouring Princes, Noblemen, Countries or Towns should desire to join by Alliance and Confederation with these aforesaid Provinces, that they may be received and admitted by the advice and consent of them all.

XII. With regard to the Coinage, all the said Provinces shall conform to the currency and rate of Specie, according to Regulations which shall be drawn up at the first opportunity, so that one shall not be able to make alterations without another.

XIII. As for Religion, they of Holland and Zealand may please themselves, and with regard to the other Provinces of this Union, they may govern themselves in this matter according to the Religious Peace of the Archduke Matthias, Governor-General of the Netherlands. . . . Or else they may either in general or in particular, arrange such order as they would esteem most suitable for the peace of the Provinces, Towns, and particular Members, and for the preservation of everybody both Ecclesiastical and Civil, of his goods and privileges, and no other Province may give them any let or hindrance therein; with the reservation that everyone shall be allowed to remain free in his Religion, so that no one shall be traduced or examined on account of religion, in accordance with the Pacification of Ghent.

XIV., XV. [Temporary Provisions.]

XVI. And if it should happen (which God forbid) that any misunderstanding, quarrel or division should occur between the said Provinces, wherein they could not agree, the same, so far as it concerns one Province in particular, shall be determined by the other Provinces, or by those whom they should depute for that purpose. But if it concerns all the Provinces in general, it shall be determined by the Stadtholders of the Provinces, as

it is stated in Article IX. They shall be bound to do justice to the parties, or to reconcile them within one month, or within a shorter time if the case so requires, after having been summoned by one or other of the Parties. And that which by the other Provinces or their Deputies, or by the said Stadtholders shall be decreed and pronounced, shall be accepted and accomplished, abolishing all other remedies at law, either by appeal, relief, revision, nullity or any other pretensions whatever.

XVII. That the said Provinces, Towns and Members thereof shall be careful not to offer any occasion of war or quarrel to any foreign Princes, Noblemen, Countries, or Towns. For the preventing thereof the said Provinces, Towns and Members thereof shall be bound to do good and speedy Justice equally to Foreigners as to their own inhabitants. And if any among them should fail therein, the rest of the Confederates shall seek by all convenient means to have it done, and that all abuses that might hinder them or stay the course of Justice, may be corrected and reformed, according to right and the Privileges and praiseworthy and ancient Customs of every one.

XVIII. [Temporary Provision.]

XIX. For the dealing with all occurrences and difficulties which may happen, the said Confederates shall be bound upon summons made unto them by such as have authority thereto, to appear in Utrecht, on the day appointed, in order to deliberate and to resolve on the said occurrences and difficulties, which shall be described in the Letters of Rescription, if the matter requires not to be kept secret, by common advice and consent or by a majority of votes, in the manner heretofore said, even if some might not appear. In which case those who appear may nevertheless proceed to the resolution of what they shall find suitable for the common good of these United Provinces. And that which hath been so decreed shall be accomplished, even by those who failed to appear, unless the matter be of very great importance and could suffer some delay. In which case summonses shall be issued again to those who have not appeared, to present themselves on a certain stated day, on pain of losing their vote for that occasion. And what shall then be resolved shall be binding and valid, even though some of the said Pro-

vinces have been absent. Yet those whom it may not suit to appear may lawfully send their advice in writing, which shall be duly regarded in the collection of the votes.

XX. And to this end all and every one of the said Confederates shall be bound to write to those who have the authority for the summoning, about all things that may occur, or that shall seem to them to tend to the good or evil of the said Provinces and Confederates, so that they may cause them to be called together.

XXI. And if there shall be any obscurity or ambiguity whereby there may grow any question or dispute, the interpretation thereof shall belong to the said Confederates, who by common advice and consent shall decree thereon as they shall think fit. And if they fail to agree among themselves, they shall have recourse to the Stadtholders of the Provinces in the manner stated previously.

XXII. In the same manner if it should be thought necessary to augment or diminish anything in the Articles of this Union, Confederation and Alliance, in any particular or clauses, it shall be done by the common advice and consent of the said Confederates and not otherwise.

XXIII. All which Points and Articles and each of them in particular, the said United Provinces have promised and do promise by these presents, to accomplish and entertain, and to cause to be accomplished and entertained, without allowing any opposition or contradiction directly in any manner. And if anything shall be done or attempted contrary to the honour thereof, they do declare it void and of no effect. They bind thereto themselves and all the inhabitants respectively of the said Provinces, Towns and Members thereof, the which in case of contravention may be in all places, and before all Judges and Jurisdictions, where they shall be found, seized and arrested for the accomplishment of these presents, and that which depends thereon, renouncing to that end all exceptions, graces, privileges, reliefs and generally all other benefits of law which contrary to these presents might in any way aid or serve them; and especially the law which says that a general renunciation is of no force, if not preceded by a special one.

XXIV. And for the greater corroboration, all the Stadtholders of the said Provinces, who are in office at present or may be hereafter, together with all Magistrates and Chief Officers of each of the said Provinces, Towns and Members thereof, shall be bound to swear and take an oath, to keep and cause to be kept all the Points and Articles, and every one of them in particular, of this Union and Confederation.

XXV. In the same manner all companies of burgesses, fraternities and official bodies shall be bound to take the same oath, in each of the said Towns and Places of the said Union.

XXVI. . . . . Accomplished and signed at Utrecht, the 23rd of January, 1579.

THE CONFEDERATION OF THE COLONIES OF NEW ENGLAND. 19 MAY, 1643.

[Frequently reprinted. An accessible version is to be found in John Winthrop's "History of New England, 1630-1649," in "Original Narratives of Early American History," ed. J. F. Jameson, New York, 1908, vol. ii. pp. 100-105.]

THE Articles of Confederation between the plantations under the government of the Massachusetts, the plantations under the government of New Plymouth, the plantations under the government of Connecticut and the government of New Haven, with the plantations in combination therewith:

WHEREAS we all came into these parts of America with one and the same end and aim, namely, to advance the Kingdom of our Lord Jesus Christ, and to enjoy the liberties of the Gospel in purity with peace: and whereas by our settling, by the wise providence of God, we are further dispersed upon the seacoasts and rivers than was at first intended, so that we cannot, according to our desire, with convenience communicate in one government and jurisdiction: and whereas we live encompassed with people of several nations and strange languages, which hereafter may prove injurious to us or our posterity; and for as much as the natives have formerly committed sundry insolences and outrages upon several plantations of the English, and have of

late combined themselves against us, and seeing by reason of the sad distractions in England (which they have heard of), and by which they know we are hindered both from that humble way of seeking advice, and reaping those comfortable fruits of protection, which at other times we might well expect; we therefore do conceive it our bounden duty, without delay, to enter into a present consociation amongst ourselves for mutual help and strength in all future concernment, that, as in nation and religion, so in other respects, we be and continue one, according to the tenor and true meaning of the ensuing articles,—

I. Wherefore it is fully AGREED and CONCLUDED between the parties above named, and they jointly and severally do, by these presents, agree and conclude that they all be, and henceforth be called by the name of the UNITED COLONIES OF NEW ENGLAND.

II. These united colonies, for themselves and their posterities, do jointly and severally hereby enter into a firm and perpetual league of friendship and amity, for offence and defence, mutual advice and succour upon all just occasions, both for preserving and propagating the truth and liberties of the gospel, and for their own mutual safety and welfare.

III. It is further agreed, that the plantations which at present are, or hereafter shall be settled within the limits of the Massachusetts, shall be forever under the government of the Massachusetts, and shall have peculiar jurisdiction amongst themselves in all cases as an entire body; and that Plymouth, Connecticut, and New Haven, shall each of them in all respects have like peculiar jurisdiction and government within their limits, and in reference to the plantations which are already settled, or shall hereafter be erected, and shall settle within any of their limits respectively; provided that no other jurisdiction shall hereafter be taken in as a distinct head or member of this confederation, nor shall any other, either plantation or jurisdiction in present being, and not already in combination or under the jurisdiction of any of these confederates, be received by any of them: nor shall any two of these confederates join in one jurisdiction, without consent of the rest, which consent to be interpreted as in the sixth ensuing article is expressed.

IV. It is also by these confederates agreed, that the charge of all just wars, whether offensive or defensive, upon what part or member of this confederation soever they shall fall, shall, both in men and provisions and all other disbursements, be borne by all the parts of this confederation in different proportions, according to their different abilities, in manner following, viz. That the commissioners for each jurisdiction, from time to time as there shall be occasion, bring account and number of all the males in each plantation, or any way belonging to or under their several jurisdictions, of what quality or condition soever they be, from sixteen years old to sixty, being inhabitants there, and that according to the different numbers which from time to time shall be found in each jurisdiction upon a true and just account, the service of men and all charges of the war be borne by the poll; each jurisdiction or plantation being left to their own just course or custom of rating themselves and people according to their different estates, with due respect to their qualities and exemptions among themselves, though the confederation take no notice of any such privilege; and that, according to the different charge of each jurisdiction and plantation, the whole advantage of the war (if it please God so to bless their endeavours), whether it be in lands, goods or persons, shall be proportionably divided among the said confederates.

V. It is further agreed, that if any of these jurisdictions, or any plantation under or in combination with them, be invaded by any enemy whatsoever, upon notice and request of any three magistrates of that jurisdiction so invaded, the rest of the confederates, without any further notice or expostulation, shall forthwith send aid to the confederate in danger, but in different proportions, namely, the Massachusetts one hundred men sufficiently armed and provided for such a service and journey, and each of the rest forty-five men so armed and provided; or any less number, if less be required, according to this proportion. But if such a confederate in danger may be supplied by their next confederate, not exceeding the number hereby agreed, they may crave help thence, and seek no further for the present; the charge to be borne as in this article is expressed, and at their return to be victualled, and supplied with powder and shot, if

there be need, for their journey, by that jurisdiction which employed or sent for them; but none of the jurisdictions to exceed these numbers till by a meeting of the commissioners for this confederation a greater aid appear necessary; and this proportion to continue till upon knowledge of the numbers in each jurisdiction, which shall be brought to the next meeting, some other proportion be ordered. But in any such case of sending men for present aid, whether before or after such order or alteration, it is agreed that at the meeting of the commissioners for this confederation, the cause of such war or invasion be duly considered, and if it appear that the fault lay in the party invaded, that then that jurisdiction or plantation make just satisfaction both to the invaders whom they have injured, and bear all the charge of the war themselves without requiring any allowance from the rest of the confederates towards the same. And further, that if any jurisdiction see any danger of an invasion approaching, and there be time for a meeting, that in such case three magistrates of that jurisdiction may summons a meeting at such convenient place as themselves shall think meet, to consider and provide against the threatened danger; provided when they are met, they may remove to what place they please: only while any of these four confederates have but three magistrates in their jurisdiction, a request or summons from any two of them shall be accounted of equal force with the three mentioned in both the clauses of this article, till there may be an increase of magistrates there.

VI. It is also agreed, that for the managing and concluding of all affairs peculiar to and concerning the whole confederation, commissioners shall be chosen by and out of each of these four jurisdictions, viz. two for the Massachusetts, two for Plymouth, two for Connecticut, and two for New Haven, all in church fellowship with us, which shall bring full power from their several general courts respectively, to hear, examine, weigh and determine all affairs of war or peace, leagues, aids, charges, and numbers of men for war, division of spoils, or whatever is gotten by conquest; receiving of more confederates or plantations into the combination with any of these confederates, and all things of like nature which are the proper concomitants or consequents

of such a confederation for amity, offence and defence, not intermeddling with the government of any of the jurisdictions, which by the Third Article is preserved entirely to themselves. But if those eight commissioners, when they meet, shall not agree, yet it is concluded that any six of the eight, agreeing, shall have power to settle and determine the business in question; but if six do not agree, that then such propositions, with their reasons, so far as they have been debated, be sent and referred to the four general courts, viz., the Massachusetts, Plymouth, Connecticut and New Haven: and if at all the said general courts the business so referred be concluded, then to be prosecuted by the confederation and all their members. It is further agreed, that these eight commissioners shall meet once every year (besides extraordinary meetings according to the Fifth Article) to consider, treat, and conclude of all affairs belonging to this confederation, which meeting shall ever be the first Thursday in September and that the next meeting after the date of these presents (which shall be accounted the second meeting) shall be at Boston in the Massachusetts, the third at Hartford, the fourth at New Haven, the fifth at Plymouth, the sixth and seventh at Boston, and so in course successively, if in the meantime some middle place be not found out and agreed upon, which may be commodious for all the jurisdictions.

VII. It is further agreed, that at each meeting of these eight commissioners, whether ordinary or extraordinary, they all, or any six of them agreeing as before, may choose their president out of themselves, whose office and work shall be to take care and direct for order and a comely carrying on of all proceedings in their present meeting, but he shall be invested with no such power or respect, as by which he shall hinder the propounding or progress of any business, or any way cast the scales otherwise than in the preceding articles is agreed.

VIII. It is also agreed, that the commissioners for this confederation hereafter at their meetings, whether ordinary or extraordinary, as they may have commission or opportunity, do endeavour to frame and establish agreements and orders in general cases of a civil nature wherein all the plantations are interested for preserving peace amongst themselves, and prevent-

ing, as much as may be, all occasions of war or differences with others, as about free and speedy passage of justice in each jurisdiction to all the confederates equally, as to their own, receiving those that remove from one plantation to another without due certificates, how all the jurisdictions may carry it towards the Indians, that they neither grow insolent nor be injured without due satisfaction, lest war break in upon the confederates through miscarriages. It is also agreed, that if any servant run away from his master into any of these confederate jurisdictions, that in such case, upon certificate of one magistrate in the jurisdiction out of which the said servant fled, or upon other due proof, the said servant shall be delivered either to his master or any other that pursues and brings such certificate or proof: And that upon the escape of any prisoner or fugitive for any criminal cause, whether breaking prison or getting from the officer, or otherwise escaping, upon the certificate of two magistrates of the jurisdiction out of which the escape is made, that he was a prisoner or such an offender at the time of the escape, the magistrate, or some of them of the jurisdiction where for the present the said prisoner or fugitive abideth, shall forthwith grant such a warrant as the case will bear, for the apprehending of any such person and the delivery of him into the hand of the officer or other person who pursueth him; and if there be help required for the safe returning of any such offender, then it shall be granted unto him that craves the same, he paying the charges thereof.

IX. And for that the justest wars may be of dangerous consequence, especially to the smaller plantations in these united colonies, it is agreed, that neither the Massachusetts, Plymouth, Connecticut, nor New Haven, nor any of the members of any of them, shall at any time hereafter begin, undertake, or engage themselves or this confederation, or any part thereof, in any war whatsoever, (sudden exigencies with the necessary consequences thereof excepted, which are also to be moderated as much as the case will permit,) without the consent and agreement of the aforenamed eight commissioners, or at least six of them, as in the sixth article is provided; and that no charge be required of any of the confederates, in case of a defensive war, till the said approved the justice of the war,

and have agreed upon the sum of money to be levied, which sum is then to be paid by the several confederates in proportion according to the Fourth Article.

X. That in extraordinary occasions, when meetings are summoned by three magistrates of any jurisdiction, or two, as in the Fifth Article, if any of the commissioners come not, due warning being given or sent, it is agreed that four of the commissioners shall have power to direct a war which cannot be delayed, and to send for due proportions of men out of each jurisdiction, as well as six might do if all met; but not less than six shall determine the justice of the war, or allow the demands or bills of charges, or cause any levies to be made for the same.

XI. It is further agreed, that if any of the confederates shall hereafter break any of these present articles, or be otherway injurious to any one of the other jurisdictions, such breach of agreement or injury shall be duly considered and ordered by the commissioners for the other jurisdictions, that both peace, and this present confederation may be entirely preserved without violation.

XII. Lastly, this perpetual confederation, and the several articles and agreements thereof being read and seriously considered both by the general court for the Massachusetts and the commissioners for the other three, were subscribed presently by the commissioners, all save those of Plymouth, who, for want of sufficient commission from their general court, deferred their subscription till the next meeting, and then they subscribed also, and were to be allowed by the general courts of the several jurisdictions, which accordingly was done, and certified at the next meeting held at Boston, (7), 7, 1643.

ACT FOR THE UNION OF THE TWO KINGDOMS OF ENGLAND AND SCOTLAND. 6 MARCH, 1706-7 6 Anne, cap. 11.

["Statutes of the Realm," vol. viii. pp. 566-577.]

MOST gracious Sovereign

Whereas Articles of Union were agreed on the Twenty-second Day of July in the Fifth Year of Your Majesty's reign by the

Commissioners nominated on Behalf of the Kingdom of England under Your Majesty's Great Seal of England bearing Date at Westminster the Tenth Day of April then last past in pursuance of an Act of Parliament made in England in the Third Year of Your Majesty's Reign, and the Commissioners nominated on behalf of the Kingdom of Scotland under Your Majesty's Great Seal of Scotland bearing Date the Twenty-seventh Day of February in the Fourth Year of Your Majesty's Reign in pursuance of the Fourth Act of the Third Session of the Present Parliament of Scotland to treat of and concerning an Union of the said Kingdoms; And whereas an Act hath passed in the Parliament of Scotland at Edinburgh the Sixteenth Day of January in the Fifth Year of Your Majesty's Reign wherein 'tis mentioned that the Estates of Parliament considering the said Articles of Union of the Two Kingdoms had agreed to and approved of the said Articles of Union with some Additions and Explanations and that Your Majesty with Advice and Consent of the Estates of Parliament for establishing the Protestant Religion and Presbyterian Church Government within the Kingdom of Scotland had passed in the same Session of Parliament an Act intituled Act for securing of the Protestant Religion and Presbyterian Church Government which by the Tenor thereof was appointed to be inserted in any Act ratifying the Treaty and expressly declared to be a fundamental and essential Condition of the said Treaty or Union in all times coming the Tenor of which Articles as ratified and approved of with Additions and Explanations by the said Act of Parliament of Scotland follows.

Article I.—That the Two Kingdoms of England and Scotland shall upon the First day of May [1707] and for ever after be united into One Kingdom by the Name of Great Britain. [Her Majesty shall appoint Ensigns Armorial and decide how the Crosses of St. George and St. Andrew shall be conjoined.]

Article II.—That the Succession to the Monarchy of the United Kingdom of Great Britain and of the Dominions thereto belonging after Her most Sacred Majesty and in default of Issue of Her Majesty be remain and continue to the most Excellent Princess Sophia Electoress and Duchess Dowager of Hanover and the Heirs of Her Body being Protestants [Cites

Act of Settlement (12 and 13 Will. III., Cap. 2) whereby Papists and also Persons marrying Papists are excluded (1 Will. and Mar., Sess. 2, Cap. 2).]

Article III.—That the United Kingdom of Great Britain be represented by One and the same Parliament to be styled The Parliament of Great Britain.

Article IV.—That all the Subjects of the United Kingdom of Great Britain shall from and after the Union have full Freedom and Intercourse of Trade and Navigation to and from any Port or Place within the said United Kingdom and the Dominions and Plantations thereunto belonging and that there be a Communication of all other Rights Privileges and Advantages which do or may belong to the Subjects of either Kingdom except where it is otherwise expressly agreed in these Articles.

Article V. [All Scotch ships declared to be British.]

Article VI.—That all Parts of the United Kingdom for ever from and after the Union shall have the same Allowances Encouragements and Drawbacks and be under the same Prohibitions Restrictions and Regulations of Trade and liable to the same Customs and Duties on Import and Export [Those settled in England shall take place throughout the United Kingdom] excepting and reserving the Duties upon Export and Import of such particular Commodities from which any Persons the Subjects of either Kingdom are specially liberated and exempted by their Private Rights which after the Union are to remain safe and entire to them in all Respects as before the same. [Scotch Cattle imported into England to be subject only to the same duties as English Cattle. Rewards on exportation of grain extended to Oats grinded and ungrinded and prohibition of importation of food into Scotland continued.]

Article VII. [Scotland to be liable to English Excise.]

Article VIII. [The salt duties to be as in England. Provisions re Salt Meat and Salt Fish from Scotland.]

Article IX. [The Land Tax. Quota of Scotland to be in proportion to that of England.]

Articles X., XI., XII., XIII. [Stamp Duties, Window Tax, Duties on Coals, Culm and Cinders, and Malt Duty not to be charged to Scotland while English Acts in force.]

Article XIV.—That the Kingdom of Scotland be not charged with any other Duties laid on by the Parliament of England before the Union except these consented to in this Treaty in regard it is agreed that all necessary Provision shall be made by the Parliament of Scotland for the Public Charge and Service of that Kingdom for the Year [1707], Provided nevertheless that if the Parliament of England shall think fit to lay any further Impositions by way of Customs or such Excises with which by virtue of this Treaty, Scotland is to be charged equally with England in such case Scotland shall be liable to the same Customs and Excises and have an Equivalent to be settled by the Parliament of Great Britain. . . . And seeing it cannot be supposed that the Parliament of Great Britain will ever lay any sort of Burthens upon the United Kingdom but what they shall find of necessity at that Time for the Preservation and Good of the Whole and with due regard to the Circumstances and Abilities of every part of the United Kingdom therefore it is agreed that there be no further Exemption insisted upon for any part of the United Kingdom but that the Consideration of any Exemptions beyond what are already agreed on in this Treaty shall be left to the Determination of the Parliament of Great Britain.

Article XV. [Scotland shall have an equivalent for duties charged towards payment of Debts of England (viz. grant of 398,085*l.*). Since customs and excise revenue will increase as result of Union the equivalent shall proportionately increase. The grant to be used for (*a*) losses of individuals by lowering of Scottish coinage; (*b*) payment of Stock of Scottish Commercial Companies.] That all the public Debts of the Kingdom of Scotland as shall be adjusted by this present Parliament shall be paid and that Two thousand pounds per annum for the Space of Seven Years shall be applied towards encouraging and promoting the Manufacture of coarse Wool within those Shires which produce the Wool. [2000*l.* per annum shall also be paid for the encouragement of fisheries and other manufactures in Scotland. Commissioners shall be appointed by the Queen to dispose of all the above sums.]

Article XVI. [Coinage in Scotland to be of same standard as that of England.]

Article XVII. [Weights and measures in Scotland to be of same standard as those of England.]

Article XVIII.—That the Laws concerning Regulation of Trade Customs and such Excises to which Scotland is by virtue of this Treaty to be liable be the same in Scotland from and after the Union as in England and that all other Laws in Use within the Kingdom of Scotland do after the Union and notwithstanding thereof remain in the same Force as before (except such as are contrary to or inconsistent with this Treaty) but alterable by the Parliament of Great Britain with this Difference betwixt the Laws concerning public Right Policy and Civil Government and those which concern private Right that the Laws which concern public Right Policy and Civil Government may be made the same throughout the whole United Kingdom. But that no Alteration be made in Laws which concern private Right except for evident Utility of the Subjects within Scotland.

Article XIX.—That the Court of Session or College of Justice do after the Union and notwithstanding thereof remain in all Time coming within Scotland as it is now constituted by the Laws of that Kingdom and with the same Authority and Privileges as before the Union subject nevertheless to such Regulations for the better Administration of Justice as shall be made by the Parliament of Great Britain. [Advocates or Principal Clerks of Session or Writers to the Signet alone to be nominated as Lords of Session subject to certain conditions.] And that the Court of Justiciary do also after the Union and notwithstanding thereof remain in all time coming within Scotland as it is now constituted by the Laws of that Kingdom and with the same Authority and Privileges as before the Union subject nevertheless to such Regulations as shall be made by the Parliament of Great Britain and without Prejudice of other Rights of Justiciary. And that all Admiralty Jurisdictions be under the Lord High Admiral or Commissioners for the Admiralty of Great Britain for the Time being and that the Court of Admiralty now established in Scotland be continued and that all Reviews, Reductions or Suspensions of the Sentences in maritime Cases competent to the jurisdiction of that Court remain in the same manner after the Union as now in Scotland

until the Parliament of Great Britain shall make such Regulations and Alterations as shall be judged expedient for the whole United Kingdom so as there be always continued in Scotland a Court of Admiralty. . . . [Heritable rights of Admiralty are reserved subject to regulations of Parliament. Other Courts to remain subject to alterations of Parliament.] And that no Causes in Scotland be cognoscible by the Courts of Chancery, Queen's Bench, Common Pleas or any other Court in Westminster Hall and that the said Courts or any other of the like nature after the Union shall have no Power to cognosce Review or alter the Acts or Sentences of the Judicatures within Scotland or stop the Execution of the same. And that there be a Court of Exchequer in Scotland after the Union for deciding Questions concerning the Revenues of Customs and Excises there having the same Power and Authority in such Cases as the Court of Exchequer has in England . . . and that the Court of Exchequer that now is in Scotland do remain until a new Court of Exchequer be settled by the Parliament of Great Britain in Scotland after the Union. And that after the Union the Queen's Majesty and Her Royal Successors may continue a Privy Council in Scotland for preserving of public Peace and Order until the Parliament of Great Britain shall think fit to alter it or establish any other effectual Method for that End.

Article XX. [Heritable Offices, Jurisdictions, etc. to be reserved to Owners as rights of property.]

Article XXI. [Rights and Privileges of Royal Burghs maintained.]

Article XXII.—That by virtue of this Treaty of the Peers of Scotland at the Time of the Union Sixteen shall be the number to sit and vote in the House of Lords and Forty-five the number of the Representatives of Scotland in the House of Commons of the Parliament of Great Britain and that when Her Majesty, Her Heirs or Successors, shall declare her or their Pleasure for holding the First or any subsequent Parliament of Great Britain until the Parliament of Great Britain do make further provision therein a Writ do issue under the Great Seal of the United Kingdom directed to the Privy Council of Scotland commanding them to cause Sixteen Peers who are to sit in the House of Lords

to be summoned to Parliament and Forty-five members to be elected to sit in the House of Commons of the Parliament of Great Britain. . . . [Names of those elected to be returned by Privy Council to Court from which Writ issued. Queen may proclaim present members of English Parliament to be members of the first Parliament of Great Britain, and also may proclaim time and place of its meeting. Members to take oaths appointed in place of these of Allegiance and Supremacy etc. to the Crown and Realm of Great Britain.]

Article XXIII. [The sixteen Peers to have all Privileges of Parliament which Peers of England and Great Britain have or shall have, especially the Right of trying Peers. All Peers of Scotland after the Union to be Peers of Great Britain and to rank immediately after peers of England before the Union.]

Article XXIV.—That from and after the Union there be one Great Seal for the United Kingdom of Great Britain which shall be different from the Great Seal now used in either Kingdom. . . . [Great Seal to be used for the public instruments and treaties concerning the United Kingdom. Separate Seal to be used in Scotland for private grants. Old Seals to be continued till new ones ready. Regalia and Records etc. of Scotland to be kept as before.]

Article XXV.—I. That all Laws and Statutes in either Kingdom so far as they are contrary to and inconsistent with the Terms of these Articles, or any of them, shall, from and after the Union cease and become void and shall be so declared to be by the respective Parliaments of the said Kingdoms.

As by the said Articles of Union ratified and approved by the said Act of Parliament of Scotland Relation being thereunto had may appear.

II. And the Tenor of the aforesaid Act for securing the Protestant Religion and Presbyterian Church Government within the Kingdom of Scotland is as follows—

Our Sovereign Lady and the Estates of Parliament, considering that by the late Act of Parliament for a treaty with England for an Union of both Kingdoms it is provided that the Commissioners for that Treaty should not treat of or concerning any Alteration of the Worship, Discipline and Government of

the Church of this Kingdom as now by Law established, which Treaty being now reported to the Parliament and it being reasonable and necessary that the true Protestant Religion as presently professed within this Kingdom with the Worship, Discipline and Government of this Church should be effectually and unalterably secured, therefore Her Majesty with Advice and Consent of the said Estates of Parliament doth hereby establish and confirm the said true Protestant Religion and the Worship, Discipline and Government of this Church to continue without any alteration to the People of this Land in all succeeding Generations and more especially Her Majesty with Advice and Consent aforesaid ratifies, approves and for ever confirms the Fifth Act of the First Parliament of King William and Queen Mary intituled an Act ratifying the Confession of Faith and settling Presbyterian Church Government, with all other Acts of Parliament relating thereto in Prosecution of the Declaration of the Estates of this Kingdom containing the Claim of Right bearing date [11 April, 1689]; and Her Majesty with Advice and Consent aforesaid expressly provides and declares that the foresaid true Protestant Religion contained in the above-mentioned Confession of Faith with the Form and Purity of Worship presently in use within this Church and its Presbyterian Church Government and Discipline (that is to say) the Government of the Church by Kirk Sessions, Presbyteries, Provincial Synods and General Assemblies all established by the foresaid Acts of Parliament pursuant to the Claim of Right shall remain and continue unalterable and that the said Presbyterian Government shall be the only Government of the Church within the Kingdom of Scotland.

[For greater security of Protestant Religion, Universities and Colleges of Scotland to continue. Professors, etc., to acknowledge Civil Government and subscribe to Confession of Faith.]

And further, Her Majesty with Advice aforesaid, expressly declares and statutes that none of the subjects of this Kingdom shall be liable to, but all and every one of them for ever free of any Oath, Test or Subscription within this Kingdom contrary to or inconsistent with the foresaid true Protestant Religion and Presbyterian Church Government, Worship and

Discipline as above established and that the same within the bounds of this Church and Kingdom shall never be imposed upon or required of them in any Sort; And lastly, that after the Decease of Her present Majesty (whom God long preserve), the Sovereign succeeding to her in the Royal Government of the Kingdom of Great Britain shall in all Time coming at His or Her Accession to the Crown swear to subscribe that they shall inviolably maintain and preserve the foresaid Settlement of the True Protestant Religion with the Government Worship, Discipline, Right and Privileges of this Church as above established by the Laws of this Kingdom in Prosecution of the Claim of Right.

And it is hereby statute and ordained that this Act of Parliament with the Establishment herein contained shall be held and observed in all Time coming as a fundamental and essential condition of any Treaty or Union to be concluded betwixt the Two Kingdoms without any Alteration thereof or Derogation thereto in any Sort for ever. As also that this Act of Parliament and Settlement therein contained shall be insert and repeated in any Act of Parliament that shall pass for agreeing and concluding the foresaid Treaty or Union betwixt the Two kingdoms and that the same shall be therein expressly declared to be a fundamental and essential Condition of the said Treaty or Union in all Time coming which Articles of Union and Act immediately above written Her Majesty with Advice and Consent aforesaid statutes enacts and ordains to be and continue in all Time coming the sure and perpetual Foundation of a Complete and Entire Union of the Two Kingdoms of Scotland and England under the Express Condition and Provision that this Approbation and Ratification of the foresaid Articles and Act shall be no ways binding on this Kingdom until the said Articles and Act be ratified, approved and confirmed by Her Majesty with and by the Authority of the Parliament of England as they are now agreed to be approved and confirmed by Her Majesty with and by the Authority of the Parliament of Scotland, declaring nevertheless that the Parliament of England may provide for the Security of the Church of England as they think expedient to take place within the bounds of the said Kingdom of England and not derogating from the Security above provided

for establishing of the Church of Scotland within the Bounds of this Kingdom as also the said Parliament of England may extend the Additions and other Provisions contained in the Articles of Union as above insert in Favours of the Subjects of Scotland to and in favour of the Subjects of England which shall not suspend or derogate from the Force and Effect of this present Ratification but shall be understood as herein included without the Necessity of a new Ratification in the Parliament of Scotland.

And lastly Her Majesty enacts and declares that all Laws and Statutes in this Kingdom so far as they are contrary to or inconsistent with the Terms of these Articles as above mentioned shall from and after the Union cease and become void.

III. [Cites 6 Anne cap. 8, An Act for securing the Church of England; which re-enacts 13 Eliz. cap. 12, An Act for the ministers of the Church to be of sound religion; and 13 and 14 Car. 2, cap 4, the Act of Uniformity, as regards the Church of England.]

And be it further enacted by the authority aforesaid, That after the demise of her Majesty (whom God long preserve) the Sovereign next succeeding to her Majesty in the royal government of the Kingdom of Great Britain, and so for ever hereafter, every King and Queen succeeding . . . at his or her Coronation, shall in the presence of all persons who shall be attending . . . take and subscribe an oath to maintain and preserve inviolably the said settlement of the Church of England.

And be it further enacted by the authority aforesaid, That this Act, all and every the matters and things therein contained, be, and shall for ever be holden and adjudged to be a fundamental and essential part of any treaty of union to be concluded between the said two Kingdoms.

IV. May it therefore please your most Excellent Majesty, that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That all and every the said Articles of Union as ratified and approved by the said Act of Parliament of Scotland, as aforesaid, and

herein before particularly mentioned and inserted; and also the said Act of Parliament of Scotland for establishing the Protestant Religion, and Presbyterian Church Government within that Kingdom, intituled, Act for securing the Protestant Religion and Presbyterian Church Government, and every Clause, Matter, and Thing in the said Articles and Act contained shall be and the said Articles and Act are hereby for ever ratified, approved and confirmed.

V. [Act (6 Anne cap. 8) for securing the Church of England and that of the Parliament of Scotland for securing the Church of Scotland to be held fundamental Conditions of the Union. These Acts] and the said Articles of Union . . . are hereby enacted and ordained to be and continue in all Times coming the complete and entire Union of the Two Kingdoms of England and Scotland.

VI. And whereas since the passing the said Act in the Parliament of Scotland for ratifying the said Articles of Union one other Act intituled Act settling the manner of electing the Sixteen Peers and Forty-five Members to represent Scotland in the Parliament of Great Britain hath likewise passed in the said Parliament of Scotland at Edinburgh [5 February, 1707] . . . the Tenor Whereof follows.

[Here follow detailed provisions for the election of the Peers and the representatives as contained in the Act.]

VII. [Re-enacts these provisions.]

THE DECLARATION OF INDEPENDENCE OF THE THIRTEEN AMERICAN COLONIES. 4 JULY, 1776.

[Jonathan Elliot, "Debates on the Federal Constitution," 2nd ed., 1836. Reprinted 1907. Vol. i. pp. 60-63.]

In Congress, July 4, 1776.

The Unanimous Declaration of the Thirteen United States of America.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of

the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness, that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly, all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world. He has refused his assent to laws the most wholesome and necessary for the public good. He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws, for the accommodation of large districts of people, unless those people would relinquish

the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise, the state remaining, in the mean time, exposed to all the dangers of invasion from without and convulsions within.

He has endeavoured to prevent the population of these states, for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance. He has kept among us, in times of peace, standing armies without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:—For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:—For cutting off our trade with all parts of the world:—

For imposing taxes on us without our consent:—For depriving us, in many cases, of the benefits of trial by jury:—For transporting us beyond seas to be tried for pretended offences:—For abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:—For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:—For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection and waging war against us. He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances

of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honor.

ARTICLES OF CONFEDERATION OF THE UNITED STATES OF AMERICA. 15 NOVEMBER, 1777.

[Jonathan Elliot, "Debates on the Federal Constitution," vol. i. pp. 79-84.]

To all to whom these Presents shall come, we, the undersigned, Delegates of the States affixed to our names, send greeting:

WHEREAS the delegates of the United States of America, in Congress assembled, did, on the fifteenth day of November, in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the Independence of America, agree to certain articles of Confederation and Perpetual Union between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Planta-

tions, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, viz. :—

Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

I. The style of this confederacy shall be, "The United States of America."

II. Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this Confederation expressly delegated to the United States in Congress assembled.

III. The said states hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade or any other pretence whatever.

IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this Union, the free inhabitants of each of these states—paupers, vagabonds and fugitives from justice, excepted—shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions, as the inhabitants thereof, respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state from any other state, of which the owner is an inhabitant; provided also, that no imposition, duty, or restriction, shall be laid by any state on the property of the United States, or either of them.

If any person, guilty of, or charged with, treason, felony, or other high misdemeanor, in any state, shall flee from justice, and be found in any of the United States, he shall, upon demand

of the governor or executive power of the state from which he fled, be delivered up, and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given, in each of these states, to the records, acts, and judicial proceedings, of the courts and magistrates of every other state.

V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No state shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each state shall maintain its own delegates in a meeting of the states and while they act as members of the committee of the states.

In determining questions in the United States in Congress assembled, each state shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on, Congress, except for treason, felony, or breach of the peace.

VI. No state, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title, of any kind whatever, from any king, prince, or foreign state;

nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into, by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain. . . .

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No state shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; . . .

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VII. When land forces are raised by any state for the common defence, all officers of or under the rank of colonel shall be appointed by the legislature of each state, respectively, by whom such forces shall be raised, or in such manner as such state shall direct; and all vacancies shall be filled up by the state which first made the appointment.

VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land, within each state, granted to or surveyed for any person, as such land, and the buildings and improvements thereon, shall be estimated according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint.

The taxes for paying that proportion shall be laid and levied

by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in Congress assembled.

IX. The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances; provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding, in all cases, what captures, on land or water, shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of capture; provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise, between two or more states, concerning boundary, jurisdiction, or any other cause whatever; . . .

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The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated; establishing and regulating post-offices from one state to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said

office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces and directing their operations.

The United States in Congress assembled shall have authority to appoint a Committee to sit in the recess of Congress, to be denominated "a committee of the states," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years—to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money or emit bills on the credit of the United States, transmitting every half year, to the respective states, an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisitions shall be binding; and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same; in which case they shall raise, officer, clothe,

arm, and equip, as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war; nor grant letters of marque and reprisal in time of peace; nor enter into any treaties or alliances; nor coin money; nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them; nor emit bills; nor borrow money on the credit of the United States; nor appropriate money; nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised; nor appoint a commander-in-chief of the army or navy,—unless nine states assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled. . . .

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X. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine states, shall from time to time, think expedient to vest them with, provided that no power be delegated to the said committee, for the exercise of which, by the Articles of Confederation, the voice of nine states in the Congress of the United States assembled is requisite.

XI. Canada, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to, all the advantages of this union; but no other colony shall be admitted into the same unless such admission be agreed to by nine states.

XII. All bills of credit emitted, moneys borrowed, and debts contracted, by or under the authority of Congress, before the assembling of the United States in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof

the said United States and the public faith are hereby solemnly pledged.

XIII. Every state shall abide by the determination of the United States in Congress assembled, on all questions which, by this Confederation, are submitted to them. And the articles of this Confederation shall be inviolably observed by every state, and the union shall be perpetual: nor shall any alteration, at any time hereafter, be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislature of every state.

THE ANNAPOLIS RESOLUTIONS URGING THE SUMMONING OF A CONSTITUTIONAL CONVENTION IN THE UNITED STATES. 14 SEPTEMBER, 1786.

[Jonathan Elliot, "Debates on the Federal Constitution," vol. i. pp. 117-118.]

The Annapolis Resolutions.

To the Honorable the Legislatures of Virginia, Delaware, Pennsylvania, New Jersey, and New York, the commissioners from the said states respectively, assembled at Annapolis, humbly beg leave to report—

That, pursuant to their several appointments, they met at Annapolis in the state of Maryland on the 11th day of September instant; and having proceeded to a communication of their powers, they found that the states of New York, Pennsylvania, and Virginia, had, in substance, and nearly in the same terms, authorized their respective commissioners "to meet such commissioners as were or might be appointed by the other states in the Union, at such time and place as should be agreed upon by the said commissioners, to take into consideration the trade and commerce of the United States; to consider how far a uniform system in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony; and to report to the several states such an act relative to this great object as, when unanimously ratified by them,

would enable the United States in Congress assembled effectually to provide for the same."

That the State of Delaware had given similar powers to their commissioners, with this difference only, that the act to be framed in virtue of these powers is required to be reported "to the United States in Congress assembled, to be agreed to by them, and confirmed by the legislatures of every state."

That the State of New Jersey had enlarged the object of their appointment, empowering their commissioners "to consider how far a uniform system in their commercial regulations and *other important matters* might be necessary to the common interest and permanent harmony of the several states," and to report such an act on the subject as, when ratified by them, "would enable the United States in Congress assembled effectually to provide for the exigencies of the Union."

That appointments of commissioners have also been made by the States of New Hampshire, Massachusetts, Rhode Island, and North Carolina, none of whom, however, have attended; but that no information has been received by your commissioners, of any appointment having been made by the states of Connecticut, Maryland, South Carolina, or Georgia.

That the express terms of the powers to your commissioners supposing a deputation from all the states, and having for object the trade and commerce of the United States, your commissioners did not conceive it advisable to proceed on the business of their mission under the circumstances of so partial and defective a representation.

Deeply impressed, however, with the magnitude and importance of the object confided to them on this occasion, your commissioners cannot forbear to indulge an expression of their earnest and unanimous wish, that speedy measures may be taken to effect a general meeting of the states in a future convention, for the same and such other purposes as the situation of public affairs may be found to require.

If, in expressing this wish, or in intimating any other sentiment, your commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence that a conduct dictated by an anxiety for the welfare of the

United States will not fail to receive an indulgent construction.

In this persuasion your commissioners submit an opinion, that the idea of extending the powers of their deputies to other objects than those of commerce, which has been adopted by the state of New Jersey, was an improvement on the original plan, and will deserve to be incorporated into that of a future convention. They are the more naturally led to this conclusion, as, in the course of their reflections on the subject, they have been induced to think that the power of regulating trade is of such comprehensive extent, and will enter so far into the general system of the federal government, that, to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a corresponding adjustment of other parts of the federal system.

That there are important defects in the system of the federal government is acknowledged by the acts of all those states which have concurred in the present meeting; that the defects upon a closer examination, may be found greater and more numerous than even these acts imply, is at least so far probable, from the embarrassments which characterize the present state of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some mode which will unite the sentiments and councils of all the states. In the choice of the mode, your commissioners are of opinion that a convention of deputies from the different states, for the special and sole purpose of entering into this investigation, and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference, from considerations which will occur without being particularized.

Your commissioners decline an enumeration of those national circumstances on which their opinion respecting the propriety of a future convention with more enlarged powers is founded; as it would be a useless intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which can have escaped the penetration of those to whom they would in this instance be addressed. They are, however, of a nature so serious, as, in the view of your

commissioners, to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the confederacy.

Under this impression, your commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction, that it may essentially tend to advance the interests of the Union, if the states, by whom they have been respectively delegated, would themselves concur, and use their endeavours to procure the concurrence of the other states, in the appointment of commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled, as, when agreed to by them, and afterwards confirmed by the legislatures of every state, will effectually provide for the same.

Though your commissioners could not with propriety address these observations and sentiments to any but the states they have the honor to represent, they have nevertheless concluded, from motives of respect, to transmit copies of this report to the United States in Congress assembled, and to the executive of the other states.

By order of the Commissioners. Dated at Annapolis, September 14, 1786.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA. 17 SEPTEMBER, 1787.

[Jonathan Elliot, "Debates on the Federal Constitution," vol. i. pp. 1-21. The most accessible version of the Constitution, together with all its subsequent Amendments, is to be found in "Old South Leaflets," No. 1, published by The Old South Association, Boston, Mass.]

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare,

and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION I.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION II.

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island and Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

When vacancies happen in the representation from any

State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

SECTION III.

The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further

than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION IV.

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Each house may determine the rules of its proceeding, punish its members for disorderly behaviour, and with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION VI.

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out

of the Treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION VII.

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence

of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

SECTION IX.

The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce

or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the Treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SECTION X.

No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

The executive power shall be vested in a President of the United States of America. He shall hold his office during the

term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.][1]

The Congress may determine the time of choosing the elec-

[1] This clause of the Constitution has been amended. See twelfth article of the Amendments.

tors and the day on which they shall give their votes, which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he may have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

Before he enter on the execution of his office he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States."

SECTION II.

The President shall be Commander-in-chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent

of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION III.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION IV.

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both

of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION II.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION III.

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION I.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION II.

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

SECTION IV.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each

of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, provided that no amendments which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

AMENDMENTS.

ARTICLE I.[1]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.[1]

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.[1]

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.[1]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly

[1] The first ten Amendments were proposed in 1789 and adopted in 1791.

describing the place to be searched, and the person or things to be seized.

ARTICLE V.[1]

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.[1]

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.[1]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.[1]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.[1]

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

[1] The first ten Amendments were proposed in 1789 and adopted in 1791.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

ARTICLE XI.[1]

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.[2]

The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to

[1] The Eleventh Amendment was proposed in 1794 and adopted in 1798.
[2] The Twelfth Amendment was proposed in 1803 and adopted in 1804.

a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.[1]

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.[2]

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians

[1] The Thirteenth Amendment was proposed and adopted in 1865.

[2] The Fourteenth Amendment was proposed in 1866 and adopted in 1868.

not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such a State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.[1]

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by

[1] The Fifteenth Amendment was proposed in 1869 and adopted in 1870.

any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI.[1]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ARTICLE XVII.[2]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

ARTICLE XVIII.[3]

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECTION 2. The Congress and the several States shall have

[1] The Sixteenth Amendment was proposed and adopted in 1913.

[2] The Seventeenth Amendment was also proposed and adopted in 1913.

[3] The Eighteenth Amendment was proposed in 1917 and adopted in 1919.

concurrent power to enforce this article by appropriate legislation.

ARTICLE XIX.[1]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

FEDERAL PACT BETWEEN THE TWENTY-TWO CANTONS OF SWITZERLAND. 7 AUGUST, 1815.

["Recueil Officiel des Pièces Concernant le Droit Public de la Suisse," Neuchâtel, 1832, vol. i. pp. 3-17.]

PACTE FÉDÉRAL

ENTRE

LES XXII CANTONS DE LA SUISSE

(DU 7 AOUT 1815.)

AU NOM DU TOUT-PUISSANT!

§ 1.

LES XXII Cantons souverains de la Suisse, savoir: *Zurich, Berne, Lucerne, Ury, Schwytz, Unterwalden, Glaris, Zug, Fribourg, Soleure, Bâle, Schaffhouse, Appenzell des deux Rhodes, St. Gall, Grisons, Argovie, Thurgovie, Tessin, Vaud, Valais, Neuchâtel* et *Genève*, se réunissent, par le présent Pacte fédéral, pour leur sûreté commune, pour la conservation de leur liberté et de leur indépendance contre toute attaque de la part de l'étranger, ainsi que pour le maintien de l'ordre et de la tranquillité dans l'intérieur. Ils se garantissent réciproquement leurs constitutions telles qu'elles auront été statuées par l'Autorité suprême de chaque Canton, conformément aux principes du Pacte fédéral. Ils se garantissent de même réciproquement leur territoire.

[1] The Nineteenth Amendment was proposed in 1918 and adopted in 1920.

§ 2.

Pour assurer l'effet de cette garantie et pour soutenir efficacement la neutralité de la Suisse, un contingent de troupes sera formé des hommes de chaque Canton habiles au service militaire, dans la proportion de deux soldats sur cent ames. Ces troupes seront fournies par les Cantons comme suit :—

Zurich	3,858	hommes
Berne	4,584	„
Lucerne	1,734	„
Ury	236	„
Schwytz	602	„
Unterwalden	382	„
Glaris	482	„
Zug	250	„
Fribourg	1,240	„
Soleure	904	„
Bâle	818	„
Schaffhouse	466	„
Appenzell	972	„
St. Gall	2,630	„
Grisons	2,000	„
Argovie	2,410	„
Thurgovie	1,670	„
Tessin	1,804	„
Vaud	2,964	„
Valais	1,280	„
Neuchâtel	1,000	„
Genève	600	„
Total :	32,886	hommes.

Cette échelle est adoptée provisoirement ; on en fera la révision à la première Diète ordinaire, d'après la base de population indiquée ci-dessus.

§ 3.

Les contingens en argent pour les frais de guerre et autres dépenses générales de la Confédération, seront payés par les Cantons dans la proportion suivante :

Zurich	francs	77,153
Berne	,,	91,695
Lucerne	,,	26,016
Ury	,,	1,184
Schwytz	,,	3,012
Unterwalden	,,	1,907
Glaris	,,	4,823
Zug	,,	2,497
Fribourg	,,	18,591
Soleure	,,	18,097
Bâle	,,	20,450
Schaffhouse	,,	9,327
Appenzell	,,	9,728
St. Gall	,,	39,451
Grisons	,,	12,000
Argovie	,,	52,212
Thurgovie	,,	25,052
Tessin	,,	18,039
Vaud	,,	59,273
Valais	,,	9,600
Neuchâtel	,,	25,000
Genève	,,	15,000
	Total francs	540,107

Cette échelle de proportion devra également être revue et rectifiée par la prochaine Diète ordinaire, qui aura égard, autant que possible, aux réclamations formées par quelques Cantons. Une révision semblable aura lieu dans la suite, ainsi que pour les contingens de troupes, tous les vingt ans.

Une caisse militaire fédérale, dont les fonds doivent s'élever jusques au double du contingent d'argent, sera en outre formée pour subvenir aux dépenses de guerre.

Cette caisse doit être exclusivement employée au paiement des frais de guerre, lorsque la Confédération ordonne une levée de troupes; le cas échéant, la moitié des dépenses sera payée au moyen de la perception d'un contingent d'argent, selon l'échelle de proportion, et l'autre moitié sera prise dans la caisse de guerre.

Pour former cette caisse, il sera établi un droit d'entrée sur les marchandises qui ne sont pas des objets de première nécessité.

Les Cantons frontières perçoivent ces droits et en rendent compte chaque année à la Diète.

La Diète fixe le tarif et règle le mode de comptabilité. Elle fait les dispositions nécessaires pour la conservation des fonds de la caisse de guerre.

§ 4.

En cas de danger extérieur ou intérieur, chaque Canton a le droit d'avertir ses co-états de se tenir prêts à lui fournir l'assistance fédérale.

Des troubles venant à éclater dans l'intérieur d'un Canton, le gouvernement peut appeler d'autres Cantons à son secours, en ayant soin toutefois d'en informer aussitôt le Directoire fédéral (*Vorort*). Si le danger continue, la Diète, sur la demande du gouvernement, prendra les déterminations ultérieures.

Dans le cas d'un danger subit, provenant du dehors, le Canton menacé peut requérir le secours d'autres Cantons ; mais il en donnera immédiatement connaissance au Directoire fédéral (*Vorort*). Celui-ci doit alors convoquer la Diète, à laquelle il appartient de faire toutes les dispositions que la sûreté de la Confédération exige.

Le Canton ou les Cantons requis ont l'obligation de prêter secours au Canton requérant.

Dans le cas de danger extérieur, les frais sont supportés par la Confédération ; ils sont à la charge du Canton réquérant, s'il s'agit de réprimer des troubles intérieurs, à moins que la Diète, dans des circonstances particulières, ne prenne une détermination différente.

§ 5.

Toutes les prétentions et contestations qui s'éleveraient entre les Cantons sur des objets non compris dans la garantie du Pacte fédéral, seront soumises au droit confédéral. La manière de procéder et la forme de droit sont réglées de la manière suivante :

Chacune des parties choisit parmi les magistrats d'autres Cantons deux arbitres, ou, si elles en sont d'accord, un seul arbitre.

Si le différend existe entre plus de deux Cantons, chaque partie choisira le nombre d'arbitres déterminé.

Ces arbitres réunis cherchent à terminer le différend à l'amiable et par les voies de conciliation.

S'ils ne peuvent y parvenir, les arbitres choisiront un sur-arbitre parmi les magistrats d'un Canton impartial dans l'affaire, et auquel ni l'un ni l'autre des arbitres déjà nommés ne doit appartenir.

Si les arbitres ne peuvent s'accorder sur le choix d'un sur-arbitre, et que l'un des Cantons vienne à s'en plaindre, le sur-arbitre est nommé par la Diète ; mais, dans ce cas, les Cantons qui sont en différend n'ont pas droit de voter. Le sur-arbitre et les arbitres essaient encore de concilier le différend, ou bien, si les parties s'en remettent à eux, ils décident par compromis.

Aucun des deux cas ci-dessus n'échéant, ils prononcent définitivement sur la contestation, selon droit.

Il ne peut être interjeté appel de cette sentence, et la Diète, en cas de besoin, la fait exécuter.

La question des frais, savoir les déboursés des arbitres et du sur-arbitre, doit être décidée en même tems que la question principale.

Les arbitres et sur-arbitres, nommés d'après les dispositions ci-dessus, seront déliés par leur gouvernement, pour le différend dont il s'agit, du serment qu'ils ont prêté à leur Canton.

Dans les différends quelconques qui viendraient à s'élever entre les Cantons, ceux-ci s'abstiendront de toutes voies de fait, à plus forte raison de l'emploi des armes ; ils suivront exactement la ligne de droit tracée dans le présent article, et se conformeront en tout à la décision rendue.

§ 6.

Les Cantons ne peuvent former entre eux de liaisons préjudiciables au Pacte fédéral, ni aux droits d'autres Cantons.

§ 7.

La Confédération consacre le principe, que comme, après la reconnaissance des XXII Cantons, il n'existe plus en Suisse de

pays sujets, de même aussi la jouissance des droits politiques ne peut jamais, dans aucun Canton, être un privilége exclusif en faveur d'une classe des citoyens.

§8.

La Diète, à laquelle les Cantons souverains ont remis les affaires générales de la Confédération, les dirige d'après les dispositions du Pacte fédéral. Elle est composée des députés des XXII Cantons, qui votent d'après les instructions de leurs gouvernemends. Chaque Canton a une voix. Elle se rassemble au chef-lieu du Directoire fédéral (*Vorort*), en session ordinaire toutes les années, le premier lundi de juillet; en session extraordinaire, lorsque le Directoire la convoque, on sur la demande de cinq Cantons.

Le Bourgmestre ou l'Avoyer en charge du Directoire fédéral la prèside.

La Diète déclare la guerre et conclut la paix. Elle seule fait des alliances avec les puissances étrangères; mais, pour ces décisions importantes, les trois quarts des voix sont nécessaires. Dans toutes les autres affaires, qui sont remises à la Diète par le présent Pacte fédéral, la majorité absolue décide.

Les traités de commerce sont conclus par la Diète.

Les Cantons peuvent traiter en particulier avec des gouvernemens étrangers, pour des capitulations militaires, ainsi que pour des objets économiques et de police; mais ces conventions ne doivent blesser en rien ni le Pacte fédéral, ni des alliances existantes, ni les droits constitutionnels d'autres Cantons. A cet effet, elles seront portées à la connaissance de la Diète.

Les Envoyés diplomatiques de la Confédération, lorsque de telles missions sont jugées nécessaires, sont nommés et révoqués par la Diète.

La Diète prend toutes les mesures nécessaires pour la sûreté intérieure et extérieure de la Suisse; elle règle l'organisation des troupes de contingent, les appelle en activité, détermine leur emploi, nomme le général, l'état-major général et les colonels de la Confédération; elle ordonne, d'intelligence avec les gouvernemens cantonaux, l'inspection nécessairè sur la formation, l'armement et l'èquipement du contingent militaire.

§ 9.

Dans des circonstances extraordinaires, la Diète, lorsqu'elle ne reste pas en permanence, peut déléguer des pouvoirs particuliers au Directoire fédéral (*Vorort*). Elle peut également, pour des objets d'une haute importance, adjoindre à l'Autorité du *Vorort*, spécialement chargée de la gestion des affaires fédérales, des représentans de la Confédération ; dans l'un et et l'autre cas, deux tiers des voix sont nécessaires.

Les représentans fédéraux sont nommés par les Cantons, lesquels alternent entre eux pour cette nomination dans les six classes suivantes :

Les deux Cantons directeurs [1] qui ne sont pas en charge, nomment tour-à-tour le premier représentant ;

Uri, Schwytz, Unterwalden, le second ;

Glaris, Zug, Appenzell, Schaffhouse, le troisième ;

Fribourg, Bâle, Soleure, Valais, le quatrième ;

Grisons, St. Gall, Argovie, Neuchâtel, le cinquième.

Vaud, Thurgovie, Tessin, Genève, le sixième.

La Diète donne aux représentans de la Confédération les instructions nécessaires, et détermine la durée de leurs fonctions. Dans tous les cas, ces dernières doivent expirer à une nouvelle réunion de la Diète. Les représentans sont indemnisés par la caisse centrale.

§ 10.

Lorsque la Diète n'est pas réunie, la direction des affaires générales est confiée au Directoire fédéral (*Vorort*), avec les mêmes attributions que celles qu'il exerçait avant l'année 1798.

Le Directoire alterne de deux en deux ans, entre les Cantons de *Zurich*, *Berne*, et *Lucerne*. Ce tour de rôle a commencé le 1er janvier 1815.

Il y aura auprès du Canton directeur une Chancellerie fédérale, composée d'un Chancelier et d'un Secrétaire d'Etat, lesquels sont nommés par la Diète.

§ 11.

Le libre achat des denrées, des produits du sol et des marchandises, la libre sortie et le passage d'un Canton à l'autre de

[1] Zurich, Berne, Lucerne.

ces mêmes objets, ainsi que du bétail, sont garantis, sauf les mesures de police nécessaires pour prévenir le monopole usuraire et l'accaparement. Ces mesures de police doivent être les mêmes pour les ressortissans du Canton et pour les autres Suisses.

Les péages, droits de route et de pontonnage actuellement existans et approuvés par la Diète, sont conservés. On ne pourra, sans l'approbation de la Diète, ni en établier de nouveaux, ni hausser ceux qui subsistent, ni prolonger leur durée, s'ils ont été accordés pour un tems déterminé.

Les droits de traité d'un Canton à l'autre sont abolis.

§ 12.

L'existence des couvens et chapitres et la conservation de leurs propriétés, en tant que cela dépend des gouvernemens des Cantons, sont garanties. Ces biens sont sujets aux impôts et contributions publiques, comme toute autre propriété particulière.

§ 13.

La dette nationale helvétique, fixée, le 1er novembre 1804, au capital de trois millions, cent dix-huit mille trois cent trente-six francs, demeure reconnue.

§ 14.

Les concordats et conventions conclus entre les Cantons depuis l'an 1803, lesquels ne sont pas contraires aux principes du présent Pacte fédéral, restent dans leur état actuel. Quant aux décrets rendus par la Diète durant le même tems, on les réunira dans une collection, pour les présenter, en 1816, à la révision de la Diète, que décidera lesquels doivent continuer d'être obligatoires.

§ 15.

Le présent Pacte fédéral, ainsi que les constitutions cantonales, seront déposés dans l'archive de la Confédération.

Les XXII Cantons se constituent en Confédération suisse ; ils déclarent qu'ils entrent librement et de bon gré dans cette

alliance, qu'ils l'observeront fidèlement, dans toutes les circonstances, en frères et confédérés ; en particulier qu'ils rempliront dès à présent, les uns envers les autres, tous les devoirs et toutes les obligations qui en résultent ; et afin qu'un acte aussi important pour le salut de la patrie commune reçoive, selon l'usage de nos pères, une sanction religieuse, ce Pacte fédéral sera non-seulement signé par les Députés de chaque Etat autorisés à cet effet, et muni de nouveau sceau de la Confédération, mais encore confirmé et corroboré par un serment solennel au Dieu tout-puissant.

Ainsi fait, signé et scellé par Messieurs les Députés et Conseillers de légation des Etats confédérés ci-après nommés, à *Zurich*, le septième août de l'an de grâce mil huit cent et quinze (7 août 1815).

ACT OF PARLIAMENT UNITING UPPER AND LOWER CANADA. 23 JULY, 1840.

[3 & 4 Vict. cap. 35. "Statutes at Large."][1]

AN Act to re-unite the Provinces of *Upper* and *Lower Canada*, and for the Government of *Canada* [23d July, 1840.]

Declaration of Union.

Whereas it is necessary that provision be made for the good Government of the Provinces of *Upper Canada* and *Lower Canada*, in such manner as may secure the Rights and Liberties and promote the Interests of all Classes of Her Majesty's Subjects within the same: And whereas to this end it is expedient that the said Provinces be re-united and form One Province for the Purposes of Executive Government and Legislation: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall be lawful for Her Majesty, with the advice of Her Privy Council, to declare, or to authorize the Governor General of the said Two Provinces of *Upper* and *Lower Canada* to declare, by Proclamation, that the said Provinces, upon, from, and after a certain Day in such Proclamation to be appointed, which Day shall be within Fifteen Calendar Months next after the passing of this Act, shall form and be One Province, under the name of the Province of *Canada*, and thenceforth the said Provinces shall constitute and be One Province, under the Name aforesaid, upon, from, and after the Day so appointed as aforesaid.

[1] In view of the varying editions of the Statutes and the different numbering of their volumes, reference to an Act may best be made by quoting the regnal year.

II. [Repeal of former Acts for the government of Canada,—portions of 31 Geo. III. c. 31 and the whole of 1 & 2 Vict. c. 9, 2 & 3 Vict. c. 53, and 1 & 2 W. IV. c. 23.]

Composition and Powers of Legislature.

III. And be it enacted, That from and after the Reunion of the said Two Provinces there shall be within the Province of *Canada* One Legislative Council and One Assembly, to be severally constituted and composed in the manner hereinafter prescribed, which shall be called "The Legislative Council and Assembly of *Canada*"; and that, within the Province of *Canada*, Her Majesty shall have Power, by and with the Advice and Consent of the said Legislative Council and Assembly, to make Laws for the Peace, Welfare, and good Government of the Province of *Canada*, such Laws not being repugnant to this Act, or to such parts of the said Act passed in the Thirty-first Year of the Reign of His said late Majesty as are not hereby repealed, or to any Act of Parliament made or to be made, and not hereby repealed, which does or shall, by express Enactment or by necessary Intendment, extend to the Provinces of *Upper* and *Lower Canada*, or to either of them, or to the Province of *Canada*; and that all such Laws being passed by the said Legislative Council and Assembly, and assented to by Her Majesty, or assented to in Her Majesty's Name by the Governor of the Province of *Canada*, shall be valid and binding to all Intents and Purposes within the Province of *Canada*.

Appointment of Legislative Councillors.

IV. And be it enacted, That for the Purpose of composing the Legislative Council of the Province of *Canada* it shall be lawful for Her Majesty, before the Time to be appointed for the First Meeting of the said Legislative Council and Assembly, by an Instrument under the Sign Manual, to authorize the Governor, in Her Majesty's Name, by an Instrument under the Great Seal of the said Province, to summon to the said Legislative Council of the said Province such Persons, being not fewer than Twenty, as Her Majesty shall think fit; and that it shall also be lawful for Her Majesty from Time to Time to authorize the Governor in like Manner to summon to the said

Legislative Council such other Person or Persons as Her Majesty shall think fit, and that every Person who shall be so summoned shall thereby become a Member of the Legislative Council of the Province of *Canada*: Provided always, that no Person shall be summoned to the said Legislative Council of the Province of *Canada* who shall not be of the full Age of Twenty-one Years, and a natural-born Subject of Her Majesty, or a Subject of Her Majesty naturalized by Act of the Parliament of *Great Britain*, or by Act of the Parliament of the United Kingdom of *Great Britain* and *Ireland*, or by an Act of the Legislature of either of the Provinces of *Upper* or *Lower Canada*, or by an Act of the Legislature of the Province of *Canada*. Qualification of Legislative Councillors.

V. And be it enacted, That every Member of the Legislative Council of the Province of *Canada* shall hold his Seat therein for the Term of his Life, but subject nevertheless to the Provisions herein-after contained for vacating the same. Tenure of Office of Councillor.

VI. And be it enacted, That it shall be lawful for any Member of the Legislative Council of the Province of *Canada* to resign his Seat in the said Legislative Council, and upon such Resignation the Seat of such Legislative Councillor shall become vacant. Resignation of Legislative Councillor.

VII. And be it enacted, That if any Legislative Councillor of the Province of *Canada* shall for Two successive Sessions of the Legislature of the said Province fail to give his Attendance in the said Legislative Council, without the Permission of Her Majesty, or of the Governor of the said Province, signified by the said Governor to the Legislative Council, or shall take any Oath or make any Declaration or Acknowledgment of Allegiance, Obedience, or Adherence to any Foreign Prince or Power, or shall do, concur in, or adopt any Act whereby he may become a Subject or Citizen of any Foreign State or Power, or whereby he may become entitled to the Rights, Privileges, or Immunities of a Subject or Citizen of any Foreign State or Power, or shall become bankrupt, or take the Benefit of any Law relating to Insolvent Debtors, or Vacating Seat by Absence.

become a public Defaulter, or be attainted of Treason, or be convicted of Felony or of any infamous Crime, his Seat in such Council shall thereby become vacant.

Trial of Questions.

VIII. And be it enacted, That any Question which shall arise respecting any Vacancy in the Legislative Council of the Province of *Canada*, on occasion of any of the matters aforesaid, shall be referred by the Governor of the Province of *Canada* to the said Legislative Council, to be by the said Legislative Council heard and determined: Provided always, that it shall be lawful, either for the Person respecting whose Seat such Question shall have arisen, or for Her Majesty's Attorney General for the said Province on Her Majesty's Behalf, to appeal from the Determination of the said Council in such case to Her Majesty, and that the Judgment of Her Majesty given with the advice of Her Privy Council thereon shall be final and conclusive to all Intents and Purposes.

Appointment of Speaker.

