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PRESUMPTIONS AS TO FOREIGN LAW

By Robert von Moschzisker*

Courts are frequently confronted with the problem of determining litigation arising out of transactions that occurred in a foreign jurisdiction, and, although it became settled at an early date that such matters were to be governed by the law of the jurisdiction where they originated,—law of which the courts do not take judicial notice,—yet the books are filled with an ever-increasing number of cases containing no direct evidence of the foreign law involved.

The question arises, Upon whom rests the burden of proving relevant foreign law? In the normal course of things, it would seem that this obligation, like other burdens of proof, should rest on him who has the affirmative of the issue on the merits,—the plaintiff whose declaration is met by a traverse or the defendant who sets up an affirmative defense. To facilitate the disposition of cases, however, the courts indulge in a presumption, the effect of which is to shift the burden of going forward with the evidence of foreign law.¹ The presumption employed is that the law of the foreign state and that of the forum are alike when both are based on the same general system of law; and, if such common foundation exists, the court takes judicial notice of that fact. The use, to this extent, of a presumption as to foreign law, is common to all our courts; but, if the general system of law prevailing in the foreign jurisdiction is not that of the forum, there is no sound basis for a presumption of similarity in particu-

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¹For a full discussion of the effect of this presumption upon the burden of proof, see Kales, Presumption of the Foreign Law, 19 Harv. L. Rev. 401; 5 Wigmore, Evidence, sec. 2536.
lar laws, and generally it is refused in such cases,² thus leaving
the burden of proving the foreign law on him who has the affirm-
itive of the issue on the merits.³

To this point, we have had in mind the unwritten law, for the
rule as above described will not logically admit of a presumption
of similarity in the field of statutory law,—that is, of similarity
between the law of the foreign jurisdiction involved and the lex
scripta of the forum,—except, perhaps, where the statute under
consideration is merely declaratory of common law previously
existing. What, then, shall the court do where the applicable
foreign law is unknown to it, and the local law on the subject is
statutory and different from the common law? Shall there be no
presumption or other guiding rule?

Some cases⁴ have answered these questions by laying down a
very convenient and inclusive doctrine, which not only solves the
difficulties as to statute law in the forum but also obviates the
necessity of inquiring into the nature of the basic legal system of
the foreign jurisdiction. Their rule, abandoning reliance upon
presumptions, is to the effect that, in the absence of proof of the
controlling foreign law, the law of the forum, whether common
or statutory, will be applied.⁵ The great majority of courts,
however, prefer to treat the problem in terms of presumptions;
and, where the presumption of similarity exists, he who claims
the foreign law to be different from that of the forum must
prove the fact asserted. Our present inquiry is as to how far
the doctrine of presumptions may legitimately be carried with
respect to statutory law.

² Aslanian v. Destumian, (1899) 174 Mass. 328, 54 N.E. 846, 47 L. R.
A. 495; Banco de Sonoro v. Bankers’ Cas. Co., (1904) 124 Iowa 576, 100
298, 301; 3 Wigmore, Evidence, sec. 2536.

³ Certain fundamental legal principles are presumed, however, as a
matter of course, even in such cases. Of this kind are those which estab-
lish the right to enforce a contractual promise. Thus in Thompson v.
Ketcham, (1811) 8 Johns. (N.Y.) 189, 193-4, although the court refused
to presume that infancy was a defense to a contract under the law of
Jamaica, it assumed without question that the law of Jamaica made con-
tracts enforceable, and permitted a recovery by the plaintiff. See Kales,
Presumption of the Foreign Law, 19 Harv. L. Rev. 401, 409.

⁴ E.g. The Hoxie (C.C.A. 4th Cir. 1924) 297 Fed. 189, 190; Allen v.
Watson, (1834) 2 Hill, Law (S.C.) 319, 322; Lillard v. Lierley, (1918)
200 Mo. App. 140, 202 S. W. 1057, 1059; Pauska v. Daus, (1868) 31 Tex.
67, 73; Carron v. Abounador, (1923) 28 N. Mex. 491, 214 Pac. 772, 774.

⁵ See article by Professor Kales, Presumptions of the Foreign Law,
discussing the propriety of this rule, 19 Harv. L. Rev. 401.
Several of the traditionally conservative states, if not a majority of jurisdictions east of the Mississippi, have restricted themselves to the original bounds of the presumption,—that the foreign law is similar to the lex nonscripta, or common law, of the forum. If the law of the forum has been altered by statute, the alteration is ignored in such cases, and the previously existing common law becomes the standard. The statutory law of the forum is not employed either as the basis for presumption or as a rule of decision. How far beyond this position can we go and still remain within the bounds of sound reasoning?

The ease with which presumption may be invoked to dispose of troublesome cases is not without its dangers. There is a

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Indiana originally adopted the conservative view, Smith v. Muncie National Bank, (1867) 29 Ind. 158, 161; B. & O. S. W. R. R. Co. v. Hollenbeck, (1903) 161 Ind. 452, 69 N. E. 136, 138; Wabash R. R. Co. v. Hassett, (1908) 170 Ind. 370, 83 N. E. 705, 707; but a recent case in the appellate court of that state, Spielman v. Herskovitz, (1922) 78 Ind. App. 131, 134 N. E. 909, 911, preserves that the law of Illinois, like that of Indiana, no longer permits coverture to be a defense to a woman's suretyship contract.

For a list of states that are in accord with Massachusetts and New York, see Kales, Presumption of the Foreign Law, 19 Harv. L. Rev. 401, 406, note in 67 L. R. A. 33; 5 Wigmore, Evidence, sec. 2536, note.
temptation to extend presumptions, in their origin legitimate, to situations in which logic denies them place, courts and counsel either forgetting the circumstances that justified the original presumption or failing to perceive the absence of such circumstances from the case in hand.

A presumption of fact is justifiable only where there is a strong probability that the fact presumed is true; without this probability, the so-called presumption becomes an arbitrary rule of law, lacking foundation, except, perhaps, as a measure of convenience or of public policy.\(^7\)

At the outset, we may safely say that no rule which seeks to justify all presumptions as to common law and exclude all as to statutory law can be accepted. As is pointed out by M. M. Bigelow, in a note to Story's Conflict of Laws,\(^8\) in ordinary cases involving jurisdictions which have the common law as the basis of their jurisprudence, the presumption is proper that the general principles of that system are there in force; yet many common law principles have been so universally altered that to presume their existence in their original form is to run counter to all probability. For example, rare indeed are the jurisdictions, if there be any, where married women's rights remain as at common law, or where the common law governs the succession to land. On the other hand, in many fields of law, there are uniform statutes, varying, perhaps, in detail, but alike in their essentials, which have become well-nigh universal; and, if a presumption is at all proper, it may be indulged as to the existence of such statutes. There are, for instance, few states in which agreements for the sale of land must not be in writing, or where notaries public are not authorized to take acknowledgments and administer oaths; nevertheless, cases may be found where, simply because the lex fori on those subjects was statutory, no presumption of a similar law in the foreign jurisdiction was permitted.\(^9\)

The language of the cases in the jurisdictions which go beyond the traditional presumption as to correspondence in com-

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\(^7\)Story, Conflict of Laws, note to sec. 637, 8th ed. by M. M. Bigelow.

\(^8\)Ibid.

\(^9\)For this reason some courts refuse to presume that parol contracts for sale of land are unenforceable (see Ellis v. Maxson, (1869), 19 Mich. 186-7, 2 Am. Rep. 81; Miller v. Wilson, (1893) 146 Ill. 523, 34 N. E. 1111, 1113, 37 Am. St. Rep. 186), and others refuse to presume the power of notaries public to administer oaths or take acknowledgments: see Holbrook v. Libby, (1915) 113 Me. 389, 94 Atl. 483, Greeley v. Greeley, (1919), 118 Me. 491, 107 Atl. 296; contra, Lavelle v. Prudential Ins. Co., (1892) 6 York (Pa.) 18, 2 Lackawanna Jurist (Pa.) 306.
mon law rules, marks practically no limit on the extent to which the presumption concerning the similarity of laws will be employed. The only expressions on the subject are such as: "This rule [as to the presumption of similarity] applies to the statute law of the state as well as to the common law"; or, "Nor is the presumption avoided because the law of [the forum] happens to be a statute." In one or two cases it has been said that the presumption as to similarity of statutory law will not be employed where to do so would impose a penalty or work a forfeiture. A few states, notably California, Texas and Oklahoma, although claiming to apply the theory of presumptions, have taken an attitude which in reality is no less than an arbitrary rule, that, in the absence of proof of the foreign law, the law of the forum will always control; thus California makes the "presumption" of similarity in all cases. In other words, whether the foreign statute be based on common law or not, California courts presume it to be identical with the code of that state. Many other courts, however, apparently having had fewer occasions to pass on the point, do not employ the presumption in respect to so great a variety of statutes; but, aside from those that say it will not be indulged where it would impose a penalty or work a forfeiture, the writer has found but one intimation in the cases that any limit on the use of the presumption was contemplated. Obviously, however, if the theory of presumptions is retained in the field of the written law, it must be subject to some limitations and these should be marked out as far as is reasonably possible.

Of course no hard and fast distinction can be made as to what particular statutes may properly be presumed to have counterparts.
in other jurisdictions, and it would be folly to attempt to list permissible and non-permissible presumptions in that regard; but it may not be wholly without value to examine a few types of cases which raise the question more or less frequently.

In some jurisdictions the presumption has been allowed that the legal rate of interest in a foreign state is the same as that prescribed by the statutes of the forum. Such a presumption certainly does serious violence to the ordinary laws of probability. Although there were no usury statutes at common law, they are universal now, and, if it was desirable, there could be little objection, in principle, to a presumption that some limit on interest rates exists in a foreign state; but to say that, because the statute in force in the forum prescribes a maximum interest rate of six per cent it is to be presumed that this same maximum is ordained in a state two or three thousand miles away, or even in a neighbor state, is to presume without a reasonable basis. This is an example of a type of cases that make presumptions regarding similarity in details of legislation,—a practice which cannot, in most instances, be reconciled with the probability basis of presumptions. The probability that detailed features of statutes have counterparts in other states is very slight, except, of course, in the case of some of the so-called uniform acts, yet the courts have gone far in allowing a presumption of similarity. To show the extent of this abuse, we may cite cases which involve legislation regulating the liability of insurance companies, statutes making it an act of conversion to sell pledged property without having given previous notice to the pledger, prescribing rights and liabilities of corporations and stockholders, removing the privilege of suit at law for injuries covered by workmen's compensation statutes, and establishing the system of community property for husbands and wives.

1. Forsyth v. Baxter, (1839) 3 Ill. 9, 11; Chumasero v. Gilbert, (1860) 24 Ill. 293, 294, 26 Ill. 39, 41; Desnoyer v. McDonald Geisse & Co., (1860) 4 Minn. 515, 520; Cooper & Lavely v. Reaney, (1860) 4 Minn. 528, 531; Leavenworth v. Brockway, (1842) 2 Hill (N.Y.) 201, 202. (This is probably not now law in New York; see note 6, supra.)


4. Hamley v. Till, (1916) 162 Wis. 533, 156 N. W. 968; Solner v. Welliver, (1923) 95 Okla. 73, 218 Pac. 1069, 1070.


The manner in which what ought to be the controlling rule of probability is sometimes ignored, may be observed in the Pennsylvania case of Bennett v. Cadwell, decided at an early stage in the development of the theory of presumptions as to similarity of statutory law. Cadwell, a liquidating partner, gave a bond to protect his former associates in business from debts of the firm. Judgment for one of these debts was obtained against Bennett, an obligee in the bond, who sued thereon to recoup his loss; the defense was that a judgment had previously been obtained in Wisconsin for this same debt against all the partners except Bennett, who had not been served, and that this had the effect in law of discharging Bennett, hence he had no right of action against Cadwell. In disposing of the case on appeal, the supreme court of Pennsylvania said:

"It is undoubtedly true that by the common law a judgment against one or more of several partners . . . is a bar to another suit against the remaining partners who were not served [and equally] clear that by the law of Pennsylvania it [is] not a bar to the action . . . why, then, should we presume that it [is] by the law of Wisconsin? . . . When Pennsylvania has abrogated the technical rule of the common law . . . why should we presume that it is in force in other states? There is no state where the common law prevails [unmodified] by statute, and . . . what foundation is there for the presumption that it exists in any state without modification? We are bound to presume that the law of Wisconsin is similar to our own."

Thus, while refusing to presume the retention of the common law in Wisconsin, a presumption that would have had some recognized basis of probability, the court presumed the much less probable fact that Wisconsin had modified the common law, on what the court itself calls a technical subject, in the same respect and manner as Pennsylvania. The result reached was correct, but the reasoning employed in the above excerpt from the opinion of the court rather ignores the principles of probabilities. The real basis of the decision may be found in that part of the opinion which immediately follows

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the portion we have quoted, where the court said that, Pennsylvania having ordained that nothing but satisfaction "bars a suit" against an unserved partner, the Pennsylvania courts would not, on some other theory of law, give greater effect to a judgment in another state than to a similar judgment in their own state. Thus it may be seen that the case really turned on the effect which would be given to a judgment against several partners for a firm debt as discharging another partner not served or included in the judgment. No matter whether the judgment was entered by a local or by a foreign court, the point of its effect in the respect indicated was purely a domestic remedial question which did not involve any inquiry as to similarities between the laws of Pennsylvania and the laws of a foreign state or presumptions in that regard.

Another example of unwarranted presumptions appears in an Iowa case. In a suit to recover damages for failure of title to land which the plaintiff had acquired in Missouri, it was necessary for him to show that, prior to his purchase, there had been a foreclosure proceeding in that state concerning which misrepresentations had been made; to this end, he offered evidence of a Missouri sheriff's deed, but the court held that no valid foreclosure had been proved, since, in the absence of evidence of the Missouri law, it would be presumed to be the same as Iowa's, which required a bill in equity, order of court, etc., for valid foreclosure, and none of these essential steps were shown by the record of the sheriff's deed. Here again, however, no presumption of similarity between the law of Missouri and that of Iowa was properly involved, as we shall now explain.

In respect to matters of remedy and procedure, the law of the state where the procedure was had always controls. Hence, in the Iowa case just mentioned, Iowa law in regard to the details of practice in the foreclosure, should not have figured at all, since Missouri was the state where the foreclosure took place; its law controlled such procedure, and, after judgment, there was a presumption it had been properly followed, so there was no necessity for proving it. Although in some cases the courts at times have

discussed presumptions of similarity between their laws and foreign laws in matters of remedy and procedure, yet, in most such instances, the decision on the merits was justified on the ground that, as to procedure and procedural rights, the law of the place where a remedy is sought always controls; therefore, the rule of presumption as to similarity of laws had no application and need not have been examined. Among laws which have been held to go to remedy and procedure only, are statutes of limitations and statutes of frauds.

As said before, the one or two cases that do try to separate the situations in which a presumption of like law will be employed from those in which it will not, on any basis other than that of the kind of law involved,—written or unwritten,—say that such a course will not be pursued where to do so would impose a penalty or work a forfeiture; but in regard to this rule, if it may be called a rule at all, we find wide variations in language and results. There is a Georgia case where the court refused to permit recovery on a note signed on Sunday in Kansas, because there was no proof of Kansas law and the Georgia law made instruments executed on Sunday void; this comes close to working a forfeiture. On the other hand, the Iowa supreme court has in effect held that, where a presumption of similarity of laws would defeat a plaintiff’s cause of action, to permit such presumption would work a forfeiture, and, therefore, if to presume that a sale of liquor in Missouri was illegal would prevent recovery on a contract of sale, no such course would be allowed.