IX. And be it enacted, That the Governor of the Province of *Canada* shall have Power and Authority from Time to Time, by an Instrument under the Great Seal of the said Province, to appoint One Member of the said Legislative Council to be Speaker of the said Legislative Council, and to remove him, and appoint another in his stead.

Quorum.

X. And be it enacted, That the Presence of at least Ten Members of the said Legislative Council, including the Speaker, shall be necessary to constitute a Meeting for the Exercise of its Powers; and that all Questions which shall

Division.

arise in the said Legislative Council shall be decided by a Majority of Voices of the Members present other than the

Casting Vote.

Speaker, and when the Voices shall be equal the Speaker shall have the casting Vote.

Convoking the Assembly.

XI. And be it enacted, That for the Purpose of constituting the Legislative Assembly of the Province of *Canada* it shall be lawful for the Governor of the said Province, within the Time hereinafter mentioned, and thereafter from Time to Time as occasion shall require, in Her Majesty's Name and by an Instrument or Instru-

ments under the Great Seal of the said Province, to summon and call together a Legislative Assembly in and for the said Province.

Representatives for each Province.

XII. And be it enacted, That in the Legislative Assembly of the Province of *Canada* to be constituted as aforesaid the Parts of the said Province which now constitute the Provinces of *Upper* and *Lower Canada* respectively shall, subject to the provisions herein-after contained, be represented by an equal Number of Representatives to be elected for the Places and in the Manner herein-after mentioned.

XIII-XX. [Representation of the town and county constituencies of Upper and Lower Canada.]

XXI-XXV. [Regulations regarding the holding of elections.]

Power to alter System of Representation.

XXVI. And be it enacted, That it shall be lawful for the Legislature of the Province of *Canada*, by any Act or Acts to be hereafter passed, to alter the Divisions and Extent of the several Counties, Ridings, Cities, and Towns which shall be represented in the Legislative Assembly of the Province of *Canada*, and to establish new and other Divisions of the same, and to alter the apportionment of Representatives to be chosen by the said Counties, Ridings, Cities and Towns respectively, and make a new and different apportionment of the Number of Representatives to be chosen in and for those Parts or the Province of *Canada* which now constitute the said Provinces of *Upper* and *Lower Canada* respectively, and in and for the several Districts, Counties, Ridings, and Towns in the same, and to alter and regulate the Appointment of Returning Officers in and for the same, and make Provision, in such Manner as they may deem expedient, for the issuing and Return of Writs for the Election of Members to serve in the said Legislative Assembly, and the time and Place of holding such Elections: Provided always, that it shall not be lawful to present to the Governor of the Province of *Canada* for Her Majesty's Assent any Bill of the Legislative Council and Assembly of the said Province by which the

Proviso.

number of Representatives in the Legislative Assembly may be altered, unless the Second and Third Reading of such Bill in the Legislative Council and the Legislative Assembly shall have been passed with the concurrence of Two Thirds of the Members for the Time being of the said Legislative Council, and of Two Thirds of the Members for the Time being of the said Legislative Assembly respectively, and the Assent of Her Majesty shall not be given to any such Bill unless Addresses shall have been presented by the Legislative Council and the Legislative Assembly respectively to the Governor, stating that such Bill has been so passed.

The present Election Laws of the Two Provinces to apply until altered.

XXVII. And be it enacted, That until Provisions shall otherwise be made by an Act or Acts of the Legislature of the Province of *Canada* all the Laws which at the Time of the passing of this Act are in force in the Province of *Upper Canada*, and all the Laws which at the Time of the passing of the said Act of Parliament, intituled *An Act to make temporary Provision for the Government of* Lower Canada [1 & 2 Vict. c. 9], were in force in the Province of *Lower Canada*, relating to the Qualification and Disqualification of any Person to be elected or to sit or vote as a Member of the Assembly in the said Provinces respectively, (except those which require a Qualification of Property in Candidates for Election, for which provision is hereinafter made,) and relating to the Qualification and Disqualification of Voters at the Election of Members to serve in the Assemblies of the said Provinces respectively, and to the oaths to be taken by any such Voters, and to the Powers and Duties of Returning Officers, and the Proceedings at such Elections, and the Period during which such Elections may be lawfully continued, and relating to the Trial of controverted Elections, and the Proceedings incident thereto, and to the vacating of Seats of Members, and the issuing and Execution of new Writs in case of any Seat being vacated otherwise than by a Dissolution of the Assembly, shall respectively be applied to Elections of Members to serve in the Legislative Assembly of the

Province of *Canada* for Places situated in those parts of the Province of *Canada* for which such Laws were passed.

XXVIII. And be it enacted, That no Person shall be capable of being elected a Member of the Legislative Assembly of the Province of *Canada* who shall not be legally or equitably seised as of Freehold, for his own Use and Benefit, of Lands or Tenements held in Free and Common Socage, or seised or possessed, for his own Use and Benefit, of Lands or Tenements held in Fief or in Roture, within the said Province of *Canada*, of the Value of Five hundred Pounds of Sterling Money of *Great Britain*, over and above all Rents, Charges, Mortgages, and Incumbrances charged upon and due and payable out of or affecting the same; and that every Candidate at such Election, before he shall be capable of being elected, shall, if required by any other Candidate, or by any Elector, or by the Returning Officer, make the following Declaration: Qualifications of Members.

"I *A. B.* do declare and testify, That I am duly seised at Law or in Equity as of Freehold, for my own Use and Benefit, of Lands or Tenements held in Free and Common Socage, [*or* duly seised or possessed, for my own Use and Benefit, of Lands or Tenements held in Fief or in Roture (*as the case may be*),] in the Province of *Canada*, of the Value of Five hundred Pounds of Sterling Money of *Great Britain*, over and above all Rents, Mortgages, Charges, and Incumbrances charged upon or due and payable out of or affecting the same; and that I have not collusively or colourably obtained a Title to or become possessed of the said Lands and Tenements, or any Part thereof, for the Purpose of qualifying or enabling me to be returned a Member of the Legislative Assembly of the Province of *Canada*." Declaration of Candidates for Election.

XXIX. [Persons making false declarations to be liable to the penalties of perjury.]

XXX. And be it enacted, That it shall be lawful for the Governor of the Province of *Canada* for the Time being to fix such Place or Places within any Part of the Province of *Canada*, and such Times for holding the First Place and Times of holding Parliament

and every other Session of the Legislative Council and Assembly of the said Province as he may think fit, such Times and Places to be afterwards changed or varied as the Governor may judge advisable and most consistent with general Convenience and the Public Welfare, giving sufficient notice thereof; and also to prorogue the said Legislative Council and Assembly from Time to Time, and dissolve the same, by Proclamation or otherwise, whenever he shall deem it expedient.

Duration of Parliament.

XXXI. And be it enacted, That there shall be a Session of the Legislative Council and Assembly of the Province of *Canada* once at least in every year, so that a Period of Twelve Calendar Months shall not intervene between the last Sitting of the Legislative Council and Assembly in One Session and the First Sitting of the Legislative Council and Assembly in the next Session; and that every Legislative Assembly of the said Province hereafter to be summoned and chosen shall continue for Four Years from the Day of the Return of the Writs for choosing the same, and no longer, subject nevertheless to be sooner prorogued or dissolved by the Governor of the said Province.

XXXII. [The first assembly of the Legislature shall be not later than six months after the reunion of the Provinces.]

Election of the Speaker.

XXXIII. And be it enacted, That the Members of the Legislative Assembly of the Province of *Canada* shall, upon the First Assembling after every General Election, proceed forthwith to elect One of their Number to be Speaker; and in case of his Death, Resignation, or Removal by a Vote of the said Legislative Assembly, the said Members shall forthwith proceed to elect another of such Members to be such Speaker; and the Speaker so elected shall preside at all Meetings of the said Legislative Assembly.

Quorum.

XXXIV. And be it enacted, That the Presence of at least Twenty Members of the Legislative Assembly of the Province of *Canada*, including the Speaker, shall be

necessary to constitute a Meeting of the said Legislative Assembly for the Exercise of its Powers; and that all Questions which shall arise in the said Assembly shall be decided by the Majority of Voices of such Members as shall be present, other than the speaker, and when the Voices shall be equal the Speaker shall have the casting Voice. Division. Casting Vote.

XXXV. And be it enacted, That no Member, either of the Legislative Council or of the Legislative Assembly of the Province of *Canada*, shall be permitted to sit or vote therein until he shall have taken and subscribed the following Oath before the Governor of the said Province, or before some Person or Persons authorized by such Governor to administer such Oath: No Member to sit or vote until he has taken the following Oath of Allegiance.

"I *A. B.* do sincerely promise and swear, That I will be faithful and bear true Allegiance to Her Majesty Queen *Victoria*, as lawful Sovereign of the United Kingdom of *Great Britain* and *Ireland*, and of this Province of *Canada*, dependent on and belonging to the said United Kingdom; and that I will defend Her to the utmost of my Power against all traitorous Conspiracies and Attempts whatever which shall be made against Her Person, Crown, and Dignity; and that I will do my utmost Endeavour to disclose and make known to Her Majesty, Her Heirs and Successors, all Treasons and traitorous Conspiracies and Attempts which I shall know to be against Her or any of them; and all this I do swear without any Equivocation, mental Evasion, or secret Reservation, and renouncing all Pardons and Dispensations from any Person or Persons whatever to the contrary. Oath of Allegiance.

So help me GOD."

XXXVI. And be it enacted, That every Person authorized by Law to make an Affirmation instead of taking an Oath may make such Affirmation in every Case in which an Oath is hereinbefore required to be taken. Affirmation instead of Oath.

XXXVII. And be it enacted, That whenever any Bill which has been passed by the Legislative Council and Assembly of the Province of *Canada* shall be presented Giving or withholding Assent to Bills.

for Her Majesty's Assent to the Governor of the said Province, such Governor shall declare, according to his Discretion, but subject nevertheless to the Provisions contained in this Act, and to such Instructions as may from Time to Time be given in that Behalf by Her Majesty, Her Heirs or Successors, that he assents to such Bill in Her Majesty's Name, or that he withholds Her Majesty's Assent, or that he reserves such Bill for the Signification of Her Majesty's Pleasure thereon.

Disallowance of Bills assented to.

XXXVIII. And be it enacted, That whenever any Bill which shall have been presented for Her Majesty's Assent to the Governor of the said Province of *Canada* shall by such Governor have been assented to in Her Majesty's Name, such Governor shall by the first convenient opportunity transmit to One of Her Majesty's Principal Secretaries of State an authentic Copy of such Bill so assented to; and that it shall be lawful, at any Time within Two Years after such Bill shall have been so received by such Secretary of State, for Her Majesty, by Order in Council, to declare Her Disallowance of such Bill; and that such Disallowance, together with a Certificate under the Hand and Seal of such Secretary of State, certifying the Day on which such Bill was received as aforesaid, being signified by such Governor to the Legislative Council and Assembly of *Canada*, by Speech or Message to the Legislative Council and Assembly of the said Province, or by Proclamation, shall make void and annul the same from and after the Day of such Signification.

Assent to Bills reserved.

XXXIX. And be it enacted, That no Bill which shall be reserved for the Signification of Her Majesty's Pleasure thereon shall have any Force or Authority within the Province of *Canada* until the Governor of the said Province shall signify, either by Speech or Message to the Legislative Council and Assembly of the said Province, or by Proclamation, that such Bill has been laid before Her Majesty in Council, and that Her Majesty has been pleased to assent to the same; and that an Entry shall be made in the

Journals of the said Legislative Council of every such Speech, Message, or Proclamation, and a Duplicate thereof, duly attested, shall be delivered to the proper Officer, to be kept among the Records of the said Province; and that no Bill which shall be so reserved as aforesaid shall have any Force or Authority in the said Province unless Her Majesty's Assent thereto shall have been so signified as aforesaid within the Space of Two Years from the Day on which such Bill shall have been presented for Her Majesty's Assent to the Governor as aforesaid.

Authority of the Governor.

XL. Provided always, and be it enacted, That nothing herein contained shall be construed to limit or restrain the Exercise of Her Majesty's Prerogative in authorizing, and that notwithstanding this Act, and any other Act or Acts passed in the Parliament of *Great Britain*, or in the Parliament of the United Kingdom of *Great Britain* and *Ireland*, or of the Legislature of the Provinces of *Quebec*, or of the Provinces of *Upper* or *Lower Canada* respectively, it shall be lawful for Her Majesty to authorize the Lieutenant Governor of the Province of *Canada* to exercise and execute, within such Parts of the said Province as Her Majesty shall think fit, notwithstanding the Presence of the Governor within the Province, such of the Powers, Functions and Authority, as well judicial as other, which before and at the Time of passing of this Act were and are vested in the Governor, Lieutenant Governor, or Person administering the Government of the Provinces of *Upper Canada* and *Lower Canada* respectively, or of either of them, and which from and after the said Re-union of the said Two Provinces shall become vested in the Governor of the Province of *Canada;* and to authorize the Governor of the Province of *Canada* to assign, depute, substitute, and appoint any Person or Persons, jointly or severally, to be his Deputy or Deputies within any Part or Parts of the Province of *Canada*, and in that Capacity to exercise, perform, and execute during the Pleasure of the said Governor such of the Powers, Functions, and Authority, as well judicial as other, as before and at the Time of the passing

of this Act were and are vested in the Governor, Lieutenant Governor, or Person administering the Government of the Provinces of *Upper* and *Lower Canada* respectively, and which from and after the Union of the said Provinces shall become vested in the Governor of the Province of *Canada*, as the Governor of the Province of *Canada* shall deem to be necessary or expedient :—Provided always, that by the Appointment of a Deputy or Deputies as aforesaid the Power and Authority of the Governor of the Province of *Canada* shall not be abridged, altered, or in any way affected otherwise than as Her Majesty shall think proper to direct.

Language of Legislative Records.

XLI. And be it enacted, That from and after the said Re-union of the said Two Provinces all Writs, Proclamations, Instruments for summoning and calling together the Legislative Council and Legislative Assembly of the Province of *Canada*, and for proroguing and dissolving the same, and all Writs of Summons and Election, and all Writs and public Instruments whatsoever relating to the said Legislative Council and Legislative Assembly, or either of them, and all Returns to such Writs and Instruments, and all Journals, Entries, and written or printed Proceedings, of what nature soever, of the said Legislative Council and Legislative Assembly, and of each of them respectively, and all written or printed Proceedings and Reports of Committees of the said Legislative Council and Legislative Assembly respectively, shall be in the *English* language only : Provided always, that this Enactment shall not be construed to prevent translated Copies of any such Documents being made, but no such Copy shall be kept among the Records of the Legislative Council or Legislative Assembly, or be deemed in any Case to have the Force of an original Record.

Ecclesiastical and Crown Rights.

XLII. And be it enacted, That whenever any Bill or Bills shall be passed by the Legislative Council and Assembly of the Province of *Canada*, containing any Provisions to vary or repeal any of the Provisions now in force contained in an Act of the Parliament of *Great*

Britain passed in the Fourteenth Year of the Reign of His late Majesty King *George* the Third, intituled *An Act for making more effectual Provision for the Government of the Province of* Quebec *in* North America [14 Geo. III. c. 83], or in the aforesaid Acts of Parliament passed in the Thirty-first Year of the same Reign, respecting the accustomed Dues and Rights of the Clergy of the Church of *Rome;* or to vary or repeal any of the several Provisions contained in the said last-mentioned Act, respecting the Allotment and Appropriation of Lands for the Support of the Protestant Clergy within the Province of *Canada*, or respecting the constituting, erecting, or endowing of Parsonages or Rectories within the Province of *Canada*, or respecting the Presentation of Incumbents or Ministers of the same, or respecting the Tenure on which such Incumbents or Ministers shall hold or enjoy the same; and also that whenever any Bill or Bills shall be passed containing any Provisions which shall in any manner relate to or affect the Enjoyment or Exercise of any Form or Mode of Religious Worship, or shall impose or create any Penalties, Burdens, Disabilities, or Disqualifications in respect of the same, or shall in any manner relate to or affect the Payment, Recovery, or Enjoyment of any of the accustomed Dues or Rights herein-before mentioned, or shall in any manner relate to the granting, imposing, or recovering of any other Dues, or Stipends, or Emoluments, to be paid to or for the use of any Minister, Priest, Ecclesiastic, or Teacher, according to any Form or Mode of Religious Worship, in respect of his said Office or Function; or shall in any Manner relate to or affect the Establishment or Discipline of the United Church of *England* and *Ireland* among the Members thereof within the said Province; or shall in any manner relate to or affect Her Majesty's Prerogative touching the granting of Waste Lands of the Crown within the said Province; every such Bill or Bills shall, previously to any Declaration or Signification of Her Majesty's Assent thereto, be laid before both Houses of Parliament of the United

Kingdom of *Great Britain* and *Ireland;* and that it shall not be lawful for Her Majesty to signify Her Assent to any such Bill or Bills until Thirty Days after the same shall have been laid before the said Houses, or to assent to any such Bill or Bills in case either House of Parliament shall, within the said Thirty Days, address Her Majesty to withhold Her Assent from any such Bill or Bills; and that no such Bill shall be valid or effectual to any of the said Purposes within the said Province of *Canada* unless the Legislative Council and Assembly of such Province shall, in the Session in which the same shall have been passed by them, have presented to the Governor of the said Province an Address or Addresses specifying that such Bill or Bills contains Provisions for some of the Purposes herein-before specially described, and desiring that, in order to give Effect to the same, such Bill or Bills may be transmitted to *England* without Delay, for the Purpose of its being laid before Parliament previously to the Signification of Her Majesty's Assent thereto.

XLIII. [Cites 18 Geo. III. c. 12. (An Act abolishing the duty on tea and withdrawing the right of Great Britain to tax the Colonies, except in so far as is necessary for the regulation of commerce, and provided that the net produce of such duties be applied to the use of the Colony in which they are levied.) Nothing in the present Act shall prevent the execution of this or any similar law.]

XLIV. [Cites Acts establishing Courts of Appeal, Probate, Queen's Bench and Chancery in Upper Canada, and Court of Appeal in Lower Canada. All ministerial and judicial Authority hitherto exercised by the Governors, etc. of the respective Provinces shall henceforward be vested in the Governor, etc. of the united Province of Canada. Court of Queen's Bench to be held at or near Toronto (subject to alteration by the Governor in Council).]

Powers to be Exercised by Governor, with the Executive Council, or Alone.

XLV. And be it enacted, That all Powers, Authorities, and Functions which by the said Act passed in the thirty-first year of the Reign of His late Majesty King

George the Third, or by any other Act of Parliament, or by any Act of the Legislature of the Provinces of *Upper* and *Lower Canada* respectively, are vested in or are authorized or required to be exercised by the respective Governors or Lieutenant-Governors of the said Provinces, with the Advice or with the Advice and Consent of the Executive Council of such Provinces respectively, or in conjunction with such Executive Council, or with any number of the Members thereof, or by the said Governors or Lieutenant Governors individually and alone, shall, in so far as the same are not repugnant to or inconsistent with the Provision of this Act, be vested in and may be exercised by the Governor of the Province of *Canada*, with the Advice or with the Advice and Consent of, or in conjunction, as the case may require, with such Executive Council, or any Members thereof, as may be appointed by Her Majesty for the Affairs of the Province of *Canada*, or by the said Governor of the Province of Canada individually and alone in Cases where the Advice, Consent, or Concurrence of the Executive Council is not required.

XLVI. [Existing laws shall remain in force except in so far as they are altered by this Act or by any Acts of the Legislature of Canada.]

XLVII. [Courts of Justice, Commissions, Officers, etc., shall continue unless they are altered by or are inconsistent with this Act.]

XLVIII. [Provision respecting temporary Acts.]

XLIX. [Repeal of those clauses of 3 G. IV. c. 119 (Act for regulating inter-colonial trade), appointing arbitrators and prescribing their course of action.]

Revenues of the Two Provinces to form a Consolidated Revenue Fund.

L. And be it enacted, That upon the Union of the Provinces of *Upper* and *Lower Canada* all Duties and Revenues over which the respective Legislatures of the said Provinces before and at the Time of the passing of this Act had and have Power of Appropriation shall form one Consolidated Revenue Fund, to be appropriated for the Public Service of the Province of *Canada*, in the Manner and subject to the Charges herein-after mentioned.

LI. [Consolidated Revenue Fund to be charged with the expense of collection thereof.]

LII. [45,000*l.* per annum to be granted permanently for the services in Schedule A (Governor, Lieutenant-Governor and Judges) and 30,000*l.* per annum during the life of Her Majesty and for five years following, for those in Schedule B (Civil Secretaries and other officials).]

LIII. [The appropriation of sums may be varied:—

In Schedule A by Act of the legislature of Canada.

In Schedule B by the Governor.]

LIV. [The above sums shall take the place of all territorial and other revenues of the Crown. During the life of Her Majesty and for five years after, such revenues shall be transferred to the Consolidated Revenue Fund.]

LV. [Charges already created in either province shall not be absorbed into the above Fund for the period of the Acts authorising them.]

LVI. [The order of charges on the Consolidated Revenue Fund shall be:—

(1) Expense of Collection.

(2) Interest of the Public Debt.

(3) Payments to Clergy.

(4 and 5) Civil List.

(6) Other charges already made on the Public Revenue.]

LVII. [Subject to the above charges, the Consolidated Revenue Fund shall be appropriated by the Provincial Legislature for the public service.]

LVIII. [The Governor may constitute townships under the Great Seal.]

LIX. [Exercise of powers of Governor to be subject to orders, etc., of Her Majesty.]

LX. [Magdalen Islands may be annexed to the Island of Prince Edward.]

Interpretation Clause.

LXI. And be it enacted, That in this Act, unless otherwise expressed therein, the words "Act of the Legislature of the Province of *Canada*" are to be understood to mean "Act of Her Majesty, Her Heirs or Successors, enacted by

Her Majesty, or by the Governor on behalf of Her Majesty, with the Advice and Consent of the Legislative Council and Assembly of the Province of *Canada;*" and the words "Governor of the Province of *Canada*" are to be understood as comprehending the Governor, Lieutenant Governor, or Person authorized to execute the Office or the Functions of Governor of the said Province.

LXII. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present Session of Parliament. Act may be amended, etc.

EARL GREY'S DESPATCHES CONCERNING THE ESTABLISHMENT OF RESPONSIBLE GOVERNMENT IN NOVA SCOTIA. 3 NOVEMBER, 1846, AND 31 MARCH, 1847.

["Parliamentary Papers," vol. 42, 1847-48.]

Earl Grey [Secretary of State for the Colonies], to Lieutenant-Governor Sir John Harvey, K.C.B. [Lieut.-Gov. of Nova Scotia].

DOWNING STREET,
3 *November*, 1846.

I HAVE received your Despatch of the 15th September, marked "Private and Confidential," in which you communicate to me your views upon the state of affairs which you have found on arriving in Nova Scotia.

Circumstances prevented me from answering your despatch, as you wished me to have done, by the packet which left England on the 3d instant; but the interval which has since elapsed has enabled me to devote more time to the consideration of the questions which you have brought under my notice than the brief space between the arrival and the departure of the North American packet would have allowed me to do.

I perceive, from your representation of the position of affairs in Nova Scotia, that there are questions to be determined in respect to the government of that province of no ordinary difficulty, and that it is of the utmost importance that the first measures of your administration should be preceded by the most careful deliberation. The knowledge which I possess of the local politics of Nova Scotia is at present too limited to enable me, with confidence in my own judgment, to give you any positive and detailed directions as to the course which circumstances may require you to adopt in the present conjuncture;

but though it is out of my power to give you such instructions, there are certain general principles which ought, as I conceive, to govern your conduct in this and in similar cases; and which, as they admit of being stated, ought, I think, to be communicated to you for your guidance.

I shall advert first to the important topic of the composition of the Legislative Council. In making appointments to this body, it ought undoubtedly to be the object of the administrator of the Government so to compose it as to make it fairly represent the opinion of the majority of the intelligent members of the community; but supposing the selection of the present members to have been ill-advised, and that the Council in consequence is not in harmony with public opinion, the question arises, what is then the proper course to be adopted? Under such circumstances there are two considerations to which it is necessary to advert. First, that it is impossible to allow the Legislative Council to obstruct permanently the passing of measures called for by public opinion, and sent up by the popular branch of the Legislature. Secondly, that it is a serious evil to be compelled to make an addition to the members of this body for the purpose of changing the character of the majority; since each such addition creates both a precedent and a necessity for a similar and perhaps larger addition whenever a change in public feeling gives the ascendancy to a new party in the assembly. It is difficult to reconcile these almost conflicting considerations, but this, in my opinion, may be attempted with the greatest hopes of success, by adopting as a rule that an addition is not to be made to the Legislative Council with a view to changing the character of the majority, except under circumstances of clear and obvious necessity. An anticipation that public business will be impeded because there is a majority in the Legislative Council attached to the political party which has not the confidence of the colony is insufficient to justify the appointment of additional members. Practical inconvenience must have actually arisen, and to a serious extent, before resort can with propriety be had to any measure for increasing the number of the Council. If that body be found obstructing pertinaciously the progress of public business, and the passing of laws which public opinion

demands, an addition to it will then be felt to be a just and necessary measure, and would not excite the same indignation, on the part even of those against whom it might be directed, as would be the case if adopted on lighter grounds; while the probability is that the members of the Legislative Council, knowing that if it should become necessary this measure must ultimately be resorted to, will shrink from creating the necessity by obstinately opposing themselves to the real opinion of the intelligent classes of the community.

. . . . . .

I come now to the second question which you have submitted to me in your Despatch, namely, the propriety of dissolving the present House of Assembly.

. . . . . .

I am of opinion that under all the circumstances of the case, the best course for you to adopt is to call upon the members of your present Executive Council to propose to you the names of the gentlemen whom they would recommend to supply the vacancies, which I understand to exist, in the present Board. If they should be successful in submitting to you an arrangement to which no valid objection arises, you will of course continue to carry on the government through them, so long as it may be possible to do so satisfactorily, and as they possess the necessary support from the Legislature. Should the present Council fail in proposing to you an arrangement which it would be proper for you to accept, it would then be your natural course, in conformity with the practice in analogous cases in this country, to apply to the opposite party, and should you be able, through their assistance, to form a satisfactory Council, there will be no impropriety in dissolving the Assembly upon their advice; such a measure, under those circumstances, being the only mode of escaping from the difficulty which would otherwise exist of carrying on the government of the province upon the principles of the constitution.

The object with which I recommend to you this course, is that of making it apparent that any transfer which may take place of political power from the hands of one party in the

province to those of another is the result not of an act of yours but of the wishes of the people themselves, as shown by the difficulty experienced by the retiring party in carrying on the government of the province according to the forms of the constitution. To this I attach great importance; I have therefore to instruct you to abstain from changing your Executive Council until it shall become perfectly clear that they are unable, with such fair support from yourself as they have a right to expect, to carry on the government of the province satisfactorily, and command the confidence of the Legislature.

Of whatsoever party your Council may be composed, it will be your duty to act strictly upon the principle you have yourself laid down in the memorandum delivered to the gentlemen with whom you have communicated, that, namely, "of not identifying yourself with any one party," but instead of this, "making yourself both a mediator and a moderator between the influential of all parties." In giving, therefore, all fair and proper support to your Council for the time being, you will carefully avoid any acts which can possibly be supposed to imply the slightest personal objection to their opponents, and also refuse to assent to any measures which may be proposed to you by your Council which may appear to you to involve an improper exercise of the authority of the Crown for party rather than for public objects. In exercising, however, this power of refusing to sanction measures which may be submitted to you by your Council, you must recollect that this power of imposing a check upon extreme measures proposed by the party for the time in the government, depends entirely for its efficacy upon its being used sparingly, and with the greatest possible discretion. A refusal to accept advice tendered to you by your Council is a legitimate ground for its members to tender to you their resignation, a course they would doubtless adopt should they feel that the subject on which a difference had arisen between you and themselves was one upon which public opinion would be in their favour. Should it prove to be so, concession to their views must, sooner or later, become inevitable, since it cannot be too distinctly acknowledged that it is neither possible nor desirable to carry on

the government of any of the British provinces in North America in opposition to the opinion of the inhabitants.

Clearly understanding, therefore, that refusing to accede to the advice of your Council for the time being upon a point on which they consider it their duty to insist, must lead to the question at issue being brought ultimately under the decision of public opinion, you will carefully avoid allowing any matter not of very grave concern, or upon which you cannot reasonably calculate upon being in the end supported by that opinion, to be made the subject of such a difference. And if, unfortunately, such a difference should arise, you will take equal care that its cause and the grounds of your own decision are made clearly to appear in written documents capable of being publicly quoted.

The adoption of this principle of action by no means involves the necessity of a blind obedience to the wishes and opinions of the members of your Council; on the contrary, I have no doubt that if they see clearly that your conduct is guided, not by personal favour to any particular men or party, but by a sincere desire to promote the public good, your objections to any measures proposed will have great weight with the Council, or should they prove unreasonable, with the Assembly, or, in last resort, with the public.

Such are the general principles upon which the constitutions granted to the North American Colonies render it necessary that their government should be conducted. It is, however, I am well aware, far easier to lay down these general principles than to determine in any particular case what is that line of conduct which an adherence to them should prescribe. In this your own judgment and a careful consideration of the circumstances in which you are placed must be your guide; and I have only, in conclusion, to assure you that Her Majesty will always be anxious to put the most favourable construction upon your conduct in the discharge of the arduous duties imposed upon you by the high situation you hold in Her service.

Earl Grey to Lieut.-Governor Sir John Harvey, K.C.B.

DOWNING STREET,
31 *March*, 1847.

SIR,

I have already acknowledged the receipt of your Despatch of the 2nd February, enclosing two letters to yourself from your Executive Council, and I now propose to communicate the conclusions at which I have arrived after that attentive consideration which I have felt due, as well to the intrinsic merits of the views stated by your advisers, as to the respectable source from which the statement emanates.

In doing so, it will be convenient that I should at the same time advert to the correspondence which, soon after your assumption of the government of Nova Scotia, you had with Mr. Howe and his friends.

Upon a careful comparison of these very able papers, in which the members of your Council and their political opponents have stated their respective views as to the manner in which the Executive Government of Nova Scotia ought to be conducted, I am led to the conclusion that there is not in reality so wide a difference of principle between the conflicting parties as would at first sight appear to exist, and that it may not be impossible to chalk out a system of administration to be hereafter adopted, to which, without the slightest sacrifice of consistency, both might assent.

On the one hand, I find that the members of your Council declare that they "desire in no degree to weaken the responsibility of the Provincial Government to the Legislature," and I gather from the general tenor of their papers of the 28th and 30th of January, that they are aware that, in the present state of affairs, and of public opinion in Nova Scotia, it is necessary that the Governor of the province should, in administering its affairs, have the advice and assistance of those who can command the confidence of the Legislature, and more especially of that branch of the Legislature which directly represents the people.

On the other hand, I can hardly doubt that the gentlemen of the opposite party who have insisted so strongly upon the necessity of what is termed "responsible government," would

admit the justness and importance of many of the arguments which have been used, in order to show the danger and inconvenience of making the general tenure of offices in the colonial service to depend upon the fluctuations of political contests in the Assembly. I am the more convinced that the gentlemen of the opposition will recognise the force of these arguments, because I observe in the various papers in which they have stated their views, frequent references, either direct or implied, to the practice of this country, as that which affords the best model for imitation in laying down rules as to the manner in which the government of Nova Scotia should be carried on. Now there is scarcely any part of the system of government in this country which I consider of greater value than that, which though not enforced by any written law, but deriving its authority from usage and public opinion, makes the tenure of the great majority of officers in the public service to depend upon good behaviour. Although, with the exception of those who hold the higher judicial situations, or situations in which judicial independence has been considered to be necessary, the whole body of public servants in the United Kingdom hold their offices technically during the pleasure of the Crown, in practice, all but the very small proportion of offices which are distinguished as political, are held independently of party changes, nor are those who have once been appointed to them ever in point of fact removed, except in consequence of very obvious misconduct or unfitness. Thus, in fact, though the legal tenure, "during good behaviour," is rare, tenure during good behaviour, in the popular sense of the term, may be said to be the general rule of our public service.

The exception is in the case of those high public servants whom it is necessary to invest with such discretion as really to leave in their hands the whole direction of the policy of the empire in all its various departments. Such power must, with a representative government, be subject to constant control by Parliament, and is therefore administered only by such persons as from time to time enjoy the confidence of Parliament as well as of the Crown. These heads of departments, or Ministers, together with their immediate subordinates who are required to represent or support them in Parliament, are almost invariably

members of one or other House, and hold their offices only as long as they enjoy the confidence of Parliament.

Though it is not without some inconveniences, I regard this system as possessing upon the whole very great advantages. We owe to it that the public servants of this country, as a body, are remarkable for their experience and knowledge of public affairs, and honourably distinguished by the zeal and integrity with which they discharge their duties, without reference to party feeling; we owe to it also, that as the transfer of power from one party in the State to another is followed by no change in the holders of any but a few of the highest offices, political animosities are not in general carried to the same height, and do not so deeply agitate the whole frame of society as in those countries in which a different practice prevails. The system, with regard to the tenure of office, which has been found to work so well here, seems well worthy of imitation in the British American Colonies, and the small population and limited revenue of Nova Scotia, as well as the general occupation and social state of the community, are, in my opinion, additional reasons for abstaining, so far as regards that province, from going further than can be avoided, without giving up the principle of executive responsibility, in making the tenure of offices in the public service dependent upon the result of party contests. In order to keep the Executive Government in harmony with the Legislature, it is doubtless necessary that the direction of the internal policy of the colony should be entrusted to those who enjoy the confidence of the Provincial Parliament, but it is of great moment not to carry the practice of changing public officers further than is absolutely necessary for the attainment of that end, lest the administration of public affairs should be deranged by increasing the bitterness of party spirit, and subjecting the whole machinery of Government to perpetual change and uncertainty.

In the practical application of these views, there will, I am aware, be room for considerable difference of opinion.

In this, as in all questions of classification, varying circumstances and the various views taken by different men, will give rise to discussions and occasional alterations with respect to particular offices. Your acquaintance with what has passed,

and is passing in the mother country, will suggest to you instances in which the question has been raised, whether a particular office should or should not be a Parliamentary office; and some in which different offices have been deliberately removed from the one into the other class.

The question how many of the public officers in Nova Scotia ought to be regarded as political, is one to be determined on the general principles I have before laid down, and with reference to various considerations arising from the peculiar exigencies of the public service, and the finances and social state of the colony. The practical end of responsible government would be satisfied by the removability of a single public officer, provided that through him public opinion could influence the general administration of affairs. Without quite assenting to the too modest estimate which your present Council have given of the resources of the province, I admit that the smallness of the community, its want of wealth, and the comparative deficiency of a class possessing leisure and independent incomes, preclude it from, at present, enjoying a very perfect division of public employments. Small and poor communities must be content to have their work cheaply and somewhat roughly done. Of the present members of your Council, the Attorney-general and Provincial Secretary, to whom the Solicitor-general should perhaps be added, appear to me sufficient to constitute the responsible advisers of the Governor. The holders of these offices should henceforth regard them as held on a political tenure. And, with a view to that end, the Provincial Secretary should be prepared, in the event of any change, to disconnect from his office that of the clerkship of the Council, which seems to be one that should on every account be held on a more permanent tenure.

It is possible that in the event of any change being rendered necessary by the course of events in the Provincial Parliament, the party succeeding to power might insist on increasing this number of political offices, by adding to the list of those to be so regarded. In case such a question should arise, I must leave it to your discretion, on a view of various local and temporary circumstances, which I am unable at present to appreciate, to form your own decision with respect to any such demand. I

should feel no objection to somewhat increasing the number of political offices (for instance, by appointing a financial Secretary and a responsible Chief of the Department of Public Lands and Works), should the expense of doing so, without injustice to those now in the public service, be found to be not more than the colonial revenue would conveniently bear. But I rely on your using your influence to resist that disposition, which a party succeeding to power often exhibits, to throw open the various offices of emolument to their friends, without sufficient regard to the mischiefs thereby permanently entailed on the public service. And it is but due to what I have seen of the conduct of the principal advocates of responsible government in Nova Scotia, to express my reliance on their public spirit and sober estimate of their country's position and interests, as the most effectual safeguard against any abuse of power.

There is another safeguard which, even with the less considerate members of any party, you will, I think, find sufficient to protect the public interests against any great disposition unnecessarily to place offices hitherto held on what has practically been a tenure of good behaviour, on one of a more precarious nature. However desirous the people of Nova Scotia may be to establish the principle of responsible government, they would, I feel assured, shrink from effecting any reform, however just or necessary, at the cost of injustice to individuals. Now, when individuals have engaged in the public service under a belief, sanctioned by custom, that they obtained a tenure of their offices during good behaviour, it would be most unjust to change that tenure to one of dependence on a Parliamentary majority, without ensuring them a provision that would make up for the loss of official income. I think that the consideration that the improvement grasping at any particular office would necessitate the provision of an adequate pension for its occupant, will be a salutary check on any disposition to carry party government beyond its just limits.

This condition must he applied to the removal of those public officers who now have seats in your Executive Council, unless where they have clearly accepted office on an understanding to the contrary effect. I cannot suppose that the necessity of

providing the requisite pensions will be deemed by the Assembly an unreasonable accompaniment of the establishment of parliamentary government. And hereafter I think it would be proper to recognise as an invariable rule, that no person should without such provision be deprived of any office (except upon the ground of unfitness or misconduct), unless he had accepted it on the distinct understanding that it was to be held virtually, as well as nominally, during pleasure.

I entertain a strong conviction that the adoption of such a rule will be found conducive not only to the interests of the holders of offices, but also to those of the public, and to a true economy of the public money. As I have already observed, it is impossible to expect that men of superior capacity will devote themselves to the public service unless they are assured that their employment will be permanent, or are offered emoluments so large as to make up for the uncertainty of the tenure by which they are enjoyed. If the emoluments of public employments are small, and its tenure at the same time uncertain, a strong temptation is given to the holders to endeavour to make up for these disadvantages by irregular gains, and thus to give rise to practices equally injurious to the community in a pecuniary and in a moral point of view.

You will observe that, in the preceding observations, I have assumed that those only of the public servants, who are to be regarded as removable on losing the confidence of the Legislature, are to be members of the Executive Council. This I consider to follow from the principles I have laid down. Those public servants, who hold their offices permanently, must upon that very ground be regarded as subordinate, and ought not to be members of either house of the Legislature, by which they would necessarily be more or less mixed up in party struggles; and, on the other hand, those who are to have the general direction of affairs exercise that function by virtue of their responsibility to the Legislature, which implies their being removable from office, and also that they should be members either of the Assembly or of the Legislative Council. But this general direction of affairs, and the control of all subordinate officers, it is the duty of the Governor to exercise through the Executive Council, hence the

seats in that Council must be considered as in the nature of political offices, and if held in connection with other offices must give to these also a political character. This, however, leads me to observe, that if only two or three of the principal offices are to be regarded as political, it may very probably be advisable to assign salaries to two or three of the Executive Councillors as such. The Executive Council has duties of a very important character to perform; those duties, and the defects in the manner in which they had then generally been discharged, I find thus described in a confidential despatch which the late Lord Sydenham, then Mr. P. Thomson, addressed to Lord J. Russell, from Halifax, in the year 1840:—

"The functions of the Executive Council, on the other hand are, it is perfectly clear, of a totally different character. They are a body upon whom the Governor must be able to call at any or at all times for advice; with whom he can consult upon the measures to be submitted to the Legislature, and in whom he may find instruments, within its walls, to introduce such amendments in the laws as he may think necessary, or to defend his acts and his policy. It is obvious, therefore, that those who compose this body must be persons whose constant attendance on the Governor can be secured; principally, therefore, officers of the Government itself; but, when it may be expedient to introduce others, men holding seats in one or other House, taking a leading part in political life, and, above all, exercising influence over the Assembly.

. . . . . .

"The last, and, in my opinion, by far the most serious defect in the Government is the utter absence of power in the Executive, and its total want of energy to attempt to occupy the attention of the country upon real improvements, or to lead the Legislature in the preparation and adoption of measures for the benefit of the colony. It does not appear to have occurred to any one that it is one of the first duties of the Government to suggest improvements where they are wanted. That the constitution having placed the power of legislation in the hands of an Assembly and a Council, it is only by acting through these bodies that this duty can be performed, and that if these proper

and legitimate functions of Government are neglected, the necessary result must be, not only that the improvements which the people have a right to expect will be neglected, and the prosperity of the country checked, but that the popular branch of the Legislature will misuse its power, and the popular mind be easily led into excitement upon mere abstract theories of government, to which their attention is directed as the remedy for the uneasiness they feel."

In this view of the proper functions of the Executive Council I entirely concur; but I greatly doubt whether they could be adequately discharged by a Council composed of only two or three persons holding offices in the public service, and of gentlemen serving gratuitously. It is hardly possible to expect that those so serving should devote any large portion of their time to their public duties, and it therefore appears to me highly desirable that salaries should be assigned to at least one or two seats in the Executive Council.

On such terms as these, which I have thus detailed, it appears to me that the peculiar circumstances of Nova Scotia present no insuperable obstacle to the immediate adoption of that system of parliamentary government which has long prevailed in the mother country, and which seems to be a necessary part of representative institutions in a certain stage of their progress.

I have thought it due to you to enter thus fully into the practical difficulties to be encountered in giving effect to those general principles which, in my despatch of 3rd of November, I laid down for your guidance in the selection of your responsible advisers. I am in hopes that the present despatch will leave you in no doubt as to the course to be pursued by you in the event of any changes of which you may anticipate the contingency. I owed it to you to make myself clearly understood on this point; and I trust that what I have now said, will be regarded by your Council as amounting to such a declaration of my views as was requested by them in their letter of the 30th January.

I have, &c.,
(Signed) GREY.

ACT OF PARLIAMENT ESTABLISHING MUNICIPAL CORPORATIONS, ETC., IN NEW ZEALAND. 28 AUGUST, 1846.

[9 & 10 Vict. cap. 103. "Statutes at Large."]

AN Act to make further Provision for the Government of the *New Zealand* Islands. [28th *August* 1846.]

I. [Recited Act (3 and 4 Vict. c. 62) and Letters Patent (dealing with the early government of the Islands and their separation from New South Wales) repealed so far as they are repugnant to this Act.]

Her Majesty may by Letters Patent establish Municipal Corporations in the Islands of New Zealand.

II. And be it enacted, That it shall be lawful for Her Majesty, in and by any Letters Patent hereafter to be issued under the Great Seal of the United Kingdom, from Time to Time to constitute and establish within any District or Districts of the Islands of *New Zealand* One or more Municipal Corporation or Corporations, and to grant to any such Corporations all or any of the powers which, in pursuance of the Statutes in that Behalf made and provided, it is competent to Her Majesty to grant to the Inhabitants of any Town or Borough in *England* and *Wales* incorporated in virtue of such statutes, or any of them, and to qualify and restrict the Exercise of any such Powers in such and the same manner as by the Statutes aforesaid, or any of them, Her Majesty may qualify or restrict the Exercise of any such Powers as aforesaid in *England*.

Her Majesty may by Letters Patent divide the Islands into Provinces, and establish separate Assemblies.

III. And be it enacted, That it shall be lawful for Her Majesty, in and by any Letters Patent hereafter to be issued under the Great Seal of the United Kingdom, from

Time to Time to divide the said Islands of *New Zealand* into two or more separate Provinces, and to constitute and establish within the same Two or more separate Assemblies; (that is to say), One such Assembly in and for each of such separate Provinces, and that each of the said Assemblies shall consist of and be holden by a Governor, a Legislative Council, and a House of Representatives.

Legislative Councils to be appointed by Her Majesty; House of Representatives to be elected by Corporations.

IV. And be it enacted, That each of the said Legislative Councils, when such Legislative Councils shall be constituted, shall consist of such Persons as Her Majesty shall for that Purpose appoint; and that the Members of each of the said Houses of Representatives shall be elected by the respective Mayors, Aldermen, and Common Councils of the several Municipal Corporations aforesaid, situate within the Limits of the Government for which each of the said Houses of Representatives respectively shall be so elected, and that such Elections shall take place in such Manner and Form and under such Regulations as shall for that purpose be prescribed in any such Letters Patent as aforesaid.

Assemblies may make Laws, etc., for the Government of the Province for which they are Constituted.

V. And be it enacted, That it shall be competent for any such Assembly so to be constituted and established within the Islands of *New Zealand*, and they are hereby authorized and empowered (save as herein-after is excepted), to make and enact Laws, Statutes, and Ordinances for the Peace, Order, and good Government of such Parts of the said Islands as shall be within the limits of any separate Province for which any such Assembly shall be so constituted and established as aforesaid, such Laws not being repugnant to the laws of the United Kingdom aforesaid, or to the laws of the General Assembly herein-after mentioned.

Her Majesty may by Letters Patent establish a General Assembly for the Islands.

VI. And be it enacted, That it shall be lawful for Her Majesty, in and by any such Letters Patent as aforesaid, to constitute and establish a General Assembly in and for the Islands of *New Zealand*, to be called the General Assembly of *New Zealand*, which said General Assembly

shall consist of and be holden by the Governor in Chief of the said Islands, and a Legislative Council, and a House of Representatives; and that the said Legislative Council shall consist of such Persons as Her Majesty shall for that Purpose appoint; and that the said House of Representatives shall consist of Members of the respective Houses of Representatives of the several Provinces into which the said Islands may in manner aforesaid be divided, which Members so to serve in the said General Assembly shall be elected, nominated, and appointed by such Persons, and in such Manner and Form, and upon and subject to such Rules and Conditions, as Her Majesty by any such Letters Patent as aforesaid shall direct.

General Assembly may make certain Laws for the Regulation of the Islands.

VII. And be it enacted, That it shall be competent to the said General Assembly of the *New Zealand* Islands, and they are hereby authorized and empowered, to make and enact such Laws, Statutes, and Ordinances as may be required for all or any of the Purposes after mentioned; (that is to say,) first, for the Regulation of all Duties of Customs to be imposed on the Importation or Exportation of any Goods at any Port or Place in the *New Zealand* Islands; and secondly, for the Establishment of a General Supreme Court, to be a Court of original Jurisdiction or of Appeal from any of the Superior Courts of any such separate Provinces as aforesaid; and thirdly, for determining the Extent of the Jurisdiction and the Course and Manner of Proceeding of such General Supreme Court; and fourthly, for regulating the Current Coin of the said islands, or the Issue therein of any Bills, Notes, or other Paper Currency; and fifthly, for determining the Weights and Measures to be used therein; and sixthly, for regulating the Post Offices within and the Carriage of Letters between different Parts of the said Islands; and seventhly, for establishing general Laws of Bankruptcy and Insolvency to be in force throughout the same; and eighthly, for the Erection and Maintenance of Beacons and Lighthouses on the Coasts of the said Islands; and ninthly, for

the Imposition of any Dues or other Charges on Shipping at any Port or Harbour within the same.

Laws of General Assembly to supersede those enacted by separate Provinces.

VIII. And be it enacted, That the Laws so to be enacted as aforesaid, for any of the Purposes aforesaid, by the said General Assembly of the *New Zealand* Islands, shall control and supersede therein any Laws, Statutes, or Ordinances in anywise repugnant thereto which may be enacted by the Assemblies of any such separate Provinces as aforesaid; and that if any Questions shall arise regarding the Limits of the Authority and Jurisdiction of the said General Assembly of the *New Zealand* Islands, and the Authority and Jurisdiction of the said other Assemblies, all Courts, Officers of Justice, and others shall conform and give Effect to the Decision of the said General Assembly of the *New Zealand* Islands on any such Question, until the Decisions thereon of Her Majesty in Council shall have been made known and promulgated within the said Islands, by which Decision any such Questions as aforesaid shall thenceforward be determined within the same.

If Questions arise as to the Power, etc., of General Assembly, Her Majesty to determine same.

IX. [Until 31st Dec., 1854, the Charter, etc., of 16th Nov., 1841, relating to New Ulster to remain in force.]

Laws of aboriginal or native Inhabitants to be maintained, where not repugnant to Principles of Humanity.

X. "And whereas it may be expedient that the Laws, Customs, and Usages of the aboriginal or native Inhabitants of *New Zealand*, so far as they are not repugnant to the general Principles of Humanity, should for the present be maintained for the Government of themselves in all their Relations to and Dealings with each other, and that particular Districts should be set apart within which such Laws, Customs, or Usages should be so observed;" be it enacted, That it shall be lawful for Her Majesty, by any such Letters Patent as aforesaid, to make Provision for the Purposes aforesaid; any Repugnancy of any such native Laws, Customs, or Usages to the Law of *England*, or to any Law, Statute, or Usage in force in the said Islands of *New Zealand*, or in any Part thereof, in anywise notwithstanding.

Her Majesty by Letters Patent to make and prescribe Rules and Regulations for Municipal Districts.

XI. And be it enacted, That it shall be lawful for Her Majesty, by any such Letters Patent as aforesaid, to make and prescribe all such Rules as to Her Majesty shall seem fit for determining the Extent and Boundaries of the Districts to be comprised within any such Municipal Corporations as aforesaid, and for regulating the Choice and Election of the various Officers of any such Corporations, and of the Members of the Governing Bodies thereof, and for ascertaining the Qualifications of the Members of any such Municipal Corporations or Assemblies or General Assembly as aforesaid, and for determining the Length of Time for which every such Assembly or General Assembly shall be holden from the Time of the Election of the Members of the said Houses of Representatives, and how and by what Authority the same shall be dissolved or prorogued, and for prescribing the Oaths to be taken or the Affirmation to be made by the Members of the said Corporations, Assemblies, or General Assembly, or any of them, before entering on the Discharge of the Duties of their Respective Offices, and for prescribing the Course of Proceeding to be followed in the said respective Assemblies and in the said General Assembly in regard to the Enactment of Laws, Statutes, and Ordinances therein, and for determining in what Cases the Governor in Chief for the Time being of the Islands of *New Zealand*, or the Governor for the Time being of any other such separate Provinces as aforesaid, shall, in the Name and on the Behalf of Her Majesty, assent to any such Laws, Statutes, or Ordinances, or reserve the Signification of Her Majesty's Pleasure thereon, together with all such Rules as shall be necessary for determining the Effect of the Disallowance by Her Majesty of any such Law, Statute, or Ordinance, although not so reserved as aforesaid, together with all such other Rules, not being repugnant to this present Act, as it may seem to Her Majesty necessary to make and establish for carrying into full Effect the Purposes and Objects thereof.

XII. And be it enacted, That it shall be lawful for Her

Her Majesty may appropriate and set apart out of the Revenues of any separate Province a Sum of Money for the Maintenance of the Civil Government.

Majesty, by any such Letters Patent as aforesaid, to appropriate and set apart, from and out of the Revenues of any such separate Provinces as aforesaid, by way of Civil List, for the Maintenance of the Administration of Justice, and the principal Officers of the Civil Government, or of such separate Provinces as aforesaid, such sums of Money as shall not exceed Six thousand Pounds by the Year in any one of the said separate Governments: Provided always, that if by any Law, Statute or Ordinance hereafter to be enacted in and by any such Assembly as aforesaid, and assented to by Her Majesty, Provision shall be made for settling on Her Majesty a Civil List in substitution for the before-mentioned Civil List, then and in that Case so much of this Act as relates to the before-mentioned Civil List shall cease to be of any Force and Effect within the Province in and for which any such Law, Statute, or Ordinance shall so have been enacted.

Grants of Money made by the Assemblies, not having been first recommended by Her Majesty, prohibited.

XIII. And be it enacted, That it shall be lawful for Her Majesty, by such Letters Patent as aforesaid, to prohibit the Grant or Appropriation of any public Money by either of the said Assemblies, or by the said General Assembly, in any case in which such Grant or Appropriation shall not first have been recommended by Her Majesty or on Her Majesty's behalf, with a view to or in aid of some specific public Service to be performed within the said Provinces respectively, or within the said Islands of *New Zealand* collectively.

Certain Powers vested in Her Majesty may be delegated to Governors of the New Zealand Islands.

XIV. "And whereas it may be convenient that some of the Powers hereby vested in Her Majesty should by Her Majesty be executed, not by means of such Letters Patent as aforesaid, but by Instructions under Her Majesty's Signet and Sign Manual approved in Her Privy Council, and accompanying or referred to in such Letters Patent: And whereas it may also be convenient that the Exercise of some of the Powers aforesaid, should by Her Majesty be delegated to the Governor in Chief of the *New Zealand* Islands for the Time being, or to the respective Governors of the said respective Provinces for the Time

being, and that it should be competent to Her Majesty from Time to Time to amend, and for that Purpose to add to, or if necessary to repeal, any such Letters Patent or Instructions as aforesaid;" be it therefore enacted, That it shall be lawful for Her Majesty to execute any of the Powers hereby vested in Her Majesty, not by means of such Letters Patent as aforesaid, but by such Instructions as aforesaid; and that it shall be lawful for Her Majesty, by any such Letters Patent or Instructions, to delegate to such Governor in Chief, or to such respective Governors as aforesaid, the Exercise of such of the Powers aforesaid as it may seem meet to Her Majesty so to delegate, and to prescribe the Manner and Form in which, and the Conditions subject to which, such delegated Authority shall so be exercised; and that it shall also be lawful for Her Majesty from Time to Time to amend, and for that Purpose to add to, or if necessary to repeal, any such Letters Patent or Instructions as aforesaid.

XV. [Letters Patent issued under this Act to be published in the *London Gazette* and laid before Parliament. Letters Patent issued after 31 December, 1847, and amending previous Letters Patent, to be of no effect until the lapse of six months after they have been laid before Parliament.]

Who are to be deemed Governor in Chief and Governor of a Province.

XVI. And be it enacted, That for the Purpose of this present Act the Officer for the Time being administering, in virtue of Her Majesty's Commission for that Purpose, the general Government of the Islands of *New Zealand* shall be considered as the Governor in Chief of *New Zealand;* and that the Officer for the Time being administering, in virtue of Her Majesty's Commissions for that Purpose, the respective Governments of any such separate Province as aforesaid shall be considered as the Governor of such Province.

XVII. [Act may be amended, etc. (in present session of Parliament).]

ACT OF PARLIAMENT ESTABLISHING PROVINCIAL COUNCILS AND A GENERAL ASSEMBLY IN NEW ZEALAND. 30 JUNE, 1852.

[15 & 16 Vict., cap. 72. "Statutes at Large."]

AN Act to grant a Representative Constitution to the Colony of *New Zealand*. [30 *June* 1852.]

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Certain Provinces established in New Zealand.

II. The following Provinces are hereby established in *New Zealand;* namely, *Auckland, New Plymouth, Wellington, Nelson, Canterbury,* and *Otago;* and the Limits of such several Provinces shall be fixed by Proclamation by the Governor as soon as conveniently may be after the Proclamation of this Act in *New Zealand.*

Each Province to have a Superintendent and Provincial Council.

III. For each of the said Provinces hereby established, and for every Province hereafter to be established as herein-after provided, there shall be a Superintendent and a Provincial Council, and the Provincial Council of each of the said Provinces hereby established shall consist of such Number of Members, not less than Nine, as the Governor shall by Proclamation direct and appoint.

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Duration of Provincial Council.

Dissolution.

XIII. Every Provincial Council shall continue for the Period of Four Years from the Day of the Return of the Writs for choosing the same, and no longer: Provided always, that it shall be lawful for the Governor, by Proclamation or otherwise, sooner to dissolve the same, whenever he shall deem it expedient so to do.

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Convening of Council.

XV. It shall be lawful for the Superintendent, by Proclamation in the Government Gazette, to fix such Place or Places within the Limits of the Province, and such Times for holding the first and every other Session of the Provincial Council, as he may think fit, and from Time to Time, in manner aforesaid, to alter and vary such Times and Places as he may judge advisable, and most consistent with general Convenience.

Prorogation.

XVI. It shall be lawful for the Superintendent to prorogue such Council from Time to Time, whenever he shall deem it expedient so to do.

A Session to be held every Year.

XVII. Provided always, That there shall be a Session of every Provincial Council once at least in every Year, so that a greater Period than Twelve Calendar Months shall not intervene between the last Sitting of the Council in one Session and the First Sitting of the Council in the next Session.

Superintendent and Provincial Council may make Laws.

XVIII. It shall be lawful for the Superintendent of each Province, with the Advice and Consent of the Provincial Council thereof, to make and ordain all such Laws and Ordinances (except and subject as hereinafter mentioned) as may be required for the Peace, Order, and good Government of such Province, provided that the same be not repugnant to the Law of *England*.

Restrictions on Powers of Legislation.

XIX. It shall not be lawful for the Superintendent and Provincial Council to make or ordain any Law or Ordinance for any of the Purposes herein-after mentioned; (that is to say,)

1. The Imposition or Regulation of Duties of Customs to be imposed on the Importation or Exportation of any Goods at any Port or Place in the Province:

2. The Establishment or Abolition of any Court of Judicature of Civil or Criminal Jurisdiction, except Courts for trying and punishing such Offences as by the Law of *New Zealand* are or may be made punishable in a Summary Way, or altering the Constitution, Jurisdiction, or Practice of any such Court, except as aforesaid:

3. Regulating any of the current Coin, or the Issue of any Bills, Notes, or other Paper Currency:

4. Regulating the Weights and Measures to be used in the Province or in any Part thereof:

5. Regulating the Post Offices and the Carriage of Letters within the Province:

6. Establishing, altering, or repealing Laws relating to Bankruptcy or Insolvency:

7. The Erection and Maintenance of Beacons and Lighthouses on the Coast:

8. The Imposition of any Dues or other Charges on Shipping at any Port or Harbour in the Province:

9. Regulating Marriages:

10. Affecting Lands of the Crown, or Lands to which the Title of the aboriginal native Owners has never been extinguished:

11. Inflicting any Disabilities or Restrictions on Persons of the Native Race to which Persons of European Birth or Descent would not also be subjected:

12. Altering in any way the Criminal Law of *New Zealand*, except so far as relates to the Trial and Punishment of such Offences as are now or may by the Criminal Law of *New Zealand* be punishable in a summary Way as aforesaid:

13. Regulating the Course of Inheritance of Real or Personal Property, or affecting the Law relating to Wills.

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Appropriation and Issue of Money.

XXV. It shall not be lawful for any Provincial Council to pass, or for the Superintendent to assent to, any Bill appropriating any Money to the Public Service, unless the Superintendent shall first have recommended to the Council to make Provision for the specific Service to which such Money is to be appropriated; and no such Money shall be issued or be made issuable, except by Warrants to be granted by the Superintendent.

Superintendent may transmit Drafts of Laws for Consideration of Council.

XXVI. It shall be lawful for the Superintendent to transmit to the Provincial Council, for their Consideration, the Drafts of any such Laws or Ordinances as it may appear to him desirable to introduce, and all such Drafts shall be taken into consideration in such convenient Manner as in and by such Rules and Orders as aforesaid shall be in that Behalf provided.

Giving or withholding Assent to Bills.

XXVII. Every Bill passed by the Provincial Council shall be presented to the Superintendent for the Governor's Assent, and the Superintendent shall declare, according to his Discretion, (but subject nevertheless to the Pro-

visions herein contained and to such Instructions as may from Time to Time be given him by the Governor,) that he assents to such Bill on behalf of the Governor, or that he withholds the Assent of the Governor, or that he reserves such Bill for the Signification of the Governor's Pleasure thereon; provided always, that it shall and may be lawful for the Superintendent, before declaring his Pleasure in regard to any Bill so presented to him, to make such Amendments in such Bill as he thinks needful or expedient, and to return such Bill with such Amendments to such Council, and the Consideration of such Amendments by such Council shall take place in such convenient manner as shall in and by the Rules and Orders aforesaid be in that Behalf provided; provided also, that all Bills altering or affecting the Extent of the several Electoral Districts which shall be represented in the Provincial Council, or establishing new or other such Electoral Districts, or altering the Number of Members of such Council to be chosen by the said Districts respectively, or altering the Number of the Members of such Council, or altering the Limits of any Town or establishing any new Town, shall be so reserved as aforesaid.

Copies of Bills Assented to to be sent to Governor.

XXVIII. Whenever any Bill shall have been assented to by the Superintendent as aforesaid, the Superintendent shall forthwith transmit to the Governor an authentic Copy thereof.

Disallowance of Bills assented to.

XXIX. It shall be lawful for the Governor at any Time within Three Months after any such Bill shall have been received by him to declare by Proclamation his Disallowance of such Bill, and such Disallowance shall make void and annul the same from and after the Day of the Date of such Proclamation or any subsequent Day to be named therein.

No Bill to have any Force until Assented to by Governor.

XXX. No Bill which shall be reserved for the Signification of the Assent of the Governor shall have any Force or Authority within the Province until the Superintendent shall signify either by Speech or Message to the Provincial Council, or by Proclamation in the Government Gazette,

that such Bill has been laid before the Governor, and that the Governor has assented to the same; and an Entry shall be made in the Journals of the Provincial Council of every such Speech, Message, or Proclamation, and a Duplicate thereof, duly attested, shall be delivered to the Registrar of the Supreme Court, or other proper Officer, to be kept among the Records of the Province; and no Bill which shall be so reserved as aforesaid shall have any Force or Authority within the Province unless the Assent of the Governor thereto shall have been so signified as aforesaid within Three Months next after the Day on which such Bill shall have been presented to the Superintendent for the Governor's Assent.

Governor may transmit Instructions to Superintendent as to reserving Bills.

XXXI. It shall be lawful for the Governor from Time to Time to transmit to the Superintendent of any Province, for his Guidance in assenting to or withholding Assent from Bills, or reserving the same for the Signification of the Governor's Pleasure thereon, such Instructions as to the Governor shall seem fit, and it shall be the Duty of the Superintendent to act in obedience to such Instructions.

Establishment of a General Assembly.

XXXII. There shall be within the Colony of *New Zealand* a General Assembly, to consist of the Governor, a Legislative Council, and House of Representatives.

Appointment of Members of the Legislative Council.

XXXIII. For constituting the Legislative Council of *New Zealand* it shall be lawful for Her Majesty before the Time to be appointed for the First Meeting of the General Assembly, by an Instrument under Her Royal Sign Manual, to authorize the Governor in Her Majesty's Name to summon to the said Legislative Council such Persons, being not less in Number than Ten, as Her Majesty shall think fit; and it shall also be lawful for Her Majesty from Time to Time in like Manner to authorize the Governor to summon to the said Legislative Council such other Person or Persons as Her Majesty shall think fit, either for supplying any Vacancy or Vacancies or otherwise, and every Person who shall be so summoned shall thereby become a Member of the said Legislative Council: Provided always, that no Person shall be summoned to such Legis-

lative Council who shall not be of the full Age of Twenty-one Years, and a natural born Subject of Her Majesty, or a Subject of Her Majesty naturalized by Act of Parliament, or by an Act of the Legislature of *New Zealand*.

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Power to Summon a House of Representatives by Proclamation in Her Majesty's Name.

XL. For the Purpose of constituting the House of Representatives of *New Zealand* it shall be lawful for the Governor, within the Time hereinafter mentioned, and thereafter from Time to Time as Occasion shall require, by Proclamation in Her Majesty's Name, to summon and call together a House of Representatives in and for *New Zealand*, such House of Representatives to consist of such Number of Members, not more than Forty-two nor less than Twenty-four, as the Governor shall by Proclamation in that Behalf direct and appoint; and every such House of Representatives shall, unless the General Assembly shall be sooner dissolved, continue for the Period of Five Years from the Day of the Return of the Writs for choosing such House, and no longer.

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Qualification of Voters for Members of House of Representatives.

XLII. The Members of the said House of Representatives to be chosen in every Electoral District appointed for that Purpose shall be chosen by the Votes of the Inhabitants of *New Zealand* who shall possess within such District the like Qualifications which, when possessed within an Electoral District appointed for the Election of Members of a Provincial Council, would entitle Inhabitants of the Province to vote in the Election of Members of the Provincial Council thereof, and who shall be duly registered as Electors; and every Person legally qualified as such Elector shall be qualified to be elected a Member of the said House.

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Power of General Assembly to make Laws.

LIII. It shall be competent to the said General Assembly (except and subject as herein-after mentioned) to make Laws for the Peace, Order, and good Government of *New Zealand*, provided that no such Laws be repugnant to the Law of *England*; and the Laws so to be made by

the said General Assembly shall control and supersede any Laws or Ordinances in anywise repugnant thereto which may have been made or ordained prior thereto by any Provincial Council; and any Law or Ordinance made or Ordained by any Provincial Council in pursuance of the Authority hereby conferred upon it, and on any Subject whereon under such Authority as aforesaid it is entitled to legislate, shall, so far as the same is repugnant to or inconsistent with any Act passed by the General Assembly, be null and void.

As to the Appropriation and Issue of Money.

LIV. It shall not be lawful for the House of Representatives or the Legislative Council to pass, or for the Governor to assent to any Bill appropriating to the Public Service any Sum of Money from or out of Her Majesty's Revenue within *New Zealand*, unless the Governor on Her Majesty's Behalf shall first have recommended to the House of Representatives to make Provision for the Specific Public Service towards which such Money is to be appropriated, and (save as herein otherwise provided) no Part of Her Majesty's Revenue within *New Zealand* shall be issued except in pursuance of Warrants under the Hand of the Governor directed to the public Treasurer thereof.