There is, perhaps, ground for a distinction between cases of actual litigation, where there are opposing parties,—such as ordinary suits at law,—and those in which the court is to a degree performing administrative functions, such as the distribution of estates. In the latter type of case, there may be times when, unless a presumption of detailed legislation is made, the court, on whom lies the duty to proceed, would be embarrassed in doing so; though, of course, every judicial tribunal, unless denied the


26See cases cited in note 24 supra.

27Note 12 supra.


29Samuel Westheimer and Sons v. Habinck, (1906) 131 Iowa 641 ... N W 189 190
natural attributes of a court, can, of its own volition, either call or force the calling of relevant evidence on any essential matter before it for determination. In an adversary proceeding, when a foreign law is involved and the court refuses to allow any presumption in regard thereto, the result is merely to shift the burden of proof, and the party in default of proof loses; but when courts are operating in administrative capacities, the controversial element is not present, and most often there is no one in particular to bear the burden of proof; therefore, in such situations, a presumption, for instance, that the foreign law of descent and distribution is identical with that of the forum may justifiably be indulged.30

The doctrine of presumption is so imbedded in our law that it would be difficult to uproot it, even if such a course were desirable; but, when necessary, some courts have in effect departed therefrom by adopting a theory of implied agreement that the law of the forum shall govern whenever the foreign law is not proved. For example, in an Alabama case,31 the court, after discussing the presumption that the foreign law was the same as that of the forum, continued as follows:

"It will be applied, though our law be statutory. It may be well said that, as we judicially know no other law of the case than our own, the parties litigant, by failing to produce the lex loci contractus, impliedly agree that it is the same as the lex fori, be the latter common law or statute. Thus is may be regarded as settled in this state that when a contract made in a state or country wherein we cannot presume the existence of the common law, is sought to be enforced in the courts of this state, and the lex loci is not produced, we will apply to it our own law."

In another Alabama case,32 it was said:

"A majority of the court are of the opinion that, in the absence of averment and proof of the laws of Florida, the parties, by invoking the jurisdiction of the Alabama court, submit themselves to the laws of this state."

In an Indiana case,33 the court held that the rule was there settled that the common law must be presumed to be the law of the foreign state; but added,

20In re E. G. Baughman's Estate, (1924) 281 Pa. 23, 37-8, 126 Atl. 58, 63.
“However reasonable it might be to conclude that where parties have submitted their rights to be adjudicated upon in our courts, if they do not introduce to the attention of the court any foreign statute which might control its ruling, they should be held to have elected to abide by the law of the former; still, we have too long recognized the other rule [of presumption] to now question its force.”

To summarize: There is a well established presumption that in jurisdictions enjoying the same general systems of law, the rules of the common law are alike in both states, and, where foreign law is involved, the law of the forum is applied on this theory. Courts divide on the general question of presuming foreign law to be similar to statutes in force in the forum; some courts will not allow such a presumption at all, while others insist upon it, or permit it with limitations; beyond this, no general classification can be found in the cases. In those jurisdictions which allow the presumption, the qualification that it will not be employed to work a forfeiture or impose a penalty is occasionally stated, though not always regarded. A classification on a different basis, that of probability,—the logical basis upon which all presumptions should rest,—is desirable. Jurisdictions which heretofore have permitted no presumption in respect to statutory law could, on the basis of probability, allow the presumption of similarity where the statutory provision in question is of such general acceptance that there is a likelihood of its existence in the foreign state; and, on the other hand, jurisdictions in which the courts have employed all-inclusive language excluding no types of statute, could, on the basis of probability, limit the use of the presumption to proper cases and prevent its misuse in regard to details of legislation as to which there is no logical ground for a presumption,—for instance, as suggested in a recent Pennsylvania case,\(^4\) legislation involving the speed limit of automobiles. If the rational test of probability is not adopted, then the theory of presumptions had better be abandoned and, in the absence of proof of other law, the law of the forum applied, on the theory of some of the cases which we have reviewed that, by not bringing forth any evidence concerning the law of the foreign jurisdiction involved, the parties impliedly agree that the case shall be judged by the law of the forum, whether common or statutory.

THE CONSTITUTIONAL CRISIS IN CANADA

BY C. D. ALLIN*

THE recent Canadian election has raised a number of interesting questions in constitutional law, some of which are of interest to all students of comparative government, and to American constitutionalists in particular. The question of the relative merits of the cabinet and presidential systems of government has long engaged the attention of political pundits. A small school of American writers has extolled the superior merits of the English system and has advocated its adoption in this country. The recurring conflicts of the president and Congress, the succession of constitutional deadlocks and the general futility of much of our governmental activities have all served to lend a certain amount of support to this contention. The fact that almost all modern democratic states have adopted the English rather than the American form of executive afforded further confirmation of the indictment of our constitutional system. But recent political events have effectively turned the tables upon the champions of the system of responsible government. In more than one European country the system of cabinet government has broken down and has been replaced by a single executive. Throughout the British Empire, it is true, the people still retain their faith in the superior excellence of the cabinet system but the fulsome tributes of its devotees no longer pass unchallenged. It is no more regarded as a final and perfect form of government. Recent events in Canada throw valuable sidelights upon certain unexpected developments in the workings of the cabinet system which may exercise a considerable influence upon the course of colonial history and the character of colonial institutions. To these developments the American public cannot afford to remain indifferent inasmuch as the experience of our Northern neighbor may prove most useful in helping us to find a solution of our own constitutional problem of obtaining a closer cooperation between the executive and legislative departments of government.

The facts of the controversy are comparatively simple and for the most part indisputable. The rise of the Progressive party placed a severe strain upon the smooth working of parliamentary institutions at Ottawa. In the elections of 1921 the Conservative

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party went down to an overwhelming defeat but the Liberal government which succeeded to office was not able to command a steady majority on the floor of the House of Commons and was dependent upon the uncertain support of the Progressive members. As the term of parliament drew to a close the position of the government became more and more humiliating so that the premier finally decided to appeal to the country for the return of a clear working majority of his own party followers. But the election returns belied his expectations, for the government's plurality disappeared and it was left in a worse position than in the previous election. The returns were as follows: Conservatives 116; Liberals 101; Progressives 24. Although the Progressive party had suffered an even severer blow in the elections than had the Liberals, they were none the less in a much stronger political position in the House inasmuch as they clearly held the balance of power between the older parties. The Conservative leaders and press immediately demanded the resignation of the government on the ground that their party commanded the largest number of members in the incoming House. Premier King, however, refused to accede to this demand and advised the Governor-General to leave the issue to the decision of the House itself. The early summoning of parliament brought about a carnival of intrigues on the part of the older political parties for the support of the Progressive group.