Governor may transmit Drafts of Laws to either House.

LV. It shall and may be lawful for the Governor to transmit by Message to either the said Legislative Council or the said House of Representatives for their Consideration the Drafts of any Laws which it may appear to him desirable to introduce, and all such Drafts shall be taken into consideration in such convenient Manner as shall in and by the Rules and Orders aforesaid be in that Behalf provided.

Governor may assent to, refuse Assent, or reserve Bills.

LVI. Whenever any Bill which has been passed by the said Legislative Council and House of Representatives shall be presented for Her Majesty's Assent to the Governor, he shall declare according to his Discretion, but subject nevertheless to the Provisions contained in this Act and to such Instructions as may from Time to Time be given in that Behalf by Her Majesty, Her Heirs or Successors, that he assents to such Bill in Her

Majesty's name, or that he refuses his Assent to such Bill, or that he reserves such Bill for the Signification of Her Majesty's Pleasure thereon; provided always, that it shall and may be lawful for the Governor, before declaring his Pleasure in regard to any Bill so presented to him, to make such Amendments in such Bill as he thinks needful or expedient, and by Message to return such Bill with such Amendments to the Legislative Council or the House of Representatives as he shall think the more fitting, and the Consideration of such Amendments by the said Council and House respectively shall take place in such convenient Manner as shall in and by the Rules and Orders aforesaid be in that Behalf provided.

Governor to conform to Instructions transmitted by Her Majesty.

LVII. It shall be lawful for Her Majesty, with the Advice of Her Privy Council, or under Her Majesty's Signet and Sign Manual, or through one of Her Principal Secretaries of State, from Time to Time to convey to the Governor of *New Zealand* such Instructions as to Her Majesty shall seem meet, for the Guidance of such Governor, for the Exercise of the Powers hereby vested in him of assenting to or dissenting from or for reserving for the Signification of Her Majesty's Pleasure Bills to be passed by the said Legislative Council and House of Representatives; and it shall be the Duty of such Governor to act in obedience to such Instructions.

As to Disallowance by Her Majesty of Bills assented to by the Governor.

LVIII. Whenever any Bill which shall have been presented for Her Majesty's Assent to the Governor shall by such Governor have been assented to in Her Majesty's Name, he shall by the first convenient opportunity transmit to one of Her Majesty's Principal Secretaries of State an authentic Copy of such Bill so assented to; and it shall be lawful, at any Time within Two Years after such Bill shall have been received by the Secretary of State, for Her Majesty, by Order in Council, to declare Her Disallowance of such Bill; and such Disallowance, together with a Certificate under the Hand and Seal of the Secretary of State certifying the Day on which such Bill was received as aforesaid, being signified by the Governor to

the said Legislative Council and House of Representatives by Speech or Message, or by Proclamation in the Government Gazette, shall make void and annul the same from and after the Day of such Signification.

No reserved Bill to have any Force until assented to by Her Majesty.

LIX. No Bill which shall be reserved for the Signification of Her Majesty's Pleasure thereon shall have any Force or Authority within *New Zealand* until the Governor shall signify, either by Speech or Message to the said Legislative Council and House of Representatives, or by Proclamation, that such Bill has been laid before Her Majesty in Council, and that Her Majesty has been pleased to assent to the same; and an Entry shall be made in the Journals of the said Legislative Council and House of Representatives of every such Speech, Message, or Proclamation, and a Duplicate thereof, duly attested, shall be delivered to the Registrar of the Supreme Court, or other proper Officer, to be kept among the Records of *New Zealand;* and no Bill which shall be so reserved as aforesaid shall have any Force or Authority within *New Zealand,* unless Her Majesty's Assent thereto shall have been so signified as aforesaid within the Space of Two Years from the Day on which such Bill shall have been presented for Her Majesty's Assent to the Governor as aforesaid.

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Her Majesty may cause Laws of aboriginal Inhabitants to be maintained.

LXXI. And whereas it may be expedient that the Laws, Customs, and Usages of the aboriginal or native Inhabitants of *New Zealand,* so far as they are not repugnant to the general Principles of Humanity, should for the present be maintained for the Government of themselves, in all their Relations to and Dealings with each other, and that particular Districts should be set apart within which such Laws, Customs, or Usages should be so observed:

It shall be lawful for Her Majesty, by any Letters Patent to be issued under the Great Seal of the United Kingdom, from Time to Time to make Provision for the Purposes aforesaid, any Repugnancy of any such native Laws, Customs, or Usages to the Law of *England,* or to

any Law, Statute, or Usage in force in *New Zealand*, or in any Part thereof, in anywise notwithstanding.

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Saving as to the Lands of aboriginal native Tribes.

LXXIII. It shall not be lawful for any person other than Her Majesty, Her Heirs or Successors, to purchase or in anywise acquire or accept from the aboriginal Natives Land of or belonging to or used or occupied by them in common as Tribes or Communities, or to accept any Release or Extinguishment of the Rights of such aboriginal Natives in any such Land as aforesaid; and no Conveyance or Transfer, or Agreement for the Conveyance or Transfer, of any such Land, either in perpetuity or for any Term or Period, either absolutely or conditionally, and either in Property or by way of Lease or Occupancy, and no such Release or Extinguishment as aforesaid, shall be of any Validity or Effect unless the same be made to, or entered into with, and accepted by Her Majesty, Her Heirs or Successors: Provided always, that it shall be lawful for Her Majesty, Her Heirs and Successors, by Instructions under the Signet and Royal Sign Manual, or signified through one of Her Majesty's Principal Secretaries of State, to delegate Her Powers of accepting such Conveyances or Agreements, Releases or Relinquishments, to the Governor of *New Zealand*, or the Superintendent of any Province within the Limits of such Province, and to prescribe or regulate the Terms on which such Conveyances or Agreements, Releases or Extinguishments, shall be accepted.

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CONSTITUTION OF THE CONFEDERATE STATES OF AMERICA. 11 MARCH, 1861.

["British and Foreign State Papers," vol. 51, 1860-1861, pp. 879-892. Portions of this Constitution which are almost exactly similar to the corresponding passages in the Constitution of the United States, 1787, are summarised with the appropriate references to the latter for purposes of comparison. New or amended articles are given in full.]

WE, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent Federal Government, establish justice, insure domestic tranquillity and secure the blessings of liberty to ourselves and our posterity—invoking the favour and guidance of Almighty God—do ordain and establish this Constitution for the Confederate States of America.

Article I. Sect. i. [Establishment of bicameral legislature (U.S. Constitution, Art. I, sect. i).]

Sect. ii. 1. [Provision for the duration of the House of Representatives and for the electoral franchise (U.S., I, ii, 1)] but no person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any offices, civil or political, State or federal.

2. [Qualifications for a Representative (U.S., I, ii, 2).]

3. [Apportionment of Representatives and direct taxes. Enumeration of all free persons and three fifths of all slaves every 10 years. Quota at least 50,000 (U.S., I, ii, 3).]

4. [Executive of each State to issue writs when vacancies occur (U.S., I, ii, 4).]

5. [The House of Representatives to choose its own officers and to have sole powers of impeachment (U.S., I, ii, 5)]; except that any judicial or other Federal officer, resident and acting

solely within the limits of any State, may be impeached by a vote of two thirds of both branches of the Legislature thereof.

Sect. iii. 1. [Provision for the selection of Senators (U.S., I, iii, 1).]

2. [Provision for the division of Senators into classes and for the filling of vacancies which occur during recess of State legislature (U.S., I, iii, 2).]

3. [Qualifications for a Senator (U.S., I, iii, 3).]

4. [Vice-President to be President of Senate (U.S., I, iii, 4).

5. [Senate to elect other officers (U.S., I, iii, 5).]

6. [Senate to try impeachments. If President accused, Chief Justice to preside (U.S., I, iii, 6).]

7. [Maximum penalty for impeachment to be loss of and disqualification for office (U.S., I, iii, 7).]

Sect. iv. 1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof, subject to the provisions of this Constitution; but the Congress may, at any time, by law, make or alter such regulations, except as to times and places of choosing Senators [U.S., I, iv, 1].

2. [Provision for meeting of Congress (U.S., I, iv, 2).]

Sect. v. [Powers of Houses re elections (§ 1), rules of procedure (§ 2), journals (§ 3) and adjournment (§ 4).], [U.S., I, v.]

Sect. vi. 1. [Payment and privileges of members (U.S., I, vi, 1).]

2. [Members may not be appointed to civil offices and no minister may be a member of either House (U.S., I, vi, 2).] But Congress may, by law, grant to the principal officer in each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing any measures appertaining to his department.

Sect. vii. 1. [Powers of the two Houses re Money Bills (U.S., I, vii, 1).]

2. [Suspensive veto of President (U.S., I, vii, 2).]

The President may approve any appropriation and disapprove any other appropriation in the same Bill. In such case he shall, in signing the Bill, designate the appropriations disapproved;

and shall return a copy of such appropriations, with his objections, to the House in which the Bill shall have originated; and the same proceedings shall then be had as in case of other Bills disapproved by the President.

3. [Suspensive veto of President on all votes, orders and resolutions (U.S., I, vii, 3).]

Sect. viii. The Congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises, for revenue necessary to pay the debts, provide for the common defence and carry on the Government of the Confederate States; but no bounties shall be granted from the Treasury, nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry, and all duties, imposts and excises shall be uniform throughout the Confederate States [U.S., I, viii, 1].

2. [To borrow money on credit of Confederate States (U.S., I, viii, 2).]

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes [U.S., I., viii, 3]; but neither this, nor any other clause contained in this Constitution, shall ever be construed to delegate the power to Congress to appropriate money for any internal improvement intended to facilitate commerce [except aids to navigation on the coast, and improvements to be paid for by duties on navigation thus facilitated].

4. [To establish uniform naturalization and bankruptcy laws (but previous debts not to be discharged, U.S., I, viii, 4)], but no law of Congress shall discharge any debt contracted before the passage of the same.

5 and 6. [To coin money, regulate weights and measures and punish counterfeiting (U.S., I, viii, 5-6).]

7. To establish post offices and post routes; but the expenses of the Post Office department [after 1 March, 1863] shall be paid out of its own revenues [U.S., I, viii, 7].

8. [Patents to inventors, etc.]; 9. [Inferior Federal Courts]; 10. [Piracies, etc.]; 11. [Declaration of war, etc.]; 12. [Raising of armies, etc.]; 13. [Provision of a navy]; 14. [Rules for Government of both Services]; 15. [Provision for calling the militia];

16. [Provision for organising militia, etc.]; 17. [Exclusive legislation in district of seat of government, etc.]; 18. [Power to make laws necessary to exercise above powers], [U.S., I, viii, 8-18].

Sect. ix. 1. The importation of negroes of the African race, from any foreign country other than the Slave-holding States or territories of the United States of America, is hereby forbidden, and Congress is required to pass such laws as shall effectually prevent same.

2. Congress shall also have power to prohibit the introduction of slaves from any State not a member of, or territory not belonging to, this Confederacy.

3. [Suspension of Habeas Corpus; 4. Bills of Attainder and ex post facto laws]; no . . . law denying or impairing the right of property in negro slaves shall be passed; 5. [Limitation of direct taxation (U.S., I, ix, 2, 3, 4).]

6. No tax or duty shall be laid on articles exported from any State except by a vote of two thirds of both Houses.

7. [No preference in inter-State trade (U.S., I, ix, 6).]

8. [Drafts to be made from Treasury only by appropriation; accounts to be published periodically (U.S., I, ix, 7).]

9. Congress shall appropriate no money from the treasury except by a vote of two thirds of both Houses, taken by yeas and nays, unless it be asked and estimated for by some one of the heads of departments and submitted to Congress by the President; or for the purpose of paying its own expenses and contingencies; or for the payment of claims against the Confederate States, the justice of which shall have been judicially declared by a tribunal for the investigation of claims against the Government, which it is hereby made the duty of Congress to establish.

10. All Bills appropriating money shall specify in federal currency the exact amount of each appropriation and the purposes for which it is made, and Congress shall grant no extra compensation to any public contractor, officer, agent, or servant after such contract is made or such service rendered.

11. [No titles to be granted and no official to accept titles, etc. from a foreign State (U.S., I, ix, 8).]

12. Congress shall make no law respecting an establishment

of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and petition the Government for a redress of grievances (U.S., Amendment I).

13. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed (U.S., Amendment II).

14. [Soldiers are not to be quartered in houses except in war time and according to the law (U.S., Amendment III).]

15. [People have a right to be secure from unreasonable searches and seizures. Warrants only on probable cause and must describe the particular place to be searched and the persons or things to be seized (U.S., Amendment IV).]

16. [Re criminal procedure and individual rights]; 17. [re rights of accused in trial]; 18. [re suits at common law of value more than 20 dollars]; 19. [re moderation in bail, fines, etc. (U.S., Amendments V-VIII).]

20. Every law, or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title.

Sect. x. 1. [Powers not exercisable by the States (U.S., I, x, 1).]

2. [Powers not exercisable by the States without consent of Congress (U.S., I, x, 2).]

3. No State shall, without the consent of Congress, lay any duty on tonnage, except on seagoing vessels for the improvement of its rivers and harbours navigated by the said vessels; [see I, viii, 3 above] but such duties shall not conflict with any Treaties of the Confederate States with foreign nations; and any surplus revenue thus derived shall, after making such improvement, be paid into the common Treasury. [No troops or ships of war shall be kept in time of peace, and no agreement made with foreign states or war declared unless on invasion (U.S., I, x, 3).] But when any river divides or flows through two or more States, they may enter into compacts with each other to improve the navigation thereof.

Article II. Sect. i. 1. [Executive Power to be vested in a President. He and the Vice President shall hold their offices for the term of 6 years; but the President shall not be re-eligible (U.S., II, i, 1).]

2. [States to appoint electors of President. No Senators, Representatives, or officers to be elected (U.S., II, i, 2).]

3, 4, 5, and 6. [Regulations for election of President and Vice President (U.S., II, 1, 3, 4 and Amendment xii).]

7. [Qualification for the office of President (U.S., II, i, 5).]

8. [Vice President, and other officers in succession, as decided by Congress, shall succeed the President in the event of his removal for any reason (U.S., II, i, 6).]

9. [Provision for President's salary (U.S., II, i, 7).]

10. [Oath to be taken by President (U.S., II, i, 8).]

Sect. ii. 1. [Powers of President as commander-in-chief, his right to demand advice of executive officers and his power of pardon (U.S., II, ii, 1).]

2. [Powers of President with concurrence of Senate:— to make treaties, appoint ambassadors, etc. Congress may leave appointment of inferior officers to President alone (U.S., II, ii, 2).]

3. The principal officer in each of the executive departments and all persons connected with the diplomatic service may be removed from office at the pleasure of the President. All other civil officers of the executive department may be removed at any time by the President, or other appointing power, when their services are unnecessary, or for dishonesty, incapacity, inefficiency, misconduct or neglect of duty; and when so removed, the removal shall be reported to the Senate, together with the reasons therefor.

4. [President to fill vacancies in Senate occurring during recess (U.S., II, ii, 3).] But no person rejected by the Senate shall be reappointed to the same office during their ensuing recess.

Sect. iii. [President to give information of state of affairs to Congress and recommend measures; may convene Houses on extraordinary occasions; may adjourn if they disagree as to time; shall receive ambassadors, etc.; and see that the laws are executed (U.S., II, iii).]

Sect. iv. [President, etc., removable if convicted of treason or crime (U.S., II, iv).]

Article III. Sect. i. [Judicial power vested in Supreme

Court and inferior courts instituted by Congress: Tenure of Judges (U.S., III, i).]

Sect. ii. 1. [Jurisdiction of the Supreme Judicature (U.S., III, ii, 1 and Am. XI).] But no State shall be sued by a citizen or subject of any foreign State.

2. [Supreme Court to have original jurisdiction in cases re ambassadors, etc., and where State is a party. Otherwise appellate except as Congress shall alter (U.S., III, ii, 2).]

3. [Trial by jury, etc. (U.S., III, ii, 3).]

Sect. iii. 1. [Treason consists in levying war or giving aid to enemy. Two witnesses necessary (U.S., III, iii, 1).]

2. [Congress shall declare punishment but there shall be no forfeiture or penalty beyond lifetime of a traitor (U.S., III, iii, 2).]

Article IV. Sect. i. [Full faith to be given by one State to public acts of another (U.S., IV, i).]

Sect. ii. 1. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States; [U.S., IV, ii, 1] and shall have the right of transit and sojourn in any State of this Confederacy, with their slaves and other property; and the right of property in said slaves shall not thereby be impaired.

2. [Anyone charged in one State with crime, who flees to another State must be surrendered by that State (U.S., IV, ii, 2).]

3. [No *slave* or other person held to service in one State shall when removed to another be discharged under its regulation (U.S., IV, ii, 3).]

Sect. iii. 1. Other States may be admitted into this Confederacy by a vote of two-thirds of the whole House of Representatives, and two-thirds of the Senate voting by States. [No new State shall be formed within the jurisdiction of another State nor by the union of two or more States unless Legislatures of these States consent (U.S., IV, iii, 1).]

2. [Congress to have power to make rules concerning the property and lands of the Confederate States (U.S., IV, iii, 2).]

3. The Confederate States may acquire new territory; and Congress shall have power to legislate and provide Governments

for the inhabitants of all territory belonging to the Confederate States, lying without the limits of the several States; and may permit them at such times, and in such manner as it may by law provide, to form States to be admitted into the Confederacy. In all such territory, the institution of negro slavery, as it now exists in the Confederate States, shall be recognized and protected by Congress and by the territorial Government; and the inhabitants of the several Confederate States and territories shall have the right to take to such territory any slaves lawfully held by them in any of the States or territories of the Confederate States.

4. [Confederation to guarantee to each State republican form of Government, to protect each from invasion and, if asked by legislature, from domestic violence (U.S., IV, iv).]

Article V. Sect. i.—Upon the demand of any three States legally assembled in their several Conventions, the Congress shall summon a Convention of all the States, to take into consideration such amendments to the Constitution as the States shall concur in suggesting at the time when the said demand is made; and should any of the proposed amendments to the Constitution be agreed on by the said Convention—voting by States—and the same be ratified by the legislatures of two-thirds of the Several States, or by Conventions in two-thirds thereof—as the one or the other mode of ratification may be proposed by the general Convention—they shall thenceforward form a part of this Constitution. But no State shall, without its consent, be deprived of its equal representation in the Senate.

Article VI. 1. [The Government established by this constitution is the successor of the Provisional Government of the Confederate States of America, and all the laws passed by the latter shall continue in force until the same shall be repealed or modified; and all officers appointed by the same shall remain in office till their successors are appointed and qualified, or the offices abolished.]

2. [All previous debts and engagements are valid against the Confederate States (U.S., VI, 1).]

3. [The Constitution, together with federal laws and treaties

is the supreme law of the land, and judges in every state shall be bound by it (U.S., VI, 2).]

4. [All Senators and Representatives and all officers are bound by oath to support the Constitution (U.S., VI, 3).]

5. [Rights retained by people of several states not disparaged by anything in Constitution (U.S., Amendment IX).]

6. [The powers not delegated to the Confederate States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people thereof (U.S. Amendment).]

Article VII. 1. [For ratification of Constitution it is sufficient that Conventions of 5 States agree (U.S., VII, 1).]

2. [When 5 States shall have ratified this Constitution, in the manner before specified, the Congress under the Provisional Government shall then prescribe time for electing President and for meeting of Electoral College, for counting votes and inaugurating the President. They shall also prescribe the time for holding the first election of members of Congress and for its assembly. Meanwhile this Congress shall continue.]

THE QUEBEC RESOLUTIONS PRECEDENT TO THE CONFEDERATION OF BRITISH NORTH AMERICA. 10 OCTOBER, 1864.

["Debates in the Parliament of Canada on the Confederation of the British North American Provinces," Quebec, 1865. Printed by Order of the Legislature, pp. 1027-1032.]

[RESOLUTIONS adopted at Quebec, 10th October, 1864, at a Conference of delegates from Upper and Lower Canada, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.]

I. The best interests and present and future prosperity of British North America will be promoted by a Federal Union under the Crown of Great Britain, provided such union can be effected on principles just to the several Provinces.

II. In the Federation of the British North American Provinces, the system of Government best adapted under existing circumstances to protect the diversified interests of the several

Provinces, and secure efficiency, harmony and permanency in the working of the Union, would be a General Government charged with matters of common interest to the whole country, and Local Governments for each of the Canadas, and for the Provinces of Nova Scotia, New Brunswick and Prince Edward Island, charged with the control of local matters in their respective sections,—provision being made for the admission into the Union, on equitable terms, of Newfoundland, the North-West Territory, British Columbia and Vancouver.

III. In framing a Constitution for the General Government, the Conference, with a view to the perpetuation of our connexion with the Mother Country, and the promotion of the best interests of the people of these Provinces, desire to follow the model of the British Constitution, so far as our circumstances will permit.

IV. The Executive Authority or Government shall be vested in the Sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well-understood principles of the British Constitution, by the Sovereign personally, or by the Representative of the Sovereign duly authorised.

V. The Sovereign or Representative of the Sovereign shall be Commander-in-Chief of the Land and Naval Militia Forces.

VI. There shall be a General Legislature or Parliament for the Federated Provinces, composed of a Legislative Council and a House of Commons.

VII. For the purpose of forming the Legislative Council, the Federated Provinces shall be considered as consisting of three divisions: 1st, Upper Canada; 2nd, Lower Canada; 3rd, Nova Scotia, New Brunswick and Prince Edward Island; each division with an equal representation in the Legislative Council.

VIII. Upper Canada shall be represented in the Legislative Council by 24 members, Lower Canada by 24 members, and the three Maritime Provinces by 24 members, of which Nova Scotia shall have 10, New Brunswick 10, and Prince Edward Island 4 members.

IX. The Colony of Newfoundland shall be entitled to enter the proposed Union with a representation in the Legislative Council of 4 members.

X. The North-West Territory, British Columbia and Vancouver shall be admitted into the Union on such terms and conditions as the Parliament of the Federated Provinces shall deem equitable, and as shall receive the assent of Her Majesty; and in the case of the Province of British Columbia or Vancouver, as shall be agreed to by the Legislature of such Province.

XI. The members of the Legislative Council shall be appointed by the Crown under the Great Seal of the General Government, and shall hold office during life; if any Legislative Councillor shall, for two consecutive sessions of Parliament, fail to give his attendance in the said Council, his seat shall thereby become vacant.

XII. The members of the Legislative Council shall be British subjects by birth or naturalization, of the full age of thirty years, shall possess a continuous real property qualification of four thousand dollars over and above all incumbrances, and shall be and continue worth that sum over and above their debts and liabilities; but in the case of Newfoundland and Prince Edward Island, the property may be either real or personal.

XIII. If any question shall arise as to the qualification of a Legislative Councillor, the same shall be determined by the Council.

XIV. The first selection of the members of the Legislative Council shall be made, except as regards Prince Edward Island, from the Legislative Councils of the various Provinces so far as a sufficient number be found qualified and willing to serve; such members shall be appointed by the Crown at the recommendation of the General Executive Government, upon the nomination of the respective Local Governments, and in such nomination due regard shall be had to the claims of the members of the Legislative Council of the opposition in each Province, so that all political parties may, as nearly as possible, be fairly represented.

XV. The Speaker of the Legislative Council (unless otherwise provided by Parliament) shall be appointed by the Crown from among the members of the Legislative Council, and shall hold office during pleasure, and shall only be entitled to a casting vote on an equality of votes.

XVI. Each of the twenty-four Legislative Councillors, representing Lower Canada in the Legislative Council of the General Legislature shall be appointed to represent one of the twenty-four Electoral Divisions mentioned in Schedule A of Chapter first of the Consolidated Statutes of Canada, and such Councillor shall reside or possess his qualification in the Division he is appointed to represent.

XVII. The basis of Representation in the House of Commons shall be Population, as determined by the Official Census every ten years; and the number of members at first shall be 194, distributed as follows:

Upper Canada	82
Lower Canada	65
Nova Scotia	19
New Brunswick	15
Newfoundland	8
Prince Edward Island	5

XVIII. Until the Official Census of 1871 has been made up, there shall be no change in the number of representatives from the several sections.

XIX. Immediately after the completion of the Census of 1871, and immediately after every decennial census thereafter, the Representation from each section in the House of Commons shall be readjusted on the basis of Population.

XX. For the purpose of such readjustments, Lower Canada shall always be assigned sixty-five members, and each of the other sections shall, at each readjustment, receive, for the ten years then next succeeding, the number of members to which it will be entitled on the same ratio of Representation to Population as Lower Canada will enjoy according to the Census last taken, by having sixty-five Members.

XXI. No reduction shall be made in the number of members returned by any section, unless its population shall have decreased, relatively to the population of the whole Union, to the extent of five *per centum*.

XXII. In computing at each decennial period the number of members to which each section is entitled, no fractional parts shall be considered, unless when exceeding one-half the number

entitling to a member, in which case a member shall be given for each such fractional part.

XXIII. The Legislature of each Province shall divide such Province into the proper number of constituencies, and define the boundaries of each of them.

XXIV. The Local Legislature of each Province may, from time to time, alter the Electoral Districts for the purposes of Representation in such Local Legislature, and distribute the Representatives to which the Province is entitled in such Local Legislature, in any manner such Legislature may see fit.

XXV. The number of Members may at any time be increased by the General Parliament,—regard being had to the proportionate rights then existing.

XXVI. Until provisions are made by the General Parliament, all the laws which, at the date of the Proclamation constituting the Union, are in force in the Provinces respectively, relating to the qualification and disqualification of any person to be elected, or to sit or vote as a Member of the Assembly in the said Provinces respectively, and relating to the qualification or disqualification of voters, and to the oaths to be taken by voters, and to Returning Officers and their powers and duties,—and relating to the proceedings at Elections, and to the period during which such elections may be continued,—and relating to the Trial of Controverted Elections, and the proceedings incident thereto,—and relating to the vacating of seats of Members, and to the issuing and execution of new Writs, in case of any seat being vacated otherwise than by a dissolution—shall respectively apply to elections of Members to serve in the House of Commons, for places situate in those Provinces respectively.

XXVII. Every House of Commons shall continue for five years from the day of the return of the writs choosing the same, and no longer; subject, nevertheless, to be sooner prorogued or dissolved by the Governor.

XXVIII. There shall be a Session of the General Parliament once, at least, in every year, so that a period of twelve calendar months shall not intervene between the last sitting of the General Parliament in one Session, and the first sitting thereof in the next Session.

XXIX. The General Parliament shall have power to make Laws for the peace, welfare and good government of the Federated Provinces (saving the Sovereignty of England), and especially laws respecting the following subjects:—

1. The Public Debt and Property.
2. The regulation of Trade and Commerce.
3. The imposition or regulation of Duties of Customs on Imports and Exports,—except on Exports of Timber, Logs, Masts, Spars, Deals and Sawn Lumber from New Brunswick, and of Coal and other Minerals from Nova Scotia.
4. The imposition or regulation of Excise Duties.
5. The raising of money by all or any other modes or systems of Taxation.
6. The borrowing of money on the Public Credit.
7. Postal Service.
8. Lines of Steam or other Ships, Railways, Canals and other works, connecting any two or more of the Provinces together, or extending beyond the limits of any Province.
9. Lines of Steamships between the Federated Provinces and other Countries.
10. Telegraph Communication and the Incorporation of Telegraph Companies.
11. All such works as shall, although lying wholly within any Province, be specially declared by the Acts authorizing them to be for the general advantage.
12. The Census.
13. Militia—Military and Naval Service and Defence.
14. Beacons, Buoys and Light Houses.
15. Navigation and Shipping.
16. Quarantine.
17. Sea Coast and Inland Fisheries.
18. Ferries between any Provinces and a Foreign country, or between any two Provinces.
19. Currency and Coinage.
20. Banking—Incorporation of Banks, and the issue of Paper Money.

21. Savings Banks.
22. Weights and Measures.
23. Bills of Exchange and Promissory Notes.
24. Interest.
25. Legal Tender.
26. Bankruptcy and Insolvency.
27. Patents of Invention and Discovery.
28. Copy Rights.
29. Indians and Lands reserved for the Indians.
30. Naturalization and Aliens.
31. Marriage and Divorce.
32. The Criminal Law, excepting the Constitution of Courts of Criminal Jurisdiction, but including the procedure in Criminal matters.
33. Rendering uniform all or any of the laws relative to property and civil rights in Upper Canada, Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island, and rendering uniform the procedure of all or any of the Courts in these Provinces; but any Statute for this purpose shall have no force or authority in any Province until sanctioned by the Legislature thereof.
34. The establishment of a General Court of Appeal for the Federated Provinces.
35. Immigration.
36. Agriculture.
37. And generally respecting all matters of a general character, not specially and exclusively reserved for the Local Governments and Legislatures.

XXX. The General Government and Parliament shall have all powers necessary or proper for performing the obligations of the Federated Provinces, as part of the British Empire, to foreign countries, arising under Treaties between Great Britain and such countries.

XXXI. The General Parliament may also, from time to time, establish additional Courts, and the General Government may appoint Judges and officers thereof, when the same shall appear necessary or for the public advantage, in order to the due execution of the laws of Parliament.

XXXII. All Courts, Judges, and officers of the several Provinces shall aid, assist and obey the General Government in the exercise of its rights and powers, and for such purposes shall be held to be Courts, Judges and officers of the General Government.

XXXIII. The General Government shall appoint and pay the Judges of the Superior Courts in each Province, and of the County Courts in Upper Canada, and Parliament shall fix their salaries.

XXXIV. Until the consolidation of the Laws of Upper Canada, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island, the Judges of these Provinces, appointed by the General Government, shall be selected from their respective Bars.

XXXV. The Judges of the Courts of Lower Canada shall be selected from the Bar of Lower Canada.

XXXVI. The Judges of the Court of Admiralty now receiving salaries, shall be paid by the General Government.

XXXVII. The Judges of the Superior Courts shall hold their offices during good behaviour, and shall be removable only on the Address of both Houses of Parliament.

XXXVIII. For each of the Provinces there shall be an Executive officer, styled the Lieutenant-Governor, who shall be appointed by the Governor General in Council, under the Great Seal of the Federated Provinces, during pleasure : such pleasure not to be exercised before the expiration of the first five years, except for cause : such cause to be communicated in writing to the Lieutenant-Governor immediately after the exercise of the pleasure as aforesaid, and also by Message to both Houses of Parliament, within the first week of the first session afterwards.

XXXIX. The Lieutenant-Governor of each Province shall be paid by the General Government.

XL. In undertaking to pay the salaries of the Lieutenant-Governors, the Conference does not desire to prejudice the claim of Prince Edward Island upon the Imperial Government for the amount now paid for the salary of the Lieutenant-Governor thereof.

XLI. The Local Government and Legislature of each

Province shall be constructed in such manner as the existing Legislature of each such Province shall provide.

XLII. The Local Legislature shall have power to alter or amend their Constitution from time to time.

XLIII. The Local Legislatures shall have power to make laws respecting the following subjects:

1. Direct taxation, and in New Brunswick the imposition of duties on the export of Timber, Logs, Masts, Spars, Deals and Sawn Lumber; and in Nova Scotia, of Coals and other Minerals.
2. Borrowing money on the credit of the Province.
3. The establishment and tenure of local offices, and the appointment and payment of local officers.
4. Agriculture.
5. Immigration.
6. Education; saving the rights and privileges which the Protestant or Catholic minority in both Canadas may possess as to their denominational schools, at the time when the union goes into operation.
7. The sale and management of Public Lands, excepting lands belonging to the General Government.
8. Sea Coast and Inland Fisheries.
9. The establishment, maintenance and management of Penitentiaries, and Public and Reformatory Prisons.
10. The establishment, maintenance and management of Hospitals, Asylums, Charities and Eleemosynary Institutions.
11. Municipal Institutions.
12. Shop, Saloon, Tavern, Auctioneer and other Licences.
13. Local Works.
14. The incorporation of Private or Local Companies, except such as relate to matters assigned to the General Parliament.
15. Property and Civil Rights, excepting those portions thereof assigned to the General Parliament.
16. Inflicting punishment by fine, penalties, imprisonment or otherwise, for the breach of laws passed in relation to any subject within their jurisdiction.

17. The Administration of Justice, including the constitution, maintenance and organisation of the Courts, both of Civil and Criminal jurisdiction, and including also the procedure in civil matters.
18. And generally all matters of a private or local nature, not assigned to the General Parliament.

XLIV. The power of respiting, reprieving, and pardoning prisoners convicted of crimes, and of commuting and remitting of sentences in whole or in part, which belongs of right to the Crown, shall be administered by the Lieutenant-Governor of each Province in Council, subject to any instructions he may, from time to time, receive from the General Government, and subject to any provisions that may be made in this behalf by the General Parliament.

XLV. In regard to all subjects over which jurisdiction belongs to both the General and Local Legislatures, the laws of the General Parliament shall control and supersede those made by the Local Legislature, and the latter shall be void so far as they are repugnant to, or inconsistent with, the former.

XLVI. Both the English and French languages may be employed in the General Parliament and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal Courts and in the Courts of Lower Canada.

XLVII. No lands or property belonging to the General or Local Governments shall be liable to taxation.

XLVIII. All Bills for appropriating any part of the Public Revenue, or for imposing any new Tax or Impost, shall originate in the House of Commons or House of Assembly, as the case may be.

XLIX. The House of Commons or House of Assembly shall not originate or pass any Vote, Resolution, Address, or Bill for the appropriation of any part of the Public Revenue, or of any Tax or Impost to any purpose, not first recommended by Message of the Governor General or the Lieutenant-Governor, as the case may be, during the Session in which such Vote, Resolution, Address or Bill is passed.

L. Any Bill of the General Parliament may be reserved in the usual manner for Her Majesty's assent, and any Bill of the

Local Legislatures may, in like manner, be reserved for the consideration of the Governor General.

LI. Any Bill passed by the General Parliament shall be subject to disallowance by Her Majesty within two years, as in the case of Bills passed by the Legislatures of the said Provinces hitherto; and, in like manner, any Bill passed by a Local Legislature shall be subject to disallowance by the Governor General within one year after the passing thereof.

LII. The Seat of Government of the Federated Provinces shall be Ottawa, subject to the Royal Prerogative.

LIII. Subject to any future action of the respective Local Governments, the Seat of the Local Government in Upper Canada shall be Toronto; of Lower Canada, Quebec; and the Seats of the Local Governments in the other Provinces shall be as at present.

LIV. All Stocks, Cash, Bankers' Balances and Securities for money belonging to each Province at the time of the Union, except as hereinafter mentioned, shall belong to the General Government.

LV. The following Public Works and Property of each Province shall belong to the General Government, to wit:—

1. Canals.
2. Public Harbours.
3. Light Houses and Piers.
4. Steamboats, Dredges and Public Vessels.
5. River and Lake Improvements.
6. Railway and Railway Stocks, Mortgages and other debts due by Railway Companies.
7. Military Roads.
8. Custom Houses, Post Offices and other Public Buildings, except such as may be set aside by the General Government for the use of the Local Legislatures and Governments.
9. Property transferred by the Imperial Government and known as Ordnance Property.
10. Armories, Drill Sheds, Military Clothing and Munitions of War; and
11. Lands set apart for public purposes.

LVI. All Lands, Mines, Minerals and Royalties vested in Her Majesty in the Provinces of Upper Canada, Lower Canada, Nova Scotia, New Brunswick and Prince Edward Island, for the use of such Provinces, shall belong to the Local Government of the territory in which the same are so situate; subject to any trusts that may exist in respect to any of such lands or to any interest of other persons in respect of the same.

LVII. All sums due from purchasers or lessees of such lands, mines or minerals at the time of the Union, shall also belong to the Local Governments.

LVIII. All Assets connected with such portions of the Public Debt of any Province as are assumed by the Local Governments, shall also belong to those Governments respectively.

LIX. The several Provinces shall retain all other Public Property therein, subject to the right of the General Government to assume any Lands or Public Property required for Fortifications or the Defence of the Country.

LX. The General Government shall assume all the Debts and Liabilities of each Province.

LXI. The Debt of Canada, not specially assumed by Upper and Lower Canada respectively, shall not exceed, at the time of the Union, $62,500,000; Nova Scotia shall enter the Union with a debt not exceeding $8,000,000; and New Brunswick with a debt not exceeding $7,000,000.

LXII. In case Nova Scotia or New Brunswick do not incur liabilities beyond those for which their Governments are now bound, and which shall make their debts, at the date of Union, less than $8,000,000 and $7,000,000 respectively, they shall be entitled to interest at five per cent. on the amount not so incurred, in like manner as is hereinafter provided for Newfoundland and Prince Edward Island; the foregoing resolution being in no respect intended to limit the powers given to the respective Governments of those Provinces by Legislative authority, but only to limit the maximum amount of charge to be assumed by the General Government; provided always, that the powers so conferred by the respective Legislatures shall be exercised within five years from this date, or the same shall then elapse.

LXIII. Newfoundland and Prince Edward Island, not having incurred debts equal to those of the other Provinces, shall be entitled to receive, by half-yearly payments, in advance, from the General Government, the interest at five per cent. on the difference between the actual amount of their respective debts at the time of the Union, and the average amount of indebtedness per head of the population of Canada, Nova Scotia and New Brunswick.

LXIV. In consideration of the transfer to the General Parliament of the powers of taxation, an annual grant in aid of each Province shall be made, equal to eighty cents per head of the population, as established by the Census of 1861; the population of Newfoundland being estimated at 130,000. Such aid shall be in full settlement of all future demands upon the General Government for local purposes, and shall be paid half-yearly in advance to each Province.

LXV. The position of New Brunswick being such as to entail large immediate charges upon her local revenues, it is agreed that for the period of ten years from the time when the Union takes effect, an additional allowance of $63,000 *per annum*, shall be made to that Province. But that so long as the liability of that Province remains under $7,000,000, a deduction equal to the interest on such deficiency shall be made from the $63,000.

LXVI. In consideration of the surrender to the General Government, by Newfoundland, of all its rights in Mines and Minerals, and of all the ungranted and unoccupied Lands of the Crown, it is agreed that the sum of $150,000 shall each year be paid to that Province by semi-annual payments; provided that that Colony shall retain the right of opening, constructing and controlling roads and bridges through any of the said lands, subject to any laws which the General Parliament may pass in respect of the same.

LXVII. All engagements that may, before the Union, be entered into with the Imperial Government for the defence of the country, shall be assumed by the General Government.

LXVIII. The General Government shall secure, without delay, the completion of the Intercolonial Railway from

Riviére du Loup, through New Brunswick, to Truro in Nova Scotia.

LXIX. The communications with the North-Western Territory, and the improvements required for the development of the trade of the Great West with the seaboard, are regarded by this Conference as subjects of the highest importance to the Federated Provinces, and shall be prosecuted at the earliest possible period that the state of finances will permit.

LXX. The sanction of the Imperial and Local Parliaments shall be sought for the Union of the Provinces, on the principles adopted by the Conference.

LXXI. That Her Majesty the Queen be solicited to determine the rank and name of the Federated Provinces.

LXXII. The Proceedings of the Conference shall be authenticated by the signatures of the Delegates, and submitted by each Delegation to its own Government, and the Chairman is authorized to submit a copy to the Governor General for transmission to the Secretary of State for the Colonies.

SPEECH OF ATTORNEY-GENERAL MACDONALD ON THE CONFEDERATION OF BRITISH NORTH AMERICA. 6 FEBRUARY, 1865.

["Debates in the Parliament of Canada on the Confederation of the British North American Provinces," Quebec, 1865. Printed by Order of the Legislature, pp. 25-45.]

LEGISLATIVE ASSEMBLY,
Monday, February 6, 1865.

ATTORNEY GENERAL MACDONALD: . . . I have had the honour of being charged, on behalf of the Government, to submit a scheme for the Confederation of all the British North American Provinces—a scheme which has been received, I am glad to say, with general, if not universal, approbation in Canada. The scheme, as propounded through the press, has received almost no opposition. While there may be occasionally, here and there, expressions of dissent from some of the details, yet the scheme as a whole has met with almost universal approval, and the Government has the greatest satisfaction in presenting it to this House. This subject, which now absorbs the attention of the people of

Canada, and of the whole of British North America, is not a new one. For years it has more or less attracted the attention of every statesman and politician in these provinces, and has been looked upon by many far-seeing politicians as being eventually the means of deciding and settling very many of the vexed questions which have retarded the prosperity of the colonies as a whole, and particularly the prosperity of Canada. The subject was pressed upon the public attention by a great many writers and politicians; but I believe the attention of the Legislature was first formally called to it by my honorable friend the Minister of Finance.[1] Some years ago, in an elaborate speech, my hon. friend, while an independent member of Parliament, before being connected with any Government, pressed his views on the Legislature at great length and with his usual force. But the subject was not taken up by any party as a branch of their policy, until the formation of the Cartier-Macdonald Administration in 1858, when the Confederation of the colonies was announced as one of the measures which they pledged themselves to attempt, if possible, to bring to a satisfactory conclusion. In pursuance of that promise, the letter or despatch, which has been so much and so freely commented upon in the press and in this House, was addressed by three of the members of that Administration to the Colonial Office. The subject, however, though looked upon with favor by the country, and though there were no distinct expressions of opposition to it from any party, did not begin to assume its present proportions until last session. Then, men of all parties and all shades of politics became alarmed at the aspect of affairs. They found that such was the opposition between the two sections of the province, such was the danger of impending anarchy, in consequence of the irreconcilable differences of opinion, with respect to representation by population, between Upper and Lower Canada, that unless some solution of the difficulty was arrived at, we would suffer under a succession of weak governments,—weak in numerical support, weak in force, and weak in power of doing good. All were alarmed at this state of affairs. We had election after election,—we had ministry after ministry,—with

[1] Mr. A. T. Galt.

the same result. Parties were so equally balanced, that the vote of one member might decide the fate of the Administration, and the course of legislation for a year or a series of years. This condition of things was well calculated to arouse the earnest consideration of every lover of his country, and I am happy to say it had that effect. None were more impressed by this momentous state of affairs, and the grave apprehensions that existed of a state of anarchy destroying our credit, destroying our prosperity, destroying our progress, than were the members of this present House; and the leading statesmen on both sides seemed to have come to the common conclusion, that some step must be taken to relieve the country from the dead-lock and impending anarchy that hung over us. With that view, my colleague, the President of the Council,[1] made a motion founded on the despatch addressed to the Colonial Minister, to which I have referred, and a committee was struck, composed of gentlemen of both sides of the House, of all shades of political opinion, without any reference to whether they were supporters of the Administration of the day or belonged to the Opposition, for the purpose of taking into calm and full deliberation the evils which threatened the future of Canada. That motion of my honorable friend resulted most happily. The committee, by a wise provision,—and in order that each member of the committee might have an opportunity of expressing his opinions without being in any way compromised before the public, or with his party, in regard either to his political friends or to his political foes,—agreed that the discussion should be freely entered upon without reference to the political antecedents of any of them, and that they should sit with closed doors, so that they might be able to approach the subject frankly and in a spirit of compromise. The committee included most of the leading members of the House,—I had the honor myself to be one of the number,—and the result was that there was found an ardent desire—a creditable desire, I must say,—displayed by all the members of the committee to approach the subject honestly, and to attempt to work out some solution which might relieve Canada from the evils under which she labored. The report of that committee was laid before the House, and then came the political action of the

[1] Mr. George Brown.

leading men of the two parties in this House, which ended in the formation of the present Government. The principle upon which that Government was formed has been announced, and is known to all. It was formed for the very purpose of carrying out the object which has now received to a certain degree its completion, by the resolutions I have had the honor to place in your hands. As has been stated, it was not without a great deal of difficulty and reluctance that that Government was formed. The gentlemen who compose this Government had for many years been engaged in political hostilities to such an extent that it affected even their social relations. But the crisis was great, the danger was imminent, and the gentlemen who now form the present Administration found it to be their duty to lay aside all personal feelings, to sacrifice in some degree their position, and even to run the risk of having their motives impugned, for the sake of arriving at some conclusion that would be satisfactory to the country in general. The present resolutions were the result. And, as I said before, I am proud to believe that the country has sanctioned, as I trust that the representatives of the people in this House will sanction, the scheme which is now submitted for the future government of British North America. Everything seemed to favor the project, and everything seemed to show that the present was the time, if ever, when this great union between all Her Majesty's subjects dwelling in British North America, should be carried out. When the Government was formed, it was felt that the difficulties in the way of effecting a union between all the British North American Colonies were great—so great as almost, in the opinion of many, to make it hopeless. And with that view it was the policy of the Government, if they could not succeed in procuring a union between all the British North American Colonies, to attempt to free the country from the dead-lock in which we were placed in Upper and Lower Canada, in consequence of the difference of opinion between the two sections, by having a severance to a certain extent of the present union between the two provinces of Upper and Lower Canada, and the substitution of a Federal Union between them. Most of us, however, I may say, all of us, were agreed—and I believe every thinking man will agree—as to the expediency of effecting a union between all the provinces, and

the superiority of such a design, if it were only practicable, over the smaller scheme of having a Federal Union between Upper and Lower Canada alone. By a happy concurrence of events, the time came when that proposition could be made with a hope of success. By a fortunate coincidence the desire for union existed in the Lower Provinces, and a feeling of the necessity of strengthening themselves by collecting together the scattered colonies on the sea-board, had induced them to form a convention of their own for the purpose of effecting a union of the Maritime Provinces of Nova Scotia, New Brunswick and Prince Edward Island, the legislatures of those colonies having formally authorized their respective governments to send a delegation to Prince Edward Island for the purpose of attempting to form a union of some kind. Whether the union should be federal or legislative was not then indicated, but a union of some kind was sought for the purpose of making of themselves one people instead of three. We, ascertaining that they were about to take such a step, and knowing that if we allowed the occasion to pass, if they did indeed break up all their present political organizations and form a new one, it could not be expected that they would again readily destroy the new organization which they had formed,—the union of the three provinces on the sea-board,—and form another with Canada. Knowing this, we availed ourselves of the opportunity, and asked if they would receive a deputation from Canada, who would go to meet them at Charlottetown, for the purpose of laying before them the advantages of a larger and more extensive union, by the junction of all the provinces in one great government under our common Sovereign. They at once kindly consented to receive and hear us. They did receive us cordially and generously, and asked us to lay our views before them. We did so at some length, and so satisfactory to them were the reasons we gave; so clearly, in their opinion, did we show the advantages of the greater union over the lesser, that they at once set aside their own project, and joined heart and hand with us in entering into the larger scheme, and trying to form, as far as they and we could, a great nation and a strong government. Encouraged by this arrangement, which, however, was altogether unofficial and unauthorized, we returned to Quebec, and then the Government of

Canada invited the several governments of the sister colonies to send a deputation here from each of them for the purpose of considering the question, with something like authority from their respective governments. The result was, that when we met here on the 10th of October, on the first day on which we assembled, after the full and free discussions which had taken place at Charlottetown, the first resolution now before this House was passed unanimously, being received with acclamation, as in the opinion of every one who heard it, a proposition which ought to receive, and would receive, the sanction of each government and each people. The resolution is, "That the best interests and present and future prosperity of British North America will be promoted by a Federal Union under the Crown of Great Britain, provided such union can be effected on principles just to the several provinces." It seemed to all the statesmen assembled—and there are great statesmen in the Lower Provinces, men who would do honor to any government and to any legislature of any free country enjoying representative institutions—it was clear to them all that the best interests and present and future prosperity of British North America would be promoted by a Federal Union under the Crown of Great Britain. And it seems to me, as to them, and I think it will so appear to the people of this country, that, if we wish to be a great people; if we wish to form—using the expression which was sneered at the other evening—a great nationality, commanding the respect of the world, able to hold our own against all opponents, and to defend those institutions we prize: if we wish to have one system of government, and to establish a commercial union, with unrestricted free trade, between people of the five provinces, belonging, as they do, to the same nation, obeying the same Sovereign, owning the same allegiance, and being, for the most part, of the same blood and lineage: if we wish to be able to afford to each other the means of mutual defence and support against aggression and attack—this can only be obtained by a union of some kind between the scattered and weak boundaries composing the British North American Provinces.

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There were . . . only three modes that were at all suggested, by which the deadlock in our affairs, the anarchy we

dreaded, and the evils which retarded our prosperity, could be met or averted. One was the dissolution of the union between Upper and Lower Canada, leaving them as they were before the union of 1841. I believe that that proposition, by itself had no supporters. It was felt by everyone that, although it was a course that would do away with the sectional difficulties which existed,—though it would remove the pressure on the part of the people of Upper Canada for representation based upon population,—and the jealousy of the people of Lower Canada lest their institutions should be attacked and prejudiced by that principle in our representation; yet it was felt by every thinking man in the province that it would be a retrograde step, which would throw back the country to nearly the same position as it occupied before the union,—that it would lower the credit enjoyed by United Canada,—that it would be the breaking up of the connexion which had existed for nearly a quarter of a century, and, under which, although it had not been completely successful, and had not allayed altogether the local jealousies that had their root in circumstances which arose before the Union, our province, as a whole, had nevertheless prospered and increased. It was felt that a dissolution of the union would have destroyed all the credit that we had gained by being a united province, and would have left us two weak and ineffective governments, instead of one powerful and united people.

The next mode suggested was the granting of representation by population. Now, we all know the manner in which that question was and is regarded by Lower Canada; that while in Upper Canada the desire and cry for it was daily augmenting, the resistance to it in Lower Canada was proportionably increasing in strength. Still, if some such means of relieving us from the sectional jealousies which existed between the two Canadas, if some such solution of the difficulties as Confederation had not been found, the representation by population must eventually have been carried; no matter though it might have been felt in Lower Canada, as being a breach of the Treaty of Union, no matter how much it might have been felt by the Lower Canadians that it would sacrifice their local interests, it is

certain that in the progress of events representation by population would have been carried; and, had it been carried — I speak here my own individual sentiments—I do not think it would have been for the interest of Upper Canada. For though Upper Canada would have felt that it had received what it claimed as a right, and had succeeded in establishing its right, yet it would have left the Lower Province with a sullen feeling of injury and injustice. The Lower Canadians would not have worked cheerfully under such a change of system, but would have ceased to be what they are now—a nationality, with representatives in Parliament, governed by general principles, and dividing according to their political opinions—and would have been in great danger of becoming a faction, forgetful of national obligations, and only actuated by a desire to defend their own sectional interests, their own laws, and their own institutions.

The third and only means of solution for our difficulties was the junction of the provinces either in a Federal or a Legislative Union. Now, as regards the comparative advantages of a Legislative and a Federal Union, I have never hesitated to state my own opinions. I have again and again stated in the House, that, if practicable, I thought a Legislative Union would be preferable. I have always contended that if we could agree to have one government and one parliament, legislating for the whole of these peoples, it would be the best, the cheapest, the most vigorous, and the strongest system of government we could adopt. But, on looking at the subject in the Conference, and discussing the matter as we did, most unreservedly, and with a desire to arrive at a satisfactory conclusion, we found that such a system was impracticable. In the first place, it would not meet the assent of the people of Lower Canada, because they felt that in their peculiar position—being in a minority, with a different language, nationality and religion from the majority,—in case of a junction with the other provinces, their institutions and their laws might be assailed, and their ancestral associations, on which they prided themselves, attacked and prejudiced; it was found that any proposition which involved the absorption of the individuality of Lower Canada—if I may use the expression

—would not be received with favor by her people. We found too, that though their people speak the same language and enjoy the same system of law as the people of Upper Canada, a system founded on the common law of England, there was as great a disinclination on the part of the various Maritime Provinces to lose their individuality, as separate political organizations, as we observed in the case of Lower Canada herself. Therefore, we were forced to the conclusion that we must either abandon the idea of union altogether, or devise a system of union in which the separate provincial organizations would be in some degree preserved. So that those who were, like myself, in favor of a Legislative Union, were obliged to modify their views and accept the project of a Federal Union as the only scheme practicable, even for the Maritime Provinces. Because, although the law of those provinces is founded on the common law of England, yet every one of them has a large amount of law of its own—colonial law framed by itself, and affecting every relation of life, such as the laws of property, municipal and assessment laws; laws relating to the liberty of the subject, and to all the great interests contemplated in legislation; we found, in short, that the statutory law of the different provinces was so varied and diversified that it was almost impossible to weld them into a Legislative Union at once. . . . I am happy to state—and indeed it appears on the face of the resolutions themselves—that, as regards the Lower Provinces, a great desire was evinced for the final assimilation of our laws. One of the resolutions provides that an attempt shall be made to assimilate the laws of the Maritime Provinces and those of Upper Canada, for the purpose of eventually establishing one body of statutory law, founded on the common law of England, the parent of the laws of all those provinces.

One great objection made to a Federal Union was the expense of an increased number of legislatures. I will not enter at any length into that subject, because my honorable friends, the Finance Minister and the President of the Council . . . will, I think, be able to show that the expenses under a Federal Union will not be greater than those under the existing system of separate governments and legislatures. . . . In the proposed

Constitution all matters of general interest are to be dealt with by the General Legislature; while the local legislatures will deal with matters of local interest, which do not affect the Confederation as a whole, but are of the greatest importance to their particular sections. By such a division of labor the sittings of the General Legislature would not be so protracted as even those of Canada alone. And so with the local legislatures, their attention being confined to subjects pertaining to their own sections, their sessions would be shorter and less expensive. Then, when we consider the enormous saving that will be effected in the administration of affairs by one General Government—when we reflect that each of the five colonies has a government of its own with a complete establishment of public departments and all the machinery required for the transaction of the business of the country—that each has a separate executive, judicial and militia system—that each province has a separate ministry, including a Minister of Militia, with a complete Adjutant General's Department—that each has a Finance Minister with a full Customs and Excise Staff—that each Colony has as large and complete an administrative organization, with as many Executive officers as the General Government will have—we can well understand the enormous saving that will result from a union of all the colonies, from their having but one head and one central system.

We, in Canada, already know something of the advantages and disadvantages of a Federal Union. Although we have nominally a Legislative Union in Canada—although we sit in one Parliament, supposed constitutionally to represent the people without regard to sections or localities, yet we know, as a matter of fact, that since the union in 1841, we have had a Federal Union; that in matters affecting Upper Canada solely, members from that section claimed and generally exercised the right of exclusive legislation, while members from Lower Canada legislated in matters affecting only their own section. . . .

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If we are not blind to our present position, we must see the hazardous situation in which all the great interests of Canada stand in respect to the United States. I am no alarmist. I do

not believe in the prospect of immediate war. I believe that the common sense of the two nations will prevent a war; still we cannot trust to probabilities. The Government and Legislature would be wanting in their duty to the people if they ran any risk. We know that the United States at this moment are engaged in a war of enormous dimensions—that the occasion of a war with Great Britain has again and again arisen, and may at any time in the future again arise. We cannot foresee what may be the result; we cannot say but that the two nations may drift into a war as other nations have done before. It would then be too late when war had commenced to think of measures for strengthening ourselves, or to begin negotiations for a union with the sister provinces. At this moment, in consequence of the ill-feeling which has arisen between England and the United States—a feeling of which Canada was not the cause—in consequence of the irritation which now exists, owing to the unhappy state of affairs on this continent, the Reciprocity Treaty, it seems probable, is about to be brought to an end—our trade is hampered by the passport system, and at any moment we may be deprived of permission to carry our goods through United States channels —the bonded goods system may be done away with, and the winter trade through the United States put an end to. Our merchants may be obliged to return to the old system of bringing in during the summer months the supplies for the whole year. Ourselves already threatened, our trade interrupted, our intercourse, political and commercial, destroyed, if we do not take warning now when we have the opportunity, and while one avenue is threatened to be closed, open another by taking advantage of the present arrangement and the desire of the Lower Provinces to draw closer the alliance between us, we may suffer commercial and political disadvantages it may take long for us to overcome.

The Conference having come to the conclusion that a legislative union, pure and simple, was impracticable, our next attempt was to form a government upon federal principles, which would give to the General Government the strength of a legislative and administrative union, while at the same time it preserved that liberty of action for the different sections which is allowed by a

Federal Union. And I am strong in the belief—that we have hit upon the happy medium in those resolutions, and that we have formed a scheme of government which unites the advantages of both, giving us the strength of a legislative union and the sectional freedom of a federal union, with protection to local interests. In doing so we had the advantage of the experience of the United States. It is the fashion now to enlarge on the defects of the Constitution of the United States, but I am not one of those who look upon it as a failure. I think and believe that it is one of the most skilful works which human intelligence ever created; it is one of the most perfect organizations that ever governed a free people. To say that it has some defects is but to say that it is not the work of Omniscience, but of human intellects. We are happily situated in having had the opportunity of watching its operation, seeing its working from its infancy till now. It was in the main formed on the model of the Constitution of Great Britain, adapted to the circumstances of a new country, and was perhaps the only practicable system that could have been adopted under the circumstances existing at the time of its formation. We can now take advantage of the experience of the last seventy-eight years, during which that Constitution has existed, and I am strongly of the belief that we have, in a great measure, avoided in this system which we propose for the adoption of the people of Canada, the defects which time and events have shown to exist in the American Constitution.

In the first place, by a resolution which meets with the universal approval of the people of this country, we have provided that for all time to come, so far as we can legislate for the future, we shall have as the head of the executive power, the Sovereign of Great Britain. No one can look into futurity and say what will be the destiny of this country. Changes come over nations and peoples in the course of ages. But, so far as we can legislate, we provide that, for all time to come, the Sovereign of Great Britain shall be the Sovereign of British North America. By adhering to the monarchical principle, we avoid one defect inherent in the Constitution of the United States. By the election of the President by a majority and for a short period, he never is the sovereign and chief of the nation.

He is never looked up to by the whole people as the head and front of the nation. He is at best but the successful leader of a party. This defect is all the greater on account of the practice of re-election. During his first term of office, he is employed in taking steps to secure his own re-election, and for his party a continuance of power. We avoid this by adhering to the monarchical principle—the Sovereign whom you respect and love. I believe that it is of the utmost importance to have that principle recognized, so that we shall have a Sovereign who is placed above the region of party—to whom all parties look up —who is not elevated by the action of one party nor depressed by the action of another, who is the common head and sovereign of all.

In the Constitution we propose to continue the system of Responsible Government, which has existed in this province since 1841, and which has long obtained in the Mother Country. This is a feature of our Constitution as we have it now, and as we shall have it in the Federation, in which, I think, we avoid one of the great defects in the Constitution of the United States. There the President, during his term of office, is in a great measure a despot, a one-man power, with the command of the naval and military forces—with an immense amount of patronage as head of the Executive, and with the veto power as a branch of the legislature, perfectly uncontrolled by responsible advisers, his cabinet being departmental officers merely, whom he is not obliged by the Constitution to consult with, unless he chooses to do so. With us the Sovereign, or in this country the Representative of the Sovereign, can act only on the advice of his ministers, those ministers being responsible to the people through Parliament.

Prior to the formation of the American Union, as we all know, the different states which entered into it were separate colonies. They had no connexion with each other further than that of having a common Sovereign, just as with us at present. Their Constitutions and their laws were different. They might and did legislate against each other, and when they revolted against the Mother Country they acted as separate sovereignties, and carried on the war by a kind of treaty of alliance against the common enemy. Ever since the union was formed the

difficulty of what is called "State Rights" has existed, and this had much to do in bringing on the present unhappy war in the United States. They commenced, in fact, at the wrong end. They declared by their Constitution that each state was a sovereignty in itself, and that all the powers incident to a sovereignty belonged to each State, except those powers which, by the Constitution, were conferred upon the General Government and Congress. Here we have adopted a different system. We have strengthened the General Government. We have given the General Legislature all the great subjects of legislation. We have conferred on them, not only specifically and in detail, all the powers which are incident to sovereignty, but we have expressly declared that all subjects of general interest not distinctly and exclusively conferred upon the local governments and local legislatures, shall be conferred upon the General Government and Legislature. We have thus avoided that great source of weakness which has been the cause of the disruption of the United States. . . .

I believe that, while England has no desire to lose her colonies, but wishes to retain them, while I am satisfied that the public mind of England would deeply regret the loss of these provinces—yet, if the people of British North America after full deliberation had stated that they considered it was for their interest, for the advantage of the future of British North America to sever the tie, such is the generosity of the people of England, that, whatever their desire to keep these colonies, they would not seek to compel us to remain unwilling subjects of the British Crown. If therefore, at the Conference, we had arrived at the conclusion, that it was for the interest of these provinces that a severance should take place, I am sure that Her Majesty and the Imperial Parliament would have sanctioned that severance. We accordingly felt that there was a propriety in giving a distinct declaration of opinion on that point, and that, in framing the Constitution, its first sentence should declare, that "The Executive authority or government shall be vested in the Sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well understood principles of the British Constitution, by the Sovereign personally, or by the Representative of the Sovereign duly authorized." . . .

SPEECH OF THE EARL OF CARNARVON, SECRETARY OF STATE FOR THE COLONIES, IN INTRODUCING THE BRITISH NORTH AMERICA BILL. 19 FEBRUARY, 1867.

[Hansard's "Parliamentary Debates," 3rd series, vol. 185 (1867), cols. 557-576b.]

HOUSE OF LORDS. *Tuesday, February* 19, 1867.

British North America Bill.

SECOND READING.

The Earl of Carnarvon:

. . . This Bill embraces only the Provinces of Upper and Lower Canada, of Nova Scotia, and New Brunswick. The time, indeed, will come before long, I cannot doubt, when Newfoundland and Prince Edward's Island will gravitate towards the common centre of this Confederation. Every consideration of policy and interest will lead them towards this conclusion. The time also is not distant when the broad and fertile districts towards the west of Canada, now under the rule of a trading Company, will form part of the Confederation—perhaps it is not very far distant when even British Columbia and Vancouver's Island may be incorporated, and one single system of English law and commerce and policy extend from the Atlantic to the Pacific. . . .

I come now to the Legislature which it is proposed to create under this Bill. It is two-fold—a Central Parliament and Local Legislatures in each Province. I will deal with the Central Parliament first. It will be composed of two Chambers—an Upper Chamber, to be styled the Senate, and a Lower Chamber, to be termed, in affectionate remembrance of some of the best and noblest traditions of English history, the House of Commons. Of all problems to be solved in the creation of a Colonial Constitution, none is more difficult than the composition of an Upper House. . . . There are, in my opinion, two broad principles to be kept in view in the creation of a Colonial Chamber: first, that it should be strong enough to maintain its own opinion, and to resist the sudden gusts of popular feeling; secondly, that it should not be so strong that it should be impenetrable to public

sentiment, and therefore out of harmony with the other branch of the Legislature. These are conditions difficult under the most favourable circumstances to secure; but they are complicated in this instance by a third, which has been made a fundamental principle of the measure by the several contracting parties, and the object of which is to provide for a permanent representation and protection of sectional interests. I will briefly explain how far these three considerations appear to me to have been met in this Bill. The Senate will consist of seventy-two Members, the four Provinces being for this purpose divided into three sections, of which Upper Canada will be one, Lower Canada one, and the Maritime Provinces one. From each of these three sections an equal number of twenty-four Members will be returned. They will be nominated by the Governor General in Council for life. But as it is obvious that the principle of life nomination, combined with a fixed number of Members, might render a difference of opinion between the two Houses a question almost insoluble under many years, and might bring about what is popularly known as a Legislative dead-lock, a power is conferred upon the Crown—a power, I need not say, that would only be exercised under exceptional and very grave circumstances—to add six Members to the Senate, subject to a restriction that those six Members shall be taken equally from the three sections, so as in no way to disturb their relative strength, and that the next vacancies shall not be filled up until the Senate is reduced to its normal number. It may, perhaps, be said that the addition of six Members will be insufficient to obviate the Legislative discord against which we desire to provide. I am free to confess that I could have wished that the margin had been broader. At the same time, the average vacancies which have of recent years occurred in the nominated portion of the present Legislative Council of Canada, go far to show that, even in the ordinary course of events, the succession of Members will be rapid. . . .

I now come to the constitution of the House of Commons. The principle upon which the Senate is constructed is, as I have explained, the representation and the protection of sectional interests. The principle upon which the House of Commons is founded is that of a representation in accordance with population.

It will not be, indeed, a representation of mere numbers distributed equally in electoral districts; but whilst population is made the basis of representation, each Province will have its own number of representatives in proportion to their own population, and in proportion also to the population and representatives conjoined of their neighbours. Unlike other popular Assemblies, the Canadian House of Commons will be a variable number; but it will vary by reference to a particular standard. That standard will be given by Lower Canada, which is to retain its present quota of sixty-five Members, and will in fact be the proportion which these sixty-five Members bear to the population of the Province. If Lower Canada, with a population of 1,100,000, has sixty-five Members, Upper Canada, with a population of nearly 1,500,000, will have eighty-two Members. It may, indeed, happen that an increase of the total numbers of the House may become necessary. Power is reserved for this contingency; but in such case the increase will be regulated in all the other Provinces by reference to the number of Members representing Lower Canada, and by the proportion between those Members and the population in that Province. But as the representation of population will be based upon the census, there will be a decennial re-adjustment of it. . . .