As the policies of the Liberals and Progressives did not greatly differ upon many questions, particularly on the matter of the tariff, Mr. King succeeded in entering into a working alliance with the Progressive leaders, by which the latter pledged the support of their party to the government in return for the promise of certain legislation which was designed to promote the interests of the Western farmers. Thanks to this support, the government succeeded in beating off a series of attacks by the Conservative party, but it still led a most precarious existence from day to day. The discovery of grave scandals in the administration of the Customs department, which involved the reputation of the minister of customs, at last turned the scales against the government. Several of the Progressive members went into the opposition lobbies in the preliminary skirmishes which preceded the crucial vote of censure on the Stevens amendment, and the government was defeated on several occasions. Thereupon the premier appealed to Lord Byng, the governor-general, for a dissolution
of the House, but His Excellency refused to follow this advice and in place thereof called upon Mr. Meighen, the Conservative leader, to form a new government. Mr. Meighen accepted the task, the more readily as he apparently entertained the hope or expectation of securing the support of the Progressive party to procure the necessary supplies and to wind up the legislative business of the session. The Premier, however, did not dare to organize his government in due form by assigning the members to definite departments, since the acceptance of these portfolios would have entailed the resignation of the ministers at the very moment when every vote was needed to keep the government in office. He accordingly adopted the plan of setting up a temporary ministry to close up the business of the session. The Liberal party made a bitter attack upon this doubtful procedure, and succeeded in winning over a majority of the Progressives to their constitutional point of view. The government was defeated by a majority of one, whereupon Mr. Meighen also asked the governor-general to dissolve the House. Lord Byng assented to this request and the dissolution was carried out at once in somewhat uncere-
monious fashion.

The Liberal party has taken advantage of these unusual proceedings to launch a strong attack upon the unconstitutional character of the action of the governor-general and in these protests they have been joined by a majority of the members of the Progressive party. The Conservative government, on the other hand, has vigorously defended the action of the governor-general on both constitutional and political grounds as a legitimate exercise of his discretionary power in difficult circumstances.

It ought to be stated at the outset that the constitutional struggle did not involve any attack upon the personal character and political integrity of the governor-general. Lord Byng has been one of the most popular representatives of the Crown in Canadian history. Mr. King has been particularly careful to acknowledge the good faith of the governor-general although he did criticise both the legality and the expediency of his action. Still less did the agitation involve any question of the separation of Canada from the Empire. All three parties are strictly committed to the British connection although they differ somewhat in their political views as to the form of imperial organization. The question of the governor-general's power of dissolution has nothing directly to do with the question of imperial relations, though the subject
CONSTITUTIONAL CRISIS IN CANADA

does come up for incidental consideration as we shall see, in connection with the closely related question as to the mode of appointing the king's representatives in the Dominions.

The real question at issue, therefore, resolves itself into one of the constitutionality of the conduct of the governor-general and his advisers. The American reader should remember, however, that in Canada matters of constitutionality are essentially questions of parliamentary custom and political precedent rather than of constitutional law, as in the United States.

The first of these questions concerns the right of the King government to ask for a dissolution of parliament in the particular circumstances. The answer to this question must depend upon the practical effect of the dissolution on parliament rather than upon the formal declaration of the government's intent. The nominal motive for asking for dissolution was the desire to straighten out the parliamentary situation, but the practical result would have been to place a muzzle upon parliament at the moment it was holding a grand inquest of the nation into certain scandals, the true facts of which it was entitled to know and to lay before the country. To interrupt this inquiry in the circumstances came close to an attack upon the privileges of parliament itself, since it is the primary function of the House to pass upon the character of the government's policy and to hold it responsible for misconduct in office. If the government were free at any time to forestall the judgment of the Commons by a summary dismissal of the legislature it would be in a position to establish a veritable autocracy and free itself from effective criticism and control. The government, it is admitted, possesses the right of appealing against the decision of the House under ordinary circumstances but it has no constitutional right to frustrate an independent expression of judgment on the part of the popularly elected chamber. The House has its privileges as well as the executive; and of these privileges the right of discussion and censure are the first and most important. They are, in truth, the primary source of parliamentary freedom.

Moreover, the King ministry had already appealed to the electorate a few months before with somewhat untoward results. According to constitutional usage, a ministry is not entitled to a second dissolution in case of an unfavorable vote of the House after a general election. In the words of Professor Jenks:

"If the ministry was formed after the existing House of Commons was elected, the King must accede to the ministry's request;"
but if, on the other hand, the House of Commons was elected since the formation of the ministry then presumably the latest expression of the popular will is adverse to the ministry which cannot therefore insist on the dissolution of parliament."

The power of dissolution was never intended to be used as an instrument in the hands of the ministry to penalize the Commons or to prevent the opposition from obtaining a victory in the House. The government had already been afforded the right of one general appeal to the country. On principles of good sportsmanship as well as parliamentary practice it was not entitled to ask for a second dissolution. For these reasons it is submitted the action of the government in this case was not justifiable either by constitutional precedent or on principles of political expediency.

The second and much more important question has to deal with the right of the governor-general to refuse to follow the advice of his ministry. What is the constitutional position of the governor-general? Does the governor of one of the Dominions occupy a position analogous to that of the king in relation to the imperial cabinet or is he a more or less independent administrative officer of the Crown? In other words, is he a social figurehead or a constitutional arbiter between the political parties?

According to the ancient theory of the English constitution the crown enjoyed the right of determining in each case whether a dissolution should be granted or not. This right was regarded as one of the most important of the royal prerogatives, but in course of time this power fell under the control of the cabinet along with the other special rights and privileges of the sovereign. Since the reign of George III the independent exercise of the right has fallen into desuetude. According to modern practice, therefore, the king should follow the advice of his ministry in the matter of dissolution as on all other questions of public policy. In the language of Sir William Anson, "We may say then that the prerogative of dissolution is one which the king exercises on the advice and at the request of his ministry and that request is not refused."

Although the sovereign has not exercised this right for the last hundred years, it is scarcely correct to say that the power has been completely abandoned, since there have been few if any occasions on which the king could have done so in a legitimate manner. The conduct of British statesmen has been on the whole, so essentially just and fairminded in asking for a dissolution that
the king has had little excuse for refusing to accept their advice. But there are still occasions in which it is admitted by constitutional authorities that the king might and probably should, exercise an independent judgment not for personal reasons or partisan purposes but for the general advantage of the state. It is not questioned, for example, that the king should refuse to grant a second dissolution to a ministry which has already been defeated at a general election. The purpose of the refusal in this instance would be to give effect to the will of the country against the arbitrary policy of the ministry. The king would be acting in a quasi-judiciary capacity as the guardian of parliamentary institutions and could not be suspected of attempting to set up a personal will of his own. Constitutional authorities would recognize, moreover, that the Crown ought not to follow the advice of his ministry in case they should recommend a clear and open violation of the law or the constitution. The king is himself subject to the law and should assist in its faithful observance. Except in a national emergency, parliament is alone empowered to suspend or dispense with the law of the land. It is the duty of the king, moreover, to respect the rights and privileges of parliament, particularly in regard to its inquisitorial and judicial activities. The king would not be justified, for example, in dissolving parliament if the purpose of the dissolution was to prevent the House of Commons from prosecuting impeachment proceedings against any or all of the ministers for treason or other high crimes or misdemeanors. In brief, the king should follow the advice of his ministers provided that it is honestly given and is not designed to defeat the lawful will of parliament or the nation. The prerogative should be used for the public good and not for the furtherance of the illegal purposes of the government. These illustrations will suffice to show that the king’s power to refuse a dissolution might still be exercised in exceptional circumstances on good constitutional grounds but these occasions are few and far between. The desirability of keeping the king entirely out of politics is so manifest that only in a national emergency should there be any thought of departing from the well-understood principle of ministerial responsibility.

The role of the king in relation to political parties is therefore that of conciliator rather than that of an arbitrator. As a general proposition he must accept the advice of his ministers no matter how undesirable it may be. He will be entitled of course, to offer
his best counsel to his ministers and even to expostulate with them on matters of policy but he will not be permitted to set up his personal will or judgment against that of the government of the day. In times of constitutional crises he may endeavor to mediate between the two parties. He may offer his good offices to see if some understanding or compromise may be reached so as to prevent a break-down of the due course of parliamentary proceedings. He may, with the consent of his ministers, call a round table conference with the leaders of the opposition to thrash out the question at issue, but in all these efforts he must act with the consent or acquiescence of his ministers and not on his own independent judgment or initiative.

As a general proposition it may be said that the English constitutional system has been introduced into the self-governing colonies almost in its entirety. But there is one striking exception to this general rule, namely, in respect to the power of the governor in the matter of dissolution. In some of the colonies, particularly in Australia and New Zealand, the old colonial theory has prevailed that the governor was free to decide in each particular case whether he would or would not accept the advice of his ministers to dissolve the House. This power has been exercised by the Australian governors on so many occasions and on the whole has been found so generally beneficial in its practical operations that it has now come to be accepted almost without question. In a recent memo on the subject of the appointment of state governors the attorney-general of Victoria incidentally remarked, “in Australia it is a well settled fact that a governor has the right, if on an impartial review of the circumstances, he thinks fit to refuse a dissolution when asked.” The same principle has been followed in New Zealand although it has not been resorted to on so many occasions.

The early constitutional history of Canada, likewise, furnishes several striking cases of which the Brown and Joly are probably the best known, in which the governors of the provinces refused to grant a dissolution to their cabinets but these instances are by no means as numerous as in the Australian colonies. The leading constitutional authorities of the Dominions such as Todd and Bourinot fully acknowledged the validity of such action and approved of its application.

“Whilst this prerogative,” says Todd, “as all others in our constitutional system, can only be administered upon the advice of
counsellors prepared to assume full responsibility for the governor's decision, the governor must be himself the judge of the necessity for a dissolution. The 'constitutional discretion' of the governor should be invoked in respect to every case wherein a dissolution may be advised or requested by his ministers; and his judgment ought not to be fettered, or his discretion disputed, by inferences drawn from previous precedent, when he decides that a proposed dissolution is unnecessary or undesirable."

Within recent years, however, the tendency has been in the other direction, though it cannot be said that the principle of complete ministerial responsibility has been fully recognized or established as it has been in England. The whole question has been left in a state of general uncertainty.

Various reasons have combined to bring about this difference in theory and practice between the mother country and the colonies. The governor of a colony occupied a somewhat different position from the sovereign. He had a two-fold role. He was at once the representative of the crown and the head of the local administration. In his former capacity he was expected to safeguard imperial interests against colonial encroachments; and in respect to all such interests he was not subject to colonial control, nor could his ministers assume any legal or political responsibility in respect thereto. The British government, moreover, formerly exercised a veto power over the acts of the colonial legislatures. This veto might be imposed either by the governor himself or by the secretary of state for the colonies. In any case it was the duty of the governor to follow the instructions of the imperial authorities rather than the opinion of his local ministers. In short, the governor's power of independent action was an outstanding expression of colonial subordination. But with the development of the nationalist spirit of the Dominions there was a corresponding growth in the powers of the colonial cabinets in relation to the governor. It was both natural and significant that Canada, the first of the colonies to obtain self-government and the greatest of the Dominions, should be the first to challenge the colonial tradition and to look to British precedents for the determination of the status of the governor.

There were particular reasons, in the case of Australia, for the growth of a distinctive practice in regard to dissolution. Political parties in Australia and New Zealand have never acquired the same permanent character and tradition that they have in the Mother Country. The political life of the colonies has been fluid.
Parties have been little better than factions. The issues have varied from election to election and have usually revolved around special local interests. The old party names of the Mother country have indeed been maintained but there have been no historic principles or political philosophy. The result has been that parliamentary life has been exceedingly complex and confused. It was seldom that a government was able to command a strong or unified body of supporters in parliament. In some of the Australian legislatures changes of government were as frequent as revolutions in Central American states. The two-party system gave way in actual practice to the uncertain occupancy of the treasury bench by short-lived coalitions. Moreover, the shortness of the legislative session in most of the colonies made it unnecessary and inconvenient to resort to frequent dissolutions. The factionalism of the House was reflected in the country at large. Seldom did a general election clearly settle any political issue or give to any party a long term of office. There were sound political reasons in such circumstances for the governor to refuse to accede to every request of his temporary advisers for a dissolution of the House. To have assented on all occasions would have resulted in a state of chronic constitutional anarchy. The principle of parliamentary government would have broken down entirely and it would have become practically necessary to set up an independent or presidential executive. The colonists came to realize from actual experience that the exercise of an independent discretion on the part of the governor in such matters was not only a legitimate but a beneficial exercise of power. All that the colonies, therefore, asked of the governor was that he should not utilize his discretionary power for partisan purposes but should act impartially and with perfect good faith as among the various factions. If the ministry was defeated the governor naturally turned to parliament to see if the situation could be straightened out by the formation of an alternative cabinet before resorting to an appeal to the country. The cabinet was not entitled to a dissolution as a matter of course, but was expected to make way for another government in case that sufficient parliamentary support was forthcoming. In short, the fluctuation of political parties brought about a material modification in the workings of English parliamentary principles in Australia as has also been the case in France and the other Continental countries which have attempted to combine the cabinet system with a multiplicity of factional groups. In this case the principle
of political expediency served to strengthen the traditional constitutional power of the governor in relation to his ministers. A power which was formerly used to protect the royal prerogative and imperial interests was unconsciously transformed in time into a useful and effective instrument of colonial democracy.

The experience of the Australian colonies has been repeated in the federal sphere since the establishment of the Australian commonwealth. The three-party system has become as marked a feature of federal politics as it was in the colonial legislatures, and with this system has reappeared a succession of weak and unstable federal ministries. The governor-general has come to assume, therefore, the same constitutional function of an impartial referee in the federal arena that the governors had previously exercised in the politics of the several colonies. His role has been particularly important where the strength of the parties has been about equally divided and where the situation has been complicated by differences of opinion between the two houses.

In Canada the political situation has been distinctly different. Since the establishment of Confederation, the two-party system has prevailed in the Dominion as well as the provinces throughout almost the whole period. The Dominion ministries have been long-lived, almost without exception, and the same phenomenon has been manifest in most of the provinces. Neither the governors-general nor the lieutenant-governors have had much opportunity to develop discretionary functions, even though they had desired to do so. The natural tendency in the circumstances was for the gubernatorial office to develop along the lines of the English Crown rather than of the Australian governors. Constitutionally there was little for the governor-general to do but to play a social role in the life of the country. The lieutenant governors for the most part followed suit, though there are several striking instances to the contrary. But with the rise of the Progressive party, a condition of political instability has appeared in Canada as in the other Dominions. In these circumstances a constitutional crisis was sure to arrive in either the Dominion or provincial governments in which the governor would have to make a difficult decision as to the right of dissolution. It was the misfortune of Governor Byng that he was called upon to establish an important precedent.

There is still another reason for the different usage in the Dominions and in the Mother Country. The position of the
governors is distinctly different in fact as well as in law from that of the king. In England a long monarchical tradition has become a vital part of the English constitution. The king has become the symbol of national and imperial unity and that symbol must be preserved at all costs. Every precaution is taken to keep the king's person and name out of political discussions for fear of lowering the prestige and authority of the Crown. More than one king has had to pay a heavy penalty for attempting to play a personal role in politics. In short, the king could not afford to take an independent stand since a mistake would have discredited the whole institution of monarchy, even though it did not result in his removal from office. Even the Tory party, therefore, the staunchest champions of the monarchical principle, have not been averse to a limitation of the king's power in the matter of dissolution. But the governors of the Dominions have no such prestige or tradition to maintain. They are merely temporary appointees of the Crown subject to removal by the King at any time like other office-holders. A mistake on the part of the governor would and did not entail the same serious consequences as an error in judgment on the part of the king. If a governor showed a lack of political tact or judgment which stirred up the hostility of the colonists, he could be recalled at any time with little inconvenience to himself and without any impairment of the working efficiency of the constitutional system. It was a simple matter for the Crown to appoint a successor to an inept or an unfortunate governor. The governor therefore could afford to take the risk of playing an independent role in politics if thereby he saw an opportunity of accomplishing some beneficial results. If his mediatorial efforts were successful he performed a valuable service to the colonies. If they failed he could suffer the opprobrium without in any way seriously disturbing the colony or imperiling the imperial connection.