The Local Legislatures to be established in each Province stand next in order; and my task here is easy; for whilst the provisions regulating the constitution of the central Parliament are in the nature of permanent enactments, those which govern the Local Legislatures will be subject to amendment by those bodies. This portion, therefore, of the Bill is intended to provide the temporary machinery by which each Province will be enabled to enter upon its new life and political duties. . . .

My Lords, I now pass to that which is, perhaps, the most delicate and the most important part of this measure—the distribution of powers between the Central Parliament and the local authorities. In this is, I think, comprised the main theory and constitution of Federal Government; on this depends the practical working of the new system. And here we navigate a sea of difficulties. There are rocks on the right hand and on the left. If, on the one hand, the Central Government be too strong, then there is risk that it may absorb the local action and that

wholesome self-government by the provincial bodies, which it is a matter both of good faith, and political expediency to maintain: if, on the other hand, the Central Government is not strong enough, then arises a conflict of State rights and pretensions, cohesion is destroyed, and the effective vigor of the central authority is encroached upon. The real object which we have in view is to give to the Central Government those high functions and almost sovereign powers by which general principles and uniformity of legislation may be secured in those questions which are of common import to all the Provinces; and, at the same time, to retain for each Province so ample a measure of municipal liberty and self-government as will allow and indeed compel them to exercise those local powers which they can exercise with great advantage to the community. In Australia there is at present a tendency towards the disintegration of the vast territories which are called colonies, because those who live at great distances on their extreme borders complain that they cannot obtain from the Central Parliaments the attention which they require. In New Zealand, on the other hand, an attempt—and not without success—has been made to combine considerable local powers with a general Government at the centre.

In this Bill the division of powers has been mainly effected by a distinct classification. That classification is fourfold. 1st, those subjects of legislation which are attributed to the Central Parliament exclusively; 2nd, those which belong to the Provincial Legislatures exclusively; 3rd, those which are subjects of concurrent legislation; and 4th, a particular question which is dealt with exceptionally. To the Central Parliament belong all questions of the public debt or property, all regulations with regard to trade or commerce, customs and excise, loans, the raising of revenue by any mode or system of taxation, all provisions as to currency, coinage, banking, postal arrangements, the regulation of the census, and the issue and collection of statistics. To the Central Parliament will also be assigned the enactment of criminal law. The administration of it indeed is vested in the local authorities; but the power of general legislation is very properly reserved for the Central Parliament. And in this I cannot but note a wise departure from the system pursued in the United States, where each State is competent to deal

as it may please with its criminal code, and where an offence may be visited with one penalty in the State of New York, and with another in the State of Virginia. The system here proposed is, I believe, a better and safer one; and I trust that before very long the criminal law of the four Provinces may be assimilated—and assimilated, I will add, upon the basis of English procedure. Lastly, the fisheries, the navigation and shipping, the quarantine regulations, the lighting of the coast, and the general question of naval and military defence, will be placed under the exclusive control of the Central Government.

The principal subjects reserved to the Local Legislatures are the sale and management of the public lands, the control of their hospitals, asylums, charitable and municipal institutions, and the raising of money by means of direct taxation. The several Provinces, which are now free to raise a revenue as they may think fit, surrender to the Central Parliament all powers under this head except that of direct taxation. Lastly, and in conformity with all recent colonial legislation, the Provincial Legislatures are empowered to amend their own constitutions. But there is, as I have said, a concurrent power of legislation to be exercised by the Central and the Local Parliaments. It extends over three separate subjects—immigration, agriculture, public works. Of these the two first will in most cases probably be treated by the Provincial authorities. They are subjects which in their ordinary character are local; but it is possible that they may have, under the changing circumstances of a young country, a more general bearing, and therefore a discretionary power of interference is wisely reserved to the Central Parliament. Public works fall into two classes: First, those which are purely local, such as roads and bridges, and municipal buildings—and these belong not only as a matter of right, but also as a matter of duty, to the local authorities. Secondly, there are public works which, though possibly situated in a single Province, such as telegraphs, and canals, and railways, are yet of common import and value to the entire Confederation, and over these it is clearly right that the Central Government should exercise a controlling authority.

Lastly, in the 93rd clause, which contains the exceptional provisions to which I referred, your Lordships will observe some rather complicated arrangements in reference to education. I

need hardly say that that great question gives rise to nearly as much earnestness and division of opinion on that as on this side of the Atlantic. This clause has been framed after long and anxious controversy, in which all parties have been represented, and on conditions to which all have given their consent. It is an understanding which, as it only concerns the local interests affected, is not one that Parliament would be willing to disturb, even if in the opinion of Parliament it were susceptible of amendment; but I am bound to add, as the expression of my own opinion, that the terms of the agreement appear to me to be equitable and judicious. For the object of the clause is to secure to the religious minority of one Province the same rights, privileges, and protection, which the religious minority of another Province may enjoy. The Roman Catholic minority of Upper Canada, the Protestant minority of Lower Canada, and the Roman Catholic minority of the Maritime Provinces, will thus stand on a footing of entire equality. But in the event of any wrong at the hand of the local majority, the minority have a right to appeal to the Governor-General in Council, and may claim the application of any remedial laws that may be necessary from the Central Parliament of the Confederation.

In closing my observations upon the distribution of powers, I ought to point out that just as the authority of the Central Parliament will prevail whenever it may come into conflict with the Local Legislatures, so the residue of legislation, if any, unprovided for in the specific classification which I have explained, will belong to the central body. It will be seen, under the 91st clause, that the classification is not intended "to restrict the generality" of the powers previously given to the Central Parliament, and that those powers extend to all laws made "for the peace, order, and good government" of the Confederation —terms which, according to all precedent, will, I understand, carry with them an ample measure of legislative authority. . . .

I have now stated the general principles upon which this measure is founded. But to so large a scheme, as might naturally be expected, objections have been made; and these objections, or some of them, it is my duty to indicate. And first, it has been urged that this Union should have been a legislative rather than a federal one. I admit, to a certain

extent, the validity of the objection. When Upper and Lower Canada were connected in a legislative Union, Lord Durham distinctly contemplated a similar incorporation of the Maritime Provinces. Nor are there wanting to this opinion many of the ablest of Canadian statesmen. But the answer is simply this—that a legislative Union is, under existing circumstances, impracticable. The Maritime Provinces are ill-disposed to surrender their separate life, and to merge their individuality in the political organization of the general body. It is in their case impossible, even if it were desirable, by a stroke of the pen to bring about a complete assimilation of their institutions to those of their neighbours. Lower Canada, too, is jealous, as she is deservedly proud, of her ancestral customs and traditions; she is wedded to her peculiar institutions, and will enter this Union only upon the distinct understanding that she retains them. The 42nd Article of the Treaty of Capitulation in 1760, when Canada was ceded by the Marquis de Vaudreuil to General Amhurst, runs thus—"*Les François et Canadiens continueront d'être gouvernés suivant la Coutume de Paris et les loix et usages établis pour ce pays.*"

The *Coutume de Paris* is still the accepted basis of their Civil Code, and their national institutions have been alike respected by their fellow-subjects and cherished by themselves. And it is with these feelings and on these terms that Lower Canada now consents to enter this Confederation.

But it has been objected that this union of Provinces will be a kingdom, not a Confederation, and that being an embodiment of the monarchical principle, it will constitute a challenge, to our powerful republican neighbour across the border. Now I am at a loss to understand how these Provinces, when united, can be one whit more or [one] whit less of a kingdom than when separate. There will be, with some few modifications, the same institutions, the same forms of government, and even the same men to give life and movement to them. It is but a development of the existing system. But whilst it is attacked by one critic as too monarchical in its character, it is assailed by another as too republican, and we are warned that it must ere long on American soil become a Republic, and lead to the dismemberment of the Empire. Now I do not see special cause for apprehension from republican any more than from monarchical dangers,

but I must submit that, at all events, the two allegations are fatally inconsistent with each other.

Again, it has been said that this great scheme owes its origin to the lust of territorial dominion on the part of one State, and that it is solely referable to the overweening ambition of Canada to exercise a supremacy over her sister Provinces. For this allegation I cannot see the smallest groundwork of argument; and, looking to the past history and the ordinary probabilities of these colonies, I can conceive nothing more unlikely than a combination of Upper and Lower Canada as against the Maritime Provinces. If, indeed, any one of these Provinces has a reasonable ground for apprehension, it is Lower Canada, with its distinct race and language and institutions, rather than Nova Scotia and New Brunswick, which are in all essentials so akin to the great and populous Province of Upper Canada. But whilst this large scheme of union has been attributed to the desire of political supremacy on the part of Canada, it is in the same breath referred to the irreconcilable differences which are supposed to have divided Upper and Lower Canada. I believe, for my own part, that those differences have been greatly exaggerated; but anyhow it is clear that the two objections cannot both be correct. They destroy each other. And this, indeed, I may observe, is the case with several other objections that have been urged; as when, in England, we are told that the object of this scheme is the imposition of fresh burdens upon the mother country, and, in America, that its object will be the imposition of pecuniary charges upon the Maritime Provinces.

. . . Let me now review some of the advantages which may be reasonably anticipated. And first, I hope that this measure may well and effectually compose some of those complaints which from time to time must arise out of such an union as that which at present subsists between Upper and Lower Canada. It has, for instance, been said, that whilst Upper Canada possesses the largest population, she has only an equal voice in the representation of their common interests in the joint Legislature. But this inequality will be redressed by the principle of representation according to population, upon which the House of Commons is to be constituted. Nor will Upper Canada gain unduly by this arrangement, for whilst her interests will be

protected by a representation in accordance with population in the Lower House, the interests of Lower Canada will be guarded by an equality of the sectional votes in the Upper House. Again, it has been said that whilst Upper Canada contributes the larger share of taxation, Lower Canada enjoys more than her just portion of the public expenditure. That allegation, whether well or ill-founded, also finds its answer in this Bill. Henceforward, apart from the revenue raised for the common purposes of the Confederation, local taxation and expenditure will depend upon the local authorities. Thus, all those complaints which must arise under the circumstances of such an union as that which now exists—complaints of partiality, of neglect, of mismanagement of roads, bridges, and those public works which are the very life of a young community, must cease. . . .

But if the advantages of union are great in a military, a commercial, a material point of view, they are not, I think, less in the moral and political aspect of the question. When once existing restrictions are removed, and the schools, the law courts, the professions, the industries of these great Provinces are thrown open from one end to another, depend upon it a stimulus greater than any that has ever been known before in British North America will be applied to every form of mental or moral energy. . . .

ACT OF PARLIAMENT FOR THE CONFEDERATION OF THE COLONIES OF BRITISH NORTH AMERICA AS THE DOMINION OF CANADA. 29 MARCH, 1867.

[30 and 31 Vict. cap. 3. "Statutes at Large".]

An Act for the Union of *Canada*, *Nova Scotia*, and *New Brunswick*, and the Government thereof; and for Purposes connected therewith.

[29*th March* 1867.]

WHEREAS the Provinces of *Canada*, *Nova Scotia*, and *New Brunswick* have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of *Great Britain* and *Ireland*, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the *British* Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of *British North America*:

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:—

I.—Preliminary.

Short Title.

1. This Act may be cited as The *British North America* Act, 1867.

Application of Provisions referring to the Queen.

2. The Provisions of this Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of *Great Britain* and *Ireland*.

II.—Union.

Declaration of Union.

3. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of *Canada*, *Nova Scotia*, and *New Brunswick* shall form and be One Dominion under the Name of *Canada*; and on and after that Day those Three Provinces shall form and be One Dominion under that Name accordingly.

Construction of subsequent Provisions of Act.

4. The subsequent Provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the Day appointed for the Union taking effect in the Queen's Proclamation; and in the same Provisions, unless it is otherwise expressed or implied, the Name *Canada* shall be taken to mean *Canada* as constituted under this Act.

Four Provinces.

5. *Canada* shall be divided into Four Provinces, named *Ontario*, *Quebec*, *Nova Scotia*, and *New Brunswick*.

Provinces of Ontario and Quebec.

6. The Parts of the Province of *Canada* (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of *Upper Canada* and *Lower Canada* shall be deemed to be severed, and shall form Two separate Provinces. The Part which formerly constituted the Province of *Upper Canada* shall constitute the Province of *Ontario*; and the Part which formerly constituted the Province of *Lower Canada* shall constitute the Province of *Quebec*.

Provinces of Nova Scotia and New Brunswick.

7. The Provinces of *Nova Scotia* and *New Brunswick* shall have the same Limits as at the passing of this Act.

Decennial Census.

8. In the general Census of the Population of *Canada* which is hereby required to be taken in the Year One thousand eight hundred and seventy-one, and in every Tenth Year thereafter, the respective Populations of the Four Provinces shall be distinguished.

III.—Executive Power.

Declaration of Executive Power in the Queen.

9. The Executive Government and Authority of and over *Canada* is hereby declared to continue and be vested in the Queen.

Application of Provisions referring to Governor General.

10. The Provisions of this Act referring to the Governor General extend and apply to the Governor General for the Time being of *Canada*, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of *Canada* on behalf and in the Name of the Queen, by whatever Title he is designated.

Constitution of Privy Council for Canada.

11. There shall be a Council to aid and advise in 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 thereof may be from Time to Time removed by the Governor General.

All powers under Acts to be exercised by Governor General with Advice of Privy Council, or alone.

12. All Powers, Authorities, and Functions which under any Act of the Parliament of *Great Britain*, or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*, or of the Legislature of *Upper Canada*, *Lower Canada*, *Canada*, *Nova Scotia*, or *New Brunswick*, are at the Union vested in or exerciseable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of *Canada*, be vested in and exerciseable by the Governor General, with the Advice or with the Advice and Consent of or in conjunction with the Queen's

Privy Council for *Canada*, or any Members thereof, or by the Governor General individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of *Great Britain* or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*) to be abolished or altered by the Parliament of *Canada*.

Application of Provisions referring to Governor General in Council.

13. The Provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the Advice of the Queen's Privy Council for *Canada*.

Power to Her Majesty to authorize Governor General to appoint Deputies.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor General from Time to Time to appoint any Person or any Persons jointly or severally to be his Deputy or Deputies within any Part or Parts of *Canada*, and in that Capacity to exercise during the Pleasure of the Governor General such of the Powers, Authorities, and Functions of the Governor General as the Governor General deems it necessary or expedient to assign to him or them, subject to any Limitations or Directions expressed or given by the Queen; but the Appointment of such a Deputy or Deputies shall not affect the Exercise by the Governor General himself of any Power, Authority, or Function.

Command of armed Forces to continue to be vested in the Queen.

15. 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.

Seat of Government of Canada.

16. Until the Queen otherwise directs, the Seat of Government of *Canada* shall be *Ottawa*.

IV.—Legislative Power.

Constitution of Parliament of Canada.

17. There shall be One Parliament for *Canada*, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Privileges, of Houses.

18. The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively shall be such as are from Time to Time defined by Act of the Parliament of *Canada*, but so that the same

shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of *Great Britain* and *Ireland* and by the Members thereof.

First Session of the Parliament of Canada.

19. The Parliament of *Canada* shall be called together not later than Six Months after the Union.

Yearly Session of the Parliament of Canada.

20. There shall be a Session of the Parliament of *Canada* once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Parliament in one Session and its first Sitting in the next Session.

The Senate.

Number of Senators.

21. The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators.

Representation of Provinces in Senate.

22. In relation to the Constitution of the Senate *Canada* shall be deemed to consist of Three Divisions:

1. *Ontario;*
2. *Quebec;*
3. The Maritime Provinces, *Nova Scotia* and *New Brunswick;*

which Three Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: *Ontario* by Twenty-four Senators; *Quebec* by Twenty-four Senators; and the Maritime Provinces by Twenty-four Senators; Twelve thereof representing *Nova Scotia*, and Twelve thereof representing *New Brunswick*.

In the Case of *Quebec* each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of *Lower Canada* specified in Schedule A. to Chapter One of the Consolidated Statutes of *Canada*.

Qualifications of Senator.

23. The Qualifications of a Senator shall be as follows:

(1) He shall be of the full Age of Thirty Years:

(2) He shall be either a natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of *Great Britain*, or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*, or of the Legislature of One

of the Provinces of *Upper Canada*, *Lower Canada*, *Canada*, *Nova Scotia*, or *New Brunswick*, before the Union, or of the Parliament of *Canada* after the Union:

(3) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in Free and Common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Francalleu or in Roture, within the Province for which he is appointed, of the Value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same:

(4) His Real and Personal Property shall be together worth Four thousand Dollars over and above his Debts and Liabilities:

(5) He shall be resident in the Province for which he is appointed:

(6) In the case of *Quebec* he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

Summons of Senator.

24. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of *Canada*, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator.

Summons of First Body of Senators.

25. Such Persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen's Proclamation of Union.

Addition of Senators in certain Cases.

26. If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Three or Six Members be added to the Senate, the Governor General may by Summons to Three or Six qualified Persons (as the Case may be), representing equally the Three Divisions of *Canada*, add to the Senate accordingly.

Reduction of Senate to normal Number.

27. In case of such Addition being at any Time made, the Governor General shall not summon any Person to the Senate, except on a further like Direction by the Queen on the like Recommendation, until each of the Three Divisions of *Canada* is represented by Twenty-four Senators and no more.

Maximum Number of Senators.

28. The Number of Senators shall not at any Time exceed Seventy-eight.

Tenure of Place in Senate.

29. A Senator shall, subject to the Provisions of this Act, hold his Place in the Senate for Life.

Resignation of Place in Senate.

30. A Senator may by Writing under his Hand addressed to the Governor General resign his Place in the Senate, and thereupon the same shall be vacant.

Disqualification of Senators.

31. The Place of a Senator shall become vacant in any of the following Cases:

(1) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate:

(2) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the rights or Privileges of a Subject or Citizen, of a Foreign Power:

(3) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter:

(4) If he is attainted of Treason or convicted of Felony or of any infamous Crime:

(5) If he ceases to be qualified in respect of Property or of Residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of *Canada* while holding an Office under that Government requiring his Presence there.

Summons on Vacancy in Senate.

32. When a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy.

33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate. Questions as to Qualifications and Vacancies in Senate.

34. The Governor General may from Time to Time, by Instrument under the Great Seal of *Canada*, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead. Appointment of Speaker of Senate.

35. Until the Parliament of *Canada* otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers. Quorum of Senate.

36. Questions arising in the Senate shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative. Voting in Senate.

The House of Commons.

37. The House of Commons shall, subject to the Provisions of this Act, consist of One hundred and eighty-one Members, of whom Eighty-two shall be elected for *Ontario*, Sixty-five for *Quebec*, Nineteen for *Nova Scotia*, and Fifteen for *New Brunswick*. Constitution of House of Commons in Canada.

38. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of *Canada*, summon and call together the House of Commons. Summoning of House of Commons.

39. A Senator shall not be capable of being elected or of sitting or voting as a Member of the House of Commons. Senators not to sit in House of Commons.

40. Until the Parliament of *Canada* otherwise provides, *Ontario*, *Quebec*, *Nova Scotia*, and *New Brunswick* shall, for the Purposes of the Election of Members to serve in the House of Commons, be divided into Electoral Districts as follows: Electoral Districts of the Four Provinces.

1.—*Ontario.*

Ontario shall be divided into the Counties, Ridings of Counties, Cities, Parts of Cities, and Towns enumerated in the First Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return One Member.

2.—*Quebec.*

Quebec shall be divided into Sixty-five Electoral Districts, composed of the Sixty-five Electoral Divisions into which *Lower Canada* is at the passing of this Act divided under Chapter Two of the Consolidated Statutes of *Canada*, Chapter Seventy-five of the Consolidated Statutes for *Lower Canada*, and the Act of the Province of *Canada* of the Twenty-Third Year of the Queen, Chapter One, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the Purposes of this Act an Electoral District entitled to return One Member.

3.—*Nova Scotia.*

Each of the Eighteen Counties of *Nova Scotia* shall be an Electoral District. The County of *Halifax* shall be entitled to return Two Members, and each of the other Counties One Member.

4.—*New Brunswick.*

Each of the Fourteen Counties into which *New Brunswick* is divided, including the City and County of *St. John*, shall be an Electoral District. The City of *St. John* shall also be a separate Electoral District. Each of those Fifteen Electoral Districts shall be entitled to return One Member.

Continuance of existing Election Laws until Parliament of Canada otherwise provides.

41. Until the Parliament of *Canada* otherwise provides, all Laws in force in the several Provinces at the Union relative to the following Matters or any of them, namely, — the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which Elections may be continued, the Trial of controverted Elections, and Proceedings incident thereto, the vacating of Seats of Members, and the Execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of

Members to serve in the House of Commons for the same several Provinces.

Provided that, until the Parliament of *Canada* otherwise provides, at any Election for a Member of the House of Commons for the District of *Algoma*, in addition to Persons qualified by the Law of the Province of *Canada* to vote, every Male *British* Subject aged Twenty-one Years or upwards, being a Householder, shall have a Vote.

Writs for First Election.

42. For the First Election of Members to serve in the House of Commons the Governor General shall cause Writs to be issued by such Person, in such Form, and addressed to such Returning Officers as he thinks fit.

The Person issuing Writs under this Section shall have the like Powers as are possessed at the Union by the Officers charged with the issuing of Writs for the Election of Members to serve in the respective House of Assembly or Legislative Assembly of the Province of *Canada*, *Nova Scotia*, or *New Brunswick*; and the Returning Officers to whom Writs are directed under this Section shall have the like Powers as are possessed at the Union by the Officers charged with the returning of Writs for the Election of Members to serve in the same respective House of Assembly or Legislative Assembly.

As to Casual Vacancies.

43. In case a Vacancy in the Representation in the House of Commons of any Electoral District happens before the Meeting of the Parliament, or after the Meeting of the Parliament before Provision is made by the Parliament in this Behalf, the Provisions of the last foregoing Section of this Act shall extend and apply to the issuing and returning of a Writ in respect of such vacant District.

As to Election of Speaker of House of Commons.

44. The House of Commons on its first assembling after a General Election shall proceed with all practicable Speed to elect One of its Members to be Speaker.

As to filling up Vacancy in Office of Speaker.

45. In case of a Vacancy happening in the Office of Speaker by Death, Resignation, or otherwise, the House of Commons shall with all practicable Speed proceed to elect another of its Members to be Speaker.

Speaker to preside.

46. The Speaker shall preside at all Meetings of the House of Commons.

Provision in case of Absence of Speaker.

47. Until the Parliament of *Canada* otherwise provides, in case of the Absence for any Reason of the Speaker from the Chair of the House of Commons for a Period of Forty-eight consecutive Hours, the House may elect another of its Members to act as Speaker, and the Member so elected shall during the Continuance of such Absence of the Speaker have and execute all the Powers, Privileges, and Duties of Speaker.

Quorum of House of Commons.

48. The Presence of at least Twenty Members of the House of Commons shall be necessary to constitute a Meeting of the House for the Exercise of its Powers, and for that Purpose the Speaker shall be reckoned as a Member.

Voting in House of Commons.

49. Questions arising in the House of Commons shall be decided by a Majority of Voices other than that of the Speaker, and when the Voices are equal, but not otherwise, the Speaker shall have a Vote.

Duration of House of Commons.

50. Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor General), and no longer.

Decennial Re-adjustment of Representation.

51. On the Completion of the Census in the Year One thousand eight hundred and seventy-one, and of each subsequent decennial Census, the Representation of the Four Provinces shall be re-adjusted by such Authority, in such a Manner, and from such Time, as the Parliament of *Canada* from Time to Time provides, subject and according to the following Rules:

(1) *Quebec* shall have the fixed Number of Sixty-five Members:

(2) There shall be assigned to each of the other Provinces such a Number of Members as will bear the same Proportion to the Number of its Population (ascertained at such Census) as the Number Sixty-five bears to the Number of the Population of *Quebec* (so ascertained):

(3) In the computation of the Number of Members for a Province a fractional Part not exceeding One Half of the whole Number requisite for entitling

the Province to a Member shall be disregarded; but a fractional Part exceeding One Half of that Number shall be equivalent to the whole Number:

(4) On any such Re-adjustment the Number of Members for a Province shall not be reduced unless the Proportion which the Number of the Population of the Province bore to the Number of the aggregate Population of *Canada* at the then last preceding Re-adjustment of the Number of Members for the Province is ascertained at the then latest Census to be diminished by One Twentieth Part or upwards:

(5) Such Re-adjustment shall not take effect until the Termination of the then existing Parliament.

Increase of Number of House of Commons.

52. The Number of Members of the House of Commons may be from Time to Time increased by the Parliament of *Canada*, provided the proportionate Representation of the Provinces prescribed by this Act is not thereby disturbed.

Money Votes; Royal Assent.

Appropriation and Tax Bills.

53. Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

Recommendation of Money Votes.

54. It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

Royal Assent to Bills, &c.

55. Where a Bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his Discretion, but subject to the Provisions of this Act and to Her Majesty's Instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the Signification of the Queen's Pleasure.

Disallowance by Order in Council of Act assented to by Governor General.

56. Where the Governor General assents to a Bill in the Queen's Name, he shall by the first convenient Opportunity send an authentic Copy of the Act to One of Her Majesty's Principal Secretaries of State, and if the Queen in Council within Two Years after Receipt thereof by the Secretary of State thinks fit to disallow the Act, such Disallowance (with a Certificate of the Secretary of State of the Day on which the Act was received by him) being signified by the Governor General, by Speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the Day of such Signification.

Signification of Queen's Pleasure on Bill reserved.

57. A Bill reserved for the Signification of the Queen's Pleasure shall not have any Force unless and until, within Two Years from the Day on which it was presented to the Governor General for the Queen's Assent, the Governor General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the Assent of the Queen in Council.

An Entry of every such Speech, Message, or Proclamation shall be made in the Journal of each House, and a Duplicate thereof duly attested shall be delivered to the proper Officer to be kept among the Records of *Canada*.

V.—Provincial Constitutions.

Executive Power.

Appointment of Lieutenant Governors of Provinces.

58. For each Province there shall be an Officer, styled the Lieutenant Governor, appointed by the Governor General in Council by Instrument under the Great Seal of *Canada*.

Tenure of Office of Lieutenant Governor.

59. A Lieutenant Governor shall hold Office during the Pleasure of the Governor General; but any Lieutenant Governor appointed after the Commencement of the First Session of the Parliament of *Canada* shall not be removeable within Five Years from his Appointment, except for Cause assigned, which shall be communicated to him in Writing within One Month after the Order for his Removal is made, and shall be communicated by Message to the Senate and to the House of Commons within One

Week thereafter if the Parliament is then sitting, and if not then within One Week after the Commencement of the next Session of the Parliament.

Salaries of Lieutenant Governors.

60. The Salaries of the Lieutenant Governors shall be fixed and provided by the Parliament of *Canada*.

Oaths, &c., of Lieutenant Governor.

61. Every Lieutenant Governor shall, before assuming the Duties of his Office, make and subscribe before the Governor General or some Person authorized by him Oaths of Allegiance and Office similar to those taken by the Governor General.

Application of Provisions referring to Lieutenant Governor.

62. The Provisions of this Act referring to the Lieutenant Governor extend and apply to the Lieutenant Governor for the Time being of each Province, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of the Province, by whatever Title he is designated.

Appointment of Executive Officers for Ontario and Quebec.

63. The Executive Council of *Ontario* and of *Quebec* shall be composed of such Persons as the Lieutenant Governor from Time to Time thinks fit, and in the first instance, of the following Officers, namely—the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, with in *Quebec* the Speaker of the Legislative Council and the Solicitor General.

Executive Government of Nova Scotia and New Brunswick.

64. The Constitution of the Executive Authority in each of the Provinces of *Nova Scotia* and *New Brunswick* shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act.

Powers to be exercised by Lieutenant Governor of Ontario or Quebec with Advice, or alone.

65. All Powers, Authorities, and Functions which under any Act of the Parliament of *Great Britain*, or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*, or of the Legislature of *Upper Canada*, *Lower Canada*, or *Canada*, were or are before or at the Union vested in or exerciseable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice or with the Advice and Consent of the respective Executive Councils thereof, or in conjunction with those

Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of *Ontario* and *Quebec* respectively, be vested in and shall or may be exercised by the Lieutenant Governor of *Ontario* and *Quebec* respectively, with the Advice or with the Advice and Consent of or in conjunction with the respective Executive Councils, or any Members thereof, or by the Lieutenant Governor individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of *Great Britain*, or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*,) to be abolished or altered by the respective Legislatures of *Ontario* and *Quebec*.

Application of Provisions referring to Lieutenant Governor in Council.

66. The Provisions of this Act referring to the Lieutenant Governor in Council shall be construed as referring to the Lieutenant Governor of the Province acting by and with the Advice of the Executive Council thereof.

Administration in Absence, &c. of Lieutenant Governor.

67. The Governor General in Council may from Time to Time appoint an Administrator to execute the Office and Functions of Lieutenant Governor during his Absence, Illness, or other Inability.

Seats of Provincial Governments.

68. Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the Seats of Government of the Provinces shall be as follows, namely,—of *Ontario*, the City of *Toronto*; of *Quebec*, the City of *Quebec*; of *Nova Scotia*, the City of *Halifax*; and of *New Brunswick*, the City of *Fredericton*.

Legislative Power.—1.—*Ontario.*

Legislature for Ontario.

69. There shall be a Legislature for *Ontario* consisting of the Lieutenant Governor and of One House, styled the Legislative Assembly of *Ontario*.

Electoral Districts.

70. The Legislative Assembly of *Ontario* shall be composed of Eighty-two Members, to be elected to represent the Eighty-two Electoral Districts set forth in the First Schedule to this Act.

2.—*Quebec.*

Legislature for Quebec.

71. There shall be a Legislature for *Quebec* consisting of the Lieutenant Governor and of Two Houses, styled the Legislative Council of *Quebec* and the Legislative Assembly of *Quebec*.

Constitution of Legislative Council.

72. The Legislative Council of *Quebec* shall be composed of Twenty-four Members, to be appointed by the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of *Quebec*, one being appointed to represent each of the Twenty-four Electoral Divisions of *Lower Canada* in this Act referred to, and each holding Office for the Term of his Life, unless the Legislature of *Quebec* otherwise provides under the Provisions of this Act.

Qualification of Legislative Councillors.

73. The Qualifications of the Legislative Councillors of *Quebec* shall be the same as those of the Senators for *Quebec*.

Resignation, Disqualification, &c.

74. The Place of a Legislative Councillor of *Quebec* shall become vacant in the Cases, *mutatis mutandis*, in which the Place of Senator becomes vacant.

Vacancies.

75. When a Vacancy happens in the Legislative Council of *Quebec* by Resignation, Death, or otherwise, the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of *Quebec*, shall appoint a fit and qualified Person to fill the Vacancy.

Questions as to Vacancies, &c.

76. If any Question arises respecting the Qualification of a Legislative Councillor of *Quebec*, or a Vacancy in the Legislative Council of *Quebec*, the same shall be heard and determined by the Legislative Council.

Speaker of Legislative Council.

77. The Lieutenant Governor may from Time to Time, by Instrument under the Great Seal of *Quebec*, appoint a Member of the Legislative Council of *Quebec* to be Speaker thereof, and may remove him and appoint another in his Stead.

Quorum of Legislative Council.

78. Until the Legislature of *Quebec* otherwise provides, the Presence of at least Ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a Meeting for the Exercise of its Powers.

Voting in Legislative Council.

79. Questions arising in the Legislative Council of *Quebec* shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative.

Constitution of Legislative Assembly of Quebec.

80. The Legislative Assembly of *Quebec* shall be composed of Sixty-five Members, to be elected to represent the Sixty-five Electoral Divisions or Districts of *Lower Canada* in this Act referred to, subject to Alteration thereof by the Legislature of *Quebec*: Provided that it shall not be lawful to present to the Lieutenant Governor of *Quebec* for Assent any Bill for altering the Limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule to this Act, unless the Second and Third Readings of such Bill have been passed in the Legislative Assembly with the Concurrence of the Majority of the Members representing all those Electoral Divisions or Districts, and the Assent shall not be given to such Bill unless an Address has been presented by the Legislative Assembly to the Lieutenant Governor stating that it has been so passed.

3.—*Ontario and Quebec.*

First Session of Legislatures.

81. The Legislatures of *Ontario* and *Quebec* respectively shall be called together not later than six months after the Union.

Summoning of Legislative Assemblies.

82. The Lieutenant Governor of *Ontario* and of *Quebec* shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

Restriction on Election of Holders of Offices.

83. Until the Legislature of *Ontario* or of *Quebec* otherwise provides, a Person accepting or holding in *Ontario* or in *Quebec* any Office, Commission, or Employment, permanent or temporary, at the Nomination of the Lieutenant Governor, to which an annual Salary, or any Fee, Allowance, Emolument, or Profit of any Kind or Amount whatever from the Province is attached, shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit and vote as such; but

nothing in this Section shall make ineligible any Person being a Member of the Executive Council of the respective Province, or holding any of the following Offices, that is to say, the Offices of Attorney General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in *Quebec* Solicitor General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such Office.

Continuance of existing Election Laws.

84. Until the Legislatures of *Ontario* and *Quebec* respectively otherwise provide, all Laws which at the Union are in force in those Provinces respectively, relative to the following Matters, or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the Assembly of *Canada*, the Qualifications or Disqualifications of Voters, the Oaths to be taken by Voters, the Returning Officers their Powers and Duties, the Proceedings at Elections, the Periods during which such Elections may be continued, and the Trial of controverted Elections and the Proceedings incident thereto, the vacating of the seats of Members and the issuing and execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the respective Legislative Assemblies of *Ontario* and *Quebec*.

Provided that, until the Legislature of *Ontario* otherwise provides, at any Election for a Member of the Legislative Assembly of *Ontario* for the District of *Algoma*, in addition to Persons qualified by the Law of the Province of *Canada* to vote, every Male *British* Subject, aged Twenty-one Years or upwards, being a Householder, shall have a Vote.

Duration of Legislative Assemblies.

85. Every Legislative Assembly of *Ontario* and every Legislative Assembly of *Quebec* shall continue for Four Years from the Day of the Return of the Writs for choosing the same (subject nevertheless to either the Legislative Assembly of *Ontario* or the Legislative Assembly of *Quebec* being sooner dissolved by the Lieutenant Governor of the Province), and no longer.

Yearly Session of Legislature.

86. There shall be a Session of the Legislature of *Ontario* and of that of *Quebec* once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first Sitting in the next Session.

Speaker, Quorum, &c.

87. The following Provisions of this Act respecting the House of Commons of *Canada* shall extend and apply to the Legislative Assemblies of *Ontario* and *Quebec*, that is to say,—the Provisions relating to the Election of a Speaker originally and on Vacancies, the Duties of the Speaker, the Absence of the Speaker, the Quorum, and the Mode of Voting, as if those Provisions were here re-enacted and made applicable in Terms to each such Legislative Assembly.

4.—*Nova Scotia and New Brunswick.*

Constitutions of Legislatures of Nova Scotia and New Brunswick.

88. The Constitution of the Legislature of each of the Provinces of *Nova Scotia* and *New Brunswick* shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act; and the House of Assembly of *New Brunswick* existing at the passing of this Act shall, unless sooner dissolved, continue for the Period for which it was elected.

5.—*Ontario, Quebec, and Nova Scotia.*

First Elections.

89. Each of the Lieutenant Governors of *Ontario*, *Quebec*, and *Nova Scotia* shall cause Writs to be issued for the First Election of Members of the Legislative Assembly thereof in such Form and by such Person as he thinks fit, and at such Time and addressed to such Returning Officer as the Governor General directs, and so that the First Election of Member of Assembly for any Electoral District or any Subdivision thereof shall be held at the same Time and at the same Places as the Election for a Member to serve in the House of Commons of *Canada* for that Electoral District.

6.—*The Four Provinces.*

Application to Legislatures of Provisions respecting Money Votes, &c.

90. The following Provisions of this Act respecting the Parliament of *Canada*, namely,—the Provisions re-

lating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for *Canada*.

VI.—Distribution of Legislative Powers.

Powers of the Parliament.

Legislative Authority of Parliament of Canada.

91. It shall be lawful for the Queen, by and with the advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of *Canada*, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of *Canada* extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

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 the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of *Canada*.
9. Beacons, Buoys, Lighthouses, and *Sable Island*.

10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any *British* or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. *Indians*, and Lands reserved for the *Indians*.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
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.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Exclusive Powers of Provincial Legislatures.

Subjects of exclusive Provincial Legislation.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the

Classes of Subjects next herein-after enumerated; that is to say,—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:—
    a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
    b. Lines of Steam Ships between the Province and any *British* or Foreign Country:
    c. Such Works as, although wholly situate within the Province, are before or after

their Execution declared by the Parliament of *Canada* to be for the general Advantage of *Canada* or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

Education.

Legislation respecting Education.

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in *Upper Canada* on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in *Quebec*:

(3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of

the Province, an Appeal shall lie to the Governor General in Council from any Act or Decis on of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:

(4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of *Canada* may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.

Uniformity of Laws in Ontario, Nova Scotia, and New Brunswick.

Legislation for Uniformity of Laws in Three Provinces.

94. Notwithstanding anything in this Act, the Parliament of *Canada* may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in *Ontario*, *Nova Scotia*, and *New Brunswick*, and of the Procedure of all or any of the Courts in those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of *Canada* to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of *Canada* making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

Agriculture and Immigration.

Concurrent Powers of Legislation respecting Agriculture, &c.

95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the

Parliament of *Canada* may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of *Canada*.

VII.—JUDICATURE.

Appointment of Judges.

96. The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in *Nova Scotia* and *New Brunswick*.

Selection of Judges in Ontario, &c.

97. Until the Laws relative to Property and Civil Rights in *Ontario*, *Nova Scotia*, and *New Brunswick*, and the Procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor General shall be selected from the respective Bars of those Provinces.

Selection of Judges in Quebec.

98. The Judges of the Courts of *Quebec* shall be selected from the Bar of that Province.

Tenure of Office of Judges of Superior Courts.

99. The Judges of the Superior Courts shall hold Office during good Behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.

Salaries, &c. of Judges.

100. The Salaries, Allowances, and Pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in *Nova Scotia* and *New Brunswick*), and of the Admiralty Courts in Cases where the Judges thereof are for the Time being paid by Salary, shall be fixed and provided by the Parliament of *Canada*.

General Court of Appeal, &c.

101. The Parliament of *Canada* may, notwithstanding anything in this Act, from Time to Time provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for *Canada*, and for the Establishment of any additional Courts for the better Administration of the Laws of *Canada*.

VIII.—Revenues; Debts; Assets; Taxation.

Creation of Consolidated Revenue Fund.

102. All Duties and Revenues over which the respective Legislatures of *Canada*, *Nova Scotia*, and *New Brunswick* before and at the Union had and have Power of Appropriation, except such Portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special Powers conferred on them by this Act, shall form One Consolidated Revenue Fund, to be appropriated for the Public Service of *Canada* in the Manner and subject to the Charges in this Act provided.

Expenses of Collection, &c.

103. The Consolidated Revenue Fund of *Canada* shall be permanently charged with the Costs, Charges, and Expenses incident to the Collection, Management, and Receipt thereof, and the same shall form the First Charge thereon, subject to be reviewed and audited in such Manner as shall be ordered by the Governor General in Council until the Parliament otherwise provides.

Interest of Provincial Public Debts.

104. The annual Interest of the Public Debts of the several Provinces of *Canada*, *Nova Scotia* and *New Brunswick* at the Union shall form the Second Charge on the Consolidated Revenue Fund of *Canada*.

Salary of Governor General.

105. Unless altered by the Parliament of *Canada*, the Salary of the Governor General shall be Ten thousand Pounds Sterling Money of the United Kingdom of *Great Britain* and *Ireland*, payable out of the Consolidated Revenue Fund of *Canada*, and the same shall form the Third Charge thereon.

Appropriation from Time to Time.

106. Subject to the several Payments by this Act charged on the Consolidated Revenue Fund of *Canada*, the same shall be appropriated by the Parliament of *Canada* for the Public Service.

Transfer of Stocks, &c.

107. All Stocks, Cash, Banker's Balances, and Securities for Money belonging to each Province at the Time of the Union, except as in this Act mentioned, shall be the Property of *Canada*, and shall be taken in Reduction of the Amount of the respective Debts of the Provinces at the Union.

Transfer of Property in Schedule.

108. The Public Works and Property of each Province, enumerated in the Third Schedule to this Act, shall be the Property of *Canada*.

Property in Lands, Mines, &c.

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of *Canada*, *Nova Scotia*, and *New Brunswick* at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of *Ontario*, *Quebec*, *Nova Scotia*, and *New Brunswick* in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.

Assets connected with Provincial Debts.

110. All Assets connected with such Portions of the Public Debt of each Province as are assumed by that Province shall belong to that Province.

Canada to be liable for Provincial Debts.

111. *Canada* shall be liable for the Debts and Liabilities of each Province existing at the Union.

Debts of Ontario and Quebec.

112. *Ontario* and *Quebec* conjointly shall be liable to *Canada* for the Amount (if any) by which the Debt of the Province of *Canada* exceeds at the Union Sixty-two million five hundred thousand Dollars, and shall be charged with Interest at the Rate of Five *per Centum per Annum* thereon.

Assets of Ontario and Quebec.

113. The Assets enumerated in the Fourth Schedule to this Act belonging at the Union to the Province of *Canada* shall be the Property of *Ontario* and *Quebec* conjointly.

Debt of Nova Scotia.

114. *Nova Scotia* shall be liable to *Canada* for the Amount (if any) by which its Public Debt exceeds at the Union Eight million Dollars, and shall be charged with Interest at the Rate of Five *per Centum per Annum* thereon.

Debt of New Brunswick.

115. *New Brunswick* shall be liable to *Canada* for the Amount (if any) by which its Public Debt exceeds at the Union Seven million Dollars, and shall be charged with Interest at the Rate of Five *per Centum per Annum* thereon.

Payment of Interest to Nova Scotia and New Brunswick.

116. In case the Public Debts of *Nova Scotia* and *New Brunswick* do not at the Union amount to Eight million and Seven million Dollars respectively, they shall

respectively receive by half-yearly Payments in advance from the Government of *Canada* Interest at Five *per Centum per Annum* on the Difference between the actual Amounts of their respective Debts and such stipulated Amounts.

Provincial Public Property.

117. The several Provinces shall retain all their respective Public Property not otherwise disposed of in this Act, subject to the Right of *Canada* to assume any Lands or Public Property required for Fortifications or for the Defence of the Country.

Grants to Provinces.

118. The following Sums shall be paid yearly by *Canada* to the several Provinces for the Support of their Governments and Legislatures:

	Dollars.
Ontario	Eighty thousand.
Quebec	Seventy thousand.
Nova Scotia . . .	Sixty thousand.
New Brunswick . . .	Fifty thousand.
	Two hundred and sixty thousand;

and an annual Grant in aid of each Province shall be made, equal to Eighty Cents *per* Head of the Population as ascertained by the Census of One thousand eight hundred and sixty-one, and in the Case of *Nova Scotia* and *New Brunswick*, by each subsequent Decennial Census until the Population of each of those Two Provinces amounts to Four hundred thousand Souls, at which Rate such Grant shall thereafter remain. Such Grants shall be in full Settlement of all future Demands on *Canada*, and shall be paid half-yearly in advance to each Province; but the Government of *Canada* shall deduct from such Grants, as against any Province, all Sums chargeable as Interest on the Public Debt of that Province in excess of the several Amounts stipulated in this Act.

Further Grant to New Brunswick.

119. *New Brunswick* shall receive by half-yearly Payments in advance from *Canada* for the Period of Ten Years from the Union an additional Allowance of Sixty-three thousand Dollars *per Annum;* but as long as the Public Debt of that Province remains under Seven million

Dollars, a Deduction equal to the Interest at Five *per Centum per Annum* on such Deficiency shall be made from that Allowance of Sixty-three thousand Dollars.

Form of Payments.

120. All Payments to be made under this Act, or in discharge of Liabilities created under any Act of the Provinces of *Canada*, *Nova Scotia*, and *New Brunswick* respectively, and assumed by *Canada*, shall, until the Parliament of *Canada* otherwise directs, be made in such Form and Manner as may from Time to Time be ordered by the Governor General in Council.

Canadian Manufactures, &c.

121. All Articles of the Growth, Produce or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

Continuance of Customs and Excise Laws.

122. The Customs and Excise Laws of each Province shall, subject to the Provisions of this Act, continue in force until altered by the Parliament of *Canada*.

Exportation and Importation as between Two Provinces.

123. Where Customs Duties are, at the Union, leviable on any Goods, Wares, or Merchandises in any Two Provinces, those Goods, Wares, and Merchandises may, from and after the Union, be imported from one of those Provinces into the other of them on Proof of Payment of the Customs Duty leviable thereon in the Province of Exportation, and on Payment of such further Amount (if any) of Customs Duty as is leviable thereon in the Province of Importation.

Lumber Dues in New Brunswick.

124. Nothing in this Act shall affect the Right of *New Brunswick* to levy the Lumber Dues provided in Chapter Fifteen of Title Three of the Revised Statutes of *New Brunswick*, or in any Act amending that Act before or after the Union, and not increasing the Amount of such Dues; but the Lumber of any of the Provinces other than *New Brunswick* shall not be subject to such Dues.

Exemption of Public Lands, &c.

125. No Lands or Property belonging to *Canada* or any Province shall be liable to Taxation.

Provincial Consolidated Revenue Fund.

126. Such Portions of the Duties and Revenues over which the respective Legislatures of *Canada*, *Nova Scotia*, and *New Brunswick* had before the Union Power of Appropriation as are by this Act reserved to the respective

Governments or Legislatures of the Provinces, and all Duties and Revenues raised by them in accordance with the special Powers conferred upon them by this Act, shall in each Province form One Consolidated Revenue Fund to be appropriated for the Public Service of the Province.

IX.—Miscellaneous Provisions.

General.

As to Legislative Councillors of Provinces becoming Senators.

127. If any Person being at the passing of this Act a Member of the Legislative Council of *Canada*, *Nova Scotia*, or *New Brunswick*, to whom a Place in the Senate is offered, does not within Thirty Days thereafter, by Writing under his Hand addressed to the Governor General of the Province of *Canada* or to the Lieutenant Governor of *Nova Scotia* or *New Brunswick* (as the Case may be), accept the same, he shall be deemed to have declined the same; and any Person who, being at the passing of this Act a Member of the Legislative Council of *Nova Scotia* or *New Brunswick*, accepts a Place in the Senate, shall thereby vacate his Seat in such Legislative Council.

Oath of Allegiance, &c.

128. Every Member of the Senate or House of Commons of *Canada* shall before taking his Seat therein take and subscribe before the Governor General or some Person authorised by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant Governor of the Province or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of *Canada* and every Member of the Legislative Council of *Quebec* shall also, before taking his Seat therein, take and subscribe before the Governor General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule.

Continuance of existing Laws, Courts, Officers &c.

129. Except as otherwise provided by this Act, all Laws in force in *Canada*, *Nova Scotia*, or *New Brunswick* at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative, and

Ministerial, existing therein at the Union, shall continue in *Ontario*, *Quebec*, *Nova Scotia*, and *New Brunswick* respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of *Great Britain* or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*,) to be repealed, abolished, or altered by the Parliament of *Canada*, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act.

Transfer of Officers to Canada.

130. Until the Parliament of *Canada* otherwise provides, all Officers of the several Provinces having Duties to discharge in relation to Matters other than those coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces shall be Officers of *Canada*, and shall continue to discharge the Duties of their respective Offices under the same Liabilities, Responsibilities, and Penalties, as if the Union had not been made.

Appointment of new Officers.

131. Until the Parliament of *Canada* otherwise provides, the Governor General in Council may from Time to Time appoint such Officers as the Governor General in Council deems necessary or proper for the effectual Execution of this Act.

Treaty Obligations.

132. The Parliament and Government of *Canada* shall have all Powers necessary or proper for performing the Obligations of *Canada* or of any Province thereof, as Part of the *British* Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

Use of English and French Languages.

133. Either the *English* or the *French* Language may be used by any Person in the Debates of the Houses of the Parliament of *Canada* and of the Houses of the Legislature of *Quebec;* and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of *Canada* established under this Act, and in or from all or any of the Courts of *Quebec*.

The Acts of the Parliament of *Canada* and of the Legislature of *Quebec* shall be printed and published in both those Languages.

Ontario and Quebec.

Appointment of Executive Officers for Ontario and Quebec.

134. Until the Legislature of *Ontario* or of *Quebec* otherwise provides, the Lieutenant Governors of *Ontario* and *Quebec* may each appoint under the Great Seal of the Province the following Officers, to hold Office during Pleasure, that is to say,—the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in the Case of *Quebec* the Solicitor General, and may, by Order of the Lieutenant Governor in Council, from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and the Officers and Clerks thereof, and may also appoint other and additional Officers to hold Office during Pleasure, and may from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof.

Powers, Duties, &c. of Executive Officers.

135. Until the Legislature of *Ontario* or *Quebec* otherwise provides, all Rights, Powers, Duties, Functions, Responsibilities, or Authorities at the passing of this Act vested in or imposed on the Attorney General, Solicitor General, Secretary and Registrar of the Province of *Canada*, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works, and Minister of Agriculture and Receiver General, by any Law, Statute, or Ordinance of *Upper Canada*, *Lower Canada*, or *Canada*, and not repugnant to this Act, shall be vested in or imposed on any Officer to be appointed by the Lieutenant Governor for the Discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the Duties and Functions of the Office of Minister of Agriculture at the passing of this Act imposed by the Law

of the Province of *Canada*, as well as those of the Commissioner of Public Works.

Great Seals.

136. Until altered by the Lieutenant Governor in Council, the Great Seals of *Ontario* and *Quebec* respectively shall be the same, or of the same Design, as those used in the Provinces of *Upper Canada* and *Lower Canada* respectively before their Union as the Province of *Canada*.

Construction of temporary Acts.

137. The Words "and from thence to the End of the then next ensuing Session of the Legislature," or Words to the same Effect, used in any temporary Act of the Province of *Canada* not expired before the Union, shall be construed to extend and apply to the next Session of the Parliament of *Canada* if the Subject Matter of the Act is within the Powers of the same as defined by this Act, or to the next Sessions of the Legislatures of *Ontario* and *Quebec* respectively if the Subject Matter of the Act is within the Powers of the same as defined by this Act.

As to Errors in Names.

138. From and after the Union the Use of the Words "*Upper Canada*" instead of "*Ontario*," or "*Lower Canada*" instead of "*Quebec*," in any Deed, Writ, Process, Pleading, Document, Matter, or Thing, shall not invalidate the same.

As to Issue of Proclamations before Union, to commence after Union.

139. Any Proclamation under the Great Seal of the Province of *Canada* issued before the Union to take effect at a Time which is subsequent to the Union, whether relating to that Province, or to *Upper Canada*, or to *Lower Canada*, and the several Matters and Things therein proclaimed, shall be and continue of like Force and Effect as if the Union had not been made.

As to Issue of Proclamations after Union.

140. Any Proclamation which is authorized by any Act of the Legislature of the Province of *Canada* to be issued under the Great Seal of the Province of *Canada*, whether relating to that Province, or to *Upper Canada*, or to *Lower Canada*, and which is not issued before the Union, may be issued by the Lieutenant Governor of *Ontario* or of *Quebec*, as its Subject Matter requires, under the Great Seal thereof; and from and after the Issue of such Proclamation the same and the several Matters and Things therein proclaimed shall be and continue of the

like Force and Effect in *Ontario* or *Quebec* as if the Union had not been made.

Penitentiary.

141. The Penitentiary of the Province of *Canada* shall, until the Parliament of *Canada* otherwise provides, be and continue the Penitentiary of *Ontario* and of *Quebec*.

Arbitration respecting Debts, &c.

142. The Division and Adjustment of the Debts, Credits, Liabilities, Properties, and Assets of *Upper Canada* and *Lower Canada* shall be referred to the Arbitrament of Three Arbitrators, One chosen by the Government of *Ontario*, One by the Government of *Quebec*, and One by the Government of *Canada;* and the Selection of the Arbitrators shall not be made until the Parliament of *Canada* and the Legislatures of *Ontario* and *Quebec* have met; and the Arbitrator chosen by the Government of *Canada* shall not be a Resident either in *Ontario* or in *Quebec*.

Division of Records.

143. The Governor General in Council may from Time to Time order that such and so many of the Records, Books, and Documents of the Province of *Canada* as he thinks fit shall be appropriated and delivered either to *Ontario* or to *Quebec*, and the same shall thenceforth be the Property of that Province; and any Copy thereof or Extract therefrom, duly certified by the Officer having charge of the Original thereof, shall be admitted as Evidence.

Constitution of Townships in Quebec.

144. The Lieutenant Governor of *Quebec* may from Time to Time, by Proclamation under the Great Seal of the Province, to take effect from a Day to be appointed therein, constitute Townships in those Parts of the Province of *Quebec* in which Townships are not then already constituted, and fix the Metes and Bounds thereof.

X.—Intercolonial Railway.

Duty of Government and Parliament of Canada to make Railway herein described.

145. Inasmuch as the Provinces of *Canada*, *Nova Scotia*, and *New Brunswick* have joined in a Declaration that the Construction of the Intercolonial Railway is essential to the Consolidation of the Union of *British North America*, and to the Assent thereto of *Nova Scotia* and *New Brunswick*, and have consequently agreed that

Provision should be made for its immediate Construction by the Government of *Canada*: Therefore, in order to give effect to that Agreement, it shall be the Duty of the Government and Parliament of *Canada* to provide for the Commencement, within Six Months after the Union, of a Railway connecting the River *St. Lawrence* with the City of *Halifax* in *Nova Scotia*, and for the Construction thereof without Intermission, and the Completion thereof with all practicable Speed.

XI.—Admission of other Colonies.

Power to admit Newfoundland, &c. into the Union.

146. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of *Canada*, and from the Houses of the respective Legislatures of the Colonies or Provinces of *Newfoundland*, *Prince Edward Island*, and *British Columbia*, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of *Canada* to admit *Rupert's Land* and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of *Great Britain* and *Ireland*.

As to Representation of Newfoundland and Prince Edward Island in Senate.

147. In case of the Admission of *Newfoundland* and *Prince Edward Island*, or either of them, each shall be entitled to a Representation in the Senate of *Canada* of Four Members, and (notwithstanding anything in this Act) in case of the Admission of *Newfoundland* the normal Number of Senators shall be Seventy-six and their maximum Number shall be Eighty-two; but *Prince Edward Island* when admitted shall be deemed to be comprised in the Third of the Three Divisions into which *Canada* is, in relation to the Constitution of the Senate, divided by this Act, and accordingly, after the Admission of *Prince Edward Island*, whether *Newfoundland* is admitted or not,

the Representation of *Nova Scotia* and *New Brunswick* in the Senate shall, as Vacancies occur, be reduced from Twelve to Ten Members respectively, and the Representation of each of those Provinces shall not be increased at any Time beyond Ten, except under the Provisions of this Act for the Appointment of Three or Six additional Senators under the Direction of the Queen.

AMENDMENTS AFFECTING CERTAIN PROVISIONS OF THE BRITISH NORTH AMERICA ACT OF 1867.

[Statutes as cited.]

The Jurisdiction of the Supreme Court of Canada.

["Statutes of Canada," 38 *Vict. Cap.* 11, *Sec.* 17.]

SUBJECT to the limitations and provisions hereinafter made, an appeal shall lie to the Supreme Court from all final judgments of the highest Court of final resort, whether such Court be a Court of Appeal or of original jurisdiction, now or hereafter established in any Province of Canada in cases in which the Court of original jurisdiction is a Superior Court: Provided that no appeal shall be allowed from any judgment rendered in the Province of Quebec, in any case wherein the sum or value of the matter in dispute does not amount to two thousand dollars; and the right to appeal in civil cases given by this Act, shall be understood to be given in such cases only as are mentioned in this section, except Exchequer cases, cases of *mandamus, habeas corpus,* or municipal by-laws, as hereinafter provided.

[*Revised Statutes, Dominion of Canada,* 1886, Vol. II., *Cap.* 135. An Act respecting the Supreme and Exchequer Courts—Sec. 26.]

(1) Except as otherwise provided in this Act or in the Act providing for the appeal, no appeal shall lie to the Supreme Court but from the highest Court of last resort having jurisdiction in the Province in which the action, suit, cause,

matter or other judicial proceeding was originally instituted, whether the judgment or decision in such action, suit, cause, matter or other judicial proceeding was or was not a proper subject of appeal to such highest Court of last resort:

(2) Provided, that an appeal shall lie directly to the Supreme Court from the judgment of the Court of original jurisdiction by consent of parties:

(3) Provided also, that an appeal shall lie to the Supreme Court by leave of such Court, or a Judge thereof, from any judgment, decree, decretal order, or order made and pronounced by a Superior Court of Equity, or made or pronounced by any Judge in Equity, or by any Superior Court in any action, cause, matter or other judicial proceeding in the nature of a suit or proceeding in equity, and from the final judgment of any Superior Court of any Province other than the Province of Quebec in any action, suit, cause, matter or other judicial proceeding originally commenced in such Superior Court, without any intermediate appeal being had to any intermediate Court of appeal in the Province.

[*Sec.* 29.]

No appeal shall lie under this Act from any judgment rendered in the Province of Quebec, in any action, suit, cause, matter or other judicial proceeding, wherein the matter in controversy does not amount to the sum or value of two thousand dollars, unless such matter, if less than that amount,—

(*a*) Involves the question of the validity of an Act of the Parliament of Canada, or of the Legislature of any of the Provinces of Canada, or of an Ordinance or Act of any of the Councils or Legislative bodies of any of the Territories or Districts of Canada; or—

(*b*) Relates to any fee of office, duty, rent, revenue or any sum of money payable to Her Majesty, or to any title to lands or tenements, annual rents or such like matters or things where the rights in future might be bound:

["Statutes of Canada," 54 *and* 55 *Vict. Cap.* 25, *Sec.* 3. Repealing Sub-Sec. 2, Sec. 29, Revised Statutes, 1886, Cap. 135]:—

(1) Where the matter in controversy involves any such question, or relates to any such fee of office, duty, rent, revenue, or sum of money, payable to Her Majesty, or to any such title to lands or tenements, annual rents or such like matters or things where rights in the future might be bound, or amounts to or exceeds the sum or value of two thousand dollars, there shall be an appeal from judgments rendered in the said Province, although such action, suit, cause, matter or other judicial proceeding may not have been originally instituted in the Superior Court:

(2) Provided that such appeals shall lie only from the Courts of Queen's Bench, or from the Superior Court in review in cases where, and so long as, no appeal lies from the judgment of that Court when it confirms the judgment rendered in the Court appealed from, which by the law of the Province of Quebec are appealable to the Judicial Committee of the Privy Council:

(3) Whenever the right to appeal is dependent upon the amount in dispute, such amount shall be understood to be that demanded and not that recovered, if they are different.

[*Sec.* 4. Repealing Sec. 37, Cap. 135, Revised Statutes, 1886]:—

(1) Important questions of law or fact touching provincial legislation, or the appellate jurisdiction as to educational matters vested in the Governor in Council by "*The British North America Act*, 1867," or by any other Act or law, or touching the constitutionality of any legislation of the Parliament of Canada, or touching any other matter with reference to which he sees fit to exercise this power, may be referred, by the Governor in Council, to the Supreme Court for hearing or consideration; and the Court shall thereupon hear and consider the same:

(2) The Court shall certify to the Governor in Council, for his information, its opinion on questions so referred, with the reasons therefor, which shall be given in like manner as in the case of a judgment upon an appeal to the said Court; and any Judge who differs from the opinion of the majority shall, in like manner, certify his opinion and his reasons.

THE CONSTITUTION OF THE NORTH GERMAN CONFEDERATION. 16 April, 1867.

THE CONSTITUTION OF THE GERMAN EMPIRE. 16 April, 1871.

[Translation in "British and Foreign State Papers," 1870-1871. The Translation is slightly modified. The adhesion of the South German States to the North German Confederation made no essential difference in its Constitution. The Constitution of the German Empire that was in force from 1871 to 1918, is printed here, and may be referred to for the provisions of the earlier Constitution.]

Constitution of the German Empire, Berlin, 16 April, 1871.

His Majesty the King of Prussia in the name of the North German Confederation, His Majesty the King of Bavaria, His Majesty the King of Wurtemberg, His Royal Highness the Grand Duke of Baden, and His Royal Highness the Grand Duke of Hesse and by Rhine, for those parts of the Grand Duchy of Hesse which are south of the river Main, conclude an everlasting Confederation for the protection of the territory of the Confederation and the rights thereof, as well as to care for the welfare of the German people. This Confederation will bear the name "German Empire," and is to have the following

CONSTITUTION.

1. *Territory of the Confederation.*

Art. I. The territory of the Confederation is comprised of the States of Prussia with Lauenburg, Bavaria, Saxony, Wurtemberg, Baden, Hesse, Mecklenburg-Schwerin, Saxe-Weimar, Mecklenburg-Strelitz, Oldenburg, Brunswick, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, Anhalt, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Waldeck, Reuss Elder Line, Reuss Younger Line, Schaumburg-Lippe, Lippe, Lubeck, Bremen, and Hamburg.

2. *Legislature of the Empire.*

II. Within this confederate territory the Empire exercises the right of legislation according to the tenour of this Constitution, and with the effect that the Imperial laws take precedence of the laws of the States. The Imperial laws receive their

binding power by their publication in the name of the Empire, which takes place by means of an Imperial Law Gazette. If the date of its first coming into force is not otherwise fixed in the published law, it comes into force on the 14th day after the close of the day on which the part of the Imperial Law Gazette which contains it is published at Berlin.

III. For entire Germany one common nationality exists with the effect that every person (subject, State-citizen) belonging to any one of the Confederated States is to be treated in every other of the Confederated States as a born native, and accordingly must be permitted to have a fixed dwelling, to trade, to be appointed to public offices, to acquire real estate property, to obtain the rights of a State-citizen, and to enjoy all other civil rights under the same presuppositions as the natives, and likewise is to be treated equally with regard to legal prosecution or legal protection.

No German may be restricted from the exercise of this right by the authorities of his own State or by the authorities of any of the other Confederated States.

Those regulations which have reference to the care of the poor and their admission into local parishes are not affected by the principles set down in the first paragraph.

Until further notice the Treaties likewise remain in force which have been entered into by the particular States of the Confederation regarding the reception of persons expelled, the care of sick persons, and the burial of deceased persons belonging to the States.

What is needful for the fulfilment of military duty in regard to the native country will be ordered by the way of Imperial legislation.

Every German has the same claim to the protection of the Empire with regard to foreign nations.

IV. The following affairs are subject to the superintendence and legislation of the Empire:

1. The regulations as to freedom of translocation, domicile and settlement affairs, right of citizenship, passport and police regulations for strangers, and as to transacting business including insurance affairs in so far as these objects are not already provided for by Article III of this Constitution. In

Bavaria, however, the domicile and settlement affairs, and likewise the affairs of colonization and emigration to foreign countries are herefrom excluded.

2. The customs and commercial legislation and the taxes which are to be applied to the requirements of the Empire.

3. The regulation of the system of the coinage, weights and measures, likewise the establishment of the principles for the issue of funded and unfunded paper money;

4. The general regulations as to banking;

5. The granting of patents for inventions;

6. The protection of intellectual property;

7. The organisation of the common protection of German commerce in foreign countries, of German vessels and their flags at sea, and the arrangement of a common Consular representation, which is to be salaried by the Empire;

8. Railway affairs,—excepting in Bavaria the arrangements in Article XLVI,—and the construction of land and water communications for the defence of the country and for the general intercourse;

9. The rafting and navigation affairs on waterways belonging in common to several of the States, and the condition of the waterways, and likewise the river or other water dues;

10. Postal and telegraph affairs; in Bavaria and Wurtemberg, however, only with reference to the provisions of Article LII;

11. Regulations as to the reciprocal execution of judgments in civil affairs and the settlement of requisitions in general;

12. Likewise as to the verification of public documents;

13. The general legislation as to obligatory rights, penal law, commercial and bill-of-exchange laws, and judicial procedure;

14. The military and naval affairs of the Empire;

15. The measures of medical and veterinary police;

16. The regulations for the press and the right of association;

V. The legislation of the Empire is carried on by the council of the Confederation and the Imperial Diet [*Reichstag*]. The accordance of the majority of votes in both Assemblies is necessary and sufficient for a law of the Empire.

In projects of law on military affairs, on naval affairs and

on the taxes mentioned in Article XXXV, the President has the casting vote in cases where there is a difference of opinion, if his vote is in favour of the maintenance of the existing arrangements.

3. *Council of the Confederation.*

VI. The Council of the Confederation consists of the Representatives of the Members of the Confederation, amongst which the votes are divided in such a manner that Prussia has, with the former votes of Hanover, Electoral Hesse, Holstein, Nassau, and

Frankfort	17 votes.	Saxe-Coburg-Gotha	1 vote.
Bavaria	6 „	Anhalt	1 „
Saxony	4 „	Schwarzburg-Rudolstadt	1 „
Wurtemberg	4 „	Schwarzburg-Sondershausen	1 „
Baden	3 „	Waldeck	1 „
Hesse	3 „	Reuss Elder Line	1 „
Mecklenburg-Schwerin	2 „	Reuss Younger Line	1 „
Saxe-Weimar	1 vote.	Schaumburg-Lippe	1 „
Mecklenburg-Strelitz	1 „	Lippe	1 „
Oldenburg	1 „	Lubeck	1 „
Brunswick	2 votes.	Bremen	1 „
Saxe-Meiningen	1 vote.	Hamburg	1 „
Saxe-Altenburg	1 „		
Total	58 votes.		

Each member of the Confederation may nominate as many Plenipotentiaries to the Council of the Confederation as it has votes; but the totality of such votes can only be cast as a unit.

VII. The Council of the Confederation determines:

1. What Bills are to be brought before the Imperial Diet, and on the resolutions passed by the same;

2. As to the administrative measures and arrangements necessary for the general execution of the Imperial legislation, in so far as no other Imperial law has decreed to the contrary;

3. As to defects which have made themselves manifest in the execution of the Imperial laws or the above-mentioned measures and arrangements.

Every member of the Confederation has the right to propose bills and to introduce motions, and the Presidency is bound to bring them under debate.

The decisions take place by simple majority, with the reservation of the stipulations in the Articles V., XXXVII., and LXXVIII. Non-represented votes or votes without instructions are not counted. In equal divisions the Presidential is the casting vote.

In decisions upon affairs, wherein according to the rules of this Constitution, the whole Empire has not a common interest, only the votes of those Confederated States are counted which are interested in common.

VIII. The Council of the Confederation forms permanent Committees from its own members;

1. For the land army and fortresses.
2. For naval affairs.
3. For customs and taxes.
4. For commerce and intercourse.
5. For railways, posts and telegraphs.
6. For affairs of justice.
7. For finance.

In each of these Committees, besides the Presidency, at least four of the Confederated States will be represented, and in the same each State only has one vote. In the Committee for the land army and fortresses, Bavaria has a perpetual seat, the other members thereof as well as the members for the Naval Committee are nominated by the Emperor; the members of the other Committees are elected by the Council of the Confederation. The composition of these Committees is to be renewed for every session of the Council of the Confederation or respectively every year, when the outgoing members may be re-elected.

Besides these in the Council of the Confederation a Committee for Foreign Affairs will be formed, comprised of the representatives of the Kingdoms of Bavaria, Saxony, and Wurtemberg, and of two other representatives of other Confederated States, who will be yearly elected by the Council of the Confederation in which Committee Bavaria will preside.

The necessary officials will be placed at the disposal of these Committees.

IX. Every member of the Council of the Confederation has the right to appear in the Imperial Diet, and must at his desire at all times be heard, in order to represent the views of his Government, even when these views have not been adopted by the majority of the Council of the Confederation. No one may at the same time be a member of the Council of the Confederation and of the Imperial Diet.

X. The Emperor is bound to afford the usual diplomatic protection to the members of the Council of the Confederation.

4. *The Presidency.*

XI. The Presidency of the Confederation belongs to the King of Prussia, who bears the name of German Emperor. The Emperor has to represent the Empire internationally, to declare war, and to conclude peace in the name of the Empire, to enter into alliances and other Treaties with Foreign Powers, to accredit and to receive Ambassadors.

The consent of the Council of the Confederation is necessary for the declaration of war in the name of the Empire, unless an attack on the territory or the coast of the Confederation has taken place.

In so far as Treaties with Foreign States have reference to affairs which, according to Article IV., belong to the jurisdiction of the Imperial Legislature, the consent of the Council of the Confederation is requisite for their conclusion, and the sanction of the Imperial Diet for their coming into force.

XII. The Emperor has the right to summon, to open, to prorogue, and to close both the Council of the Confederation and the Imperial Diet.

XIII. The summoning of the Council of the Confederation, and of the Imperial Diet, takes place once each year, and the Council of the Confederation can be called together for preparation of business without the Imperial Diet being likewise summoned, whereas the latter cannot be summoned without the Council of the Confederation.

XIV. The Council of the Confederation must be summoned whenever one-third of the votes require it.

XV. The presidency in the Council of the Confederation and

the direction of the business belongs to the Chancellor of the Empire, who is to be appointed by the Emperor.

The Chancellor of the Empire can be represented, on his giving written information thereof, by any other member of the Council of the Confederation.

XVI. The requisite motions, in accordance with the votes of the Council of the Confederation will be brought before the Imperial Diet in the name of the Emperor, where they will be supported by members of the Council of the Confederation, or by particular commissioners nominated by the latter.

XVII. The formulation and proclamation of the laws of the Empire, and the care of their execution, belongs to the Emperor. The Orders and Decrees of the Emperor are issued in the name of the Empire and require for their validity the counter-signature of the Chancellor of the Empire, who thereby undertakes the responsibility.

XVIII. The Emperor nominates the Imperial officials, receives their oath of allegiance to the Empire, and, when necessary, decrees their dismissal.

The officials of any State of the Confederation, when appointed to any Imperial office, are entitled to the same rights with respect to the Empire, as they would enjoy from their official position in their own state, excepting in such cases as have otherwise been provided for by Imperial legislation before their entrance into the Imperial service.

XIX. Whenever members of the Confederation do not fulfil their Constitutional duties towards the Confederation, they may be constrained to do so by way of execution. Such execution must be decreed by the Council of the Confederation, and be carried out by the Emperor.

5. *Imperial Diet* [Reichstag].

XX. The Imperial Diet is elected by universal and direct election with secret votes.

Until the legal arrangement reserved in § 5 of the Election Laws of 31 May, 1869 (*Federal Law Gazette*, 1869, page 145), has been made, there are to be elected—in Bavaria, 48; in Wurtemberg, 17; in Baden, 14; in Hesse, south of the Main, 6

members, and the total number of the members consists, therefore, of 382.

XXI. Officials do not require any leave of absence on entering into the Imperial Diet.

If any member of the Imperial Diet accepts any salaried appointment of the Empire, or of any State of the Confederation, or enters into any Imperial or State office to which a higher rank, or higher salary is attached, he loses his seat and service in the Diet, and can only regain his position in the same by re-election.

XXII. The proceedings of the Imperial Diet are public.

Accurate reports of the proceedings in the public sittings of the Imperial Diet are free from any responsibility.

XXIII. The Imperial Diet has the right to propose laws within the competency of the Empire, and to forward Petitions which have been addressed to it to the Council of the Confederation, or to the Chancellor of the Empire.

XXIV. The legislative period of the Imperial Diet is three years.[1] For a dissolution of the Imperial Diet within this period, a resolution of the Council of the Confederation, with the assent of the Emperor, is requisite.

XXV. In case of a dissolution of the Imperial Diet, the meeting of the electors must be called within a period of 60 days after such dissolution, and within a period of 90 days the Imperial Diet must be summoned.

XXVI. Without the assent of the Imperial Diet the prorogation of the same may not be extended over 30 days, nor repeated during the same session.

XXVII. The Imperial Diet scrutinises the legality of the credentials of its members and decides thereon. It regulates its own method of business and discipline by a business order, and elects its President, Vice-Presidents, and Secretaries.

XXVIII. The Imperial Diet decides by absolute majority of votes. The presence of a majority of the legal number of members is necessary for the validity of a resolution.

In voting on a matter which, according to the stipulations of this Constitution, is not common to the whole Empire, only the

[1] Amended to *five* years, 19 March, 1888.

votes of those members will be counted who have been elected in those Confederate States to which the matter is common.[1]

XXIX. The members of the Imperial Diet are representatives of the people as a whole, and are not bound by orders and instructions.

XXX. No member of the Imperial Diet can at any time be proceeded against, either judicially or by way of discipline, on account of his votes, or for expressions made use of in the exercise of his functions, nor can he be made responsible therefore in any way outside the assembly.

XXXI. Without the assent of the Imperial Diet, no member of the same may be placed under examination or arrested during the period of the session for any deed subject to punishment, except when taken in the act or in the course of the following day.

The same assent is needful in arrest for debt.

At the requisition of the Imperial Diet every correctional procedure against a member of the same, and all investigations or civil arrests must be relinquished for the duration of the period of the session.

XXXII. The members of the Imperial Diet must not receive any salary or indemnification in that capacity.

6. *Customs and Commercial Affairs.*

XXXIII. Germany forms one customs and commercial territory encircled by a common customs frontier. Those separate parts of territory are excluded, which from their position are not adapted for inclusion in the customs frontier.

All articles of free trade in any one of the States of the Confederation may be introduced into any other State of the Confederation, and can only be subjected to a duty in the latter in so far as similar articles produced in that State are subject to a home duty.

XXXIV. The Hanseatic towns Bremen and Hamburg, with so much of their own, or of the adjacent territory as may be needful for the purpose, remain as free ports outside the common customs frontier until they apply to be admitted therein.

[1] Repealed by Act of 24 February, 1873.

XXXV. The Empire has the sole right of legislation in all Custom-House affairs, in the taxation of salt and tobacco produced in the territories of the Confederation, beer and spirit and sugar and syrup or other home productions made from beetroot, in the reciprocal protection against fraud of consumption duties raised in the separate States of the Confederation, as well as in such measures as the Customs' Committees may find requisite for the security of the common customs frontier.

In Bavaria, Wurtemberg and Baden, the taxation of the native spirit and beer remains for the present subject to the laws of the land. But the States of the Confederation will direct their efforts to bring about an assimilation in the taxation of these articles likewise.

XXXVI. The collection and administration of the duties and consumption taxes (Article XXXV.) remain in the hands of each State of the Confederation, within its own territory, in so far as they have hitherto been so.

The Emperor watches over the observance of the legal procedure through Imperial officials, whom he attaches to the customs or excise offices, and to the directing authorities of the separate States according to the advice of the Committee of the Council of the Confederation for customs and excise affairs.

Information given by these officials as to defects in the execution of the common legislation (Article XXXV.) will be laid before the Council of the Confederation for decision.

XXXVII. In decisions relative to the administrative instructions and arrangements (Article XXXV.) for the execution of the common legislation, the Presidency has the casting vote, when it is given for the continuance of the existing instruction or arrangement.

XXXVIII. The revenue from the duties mentioned in Article XXXV. and from the other taxes mentioned in so far as they are subject to Imperial legislation, flows into the Imperial Treasury.

This revenue consists of the whole income arising from the duties and other taxes after the deduction of :

1. The tax-compensations and abatements according to the laws or the general administrative regulations.
2. The repayments for incorrect levies.

(*a*) For the customs, the expenses which are requisite for the protection and the collection of the duties on that part of the frontiers situated towards foreign countries and in the border district.

(*b*) For the salt tax, the expenses which are incurred for the salaries of the officials who are employed in the salt works to collect and control that tax.

(*c*) For the beet-sugar and tobacco tax, the compensation which, according to the decisions of the Council of the Confederation from time to time, has to be made to the several Federal Governments for the expenses incurred in the administration of these taxes.

(*d*) For the other duties 15 per cent. of the total income.

The territories situated outside the common customs frontier pay an agreed sum towards defraying the expenses of the Empire.

Bavaria, Wurtemberg, and Baden, do not participate in the income flowing into the Imperial Treasury from the taxes on spirits and beer, nor in the corresponding part of the above-mentioned agreed payment.

XXXIX. The quarterly summaries which are to be made at the end of each quarter of the year by the collecting authorities of the Federal States, and the final statements to be made at the end of the year and the close of the books, of the income from duties and from consumption dues flowing into the Imperial Treasury according to Article XXXVIII., falling due during the quarter, or during the financial year, are to be collected into chief summaries, after previous examination, by the directing authorities of the Federal States, and therein each duty is to be separately shown; these summaries are to be sent in to the Committee of the Council of the Confederation for financial affairs.

On the basis of these summaries the said Committee makes out provisionally every three months, the amount due from the Treasury of each State of the Confederation, to the Imperial Treasury, and communicates these amounts to the Council of the Confederation, and to the States of the Confederation, it also presents the final statement of these amounts every year, with remarks, to the Council of the Confederation. The Council of the Confederation decides on this statement.

XL. The stipulations in the Zollverein Treaty of July 8, 1867, remain in force in so far as they have not been altered by the provisions of this Constitution, and so long as they are not altered in the way pointed out in Article VII., or Article LXXVIII.

7. *Railway Affairs.*

XLI. Railways which are considered necessary for the defence of Germany, or for the sake of the common intercourse, may, by virtue of an Imperial law, be constructed on account of the empire, even against the opposition of the members of the Confederation whose territory is intersected by the railways, but without prejudice to the prerogatives of any state. Concessions to execute the works may also be granted to private contractors, with the right of expropriation.

Every existing railway board of direction is bound to consent to the junction of newly constructed railways at the expense of the same.

The legal enactments which have granted a right of denial to existing railway undertakings against the construction of parallel or competing lines are hereby, without prejudice to rights already gained, repealed for the entire Empire. Nor can such a right of denial be ever granted again in concessions to be issued hereafter.

XLII. The Governments of the Confederation bind themselves to manage the German railways as a uniform network in the interest of the common intercourse, and likewise for this purpose to have all new railways which are to be made, constructed and fitted up according to uniform rules.

XLIII. For this purpose corresponding working arrangements are to be adopted with all possible dispatch, particularly with regard to railway police regulations. The Empire has likewise to take heed that the railway boards keep the lines at all times in such a state of repair as to ensure safety, and that they provide them with the working material necessary for the traffic.

XLIV. The railway boards are bound to introduce the necessary passenger trains of the proper speed for the through traffic, and for the arrangement of corresponding journeys, also

the requisite trains to provide for the goods traffic; likewise to arrange direct expeditions for passengers and goods traffic, with permission for conveying the means of transport from one line to the other for the usual payments.

XLV. The Empire exercises the control over the tariffs, and will especially operate to the end:

1. That working regulations, in conformity with each other, be introduced as soon as possible on all German railroads;

2. That the greatest possible equalization and reduction of the tariffs shall take place, and particularly for greater distances an abatement of the tariffs for the transport of coals, coke, timber, ores, stones, salt, raw iron, manures, and similar articles, so as to be more in proportion to the necessities of agriculture and industry, and that the one pfennig tariff may be introduced as speedily as possible.

XLVI. In times of distress, particularly when an unusual dearth of the necessaries of life occurs, the railway boards are bound to introduce a lower special tariff for the transport of grain, meal, pulse, and potatoes, temporarily, according to the necessity, as will be determined by the Emperor on the proposal of the respective committee of the Council of the Confederation, which tariff, however, must not be lower than the lowest rate already existing for raw produce on the said line.

The above, as well as the stipulations made in the Articles XLII. to XLV., are not applicable to Bavaria.

But the Empire has the right in regard to Bavaria likewise to lay down, by way of legislation, uniform rules for the construction and fitting up of the railways which are of importance for the defence of the country.

XLVII. The requisitions of the authorities of the Empire relative to making use of the railways for the purpose of the defence of Germany, must be obeyed without question by all the railway boards. In particular, the military and all materials of war are to be conveyed at equally reduced rates.

8. *Postal and Telegraph Affairs.*

XLVIII. The postal and telegraph affairs will be arranged and administered for the entire German Empire as uniform institutions for State intercourse.

The legislation of the Empire in postal and telegraphic affairs, as provided in Article IV., does not extend to those objects, the regulation of which, according to the principles which govern the North German Postal and Telegraphic Administration, has been left to definitive rules or administrative directions.

XLIX. The revenues of the postal and telegraphic service are in common for the entire Empire. The expenses will be defrayed from the common revenues. The surpluses flow into the Imperial Treasury (Section XII.).

L. The chief direction of the postal and telegraphic administration belongs to the Emperor. The officials appointed by him have the duty and the right to take care that uniformity in the organization of the administration and in carrying on the service, as well as in the qualification of the officials, be introduced and maintained.

The issue of definitive rules and general administrative directions, as well as the sole care of the relations with other postal and telegraphic offices, belongs to the Emperor.

All the officials of the postal and telegraphic administration are bound to obey the Imperial directions. This duty is to be recorded in the oath of service.

The appointment of the requisite principal officials for the administrative authorities of the post and telegraphic service in the various districts (such as directors, counsellors, chief inspectors), likewise the appointment of the officials acting as the agents of the before-mentioned functionaries, in the service of supervision, etc., in the separate districts (such as inspectors, controllers), proceeds, for the whole territory of the German Empire, from the Emperor, to whom these officials render the oath of service. Timely notice of the appointments in question, for the governmental approbation and publication, will be given to the Governments of the several States, so far as their territory is thereby concerned.

The other officials necessary for the post and telegraphic service, as well as all those required for the local or technical business, and therefore the officials, etc., acting at the actual place of business, will be appointed by the respective State Governments.

Where there is no independent State post, or telegraph administration, the provisions of the special Treaties supply the rule.

LI. In making over the balance of the postal administration for general Imperial purposes (Article XLIX.), in consideration of the previous difference in the net incomes obtained by the State postal administrations of the separate territories, the following proceeding is to be observed for the purpose of a corresponding arrangement during the undermentioned period of transition.

From the postal balances which have accrued in the separate postal districts during the five years, 1861 to 1865, an average yearly balance will be calculated, and the share which each separate postal district has had in the postal balance thus shown for the whole territory of the Empire, will be fixed according to percentages.

According to the proportion ascertained in this manner, the separate States will be credited for the next eight years after their entrance into the postal administration of the Empire, with such quotas as accrue to them from the postal balances produced in the Empire, in account with their other contributions for Imperial purposes.

At the expiration of the 8 years all distinctions cease, and the postal balances will flow in undivided account into the Imperial Treasury, according to the principle set forth in Article XLIX.

From the quotas of the postal surplus thus ascertained during the before-mentioned 8 years for the Hanseatic towns, one half will be placed beforehand every year at the disposal of the Emperor, for the purpose, in the first place, of paying therefrom the expenses for the establishment of normal postal institutions in the Hanseatic towns.

LII. The stipulations in the foregoing Articles XLVIII. to LI. have no application to Bavaria and Wurtemberg. In their place the following stipulations are in force for those two states of the Confederation.

To the Empire alone belongs the legislation as to the postal and telegraphic privileges, as to the legal relations between both institutions and the public, as to exemptions from postage and

rates of postage, exclusively, however, of the rules and tariff regulations for the domestic circulation of Bavaria, and of Wurtemberg respectively, likewise under similar reservation the settlement of the fees for telegraphic correspondence.

In the same manner the regulation of the postal and telegraphic intercourse with foreign countries belongs to the Empire, excepting the direct intercourse of Bavaria, and of Wurtemberg themselves with the neighbouring States which do not belong to the Empire, the regulations as to which remain as stipulated in Article XLIX. of the Postal Treaty of 23 November, 1867.

Bavaria and Wurtemberg do not participate in the income flowing into the Imperial Treasury from the postal and telegraph service.

9. *Shipping and Navigation.*

LIII. The war navy of the Empire is one united navy under the chief command of the Emperor. The organization and composition thereof is the business of the Emperor, who appoints the naval officers and officials, and into whose service they and the men are to be sworn.

The Harbour of Kiel and that of Jahde are Imperial military harbours.

The necessary expenses for the establishment and maintenance of the war fleet, and the institutions in connection therewith, are paid from the Treasury of the Empire.

The whole of the maritime population of the Empire, including engineers and shipwrights, are free from service in the land army, but on the other hand, are bound to serve in the Imperial Navy.

The apportionment of the recruits is arranged according to the number of the maritime population, and the quota which each State thus contributes is deducted from the contingent to the land army.

LIV. The merchant vessels of all the States of the Confederation form one undivided commercial navy.

The Empire has to determine the method of ascertaining the burthen of sea-going vessels, to grant tonnage certificates, as well as to regulate other ship certificates, and to determine the

conditions upon which the permit to command a sea-going vessel depends.

The merchant ships of all the States of the Confederation will be admitted and treated on equal terms in the seaports and in all the natural and artificial water-ways of the separate States of the Confederation. The dues to be levied in the seaports from sea-going vessels or their cargoes for using the appliances of navigation, must not exceed the expenses which are requisite for the maintenance and ordinary repairs of those appliances.

On all natural water-ways dues may only be levied for the use of such appliances as are especially intended for the furtherance of traffic. These dues, as well as the dues payable for making use of such artificial water-ways as are State property, must not exceed the expenses which are requisite for the maintenance and ordinary repairs of such erections and works. These regulations are also applicable to rafting so far as it takes place on navigable water-ways.

The imposing of other or higher dues on foreign ships, or their cargoes, than those paid by the ships of the Federal States does not belong to any single State, but solely to the Empire.

LV. The flag of the navy and of the mercantile marine is black-white-red.

10. *Consular Service.*

LVI. The whole of the Consular Service of the German Empire is under the superintendence of the Emperor, who appoints the Consuls after consultation with the Committee of the Council of the Confederation for Commerce and Traffic.

Within the official district of the German Consuls no new Consulates for separate States may be erected. The German Consuls exercise the functions of a national Consul for any State of the Confederation, not represented in their district. The whole of the existing Consulates for separate States are to be abolished as soon as the organization of the German Consulates is so completed, that the representation of the interests of all the States of the Confederation is recognized by the Council of the Confederation as secured by the German Consulates.

11. *Military Affairs of the Empire.*

LVII. Every German is liable to military service, and cannot have that service performed by substitute.

LVIII. The expenses and burdens of the whole of the military affairs of the Empire are to be borne equally by all of the States of the Confederation and those belonging to them, so that no preferences, or overburdening of any single States or classes, are in principle admissible. Where an equal division of the burdens is not practicable *in natura*, without prejudice to the public welfare, the matter is to be arranged on the principles of equity by means of legislation.

LIX. Every German capable of service belongs for 7 years to the standing army, as a rule from the completion of the twentieth to the commencement of the twenty-eighth year of his age; that is, for the first 3 of these years with the colours, and for the last 4 years in the reserve; then for the following 5 years of his life to the *Landwehr*. In those States of the Confederation wherein hitherto a longer period than 12 years of service altogether has been legal, the gradual reduction of such service can only take place in so far as regard for the readiness of the Imperial Army for war permits it.

With respect to the emigration of men belonging to the reserve only those regulations are to be applied which are in force for the emigration of men of the *Landwehr*.

LX. The effective strength of the German Army in peace is fixed till 31 December, 1871, at one per cent. of the population of the year 1867, and the separate States of the Confederation supply it *pro rata*. Subsequently the effective strength of the army in peace will be determined by Imperial legislation.

LXI. After the publication of this Constitution the whole Prussian Military Code of Laws is to be introduced throughout the Empire without delay, both the laws themselves and the regulations, instructions, and rescripts issued for the explanation and completion thereof, especially therefore the Military Penal Code of 3 April, 1845, the Military Court Martial Regulations of 3 April, 1845; the Ordinance upon Courts of Honour of 20 July, 1843; the regulations upon recruiting, time of service, allowance and maintenance affairs, billeting, compensations for

damages to agriculture, mobilisation, etc., for war and peace. The military Church ritual is, however, excluded.

After the uniform war organization of the German army has been effected, a comprehensive military law for the Empire will be laid before the Imperial Diet and the Council of the Confederation for their constitutional decision.

LXII. To cover the outlay necessary for the entire German army, and the arrangements appertaining thereunto until 31 December, 1871, there are yearly to be placed at the disposal of the Emperor, as many times 225 thalers, in words two hundred and twenty-five thalers, as the poll-number of the peace strength of the army amounts to, according to Article LX. (See Section XII.)

After 31 December, 1871, these contributions must continue to be paid to the Imperial Treasury by each State of the Confederation. For the calculation thereof the effective strength in peace, as provisionally settled in Article LX., will be taken as the basis until it is altered by an Imperial law.

The expenditure of this sum for the entire Imperial Army and its arrangements will be determined on by the Estimate Law.

In settling the estimates of the military expenses the legal organization of the Imperial Army, as laid down in this Constitution, will be taken as the basis.

LXIII. The entire land force of the Empire will form a single army, which in war and peace is under the command of the Emperor.

The regiments, etc., bear running numbers for the entire German Army. For their clothing, the ground colours and fashion of the Royal Prussian Army are to be the model. It is left to the chiefs of the respective contingents to determine the external marks of distinction (cockades, etc.).

It is the duty and the right of the Emperor to take care that all the divisions of troops within the German Army are numerically complete and effective for war, and that unity in the organization and formation, in the armament and command, in the training of the men, as well as in the qualifications of the officers, be established and maintained. For this purpose the Emperor has the right to convince himself of the condition of

the separate contingents at all times by inspection, and to order the reformation of any defects thereby discovered.

The Emperor determines the effective strength, the division and arrangement of the contingents of the Imperial Army, as well as the organization of the *Landwehr*, he also has the right of determining the garrisons within the territories of the Confederation, and to order the embodiment of any part of the Imperial Army in a state of preparation for war.

For the purpose of keeping up the indispensable uniformity in the administration, maintenance, armament, and equipment of all the divisions of troops of the German Army, the orders issued thereon in future for the Prussian Army will be communicated in a suitable manner, through the committee for the land army and fortresses mentioned in Article VIII., No. 1, to the commanders of the other Contingents for observance.

LXIV. All German troops are bound to obey the commands of the Emperor unconditionally. This duty is to be specified in the banner-oath.

The Commander-in-Chief of a contingent, likewise all officers who command troops of more than one contingent, and all commanders of fortresses are appointed by the Emperor. The officers appointed by the Emperor take the banner-oath to him. The appointments of Generals and officers acting as Generals within the contingents are at all times subject to the approbation of the Emperor.

The Emperor has the right, for purposes of transfer, with or without promotion, to select, for such appointments as are to be made by him in the Imperial Service, whether in the Prussian Army or in other contingents, from the officers of all the contingents of the Imperial Army.

LXV. The right of erecting fortresses within the territories of the Confederation belongs to the Emperor, who proposes, according to Section XII., the grant of the necessary means for the purpose, in so far as they are not provided for in the ordinary estimates.

LXVI. Where nothing to the contrary is stipulated by particular Conventions, the Sovereigns of the Confederation, or the Senates, appoint the officers of their contingents, subject to the restriction of Article LXIV. They are the chiefs of all the

divisions of troops belonging to their territories, and enjoy the honours connected therewith. They have especially the right of inspection at all times, and receive, besides the regular reports and announcements of alterations which take place, timely information, for the purpose of Governmental publication, of all promotions or nominations among the respective divisions of the troops.

Likewise they have the right to make use, for purposes of police, not only of their own troops, but also to make requisition for any other division of troops of the Imperial Army which may be located in their territories.

LXVII. Unexpended balances from the military estimate do not belong under any circumstances to a single Government, but at all times to the Imperial Treasury.

LXVIII. The Emperor may, when the public safety is threatened in the territories of the Confederation, declare any part thereof to be in a state of war. Until the promulgation of an Imperial law, which will regulate the premisses, the form of publication and the effects of such a declaration, the rules of the Prussian law of 4 June, 1851, remain in force. (*Collection of Laws for* 1851, p. 451 & sqq.)

Final Stipulation to Section XI.

The provisions contained in this section come into force in Bavaria according to the special stipulations of the Treaty of Confederation, of 23 November, 1870 (*Federal Law Gazette*, 1871, p. 9), under III., § 5, and in Wurtemberg, according to the special stipulations of the Military Convention of 21 to 25 November, 1870 (*Federal Law Gazette*, 1870, p. 658).

12. *Finances of the Empire.*

LXIX. All the receipts and disbursements of the Empire must be estimated for each year, and be brought into the Imperial estimates. These are to be fixed by a law before the beginning of the financial year, according to the following principles.

LXX. To provide for all common expenses, any balances of the preceding year are first of all employed, and likewise the common revenues derived from the duties, the common consumption taxes, and from the postal and telegraph services. In so

far as they cannot be provided for by these revenues, they are, as long as Imperial taxes are not introduced, to be met by contributions from the single States of the Confederation, in proportion to their population, which contributions to the amount estimated in the budget will be assessed by the Chancellor of the Empire.

LXXI. The common disbursements are, as a rule, voted for one year; they may, however, in particular cases, be voted for a longer period.

During the time of transition mentioned in Article LX., the estimates of the expenditure for the army, arranged under heads, are to be laid before the Council of the Confederation and the Imperial Diet only for their information and remembrance.

LXXII. The Chancellor of the Empire is to give account yearly to the Council of the Confederation and to the Imperial Diet of the application of all the incomes of the Empire, for discharge of responsibility.

LXXIII. In cases of extraordinary requirements, the contracting of a loan, also the undertaking of a guarantee on account of the Empire, may take place by Imperial legislation.

Final Stipulation to Section XII.

To the expenditure for the Bavarian army Articles LXIX. and LXXI. are only applicable in conformity with the stipulations of the Treaty of 23 November, 1870, mentioned in the final stipulation to Section XI., and Article LXXII. only so far that the assignment to Bavaria of the sums necessary for the Bavarian army is to be notified to the Council of the Confederation and to the Imperial Diet.

13. *Settlement of Differences and Penal Stipulations.*

LXXIV. Every undertaking against the existence, the integrity, the safety, or the Constitution of the German Empire; finally, insulting the Council of the Confederation or the Imperial Diet, or a member of the Council of the Confederation or of the Imperial Diet, or any authority, or a public functionary of the Empire, whilst in the exercise of their vocation, or in reference to their vocation, by word, in writing, printing, drawing, figurative or other representation, will be sentenced and punished

in the separate States of the Confederation according to the existing law, or the laws which may in future be enacted there, in pursuance of which a similar offence committed against that separate State of the Confederation, its Constitution, its Chambers, or Diet, the members of its Chambers, or Diet, its authorities and functionaries, would be punished.

LXXV. For those undertakings against the German Empire, mentioned in Article LXXIV., which, if they had been undertaken against one of the separate States of the Confederation, would be qualified as high treason, or treason against the country, the Common Upper Court of Appeal of the three free and Hanseatic towns, at Lubeck, is the competent deciding authority in first and last instance.

The special regulations as to the competency and the procedure of the Upper Court of Appeal are to be settled by way of Imperial legislation. Until the promulgation of an Imperial law, the competency of the courts in the separate States of the Confederation, and the provisions relative to the procedure of these courts, remain as they have hitherto been.

LXXVI. Differences between various States of the Confederation, in so far as they are not of a private legal nature and therefore to be decided by the competent judicial authorities, will, at the suit of one of the parties, be settled by the Council of the Confederation.

Constitutional differences in those States of the Confederation in whose constitution no authority for settling such disputes is provided, are to be amicably arranged by the Council of the Confederation at the suit of one of the parties, or if this should not succeed, they are to be settled by way of Imperial legislation.

LXXVII. If, in a State of the Confederation, the case of a refusal of justice should occur, and sufficient aid cannot be obtained by way of law, it is the duty of the Council of the Confederation to take cognizance of the complaints as to the refused or hindered administration of the law when proved according to the Constitution and existing laws of the respective State of the Confederation, and thereupon to cause the Government of the Confederate State which has given occasion for the complaint, to afford judicial aid.

14. *General Stipulations.*

LXXVIII. Alterations in the Constitution take place by way of legislation. They are considered as rejected if they have 14 votes in the Council of the Confederation against them.

Those provisions of the Constitution of the Empire, by which certain rights are established for separate States of the Confederation in their relation to the community, can only be altered with the consent of the State of the Confederation entitled to those rights.

ACT OF PARLIAMENT ESTABLISHING THE FEDERATION OF THE LEEWARD ISLANDS. 21 AUGUST, 1871.

[34 and 35 Vict. Cap. 107, "Law Reports—Public General Statutes," vol. 6 (1871), pp. 548-553.]

An Act for the Federation and general Government of the Leeward Islands.

[21*st August*, 1871.]

WHEREAS the several legislative bodies of Her Majesty's Leeward Islands have, by certain resolutions, signified their desire for the union of the said islands under one government in manner therein set forth, and have requested that the said resolutions may be embodied in an Act of the Imperial Parliament with all such provisions as may be necessary to give them full force and effect, and it is expedient that the said union should be established:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Leeward Islands Act, 1871." Short Title.

2. So soon as this Act shall come into operation in the Leeward Islands, those islands shall form one colony, consisting of six presidencies, namely, the several islands of Antigua, Montserrat, Saint Christopher, Nevis, and Dominica, with their respective dependencies, and the Virgin Islands. Colony of Leeward Islands.

3. In this Act the following terms shall have the Definition of Terms.

meanings hereby assigned to them, unless there be something in the subject or context repugnant thereto; (that is to say,)

"Governor" shall mean the Governor or officer for the time being administering the general government of the Leeward Islands:

"General Government" and "General Legislature" shall respectively mean the government and legislature of the Leeward Islands:

"Island Government," "Island Council," and "Island Legislature" shall mean respectively the government, legislative body, or legislature of one of the above-named presidencies:

"Proclamation" shall mean a written or printed notice under the hand of the Governor, published by his order in each of the presidencies which it may directly concern.

Commencement of Act.

4. This Act shall come into operation in the Leeward Islands on a day to be declared by proclamation.

Executive Council.

5. There shall be an Executive Council of the Leeward Islands consisting of such persons or officers as the Queen may from time to time name or designate.

Appointment of officers.

6. The Queen may, from time to time, appoint such officers of the General Government as Her Majesty may think fit, with such salaries as may be assigned to them by the General Legislature.

General Legislative Council.

7. There shall be in the Leeward Islands a legislative body, to be styled "The General Legislative Council," composed of ten elective and ten non-elective members.

Provided that the proceedings of the Council shall not be invalid on account of any vacancies therein.

Elective members.

8. Of the elective members, four shall be taken from the Island Council of Antigua, three from that of Saint Christopher, two from that of Dominica, and one from that of Nevis. They shall respectively be chosen by the elective members of the island council from which they are taken, in such manner as the said island council may, from time to time, by any standing rule determine, and within such period as may, from time to time, be prescribed by proclamation.

9. The non-elective members shall be appointed by the Queen in such manner and under such conditions as Her Majesty may think fit, and shall be as follows: Non-elective members.

A President, who at the time of his appointment shall be member of some island council: President.

Three official members, who shall at the time of their appointment be officers of the General Government, and shall *ipso facto* vacate their seats on ceasing to be so: Official members.

Six unofficial members, of whom one shall be taken from each of the island councils, and who shall *ipso facto* vacate their seats on ceasing to be members of such councils. Unofficial members.

10. Subject to the provisions of the twenty-fifth and twenty-sixth sections of this Act, the Governor with the consent of the General Legislative Council, herein-after referred to as "the Council," may make laws, for the Leeward Islands or any part thereof, on the following subjects: Legislative powers of the Council.

(1) The law of real and personal property, including wills, testaments, probate, and administration of estates of deceased persons:

(2) The mercantile law:

(3) The law relating to husband and wife, parent and child, marriage, divorce, and guardianship of infants:

(4) The criminal law:

(5) The constitution of courts of law, the criminal and civil administration of justice, including the jurisdiction, practice, and procedure of all courts of law, criminal and civil:

(6) The establishment and regulation of a common convict station and a common prison discipline:

(7) The establishment and regulation of a general police force, and of the other protective forces of the Leeward Islands:

(8) The post office and the electric telegraph:

(9) Quarantine:

(10) Currency:

(11) Weights and measures:

(12) Audit of the public accounts in the several presidencies:

(13) Education:
(14) Immigration and treatment of immigrants:
(15) Idiots, lunatics, and idiot and lunatic asylums:
(16) Copyrights and patents:
(17) The constitution and procedure of the Council.
(18) Such other subjects in respect of each presidency as the Island Legislature thereof may declare to be within the competency of the General Legislature.

Legislative powers of Presidencies.

11. Subject to the provisions of the twenty-fifth and twenty-sixth sections of this Act, the Governor may, with the consent of the Legislative Body of any presidency, make laws for the peace, order, and good government thereof, but any island enactment relating to any of the subjects named in the preceding section may at any time be repealed or altered by the General Legislature, and shall, without any formal repeal, be void so far as it is repugnant to any law passed by the General Legislature.

Convocation, etc. of General Legislative Council.

12. The Council may from time to time be convoked, prorogued, and dissolved by any instrument under the hand and seal of the Governor.

When to be convoked.

13. The Council shall be so convoked within six months after this Act shall come into operation in the Leeward Islands, and afterwards once (at least) in every year.

Place of Meeting.

14. The place of meeting of the Council shall from time to time be fixed by proclamation.

Duration of Council.

15. The duration of the Council, unless sooner dissolved, shall be three years.

Oath to be taken by the members of the General Legislative Council.

16. Every member of the Council shall, before taking his seat, take and subscribe before the Governor, or some person authorized by him, the following oath of allegiance:

"I, *A. B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me GOD." But any person authorized by law to affirm or declare instead of taking an oath may make such affirmation or declaration in lieu of the said oath.

Appointment of vice-president.

17. The Council shall appoint one of the members of the Council to be vice-president thereof.

18. Every member of the Council, except the official members, may resign his seat therein by writing under his hand addressed to the Governor. Resignation of unofficial members.

19. Every elective member who shall accept any office under the Crown shall vacate his seat in the said Council, but shall be eligible for re-election. Vacation of seats on acceptance of office.

20. When any elective member vacates his seat in the Council otherwise than by the dissolution or other determination thereof, the elective members of the island council which he represented shall choose a successor within three months after notice of such vacancy shall have been proclaimed in the presidency; and if they fail to do so within that time the Governor shall appoint a person from that island council to fill such vacancy. Appointment of elective members in case of vacancy.

21. Until otherwise determined by the Council, the Council shall not be considered as constituted for the despatch of business unless at least eleven members be present and assisting thereat. Quorum.

22. Questions arising in the Council shall be decided by a majority of voices; the President shall, in all cases, have a vote, and when the voices are equal the decision shall be deemed to be in the negative. Majority of voices to decide.

23. No vote or resolution shall be proposed in the Council having for its object to charge any part of the revenues arising within the said Leeward Islands, except by one of the official members, or with the express approval or direction of the Governor. Initiation of money votes.

24. When a Bill passed by the Council is presented to the Governor for his assent, he shall declare according to his discretion either that he assents thereto, or that he refuses his assent to the same, or that he reserves the same for the signification of Her Majesty's pleasure thereon. Assent to Bills.

25. When the Governor assents to a Bill, he shall by the first convenient opportunity send an authentic copy of the law to one of Her Majesty's Principal Secretaries of State, and it shall be lawful for Her Majesty at any time within eighteen months after such copy shall have been received by the said Secretary of State to notify to the Governor her disallowance of such law through one of her Disallowance of Acts.

Principal Secretaries of State, and every such law shall become null and void from and after the day on which the said Governor shall signify such disallowance by message to the Council, or from and after a day to be named by proclamation.

Signification of Her Majesty's pleasure upon reserved Bills.

26. A Bill reserved for the signification of Her Majesty's pleasure shall take effect so soon as Her Majesty shall have given her assent to the same by Order in Council, and the Governor shall have signified such assent by message to the Council or proclamation, provided that no such message or proclamation shall be issued after two years from the day on which the Bill was presented to the Governor for his assent.

Standing rules and orders.

27. The Council shall at its first meeting, and may from time to time afterwards, as occasion may require, adopt standing rules and orders for the orderly conduct of business, which rules and orders shall take effect when confirmed by the Governor.

Apportionment of expenses of common establishment.

28. The expenses of such establishments as are common to all the Leeward Islands, other than the remuneration and travelling expenses of the members of the Council, shall be fixed by the Council, and shall, until otherwise apportioned by the Council, be divided into sixteen parts, which shall be charged as follows:—

On Antigua	5 parts.
,, St. Christopher . . .	4 ,,
,, Dominica	3 ,,
,, Nevis	2 ,,
,, Monserrat	1 part.
,, Virgin Islands . . .	1 ,,

Such charges, however, as may be incurred in respect of immigration shall be shared only by such islands as may elect to participate therein.

Annual Estimates.

29. An estimate of such expenses shall be every year prepared by the General Government and laid before the Council, and when passed by the Council shall be published in the Leeward Islands; and after such publication the Governor may, from time to time, as the occasion shall require, draw on the public treasury of each presidency for

the whole or any part of the amount due from such presidency.

Power to Council to alter provisions of Act.

30. The Council may, by any law or laws, alter from time to time any of the provisions of this Act: Provided that every such law shall be reserved by the said Governor for the signification of Her Majesty's pleasure.

Existing Powers of Island Governors to vest in Governor of Leeward Islands.

31. The term Governor or officer administering the Government, when used in any island enactment heretofore passed, shall, after this Act shall come into operation, and until otherwise provided by the Island Legislature, be taken to mean the Governor of the Leeward Islands or any other person appointed in that behalf by writing under his hand and under the Public Seal of the Presidency.

Delegation of certain powers to the Governor.

32. The powers conferred on Her Majesty by the fifth, sixth, and ninth sections of this Act may be exercised by instructions or warrants under the Royal Sign Manual and Signet, or may be delegated to the Governor by letters patent under the great seal of the United Kingdom; and such instructions, warrants or letters patent may be issued before this Act shall come into operation in the Leeward Islands.

Power to bring other islands under operation of Act.

33. It shall be lawful for Her Majesty, by Order in Council, from time to time, on address from the Legislative Body of any of the West Indian Islands not included in this Act and from the Council, to bring such island under the operation of this Act, on such terms and conditions in each case as are in the addresses expressed, and as Her Majesty thinks fit to approve, and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Imperial Parliament.

CONSTITUTION OF THE SWISS CONFEDERATION. 29 MAY, 1874.

["Recueil des Lois Fédérales" (Berne, 1875), vol. i. pp. 1-27. For the Constitution of 1849 see "Texte Officiel de la Constitution Fédérale Suisse," 1856.]

CONSTITUTION FÉDÉRALE

DE LA

CONFEDERATION SUISSE.

(DU 29 MAI 1874)

AU NOM DE DIEU TOUT PUISSANT!

LA CONFÉDÉRATION SUISSE

Voulant affermir l'alliance des Confédérés, maintenir et accroître l'unité, la force et l'honneur de la Nation suisse, a adopté la Constitution fédérale suivante :

CHAPITRE PREMIER.

DISPOSITIONS GÉNÉRALES.

ART. 1er. Les peuples des vingt-deux Cantons souverains de la Suisse, unis par la présente alliance, savoir : *Zurich*, *Berne*, *Lucerne*, *Uri*, *Schwyz*, *Unterwalden* (Le Haut et le Bas), *Glaris*, *Zoug*, *Fribourg*, *Soleure*, *Bâle* (Ville et Campagne), *Schaffhouse*, *Appenzell* (les deux Rhodes), *St. Gall*, *Grisons*, *Argovie*, *Thurgovie*, *Tessin*, *Vaud*, *Valais*, *Neuchâtel* et *Genève*, forment dans leur ensemble la CONFÉDÉRATION SUISSE.

ART. 2. La Confédération a pour but d'assurer l'indépendance de la patrie coutre l'étranger, de maintenir la tranquillité et l'ordre a l'intérieur, de protéger la liberté et les droits des Confédérés et d'accroître leur prospérité commune.

ART. 3. Les Cantons sont souverains en tant que leur souveraineté n'est pas limitée par la Constitution fédérale, et,

commé tels, ils exercent tous les droits qui ne sont pas délégués au pouvoir fédéral.

ART. 4. Tous les Suisses sont égaux devant la loi. Il n'y a en Suisse ni sujets, ni priviléges de lieu, de naissance, de personnes ou de familles.

ART. 5. La Confédération garantit aux Cantons leur territoire, leur souveraineté dans les limites fixées par l'article 3, leurs Constitutions, la liberté et les droits du peuple, les droits constitutionnels des citoyens, ainsi que les droits et les attributions que le peuple a conférés aux autorités.

ART. 6. Les Cantons sont tenus de demander à la Confédération la garantie de leurs Constitutions.

Cette garantie est accordée, pourvu :—

a. Que ces Constitutions ne renferment rien de contraire aux dispositions de la Constitution fédérale ;

b. Qu'elles assurent l'exercice des droits politiques d'après des formes républicaines,—représentatives ou démocratiques ;

c. Qu'elles aient été acceptées par le peuple, et qu'elles puissent être révisées lorsque la majorité absolue des citoyens le demande.

ART. 7. Toute alliance particulière et tout traité d'une nature politique entre Cantons sont interdits.

En revanche, les Cantons ont le droit de conclure entre eux des conventions sur des objets de législation, d'administration ou de justice ; toutefois, ils doivent les porter à la connaissance de l'autorité fédérale, laquelle, si ces conventions renferment quelque chose de contraire à la Confédération ou aux droits des autres Cantons, est autorisée à en empêcher l'exécution. Dans le cas contraire, les Cantons contractants sont autorisés à réclamer, pour l'exécution la coopération des autorités fédérales.

ART. 8. La Confédération a seule le droit de déclarer la guerre et de conclure la paix, ainsi que de faire avec les Etats étrangers des alliances et des traités, notamment des traités de péage (douanes) et de commerce.

ART. 9. Exceptionnellement, les Cantons conservent le droit de conclure avec les Etats étrangers des traités sur des objets concernant l'économie publique, les rapports de voisinage et de police ; néanmoins ces traités ne doivent rien contenir de contraire à la Confédération ou aux droits d'autres Cantons.

ART. 10. Les rapports officiels entre les Cantons et les Gouvernments étrangers ou leurs représentants ont lieu par l'intermédiaire du Conseil fédéral.

Toutefois, les Cantons peuvent correspondre directement avec les autorités inférieures et les employés d'un Etat étranger, lorsqu'il s'agit des objets mentionnés à l'article précédent.

ART. 11. Il ne peut être conclu de capitulations militaires.

ART. 12. Les membres des autorités fédérales, les fonctionnaires civils et militaires de la Confédération, et les représentants ou les commissaires fédéraux ne peuvent recevoir d'un Gouvernement étranger ni pensions ou traitements, ni titres, présents ou décorations.

S'ils sont déjà en possession de pensions, de titres ou de décorations, ils devront renoncer à jouir de leurs pensions et à porter leurs titres et leurs décorations pendant la durée de leurs fonctions.

Toutefois les employés inférieurs peuvent être autorisés par le Conseil fédéral à recevoir leurs pensions.

On ne peut, dans l'armée fédérale, porter ni décoration ni titre accordés par un Gouvernement étranger.

Il est interdit à tout officier, sous-officier ou soldat d'accepter des distinctions de ce genre.

ART. 13. La Confédération n'a pas le droit d'entretenir des troupes permanentes.

Nul Canton ou demi-Canton ne peut avoir plus de 300 hommes de troupes permanentes, sans l'autorisation du pouvoir fédéral ; la gendarmerie n'est pas comprise dans ce nombre.

ART. 14. Des différends venant à s'élever entre Cantons, les Etats s'abstiendront de toute voie de fait et de tout armement. Ils se soumettront à la décision qui sera prise sur ces différends conformément aux prescriptions fédérales.

ART. 15. Dans le cas d'un danger subit provenant du dehors, le Gouvernement du Canton menacé doit requérir le secours des Etats confédéres et en aviser immédiatement l'autorité fédérale, le tout sans préjudice des dispositions qu'elle pourra prendre. Les Cantons requis sont tenus de prêter secours. Les frais sont supportés par la Confédération.

ART. 16. En cas de troubles à l'intérieur, ou lorsque le danger provient d'un autre Canton, le Gouvernement du Canton menacé

doit en aviser immédiatement le Conseil fédéral, afin qu'il puisse prendre les mesures nécessaires dans les limites de sa compétence (Article 102, chiffres 3, 10 et 11) ou convoquer l'Assemblée fédérale. Lorsqu'il y a urgence, le Gouvernement est autorisé, en avertis sant immédiatement le Conseil fédéral, à requérir le secours d'autres Etats confédéres, qui sont tenus de le prêter.

Lorsque le Gouvernement est hors d'état d'invoquer le secours, l'autorité fédérale compétente peut intervenir sans réquisition ; elle est tenue de la faire lorsque les troubles compromettent la sûreté de la Suisse.

En cas d'intervention, les autorités fédérales veillent à l'observation des dispositions prescrites à l'article 5.

Les frais sont supportés par le Canton qui a requis l'assistance ou occasionné l'intervention, à moins que l'Assemblée fédérale n'en décide autrement, en considération de circonstances particulières.

ART. 17. Dans les cas mentionnés aux deux articles précédents, chaque Canton est tenu d'accorder libre passage aux troupes. Celles-ci seront immédiatement placées sous le commandement fédéral.

ART. 18. Tout Suisse est tenu au service militaire.

Les militaires qui, par le fait du service fédéral, perdent la vie ou voient leur santé altérée d'une manière permanente, ont droit à des secours de la Confédération, pour eux ou pour leur famille, s'ils sont dans le besoin.

Chaque soldat reçoit gratuitement ses premiers effets d'armement, d'équipement et d'habillement. L'arme reste en mains du soldat aux conditions qui seront fixées par la législation féderale.

La Confédération édictera des prescriptions uniformes sur la taxe d'exemption du service militaire.

ART. 19. L'armée fédérale est composée :

a. des corps de troupes des Cantons ;

b. de tous les Suisses qui, n'appartenant pas à ces corps, sont néanmoins astreints au service militaire.

Le droit de disposer de l'armée, ainsi que du matériel de guerre prévu par la loi, appartient à la Confédération.

En cas de danger, la Confédération a aussi le droit de disposer exclusivement et directement des hommes non incorporés dans

l'armée fédérale et de toutes les autres ressources militaires des Cantons.

Les Cantons disposent des forces militaires de leur territoire, pour autant que ce droit n'est pas limité par la Constitution ou les lois fédérales.

ART. 20. Les lois sur l'organisation de l'armée émanent de la Confédération. L'exécution des lois militaires dans les Cantons a lieu par les autorités cantonales, dans les limites qui seront fixées par la législation fédérale et sous la surveillance de la Confédération.

L'instruction militaire dans son ensemble appartient à la Confédération ; il en est de même de l'armement.

La fourniture et l'entretien de l'habillement et de l'equipement restent dans la compétence cantonale ; toutefois, les dépenses qui en résultent sont bonifiées aux Cantons par la Confédération, d'après une règle à établir par la législation fédérale.

ART. 21. A moins que des considérations militaires ne s'y opposent, les corps doivent être formés de troupes d'un même Canton.

La composition de ces corps de troupes, le soin du maintien de leur effectif, la nomination et la promotion des officiers de ces corps appartiennent aux Cantons sous réserve des prescriptions générales qui leur seront transmises par la Confédération.

ART. 22. Moyennant une indemnité équitable, la Confédération a le droit de se servir ou de devenir propriétaire des places d'armes et des bâtiments ayant une destination militaire qui existent dans les Cantons, ainsi que de leur accessoires.

Les conditions de l'indemnité seront réglées par la législation fédérale.

ART. 23. La Confédération peut ordonner à ses frais ou encourager par des subsides les travaux publics qui intéressent la Suisse ou une partie considérable du pays.

Dans ce but, elle peut ordonner l'expropriation moyennant une juste indemnité. La législation fédérale statuera les dispositions ultérieures sur cette matière.

L'Assemblée fédérale peut interdire les constructions publiques qui porteraient atteinte aux intérêts militaires de la Confédération.

ART. 24. La Confédération a le droit de haute surveillance sur la police des endiguements et des forêts dans les régions élevées.

Elle concourra à la correction et à l'endiguement des torrents, ainsi qu'au reboisement des régions où ils prennent leur source. Elle décrétera les mesures nécessaires pour assurer l'entretien de ces ouvrages et la conservation des forêts existantes.

ART. 25. La Confédération a le droit de statuer des dispositions législatives pour régler l'exercice de la pêche et de la chasse, principalement en vue de la conservation du gros gibier dans les montagnes, ainsi que pour protéger les oiseaux utiles à l'agriculture et à la sylviculture.

ART. 26. La législation sur la construction et l'exploitation des chemins de fer est du domaine de la Confédération.

ART. 27. La Confédération a le droit de créer, outre l'Ecole polytechnique existante, une Université fédérale et d'autres établissements d'instruction supérieure ou de subventionner des établissements de ce genre.

Les Cantons pourvoient à l'instruction primaire, qui doit être suffisante et placée exclusivement sous la direction de l'autorité civile. Elle est obligatoire et, dans les écoles publiques, gratuite.

Les écoles publiques doivent pouvoir être fréquentées par les adhérents de toutes les confessions, sans qu'ils aient à souffrir d'aucune façon dans leur liberté de conscience ou de croyance.

La Confédération prendra les mesures nécessaires contre les Cantons qui ne satisferaient pas à ces obligations.

ART. 28. Ce qui concerne les péages relève de la Confédération. Celle-ci peut percevoir des droits d'entrée et des droits de sortie.

ART. 29. La perception des péages fédéraux sera réglée conformément aux principes suivants :

1. Droits sur l'importation :

a. Les matières nécessaires à l'industrie et à l'agriculture du pays seront taxées aussi bas que possible.

b. Il en sera de même des objets nécessaires à la vie.

c. Les objets de luxe seront soumis aux taxes les plus élevées.

A moins d'obstacles majeurs, ces principes devront aussi être observés lors de la conclusion de traités de commerce avec l'étranger.

2. Les droits sur l'exportation seront aussi modérés que possible.

3. La législation des péages contiendra des dispositions propres à assurer le commerce frontière et sur les marchés.

Les dispositions ci-dessus n'empêchent point la Confédération de prendre temporairement des mesures exceptionnelles dans les circonstances extraordinaires.

ART. 30. Le produit des péages appartient à la Confédération.

Les indemnités payées jusqu'à présent aux Cantons pour le rachat des péages, des droits de chaussée et de pontonage, des droits de douane et d'autres émoluments semblables, sont supprimées.

Les Cantons d'Uri, des Grisons, du Tessin et du Valais reçoivent, par exception et à raison de leurs routes alpestres internationales, une indemnité annuelle dont, en tenant compte de toutes les circonstances, le chiffre est fixé comme suit :

Uri	fr. 80,000
Grisons	„ 200,000
Tessin	„ 200,000
Valais	„ 50,000

Les Cantons d'Uri et du Tessin recevront en outre, pour le déblaiement des neiges sur la route du St-Gothard, une indemnité annuelle totale de fr. 40,000, aussi longtemps que cette route ne sera pas remplacée par un chemin de fer.

ART. 31. La liberté de commerce et d'industrie est garantie dans toute l'étendue de la Confédération.

Sont reservés :

a. La règale du sel et de la poudre de guerre, les péages fédéraux, les droits d'entrée sur les vins et les autres boissons spiritueuses, ainsi que les autres droits de consommation formellement reconnus par la Confédération, à teneur de l'Article 32.

b. Les mesures de police sanitaire contre les épidémies et les épizooties.

c. Les dispositions touchant l'exercice des professions com-

merciales et industrielles, les impôts qui s'y rattachent et la police des routes.

Ces dispositions ne peuvent rien renfermer de contraire au principe de la liberté de commerce et d'industrie.

ART. 32. Les Cantons sont autorisés à percevoir les droits d'entrée sur les vins et les autres boissons spiritueuses prévus à l'Article 31, lettre *a*, toutefois sous les restrictions suivantes :

a. La perception de ces droits d'entrée ne doit nullement grever le transit ; elle doit gêner le moins possible le commerce, qui ne peut être frappé d'aucune autre taxe.

b. Si les objets importés pour la consommation sont réexportés du Canton, les droits payés pour l'entrée sont restitués sans qu'il en résulte d'autres charges.

c. Les produits d'origine suisse seront moins imposés que ceux de l'étranger.

d. Les droits actuels d'entrée sur les vins et les autres boissons spiritueuses d'origine suisse ne pourront être haussés par les Cantons où il en existe. Il n'en pourra être établi sur ces produits par les Cantons qui n'en perçoivent pas actuellement.

e. Les lois et les arrêtés des Cantons sur la perception des droits d'entrée sont, avant leur mise à exécution, soumis à l'approbation de l'autorité fédérale, afin qu'elle puisse, au besoin, faire observer les dispositions qui précèdent.

Tous les droits d'entrée perçus actuellement par les Cantons, ainsi que les droits analogues perçus par les communes, doivent disparaître sans indemnité à l'expiration de l'année 1890.

ART. 33. Les Cantons peuvent exiger des preuves de capacité de ceux qui veulent exercer des professions libérales.

La législation fédérale pourvoit à ce que ces derniers puissent obtenir à cet effet des actes de capacité valables dans toute la Confédération.

ART. 34. La Confédération a le droit de statuer des prescriptions uniformes sur le travail des enfants dans les fabriques, sur la durée du travail qui pourra y être imposé aux adultes, ainsi que sur la protection à accorder aux ouvriers contre l'exercice des industries insalubres et dangereuses.

Les opérations des agences d'émigration et des entreprises d'assurance non instituées par l'Etat sont soumises à la surveillance et à la législation fédérale.

ART. 35. Il est interdit d'ouvrir des maisons de jeu. Celles qui existent actuellement seront fermées le 31 décembre 1877.

Les concessions qui auraient été accordées ou renouvelées depuis le commencement de l'année 1871 sont declarées nulles.

La Confédération peut aussi prendre les mesures nécessaires concernant les loteries.

ART. 36. Dans toute la Suisse, les postes et les télégraphes sont du domaine fédéral.

Le produit des postes et des télégraphes appartient à la caisse fédérale.

Les tarifs seront fixés d'après les mêmes principes et aussi équitablement que possible dans toutes les parties de la Suisse.

L'inviolabilité du secret des lettres et des télégrammes est garantie.

ART. 37. La Confédération exerce la haute surveillance sur les routes et les ponts dont le maintien l'intéresse.

Les sommes dues aux Cantons désignés à l'article 30, à raison de leurs routes alpestres internationales, seront retenues par l'autorité fédérale si ces routes ne sont pas convenablement entretenues par eux.

ART. 38. La Confédération exerce tous les droits compris dans la régale des monnaies.

Elle a seule le droit de battre monnaie.

Elle fixe le système monétaire et peut édicter, s'il y a lieu, des prescriptions sur la tarification de monnaies étrangères.

ART. 39. La Confédération a le droit de décréter par voie législative des prescriptions générales sur l'émission et le remboursement des billets de banque.

El ne peut cependant créer aucun monopole pour l'émission des billets de banque, ni décréter l'acceptation obligatoire de ces billets.

ART. 40. La Confédération détermine le système des poids et mesures.

Les Cantons exécutent, sous la surveillance de la Confédération, les lois concernant cette matière.

ART. 41. La fabrication et la vente de la poudre de guerre dans toute la Suisse appartiennent exclusivement à la Confédération.

Les compositions minières impropres au tir ne sont point comprises dans la régale des poudres.

ART. 42. Les dépenses de la Confédération sont couvertes :

(*a*) Par le produit de la fortune fédérale ;

(*b*) Par le produit de péages fédéraux perçus à la frontière suisse ;

(*c*) Par le produit des postes et des télégraphes ;

(*d*) Par le produit de la régale des poudres ;

(*e*) Par la moitié du produit brut de la taxe sur les exemptions militaires perçue par les Cantons ;

(*f*) Par les contributions des Cantons, que réglera la législation fédérale, en tenant compte surtout de leur richesse et de leurs ressources imposables.

ART. 43. Tout citoyen d'un Canton est citoyen suisse.

Il peut, à ce titre, prendre part, au lieu de son domicile, à toutes les élections et votations en matière fédérale, après avoir dûment justifié de sa qualité d'électeur.

Nul ne peut exercer des droits politiques dans plus d'un Canton.

Le Suisse établi jouit, au lieu de son domicile, de tous les droits des citoyens du Canton et, avec ceux-ci, de tous les droits des bourgeois de la commune. La participation aux biens des bourgeoisies et des corporations et le droit de vote dans les affaires purement bourgeoisiales sont exceptés de ces droits, à moins que la législation cantonale n'en décide autrement.

En matière cantonale et communale il devient électeur après un établissement de trois mois.

Les lois cantonales sur l'établissement et sur les droits électoraux que possèdent en matière communale les citoyens établis sont soumises à la sanction du Conseil fédéral.

ART. 44. Aucun Canton ne peut renvoyer de son territoire un de ses ressortissants, ni le priver du droit d'origine ou de cité.

La législation fédérale déterminera les conditions auxquelles les étrangers peuvent être naturalisés, ainsi que celles auxquelles un Suisse peut renoncer à sa nationalité pour obtenir la naturalisation dans un pays étranger.

ART. 45. Tout citoyen suisse a le droit de s'établir sur un point quelconque du territoire suisse, moyennant la production d'un acte d'origine ou d'une autre pièce analogue.

Exceptionnellement, l'établissement peut être *refusé* ou *retiré* à ceux qui, par suite d'un jugement pénal, ne jouissent pas de leurs droits civiques,

L'établissement peut être de plus retiré à ceux qui ont été à réitérées fois punis pour des délits graves, comme aussi à ceux qui tombent d'une manière permanente à la charge de la bien faisance publique et auxquels leur commune, soit leur Canton d'origine, refuse une assistance suffisante après avoir invitée officiellement à l'accorder.

Dans les Cantons où existe l'assistance ou domicile, l'autorisation de s'établir peut être subordonnée, s'il s'agit de ressortissants du Canton, à la condition qu'ils soient en état de travailler et qu'ils ne soient pas tombés, à leur ancien domicile dans le Canton d'origine, d'une manière permanente à la charge de la bienfaisance publique.

Tout renvoi pour cause d'indigence doit être ratifié par le Gouvernement du Canton du domicile et communiqué préalablement au Gouvernement du Canton d'origine.

Le Canton dans lequel un Suisse établit son domicile ne peut exiger de lui un cautionnement, ni lui imposer aucune charge particulière pour cet établissement. De même, les communes ne peuvent imposer aux Suisses domiciliés sur leur territoire d'autres contributions que celles qu'elles imposent à leurs propres ressortissants.

Une loi fédérale fixera le maximum de l'émolument de chancellerie à payer pour obtenir un permis d'établissement.

ART. 46. Les personnes établies en Suisse sont soumises, dans la règle, à la juridiction et à la législation du lieu de leur domicile en ce qui concerne les rapports de droit civil.

La législation fédérale statuera les dispositions nécessaires en vue de l'application de ce principe, et pour empêcher qu'un citoyen soit imposé à double.

ART. 47. Une loi fédérale déterminera la différence entre l'établissement et le séjour et fixera en même temps les règles auxquelles seront soumises les Suisses en séjour quant à leurs droits politiques et à leurs droits civils.

ART. 48. Une loi fédérale statuera les dispositions nécessaire pour régler ce qui concerne les frais de maladie et de sépulture des ressortissants pauvres d'un Canton tombés malades ou décédés dans un autre Canton.

ART. 49. La liberté de conscience et de croyance est inviolable.

Nul ne peut être contraint de faire partie d'une association religieuse, de suivre un enseignement religieux, d'accomplir un acte religieux, ni encourir des peines, de quelque nature qu'elles soient, pour cause d'opinion religieuse.

La personne qui exerce l'autorité paternelle ou tutélaire a le droit de disposer, conformément aux principes ci-dessus, de l'éducation religieuse des enfants jusqu'à l'âge de 16 ans révolus.

L'exercice des droits civils ou politiques ne peut être restreint par des prescriptions ou des conditions de nature ecclésiastique ou religieuse, quelles qu'elles soient.

Nul ne peut, pour cause d'opinion religieuse, s'affranchir de l'accomplissement d'un devoir civique.

Nul n'est tenu de payer des impôts dont le produit est spécialement affecté aux frais propres ments, dits du culte d'une communauté religieuse à laquelle il n'appartient pas. L'exécution ultérieure de ce principe reste réservée à la législation fédérale.

ART. 50. Le libre exercice des cultes est garanti dans les limites compatibles avec l'ordre public et les bonnes mœurs.

Les Cantons et la Confédération peuvent prendre les mesures nécessaires pour le maintien de l'ordre public et de la paix entre les membres des diverses communautés religieuses, ainsi que contre les empiétements des autorités ecclésiastiques sur les droits des citoyens et de l'Etat.

Les contestations de droit public ou de droit privé auxquelles donne lieu la création de communautés religieuses ou une scission de communautés religieuses existantes, peuvent être portées par voie de recours devant les autorités fédérales compétentes.

Il ne peut être érigé d'évêchés sur le territoire suisse sans l'approbation de la Confédération.

ART. 51. L'ordre des Jésuites et les sociétés qui lui sont affiliées ne peuvent être reçus dans aucune partie de la Suisse, et toute action dans l'Eglise et dans l'Ecole est interdite à leurs membres.

Cette interdiction peut s'étendre aussi, par voie d'arrêté fédéral, à d'autres ordres religieux dont l'action est dangereuse pour l'Etat ou trouble la paix entre les confessions.

ART. 52. Il est interdit de fonder de nouveaux couvents ou ordres religieux et de rétablir ceux qui ont été supprimés.

ART. 53. L'état civil et la tenue des registres qui s'y rapportent est du ressort des autorités civiles. La législation fédérale statuera à ce sujet les dispositions ultérieures.

Le droit de disposer des lieux de sépulture appartient à l'autorité civile. Elle doit pourvoir à ce que toute personne décédée puisse être enterrée décemment.