All these factors have combined to bring about a material modification of the royal prerogative of dissolution in the Dominions. But the question still arises which of these traditions is the better, which is based on the sounder constitutional principles and which is better adapted to the needs of the Dominions? In the recent crisis in Canada the governor-general, as we have seen, decided in favor of the so-called colonial as against the English tradition. In other words, he conceived of the gubernatorial office as that of a constitutional referee and not simply that of a legal
Most of the recent English authorities have preferred the English precedent on the ground that it best preserves the monarchy from political discord and that it is most compatible with the principle of responsible government. In the words of Keith:

"The normal form of the refusal to accept ministerial advice is when a ministry, beaten in Parliament, or which is losing its hold on Parliament, asks for a dissolution in order that it may strengthen its hand in the country. Now, the imperial practice in this regard is of course, that the minister receives a dissolution when he asks for it. There is in favor of this view the most important authority, and the expressions of opinion which have been made on the other side from time to time are hardly authoritative. It is indeed clear that the refusal of a dissolution is much too dangerous a course for the Crown to take; it at once reduces the Crown, however reluctantly, to be a partisan in a political struggle. In the case of a governor this does not matter very seriously; he is only a temporary tenant of office, and his personality and popularity are not things of the highest moment. He may discredit the post of governor and weaken the imperial connection, but these things can be put right by a tactful succession and truth to tell, both governors and ministers, as self-government develops, seem to grow more used to work together. The governor exercises more influence if less power than his predecessors in the 60's and 70's, and there are fewer of those claims, preposterous on both sides to an unimpassioned view, than then were rife. But the popularity of the Crown is only borne out by absolute ministerial responsibility. The loyalty of the country to the Crown must depend in political matters on the feeling that whatever is done is done not as a royal whim, but at the will of a ministry commanding influence in the country. Any other theory, however specious, is sure in the long run to lead to the degradation of the Crown, which owes its absolute security, as Lord John Russell pointed out in 1839, to its standing apart from all political strife."

This argument is particularly effective inasmuch as it ties up the interests of the Crown with the furtherance of democratic principles. It appeals to the Tory and the Radical alike.

But the argument, it should be observed, is still open to criticism. It assumes, as a matter of fact, that the governor will escape being drawn into the political arena by an attitude of strict passivity. In actual fact, however, the governor may prove himself to be as much a partisan by acceding to the illegal or corrupt advice of his advisers as he would by refusing in some cases for good and substantial reasons to follow that advice in the matter of a dissolution. If he places the power of dissolution at the service of his cabinet to be used for purely partisan purposes he
cannot expect to escape the censure of the opposition by simply pleading that he had no choice in the matter. In short, he will almost inevitably be subjected to criticism whatever decision he may make in a bitter partisan conflict where the control of the prerogative may mean the difference between victory and defeat.

The Liberals and Progressives in Canada, however, were not so much concerned about the political immunity of the governor general from attack as they were about the constitutional status of Canada. They freely admit that the leading colonial authorities lend full support to the validity of the governor-general's action and that several colonial precedents can be cited to a similar effect. But these authorities and precedents, they maintain, have no applicability to the existing constitutional situation in Canada. "Whatever may have been the position in the earlier history of Canada, says the Hon. N. W. Rowell, one of the leading Canadian nationalists, "there can be no doubt, as Sir Robert Borden has stated in his Canadian Constitutional Studies, that the governor-general of Canada is today invested with practically the same powers and duties in this country as those appertaining to the King in the British Isles, and he should follow the British constitutional practice in reference to the dissolution of parliament." Since Canada has been raised to a constitutional equality with the Motherland, as was clearly recognized in the resolution of the Imperial Conference of London in 1921, and in the subsequent ratification of the Irish Free State Act by the British parliament, there should be no doubt but that the principles of the English constitution in respect to dissolution should be applied in the colonies. In other words, the status of the governor-general should be assimilated to that of the Crown. The Liberal leaders profess to see in the governor-general's action the danger of a return to the Downing Street regime. They made the independent exercise of the governor's judgment the one outstanding test of the existence of a colonial status and they attacked the exercise of that power as incompatible with the status of the Dominions as co-equal members of the community of nations forming the British Commonwealth.

From an historical standpoint it must be admitted there is much to be said in support of this contention. So long as the colonial governors were free to exercise an independent judgment on colonial matters by reason of their imperial office, the autonomy of the colonies was necessarily limited in purely domestic as well
as in imperial affairs. But since the Dominions have attained a new constitutional and international status the historical objections to the exercise of the governor's power have lost their force since there is no longer any occasion or justification for intervention in Dominion affairs on the part of the Colonial Office. The constitutional question at issue must now be decided on the basis of the present utility of the exercise of the power in question and not by an appeal to the abuses of the past. The history of the English cabinet clearly proves that the value of political institutions varies from age to age with changing conditions and that an institution which was extremely dangerous to political liberty in the beginning may turn out to be a most effective weapon of popular government. The experience of the governor's prerogative in Australia, as we have seen, bears out the same conclusion.

In the present instance, moreover, there was no necessity for dragging Downing Street into the controversy. Throughout the crisis there was not the slightest evidence that the governor-general consulted with the Colonial Office in any way or that the imperial government took any measures to influence or control the course of the governor's action. As a matter of fact, the secretary of state for the Dominions expressly disavowed any desire or intention to intervene in what was regarded as a strictly Canadian controversy. The Colonial Office has learned from experience that it is extremely inadvisable to get mixed up in the political affairs of the Dominions.

On general principles, there would seem to be no sound reason to consider the British precedent in the matter of dissolution as conclusive evidence of a Dominion status. It has always been the genius of the English constitution to adapt itself to varying conditions. One of the rights which the Dominion nationalists have been demanding most strongly has been the right of the Dominions to modify their constitutions at will. Adherence to English precedents which are no longer adapted to colonial conditions does not constitute a mark of constitutional independence but of colonial subordination. The dominions must needs be free to work out their own constitutional conventions in accordance with their own special needs. The multiple party system of the Dominions, as we have seen, has introduced a new complication into the workings of parliamentary government and there is no doubt but that this system must be adjusted so as to function more efficiently in some at least, of the Dominions. The Australasian colonies have already
led the way in this respect and it now looks as though Canada may be obliged to follow suit.

It is interesting to observe in this connection that a similar condition of affairs recently occurred in England and has raised the same constitution difficulty. The election of 1923 resulted in the return of a plurality of Conservatives to the House but the Tory government was soon after defeated by a combination of the Labor and Liberal parties and Mr. Ramsay MacDonald succeeded to the premiership. In view of the fact that none of the parties enjoyed a clear majority in the House, Mr. Asquith, ex-Liberal premier, very properly raised the question as to whether a minority government would be entitled to demand a dissolution whenever it so desired and very strongly expressed the opinion that the King would be justly entitled in these circumstances to refuse to accept such advice and to look to the House for determination of the question at issue. This view stirred up a lively discussion both inside and outside the Commons, particularly on the part of the Labor leaders. In this particular instance the King did not see fit to follow the course outlined by the Liberal leader but upon the defeat of the government shortly afterwards granted a dissolution to Ramsay McDonald as a matter of course. The fact that the question was raised by the Liberal, not by the Conservative party, affords sufficient evidence that the proposed innovation was not prompted by any desire to strengthen the royal prerogative, but by a conscious effort to grapple with a perplexing parliamentary situation which threatened to become more or less permanent. It is at least interesting to speculate that if this unsettled condition of affairs should prevail for an extended period of time it may become necessary to modify the practice of the English constitution in the direction of the Australian precedent so as to prevent a possible ministerial abuse of the power of dissolution. On the other hand, it is safe to predict that the restoration of the two-party system will undoubtedly serve to strengthen the existing control of the cabinet over the crown.