ART. 54. Le droit au mariage est placé sous la protection de la Confédération.

Aucun empêchement au mariage ne peut être fondé sur les motifs confessionnels, sur l'indigence de l'un ou de l'autre des époux, sur leur conduite ou sur quelque autre motif de police que ce soit.

Sera reconnu comme valable dans toute la Confédération le mariage conclu dans un Canton ou à l'étranger, conformément à la législation qui y est en vigueur.

La femme acquiert par le mariage le droit de cité et de bourgeoisie de son mari.

Les enfants nés avant le mariage sont légitimés par le mariage subséquent de leurs parents.

Il ne peut être perçu aucune finance d'admission ni aucune taxe semblable de l'un ou de l'autre époux.

ART. 55. La liberté de la presse est garantie.

Toutefois les lois cantonales statuent les mesures nécessaires à la répression des abus ; ces lois sont soumises à l'approbation du Conseil fédéral.

La Confédération peut aussi statuer des peines pour réprimer les abus dirigés contre elle ou ses autorités.

ART. 56. Les citoyens ont le droit de former des associations, pourvu qu'il n'y ait dans le but de ces associations ou dans les moyens qu'elles emploient rien d'illicite ou de dangereux pour l'Etat. Les lois cantonales statuent les mesures nécessaires à la répression des abus.

ART. 57. Le droit de pétition est garanti.

ART. 58. Nul ne peut être distrait de son juge naturel. En conséquence, il ne pourra être établi de tribunaux extraordinaires.

La juridiction ecclésiastique est abolie.

ART. 59. Pour réclamations personnelles, le débiteur solvable

ayant domicile en Suisse doit être recherché devant le juge de son domicile ; ses biens ne peuvent en conséquence être saisis ou séquestrés hors du Canton où il est domicilié, en vertu de réclamations personnelles.

Demeurent réservées, en ce qui concerne les étrangers, les dispositions des traités internationaux.

La contrainte par corps est abolie.

ART. 60. Tous les Cantons sont obligés de traiter les citoyens des autres Etats confédérés comme ceux de leur Etat en matière de législation et pour tout ce qui concerne les voies juridiques.

ART. 61. Les jugements civils définitifs rendus dans un Canton sont exécutoires dans toute la Suisse.

ART. 62. La traite foraine est abolie dans l'intérieur de la Suisse, ainsi que le droit de retrait des citoyens d'un Canton contre ceux d'autres Etats confédérés.

ART. 63. La traite foraine à l'égard des pays étrangers est abolie sous réserve de réciprocité.

ART. 64. La législation :

sur la capacité civile,

sur toutes les matières du droit se rapportant au commerce et aux transactions mobilières (droit des obligations, y compris le droit commercial et le droit de change),

sur la propriété littéraire et artistique,

sur la poursuite pour dettes et la faillite,

est du ressort de la Confédération.

L'administration de la justice reste aux Cantons, sous réserve des attributions du Tribunal fédéral.

ART. 65. La peine de mort est abolie.

Sont réservées toutefois les dispositions du code pénal militaire, en temps de guerre.

Les peines corporelles sont abolies.

ART. 66. La législation fédérale fixe les limites dans lesquelles un citoyen suisse peut être privé de ses droits politiques.

ART. 67. La législation fédérale statue sur l'extradition des accusés d'un Canton à l'autre ; toutefois l'extradition ne peut être rendue obligatoire pour les délits politiques et ceux de la presse.

ART. 68. Les mesures à prendre pour incorporer les gens sans patrie (*Heimathlosen*) et pour empêcher de nouveaux cas de ce genre, sont réglées par la loi fédérale.

ART. 69. La législation concernant les mesures de police sanitaire contre les épidémies et les épizooties qui offrent un danger général, est du domaine de la Confédération.

ART. 70. La Confédération a le droit de renvoyer de son territoire les étrangers qui compromettent la sûreté intérieure ou extérieure de la Suisse.

CHAPITRE II.

Autorités Fédérales.

I ASSEMBLÉE FÉDÉRALE.

ART. 71. Sous réserve des droits du peuple et des Cantons (Articles 89 et 121), l'autorité suprême de la Confédération est exercée par l'Assemblée fédérale, qui se compose de deux Sections ou Conseils, savoir :

A. le Conseil national ;
B. le Conseil des Etats.

A. *Conseil national.*

ART. 72. Le Conseil national se compose des députés du peuple suisse, élus à raison d'un membre par 20,000 âmes de la population totale. Les fractions en sus de 10 mille âmes sont comptées pour 20 mille.

Chaque Canton et, dans les Cantons partagés, chaque demi-Canton élit un député au moins.

ART. 73. Les élections pour le Conseil national sont directes. Elles ont lieu dans des colléges électoraux fédéraux, qui ne peuvent toutefois être formés de parties de différents Cantons.

ART. 74. A droit de prendre part aux élections et aux votations tout Suisse âgé de vingt ans révolus et qui n'est du reste point exclu du droit de citoyen actif par la législation du Canton dans lequel il a son domicile.

Toutefois, la législation fédérale pourra régler d'une manière uniforme l'exercice de ce droit.

ART. 75. Est éligible comme membre du Conseil national tout citoyen suisse laïque et ayant droit de voter.

ART. 76. Le Conseil national est élu pour trois ans et renouvelé intégralement chaque fois.

ART. 77. Les députés au Conseil des Etats, les membres du Conseil fédéral et les fonctionnaires nommés par ce Conseil ne peuvent être simultanément membres du Conseil national.

ART. 78. Le Conseil national choisit dans son sein, pour chaque session ordinaire ou extraordinaire, un Président et un vice-Président.

Le membre qui a été Président pendant une session ordinaire ne peut, à la session ordinaire suivante, revêtir cette charge ni celle de vice-Président.

Le même membre ne peut être vice-Président pendant deux sessions ordinaires consécutives.

Lorsque les avis sont également partagés, le Président décide; dans les élections, il vote comme les autres membres.

ART. 79. Les membres du Conseil national sont indemnisés par la Caisse fédérale.

B. *Conseil des Etats.*

ART. 80. Le Conseil des Etats se compose de quarante-quatre députés des Cantons. Chaque Canton nomme deux députés; dans les Cantons partagés, chaque demi-Etat en élit un.

ART. 81. Les membres du Conseil national et ceux du Conseil fédéral ne peuvent être députés au Conseil des Etats.

ART. 82. Le Conseil des Etats choisit dans son sein, pour chaque session ordinaire ou extraordinaire, un Président et un vice-Président.

Le Président ni le vice-Président ne peuvent être élus parmi les députés du Canton dans lequel a été choisi le Président pour la session ordinaire qui a immédiatement précédé.

Les députés du même Canton ne peuvent revêtir la charge de vice-Président pendant deux sessions ordinaires consécutives.

Lorsque les avis sont également partagés, le Président décide; dans les élections, il vote comme les autres membres.

ART. 83. Les députés au Conseil des Etats sont indemnisés par les Cantons.

C. *Attributions de l'Assemblée fédérale.*

ART. 84. Le Conseil national et le Conseil des Etats délibèrent sur tous les objets que la présente Constitution place dans le ressort de la Confédération et qui ne sont pas attribués à une autre autorité fédérale.

ART. 85. Les affaires de la compétence des deux Conseils sont notamment les suivantes :

1. Les lois sur l'organisation et le mode d'élection des autorités fédérales ;

2. Les lois et arrêtés sur les matières que la Constitution place dans la compétence fédérale ;

3. Le traitement et les indemnités des membres des autorités de la Confédération et de la Chancellerie fédérale ; la création de fonctions fédérales permanentes et la fixation des traitements ;

4. L'élection du Conseil fédéral, du Tribunal fédéral et du Chancelier, ainsi que du Général en chef de l'armée fédérale ;

La législation fédérale pourra attribuer à l'Assemblée fédérale d'autres droits d'élection ou de confirmation ;

5. Les alliances et les traités avec les Etats étrangers, ainsi que l'approbation des traités des Cantons entre eux ou avec les Etats étrangers ; toutefois les traités des Cantons ne sont portés à l'Assemblée fédérale que lorsque le Conseil fédéral ou un autre Canton élève des réclamations ;

6. Les mesures pour la sûreté extérieure ainsi que pour le maintien de l'indépendance et de la neutralité de la Suisse ; les déclarations de guerre et la conclusion de la paix ;

7. La garantie des Constitutions et du territoire des Cantons ; l'intervention par suite de cette garantie ; les mesures pour la sûreté intérieure de la Suisse, pour le maintien de la tranquillité et de l'ordre ; l'amnistie et le droit de grâce ;

8. Les mesures pour faire respecter la Constitution fédérale et assurer la garantie des Constitutions cantonales, ainsi que celles qui ont pour but d'obtenir l'accomplissement des devoirs fédéraux ;

9. Le droit de disposer de l'armée fédérale ;

10. L'établissement du budget annuel, l'approbation des comptes de l'Etat et les arrêtés autorisant des emprunts ;

11. La haute surveillance de l'administration et de la justice fédérales ;

12. Les réclamations contre les décisions du Conseil fédéral relatives à des contestations administratives (Art. 113) ;

13. Les conflits de compétence entre autorités fédérales ;

14. La révision de la Constitution fédérale.

ART. 86. Les deux Conseils s'assemblent, chaque année une fois, en session ordinaire, le jour fixé par le règlement.

Ils sont extraordinairement convoqués par le Conseil fédéral, ou sur la demande du quart des membres du Conseil national ou sur celle de cinq Cantons.

ART. 87. Un Conseil ne peut déliberer qu'autant que les députés présents forment la majorité absolue du nombre total de ses membres.

ART. 88. Dans le Conseil national et dans le Conseil des Etats les délibérations sont prises à la majorité absolue des votants.

ART. 89. Les lois fédérales, les décrets et les arrêtés fédéraux ne peuvent être rendus qu'avec l'accord des deux Conseils,

Les lois fédérales sont soumises à l'adoption ou au rejet du peuple, si la demande en est faite par 30,000 citoyens actifs ou par huit Cantons. Il en est de même des arrêtés fédéraux qui sont d'une portée générale et qui n'ont pas un caractère d'urgence.

ART. 90. La législation fédérale déterminera les formes et les délais à observer pour les votations populaires.

ART. 91. Les membres des deux Conseils votent sans instructions.

ART. 92. Chaque Conseil délibère séparément. Toutefois, lorsqu'il s'agit des élections mentionnées à l'art. 85, chiffre 4, d'exercer le droit de grâce ou de prononcer sur un conflit de compétence (art. 85, chiffre 13), les deux Conseils se réunissent pour délibérer en commun sous la direction du Président du Conseil national, et c'est la majorité des membres votants des deux Conseils qui décide.

ART. 93. L'initiative appartient à chacun des deux Conseils et à chacun de leurs membres.

Les Cantons peuvent exercer le même droit par correspondance.

ART. 94. Dans la règle, les séances des Conseils sont publiques.

II. CONSEIL FÉDÉRAL.

ART. 95. L'autorité directoriale et exécutive supérieure de la Confédération est exercée par un Conseil fédéral composé de sept membres.

ART. 96. Les membres du Conseil fédéral sont nommés pour trois ans, par les Conseils réunis, et choisis parmi tous les citoyens suisses éligibles au Conseil national. On ne pourra toutefois choisir plus d'un membre du Conseil fédéral dans le même Canton.

Le Conseil fédéral est renouvelé intégralement après chaque renouvellement du Conseil national.

Les membres qui font vacance dans l'intervalle des trois ans sont remplacés, à la première session de l'Assemblée fédérale, pour le reste de la durée de leurs fonctions.

ART. 97. Les membres du Conseil fédéral ne peuvent, pendant la durée de leurs fonctions, revêtir aucun autre emploi, soit au service de la Confédération, soit dans un Canton, ni suivre d'autre carrière ou exercer de profession.

ART. 98. Le Conseil fédéral est présidé par le Président de la Confédération. Il a un vice-President.

Le Président de la Confédération et le vice-Président du Conseil fédéral sont nommés pour une année, par l'Assemblée fédérale, entre les membres du Conseil.

Le Président sortant de charge ne peut être élu Président ou vice-Président pour l'année qui suit.

Le même membre ne peut revêtir la charge de vice-Président pendant deux années de suite.

ART. 99. Le Président de la Confédération et les autres membres du Conseil fédéral reçoivent un traitement annuel de la Caisse fédérale.

ART. 100. Le Conseil fédéral ne peut délibérer que lorsqu'il y a au moins quatre membres présents.

ART. 101. Les membres du Conseil fédéral ont voix consultative dans les deux Sections de l'Assemblée fédérale, ainsi que le droit d'y faire des propositions sur les objets en délibération.

ART. 102. Les attributions et les obligations du Conseil fédéral, dans les limites de la présente Constitution, sont notamment les suivantes :

1. Il dirige les affaires fédérales, conformément aux lois et arrêtés de la Confédération.

2. Il veille à l'observation de la Constitution, des lois et des arrêtés de la Confédération, ainsi que des prescriptions des concordats fédéraux ; il prend, de son chef ou sur plainte, les

mesures nécessaires pour les faire observer, lorsque le recours n'est pas du nombre de ceux qui doivent être portés devant le Tribunal fédéral à teneur de l'art. 113.

3. Il veille à la garantie des Constitutions cantonales.

4. Il présente des projets de lois ou d'arrêtés à l'Assemblée fédérale et donne son préavis sur les propositions qui lui sont adressées par les Conseils ou par les Cantons.

5. Il pourvoit à l'éxecution des lois et des arrêtés de la Confédération et à celle des jugements du Tribunal fédéral, ainsi que des transactions ou des sentences arbitrales sur des différends entre Cantons.

6. Il fait les nominations qui ne sont pas attribuées à l'Assemblée fédérale ou au Tribunal fédéral ou à une autre autorité.

7. Il examine les traités des Cantons entre eux ou avec l'etranger, et il les approuve, s'il y a lieu (art. 85, chiffre 5).

8. Il veille aux intérêts de la Confédération au dehors, notamment à l'observation de ses rapports internationaux, et il est, en général, chargé des relations extérieures.

9. Il veille à la sûreté extérieure de la Suisse, au maintien de son indépendance et de sa neutralité.

10. Il veille à la sûreté intérieure de la Confédération, au maintien de la tranquillité et de l'ordre.

11. En cas d'urgence et lorsque l'Assemblée fédérale n'est pas réunie, le Conseil fédéral est autorisé à lever les troupes nécessaires et à en disposer, sous réserve de convoquer immédiatement les Conseils, si le nombre des troupes levées dépasse deux mille hommes ou si elles restent sur pied au delà de trois semaines.

12. Il est chargé de ce qui a rapport au militaire fédéral, ainsi que de toutes les autres branches de l'administration qui appartiennent à la Confédération.

13. Il examine des lois et les ordonnances des Cantons qui doivent être soumises à son approbation ; il exerce la surveillance sur les branches de l'administration cantonale qui sont placés sous son contrôle.

14. Il administre les finances de la Confédération, propose le budget et rend les comptes des recettes et des dépenses.

15. Il surveille la gestion de tous les fonctionnaires et employés de l'administration fédérale.

16. Il rend compte de sa gestion à l'Assemblée fédérale, à chaque session ordinaire, lui présente un rapport sur la situation de la Confédération tant à l'intérieur qu'au dehors, et recommande à son attention les mesures qu'il croit utiles à l'accroissement de la prospérité commune.

Il fait aussi des rapports spéciaux lorsque l'Assemblée fédérale ou une de ses Sections le demande.

ART. 103. Les affaires du Conseil fédéral sont réparties par départements entre ses membres. Cette répartition a uniquement pour but de faciliter l'examen et l'expédition des affaires ; les décisions émanent du Conseil fédéral comme autorité.

ART. 104. Le Conseil fédéral et ses départements sont autorisés à appeler des experts pour des objets spéciaux.

III. CHANCELLERIE FÉDÉRALE.

ART. 105. Une chancellerie fédérale, à la tête de laquelle se trouve le Chancelier de la Confédération, est chargée du secrétariat de l'Assemblée fédérale et de celui du Conseil fédéral.

Le Chancelier est élu par l'Assemblée fédérale pour le terme de trois ans, en même temps que le Conseil fédéral.

Une loi fédérale détermine ce qui a rapport à l'organisation de la chancellerie.

IV. TRIBUNAL FÉDÉRAL.

ART. 106. Il y a un Tribunal fédéral pour l'administration de la justice en matière fédérale.

Il y a, de plus, un Jury pour les affaires pénales (Art. 112).

ART. 107. Les membres et les suppléants du Tribunal fédéral sont nommés par l'Assemblée fédérale, qui aura égard à ce que les trois langues nationales y soient représentées.

La loi détermine l'organisation du Tribunal fédéral et de ses sections, le nombre de ses membres et des suppléants, la durée de leurs fonctions et leur traitement.

ART. 108. Peut être nommé au Tribunal fédéral tout citoyen suisse éligible au Conseil national.

Les membres de l'Assemblée fédérale et du Conseil fédéral

et les fonctionnaires nommés par ces autorités ne peuvent en même temps faire partie du Tribunal fédéral.

Les membres du Tribunal fédéral ne peuvent, pendant la durée de leurs fonctions, revêtir aucun autre emploi, soit au service de la Confédération, soit dans un Canton, ni suivre d'autre carrière ou exercer de profession.

ART. 109. Le Tribunal fédéral organise sa chancellerie et en nomme le personnel.

ART. 110. Le Tribunal fédéral connaît des différends de droit civil.

1. entre la Confédération et les Cantons ;
2. entre la Confédération d'une part et des corporations ou des particuliers d'autre part, quand ces corporations ou ces particuliers sont demandeurs et quand le litige atteint le degré d'importance que déterminera la législation fédérale ;
3. entre Cantons ;
4. entre des Cantons d'une parte et des corporations ou des particuliers d'autre part, quand une des parties le requiert et que le litige atteint le degré d'importance que déterminera la législation fédérale.

Il connaît de plus des différends concernant le *heimatlosat*, ainsi que des contestations qui surgissent entre communes de différents Cantons, touchant le droit de cité.

ART. 111. Le Tribunal fédéral est tenu de juger d'autres causes, lorsque les parties s'accordent à le nantir et que l'objet en litige atteint le degré d'importance que déterminera la législation fédérale.

ART. 112. Le Tribunal fédéral assisté du Jury, lequel statue sur les faits, connaît en matière pénale :

1. des cas de haute trahison envers la Confédération, de révolte ou de violence contre les autorités fédérales ;
2. des crimes et des délits contre le droit des gens ;
3. des crimes et des délits politiques qui sont la cause ou la suite de troubles par lesquels une intervention fédérale armée est occasionnée ;
4. des faits relevés à la charge de fonctionnaires nommés par une autorité fédérale, quand cette autorité en saisit le Tribunal fédéral.

ART. 113. Le Tribunal connaît, en outre :

1. des conflits de compétence entre les autorités fédérales, d'une part, et les autorités cantonales, d'autre part ;
2. des différends entre Cantons, lorsque ces différends sont du domaine du droit public ;
3. des réclamations pour violation de droits constitutionnels des citoyens ainsi que des réclamations de particuliers pour violation de concordats ou de traités.

Sont réservées les contestations administratives, à déterminer par la législation fédérale.

Dans tous les cas prémentionnés, le Tribunal fédéral appliquera les lois votées par l'Assemblée fédérale et les arrêtés de cette Assemblée qui ont une portée générale. Il se conformera également aux traités que l'Assemblée fédérale aura ratifiés.

ART. 114. Outre les cas mentionnés aux articles 110, 112 et 113, la législation fédérale peut placer d'autres affaires dans la compétence du Tribunal fédéral ; elle peut, en particulier, donner à ce Tribunal des attributions ayant pour but d'assurer l'application uniforme des lois prévues à l'article 64.

V. DISPOSITIONS DIVERSES.

ART. 115. Tout ce qui concerne le siége des autorités de la Confédération est l'objet de la législation fédérale.

ART. 116. Les trois principales langues parlées en Suisse, l'allemand, le français et l'italien, sont langues nationales de la Confédération.

ART. 117. Les fonctionnaires de la Confédération sont responsables de leur gestion. Une loi fédérale détermine ce qui tient à cette responsabilité.

CHAPITRE III.

RÉVISION DE LA CONSTITUTION FÉDÉRALE.

ART. 118. La Constitution fédérale peut être révisée en tout temps.

ART. 119. La révision a lieu dans les formes statuées pour la législation fédérale.

ART. 120. Lorsqu une section de l'Assemblée fédérale décrète la révision de la Constitution fédérale et que l'autre section n'y

consent pas, ou bien lorsque cinquante mille citoyens suisses ayant droit de voter demandent la révision, la question de savoir si la Constitution fédérale doit être révisée, est, dans l'un comme dans l'autre cas, soumise à la votation du peuple suisse, par oui ou par non.

Si, dans l'un ou l'autre de ces cas, la majorité des citoyens suisses prenant part à la votation se prononce pour l'affirmative, les deux Conseils seront renouvelés pour travailler à la révision.

ART. 121. La Constitution fédérale révisée entre en viguer lorsqu'elle a été acceptée par la majorité des citoyens suisses prenant part à la votation et par la majorité des Etats.

Pour établier la majorité des Etats, le vote d'un demi-Canton est compté pour une demi-voix.

Le résultant de la votation populaire dans chaque Canton est considéré comme le vote de l'Etat.

DISPOSITIONS TRANSITOIRES.

ART. 1er. Le produit des postes et des péages sera réparté sur les bases actuelles jusqu'à l'époque où la Confédération prendra effectivement à sa charge les dépenses militaires supportées jusqu'à ce jour par les Cantons.

La législation fédérale pourvoira en outre à ce que la perte qui pourraient entraîner dans leur ensemble les modifications résultant des articles 20, 30, 36, 2e alinéa, et 42, pour le fisc de certains Cantons, ne frappe ceux-ci que graduellement et n'atteigne son chiffre total qu'après une période transitoire de quelques années.

Les Cantons qui n'auraient pas rempli, au moment où l'article 20 de la Constitution entrera en vigueur, les obligations militaires qui leur sont imposées par l'ancienne Constitution et les lois fédérales seront tenus de les exécuter à leurs propres frais.

ART. 2. Les dispositions des lois fédérales, des concordats et des Constitutions ou des lois cantonales contraires à la présente Constitution cessent d'être en vigueur par le fait de l'adoption de celli-ci, ou de la promulgation des lois qu'elle prévoit,

ART. 3. Les nouvelles dispositions concernant l'organisation

et la compétence du Tribunal fédéral n'entrent en vigueur qu'après la promulgation des lois fédérales y relatives.

ART. 4. Un délai de cinq ans est accordé aux Cantons, pour introduire la gratuité de l'enseignement public primaire (Art. 27).

ART. 5. Les personnes qui exercent une profession libérale et qui, avant la promulgation de la loi fédérale prévue à l'art. 33, ont obtenu un certificat de capacité d'un Canton ou d'une autorité concordataire représentant plusieurs Cantons, peuvent exercer cette profession sur tout le territoire de la Confédération.

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ACT OF PARLIAMENT ESTABLISHING A FEDERAL COUNCIL OF AUSTRALASIA. 14 AUGUST, 1885.

[48 and 49 Vict. Cap. 60, "Law Reports; Public General Statutes," vol. 21, 1885, pp. 324-328.]

An Act to Constitute a Federal Council of Australasia.

[14*th August*, 1885.]

WHEREAS it is expedient to constitute a Federal Council of Australasia, for the purpose of dealing with such matters of common Australasian interest, in respect to which united action is desirable, as can be dealt with without unduly interfering with the management of the internal affairs of the several colonies by their respective legislatures:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In this Act, unless the context otherwise require, the following terms shall bear the meanings set opposite to them respectively:— Definitions.

"Colonies."—The colonies (including their respective dependencies) of Fiji, New Zealand, New South Wales, Queensland, Tasmania, Victoria, and Western Australia, and the province of South Australia, and any other colonies that may hereafter be created in Australasia, or those of the said colonies in respect to which this Act is in operation:

"Crown Colony."—Any colony in which the control of public officers is retained by Her Majesty's Imperial Government:

"Her Majesty's possessions in Australasia."—The colonies and such other territories as Her Majesty may from time to time declare by Order in Council to be within the operation of this Act:

"Council."—The Federal Council as hereby constituted:

"Governor."—The Governor, Lieutenant Governor, or other officer administering the government of the colony referred to, with the advice of his executive council, except in the case of a Crown Colony, in which case the word shall mean the Governor, Lieutenant Governor, or such other officer alone.

Institution of Federal Council.

2. There shall be in and for Her Majesty's possessions in Australasia a Federal Council, constituted as hereinafter provided, and called the Federal Council of Australasia, which shall have the functions, powers, and authority herein-after defined.

Power to make laws.

3. Within such possessions Her Majesty shall have power, by and with the advice and consent of the Council, to make laws for the purposes herein-after specified, subject to the provisions herein contained respecting the operation of this Act.

Session of Council.

4. A session of the Council shall be held once at least in every two years.

Constitution of Council.

5. Each colony shall be represented in the Council by two members, except in the case of Crown colonies, which shall be represented by one member each. Her Majesty, at the request of the legislatures of the colonies, may by Order in Council from time to time increase the number of representatives for each colony.

Appointment, etc., of representatives.

6. The legislature of any colony may make such provision as it thinks fit for the appointment of the representatives of that colony, and for determining the tenure of their office.

Place of sitting of Council.

7. The first session of the Council shall be held at Hobart, in the colony of Tasmania. Subsequent sessions shall be held in such colony as the Council shall from time to time determine.

Summoning and Prorogation of Council.

8. The Council shall be summoned and prorogued by the Governor of the colony in which the session shall be held; and shall be so summoned and prorogued by proclamation, published in the "Government Gazette" of each of the colonies; and shall meet at such time and at such place as shall be named in the proclamation.

Governors to report names of representatives

9. The Governor of each colony shall from time to time transmit to the Governors of the other colonies the names of the members appointed to represent the colony of which he is Governor.

Vacancy in representation not to affect acts of Council.

10. Notwithstanding any vacancy in the representation of any colony, the Council shall be competent to proceed to the dispatch of business, and to exercise the authority hereby conferred upon it.

Special Sessions of Council.

11. At the request of the Governors of any three of the colonies, a special session of the Council shall be summoned to deal with such special matters as may be mentioned in the proclamation convening it. Until the Council shall make other provision in that behalf, any such special session shall be summoned by the Governor of Tasmania, and shall be held at Hobart.

President of Council.

12. The Council shall in each session elect one of its members to be president.

Quorum, and voting.

13. The presence of a majority of the whole number of members of the Council for the time being, representing a majority of the colonies with respect to which this Act is in operation, shall be necessary to constitute a quorum for the dispatch of business, and all questions which shall arise in the Council shall be decided by the votes of a majority of the members present, including the president.

Oath or affirmation to be taken by members.

14. No member of the Council shall sit or vote until he shall have taken and subscribed before the governor of one of the colonies the oath of allegiance contained in the schedule hereto: Provided that every member authorized by the law of the colony which he represents to make an affirmation instead of the oath hereby required to be taken.

Matters subject to legislative authority of Council.

15. Saving Her Majesty's prerogative, and subject to the provisions herein contained with respect to the

operation of this Act, the Council shall have legislative authority in respect to the several matters following :—

(*a*) The relations of Australasia with the islands of the Pacific :

(*b*) Prevention of the influx of criminals :

(*c*) Fisheries in Australasian waters beyond territorial limits :

(*d*) The service of civil process of the courts of any colony within Her Majesty's possessions in Australasia out of the jurisdiction of the colony in which it issued :

(*e*) The enforcement of judgments of Courts of law of any colony beyond the limits of the colony :

(*f*) The enforcement of criminal process beyond the limits of the colony in which it is issued, and the extradition of offenders (including deserters of wives and children, and deserters from the imperial or colonial naval or military forces) :

(*g*) The custody of offenders on board ships belonging to Her Majesty's Colonial Governments beyond territorial limits :

(*h*) Any matter which at the request of the legislatures of the colonies Her Majesty by Order in Council shall think fit to refer to the Council :

(*i*) Such of the following matters as may be referred to the Council by the legislatures of any two or more colonies, that is to say,—general defences, quarantine, patents of invention and discovery, copyright, bills of exchange and promissory notes, uniformity of weights and measures, recognition in other colonies of any marriage or divorce duly solemnised or decreed in any colony, naturalisation of aliens, status of corporations and joint stock companies in other colonies than that in which they have been constituted, and any other matter of general Australasian interest with respect to which the legislatures of the several colonies can legislate within their own limits, and as to which it is deemed desirable that there should be a law of general application : provided that in such cases the Acts of the Council shall extend only to the colonies by whose legislatures the matter shall have been so

referred to it, and such other colonies as may afterwards adopt the same.

Every Bill in respect of the matters marked (*a*), (*b*), or (*c*), shall, unless previously approved by Her Majesty through one of Her Principal Secretaries of State, be reserved for the signification of Her Majesty's pleasure.

Power to Governors to refer questions for determination of Council.

16. The Governors of any two or more of the colonies may, upon an address of the legislatures of such colonies, refer for the consideration and determination of the Council any questions relating to those colonies or their relations with one another, and the Council shall thereupon have authority to consider and determine by Act of Council the matters so referred to it.

Royal assent to Bills passed by Council.

17. Every Bill passed by the Council shall be presented, for Her Majesty's assent, to the Governor of the colony in which the Council shall be sitting, who shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in Her Majesty's name, or that he withholds such assent, or that he reserves the Bill for the signification of Her Majesty's pleasure, or that he will be prepared to assent thereto, subject to certain amendments to be specified by him.

Power to Her Majesty to disallow Act to which Governor has assented in Her Majesty's name.

18. When the Governor assents to a Bill in Her Majesty's name, he shall, by the first convenient opportunity, send an authentic copy of the Act to one of Her Majesty's Principal Secretaries of State, and if her Majesty, within one year after receipt thereof by the Secretary of State, thinks fit to disallow the Act, such disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him) being signified by such Governor by message to the Council, or by proclamation in the "Government Gazette" of all the colonies affected thereby, shall annul the Act from and after the day of such signification.

Bill reserved for signification of Her Majesty's pleasure.

19. A Bill reserved for the signification of Her Majesty's pleasure shall not have any force unless and until within one year from the day on which it was presented to the Governor for Her Majesty's assent such Governor signifies,

by message to the Council, or by proclamation published as last aforesaid, that it has received the assent of Her Majesty.

Acts of Council when assented to to have force of law.

20. All Acts of the Council, on being assented to in manner herein-before provided, shall have the force of law in all Her Majesty's possessions in Australasia in respect to which this Act is in operation, or in the several colonies to which they shall extend, as the case may be, and on board all British Ships, other than Her Majesty's ships of war, whose last port of clearance or port of destination is in any such possession or colony.

Publication of Acts.

21. Every Act assented to in the first instance shall be proclaimed in the "Government Gazette" of the colony in which the session of the Council at which it was passed was held, and shall also be transmitted by the Governor assenting thereto to the Governors of the several colonies affected thereby, and shall be proclaimed by them within the respective colonies of which they are Governors.

Acts of Council to supersede Colonial enactments.

22. If in any case the provisions of any Act of the Council shall be repugnant to, or inconsistent with, the law of any colony affected thereby, the former shall prevail, and the latter shall, so far as such repugnance or inconsistency extends, have no operation.

Standing orders for conduct of business.

23. The Council may from time to time make and adopt such standing rules and orders as may be necessary for the conduct of its business, and all such rules and orders shall be binding on the members of the Council.

Committees of Council.

24. The Council may appoint temporary or permanent committees of its members, to perform such duties, whether during the session of the Council or when the Council is not in session, as may be referred to them by the Council.

Officers and Servants.

25. The Council may appoint such officers and servants as may be necessary for the proper conduct of its business, and may direct the payment to them of such remuneration as it may think fit.

Mode of defraying expenditure of Council.

26. The necessary expenditure connected with the business of the Council shall be defrayed in the first instance by the colony wherein the expenditure is in-

curred, and shall be ultimately contributed and paid by the several colonies in proportion to their population. The amounts payable by the several colonies shall be assessed and apportioned, in case of difference, by the Governor of the colony of Tasmania.

Payment of contributions by colonies.

27. It shall be the duty of the Governor of each colony to direct the payment by the Colonial Treasurer, or other proper officer of the colony, of the amount of the contribution payable by such colony under the provisions of the preceding section.

Evidence of proceedings.

28. Whenever it shall be necessary to prove the proceedings of the Council in any court of justice, or otherwise, a certified copy of such proceedings, under the hand of the clerk or other officer appointed in that behalf by the Council, shall be conclusive evidence of the proceedings appearing by such copy to have been had or taken.

Power to make representations to Her Majesty.

29. The Council may make such representations or recommendations to Her Majesty as it may think fit with respect to any matters of general Australasian interest, or to the relations of Her Majesty's possessions in Australasia with the possessions of foreign powers.

Commencement of Act in respect of any colony.

30. This Act shall not come into operation in respect of any colony until the legislature of such colony shall have passed an Act or Ordinance declaring that the same shall be in force therein, and appointing a day on and from which such operation shall take effect, nor until four colonies at the least shall have passed such Act or Ordinance.

Power to determine operation of Act in any Colony.

31. This Act shall cease to be in operation in respect to any colony the legislature of which shall have passed an Act or Ordinance declaring that the same shall cease to be in force therein: Provided, nevertheless, that all Acts of the Council passed while this Act was in operation in such colony shall continue to be in force therein, unless altered or repealed by the Council.

Short title.

32. This Act shall be styled and may be cited as the Federal Council of Australasia Act, 1885.

CONSTITUTION OF THE UNITED STATES OF BRAZIL.

24 FEBRUARY, 1891.

[Translation in "British and Foreign State Papers," vol. 83 (1891), pp. 487-509.]

TITLE I.—OF THE FEDERAL ORGANIZATION.

Preliminary Provisions.

Art. 1. The Brazilian nation adopts as a form of Government under the representative system the Federal Republic proclaimed on the 15th November, 1889, and constitutes itself, by the perpetual and indissoluble union of its former provinces, into the United States of Brazil.

Art. 2. Each of the former provinces will form a State, and the former neutral municipality will constitute the Federal District, and continue to be the capital of the Union, until the provisions of the following Article shall have been carried out.

Art. 3. [A zone to be marked out on the central plateau for the foundation of a capital therein.]

Art. 4. The States may become incorporated one with another, may be subdivided or dismembered in order to annex themselves to others, or to form new States, with the assent of the respective Legislative Assemblies granted at two successive annual sessions, and with the approbation of the National Congress.

Art. 5. It is incumbent on each State to provide at its own expense for the needs of its Government and Administration; the Union, however, will afford assistance to any State which, in case of public misfortune, may apply therefor.

Art. 6. The Federal Government cannot intervene in matters exclusively affecting the States, except for the purpose of—

1. Repelling foreign invasion, or the invasion of one State by another;

2. Maintaining the Federal Republican form of Government;

3. Re-establishing order and tranquillity in the States at the request of their respective Governments.

4. Insuring the execution of the Federal laws and sentences.

Art. 7. It is the exclusive province of the Union to decree—

1. Duties on imports of foreign origin.

2. Dues on the entry, departure, and stay of vessels, the coasting trade being free to native goods, as also to foreign goods, if the latter have already paid import duty.

3. Stamp taxes, saving the restriction mentioned in Article 9, § 1, No. 1;

4. Federal, postal, and telegraph taxes.

§ 1. It is also the exclusive province of the Union—

(1) To regulate the establishment of banks of issue;

(2) To establish and maintain custom-houses.

§ 2. The taxes decreed by the Union must be uniform for all the States.

§ 3. The laws of the Union and the acts and sentences of its officers shall be carried out throughout the entire country by Federal officers; the execution of the former, however, may be entrusted to the Governors of the States, provided the latter consent to this course.

Art. 8. The Federal Government are prohibited from creating in any way distinctions or preferences in favour of the ports of some States as against those of others.

Art. 9. It is the exclusive province of the States to establish taxes—

1. On the exportation of goods of their own production;

2. On rural and urban real property;

3. On the transfer of property;

4. On industries and professions.

§ 1. It is also the exclusive province of the States to decree—

(1) Stamp Duties on Acts emanating from their respective Governments, and on transactions concerning their own internal economy;

(2) Contributions concerning their telegraph and postal services.

§ 2. The produce of other States is exempt from duty in the State through which it is exported.

§ 3. [A State may impose duties on foreign merchandise intended only for its own consumption, the proceeds going to the Federal Treasury.]

§ 4. [States may establish telegraph lines.]

Art. 10. The States are prohibited from taxing Federal property and revenues, or services undertaken on account of the Union, and *vice versa*.

Art. 11. The States, as well as the Union, are prohibited from—

1. Creating any dues on transit through the territory of any State, or on passage from one State to another for the products of other States, or for foreign products, as also for the vehicles transporting the same, whether by land or water;

2. Establishing, endowing, or interfering with the exercise of any form of religious worship;

3. Enacting retrospective laws.

Art. 12. In addition to the sources of revenue mentioned in Articles 7 and 9, it is lawful for the Union or the States to create, jointly or otherwise, any others which do not contravene what is laid down in Articles 7, 9 and 11 (No. 1).

Art. 13. The right of the Union and of the States to legislate in regard to railways and internal navigation will be regulated by a Federal law.

§. The coasting trade will be carried on by national vessels.

Art. 14. [The land and sea forces are national institutions, and are to obey their lawful superiors and uphold the constitutional institutions.]

Art. 15. The national sovereignty is exercised by means of the legislative, executive, and judicial power, harmonious and independent as regards each other.

Section I.—Of the Legislative Power.

Chapter I.—*General Provisions.*

Art. 16. The legislative power is exercised by the National Congress, with the sanction of the President of the Republic.

[This consists of the Chamber of Deputies and the Senate, which must be elected simultaneously.]

Art. 17. [Makes provision for the assembling of Congress, for the duration of each Legislature, which shall be three years, and for the filling of vacancies.]

Arts. 18-22 provide for the procedure of both Houses, their duties and the privileges and duties of their members.

Art. 23. No member of Congress may, after being elected, conclude contracts with the Executive Power, or accept from it any paid commission or office.

[Diplomatic missions, military commissions, and legal appointments to be exceptions.]

Arts. 24, 25. [Deputies and Senators to be ineligible for the Presidency or any other office.]

Arts. 26, 27. [Qualifications for election to Congress, etc.]

CHAPTER 2.—*Of the Chamber of Deputies.*

Art. 28. The Chamber of Deputies is composed of the representatives of the people elected by the States and by the Federal District, by means of direct suffrage, the representation of the minority being guaranteed.

[Proportional representation of the States to be determined by a decennial census.]

Art. 29. [This House to take the initiative in laws respecting taxes, the number of land and sea forces, etc., and to declare whether there is sufficient ground for impeachments.]

CHAPTER 3.—*Of the Senate.*

Art. 30. The Senate is composed of citizens eligible in accordance with the terms of Article 26 and who are over thirty-five years of age, to the number of three Senators for each State and three for the Federal District, to be elected in the same way as the Deputies.

Art. 31. The mandate of a Senator will last for nine years, one-third of the Senate being renewed triennially.

Arts. 32-33. [The Vice-President shall be President of the Senate. The Senate shall try the President and all other Federal officers under regulations similar to those of the U.S. Constitution.]

CHAPTER 4.—*Of the Powers of Congress.*

Art. 34. It is the exclusive province of the National Congress—

1. To estimate the Federal receipts and to fix the amount of Federal expenditure each year, and to examine the accounts of the receipts and expenditure of each financial year.

2. To authorise the Executive Power to contract loans and undertake other operations of credit.

3. To legislate in regard to the Public Debt, and to establish means for its payment.

4. To regulate the collection and distribution of Federal revenues.

5-6. [To regulate foreign and inter-State trade.]

7-9. [To settle coinage, establish banks of issue, and determine standard of weights and measures.]

10. [To decide inter-State and national boundaries.]

11-13. [To authorise Government to declare war and make peace and have final decision as to Treaties, etc.]

14-15. [To grant subsidies to States (see Article 5) and to legislate in regard to Telegraph and Postal Services.]

16-21. [To provide for frontier defence and for the number of the forces annually and their organization ; to decide if foreign forces may pass through the national territory ; to mobilize the National Guard and to declare a state of siege in national emergency.]

22-26. [To determine the elections to the Federal offices; to legislate in regard to the law of the Republic, and to the procedure of the Federal Judiciary. To control the number and functions of all Federal offices. To organize the Federal Judiciary.]

27-28. [To grant an amnesty and revise penalties imposed on Federal officers.]

29-31. [To legislate concerning the lands and mines of the Union, various services in the Federal capital, and various places used for Federal purposes, e.g. arsenals.]

32. To regulate cases of extradition between the States.

33. To decree the necessary Laws and Resolutions for the exercise of the powers which belong to the Union.

34. To decree the organic Laws necessary for the entire execution of the Constitution.

35. To prorogue and adjourn its Sessions.

Art. 35. It is also the duty, but not the exclusive duty, of Congress—

1. To watch over the keeping of the Constitution and the Laws, and to provide for necessities of a Federal character.

2-4. [To encourage agriculture and immigration, the arts and sciences; and to establish institutions for higher and secondary education.]

CHAPTER 5.—*Of Laws and Resolutions.*

Arts. 36-40. [These Articles deal with the introduction and passing of Bills, the President's suspensive veto, the promulgation of Laws, and provisions for the disagreement of the Houses.]

SECTION 2.—OF THE EXECUTIVE POWER.

CHAPTER 1.—*Of the President and Vice-President.*

Art. 41. The President of the Republic of the United States of Brazil exercises the Executive Power as the Elective Chief of the nation.

[Provision for the event of his removal or that of the Vice-President during their term of office. Qualifications for these offices.]

Art. 42. [If either office falls vacant before the lapse of two years, a new election must take place.]

Art. 43. The President will hold his office for four years, and cannot be re-elected for the Presidential period immediately following.

Arts. 44-46—

[(1) The oath to be taken by the President.

(2) The President may not leave the country without consent of Congress.

(3) The President will receive a salary fixed in previous term.]

CHAPTER 2.—*Of the Election of the President and Vice-President.*

Art. 47. The President and Vice-President of the Republic will be elected by the direct suffrage of the nation and by an absolute majority of votes.

[Time and procedure of election. Provision for a case when no candidate has an absolute majority (cf. U.S. Constitution).]

CHAPTER 3.—*Of the Attributes of the Executive Power.*

Art. 48. It is the exclusive province of the President of the Republic—

1. To sanction, promulgate and cause to be published the

Laws and Resolutions of Congress, and to issue decrees, instructions, and regulations to secure their faithful execution.

2. To freely appoint and dismiss the Ministers of State.

3 and 4. [To command and administer the army and navy.]

5. To fill up the civil and military offices of a Federal character, with due regard to the express restrictions laid down in the Constitution.

6. [To pardon criminals except Federal officers who have neglected their duties or are their accomplices.]

7, 8 and 14-16. [To declare war or make peace when authorized by Congress. In case of invasion to declare war immediately; to maintain relations with foreign states; to proclaim state of siege in case of disturbance, and, subject to approval of Congress, to conclude international agreements and approve those concluded by the States.]

9-13. [To report annually to Congress on the situation of the country and recommend measures, to call Congress on extraordinary occasions, to appoint those recommended by Supreme Tribunal to be Federal Magistrates and subject to approval of Senate to appoint members of the Supreme Tribunal and of the Diplomatic Service.]

CHAPTER 4.—*Of the Ministers of State.*

Arts. 49-52. [They are to assist the President and are not to be responsible to Congress for their advice to the President. They may not hold another office nor appear in Congress, of which they must not be members.]

CHAPTER 5.—*Of the Responsibility of the President.*

Arts. 53-54. [He will be tried before the Supreme Federal Tribunal in the case of ordinary crimes, and before the Senate in case of breach of duty.]

SECTION 3.—*Of the Judicial Power.*

Arts. 55-62. [These Articles deal (*a*) with the appointment, composition and tenure of the Supreme Tribunal; (*b*) its original and exclusive jurisdiction, e.g. the trial of the President and suits between the Union and States or with foreign States; (*c*) its appellate jurisdiction, e.g. from Federal Courts and in certain cases from State Courts; (*d*) the jurisdiction of Federal Courts,

e.g. between one State and citizens of another; (*e*) limitations, e.g. *habeas corpus* and also the exclusion of State Courts from the Federal sphere and vice versa.]

TITLE II.—*Of the States.*

Art. 63. Each State will be governed by the Constitution, and by the laws it may adopt, observing the constitutional principles of the Union.

Art. 64. [Mines and waste lands are their property except such as are reserved by the Union for Federal purposes.]

Art. 65. The States are free—

1. To conclude among themselves Treaties and Conventions of a non-political nature (Article 48, No. 16).

2. To exercise, in general, each and every power or right which is not denied them by an express clause, or one implicitly contained in an express clause of the Constitution.

Art. 66. The States are precluded from—

1. Refusing recognition to documents of the Union, or of other States, of a legislative, administrative, or judicial character;

2. Rejecting coin or bank notes in circulation by order of the Federal Government;

3. Waging or declaring war among themselves, or using reprisals;

4. [Refusing the extradition of criminals.]

Art. 67. [Provision for the administration of the Federal district.]

TITLE III.—*Of the Municipalities.*

Art. 68. The States will organize themselves in such a way as to guarantee the autonomy of the municipalities in all that concerns their particular interests.

TITLE IV.—*Of Brazilian Citizens.*

SECTION 1.—*Of the Qualifications of Brazilian Citizenship.*

Arts. 69-71. [These Articles declare who are citizens, who are electors and who may not be, and also state the cases in which the rights of citizens are suspended or lost.]

SECTION 2.—*Declaration of Rights.*

Art. 72. [Provisions in great detail for the security of the individual in life, liberty, and property.]

Arts. 73-78. [Public offices to be open to all suitable citizens and permanent posts to be guaranteed. Provision is also made for the trial of soldiers and sailors. Rights not specifically mentioned are not thereby void.]

TITLE V.—*General Provisions.*

Art. 79. A citizen invested with the functions of any one of the three Federal powers cannot exercise those of any other.

Arts. 80-82 [State when a state of siege may be declared; prescribe limits to governmental encroachment; and determine when criminal suits may be revised. Public officials to be responsible for abuse and neglect in their departments.]

Art. 83. [Provision for maintaining the laws of the old régime till they are revoked.]

Art. 84. [Provision that the Federal Government shall guarantee all public debt.]

Arts. 85-88. [Provision for the raising of the Army and its limitation to wars of defence.]

Art. 89. [A Court of Audit to be established.]

Art. 90. The Constitution may be amended at the initiative of the National Congress, or of the Legislatures of the States.

§ 1. A proposal for an amendment will be taken into consideration when it is presented by at least a fourth of the members of either of the Chambers of the National Congress and has been accepted after three discussions by two-thirds of the votes in both Chambers, or when it is asked for by two-thirds of the States in the course of one year, each State being represented by a majority of the votes of its Assembly.

§ 2. This proposal will be considered as approved if it be approved in the following year after three discussions by a majority of two-thirds of the votes in both Chambers of Congress.

§ 3. The proposal, when approved, will be signed by the Presidents and Secretaries of the two Chambers, and it will be incorporated in the Constitution as an integral part thereof.

§ 4. Bills having for their object the abolition of the Federative Republican form of government, or of the equal representa-

tion of the States in the Senate, cannot be introduced for discussion into the Congress.

Art. 91. [Provision for the promulgation of the Constitution.]

Transitory Provisions.

[These Articles provide

(*a*) for setting in motion the various parts of the Federal Constitutional machinery.

(*b*) for the establishment of the various State governments.

(*c*) a pension for the ex-Emperor and the purchase of Benjamin Constant's house since he was the founder of the Republic.]

We order all authorities whom this Constitution and its execution concern to execute it and cause it to be executed and observed faithfully and entirely as is therein prescribed.

It shall be published and carried out over the entire country.

Sessions Hall of the National Constituent Congress, in the city of Rio de Janeiro, the 24th day of February, 1891, and in the third year of the Republic.

SPEECH OF THE SECRETARY OF STATE FOR THE COLONIES (Right Hon. Joseph Chamberlain, M.P.) ON INTRODUCING THE COMMONWEALTH OF AUSTRALIA BILL (Extracts). 14 MAY, 1900.

[Hansard's "Parliamentary Debates," 4th series, vol. 83 (1900), cols. 46-76. The whole speech and the ensuing debates on the Bill have been reprinted in "Commonwealth of Australia Constitution Bill. Debates in the Imperial Parliament with Appendices." London, Wyman, 1901.]

The SECRETARY OF STATE for the COLONIES (Mr. J. Chamberlain, Birmingham, W.):

. . . . . .

This Bill, which is the result of the careful and prolonged labours of the ablest statesmen in Australia, enables that great island continent to enter at once the widening circle of English-speaking nations. No longer will she be a congeries of States, each of them separate from and entirely independent of the

others, a position which anyone will see might possibly in the future, through the natural consequences of competition, become a source of danger and lead, at any rate, to friction and to weakness. But, if this Bill passes, in future Australia will be, in the words of the preamble of the Bill which I am about to introduce, "an indissoluble federal Commonwealth firmly united for many of the most important functions of government." After it has been passed there will be for Australia under one administration a uniform postal and telegraphic service, and provision is made making it possible hereafter for railway communication to be under similar control. In the meantime everything which has to do with the exterior relations of the six colonies concerned will be a matter for the Commonwealth, and not for the individual Governments; a common tariff will be established for all the colonies; there will be at the same time inter-colonial free trade, and what is perhaps more important than all, in future there will be a common form and a common control of national defences. Now, this is a consummation long expected and earnestly hoped for by the people of this country. We believe that it is in the interest of Australia, and that has always been with us the first consideration. But we recognize that it is also in our interest as well; we believe the relations between ourselves and those colonies will be simplified, will be more frequent and unrestricted, and, if it be possible, though I hardly think it is, will be more cordial when we have to deal with a single central authority instead of having severally to consult six independent Governments. Whatever is good for Australia is good for the whole British Empire. Therefore, we all of us—independently altogether of party, whether at home or in any other portion of the Empire—rejoice at this proposal, welcome the new birth of which we are witnesses, and anticipate for those great free and progressive communities a future even more prosperous than their past, and an honourable and important position in the history of the Anglo-Saxon race. . . .

. . . . . .

It would be absolutely impossible for me, within anything like a reasonable time, to refer to the multifarious details of this great measure, nor do I think it necessary to do so, because I cannot conceive that the House will be inclined to discuss these

details in any critical spirit; but I might be allowed, and it would interest the House, I think, if I call attention to the general scope of the measure and to some of its most striking features. I think it is true to say that, on the whole, this new Constitution, although it is in important respects unlike every other constitution at present existing, still in the main, and more than any other, follows the Constitution of the United States of America. But it would be, perhaps, more interesting to us to contrast it with the Constitution of our own colony of Canada. The differences between the Constitution of the Dominion and the Constitution of the new Commonwealth are, I think, to be explained in a certain fundamental diversity in the position of the two colonies, and also in the methods by which the Constitution has been brought into existence. In the case of Canada, the delegates came here and the Constitution was settled here in conference with Her Majesty's Government, and was the result, to some extent at any rate, of their advice and suggestion. In the case of Australia, the people of Australia, through their representatives, have worked alone, without either inviting or desiring any assistance from outside. In Australia, it must also be remembered, the separate States have enjoyed for a much longer period than had the provinces of Canada complete independent self-governing existence, and, accordingly, while in Canada the people had before them at the time that the Constitution was decided upon the warning, I might almost say, afforded by the civil war in America of the danger of exaggerating State rights, and while the special provinces had no desire to put forward those rights in too emphatic a manner, in Australia there was no such example to fear, and the separate colonies had enjoyed for so long such great powers that they were naturally unwilling to part with them to anything like the same extent. Accordingly, while in Canada the result of the Constitution was substantially to amalgamate the provinces into one Dominion, the Constitution of Australia creates a federation for distinctly definite and limited objects of a number of independent States, and State rights have throughout been jealously preserved. In Canada everything that was not given expressly to the provinces went to the Central Government. In Australia the Central Government has only powers over matters which are expressly

stated and defined in the Constitution. In Canada the Senate was a body which represented particular provinces substantially in proportion to their population. In Australia the Senate consists of six members from all the States—that is to say, an equal number, whatever may be the size or the population; and the mode of the election of the Senate is also different from that of Canada, and, I believe, entirely novel. In Canada the Senate was nominated for life on the advice of the Ministers. In the United States, as we all know, the Senate is elected by the Legislatures of the several States. In Australia the Senate is to be elected at the same election as the Lower House, but each State is to vote, not in the separate constituencies into which it is divided for the purposes of the Lower House, but as one constituency—a *scrutin de liste*, in fact, as the French call it—except in the case of Queensland, where there are to be two divisions. The Upper House is to serve for six years instead of three; but those are the only differences which separate it in composition, qualification, or constitution from the composition of the Lower House. The Lower House is to be elected according to the electoral laws of the several States, but according to population, and a very ingenious device has been resorted to in order to prevent the numbers of the Lower House from ever becoming excessive. It is provided by the Constitution that the members of the Lower House shall, as far as possible, be exactly double the numbers of the Upper House or Senate. I should add, perhaps, that the members of both Houses will be paid, and paid the same salary. There is also an example, which I cannot help thinking, might be wisely imitated by ourselves. Ministers on taking office do not vacate their seats. Then there is a most ingenious and complicated provision to prevent a possible deadlock between the two Houses; for although they are, as I have said, elected practically by the same constituency, I think it is evident that the differences in the manner of election may sometimes result in a diversity of opinion between the two chambers. In that case—and here, also, I cannot help thinking that hon. Members who are interested in the subject may find many useful suggestions—the course of the operation is this. Measures may be twice rejected by the Senate, as I understand, in two separate sessions of Parliament. After that the Govern-

ment may dissolve both Houses. Both Houses will be re-elected at the same time. If after that re-election the Senate should again—a third time—reject a measure, then there is to be a joint sitting of both Houses, and a decision is to be taken by a simple majority of both Houses. That applies to the case of ordinary measures, but, if the question between the two Houses is an amendment of the Constitution, then a somewhat different course is followed. The proposed amendment may be twice rejected by the Senate, and if after that the Houses do not come to an agreement, then the amendment will be settled by means of a referendum, and is to be decided by the majority of votes in a majority of the States. Now, to this new Parliament so constituted thirty-nine distinct subjects have been expressly referred. Amongst them are the tariff, post office, and telegraph services, defence, currency, bankruptcy, marriage and divorce, and old-age pensions, and also the following matters—to which I call special attention because they involve interest outside Australia as well as locally—first, the fisheries in Australian waters, beyond the territorial limits of Australia; secondly, copyright; thirdly, legislation dealing with the people of any race not being natives of either of the States (I think that has in view legislation in regard to Asiatics); fourthly, "external affairs," a phrase of great breadth and vagueness, which, unless interpreted and controlled by some other provision, might easily, it will be seen, give rise to serious difficulties; and, fifthly, the relations with the islands of the Pacific, which also involves, of course, many questions in which foreign nations are concerned. It will be seen that almost all the points to which I have thus called special attention are matters in which the Imperial Government may have to deal with foreign countries. It is important, therefore—I say this in passing, although I shall deal with it more at length—it is important that measures of this kind, which may involve the Imperial Government in the most serious responsibility, should be interpreted by a tribunal in which all parties have confidence. There are also in the Bill some complicated provisions for dealing with the division of the receipts from Customs among the several States, for the imposition of new duties, and the division of old ones. I have mentioned, at all events, the most important and the most interesting matters

which are raised by this Bill, and I think it is evident from even this very brief and inadequate résumé that there are a great number of propositions in the Bill which, if it were a case of freely discussing a Constitution of our own, would arouse much difference of opinion. If we had been invited to frame a Constitution, or if we had been consulted after the Constitution had been framed, it is quite possible—I do not say it would have been so—it is quite possible we might have had many suggestions to make and some amendments to offer. But that is not the position. The Bill has been prepared without reference to us. It represents substantially and in most of its features the general opinion of the Australian people; and although I differ totally from those who have said that the Australian people do not desire that this great measure, the result of the labour of their representatives, should receive in the Imperial Parliament the fullest consideration and even the fullest discussion; although I deny altogether that the Australian people have ever considered, or shown that they consider, the Imperial Parliament as merely a Court for the registration of their decrees; and although I am convinced that the Australian people will be neither offended nor insulted if we alter here a word or there a word, or even a clause, in this Bill, I think, on the other hand, they do expect that we shall have a reasonable regard to the labours which they have already expended upon this measure, and to the general feeling of the Australian people, wherever it has been really and conclusively shown, and to those rights of self-government of which they have made so magnificent a use and which we have so freely and gladly conceded. Now, it is therefore on these main principles that the Government have proceeded in dealing with this Bill. On the one hand, we have accepted without demur, and we shall ask the House of Commons to accept, every point in this Bill, every word, every line, every clause, which deals exclusively with the interests of Australia. We may be vain enough to think that we might have made improvements for the advantage of Australia, but we recognize that they are the best judges in their own case, and we are quite content that the views of their representatives should be in these matters accepted as final; and the result of that is that the Bill which I hope to present to the House to-night is, so far as ninety-

nine-hundredths of it, I think I might almost say nine hundred and ninety-nine thousandths of it is concerned—as regards the vast proportion of the Bill—exactly the same as that which passed the referendum of the Australian people. But the second principle which I ask the House to assent to, and to which we have given application by certain amendments we have made in the Bill, is that wherever the Bill touches the interests of the Empire as a whole, or the interests of Her Majesty's subjects, or of Her Majesty's possessions outside Australia, the Imperial Parliament occupies a position of trust which it is not the desire of the Empire, and which I do not believe for a moment it is the desire of Australia, that we should fulfil in any perfunctory or formal manner. As I say, we have applied these principles in dealing with the Bill. Two colonies—Western Australia and New Zealand—appealed to Her Majesty's Government, and were represented here by special delegates, and asked us to interfere to secure for them certain amendments in the Bill. I may say Her Majesty's Government were inclined to sympathize with the desire of both these colonies. Her Majesty's Government would have been very glad indeed could their wishes have been complied with; but, as we considered that it was an entirely Australian question, as it was a difference of opinion arising between the Australian colonies, in which neither the Empire nor the mother country were themselves directly concerned, we felt we were not justified in pressing these claims, or in insisting upon securing their adoption as against the majority of the colonies in Australia. Western Australia asked for the right to come in as an original State, on terms slightly different from those provided in the Constitution. The differences arose as to the question of tariffs; and undoubtedly it was admitted by the five federating colonies, that, owing to the peculiar position of Western Australia, she was entitled to some period of interval before she adopted the common tariff of the Commonwealth; and accordingly five years were allowed her for that purpose, subject to the condition that each year one-fifth of any difference that might exist between the tariff of Western Australia and the tariff of the Commonwealth should be reduced. I confess that it seemed to me that a condition of that kind imposed, and I still think it imposes, on the financial system of

Western Australia a very considerable strain. I do not envy the position of the Chancellor of the Exchequer who is beforehand tied down by a statutory and Constitutional law to reduce his tariff by one-fifth in every successive year for five years to come. It is perfectly evident that that must interfere to a considerable extent with the production of his annual budget. But, as I have said, having appealed to the Premiers, and having put forward the views of Western Australia, and having received from them the statement that they did not feel justified in assenting to any amendments, we reported the result of our inquiries to Sir John Forrest, the highly-respected Premier of Western Australia ; and we ventured—although it was perhaps hardly our business—in the interest, as we believed, of Australia as a whole and even of Western Australia, to press upon him that his Government should now reconsider their position, and that in spite of the arrangements of which they complained they should seek to enter the Federation as an original State. I am very happy to say—as will be seen by the Blue-book which I have laid upon the table—that Sir John Forrest and his Government have assented to our request to take this step. Their Parliament will be shortly called together ; and I hope the result will be that the Constitution will be submitted to the people of Western Australia, and that Her Majesty's Government will be able to proclaim the whole of the six colonies of Australia as taking part in this great scheme. The colony of New Zealand made several requests to us. Two of these were, I think, of minor importance. They were that they should have access to the Supreme Court of the new Federation, and that some arrangement should be made at once for common defence. We considered that there would be no difficulty in dealing with these very important questions as between New Zealand and the Federated Commonwealth after it was formed, and that it was unnecessary to delay the Commonwealth during the discussion of matters which, no doubt, would require a considerable amount of time. The third proposal was that New Zealand should be allowed to enter as an original State at any time within the next seven years—I do not know that the period of seven years was a definite part of the proposition ; but, at all events, a considerable period was to be given to them to make their choice. I confess that here also

I should have been very glad if the Premiers had seen their way to accept the suggestion. The delegates, however, who were representing the five federating colonies explained, very ably, the difficulties that would arise from such a state of things. They pointed out that great inconvenience might be suffered, especially with regard to the establishment of a tariff, if the federating colonies were under a sort of compulsion to accept another partner at any time during a long period. . . . I now come to the points upon which we think amendment to be necessary. Substantially there is only one point of importance, but in order that I may be perfectly accurate I will mention others, as to which, I think, there will probably be very little debate or opposition. . . . [Admission of Western Australia. Consequential amendments.] . . . . . Then, in the third place, there is a matter of more importance, though I am happy to say it is one on which there is no division of opinion. We propose to make clear in the Bill the application of the Colonial Laws Validity Act to the Commonwealth. . . . Now I come to what I have described as the substantial point of alteration, which of course is the point affecting the question of appeal. This is the only point, I think, on which there can possibly be any important subject of controversy or difference of opinion between ourselves and the Australian representatives. . . . . We have got to a point in our relations with our self-governing colonies in which I think we recognize, once for all, that these relations depend entirely on their free will and absolute consent. The links between us and them at the present time are very slender. Almost a touch might snap them. But, slender as they are, and slight as they are, although we wish, although I hope, that they will become stronger, still if they are felt irksome by any one of our great colonies, we shall not attempt to force them to wear them. One of these ancient links is precisely this right of appeal by every subject of Her Majesty to the Queen in Council. The Bill weakens that—there is no doubt about that—and thereby there opens up, as I shall show, a prospect of causes of friction and irritation between the colonies and ourselves which, in my opinion, would be more numerous and more serious than anything that is likely to

result if the right of appeal is retained. Well, how shall we deal with this question? I am sure that the House will feel that there is no man in the House who is more anxious to maintain the good feeling between ourselves and our colonies than I am. Ever since I have been in office, that has been my chief desire. Sir, in a case of this kind nothing is more easy than to concede; nothing is more difficult than to refuse. At the same time, believing firmly, as the Government do, that what is asked for in this Bill, as it originally came to us, is not only injurious to the best interests of Australia, but that it would lead to complications which might be destructive of good relations and prejudicial to the unity of the Empire, we feel that we are bound to ask the House to reconsider it. Sir, we believe further—and this is an important point—that opinion has not yet been definitely formed on the subject in Australia, and before, therefore, assenting to a change which may have such serious results, we hold it will be our duty to be quite certain that the demand is a demand that has behind it the whole force of Australian opinion. Now, the new clause, Clause 74, as submitted, would allow no appeal in any matter involving the Federal Constitution, or the constitution of a State, unless the "public interests" of some part of Her Majesty's dominions other than Australia are involved; and it further provides—a matter to which sufficient attention has not been directed—that the Federal Parliament may in the future make laws limiting further the matters on which appeal is to lie. Now, the right hon. Gentleman the Member for East Fife [Right Hon. H. H. Asquith], unless he has been misrepresented, said that the Bill did not take away any right already existing. He will find that that is a mistake. It does take away the right of appeal from a State where the State Constitution is in question; and that right exists at the present time. And further, as I have pointed out, by a proposal in this solemn instrument expressly to authorize the newly created Parliament to further limit the right of appeal, it almost makes it impossible for Her Majesty in future, in reference to this subject, to exercise the right of veto which, of course, is inherent in the prerogative. . . . . .

. . . I go on to another point to which I wish to call attention. Although this Bill does not in direct terms limit the

right of veto, which is a right,—although undoubtedly reserved to the Crown, which must, nevertheless, always be exercised with the most scrupulous care and consideration—although it does not take away that right, it would make it almost a stultification on the part of Her Majesty if the Crown were advised to exercise that right in a matter which we had expressly referred and delegated to the new Parliament. Now, these are the proposals. What are the main objections to these proposals?

. . . . . .

In 1871 it appears a question was raised at the instigation of some of the Australian colonies, and then the Privy Council in their memorandum said—

"The appellate jurisdiction of Her Majesty in Council exists for the benefit of the Colonies, and not for that of the mother country; but it is impossible to overlook the fact that this jurisdiction is part of Her Majesty's prerogative, and which has been exercised for the benefit of the Colonies since the date of their settlement. It is still a powerful link between the Colonies and the Crown of Great Britain, and secures to every subject throughout the Empire the right to claim redress from the Throne. It provides a remedy in many cases not falling within the jurisdiction of the ordinary courts of justice. It removes causes from the influence of local prepossession; it affords the means of maintaining the uniformity of the law of England and her Colonies which derive a great body of their laws from Great Britain, and enables them, if they think fit, to obtain a decision in the last resort, from the highest judicial authority, composed of men of the greatest legal capacity in the metropolis."