At this point of the discussion, the question of the prerogative of the governor-general gets mixed up with the question of the mode of his appointment. Colonial nationalists will always feel somewhat suspicious of Downing Street so long as their governor-generals are appointed from Westminster. The attainment of complete Dominion autonomy logically demands that the nomina-
tion and appointment of the governors should be transferred from the British to the colonial governments. In that event the governor-general would no longer be looked upon as an official of the British ministry, but would be regarded as the formal political head of the local administration. In order to meet colonial objections to the present system of selection, a new convention of the imperial constitution has been adopted by which the British government makes it a point to consult the Dominion governments before making an appointment. In other words, there is a tendency to look upon the Governor-General as a diplomatic representative of the English crown in the colonies rather than as a constitutional official, and the mode of appointment has therefore been assimilated to that in use in the diplomatic service. In the case of the most recent appointment in Canada, it is understood that the British government submitted the names of several possible nominees to the Canadian premier and permitted Mr. King to select the one whom he regarded as most desirable.

But even this precedent does not go far enough to satisfy some of the more radical nationalists. There has been a strong movement in Australia among the Labor party to limit appointments to the governorships of the respective states to Australian citizens only and a memorandum was recently presented to the secretary of state for the Dominions signed by the Labor premiers of five of the Australian states to this effect. The memo did not express any dissatisfaction with the conduct or policies of past English appointees but it did urge that the principle of self-government required the selection of local governors. There is nothing, of course, in the present imperial constitution to prevent the selection of a governor from one of the inhabitants of a Dominion. A precedent had already been established in the choice of Mr. Timothy Healy as representative of the Crown in the Irish Free State. It was evident, however, that Mr. Amery, Secretary for the Colonies, did not approve of the Australian Labor proposal, but he very properly reaffirmed the principle which had been laid down by Lord Milner, that the question was one for the Australians to decide for themselves and that the British government would abide by their decision. But until there was a stronger evidence of a preponderant opinion in Australia in favor of the change he was unwilling to reverse the traditional policy of the colonial office. "If the premiers' proposal is to be adopted, he declared, "there should be no doubt that Australian opinion is
generally in favor of the change and so strongly in favor of it that a subsequent demand for its reversal is not likely to arise." It is somewhat difficult to understand on principle, however, why the views of five Labor ministries in favor of local governors should not outweigh the more conservative views of the Nationalist government in Victoria in favor of the maintenance of the existing system of appointment. It is this tendency of the Colonial Office to cling as long as possible to the old imperial traditions which occasions the lingering suspicions on the part of the colonial nationalists as to the genuineness of the acceptance of the principle of Dominion equality by the British government. So long as this suspicion continues Liberal and Labor governments in the Dominions are naturally reluctant to take any action which would tend to increase the powers of a British governor. From a political standpoint there are certain manifest advantages in the selection of a distinguished and impartial British official rather than a local politician as nominal head of the executive in the Dominions, but these advantages in the minds of the colonial nationalists are insufficient to offset the danger of imperial participation in colonial politics. It is this feeling of suspicion, actual or artificial, which is back of much of the criticism of the recent action of the governor-general in Canada; and it is upon this fear that some of the less scrupulous politicians are prone to play in stirring up opposition among the "habitants" to the alleged menace of Downing Street.

It is exceedingly unfortunate that the question of the mode of selecting the governor-general should have become mixed up with the question of the nature of his office with particular reference to the power of dissolution. There is, as we have seen, a historical and also a potential connection between the two issues but at heart they are fundamentally distinct and should not be confused. The question of the discretionary power of the governor-general in the matter of dissolution would come up for decision irrespective of the nationality of the governor or the mode of his selection. In fact, the same question has already arisen in England and there are several instances in which it has appeared in the case of the lieutenant governors of the Canadian provinces as well as in connection with the governors of the Australasian states and commonwealth. But the issue has again been confused in the Canadian provinces by reason of the fact that the lieutenant governors are appointed by the Dominion government and may consequently
belong to a different political party from that of their advisers. As a general proposition there have been few disagreements between the lieutenant governors and their cabinets but on one or two occasions the provincial governors have been accused of using their position in order to further the interests of their political friends at Ottawa at the expense of their constitutional advisers in the province. If these external influences could be eliminated in both Dominion and provincial politics the question of dissolution could be decided upon its merits alone since no matter how or by whom the governor-general or lieutenant governor might be chosen or elected he would still have to decide in each case whether he should or should not accede to the advice of his ministry. The position of a popularly elected governor would not differ the slightest in this respect from a royal official.

Recent developments in colonial politics would seem to emphasize the advantages of clothing the governor with certain discretionary powers in respect to his cabinet. Politics is essentially a game, perhaps the greatest of all games, and played with a zest and enthusiasm such as is seldom found in other forms of sport. So long as human nature remains as it is the politician will play to win. But in order that the game should be played fairly and honestly there must be a well-designed body of rules to govern the sport, and above all, a high-minded and impartial referee to see that the rules be faithfully observed by all parties. There is almost an irresistible temptation on the part of the party in power to abuse its authority in order to strengthen or maintain its position or ascendency. To dish a political opponent is too often considered clever political tactics.

The House of Commons has realized this danger by providing for the entire separation of the position of speaker from that of political leadership in the House. The speaker has been elevated into the position of an impartial presiding officer whose duty it is to see that even-handed justice is distributed between the contending parties in the House. He has become the great guardian of the rights of the minority against the excess of power on the part of the majority. He is the constitutional referee who holds the respective parties to the strict observance of parliamentary order and fair play. Every care and precaution is taken to remove him from the temptations of party warfare. Once he is elected to his high office he is supposed to drop all party affiliations and to forget all party differences. Any deviation on his part from a policy
of strict and absolute neutrality would cost him the confidence of the House and lower the reputation of the office. The significance of the position of the speaker in the English parliamentary system, as also to a somewhat smaller degree in the Dominion legislatures, can best be appreciated by comparing his position with that of the presiding officer of the United States House of Representatives. The speaker of the American House is a strong party man elected by partisan supporters and expected to promote partisan ends. He is in truth one of the two great outstanding leaders of the majority party in the House. Thanks to his combination of the powers of speaker with those of a party leader, he developed into the czar of the House. The minority were almost powerless to stand out against him, and it became necessary to modify his powers so as to preserve the independence of the House itself.

The same political situation is presented in the larger political arena outside the House. The dangers of the abuse of powers on the part of the executive in matters of administration are very much greater than in legislative matters inside the House. If the governor-general is reduced to the position of a mere figure-head who must register the will of his advisers, there will be no effective check upon the arbitrary power of the Ministry. There will be a czarism of the cabinet even more dangerous and autocratic than the czarism of the speaker in the House of Representatives. The same consideration that demands the separation of the functions of the speaker from the leadership of the party in the House of Commons likewise demands that there should be set up an impartial presiding constitutional referee to maintain the principles of justice and fair play in the conduct of the administrative affairs of the country. The ministers of the day cannot be safely entrusted with the power of modifying the rules of the game at will in order to suit their own political purposes. They ought not to act as judges in their own cases.