The Australian colonies in 1871 recognized the validity of these reasons, and the matter was allowed to drop. It was raised again in 1875, [after] the passing of the Act by which the Dominion of Canada was created; and again the Privy Council pointed out that—

"this power had been exercised for centuries over all the dependencies of the Empire by the Sovereign of the mother country sitting in Council. By this institution, common to all parts of the Empire beyond the seas, all matters whatever requiring a judicial solution may be brought to the cognisance of one Court in which all have a voice. To abolish this controlling power and abandon each colony and dependency to a separate Court of Appeal of its own, would obviously destroy one of the most important ties connecting all parts of the Empire in common obedience to the courts of law, and renounce

the last and most essential mode of exercising the authority of the Crown over its possessions abroad."

There are other reasons, besides these which are stated by the Privy Council, which we have now to bear in mind. This Constitution is to be an Imperial Act, and it is, in substance, the delegation of powers to an authority which is created by the Imperial Parliament. Is it reasonable that when questions arise, as they certainly will arise, as to the interpretation of the powers of the clause by which this authority is delegated, the Imperial power which made the delegation shall not be represented upon the Court which is to give a decision? Then, Sir, there is another point. The terms of the clause are such as certainly to introduce confusion where uniformity is most desired. No appeal is to lie except where the "public interests" of a portion of Her Majesty's dominions outside Australia are concerned. The advice which I have received on the subject goes to show that there may be endless litigation as to the precise nature of the cases in which public interests will arise. . . . . Lastly, there is also the question, to which I have already referred, that the Constitution empowers the new Parliament to deal with maritime jurisdiction, with the Pacific islands, with foreign enlistments, and with external affairs. The responsibility for the action of the Parliament of Australia and its legislation rests with us. We may be brought into a hostile position in regard to any foreign country in consequence of the action of the Colonial Court. Is it reasonable that while we still undertake to co-operate with the colonies in their defence, while the whole strength of the Empire would be brought to bear in order to protect the interests of the colonies—is it reasonable that the question whether or not their Parliament has gone beyond the powers delegated to it, in some matter in which a foreign country—not one of Her Majesty's possessions—is concerned, should be settled without an appeal to the Privy Council? For these and other reasons—but I have stated the principal ones—Her Majesty's Government, as soon as they obtained the Bill from the Premiers, were desirous of making some amendments. . . . . .

It has been recognized by none more strongly or more eloquently than by the delegates themselves that the position of the Imperial

Parliament is that of trustee for the Empire, and that although the policy of reconstruction may be a different matter, the right of reconstruction undoubtedly rests with us. If, therefore, it were a fact that Australia as a whole was absolutely united on this question, if the clause exactly as it stands had been taken as the irrevocable and final decision of the Governments and the people of Australia, our position would no doubt be a very delicate and very difficult one, because, . . ., we recognize fully the unwisdom—I had almost said the impossibility—of pressing views on great self-governing communities to which they are absolutely opposed. . . . Fortunately Her Majesty's Government are not placed in this difficult position. . . . There is no such unanimity as should make us hesitate in a matter of this vast importance, at all events to take time, and for the present, at any rate, retain the right, of appeal . . . as [it] is now enjoyed by Canada, South Africa and India[1] . . .

[1] After much negotiation with the delegates and the Colonial Governments, a compromise was arrived at, and Clause 74 was amended in Committee to the form in which it appears in the Act.

ACT OF PARLIAMENT ESTABLISHING THE CONSTITUTION OF THE COMMONWEALTH OF AUSTRALIA. 9 JULY, 1900.

[63 & 64 Vict. cap. 12, "Law Reports: Public General Statutes," vol. 38 (1900), pp. 24-45.]

AN Act to constitute the Commonwealth of Australia. [*9th July*, 1900.]

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the Commonwealth of Australia Constitution Act.

Act to extend to the Queen's successors.

2. The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom.

Proclamation of Commonwealth.

3. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, and also, if Her Majesty is satisfied that the people

of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia. But the Queen may, at any time after the proclamation, appoint a Governor-General for the Commonwealth.

Commencement of Act.

4. The Commonwealth shall be established, and the Constitution of the Commonwealth shall take effect, on and after the day so appointed. But the Parliaments of the several colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

Operation of the constitution and laws.

5. This Act, and all laws made by the Parliament of the Commonwealth under the constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

Definitions.

6. "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act.

"The States" shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called "a State."

"Original States" shall mean such States as are parts of the Commonwealth at its establishment.

Repeal of Federal Council Act. 48 & 49 Vict. c. 60.

7. The Federal Council of Australasia Act, 1885, is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Any such law may be repealed as to any State by the Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof.

Application of Colonial Boundaries Act, 58 & 59 Vict. c. 34.

8. After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

9. The Constitution of the Commonwealth shall be as follows:—

Constitution.

THE CONSTITUTION.

This Constitution is divided as follows:

Chapter I.—The Parliament:
Part I.—General:
Part II.—The Senate:
Part III.—The House of Representatives:
Part IV.—Both Houses of the Parliament:
Part V.—Powers of the Parliament:
Chapter II.—The Executive Government:
Chapter III.—The Judicature:
Chapter IV.—Finance and Trade:
Chapter V.—The States:
Chapter VI.—New States:
Chapter VII.—Miscellaneous:
Chapter VIII.—Alteration of the Constitution.
The Schedule.

Chap. I. The Parliament.

CHAPTER I.

THE PARLIAMENT.

Part I. General.

PART I.—GENERAL.

Legislative power.

1. The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is herein-after called "The Parliament," or "The Parliament of the Commonwealth."

Governor-General.

2. A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.

Salary of Governor-General.

3. There shall be payable to the Queen out of the Consolidated Revenue fund of the Commonwealth, for the salary of the Governor-General, an annual sum which, until the Parliament otherwise provides, shall be ten thousand pounds.

The salary of a Governor-General shall not be altered during his continuance in office.

Provisions relating to Governor-General.

4. The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.

Sessions of Parliament. Prorogation and dissolution.

5. The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives.

Summoning Parliament.

After any general election the Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs.

First session.

The Parliament shall be summoned to meet not later than six months after the establishment of the Commonwealth.

Yearly session of Parliament.

6. There shall be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

PART II.—THE SENATE.

Part II. The Senate.

The Senate.

7. The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.

But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of

senators to be chosen for each division, and in the absence of such provision the State shall be one electorate.

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

The senators shall be chosen for a term of six years, and the names of the senators chosen for each State shall be certified by the Governor to the Governor-General.

Qualification of electors.

8. The qualification of electors of senators shall be in each State that which is prescribed by this Constitution, or by the Parliament, as the qualification for electors of members of the House of Representatives; but in the choosing of senators each elector shall vote only once.

Method of election of senators.

9. The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State.

Times and Places.

The Parliament of a State may make laws for determining the times and places of elections of senators for the State.

Application of State laws.

10. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State, for the time being, relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State.

Failure to choose senators.

11. The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate.

Issue of writs.

12. The Governor of any State may cause writs to be issued for elections of senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution.

Rotation of senators.

13. As soon as may be after the Senate first meets, and

after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of the third year, and the places of those of the second class at the expiration of the sixth year, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service.

The election to fill vacant places shall be made in the year at the expiration of which the places are to become vacant.

For the purposes of this section the term of service of a senator shall be taken to begin on the first day of January following the day of his election, except in the cases of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of January preceding the day of his election.

Further provision for rotation.

14. Whenever the number of senators for a State is increased or diminished, the Parliament of the Commonwealth may make such provision for the vacating of the places of senators for the State as it deems necessary to maintain regularity in the rotation.

Casual vacancies.

15. If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen shall, sitting and voting together, choose a person to hold the place until the expiration of the term, or until the election of a successor as hereinafter provided, whichever first happens. But if the Houses of Parliament of the State are not in session at the time when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens.

At the next general election of members of the House

of Representatives, or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

The name of any senator so chosen or appointed shall be certified by the Governor of the State to the Governor-General.

Qualifications of senator.

16. The qualifications of a senator shall be the same as those of a member of the House of Representatives.

Election of President.

17. The Senate shall, before proceeding to the despatch of any other business, choose a senator to be the President of the Senate; and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President.

The President shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of President.

18. Before or during any absence of the President, the Senate may choose a senator to perform his duties in his absence.

Resignation of senator.

19. A senator may, by writing addressed to the President, or to the Governor-General if there is no President, or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence.

20. The place of a senator shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the Senate, fails to attend the Senate.

Vacancy to be notified.

21. Whenever a vacancy happens in the Senate, the President, or if there is no President or if the President is absent from the Commonwealth the Governor-General, shall notify the same to the Governor of the State in the representation of which the vacancy has happened.

Quorum.

22. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

Voting in Senate.

23. Questions arising in the Senate shall be determined

by a majority of votes, and each senator shall have one vote. The President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative.

Part III.—The House of Representatives.

Constitution of House of Representatives.

24. The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:—

(i) A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators:

(ii) The number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

Provision as to races disqualified from voting.

25. For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.

Representatives in first Parliament.

26. Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows:—

New South Wales . . .	twenty-three;
Victoria	twenty;
Queensland	eight;
South Australia	six;
Tasmania	five;

Provided that if Western Australia is an Original State, the numbers shall be as follows :—

New South Wales . . .	twenty-six;
Victoria	twenty-three;
Queensland	nine;
South Australia	seven;
Western Australia . . .	five;
Tasmania	five.

Alteration of number of members.

27. Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives.

Duration of House of Representatives.

28. Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.

Electoral divisions.

29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

In the absence of other provision, each State shall be one electorate.

Qualification of electors.

30. Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State; but in the choosing of members each elector shall vote only once.

Application of State laws.

31. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more

numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives.

Writs for general election.

32. The Governor-General in Council may cause writs to be issued for general elections of members of the House of Representatives.

After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof.

Writs for vacancies.

33. Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker or if he is absent from the Commonwealth the Governor-General in Council may issue the writ.

Qualifications of members.

34. Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:—

(i) He must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen:

(ii) He must be a subject of the queen, either natural-born or for at least five years naturalised under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.

Election of Speaker.

35. The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.

The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of Speaker.

36. Before or during any absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence.

Resignation of member.

37. A member may by writing addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence.

38. The place of a member shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the House, fails to attend the House.

Quorum.

39. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary, to constitute a meeting of the House for the exercise of its powers.

Voting in House of Representatives.

40. Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

Part IV. Both Houses of the Parliament.

PART IV.—BOTH HOUSES OF THE PARLIAMENT.

Right of electors of States.

41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

Oath or affirmation of allegiance.

42. Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorized by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

Member of one House ineligible for other.

43. A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.

Disqualification.

44. Any person who—

(i) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or

privileges of a subject or a citizen of a foreign power: or

(ii) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or

(iii) Is an undischarged bankrupt or insolvent: or

(iv) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or

(v) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But sub-section iv. does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

Vacancy on happening of disqualification.

45. If a senator or member of the House of Representatives—

(i) Becomes subject to any of the disabilities mentioned in the last preceding section: or

(ii) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors: or

(iii) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State:

his place shall thereupon become vacant.

Penalty for sitting when disqualified.

46. Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.

Disputed elections.

47. Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House shall be determined by the House in which the question arises.

Allowance to members.

48. Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat.

Privileges, &c. of Houses.

49. The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

Rules and orders.

50. Each House of the Parliament may make rules and orders with respect to—

(i) The mode in which its powers, privileges, and immunities may be exercised and upheld:

(ii) The order and conduct of its business and proceedings either separately or jointly with the other House.

PART V.—POWERS OF THE PARLIAMENT.

Part V. Powers of the Parliament.

Legislative powers of the Parliament.

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:—

(i) Trade and commerce with other countries, and among the States:

(ii) Taxation; but so as not to discriminate between States or parts of States:

(iii) Bounties on the production or export of goods,

but so that such bounties shall be uniform throughout the Commonwealth:

(iv) Borrowing money on the public credit of the Commonwealth:

(v) Postal, telegraphic, telephonic, and other like services:

(vi) The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth:

(vii) Lighthouses, lightships, beacons and buoys:

(viii) Astronomical and meteorological observations:

(ix) Quarantine:

(x) Fisheries in Australian waters beyond territorial limits:

(xi) Census and statistics:

(xii) Currency, coinage, and legal tender:

(xiii) Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money:

(xiv) Insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned:

(xv) Weights and measures:

(xvi) Bills of exchange and promissory notes:

(xvii) Bankruptcy and insolvency:

(xviii) Copyrights, patents of inventions and designs, and trade marks:

(xix) Naturalization and aliens:

(xx) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:

(xxi) Marriage:

(xxii) Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants:

(xxiii) Invalid and old-age pensions:

(xxiv) The service and execution throughout the

Commonwealth of the civil and criminal process and the judgments of the courts of the States:

(xxv) The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States:

(xxvi) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws:

(xxvii) Immigration and emigration:

(xxviii) The influx of criminals:

(xxix) External affairs:

(xxx) The relations of the Commonwealth with the islands of the Pacific:

(xxxi) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:

(xxxii) The control of railways with respect to transport for the naval and military purposes of the Commonwealth:

(xxxiii) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State:

(xxxiv) Railway construction and extension in any State with the consent of that State:

(xxxv) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State:

(xxxvi) Matters in respect of which this Constitution makes provision until the Parliament otherwise provides:

(xxxvii) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:

(xxxviii) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this

Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia:

(xxxix) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

Exclusive powers of the Parliament.

52. The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—

(i) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes:

(ii) Matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth:

(iii) Other matters declared by this Constitution to be within the exclusive power of the Parliament.

Powers of the Houses in respect of legislation.

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House

of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

Appropriation Bills.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

Tax Bill.

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Recommendation of money votes.

56. A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.

Disagreement between the Houses.

57. If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or

passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

Royal assent to Bills.

58. When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

Recommendations by Governor-General.

The Governor-General may return to the house in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

Disallowance by the Queen.

59. The Queen may disallow any law within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.

Signification of Queen's pleasure on Bills reserved.

60. A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General

makes known, by speech or message to each of the Houses of the Parliament, or by Proclamation, that it has received the Queen's assent.

Chap. II. The Government.

CHAPTER II.

THE EXECUTIVE GOVERNMENT.

Executive power.

61. The executive power of the Commonwealth is vested in the Queen and is exerciseable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

Federal Executive Council.

62. There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

Provisions referring to Governor-General.

63. The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

Ministers of State.

64. The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

Ministers to sit in Parliament.

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

Number of Ministers.

65. Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.

Salaries of Ministers.

66. There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the

salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

Appointment of civil servants.

67. Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by a law of the Commonwealth to some other authority.

Command of naval and military forces.

68. The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

Transfer of certain departments.

69. On a date or dates to be proclaimed by the Governor-General after the establishment of the Commonwealth the following departments of the public service in each State shall become transferred to the Commonwealth;

Posts, telegraphs, and telephones:

Naval and military defence:

Lighthouses, lightships, beacons, and buoys:

Quarantine.

But the departments of customs and excise in each State shall become transferred to the Commonwealth on its establishment.

Certain powers of Governors to vest in Governor-General.

70. In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

CHAPTER III.

Chap. III. The Judicature.

THE JUDICATURE.

Judicial power and Courts.

71. The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High

Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

Judges' appointment, tenure, and remuneration.

72. The Justices of the High Court and of the other courts created by the Parliament—

(i) Shall be appointed by the Governor-General in Council:

(ii) Shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity:

(iii) Shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

Appellate jurisdiction of High Court.

73. The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences—

(i) Of any Justice or Justices exercising the original jurisdiction of the High Court:

(ii) Of any other federal court, or court exercising federal jurisdiction; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council:

(iii) Of the inter-State Commission, but as to questions of law only:

and the judgment of the High Court in all such cases shall be final and conclusive.

But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

Until the Parliament otherwise provides, the conditions

of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

Appeal to Queen in Council.

74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.

Original jurisdiction of High Court.

75. In all matters—

(i) Arising under any treaty:

(ii) Affecting consuls or other representatives of other countries:

(iii) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party:

(iv) Between States, or between residents of different States, or between a State and a resident of another State:

(v) In which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth:

the High Court shall have original jurisdiction.

Additional original jurisdiction.

76. The Parliament may make laws conferring original jurisdiction on the High Court in any matter—

(i) Arising under this Constitution, or involving its interpretation:

(ii) Arising under any laws made by the Parliament:

(iii) Of Admiralty and maritime jurisdiction:

(iv) Relating to the same subject-matter claimed under the laws of different States.

Power to define jurisdiction.

77. With respect of any of the matters mentioned in the last two sections the Parliament may make laws—

(i) Defining the jurisdiction of any federal court other than the High Court:

(ii) Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States:

(iii) Investing any court of a State with federal jurisdiction.

Proceedings against Commonwealth or State.

78. The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power.

Number of judges.

79. The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.

Trial by jury.

80. The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

Chap. IV. Finance and Trade.

CHAPTER IV.

FINANCE AND TRADE.

Consolidated Revenue Fund.

81. All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

Expenditure charged thereon.

82. The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated

Revenue Fund shall form the first charge thereon ; and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

Money to be appropriated by law.

83. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of the Parliament the Governor-General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for the Parliament.

Transfer of officers.

84. When any department of the public service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the State, be entitled to receive from the State any Pension, gratuity, or other compensation, payable under the law of the State on the abolition of his office.

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time, and on the pension or retiring allowance, which would be permitted by the law of the State if his service with the Commonwealth were a continuation of his service with the State. Such pension or retiring allowance shall be paid to him by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the State bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

Any officer who is, at the establishment of the Commonwealth, in the public service of a State, and who is, by consent of the Governor of the State with the advice of

the Executive Council thereof, transferred to the public service of the Commonwealth, shall have the same rights as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth.

Transfer of property of State.

85. When any department of the public service of a State is transferred to the Commonwealth—

(i) All property of the State of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth; but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General may declare to be necessary:

(ii) The Commonwealth may acquire any property of the State, of any kind used, but not exclusively used in connexion with the department; the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the State for public purposes is ascertained under the law of the State in force at the establishment of the Commonwealth:

(iii) The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament:

(iv) The Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred.

86. On the establishment of the Commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth.

87. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, of the net revenue of the Commonwealth from duties of customs and of excise not more than

one-fourth shall be applied annually by the Commonwealth towards its expenditure.

The balance shall, in accordance with this Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth.

Uniform duties of customs.

88. Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.

Payment to States before uniform duties.

89. Until the imposition of uniform duties of customs—

(i) The Commonwealth shall credit to each State the revenues collected therein by the Commonwealth.

(ii) The Commonwealth shall debit to each State—

(*a*) The expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth;

(*b*) The proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth.

(iii) The Commonwealth shall pay to each State month by month the balance (if any) in favour of the State.

Exclusive power over customs, excise, and bounties.

90. On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

Exceptions as to bounties.

91. Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver,

or other metals, nor from granting, with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.

Trade within the Commonwealth to be free.

92. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation.

Payment to States for five years after uniform tariffs.

93. During the first five years after the imposition of uniform duties of customs, and thereafter until the Parliament otherwise provides—

(i) The duties of customs chargeable on goods imported into a State and afterwards passing into another State for consumption, and the duties of excise paid on goods produced or manufactured in a State and afterwards passing into another State for consumption, shall be taken to have been collected not in the former but the latter State:

(ii) Subject to the last subsection, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs.

Distribution of surplus.

94. After five years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth.

Customs duties of Western Australia.

95. Notwithstanding anything in this Constitution, the Parliament of the State of Western Australia, if that State be an Original State, may, during the first five years after

the imposition of uniform duties of customs, impose duties of customs on goods passing into that State and not originally imported from beyond the limits of the Commonwealth; and such duties shall be collected by the Commonwealth.

But any duty so imposed on any goods shall not exceed during the first of such years the duty chargeable on the goods under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth, and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth of such latter duty, and all duties imposed under this section shall cease at the expiration of the fifth year after the imposition of uniform duties.

If at any time during the five years the duty on any goods under this section is higher than the duty imposed by the Commonwealth on the importation of the like goods, then such higher duty shall be collected on the goods when imported into Western Australia from beyond the limits of the Commonwealth.

Financial assistance to States.

96. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

Audit.

97. Until the Parliament otherwise provides, the laws in force in any Colony which has become or becomes a State with respect to the receipt of revenue and the expenditure of money on account of the Government of the Colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the State in the same manner as if the Commonwealth, or the Government or an officer of the Commonwealth, were mentioned whenever the Colony, or the Government or an officer of the Colony, is mentioned.

Trade and commerce includes navigation and State railways.

98. The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State.

Commonwealth not to give preference.

99. The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

Nor abridge right to use water.

100. The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

Inter-State Commission.

101. There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder.

Parliament may forbid preferences by State.

102. The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any State, or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State; due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission.

Commissioners' appointment, tenure, and remuneration.

103. The members of the Inter-State Commission—

(i) Shall be appointed by the Governor-General in Council:

(ii) Shall hold office for seven years, but may be removed within that time by the Governor-General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity:

(iii) Shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office.

Saving of certain rates.

104. Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway, the

property of a State, if the rate is deemed by the Inter-State Commission to be necessary for the development of the territory of the State, and if the rate applies equally to goods within the State and to goods passing into the State from other States.

Taking over public debts of States.

105. The Parliament may take over from the States their public debts as existing at the establishment of the Commonwealth, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States.

CHAPTER V.

Chap. V. The States.

THE STATES.

Saving of Constitutions.

106. The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

Saving of Power of State Parliaments.

107. Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

Saving of State laws.

108. Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth, shall, subject to this Constitution, continue in force in the State;

and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State.

Inconsistency of laws.

109. When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Provisions referring to Governor.

110. The provisions of this Constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other chief executive officer or administrator of the government of the State.

States may surrender territory.

111. The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.

States may levy charges for inspection laws.

112. After uniform duties of customs have been imposed, a State may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State; but the net produce of all charges so levied shall be for the use of the Commonwealth; and any such inspection laws may be annulled by the Parliament of the Commonwealth.

Intoxicating liquids.

113. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the State as if such liquids had been produced in the State.

States may not raise forces. Taxation of property of Commonwealth or State.

114. A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

States not to coin money.

115. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

Commonwealth not to legislate in respect of religion.

116. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious ob-

servance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Rights of residents in States.

117. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

Recognition of laws, &c. of States.

118. Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.

Protection of States from invasion and violence.

119. The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.

Custody of offenders against laws of the Commonwealth.

120. Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision.

CHAPTER VI.

Chap. VI. New States.

NEW STATES.

New States may be admitted or established.

121. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

Government of territories.

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

Alteration of limits of States.

123. The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval

of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.

Formation of new States.

124. A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected.

Chap. VII. Miscellaneous.

CHAPTER VII.

MISCELLANEOUS.

Seat of Government.

125. The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles from Sydney.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor.

The Parliament shall sit at Melbourne until it meet at the seat of Government.

Power to Her Majesty to authorize Governor-General to appoint deputies.

126. The Queen may authorize the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the

exercise by the Governor-General himself of any power or function.

127. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.

Aborigines not to be counted in reckoning population.

CHAPTER VIII.

Chap. VIII. Alteration of Constitution.

ALTERATION OF THE CONSTITUTION.

128. This Constitution shall not be altered except in the following manner :—

Mode of altering the Constitution.

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two or more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members

of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

SCHEDULE.

OATH.

I, *A.B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. SO HELP ME GOD!

AFFIRMATION.

I, *A.B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.

(NOTE.—*The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.*)

ACT OF PARLIAMENT ESTABLISHING THE CONSTITUTION OF THE UNION OF SOUTH AFRICA. 20 SEPTEMBER, 1909.

[9 Edw. VII. Cap. 9, "Law Reports: Public General Statutes," vol. 47 (1909), pp. 42-77.]

An Act to constitute the Union of South Africa.

[20*th September*, 1909.]

WHEREAS it is desirable for the welfare and future progress of South Africa that the several British Colonies therein should be united under one Government in a legislative union under the Crown of Great Britain and Ireland:

And whereas it is expedient to make provision for the union of the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony on terms and conditions to which they have agreed by resolution of their respective Parliaments, and to define the executive, legislative, and judicial powers to be exercised in the government of the Union:

And whereas it is expedient to make provision for the establishment of provinces with powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration:

And whereas it is expedient to provide for the eventual admission into the Union or transfer to the Union of such parts of South Africa as are not originally included therein:

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

I.—PRELIMINARY.

Short title.

1. This Act may be cited as the South Africa Act, 1909.

Definitions.

2. In this Act, unless it is otherwise expressed or implied, the words "the Union" shall be taken to mean the Union of South Africa as constituted under this Act, and the words "Houses of Parliament," "House of Parliament," or "Parliament," shall be taken to mean the Parliament of the Union.

Application of Act to King's successors.

3. The provisions of this Act referring to the King shall extend to His Majesty's heirs and successors in the sovereignty of the United Kingdom of Great Britain and Ireland.

II.—The Union.

Proclamation of Union.

4. It shall be lawful for the King, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony, hereinafter called the Colonies, shall be united in a Legislative Union under one Government under the name of the Union of South Africa. On and after the day appointed by such proclamation the Government and Parliament of the Union shall have full power and authority within the limits of the Colonies, but the King may at any time after the proclamation appoint a governor-general for the Union.

Commencement of Act.

5. The provisions of this Act shall, unless it is otherwise expressed or implied, take effect on and after the day so appointed.

Incorporation of colonies into the Union.

6. The colonies mentioned in section four shall become original provinces of the Union under the names of Cape of Good Hope, Natal, Transvaal, and Orange Free State, as the case may be. The original provinces shall have the same limits as the respective colonies at the establishment of the Union.

Application of 58 & 59 Vict. c. 34, &c.

7. Upon any colony entering the Union, the Colonial Boundaries Act, 1895, and every other Act applying to any of the Colonies as being self-governing colonies or colonies with responsible government, shall cease to apply to that colony, but as from the date when this Act takes

effect every such Act of Parliament shall apply to the Union.

III.—Executive Government.

Executive power.

8. The Executive Government of the Union is vested in the King, and shall be administered by His Majesty in person or by a governor-general as His representative.

Governor-General.

9. The Governor-General shall be appointed by the King, and shall have and may exercise in the Union during the King's pleasure, but subject to this Act, such powers and functions of the King as His Majesty may be pleased to assign to him.

Salary of Governor-General.

10. There shall be payable to the King out of the Consolidated Revenue Fund of the Union for the salary of the Governor-General an annual sum of ten thousand pounds. The salary of the Governor-General shall not be altered during his continuance in office.

Application of Act to Governor-General.

11. The provisions of this Act relating to the Governor-General extend and apply to the Governor-General for the time being or such person as the King may appoint to administer the government of the Union. The King may authorise the Governor-General to appoint any person to be his deputy within the Union during his temporary absence, and in that capacity to exercise for and on behalf of the Governor-General during such absence all such powers and authorities vested in the Governor-General as the Governor-General may assign to him, subject to any limitations expressed or directions given by the King; but the appointment of such deputy shall not affect the exercise by the Governor-General himself of any power or function.

Executive Council.

12. There shall be an Executive Council to advise the Governor-General in the government of the Union, and the members of the council shall be chosen and summoned by the Governor-General and sworn as executive councillors, and shall hold office during his pleasure.

Meaning of Governor-General in Council.

13. The provisions of this Act referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Executive Council.

Appointment of ministers.

14. The Governor-General may appoint officers not exceeding ten in number to administer such departments of State of the Union as the Governor-General in Council may establish; such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Executive Council and shall be the King's ministers of State for the Union. After the first general election of members of the House of Assembly, as hereinafter provided, no minister shall hold office for a longer period than three months unless he is or becomes a member of either House of Parliament.

Appointment and removal of officers.

15. The appointment and removal of all officers of the public service of the Union shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by this Act or by a law of Parliament to some other authority.

Transfer of executive powers to Governor-General in Council.

16. All powers, authorities, and functions which at the establishment of the Union are in any of the Colonies vested in the Governor or in the Governor in Council, or in any authority of the Colony, shall, as far as the same continue in existence and are capable of being exercised after the establishment of the Union, be vested in the Governor-General or in the Governor-General in Council, or in the authority exercising similar powers under the Union, as the case may be, except such powers and functions as are by this Act or may by a law of Parliament be vested in some other authority.

Command of naval and military forces.

17. The command in chief of the naval and military forces within the Union is vested in the King or in the Governor-General as His representative.

Seat of Government.

18. Save as in section twenty-three excepted, Pretoria shall be the seat of Government of the Union.

IV.—Parliament.

Legislative power.

19. The legislative power of the Union shall be vested in the Parliament of the Union, herein called Parliament, which shall consist of the King, a Senate, and a House of Assembly.

20. The Governor-General may appoint such times for holding the sessions of Parliament as he thinks fit, and may also from time to time, by proclamation or otherwise, prorogue Parliament, and may in like manner dissolve the Senate and the House of Assembly simultaneously, or the House of Assembly alone: provided that the Senate shall not be dissolved within a period of ten years after the establishment of the Union, and provided further that the dissolution of the Senate shall not affect any senators nominated by the Governor-General in Council. Sessions of Parliament.

21. Parliament shall be summoned to meet not later than six months after the establishment of the Union. Summoning of first Parliament.

22. There shall be a session of Parliament once at least in every year, so that a period of twelve months shall not intervene between the last sitting of Parliament in one session and its first sitting in the next session. Annual session of Parliament.

23. Cape Town shall be the seat of the Legislature of the Union. Seat of Legislature.

Senate.

24. For ten years after the establishment of the Union the constitution of the Senate shall, in respect of the original provinces, be as follows:— Original constitution of Senate.

(i) Eight senators shall be nominated by the Governor-General in Council, and for each original province eight senators shall be elected in the manner hereinafter provided:

(ii) The senators to be nominated by the Governor-General in Council shall hold their seats for ten years. One-half of their number shall be selected on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa. If the seat of a senator so nominated shall become vacant, the Governor-General in Council shall nominate another person to be a senator, who shall hold his seat for ten years:

(iii) After the passing of this Act, and before the day appointed for the establishment of the Union, the

Governor of each of the Colonies shall summon a special sitting of both Houses of the Legislature, and the two Houses sitting together as one body and presided over by the Speaker of the Legislative Assembly shall elect eight persons to be senators for the province. Such senators shall hold their seats for ten years. If the seat of a senator so elected shall become vacant, the provincial council of the province for which such senator has been elected shall choose a person to hold the seat until the completion of the period for which the person in whose stead he is elected would have held his seat.

Subsequent constitution of Senate.

25. Parliament may provide for the manner in which the Senate shall be constituted after the expiration of ten years, and unless and until such provision shall have been made—

(i) the provisions of the last preceding section with regard to nominated senators shall continue to have effect;

(ii) eight senators for each province shall be elected by the members of the provincial council of such province together with the members of the House of Assembly elected for such province. Such senators shall hold their seats for ten years unless the Senate be sooner dissolved. If the seat of an elected senator shall become vacant, the members of the provincial council of the province, together with the members of the House of Assembly elected for such province, shall choose a person to hold the seat until the completion of the period for which the person in whose stead he is elected would have held his seat. The Governor-General in Council shall make regulations for the joint election of senators prescribed in this section.

Qualifications of senators.

26. The qualifications of a senator shall be as follows :— He must—

(*a*) be not less than thirty years of age;

(*b*) be qualified to be registered as a voter for the election

of members of the House of Assembly in one of the provinces;

(*c*) have resided for five years within the limits of the Union as existing at the time when he is elected or nominated, as the case may be;

(*d*) be a British subject of European descent;

(*e*) in the case of an elected senator, be the registered owner of immovable property within the Union of the value of not less than five hundred pounds over and above any special mortgages thereon.

For the purposes of this section, residence in, and property situated within, a colony before its incorporation in the Union shall be treated as residence in and property situated within the Union.

Appointment and tenure of office of President.

27. The Senate shall, before proceeding to the dispatch of any other business, choose a senator to be the President of the Senate, and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President. The President shall cease to hold office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office by writing under his hand addressed to the Governor-General.

Deputy President.

28. Prior to or during any absence of the President the Senate may choose a senator to perform his duties in his absence.

Resignation of senators.

29. A senator may, by writing under his hand addressed to the Governor-General, resign his seat, which thereupon shall become vacant. The Governor-General shall as soon as practicable cause steps to be taken to have the vacancy filled.

Quorum.

30. The presence of at least twelve senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

Voting in the Senate.

31. All questions in the Senate shall be determined by a majority of votes of senators present other than the President or the presiding senator, who shall, however, have and exercise a casting vote in the case of an equality of votes.

House of Assembly.

Constitution of House of Assembly.

32. The House of Assembly shall be composed of members directly chosen by the voters of the Union in electoral divisions delimited as hereinafter provided.

Original number of members.

33. The number of members to be elected in the original provinces at the first election and until the number is altered in accordance with the provisions of this Act shall be as follows:—

Cape of Good Hope . . .	Fifty-one.
Natal	Seventeen.
Transvaal	Thirty-six.
Orange Free State	Seventeen.

These numbers may be increased as provided in the next succeeding section, but shall not, in the case of any original province, be diminished until the total number of members of the House of Assembly in respect of the provinces herein provided for reaches one hundred and fifty, or until a period of ten years has elapsed after the establishment of the Union, whichever is the longer period.

Increase of number of members.

34. The number of members to be elected in each province, as provided in section thirty-three, shall be increased from time to time as may be necessary in accordance with the following provisions:—

(i) The quota of the Union shall be obtained by dividing the total number of European male adults in the Union, as ascertained at the census of nineteen hundred and four, by the total number of members of the House of Assembly as constituted at the establishment of the Union:

(ii) In nineteen hundred and eleven, and every five years thereafter, a census of the European population of the Union shall be taken for the purposes of this Act:

(iii) After any such census the number of European male adults in each province shall be compared with the number of European male adults as ascertained at the census of nineteen hundred and four, and, in the case of any province where an

increase is shown, as compared with the census of nineteen hundred and four, equal to the quota of the Union or any multiple thereof, the number of members allotted to such province in the last preceding section shall be increased by an additional member or an additional number of members equal to such multiple, as the case may be:

(iv) Notwithstanding anything herein contained, no additional member shall be allotted to any province until the total number of European male adults in such province exceeds the quota of the Union multiplied by the number of members allotted to such province for the time being, and thereupon additional members shall be allotted to such province in respect only of such excess:

(v) As soon as the number of members of the House of Assembly to be elected in the original provinces in accordance with the preceding subsections reaches the total of one hundred and fifty, such total shall not be further increased unless and until Parliament otherwise provides; and subject to the provisions of the last preceding section the distribution of members among the provinces shall be such that the proportion between the number of members to be elected at any time in each province and the number of European male adults in such province, as ascertained at the last preceding census, shall as far as possible be identical throughout the Union:

(vi) "Male adults" in this Act shall be taken to mean males of twenty-one years of age or upwards not being members of His Majesty's regular forces on full pay:

(vii) For the purpose of this Act the number of European male adults, as ascertained at the census of nineteen hundred and four, shall be taken to be—

For the Cape of Good Hope . .	167,546
For Natal	34,784
For the Transvaal	106,493
For the Orange Free State . . .	41,014

Qualifications of voters.

35.—(1) Parliament may by law prescribe the qualifications which shall be necessary to entitle persons to vote at the election of members of the House of Assembly but no such law shall disqualify any person in the province of the Cape of Good Hope, who, under the laws existing in the Colony of the Cape of Good Hope at the establishment of the Union, is or may become capable of being registered as a voter from being so registered in the province of the Cape of Good Hope by reason of his race or colour only, unless the Bill be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses. A Bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

(2) No person who at the passing of any such law is registered as a voter in any province shall be removed from the register by reason only of any disqualification based on race or colour.

Application of existing qualifications.

36. Subject to the provisions of the last preceding section, the qualifications of parliamentary voters, as existing in the several Colonies at the establishment of the Union, shall be the qualifications necessary to entitle persons in the corresponding provinces to vote for the election of members of the House of Assembly: Provided that no member of His Majesty's regular forces on full pay shall be entitled to be registered as a voter.

Elections.

37.—(1) Subject to the provisions of this Act, the laws in force in the Colonies at the establishment of the Union relating to elections for the more numerous Houses of Parliament in such Colonies respectively, the registration of voters, the oaths or declarations to be taken by voters, returning officers, the powers and duties of such officers, the proceedings in connection with elections, election expenses, corrupt and illegal practices, the hearing of

election petitions and the proceedings incident thereto, the vacating of seats of members, and the proceedings necessary for filling such vacancies, shall, mutatis mutandis, apply to the elections in the respective provinces of members of the House of Assembly.

(2) Notwithstanding anything to the contrary in any of the said laws contained, at any general election of members of the House of Assembly, all polls shall be taken on one and the same day in all the electoral divisions throughout the Union, such day to be appointed by the Governor-General in Council.

Commission for delimitation of electoral divisions.

38. Between the date of the passing of this Act and the date fixed for the establishment of the Union, the Governor in Council of each of the Colonies shall nominate a judge of any of the Supreme or High Courts of the Colonies, and the judges so nominated shall, upon acceptance by them respectively of such nomination, form a joint commission, without any further appointment, for the purpose of the first division of the provinces into electoral divisions. The High Commissioner of South Africa shall forthwith convene a meeting of such commission at such time and place in one of the Colonies as he shall fix and determine. At such meeting the Commissioners shall elect one of their number as chairman of such commission. They shall thereupon proceed with the discharge of their duties under this Act, and may appoint persons in any province to assist them or to act as assessors to the commission or with individual members thereof for the purpose of inquiring into matters connected with the duties of the commission. The commission may regulate their own procedure and may act by a majority of their number. All moneys required for the payment of the expenses of such commission before the establishment of the Union in any of the Colonies shall be provided by the Governor in Council of such colony. In case of the death, resignation, or other disability of any of the Commissioners before the establishment of the Union, the Governor in Council of the Colony in respect of which he was nominated shall forthwith nominate another judge to

fill the vacancy. After the establishment of the Union the expenses of the commission shall be defrayed by the Governor-General in Council, and any vacancies shall be filled by him.

Electoral divisions.

39. The commission shall divide each province into electoral divisions, each returning one member.

Method of dividing provinces into electoral divisions.

40.—(1) For the purpose of such division as is in the last preceding section mentioned, the quota of each province shall be obtained by dividing the total number of voters in the province, as ascertained at the last registration of voters, by the number of members of the House of Assembly to be elected therein.

(2) Each province shall be divided into electoral divisions in such a manner that each such division shall, subject to the provisions of subsection (3) of this section, contain a number of voters, as nearly as may be, equal to the quota of the province.

(3) The Commissioners shall give due consideration to—

(*a*) community or diversity of interests;
(*b*) means of communication;
(*c*) physical features;
(*d*) existing electoral boundaries;
(*e*) sparsity or density of population;

in such manner that, while taking the quota of voters as the basis of division, the Commissioners may, whenever they deem it necessary, depart therefrom, but in no case to any greater extent than fifteen per centum more or fifteen per centum less than the quota.

Alteration of electoral divisions.

41. As soon as may be after every quinquennial census, the Governor-General in Council shall appoint a commission consisting of three judges of the Supreme Court of South Africa to carry out any re-division which may have become necessary as between the different electoral divisions in each province, and to provide for the allocation of the number of members to which such province may have become entitled under the provisions of this Act. In carrying out such re-division and allocation the commission shall have the same powers and proceed upon

the same principles as are by this Act provided in regard to the original division.

Powers and duties of commission for delimiting electoral divisions.

42.—(1) The joint commission constituted under section thirty-eight, and any subsequent commission appointed under the provisions of the last preceding section, shall submit to the Governor-General in Council—

(*a*) a list of electoral divisions, with the names given to them by the commission and a description of the boundaries of every such division:

(*b*) a map or maps showing the electoral divisions into which the provinces have been divided:

(*c*) such further particulars as they consider necessary.

(2) The Governor-General in Council may refer to the commission for its consideration any matter relating to such list or arising out of the powers or duties of the commission.

(3) The Governor-General in Council shall proclaim the names and boundaries of the electoral divisions as finally settled and certified by the commission, or a majority thereof, and thereafter, until there shall be a re-division, the electoral divisions as named and defined shall be the electoral divisions of the Union in the provinces.

(4) If any discrepancy shall arise between the description of the divisions and the aforesaid map or maps, the description shall prevail.

Date from which alteration of electoral divisions to take effect.

43. Any alteration in the number of members of the House of Assembly to be elected in the several provinces, and any re-division of the provinces into electoral divisions, shall, in respect of the election of members of the House of Assembly, come into operation at the next general election held after the completion of the re-division or of any allocation consequent upon such alteration, and not earlier.

Qualifications of members of House of Assembly.

44. The qualifications of a member of the House of Assembly shall be as follows:—

He must—

(*a*) be qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces;

(*b*) have resided for five years within the limits of the Union as existing at the time when he is elected;

(*c*) be a British subject of European descent.

For the purposes of this section, residence in a colony before its incorporation in the Union shall be treated as residence in the Union.

Duration.

45. Every House of Assembly shall continue for five years from the first meeting thereof, and no longer, but may be sooner dissolved by the Governor-General.

Appointment and tenure of office of Speaker.

46. The House of Assembly shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and, as often as the office of Speaker becomes vacant, the House shall again choose a member to be the Speaker. The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing under his hand addressed to the Governor-General.

Deputy Speaker.

47. Prior to or during the absence of the Speaker, the House of Assembly may choose a member to perform his duties in his absence.

Resignation of members.

48. A member may, by writing under his hand addressed to the Speaker, or, if there is no Speaker, or if the Speaker is absent from the Union, to the Governor-General, resign his seat, which shall thereupon become vacant.

Quorum.

49. The presence of at least thirty members of the House of Assembly shall be necessary to constitute a meeting of the House for the exercise of its powers.

Voting in House of Assembly.

50. All questions in the House of Assembly shall be determined by a majority of votes of members present other than the Speaker or the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

Both Houses of Parliament.

Oath or affirmation of allegiance.

51. Every senator and every member of the House of Assembly shall, before taking his seat, make and subscribe before the Governor-General, or some person authorized

by him, an oath or affirmation of allegiance in the following form :—

Oath.

I, *A.B.*, do swear that I will be faithful and bear true allegiance to His Majesty [*here insert the name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being*] His [*or Her*] heirs and successors according to law. So help me God.

Affirmation.

I, *A.B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to His Majesty [*here insert the name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being*] His [*or Her*] heirs and successors according to law.

Member of either House disqualified for being member of the other House.

52. A member of either House of Parliament shall be incapable of being chosen or of sitting as a member of the other House : Provided that every minister of State who is a member of either House of Parliament shall have the right to sit and speak in the Senate and the House of Assembly, but shall vote only in the House of which he is a member.

Disqualifications for being a member of either House.

53. No person shall be capable of being chosen or of sitting as a senator or as a member of the House of Assembly who—

(*a*) has been at any time convicted of any crime or offence for which he shall have been sentenced to imprisonment without the option of a fine for a term of not less than twelve months, unless he shall have received a grant of amnesty or a free pardon, or unless such imprisonment shall have expired at least five years before the date of his election ; or

(*b*) is an unrehabilitated insolvent ; or

(*c*) is of unsound mind, and has been so declared by a competent court ; or

(*d*) holds any office of profit under the Crown within the Union: Provided that the following persons shall not be deemed to hold an office of profit under the Crown for the purposes of this subsection:

(1) a minister of State for the Union;

(2) a person in receipt of a pension from the Crown;

(3) an officer or member of His Majesty's naval or military forces on retired or half pay, or an officer or member of the naval or military forces of the Union whose services are not wholly employed by the Union.

Vacation of seats.

54. If a senator or member of the House of Assembly—

(*a*) becomes subject to any of the disabilities mentioned in the last preceding section; or

(*b*) ceases to be qualified as required by law; or

(*c*) fails for a whole ordinary session to attend without the special leave of the Senate or the House of Assembly, as the case may be;

his seat shall thereupon become vacant.

Penalty for sitting or voting when disqualified.

55. If any person who is by law incapable of sitting as a senator or member of the House of Assembly shall, while so disqualified and knowing or having reasonable grounds for knowing that he is so disqualified, sit or vote as a member of the Senate or the House of Assembly, he shall be liable to a penalty of one hundred pounds for each day on which he shall so sit or vote, to be recovered on behalf of the Treasury of the Union by action in any Superior Court of the Union.

Allowances of members.

56. Each senator and each member of the House of Assembly shall, under rules as shall be framed by Parliament, receive an allowance of four hundred pounds a year, to be reckoned from the date on which he takes his seat: Provided that for every day of the session on which he is absent there shall be deducted from such allowance the sum of three pounds: Provided further that no such allowance shall be paid to a Minister receiving a salary

under the Crown or to the President of the Senate or the Speaker of the House of Assembly. A day of the session shall mean in respect of a member any day during a session on which the House of which he is a member or any committee of which he is a member meets.

Privileges of Houses of Parliament.

57. The powers, privileges, and immunities of the Senate and of the House of Assembly and of the members and committees of each House shall, subject to the provisions of this Act, be such as are declared by Parliament, and until declared shall be those of the House of Assembly of the Cape of Good Hope and of its members and committees at the establishment of the Union.

Rules of procedure.

58. Each House of Parliament may make rules and orders with respect to the order and conduct of its business and proceedings. Until such rules and orders shall have been made the rules and orders of the Legislative Council and House of Assembly of the Cape of Good Hope at the establishment of the Union shall mutatis mutandis apply to the Senate and House of Assembly respectively. If a joint sitting of both Houses of Parliament is required under the provisions of this Act, it shall be convened by the Governor-General by message to both Houses. At any such joint sitting the Speaker of the House of Assembly shall preside and the rules of the House of Assembly shall, as far as practicable, apply.

Powers of Parliament.

Powers of Parliament.

59. Parliament shall have full power to make laws for the peace, order, and good government of the Union.

Money Bills.

60.—(1) Bills appropriating revenue or moneys or imposing taxation shall originate only in the House of Assembly. But a Bill shall not be taken to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.

(2) The Senate may not amend any Bills so far as they impose taxation or appropriate revenue or moneys for the services of the Government.

(3) The Senate may not amend any Bill so as to increase any proposed charges or burden on the people.

Appropriation Bills.

61. Any Bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

Recommendation of money votes.

62. The House of Assembly shall not originate or pass any vote, resolution, address, or Bill for the appropriation of any part of the public revenue or of any tax or impost to any purpose unless such appropriation has been recommended by message from the Governor-General during the Session in which such vote, resolution, address, or Bill is proposed.

Disagreements between the two Houses.

63. If the House of Assembly passes any Bill and the Senate rejects or fails to pass it or passes it with amendments to which the House of Assembly will not agree, and if the House of Assembly in the next session again passes the Bill with or without any amendments which have been made or agreed to by the Senate and the Senate rejects or fails to pass it or passes it with amendments to which the House of Assembly will not agree, the Governor-General may during that session convene a joint sitting of the members of the Senate and House of Assembly. The members present at any such joint sitting may deliberate and shall vote together upon the Bill as last proposed by the House of Assembly and upon amendments, if any, which have been made therein by one House of Parliament and not agreed to by the other; and any such amendments which are affirmed by a majority of the total number of members of the Senate and House of Assembly present at such sitting shall be taken to have been carried, and if the Bill with the amendments, if any, is affirmed by a majority of the members of the Senate and House of Assembly present at such sitting, it shall be taken to have been duly passed by both Houses of Parliament: Provided that, if the Senate shall reject or fail to pass any Bill dealing with the appropriation of revenue or moneys for the public service, such joint sitting may be convened during the same session in which the Senate so rejects or fails to pass such Bill.

Royal Assent to Bills.

64. When a Bill is presented to the Governor-General for the King's Assent, he shall declare according to his discretion, but subject to the provisions of this Act, and to such instructions as may from time to time be given in that behalf by the King, that he assents in the King's name, or that he withholds assent, or that he reserves the Bill for the signification of the King's pleasure. All Bills repealing or amending this section or any of the provisions of Chapter IV. under the heading "House of Assembly," and all Bills abolishing provincial councils or abridging the powers conferred on provincial councils under section eighty-five, otherwise than in accordance with the provisions of that section, shall be so reserved. The Governor-General may return to the House in which it originated any Bill so presented to him, and may transmit therewith any amendments which he may recommend, and the House may deal with the recommendation.

Disallowance of Bills.

65. The King may disallow any law within one year after it has been assented to by the Governor-General, and such disallowance, on being made known by the Governor-General by speech or message to each of the Houses of Parliament or by proclamation, shall annul the law from the day when the disallowance is so made known.

Reservation of Bills.

66. A Bill reserved for the King's pleasure shall not have any force unless and until, within one year from the day on which it was presented to the Governor-General for the King's Assent, the Governor-General makes known by speech or message to each of the Houses of Parliament or by proclamation that it has received the King's Assent.

Signature and enrolment of Acts.

67. As soon as may be after any law shall have been assented to in the King's name by the Governor-General, or having been reserved for the King's pleasure shall have received his assent, the Clerk of the House of Assembly shall cause two fair copies of such law, one being in the English and the other in the Dutch language (one of which copies shall be signed by the Governor-General), to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court of South

Africa; and such copies shall be conclusive evidence as to the provisions of every such law, and in case of conflict between the two copies thus deposited that signed by the Governor-General shall prevail.

V.—The Provinces.

Administrators.

Appointment and tenure of office of provincial administrators.

68.—(1) In each province there shall be a chief executive officer appointed by the Governor-General in Council, who shall be styled the administrator of the province, and in whose name all executive acts relating to provincial affairs therein shall be done.

(2) In the appointment of the administrator of any province, the Governor-General in Council shall, as far as practicable, give preference to persons resident in such province.

(3) Such administrator shall hold office for a term of five years and shall not be removed before the expiration thereof except by the Governor-General in Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, or, if Parliament be not sitting, then within one week after the commencement of the next ensuing session.

(4) The Governor-General in Council may from time to time appoint a deputy administrator to execute the office and functions of the administrator during his absence, illness, or other inability.

Salaries of administrators.

69. The salaries of the administrators shall be fixed and provided by Parliament, and shall not be reduced during their respective terms of office.

Provincial Councils.

Constitution of provincial councils.

70.—(1) There shall be a provincial council in each province consisting of the same number of members as are elected in the province for the House of Assembly: Provided that, in any province whose representatives in the House of Assembly shall be less than twenty-five in number, the provincial council shall consist of twenty-five members.

(2) Any person qualified to vote for the election of members of the provincial council shall be qualified to be a member of such council.

Qualification of provincial councillors.

71.—(1) The members of the provincial council shall be elected by the persons qualified to vote for the election of members of the House of Assembly in the province voting in the same electoral divisions as are delimited for the election of members of the House of Assembly: Provided that, in any province in which less than twenty-five members are elected to the House of Assembly, the delimitation of the electoral divisions, and any necessary re-allocation of members or adjustment of electoral divisions, shall be effected by the same commission and on the same principles as are prescribed in regard to the electoral divisions for the House of Assembly.

(2) Any alteration in the number of members of the provincial council, and any re-division of the province into electoral divisions, shall come into operation at the next general election for such council held after the completion of such re-division, or of any allocation consequent upon such alteration, and not earlier.

(3) The election shall take place at such times as the administrator shall by proclamation direct, and the provisions of section thirty-seven applicable to the election of members of the House of Assembly shall mutatis mutandis apply to such elections.

Application of sections 53 to 55 to provincial councillors.

72. The provisions of sections fifty-three, fifty-four, and fifty-five, relative to members of the House of Assembly, shall mutatis mutandis apply to members of the provincial councils: Provided that any member of a provincial council who shall become a member of either House of Parliament shall thereupon cease to be a member of such provincial council.

Tenure of office by provincial councillors.

73. Each provincial council shall continue for three years from the date of its first meeting, and shall not be subject to dissolution save by effluxion of time.

Sessions of provincial councils.

74. The administrator of each province shall by proclamation fix such times for holding the sessions of the provincial council as he may think fit, and may from time

to time prorogue such council: Provided that there shall be a session of every provincial council once at least in every year, so that a period of twelve months shall not intervene between the last sitting of the council in one session and its first sitting in the next session.

Chairmen of provincial councils.

75. The provincial council shall elect from among its members a chairman, and may make rules for the conduct of its proceedings. Such rules shall be transmitted by the administrator to the Governor-General, and shall have full force and effect unless and until the Governor-General in council shall express his disapproval thereof in writing addressed to the administrator.

Allowances of provincial councillors.

76. The members of the provincial council shall receive such allowances as shall be determined by the Governor-General in Council.

Freedom of speech in provincial councils.

77. There shall be freedom of speech in the provincial council, and no member shall be liable to any action or proceeding in any court by reason of his speech or vote in such council.

Executive Committees.

Provincial executive committees.

78.—(1) Each provincial council shall at its first meeting after any general election elect from among its members, or otherwise, four persons to form with the administrator, who shall be chairman, an executive committee for the province. The members of the executive committee other than the administrator shall hold office until the election of their successors in the same manner.

(2) Such members shall receive such remuneration as the provincial council, with the approval of the Governor-General in Council, shall determine.

(3) A member of the provincial council shall not be disqualified from sitting as a member by reason of his having been elected as a member of the executive committee.

(4) Any casual vacancy arising in the executive committee shall be filled by election by the provincial council if then in session or, if the council is not in session, by a person appointed by the executive committee to hold office temporarily pending an election by the council.

Right of administrator, &c. to take part in proceedings of provincial council.

79. The administrator and any other member of the executive committee of a province, not being a member of the provincial council, shall have the right to take part in the proceedings of the council, but shall not have the right to vote.

Powers of provincial executive committees.

80. The executive committee shall on behalf of the provincial council carry on the administration of provincial affairs. Until the first election of members to serve on the executive committee, such administration shall be carried on by the administrator. Whenever there are not sufficient members of the executive committee to form a quorum according to the rules of the committee, the administrator shall, as soon as practicable, convene a meeting of the provincial council for the purpose of electing members to fill the vacancies, and until such election the administrator shall carry on the administration of provincial affairs.

Transfer of powers to provincial executive committees.

81. Subject to the provisions of this Act, all powers, authorities, and functions which at the establishment of the Union are in any of the Colonies vested in or exercised by the Governor or the Governor in Council, or any minister of the Colony, shall after such establishment be vested in the executive committee of the province so far as such powers, authorities, and functions relate to matters in respect of which the provincial council is competent to make ordinances.

Voting in executive committees.

82. Questions arising in the executive committee shall be determined by a majority of votes of the members present, and, in case of an equality of votes, the administrator shall have also a casting vote. Subject to the approval of the Governor-General in Council, the executive committee may make rules for the conduct of its proceedings.

Tenure of office by members of executive committees.

83. Subject to the provisions of any law passed by Parliament regulating the conditions of appointment, tenure of office, retirement and superannuation of public officers, the executive committee shall have power to appoint such officers as may be necessary, in addition to officers assigned to the province by the Governor-General

in Council under the provisions of this Act, to carry out the services entrusted to them and to make and enforce regulations for the organization and discipline of such officers.

Power of administrator to act on behalf of Governor-General in Council.

84. In regard to all matters in respect of which no powers are reserved or delegated to the provincial council, the administrator shall act on behalf of the Governor-General in Council when required to do so, and in such matters the administrator may act without reference to the other members of the executive committee.

Powers of Provincial Councils.

Powers of provincial councils.

85. Subject to the provisions of this Act and the assent of the Governor-General in Council as hereinafter provided, the provincial council may make ordinances in relation to matters coming within the following classes of subjects (that is to say) :—

(i) Direct taxation within the province in order to raise a revenue for provincial purposes :

(ii) The borrowing of money on the sole credit of the province with the consent of the Governor-General in Council and in accordance with regulations to be framed by Parliament :

(iii) Education, other than higher education, for a period of five years and thereafter until Parliament otherwise provides :

(iv) Agriculture to the extent and subject to the conditions to be defined by Parliament :

(v) The establishment, maintenance, and management of hospitals and charitable institutions :

(vi) Municipal institutions, divisional councils, and other local institutions of a similar nature :

(vii) Local works and undertakings within the province, other than railways and harbours and other such works as extend beyond the borders of the province, and subject to the power of Parliament to declare any work a national work and to provide for its con-

struction by arrangement with the provincial council or otherwise :

(viii) Roads, outspans, ponts, and bridges, other than bridges connecting two provinces :

(ix) Markets and pounds :

(x) Fish and game preservation :

(xi) The imposition of punishment by fine, penalty, or imprisonment for enforcing any law or any ordinance of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section :

(xii) Generally all matters which, in the opinion of the Governor-General in Council, are of a merely local or private nature in the province :

(xiii) All other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the provincial council.

Effect of provincial ordinances.

86. Any ordinance made by a provincial council shall have effect in and for the province as long and as far only as it is not repugnant to any Act of Parliament.

Recommendations to Parliament.

87. A provincial council may recommend to Parliament the passing of any law relating to any matter in respect of which such council is not competent to make ordinances.

Power to deal with matters proper to be dealt with by private Bill legislation.

88. In regard to any matter which requires to be dealt with by means of a private Act of Parliament, the provincial council of the province to which the matter relates may, subject to such procedure as shall be laid down by Parliament, take evidence by means of a Select Committee or otherwise for and against the passing of such law, and, upon receipt of a report from such council, together with the evidence upon which it is founded, Parliament may pass such Act without further evidence being taken in support thereof.

Constitution of provincial revenue fund.

89. A provincial revenue fund shall be formed in every province, into which shall be paid all revenues raised by or accruing to the provincial council and all moneys paid over by the Governor-General in Council to the provincial

council. Such fund shall be appropriated by the provincial council by ordinance for the purposes of the provincial administration generally, or, in the case of moneys paid over by the Governor-General in Council for particular purposes, then for such purposes, but no such ordinance shall be passed by the provincial council unless the administrator shall have first recommended to the council to make provision for the specific service for which the appropriation is to be made. No money shall be issued from the provincial revenue fund except in accordance with such appropriation and under warrant signed by the administrator: Provided that, until the expiration of one month after the first meeting of the provincial council, the administrator may expend such moneys as may be necessary for the services of the province.

Assent to provincial ordinances.

90. When a proposed ordinance has been passed by a provincial council it shall be presented by the administrator to the Governor-General in Council for his assent. The Governor-General in Council shall declare within one month from the presentation to him of the proposed ordinance that he assents thereto, or that he withholds assent, or that he reserves the proposed ordinance for further consideration. A proposed ordinance so reserved shall not have any force unless and until, within one year from the day on which it was presented to the Governor-General in Council, he makes known by proclamation that it has received his assent.

Effect and enrolment of ordinances.

91. An ordinance assented to by the Governor-General in Council and promulgated by the administrator shall, subject to the provisions of this Act, have the force of law within the province. The administrator shall cause two fair copies of every such ordinance, one being in the English and the other in the Dutch language (one of which copies shall be signed by the Governor-General), to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court of South Africa; and such copies shall be conclusive evidence as to the provisions of such ordinance, and, in case of conflict be-

tween the two copies thus deposited, that signed by the Governor-General shall prevail.

Miscellaneous.

Audit of provincial accounts.

92.—(1) In each province there shall be an auditor of accounts to be appointed by the Governor-General in Council.

(2) No such auditor shall be removed from office except by the Governor-General in Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, and, if Parliament be not sitting, then within one week after the commencement of the next ensuing session.

(3) Each such auditor shall receive out of the consolidated Revenue Fund such salary as the Governor-General in Council, with the approval of Parliament, shall determine.

(4) Each such auditor shall examine and audit the accounts of the province to which he is assigned subject to such regulations and orders as may be framed by the Governor-General in Council and approved by Parliament, and no warrant signed by the administrator authorizing the issuing of money shall have effect unless countersigned by such auditor.

Continuation of powers of divisional and municipal councils.

93. Notwithstanding anything in this Act contained, all powers authorities, and functions lawfully exercised at the establishment of the Union by divisional or municipal councils, or any other duly constituted local authority, shall be and remain in force until varied or withdrawn by Parliament or by a provincial council having power in that behalf.

Seats of provincial government.

94. The seats of provincial government shall be—

For the Cape of Good Hope	Cape Town.
For Natal	Pietermaritzburg.
For the Transvaal . .	Pretoria.
For the Orange Free State .	Bloemfontein.

VI.—The Supreme Court of South Africa.

Constitution of Supreme Court.

95. There shall be a Supreme Court of South Africa consisting of a Chief Justice of South Africa, the ordinary judges of appeal, and the other judges of the several divisions of the Supreme Court of South Africa in the provinces.

Appellate Division of Supreme Court.

96. There shall be an Appellate Division of the Supreme Court of South Africa, consisting of the Chief Justice of South Africa, two ordinary judges of appeal, and two additional judges of appeal. Such additional judges of appeal shall be assigned by the Governor-General in Council to the Appellate Division from any of the provincial or local divisions of the Supreme Court of South Africa, but shall continue to perform their duties as judges of their respective divisions when their attendance is not required in the Appellate Division.

Filling of temporary vacancies in Appellate Division.

97. The Governor-General in Council may, during the absence, illness, or other incapacity of the Chief Justice of South Africa, or of any ordinary or additional judge of appeal, appoint any other judge of the Supreme Court of South Africa to act temporarily as such chief justice, ordinary judge of appeal, or additional judge of appeal, as the case may be.

Constitution of provincial and local divisions of Supreme Court.

98.—(1) The several supreme courts of the Cape of Good Hope, Natal, and the Transvaal, and the High Court of the Orange River Colony shall, on the establishment of the Union, become provincial divisions of the Supreme Court of South Africa within their respective provinces, and shall each be presided over by a judge-president.

(2) The court of the eastern districts of the Cape of Good Hope, the High Court of Griqualand, the High Court of Witwatersrand, and the several circuit courts, shall become local divisions of the Supreme Court of South Africa within the respective areas of their jurisdiction as existing at the establishment of the Union.

(3) The said provincial and local divisions, referred to in this Act as superior courts, shall, in addition to any original jurisdiction exercised by the corresponding courts

of the Colonies at the establishment of the Union, have jurisdiction in all matters—

(*a*) in which the Government of the Union or a person suing or being sued on behalf of such Government is a party:

(*b*) in which the validity of any provincial ordinance shall come into question.

(4) Unless and until Parliament shall otherwise provide, the said superior courts shall mutatis mutandis have the same jurisdiction in matters affecting the validity of elections of members of the House of Assembly and provincial councils as the corresponding courts of the Colonies have at the establishment of the Union in regard to parliamentary elections in such Colonies respectively.

Continuation in office of existing judges.

99. All judges of the supreme courts of the Colonies, including the High Court of the Orange River Colony, holding office at the establishment of the Union shall on such establishment become judges of the Supreme Court of South Africa, assigned to the divisions of the Supreme Court in the respective provinces, and shall retain all such rights in regard to salaries and pensions as they may possess at the establishment of the Union. The Chief Justices of the Colonies holding office at the establishment of the Union shall on such establishment become the Judges-President of the divisions of the Supreme Court in the respective provinces, but shall so long as they hold that office retain the title of Chief Justice of their respective provinces.

Appointment and remuneration of judges.

100. The Chief Justice of South Africa, the ordinary judges of appeal, and all other judges of the Supreme Court of South Africa to be appointed after the establishment of the Union shall be appointed by the Governor-General in Council, and shall receive such remuneration as Parliament shall prescribe, and their remuneration shall not be diminished during their continuance in office.

Tenure of office by judges.

101. The Chief Justice of South Africa and other judges of the Supreme Court of South Africa shall not be removed from office except by the Governor-General in Council on an address from both Houses of Parliament in

the same session praying for such removal on the ground of misbehaviour or incapacity.

Reduction in number of judges.

102. Upon any vacancy occurring in any division of the Supreme Court of South Africa, other than the Appellate Division, the Governor-General in Council may, in case he shall consider that the number of judges of such court may with advantage to the public interest be reduced, postpone filling the vacancy until Parliament shall have determined whether such reduction shall take place.

Appeals to Appellate Division.

103. In every civil case in which, according to the law in force at the establishment of the Union, an appeal might have been made to the Supreme Court of any of the Colonies from a Superior Court in any of the Colonies, or from the High Court of Southern Rhodesia, the appeal shall be made only to the Appellate Division, except in cases of orders or judgments given by a single judge, upon applications by way of motion or petition or on summons for provisional sentence or judgments as to costs only, which by law are left to the discretion of the court. The appeal from any such orders or judgments, as well as any appeal in criminal cases from any such Superior Court, or the special reference by any such court of any point of law in a criminal case, shall be made to the provincial division corresponding to the court which before the establishment of the Union would have had jurisdiction in the matter. There shall be no further appeal against any judgment given on appeal by such provincial division except to the Appellate Division, and then only if the Appellate Division shall have given special leave to appeal.

Existing appeals.

104. In every case, civil or criminal, in which at the establishment of the Union an appeal might have been made from the Supreme Court of any of the Colonies or from the High Court of the Orange River Colony to the King in Council, the appeal shall be made only to the Appellate Division: Provided that the right of appeal in any civil suit shall not be limited by reason only of the value of the matter in dispute or the amount claimed or awarded in such suit.

105. In every case, civil or criminal, in which at the establishment of the Union an appeal might have been made from a court of resident magistrate or other inferior court to a superior court in any of the Colonies, the appeal shall be made to the corresponding division of the Supreme Court of South Africa; but there shall be no further appeal against any judgment given on appeal by such division except to the Appellate Division, and then only if the Appellate Division shall have given special leave to appeal. Appeals from inferior courts to provincial divisions.

106. There shall be no appeal from the Supreme Court of South Africa or from any division thereof to the King in Council, but nothing herein contained shall be construed to impair any right which the King in Council may be pleased to exercise to grant special leave to appeal from the Appellate Division to the King in Council. Parliament may make laws limiting the matters in respect of which such special leave may be asked, but Bills containing any such limitation shall be reserved by the Governor-General for the signification of His Majesty's pleasure: Provided that nothing in this section shall affect any right of appeal to His Majesty in Council from any judgment given by the Appellate Division of the Supreme Court under or in virtue of the Colonial Courts of Admiralty Act, 1890. Provisions as to appeals to the King in Council. 53 & 54 Vict. c. 27.

107. The Chief Justice of South Africa and the ordinary judges of appeal may, subject to the approval of the Governor-General in Council, make rules for the conduct of the proceedings of the Appellate Division and prescribing the time and manner of making appeals thereto. Until such rules shall have been promulgated, the rules in force in the Supreme Court of the Cape of Good Hope at the establishment of the Union shall mutatis mutandis apply. Rules of procedure in Appellate Division.

108. The chief justice and other judges of the Supreme Court of South Africa may, subject to the approval of the Governor-General in Council, frame rules for the conduct of the proceedings of the several provincial and local divisions. Until such rules shall have been promulgated, the rules in force at the establishment of the Union in the respective courts which become divisions of the Supreme Court of South Africa shall continue to apply therein. Rules of procedure in provincial and local divisions.

Place of sittings of Appellate Division.

109. The Appellate Division shall sit in Bloemfontein, but may from time to time for the convenience of suitors hold its sittings at other places within the Union.

Quorum for hearing appeals.

110. On the hearing of appeals from a court consisting of two or more judges, five judges of the Appellate Division shall form a quorum, but, on the hearing of appeals from a single judge, three judges of the Appellate Division shall form a quorum. No judge shall take part in the hearing of any appeal against the judgment given in a case heard before him.

Jurisdiction of Appellate Division.

111. The process of the Appellate Division shall run throughout the Union, and all its judgments or orders shall have full force and effect in every province, and shall be executed in like manner as if they were original judgments or orders of the provincial division of the Supreme Court of South Africa in such province.

Execution of processes of provincial divisions.

112. The registrar of every provincial division of the Supreme Court of South Africa, if thereto requested by any party in whose favour any judgment or order has been given or made by any other division, shall, upon the deposit with him of an authenticated copy of such judgment or order and on proof that the same remains unsatisfied, issue a writ or other process for the execution of such judgment or order, and thereupon such writ or other process shall be executed in like manner as if it had been originally issued from the division of which he is registrar.

Transfer of suits from one provincial or local division to another.

113. Any provincial or local division of the Supreme Court of South Africa to which it may be made to appear that any civil suit pending therein may be more conveniently or fitly heard or determined in another division may order the same to be removed to such other division, and thereupon such last-mentioned division may proceed with such suit in like manner as if it had been originally commenced therein.

Registrar and officers of Appellate Division.

114. The Governor-General in Council may appoint a registrar of the Appellate Division and such other officers thereof as shall be required for the proper dispatch of the business thereof.

Advocates and attorneys.

115.—(1) The laws regulating the admission of advo-

cates and attorneys to practise before any superior court of any of the Colonies shall mutatis mutandis apply to the admission of advocates and attorneys to practise in the corresponding division of the Supreme Court of South Africa.

(2) All advocates and attorneys entitled at the establishment of the Union to practise in any superior court of any of the Colonies shall be entitled to practise as such in the corresponding division of the Supreme Court of South Africa.

(3) All advocates and attorneys entitled to practise before any provincial division of the Supreme Court of South Africa shall be entitled to practise before the Appellate Division.

Pending suits.

116. All suits, civil or criminal, pending in any superior court of any of the Colonies at the establishment of the Union shall stand removed to the corresponding division of the Supreme Court of South Africa, which shall have jurisdiction to hear and determine the same, and all judgments and orders of any superior court of any of the Colonies given or made before the establishment of the Union shall have the same force and effect as if they had been given or made by the corresponding division of the Supreme Court of South Africa. All appeals to the King in Council which shall be pending at the establishment of the Union shall be proceeded with as if this Act had not been passed.

VII.—Finance and Railways.

Constitution of Consolidated Revenue Fund and Railway and Harbour Fund.

117. All revenues, from whatever source arising, over which the several Colonies have at the establishment of the Union power of appropriation, shall vest in the Governor-General in Council. There shall be formed a Railway and Harbour Fund, into which shall be paid all revenues raised or received by the Governor-General in Council from the administration of the railways, ports, and harbours, and such fund shall be appropriated by Parliament to the purposes of the railways, ports, and harbours in the manner prescribed by this Act. There shall also be formed a Consolidated Revenue Fund, into

which shall be paid all other revenues raised or received by the Governor General in Council, and such fund shall be appropriated by Parliament for the purposes of the Union in the manner prescribed by this Act, and subject to the charges imposed thereby.

Commission of inquiry into financial relations between Union and provinces.

118. The Governor-General in Council shall, as soon as may be after the establishment of the Union, appoint a commission, consisting of one representative from each province, and presided over by an officer from the Imperial Service, to institute an inquiry into the financial relations which should exist between the Union and the provinces. Pending the completion of that inquiry and until Parliament otherwise provides, there shall be paid annually out of the Consolidated Revenue Fund to the administrator of each province—

(*a*) an amount equal to the sum provided in the estimates for education, other than higher education, in respect of the financial year, 1908-9, as voted by the Legislature of the corresponding colony during the year nineteen hundred and eight;

(*b*) such further sums as the Governor-General in Council may consider necessary for the due performance of the services and duties assigned to the provinces respectively.

Until such inquiry shall be completed and Parliament shall have made other provision, the executive committees in the several provinces shall annually submit estimates of their expenditure for the approval of the Governor-General in Council, and no expenditure shall be incurred by any executive committee which is not provided for in such approved estimates.

Security for existing public debts.

119. The annual interest of the public debts of the Colonies and any sinking funds constituted by law at the establishment of the Union shall form a first charge on the Consolidated Revenue Fund.

Requirements for withdrawal of money from funds.

120. No money shall be withdrawn from the Consolidated Revenue Fund or the Railway and Harbour Fund except under appropriation made by law. But, until the expiration of two months after the first meeting of Parlia-

ment, the Governor-General in Council may draw therefrom and expend such moneys as may be necessary for the public service, and for railway and harbour administration respectively.

Transfer of Colonial property to the Union.

121. All stocks, cash, bankers' balances, and securities for money belonging to each of the Colonies at the establishment of the Union shall be the property of the Union: Provided that the balances of any funds raised at the establishment of the Union by law for any special purposes in any of the Colonies shall be deemed to have been appropriated by Parliament for the special purposes for which they have been provided.

Crown lands, &c.

122. Crown lands, public works, and all property throughout the Union, movable or immovable, and all rights of whatever description belonging to the several Colonies at the establishment of the Union, shall vest in the Governor-General in Council subject to any debt or liability specifically charged thereon.

Mines and minerals.

123. All rights in and to mines and minerals, and all rights in connection with the searching for, working for, or disposing of, minerals or precious stones, which at the establishment of the Union are vested in the Government of any of the Colonies, shall on such establishment vest in the Governor-General in Council.

Assumption by Union of colonial debts.

124. The Union shall assume all debts and liabilities of the Colonies existing at its establishment, subject, notwithstanding any other provision contained in this Act, to the conditions imposed by any law under which such debts or liabilities were raised or incurred, and without prejudice to any rights of security or priority in respect of the payment of principal, interest, sinking fund, and other charges conferred on the creditors of any of the Colonies, and may, subject to such conditions and rights, convert, renew, or consolidate such debts.

Ports, harbours, and railways.

125. All ports, harbours, and railways belonging to the several Colonies at the establishment of the Union shall from the date thereof vest in the Governor-General in Council. No railway for the conveyance of public traffic, and no port, harbour, or similar work, shall be constructed without the sanction of Parliament.

Constitution of Harbour and Railway Board.

126. Subject to the authority of the Governor-General in Council, the control and management of the railways, ports, and harbours of the Union shall be exercised through a board consisting of not more than three commissioners, who shall be appointed by the Governor-General in Council, and a minister of State, who shall be chairman. Each commissioner shall hold office for a period of five years, but may be re-appointed. He shall not be removed before the expiration of his period of appointment, except by the Governor-General in Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, or, if Parliament be not sitting, then within one week after the commencement of the next ensuing session. The salaries of the commissioners shall be fixed by Parliament and shall not be reduced during their respective terms of office.

Administration of railways, ports, and harbours.

127. The railways, ports, and harbours of the Union shall be administered on business principles, due regard being had to agricultural and industrial development within the Union and promotion, by means of cheap transport, of the settlement of an agricultural and industrial population in the inland portions of all provinces of the Union. So far as may be, the total earnings shall be not more than are sufficient to meet the necessary outlays for working, maintenance, betterment, depreciation, and the payment of interest due on capital not being capital contributed out of railway or harbour revenue, and not including any sums payable out of the Consolidated Revenue Fund in accordance with the provisions of sections one hundred and thirty and one hundred and thirty-one. The amount of interest due on such capital invested shall be paid over from the Railway and Harbour Fund into the Consolidated Revenue Fund. The Governor-General in Council shall give effect to the provisions of this section as soon as and at such time as the necessary administrative and financial arrangements can be made, but in any case shall give full effect to them before the expiration of four years from the establishment of the

Union. During such period, if the revenues accruing to the Consolidated Revenue Fund are insufficient to provide for the general service of the Union, and if the earnings accruing to the Railway and Harbour Fund are in excess of the outlays specified herein, Parliament may by law appropriate such excess or any part thereof towards the general expenditure of the Union, and all sums so appropriated shall be paid over to the Consolidated Revenue Fund.

Establishment of fund for maintaining uniformity of railway rates.

128. Notwithstanding anything to the contrary in the last preceding section, the Board may establish a fund out of railway and harbour revenue to be used for maintaining, as far as may be, uniformity of rates notwithstanding fluctuations in traffic.

Management of railway and harbour balances.

129. All balances standing to the credit of any fund established in any of the Colonies for railway or harbour purposes at the establishment of the Union shall be under the sole control and management of the Board, and shall be deemed to have been appropriated by parliament for the respective purposes for which they have been provided.

Construction of harbour and railway works.

130. Every proposal for the construction of any port or harbour works or of any line of railway, before being submitted to Parliament, shall be considered by the Board, which shall report thereon, and shall advise whether the proposed works or line of railway should or should not be constructed. If any such works or line shall be constructed contrary to the advice of the Board, and if the Board is of opinion that the revenue derived from the operation of such works or line will be insufficient to meet the costs of working and maintenance, and of interest on the capital invested therein, it shall frame an estimate of the annual loss which, in its opinion, will result from such operation. Such estimate shall be examined by the Controller and Auditor-General, and when approved by him the amount thereof shall be paid over annually from the Consolidated Revenue Fund to the Railway and Harbour Fund: Provided that, if in any year the actual loss incurred, as calculated by the Board and certified by the Controller and Auditor-General, is less than the

estimate framed by the Board, the amount paid over in respect of that year shall be reduced accordingly so as not to exceed the actual loss incurred. In calculating the loss arising from the operation of any such work or line, the Board shall have regard to the value of any contributions of traffic to other parts of the system which may be due to the operation of such work or line.

Making good of deficiencies in Railway Fund in certain cases.

131. If the Board shall be required by the Governor-General in Council or under any Act of Parliament or resolution of both Houses of Parliament to provide any services or facilities either gratuitously or at a rate of charge which is insufficient to meet the costs involved in the provision of such services or facilities, the Board shall at the end of each financial year present to Parliament an account approved by the Controller and Auditor-General, showing, as nearly as can be ascertained, the amount of the loss incurred by reason of the provision of such services and facilities, and such amount shall be paid out of the Consolidated Revenue Fund to the Railway and Harbour Fund.

Controller and Auditor-General.

132. The Governor-General in Council shall appoint a Controller and Auditor-General who shall hold office during good behaviour: provided that he shall be removed by the Governor-General in Council on an address praying for such removal presented to the Governor-General by both Houses of Parliament: provided further that when Parliament is not in session the Governor-General in Council may suspend such officer on the ground of incompetence or misbehaviour: and, when and so often as such suspension shall take place, a full statement of the circumstances shall be laid before both Houses of Parliament within fourteen days after the commencement of its next session; and, if an address shall at any time during the session of Parliament be presented to the Governor-General by both Houses praying for the restoration to office of such officer, he shall be restored accordingly; and if no such address be presented the Governor-General shall confirm such suspension and shall declare the office of Controller and Auditor-General to be, and it shall

thereupon become, vacant. Until Parliament shall otherwise provide, the Controller and Auditor-General shall exercise such powers and functions and undertake such duties as may be assigned to him by the Governor-General in Council by regulations framed in that behalf.

Compensation of colonial capitals for diminution of prosperity.

133. In order to compensate Pietermaritzburg and Bloemfontein for any loss sustained by them in the form of diminution of prosperity or decreased rateable value by reason of their ceasing to be the seats of government of their respective colonies, there shall be paid from the Consolidated Revenue Fund for a period not exceeding twenty-five years to the municipal councils of such towns a grant of two per centum per annum on their municipal debts, as existing on the thirty-first day of January nineteen hundred and nine, and as ascertained by the Controller and Auditor-General. The Commission appointed under section one hundred and eighteen shall, after due inquiry, report to the Governor-General in Council what compensation should be paid to the municipal councils of Cape Town and Pretoria for the losses, if any, similarly sustained by them. Such compensation shall be paid out of the Consolidated Revenue Fund for a period not exceeding twenty-five years, and shall not exceed one per centum per annum on the respective municipal debts of such towns as existing on the thirty-first January nineteen hundred and nine, and as ascertained by the Controller and Auditor-General. For the purposes of this section Cape Town shall be deemed to include the municipalities of Cape Town, Green Point, and Sea Point, Woodstock, Mowbray, and Rondebosch, Claremont, and Wynberg, and any grant made to Cape Town shall be payable to the councils of such municipalities in proportion to their respective debts. One half of any such grants shall be applied to the redemption of the municipal debts of such towns respectively. At any time after the tenth annual grant has been paid to any of such towns the Governor-General in Council, with the approval of Parliament, may after due inquiry withdraw or reduce the grant to such town.

VIII.—General.

Method of voting for senators, &c.

134. The election of senators and of members of the executive committees of the provincial councils as provided in this Act shall, whenever such election is contested, be according to the principle of proportional representation, each voter having one transferable vote. The Governor-General in Council, or, in the case of the first election of the Senate, the Governor in Council of each of the Colonies, shall frame regulations prescribing the method of voting and of transferring and counting votes and the duties of returning officers in connection therewith, and such regulations or any amendments thereof after being duly promulgated shall have full force and effect unless and until Parliament shall otherwise provide.

Continuation of existing colonial laws.

135. Subject to the provisions of this Act, all laws in force in the several Colonies at the establishment of the Union shall continue in force in the respective provinces until repealed or amended by Parliament, or by the provincial councils in matters in respect of which the power to make ordinances is reserved or delegated to them. All legal commissions in the several Colonies at the establishment of the Union shall continue as if the Union had not been established.

Free trade throughout Union.

136. There shall be free trade throughout the Union, but until Parliament otherwise provides the duties of custom and of excise leviable under the laws existing in any of the Colonies at the establishment of the Union shall remain in force.

Equality of English and Dutch languages.

137. Both the English and Dutch languages shall be official languages of the Union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights, and privileges; all records, journals, and proceedings of Parliament shall be kept in both languages, and all Bills, Acts, and notices of general public importance or interest issued by the Government of the Union shall be in both languages.

Naturalization.

138. All persons who have been naturalized in any of the Colonies shall be deemed to be naturalized throughout the Union.

Administration of justice.

139. The administration of justice throughout the Union shall be under the control of a minister of State, in whom shall be vested all powers, authorities, and functions which shall at the establishment of the Union be vested in the Attorneys-General of the Colonies, save and except all powers, authorities, and functions relating to the prosecution of crimes and offences, which shall in each province be vested in an officer to be appointed by the Governor-General in Council, and styled the Attorney-General of the province, who shall also discharge such other duties as may be assigned to him by the Governor-General in Council: Provided that in the province of the Cape of Good Hope the Solicitor-General for the Eastern Districts and the Crown Prosecutor for Griqualand West shall respectively continue to exercise the powers and duties by law vested in them at the time of the establishment of the Union.

Existing officers.

140. Subject to the provisions of the next succeeding section, all officers of the public service of the Colonies shall at the establishment of the Union become Officers of the Union.

Reorganization of public departments.

141.—(1) As soon as possible after the establishment of the Union, the Governor-General in Council shall appoint a public service commission to make recommendations for such reorganization and readjustment of the departments of the public service as may be necessary. The commission shall also make recommendations in regard to the assignment of officers to the several provinces.

(2) The Governor-General in Council may after such commission has reported assign from time to time to each province such officers as may be necessary for the proper discharge of the services reserved or delegated to it, and such officers on being so assigned shall become officers of the province. Pending the assignment of such officers, the Governor-General in Council may place at the disposal of the provinces the services of such officers of the Union as may be necessary.

(3) The provisions of this section shall not apply to any service or department under the control of the Railway

and Harbour Board, or to any person holding office under the Board.

Public service commission.

142. After the establishment of the Union the Governor-General in Council shall appoint a permanent public service commission with such powers and duties relating to the appointment, discipline, retirement, and superannuation of public officers as Parliament shall determine.

Pensions of existing officers.

143. Any officer of the public service of any of the Colonies at the establishment of the Union who is not retained in the service of the Union or assigned to that of a province shall be entitled to receive such pension, gratuity, or other compensation as he would have received in like circumstances if the Union had not been established.

Tenure of office of existing officers.

144. Any officer of the public service of any of the Colonies at the establishment of the Union who is retained in the service of the Union or assigned to that of a province shall retain all his existing and accruing rights, and shall be entitled to retire from the service at the time at which he would have been entitled by law to retire, and on the pension or retiring allowance to which he would have been entitled by law in like circumstances if the Union had not been established.

Existing officers not to be dismissed for ignorance of English or Dutch.

145. The services of officers in the public service of any of the Colonies at the establishment of the Union shall not be dispensed with by reason of their want of knowledge of either the English or Dutch language.

Compensation to existing officers who are not retained.

146. Any permanent officer of the Legislature of any of the Colonies who is not retained in the service of the Union, or assigned to that of any province, and for whom no provision shall have been made by such Legislature, shall be entitled to such pension, gratuity, or compensation as Parliament may determine.

Administration of native affairs, &c.

147. The control and administration of native affairs and of matters specially or differentially affecting Asiatics throughout the Union shall vest in the Governor-General in Council, who shall exercise all special powers in regard to native administration hitherto vested in the Governors of the Colonies or exercised by them as supreme chiefs, and any lands vested in the Governor or Governor and

Executive Council of any colony for the purpose of reserves for native locations shall vest in the Governor-General in Council, who shall exercise all special powers in relation to such reserves as may hitherto have been exercisable by any such Governor or Governor and Executive Council, and no lands set aside for the occupation of natives which cannot at the establishment of the Union be alienated except by an Act of the Colonial Legislature shall be alienated or in any way diverted from the purposes for which they are set apart except under the authority of an Act of Parliament.

Devolution on Union of rights and obligations under conventions.

148.—(1) All rights and obligations under any conventions or agreements which are binding on any of the Colonies shall devolve upon the Union at its establishment.

(2) The provisions of the railway agreement between the Governments of the Transvaal, the Cape of Good Hope, and Natal, dated the second of February, nineteen hundred and nine, shall, as far as practicable, be given effect to by the Governments of the Union.

IX.—New Provinces and Territories.

Alteration of boundaries of provinces.

149. Parliament may alter the boundaries of any province, divide a province into two or more provinces, or form a new province out of provinces within the Union, on the petition of the provincial council of every province whose boundaries are affected thereby.

Power to admit into Union territories administered by British South Africa Company.

150. The King, with the advice of the Privy Council, may, on addresses from the Houses of Parliament of the Union, admit into the Union the territories administered by the British South Africa Company on such terms and conditions as to representation and otherwise in each case as are expressed in the addresses and approved by the King, and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

Power to transfer to Union government of native territories.

151. The King, with the advice of the Privy Council, may, on addresses from the Houses of Parliament of the Union, transfer to the Union the government of any

territories, other than the territories administered by the British South Africa Company, belonging to or under the protection of His Majesty, and inhabited wholly or in part by natives, and upon such transfer the Governor-General in Council may undertake the government of such territory upon the terms and conditions embodied in the Schedule to this Act.

X.—Amendment of Act.

Amendment of Act.

152. Parliament may by law repeal or alter any of the provisions of this Act: Provided that no provision thereof, for the operation of which a definite period of time is prescribed, shall during such period be repealed or altered: And provided further that no repeal or alteration of the provisions contained in this section, or in sections thirty-three and thirty-four (until the number of members of the House of Assembly has reached the limit therein prescribed, or until a period of ten years has elapsed after the establishment of the Union, whichever is the longer period), or in sections thirty-five and one hundred and thirty-seven, shall be valid unless the Bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses. A Bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

Section 151.

SCHEDULE.

1. After the transfer of the government of any territory belonging to or under the protection of His Majesty, the Governor-General in Council shall be the legislative authority, and may by proclamation make laws for the peace, order, and good government of such territory: Provided that all such laws shall be laid before both Houses of Parliament within seven days after the issue of the proclamation or, if Parliament be not then sitting, within seven days after the beginning of the next session, and shall be effectual unless and until both Houses of Parliament shall by resolutions passed in the same session

request the Governor-General in Council to repeal the same, in which case they shall be repealed by proclamation.

2. The Prime Minister shall be charged with the administration of any territory thus transferred, and he shall be advised in the general conduct of such administration by a commission consisting of not fewer than three members with a secretary, to be appointed by the Governor-General in Council, who shall take the instructions of the Prime Minister in conducting all correspondence relating to the territories, and shall also under the like control have custody of all official papers relating to the territories.

3. The members of the commission shall be appointed by the Governor-General in Council, and shall be entitled to hold office for a period of ten years, but such period may be extended to successive further terms of five years. They shall each be entitled to a fixed annual salary, which shall not be reduced during the continuance of their term of office, and they shall not be removed from office except upon addresses from both Houses of Parliament passed in the same session praying for such removal. They shall not be qualified to become, or to be, members of either House of Parliament. One of the members of the commission shall be appointed by the Governor-General in Council as vice-chairman thereof. In case of the absence, illness, or other incapacity of any member of the commission, the Governor-General in Council may appoint some other fit and proper person to act during such absence, illness, or other incapacity.

4. It shall be the duty of the members of the commission to advise the Prime Minister upon all matters relating to the general conduct of the administration of, or the legislation for, the said territories. The Prime Minister, or another minister of State nominated by the Prime Minister to be his deputy for a fixed period, or, failing such nomination, the vice-chairman, shall preside at all meetings of the commission, and in case of an equality of votes shall have a casting vote. Two members of the commission shall form a quorum. In case the commission

shall consist of four or more members, three of them shall form a quorum.

5. Any member of the commission who dissents from the decision of a majority shall be entitled to have the reasons for his dissent recorded in the minutes of the commission.

6. The members of the commission shall have access to all official papers concerning the territories, and they may deliberate on any matter relating thereto and tender their advice thereon to the Prime Minister.

7. Before coming to a decision on any matter relating either to the administration, other than routine, of the territories or to legislation therefor, the Prime Minister shall cause the papers relating to such matter to be deposited with the secretary to the commission, and shall convene a meeting of the commission for the purpose of obtaining its opinion on such matter.

8. Where it appears to the Prime Minister that the despatch of any communication or the making of any order is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the commission or deposited for the perusal of the members thereof. In any such case the Prime Minister shall record the reasons for sending the communication or making the order and give notice thereof to every member.

9. If the Prime Minister does not accept a recommendation of the commission or proposes to take some action contrary to their advice, he shall state his views to the commission, who shall be at liberty to place on record the reasons in support of their recommendation or advice. This record shall be laid by the Prime Minister before the Governor-General in Council, whose decision in the matter shall be final.

10. When the recommendations of the commission have not been accepted by the Governor-General in Council, or action not in accordance with their advice has been taken by the Governor-General in Council, the Prime Minister, if thereto requested by the commission, shall lay

the record of their dissent from the decision or action taken and of the reasons therefor before both Houses of Parliament, unless in any case the Governor-General in Council shall transmit to the commission a minute recording his opinion that the publication of such record and reasons would be gravely detrimental to the public interest.

11. The Governor-General in Council shall appoint a resident commissioner for each territory, who shall, in addition to such other duties as shall be imposed on him, prepare the annual estimates of revenue and expenditure for such territory, and forward the same to the secretary to the commission for the consideration of the commission and of the Prime Minister. A proclamation shall be issued by the Governor-General in Council, giving to the provisions for revenue and expenditure made in the estimates as finally approved by the Governor-General in Council the force of law.

12. There shall be paid into the Treasury of the Union all duties of customs levied on dutiable articles imported into and consumed in the territories, and there shall be paid out of the Treasury annually towards the cost of administration of each territory a sum in respect of such duties which shall bear to the total customs revenue of the Union in respect of each financial year the same proportion as the average amount of the customs revenue of such territory for the three completed financial years last preceding the taking effect of this Act bore to the average amount of the whole customs revenue for all the Colonies and territories included in the Union received during the same period.

13. If the revenue of any territory for any financial year shall be insufficient to meet the expenditure thereof, any amount required to make good the deficiency may, with the approval of the Governor-General in Council, and on such terms and conditions and in such manner as with the like approval may be directed or prescribed, be advanced from the funds of any other territory. In default of any such arrangement, the amount required to

make good any such deficiency shall be advanced by the Government of the Union. In case there shall be a surplus for any territory, such surplus shall in the first instance be devoted to the repayment of any sums previously advanced by any other territory or by the Union Government to make good any deficiency in the revenue of such territory.

14. It shall not be lawful to alienate any land in Basutoland or any land forming part of the native reserves in the Bechuanaland protectorate and Swaziland from the native tribes inhabiting those territories.

15. The sale of intoxicating liquor to natives shall be prohibited in the territories, and no provision giving facilities for introducing, obtaining, or possessing such liquor in any part of the territories less stringent than those existing at the time of transfer shall be allowed.

16. The custom, where it exists, of holding pitsos or other recognised forms of native assembly shall be maintained in the territories.

17. No differential duties or imposts on the produce of the territories shall be levied. The laws of the Union relating to customs and excise shall be made to apply to the territories.

18. There shall be free intercourse for the inhabitants of the territories with the rest of South Africa subject to the laws, including the pass laws, of the Union.

19. Subject to the provisions of this Schedule, all revenues derived from any territory shall be expended for and on behalf of such territory: Provided that the Governor-General in Council may make special provision for the appropriation of a portion of such revenue as a contribution towards the cost of defence and other services performed by the Union for the benefit of the whole of South Africa, so, however, that that contribution shall not bear a higher proportion to the total cost of such services than that which the amount payable under paragraph 12 of this Schedule from the Treasury of the Union towards the cost of the administration of the territory bears to the total customs revenue of the Union on the average of the

three years immediately preceding the year for which the contribution is made.

20. The King may disallow any law made by the Governor-General in Council by proclamation for any territory within one year from the date of the proclamation, and such disallowance on being made known by the Governor-General by proclamation shall annul the law from the day when the disallowance is so made known.

21. The members of the commission shall be entitled to such pensions or superannuation allowances as the Governor-General in Council shall by proclamation provide, and the salaries and pensions of such members and all other expenses of the commission shall be borne by the territories in the proportion of their respective revenues.

22. The rights as existing at the date of transfer of officers of the public service employed in any territory shall remain in force.

23. Where any appeal may by law be made to the King in Council from any court of the territories, such appeal shall, subject to the provisions of this Act, be made to the Appellate Division of the Supreme Court of South Africa.

24. The Commission shall prepare an annual report on the territories, which shall, when approved by the Governor-General in Council, be laid before both Houses of Parliament.

25. All bills to amend or alter the provisions of this Schedule shall be reserved for the signification of His Majesty's pleasure.

THE GERMAN CONSTITUTION, 1919.[1]

["British and Foreign State Papers," vol. 112 (1919), pp. 1063-1094. An accessible translation is that published by H.M. Stationery Office, 1919. Extracts from this version are given below.]

This Constitution has been framed by the united German people, inspired by the determination to restore and establish their Federation upon a basis of liberty and justice, to be of service to the cause of peace both at home and abroad, and to promote social progress.

PART I.

CONSTRUCTION AND DUTIES OF THE FEDERATION.

SECTION I.

FEDERATION AND STATES.

Article 1.

The German Federation is a Republic.

The supreme power proceeds from the people.

Article 2.

The Federal territory consists of the territories of the German States. Other territories may, by Federal law, be admitted within the Federation, if desired by their population, in virtue of the right of self-determination.

[1] A declaration that all provisions of their Constitution which are in contradiction with the terms of the Treaty of Peace are null and void, was signed on the 22nd September, 1919, at Paris by the acting Head of the German Delegation.

Article 3.

The Federal colours are black, red and gold. The commercial flag is black, white and red, with the Federal colours in the upper inside corner.

Article 4.

The universally recognized rules of International Law are valid as binding constituent parts of German Federal Law.

Article 5.

The executive power is exercised in Federal affairs through the institutions of the Federation, in virtue of the Federal constitution, and in State affairs by the officials of the States, in virtue of the constitutions of the States.

Article 6.

The Federal Government has sole legislative power as regards:

1. Foreign relations;
2. Colonial affairs;
3. Nationality, right of domicile, immigration, emigration and extradition;
4. Military organization;
5. The monetary system;
6. The customs department, as well as uniformity in the sphere of customs and trade, and freedom of commercial intercourse;
7. The postal and telegraph services, including the telephone service.

Article 7.

The Federal Government has legislative power as regards:

1. Civic rights;
2. Penal power;
3. Judicial procedure, including the carrying out of sentences, as well as official co-operation between authorities;
4. The passport office and the police supervision of foreigners;
5. The poor-law system and the provision for travellers;
6. The Press, trades-unions and the right of assembly;

7. The population question, and the care of motherhood, infants, children and young persons;
8. The health and veterinary departments, and the protection of plants against disease and damage from pests;
9. Labour laws, the insurance and protection of the workers and employees, together with Labour Bureaux;
10. The organization of competent representation for the Federal territory;
11. The care of all who took part in the war, and of their dependants;
12. The law of expropriation;
13. The formation of associations for dealing with natural resources and economic undertakings, as well as the production, preparation, distribution and determination of prices of economic commodities for common use;
14. Commerce, the system of weights and measures, the issue of paper money, banking affairs and the system of exchange;
15. Traffic in foodstuffs and luxuries, as well as in articles of daily necessity;
16. Industry and mining;
17. Insurance matters;
18. Navigation, deep sea and coastal fishery;
19. Railways, inland waterways, motor traffic by land, water and air, as well as the construction of high-roads, so far as this is concerned with general traffic and home defence;
20. Theatres and cinemas.

Article 8.

Further, the Federal Government has legislative power as regards taxes and other sources of revenue, in so far as they are claimed wholly or in part for Federal purposes. Where the Federal Government demands taxes or other sources of revenue hitherto appertaining to the various States, it must take into consideration the maintenance of the vitality of those States.

Article 9.

Where there is need for the issue of uniform regulations, the Federal Government has legislative power as regards:

1. Sanitary administration;
2. The maintenance of public order and safety.

Article 10.

In the course of legislation, the Federal Government may draw up regulations for:

1. The rights and duties of religious societies;
2. Public instruction, including universities, and the department of scientific literature;
3. The rights of the officials of all public corporations;
4. The land laws, the distribution of land, questions regarding colonization settlements, the tenure of landed property, the housing question and the distribution of the population;
5. Questions regarding burial.

Article 11.

In the course of legislation, the Federal Government may draw up regulations as to the admissibility and mode of collection of State taxes, in so far as they are requisite for the purpose of preventing:—

1. Loss of revenue or action prejudicial to the commercial relations of the Federation;
2. Double taxation;
3. Charges for the use of public lines of communication and their accessories, which are excessive, and constitute a hindrance to traffic;
4. Assessments which are prejudicial to imported goods, as opposed to home products, in dealings between the separate States and parts of a State, or
5. Bounties on exportation,

or for the protection of important social interests.

Article 12.

So long and in so far as the Federal Government does not make use of its legislative power, the States retain that power for themselves. This does not apply to the exclusive legislative power of the Federal Government.

The Federal Government has the right of veto in respect of any laws of a State which refer to subjects included in Article 7,

paragraph 13, in so far as the welfare of the community in general is thereby affected.

Article 13.

Federal law overrides State law. Where there exists any doubt or difference of opinion as to whether a regulation of State law is compatible with Federal law, an appeal may be made by the competent Federal or State authorities to the decision of the highest tribunal of the Federation for a more exact interpretation of the Federal law.

Article 14.

Federal laws are carried into execution by the State authorities, unless these laws decree otherwise.

Article 15.

The Federal Government exercises control in those affairs in which it holds the legislative power.

In so far as Federal laws are carried into execution by State authorities, the Federal Government may issue general instructions. For the purpose of supervision of the execution of Federal laws, the Government is empowered to despatch commissioners to the State central authorities, and, with their consent, to the subordinate authorities.

It is the duty of the State Governments, at the request of the Federal Government, to remedy defects observed in the execution of Federal laws. In case of differences of opinion, both the Federal Government and the State Government may appeal to the decision of the Supreme Court of Judicature, where no other court has been determined by Federal law.

Article 16.

Officials entrusted with the direct Federal administration in the various States shall, as a rule, be natives of the State in question. Officials, employees and workmen of the Federal administration shall, if they desire it, be employed as far as possible in their native districts, unless considerations of training or the exigencies of the service are opposed to this course.

Article 17.

Each State must have a republican constitution. The representatives of the people must be elected by the universal, equal, direct and secret suffrage of all men and women of the German Federation, upon the principles of proportional representation. The State Government requires the confidence of the people's representatives.

The principles underlying elections of the people's representatives apply also to municipal elections. By a State law the qualification for a vote may, however, be declared conditional upon a year's residence in the district.

Article 18.

The organization of the Federation into States shall serve the best economic and educational interests of the people, with all due consideration for the will of the population concerned. Alteration of the territory of the States, and the formation of new States within the Federation, shall be effected by means of a Federal law making an alteration in the constitution.

Where the States concerned give their direct consent, a simple Federal law suffices.

A simple Federal law suffices also, in a case where the consent of one of the States concerned has not been obtained, but where an alteration of territory or reorganization is demanded by the will of the population and required by paramount Federal interests.

The will of the population shall be ascertained by voting. The Federal Government orders the taking of the vote, when demanded by one-third of those inhabitants of the territory to be separated, who are entitled to vote for the Reichstag.

For the determination of an alteration or reorganization of territory, the proportion of votes required is three-fifths of the number cast, or, at the least, a majority of the votes of persons qualified. Even when it is a question of the separation of only a portion of a Prussian administrative area (*Regierungsbezirk*), a Bavarian district (*Kreis*), or of a corresponding administrative district (*Verwaltungsbezirk*) in other States, the will of the population of the whole district in question shall be ascertained. Should the area of the territory to be separated and that of the

whole district (*Bezirk*) not coincide, the will of the population of the former may, by means of a special Federal law, be declared sufficient.

The consent of the population having been obtained, the Federal Government shall lay before the Reichstag a law in accordance with the decision.

In the case of union or separation, should any dispute arise on the question of arrangements as to property, the decision on such points shall be given, upon an application from one party, by the Supreme Court of Judicature of the German Federation.

Article 19.

Constitutional controversies within a State in which no court exists for their settlement, as well as disputes not of a private nature, between different States or between the Federation and a State, shall be decided, upon an application from one of the parties, by the Supreme Court of Judicature for the German Federation, where it is not the business of another Federal tribunal.

The Federal President of the Federation carries out the decision of the Supreme Court of Judicature.

SECTION II.

The Reichstag.

Article 20.

The Reichstag is an Assembly composed of the deputies of the German people.

Article 21.

The deputies are representatives of the whole people. They are subject to their conscience only, and not bound by any mandates.

Article 22.

The deputies are elected by the universal, equal, direct and secret suffrage of all men and women above the age of 20, upon the principles of proportional representation. Elections must take place on a Sunday, or a public holiday.

Details are determined by the Federal election law.

Article 23.

The Reichstag is elected for four years. The general election must take place not later than sixty days after dissolution. The Reichstag must assemble not less than thirty days after the election.

Article 24.

The Reichstag assembles annually on the first Wednesday in November at the seat of the Federal Government. The President of the Reichstag must summon it earlier, if requested by the President of the Federation or by at least one-third of the members. The Reichstag determines the conclusion of the session and the day of re-assembly.

Article 25.

The President of the Federation may dissolve the Reichstag, but only once for any one reason. The general election will take place not later than sixty days after the dissolution.

Article 26.

The Reichstag elects the President, his Deputy and Secretary, and draws up its Standing Orders.

Article 27.

Between two sessions or elective periods the President and Deputy of the last session remain in office.

Article 28.

The President exercises domestic and police authority within the Reichstag buildings. He is responsible for the administration of the House; regulates receipts and expenditure in proportion to the requirements of the Federal budget, and represents the Federation in all the legal business and legal disputes of his administration.

Articles 29, 30 *and* 31.

[These Articles provide for the publicity of debates, and for the establishment of a tribunal to scrutinize the poll and adjudicate concerning the deputies.]

Article 32.

For a decision of the Reichstag, a simple majority is required, where no other proportion of votes is prescribed by the Constitution. Standing Orders may permit exceptions in the case of elections to be undertaken by the Reichstag. The number required to form a quorum is regulated by Standing Orders.

Article 33.

The Reichstag and its Committees may require the presence of the Federal Chancellor and of any Federal Minister.

The Federal Chancellor, the Federal Minister and Commissioners appointed by them, have access to the sittings of the Reichstag and its Committees. The States are entitled to send plenipotentiaries to these sittings, for the purpose of stating the point of view of their Government with regard to the subject under discussion.

At their request, the Government representatives must be heard during the debate, also the representatives of the Federal Government, without regard to the Order of the Day.

They are subject to the authority of the President.

Article 34.

The Reichstag has the right which, on the motion of a fifth of its members, becomes an obligation—to appoint Committees of Enquiry. These Committees examine evidence considered necessary by themselves or by the movers of the motion for their appointment. The proceedings are public, but may be held in private if desired by the Committee, and supported by a two-thirds' majority. The proceedings of the Committee are regulated and the number of its members determined by Standing Orders.

The Courts and administrative authorities are bound to comply with the request of such Committees for the production of evidence; the documents of the authorities must be laid before them if desired. Wherever applicable, the regulations as to criminal procedure are made use of in the investigations of the Committees and of the authorities applied to by them, but the privacy of correspondence and of the Postal, Telegraph and Telephone Services must be respected.

Article 35.

The Reichstag appoints a Standing Committee for Foreign Affairs which may also continue its work beyond the session of the Reichstag and after the termination of the election, or the dissolution of the Reichstag, until the assembly of the new Reichstag. The sittings of this Committee are not public unless so decreed by the Committee upon a two-thirds' majority.

The Reichstag also appoints a Standing Committee, for the protection of the rights of the representation of the people in relation to the Federal Government, for the time following the session, and after the termination of an election.

These Committees have the same power as Committees of Enquiry.

Articles 36 *and* 37.

[Members of the Reichstag may not be proceeded against on account of their actions in the House. No Member may be arrested during a Session without consent of the House.]

Article 38.

[Members may refuse evidence concerning matters confided to them in their capacity as deputies.]

Article 39.

[Members of the Military Forces do not require leave for the exercise of their duties as deputies, and will be granted leave to prepare for an election.]

Article 40.

[Members to have free railway passes.]

SECTION III.

The President of the Federation and the Federal Government.

Article 41.

The President of the Federation is elected by the whole German people.

Every German who has completed his 35th year is eligible.

Details are determined by a Federal law.

Article 42.

The President of the Federation when entering upon his office in the Reichstag, takes the following oath :—

"I swear to dedicate my powers to the welfare of the German people, to enlarge their sphere of usefulness, to guard them from injury, to observe the Constitution and the laws of the Federation, to fulfil my duties conscientiously, and to do justice to every man."

The addition of a religious asseveration is permissible.

Article 43.

The President of the Federation remains in office for seven years. Re-election is permissible.

Before the expiration of the set term, the President of the Federation may, upon the motion of the Reichstag, be removed from office by the vote of the people. The decision of the Reichstag requires a two-thirds' majority. By such a decision, the President of the Federation is prevented from the further exercise of his office. The refusal to remove him from office, expressed by the vote of the people, is equivalent to re-election, and involves the dissolution of the Reichstag.

Penal proceedings may not be taken against the President of the Federation without the consent of the Reichstag.

Article 44.

The President of the Federation cannot at the same time be a member of the Reichstag.

Article 45.

The President of the Federation represents the Federation in international relations. He concludes alliances and other treaties with Foreign Powers in the name of the Federation. He accredits and receives Ambassadors.

The declaration of war and the conclusion of peace are dependent upon the passing of a Federal law.

Alliances and treaties with foreign states, which refer to subjects of Federal legislation, require the consent of the Reichstag.

Article 46.

The President of the Federation appoints and dismisses Federal officials and officers, where no other system is determined by law. He may depute these powers to other authorities.

Article 47.

The President of the Federation has Supreme Command over all the Armed Forces of the Federation.

Article 48.

In the case of a State not fulfilling the duties imposed on it by the Federal Constitution or the Federal laws, the President of the Federation may enforce their fulfilment with the help of armed forces.

Where public security and order are seriously disturbed or endangered within the Federation, the President of the Federation may take the measures necessary for their restoration, intervening in case of need with the help of armed forces. For this purpose he is permitted, for the time being, to abrogate, either wholly or partially, the fundamental laws laid down in Articles 114, 115, 117, 118, 123, 124 and 153.

The President of the Federation must, without delay, inform the Reichstag of any measures taken in accordance with paragraphs 1 or 2 of this Article. Such measures shall be withdrawn upon the demand of the Reichstag.

Where there is danger in delay, the State Government may take provisional measures of the kind described in paragraph 2, for its own territory. Such measures shall be withdrawn upon the demand of the President of the Federation or the Reichstag.

Details are determined by a Federal law.

Article 49.

The President of the Federation exercises the prerogative of mercy for the Federation.

Amnesties require a Federal law.

Article 50.

All orders and decrees of the President of the Federation, including those relating to the Armed Forces, require for their

validity the countersignature of the Federal Chancellor or the competent Federal Minister. The countersignature implies the undertaking of responsibility.

Article 51.

In case of any disability, the President of the Federation is represented by the Chancellor of the Federation. Should it be probable that the disability might continue for some time, his representative shall be appointed by a Federal law.

The same applies in the case of premature vacancy in the office of President, up to the completion of the new election.

Article 52.

The Federal Government consists of the Chancellor of the Federation and the Federal Ministers.

Article 53.

The President of the Federation appoints and dismisses the Chancellor of the Federation, and, on the latter's recommendation, the Federal Ministers.

Article 54.

The Chancellor of the Federation and the Federal Ministers require, for the administration of their office, the confidence of the Reichstag. Any one of them must resign, should the confidence of the House be withdrawn by an express resolution.

Article 55.

The Chancellor of the Federation presides over the Federal Government and directs its business, according to a standing order drawn up by the Federal Government and approved by the President of the Federation.

Article 56.

The Chancellor of the Federation determines the main lines of policy, for which he is responsible to the Reichstag. Within these main lines each Federal Minister directs independently the department entrusted to him, for which he is personally responsible to the Reichstag.

Article 57.

The Federal Ministers must submit to the Federal Government for advice and decision the drafts of all Bills, also all matters for which such a course is prescribed by the Constitution, or by law, as well as differences of opinion upon questions affecting the sphere of action of several Federal Ministers.

Article 58.

The Federal Government comes to a decision by the majority of votes. In case of an even vote the Speaker gives the casting vote.

Article 59.

The Reichstag is entitled to arraign the President of the Federation, Federal Chancellor and the Federal Ministers, before the Supreme Court of Judicature for the German Federation, for culpable violation of the Federal Constitution, or of a Federal law. The motion for the arraignment must be signed by at least one hundred members of the Reichstag, and requires the consent of the majority prescribed for alterations of the Constitution. Details are regulated by the Federal law as to the Supreme Court of Judicature.

SECTION IV.

THE FEDERAL COUNCIL (*Reichsrat*).

Article 60.

A Reichsrat is formed for the representation of the German States in Federal legislation and administration.

Article 61.

In the Reichsrat, each State has at least one vote. In the larger States, one vote is assigned for each million inhabitants. A surplus, which is not less than the total population of the smallest State, is reckoned as a million. No State may be represented by more than two-fifths of all the votes.

[1] German Austria will, after her union with the German

[1] The second part of Article 61 comes within the meaning of the declaration signed at Paris on the 22nd September, 1919, by the acting Head of the German Delegation, *vide* footnote on page 408.

Federation, acquire the right of participation in the Reichsrat, with the number of votes corresponding to her population. Until that time, the representatives of German Austria have the right of being heard.

The number of votes shall be redistributed by the Reichsrat, after each general census.

Article 62.

In Committees appointed by the Reichsrat from its members no State shall have more than one vote.

Article 63.

The States are represented in the Reichsrat by members of their Governments. However, one-half of the Prussian votes are assigned, according to a State law, to representatives of Prussian Provincial administrations.

The States are entitled to send to the Council as many representatives as the number of votes assigned to them.

Article 64.

The Federal Government must convene the Reichsrat upon the demand of one-third of its members.

Article 65.

The Reichsrat and its Committees are presided over by a member of the Federal Government. The members of the latter are entitled, and, if requested, are bound, to take part in the deliberations of the Reichsrat and its Committees. They must be heard upon their demand at any time during the debate.

Article 66.

The Federal Government, as well as any member of the Reichsrat, are authorized to lay proposals before the Reichsrat.

The Reichsrat regulates its business procedure by Standing Orders.

The full sittings of the Reichsrat are open to the public, but the latter may be excluded during the discussion of certain subjects, in accordance with Standing Orders.

In taking the vote, a simple majority suffices for decision.

Article 67.

The Reichsrat shall be kept in touch by the Federal Ministries with the progress of affairs in the Federation. In discussions upon important subjects the Committees of the Reichsrat concerned shall be summoned to attend by the Federal Ministries.

SECTION V.

FEDERAL LEGISLATION.

Article 68.

Bills are introduced by the Federal Government, or by Members of the Reichstag.

Federal laws are passed by the Reichstag.

Article 69.

The introduction of Bills by the Federal Government requires the consent of the Reichsrat. Should the Government and the Reichsrat not be in agreement, the former may, nevertheless, introduce the Bill, but, in doing so, must state the divergent views of the Reichsrat.

Should the Reichsrat adopt a bill to which the Government does not agree, the latter must introduce the bill in the Reichstag with a statement of their point of view.

Article 70.

The President of the Federation shall prepare for publication the laws which have received sanction in accordance with the Constitution, and, within the period of one month, shall promulgate them in the Federal Gazette (*Reichsgesetzblatt*).

Article 71.

Federal laws come into force, if no different decision has been made, fourteen days from the day on which the Federal Gazette (*Reichsgesetzblatt*) was published in the Federal capital.

Article 72.

The promulgation of a Federal law shall be deferred for two months, if one-third of the Reichstag demands it. Laws which

both the Reichstag and the Reichsrat declare to be urgent may, however, be promulgated by the President of the Federation, in spite of such a demand.

Article 73.

A law passed by the Reichstag shall, before its promulgation, be submitted to the decision of the people, if the President of the Federation so determines, within one month.

A law, the promulgation of which is deferred on the proposal of at least one-third of the Reichstag, shall be submitted to the decision of the people, if desired by one-twentieth of those entitled to the franchise. Further, there may be an appeal to the decision of the people, if requested by one-tenth of those entitled to the franchise, after the production of a draft-bill. The people's request, which must be supported by a complete draft of the Bill, shall be submitted to the Reichstag by the Government, accompanied by a statement of their attitude towards it. The appeal of the people shall not take place if the desired Bill be adopted without the alteration in the Reichstag.

With regard to the budget, to laws dealing with taxation, and to regulations as to pay, only the President of the Federation has the right of bringing about an appeal to the people.

The methods of procedure for an appeal to, or a demand by, the people, are regulated by a Federal law.

Article 74.

The Reichsrat has the right of protest against a law passed by the Reichstag.

This protest must be lodged with the Federal Government within two weeks after the final vote in the Reichstag, and must be supported by reasons, presented within another two weeks at latest.

In case of a protest, the law shall be brought before the Reichstag for further consideration. Should the Reichstag and the Reichsrat not arrive at an agreement, the President of the Federation may, within three months, order an appeal to the people upon the subject in dispute. Should the President not make use of this right, the law does not come into operation. Should the Reichstag decide by a two-thirds' majority against

the protest of the Reichsrat, the President must either promulgate the law within three months, in the form approved by the Reichstag, or order an appeal to the people.

Article 75.

A decision of the Reichstag can only be annulled by the decision of the people, where a majority of those entitled to the franchise have taken part in the vote.

Article 76.

The Constitution may be altered by legislation. But decisions of the Reichstag as to such alterations come into effect only if two-thirds of the legal total of members be present, and if at least two-thirds of those present have given their consent. Decisions of the Reichsrat in favour of alteration of the Constitution also require a majority of two-thirds of the votes cast. Where an alteration of the Constitution is decided by an appeal to the people at their request, the consent of the majority of voters is necessary.

Should the Reichstag have decided upon an alteration of the Constitution in spite of the protest of the Reichsrat, the President of the Federation is not allowed to promulgate this law if the Reichsrat, within two weeks, demands an appeal to the people.

Article 77.

The Federal Government issues the general administrative instructions necessary for the execution of Federal laws, so far as there are no legal enactments to the contrary. For this purpose, the Government needs the consent of the Reichsrat, when the execution of Federal laws is the business of the State authorities.

SECTION VI.

Federal Administration.

Article 78.

The administration of relations with foreign States is exclusively the business of the Federation.

In affairs regulated by State legislation, the States may conclude agreements with foreign States. These agreements require the consent of the Federation.

Conventions with Foreign States as to the alteration of the Federal frontiers are concluded by the Federal Government, with the consent of the State concerned. Alterations in the frontier may be effected only as the result of a Federal law, except in the case of a simple rectification of the borders of uninhabited portions of a district.

In order to guarantee the representation of interests arising for certain States from their special economic relations, or their position in regard to foreign States, the Federal Government undertakes the requisite arrangements and measures in agreement with the States concerned.

Article 79.

The defence of the Federation is a Federal question. The military constitution of the German people is regulated uniformly by means of a Federal law, having regard to the individual conditions of each State.

Article 80.

Colonial affairs are exclusively the business of the Federal Government.

Article 81.

All German merchantmen form a uniform commercial fleet.

Article 82.

Germany forms one customs and commercial district, surrounded by one common customs frontier. The customs frontier coincides with that bordering foreign countries. On the sea, it is formed by the shore of the mainland, and the islands belonging to Federal territory. For the course of the customs frontier on the sea or on other bodies of water, deviations may be fixed.

The territories, or portions of the territories of a foreign State, may be included in the customs district by State treaties or by agreement.

In special circumstances certain parts may be excluded from the customs district. With regard to free ports, exclusion can be set aside only by means of a law altering the Constitution.

Places excluded from the customs may join a foreign customs district by means of State treaties, or by agreement.

All natural products, as well as products of manufacture and industry, which are allowed free trade within the Federation, may be transported in any direction across the frontier of the States and municipalities. Exceptions may be allowed by a Federal law.

Article 83.

Customs and duties upon articles of consumption are administered by the Federal authorities.

In the administration of Federal taxes by Federal authorities, arrangements shall be made so as to ensure to the various States the protection of special State interests within the domain of agriculture, trade, manufacture and industry.

Article 84.

The Federal Government takes measures by means of laws in respect of:

1. The organization of the administration of taxes in the States, so far as is required for the purpose of uniform and equal execution of the Federal laws on taxation;
2. The organization and powers of the authorities entrusted with the superintendence of the execution of Federal laws on taxation;
3. The settlement of accounts with the States;
4. The reimbursement of expenses of administration in the execution of the Federal laws on taxation.

Article 85.

All receipts and expenditure of the Federation must be estimated for each financial year, and shown in the budget.

The budget is fixed by law, before the opening of the financial year.

Items of expenditure are, as a rule, granted for one year; in special cases, they may be granted for a longer period. In other respects, provisions in the Federal budget law, which extend beyond the financial year, or do not refer to the receipts and expenditure of the Federation, or their administration, are inadmissible.

In the draft of the budget, the Reichstag may neither increase items of expenditure, nor include new ones, without

consent of the Reichsrat. Instead of the consent of the Reichsrat, the provisions of Article 74 may be applied.

Article 86.

In the following financial year the Chancellor of the Exchequer presents to the Reichsrat and the Reichstag an account of the application of all Federal receipts, thus relieving the Government of responsibility. The auditing of the account is regulated by Federal law.

Article 87.

Funds may be obtained upon credit only in case of special necessity, and, as a rule, only for expenditure on productive undertakings. Such a proceeding, as well as the acceptance of a security chargeable to the Federation, may only be effected upon the authority of a Federal law.

Article 88.

The postal and telegraph services, together with the telephone services, are exclusively the affair of the Federation.

Postage stamps are uniform for the whole Federation.

The Federal Government, with the consent of the Reichsrat, issues the instructions which determine the principles and charges for the use of the means of communication. With the consent of the Reichsrat, the Government may transfer these powers to the Postmaster-General.

For the purpose of consultative co-operation in the affairs of postal, telegraphic and telephonic communication, and of the tariffs, the Federal Government shall, with the consent of the Reichsrat, establish an advisory Council.

Treaties referring to communication with foreign countries are concluded only by the Federal Government.

Article 89.

It is the duty of the Federal Government to assume ownership of the railways serving for general traffic, and to manage them on a uniform traffic system.

The rights of States to acquire private railways shall be transferred, upon demand, to the Federal Government.

Article 90.

With the transfer of the railways, the Federal Government assumes the power of expropriation and the sovereign rights of the States as regards the railway service. The Supreme Court of Judicature decides, in case of dispute, as to the extent of such rights.

Article 91.

The Federal Government, with the consent of the Reichsrat, issues orders for regulating the construction, management and working of the railways. With the consent of the Reichsrat, the Government may transfer these powers to the duly qualified Federal Minister.

Article 92.

[Federal railways are to be administered as a separate economic concern.]

Article 93.

[The Federal Government shall establish advisory Councils for the Federal railways.]

Article 94.

[The Federal Government (1) must be consulted with regard to the construction of new railways in one of its districts; (2) may, if desirable, lay down railways in spite of opposition by the States whose territory is traversed; (3) may link up existing railways.]

Article 95.

[Other general railways are subject to inspection by the Federal Government.]

Article 96.

[All railways must submit to use by the Federal Government for the purposes of State defence.]

Article 97.

[The Federal Government (1) assumes ownership of all waterways for general traffic; (2) must be consulted regarding the construction of new waterways of this character; (3) must consider the necessities of agriculture and water supply in this

connection; (4) assumes control of tariffs, river and maritime police and takes over the duties of the River Works Department. Every department for the administration of waterways must allow others to be linked with it.]

Article 98.

[Advisory Councils for the waterways to be established with the consent of the Reichsrat in accordance with the instructions of the Federal Government.]

Article 99.

[Navigation taxes to be levied to defray the cost of maintenance of waterways. The Federal Government alone can impose differential taxes on foreign ships.]

Article 100.

[Contributions for the expenses of inland waterways may be levied, by a Federal law, from those who profit from the dams in other ways than by navigation.]

Article 101.

[The Federal Government must administer all sea beacons.]

SECTION VII.

Administration of Justice.

Article 102.

[Judges are independent and subject only to the law.

Article 103.

The regular jurisdiction is exercised by the Federal High Court of Justice, and the courts of justice of the States.

Article 104.

The judges of the regular jurisdiction are appointed for life. They may be removed from office permanently or temporarily only by authority of a judicial decision, and only upon the grounds and by the methods of procedure fixed by the laws; the same applies to change of post or superannuation. Age

limits may be fixed by legislation, upon reaching which judges shall retire.

Provisional removal from office, occurring by authority of the law, is not affected by the above.

In the case of a change of arrangements in the courts of justice or their circuits, the State Administration of Justice may order compulsory transfer to another court, or removals from office, but only on condition of the retention of the full salary.

These decisions do not apply to judges on commercial tribunals, petty judges and jurymen.

Article 105.

Exceptional Courts are illegal. No one may be withdrawn from his legal judge. Legal regulations regarding Courts-Martial and Summary Military Courts are not affected by the above. Military Courts of Honour are abolished.

Article 106.

Military jurisdiction is abolished, excepting in time of war or on board warships. Details are regulated by a Federal law.

Article 107.

In the Federation and the States there shall be, in accordance with the laws, courts of administration for the protection of individuals against regulations and decrees of the administrative authorities.

Article 108.

In accordance with a Federal law, a Supreme Court of Judicature will be established for the German Federation.

PART II.

Fundamental Rights and Duties of Germans.

SECTION I.

THE INDIVIDUAL.

Article 109.

All Germans are equal before the law.

Men and women have in principle equal civic rights and duties.

Public and legal privileges or disadvantages of birth or rank are to be abolished. Titles of nobility simply form a part of the name, and may no longer be conferred.

Titles may be conferred only when they indicate an office or calling, academical degrees not being hereby affected.

Orders and badges of honour may not be conferred by the State.

No German is permitted to accept a title or order from a Foreign Government.

Article 110.

Nationality in the Federation and the States is acquired and lost according to the provisions of a Federal law. Every subject of a State is also a subject of the Federation.

Every German has the same rights and duties in any State of the Federation as the subjects of that State.

Articles 111 *and* 112.

[All Germans have the right of change of domicile in the Federation and of emigration from it subject only to restriction by Federal law. The Federation extends its protection to all its citizens.]

Article 113.

[No adverse measures may be taken against sections of the population speaking a foreign tongue.]

Articles 114-118.

[All Germans are to enjoy personal liberty unless cause is shown for their deprivation of it. The residence of a German is a sanctuary for him. Punishment may only be inflicted according to a penalty previously established by law. Subject to Federal law there shall be secrecy of correspondence. Every German has, within the limits of general laws, the right to freedom of expression.]

SECTION II.

THE LIFE OF THE COMMUNITY.

Articles 119-122.

[Regulations regarding marriage and education.]

Articles 123 *and* 124.

[All Germans have, subject to Federal law, the right to meet for discussion and to form unions and societies.]

Article 125.

[Elections are to be free and secret.]

Article 126.

[Every German may make petitions regarding grievances.]

Article 127.

[Communities have, within the limits of the law, the right of self-government.]

Articles 128-133.

[Any citizen, male or female, may be eligible for public office, and in such office has certain rights and duties. If in the execution of one duty, the official neglects another, the State is liable. It is every German's duty to undertake honorary posts and to do personal service for the State.]

Article 134.

[All citizens must contribute to taxation in proportion to their means.]

SECTION III.

RELIGION AND RELIGIOUS BODIES.

Articles 135-141.

[There is to be complete toleration, and no one is to suffer political or civil disabilities on account of his religion. There is no State Church, but each religious body regulates its own affairs as a corporation quite independently. These bodies are to have the right of entry for religious purposes to all public institutions.]

SECTION IV.

EDUCATION AND SCHOOLS.

Articles 142-150.

[The Federal Government, the States and all communities shall co-operate in the organization of education, which shall be free and compulsory for all. Certain limitations are imposed on private schools. All schools are to aim at a national system of education, and religious instruction is to be a regular subject. Monuments of art, etc., are under the care of the State.]

SECTION V.

ECONOMIC LIFE.

Articles 151-156.

[Conditions worthy of a human being are to be the basis of economic organization. In economic intercourse there is freedom of contract. Property is guaranteed but may be expropriated for the general welfare, and to this end the distribution and use of land is superintended by the State, while the right of inheritance is guaranteed. The Federation may convert private concerns, etc., into public property or combine them on the basis of self-government.]

Article 157.

Labour is under the special protection of the Federation.

The Federal Government will draw up one uniform labour code.

Article 158.

Intellectual work, the rights of originators, inventors and artists are under the protection and care of the Federation.

By means of international agreements, acknowledgment and protection must be ensured abroad for the creation of German science, art, and technical skill.

Articles 159-165.

[There is to be freedom of association for all and time for the exercise of political rights. The Federal Government will draw up a scheme of Insurance and intervene to obtain an international regulation of the legal and social conditions of the

workers. Every German should make the best use of his abilities, but should be provided for in case of unemployment. The middle class shall be assisted by legislation and protected from over taxation. Workmen should co-operate with their employers in the regulation of labour conditions. There are Trades Workmen's Councils for their protection, and also a Federal Council to which social and economic measures must be submitted by the Federal Government. The latter regulates the spheres of action of these Councils.]

PROVISIONAL AND CONCLUDING ARRANGEMENTS.

Articles 166-174.

[Various temporary arrangements are made for the period before certain Articles of the Constitution take effect.]

Article 172.

Up to the date at which the Federal law as to the Supreme Court of Judicature comes into force, its authority shall be vested in a Senate of seven members, four of whom are elected by the Reichstag, and three by the High Court of Justice from its own numbers. The regulation of proceedings is left to the Senate itself.

Articles 175-177.

[War decorations not to come within meaning of Article 109. All public officials and members of the forces must take an oath of allegiance to the Constitution.]

Article 178.

The Constitution of the German Empire of 16th April, 1871, and the law of 10th February, 1919, as to provisional Imperial authority, are repealed.

The remaining laws and decrees of the Empire remain in force, as far as they are not in opposition to the present Constitution. The provisions of the Treaty of Peace signed at Versailles on 28th June, 1919, are unaffected by the Constitution. Regulations of authorities, issued in a legal manner upon the basis of existing laws, remain valid until they are annulled in the course of the issue of further regulations, or in the course of legislation.

Article 179.

Where, in laws or decrees, reference is made to regulations of arrangements annulled by this Constitution, they are replaced by the corresponding regulations or arrangements of this Constitution. In particular, the National Assembly is replaced by the Reichstag, the Committee of the States by the Reichsrat, and the President of the Federation, who was elected on the basis of the law as to provisional Federal authority, is replaced by the President of the Federation elected upon the basis of this Constitution.

The powers for the issue of decrees held by the Committee of the States in accordance with hitherto existing regulations are transferred to the Federal Government; the consent of the Reichsrat is requisite for the issue of decrees, in accordance with the provisions of this Constitution.

Article 180.

Until the meeting of the first Reichstag, the National Assembly will have the status of the Reichstag. Until the first Federal President enters upon his office, his work is carried on by the President of the Federation elected under the law as to provisional Federal authority.

Article 181.

The German people, through their National Assembly, have carried and decreed this Constitution. It comes into force upon the day of its publication.

INDEX.

The following abbreviations are employed to indicate the document in which the particular passage referred to occurs: (A) Commonwealth of Australia Act, 1900; (AC) Articles of Confederation of U.S.A., 1777; (AFC) Federal Council of Australasia Act, 1885; (AR) Annapolis Resolutions, 1786; (B) Constitution of United States of Brazil, 1891; (C) Speech of Earl of Carnarvon on Canadian Confederation, 1867; (Can. 1840) Act uniting Upper and Lower Canada, 1840; (Can. 1867) British North America Act, 1867 and Amendments thereof; (Ch.) Speech of Mr. Joseph Chamberlain on Australian Confederation, 1900; (CS) Constitution of Confederate States of America, 1861; (DI) Declaration of Independence of the Thirteen American Colonies, 1776; (ES) Act of Union of England and Scotland, 1707; (GE) Constitution of North German Confederation, 1867, and Empire, 1871; (GR) Constitution of German Republic, 1919; (Grey) Earl Grey's Despatches concerning Responsible Government, 1846; (LI) Act establishing Leeward Is. Federation, 1871; (M) Speech of Attorney-General Macdonald on Canadian Confederation, 1865; (N) Union (of Utrecht) of the Netherlands, 1579; (NE) New England Confederation, 1643; (NZ 1846) New Zealand Act, 1846; (NZ 1852) New Zealand Provincial Councils Act, 1852; (QR) Quebec Resolutions preceding Canadian Confederation, 1864; (S 1291) League of three Swiss Forest Communities, 1291; (S 1815) Swiss Federal Pact, 1815; (S 1874) Swiss Federal Constitution, 1874; (SA) South Africa Act, 1909; (US) Constitution of United States of America, 1787, and Amendments therof.

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