The situation is rendered all the more acute by reason of the fact that the game of politics is no longer played on a strictly amateur basis by a group of country gentlemen. The old social amenities, which played so large a part in the life of the English parliament, have been gradually giving way. The place of the amateur in politics has been taken by the professional, and with the introduction of the professional politician the tone and spirit of English political life have undergone a change, in some respects
at least, for the worse. The professional politician must win in order to hold his place; if unsuccessful he is soon eliminated from the game. Moreover, the political stakes are now much larger than they formerly were. With the rapid extension of the activities of the government there has been a tremendous multiplication in the number of offices to be filled. An immense political patronage is now placed at the service of the government which can be used to strengthen the position of the government throughout the country. In many of the Dominions the spoils system has been introduced with dangerous results to the efficiency and honesty of the course of administration. Vast expenditures of the government on public works have become an even more powerful agency for the distribution of party favors and the furtherance of party purposes. In short, a tremendous political organization has been the maintenance of office. These factors have been still further built up whose sole interest is dependent upon the acquisition or strengthened by the development of great industrial and financial interests whose business prospects are dependent upon the policy of a political party or parties. Questions of politics have been largely transformed into questions of economics. Electoral struggles are waged over questions of fiscal or financial policies which vitally concern large sections of the community. The advent of the Socialist party has intensified the bitterness of party warfare by challenging the existence of the whole economic and social organization of the country. Extreme partisans on both sides are willing to resort to almost any measures in order to secure control over the executive through which they hope to determine the economic policies of the day.

The situation is all the more dangerous in the Dominions by reason of the fact that there are not the same high traditions of political life overseas as have prevailed in England during the last half century. The Dominion parliaments have not succeeded in attracting the same high type of members into the House of Commons as have gone into the British parliament. The best training and ability have been diverted into business rather than into politics. There is not the splendid tradition of office-holding nor the same honorable status attached to service in the administrative departments of the government. The spoils system, as we have seen, has materially lowered the tone of political life. Governments have seldom scrupled to use all the advantages of office holding in order to secure a return to power. The administrative
service is not divorced from politics and parties vie with one another in the promise of public works for various constituencies. In England, on the other hand, the cabinet enjoys no special advantages in making an appeal to the country. As a matter of fact, the possession of power is often a serious disadvantage in seeking a return to office. There, it is almost the invariable rule that the opposition are successful in winning by-elections, but in the Dominions the reverse is true. In the present instance, it must be confessed, the Liberal party in Canada was not so much concerned over the constitutional issue as over the loss of control over the electoral machinery. The government has always expected to control this machinery and to use it for its own political advantage at the expense of the opposition. It is not surprising in the circumstances that by-elections have usually resulted in the return of government candidates and that the terms of office of both Dominion and provincial ministries have been marked by length of years rather than by intellectual distinction or legislative or administrative accomplishments.

In brief the power of the cabinet is practically uncontrolled during the recess of parliament save insofar as the cabinet may see fit to listen to the wisdom or counsels of the governor-general. There is no effective check upon the excesses of partisanship, such as is provided in the House by the independent power of the speaker. In England the honorable tradition of office has afforded some safeguard against the abuse of executive power and it has not been necessary in consequence to call upon the prerogative of the king. In Australia, the governors of the several colonies have served to some extent as a balance-wheel of the constitution. But in Canada, unfortunately, there have been no such moderating influences, and if the discretionary power of the Governor-General is to pass away like that of the king there would seem to be little prospect of curbing the growing dangers of partisanship.

The increasing power of the cabinet may likewise become a menace to parliament itself. Formerly the ministry was looked upon as the servant of parliament but today it threatens to become the master. To endow the cabinet with unlimited power of life and death over the Commons would impair the independence of that body. Many of the members would scarcely feel free to oppose the policy of the executive while a threat of dissolution was hanging over their heads. The very existence of responsible government depends upon the vigor and freedom of parliamentary
criticism. Any impairment of that freedom would result in the establishment of an irresponsible oligarchy in place of a responsible ministry. The position of the House would be rendered all the more dubious by reason of the fact that the Cabinet can not only force the members to run the risk and bear the expense of frequent elections, but through its control of political favors and election machinery can sometimes win an unfair advantage at the polls. The power of dissolution can be used in such circumstances not for the purpose of eliciting the views of the country at large but of defeating the free expression of public opinion and securing the return of a subservient majority to the House. In other words, the machinery of self-government may be turned against democracy itself. But parliament, it should be remembered, has rights as well as the cabinet and these rights both from a legal and historical standpoint have priority over the claims of the government, and it is the duty of the governor to respect these rights. The cabinet is undoubtedly entitled to advise the governor-general at all times and in all matters; but parliament is equally entitled to express its judgment upon the conduct of the ministry and the public questions of the day, and its judgment should prevail except where the mandate of the country is practically exhausted or where new issues have arisen upon which the country has had no opportunity to express an opinion.

The position of the governor-general, as we have seen, would be materially altered by the permanent establishment of the multiple party system in the House. In the past the governor-general has not ventured to set up his judgment against the strong united will of the cabinet and parliament. But with the adoption of the bloc system the varied opinions of minority groups would be substituted for the stable will of the majority. The governor would now have to deal with a weak cabinet and a disorganized legislature. Only with the greatest difficulty could the king's government be carried on. In some of the European countries where this condition has prevailed the parliamentary system has broken down completely and has been supplanted for the time being by dictatorships. In despair the people have preferred autocracy to anarchy. Fortunately the Dominions have not yet fallen into this sorry plight, but in the Australian colonies it has been found necessary to revive some of the ancient prerogatives of the Crown in order to stabilize the chaotic situation.
In Canada, on the other hand, the two-party system has struck much deeper roots in the political soil. From time to time third-party movements have sprung up in some of the provinces and have flourished for a season but they have all failed to stand the test of time. The present farmers’ movement in the Northwest seems to show greater signs of permanency inasmuch as it is closely bound up with the great cooperative movement of the grain growers’ association. The political program of the party has been based upon a vital and permanent economic interest. Should the multiple party system continue and the Progressives succeed in retaining the balance of power in the House the government would doubtless find it necessary to resort to some form of coalition ministry such as has been employed in Australia for several years past. The King ministry had already taken a step in this direction at the last session by entering into a working agreement with the Progressive leaders but this arrangement, as we have seen, did not work very satisfactorily. The people of Canada shared the English objection to coalition ministries. If a coalition ministry should prove unworkable in practice the only alternative available would seem to be the adoption of some modified form of the presidential system which would enable the administration to be carried on more or less independently of the turmoil of parties in the popular chamber. In other words, the executive would have to be separated to a larger degree from the legislature. It is interesting to observe that several of the Progressive leaders have already advanced the opinion that the English parliamentary system should be scrapped so as to make way for a more independent and scientifically efficient administrative regime, but these views have not yet found much favor either in the House of Commons or in the country at large.

The political advantages of converting the governor-general into a constitutional referee become somewhat clearer when we remember that the Canadian constitution, like the English, is essentially a political, not a legal constitution, based upon the principle of the concentration of power and responsibility. There is no theory of separation of powers, no elaborate system of checks and balances, no specific guarantee of individual rights and property, such as are to be found in the American constitution, nor does the Canadian judiciary serve as the general guardian of the constitution against legislative encroachments upon the so-called natural and inalienable rights of the citizen. For the protection
of their civil and political rights the Canadian public are forced to rely upon the honesty of the government, the independence and good faith of parliament and the publicity of its proceedings and above all, upon their own lively and intelligent interest in the affairs of state. Thus far, it must be admitted this high democratic faith in the justice and competence of both officers and people has been splendidly vindicated in the political history of the country, but there are certain tendencies, as we have seen, which point towards the growing danger of the abuse of political power by the cabinet.

But if the Australian experiment is to be followed, it will probably be found advisable to effect a change not only in the mode of appointing the governor-general and lieutenant governors but also in the type and character of the men to be selected for this important function. The holder of this high office should possess something more than social rank and prestige or the qualifications of a successful politician; he should be endowed with those qualities which are demanded of a speaker,—tact, a judicial temperament and a thorough knowledge of constitutional and parliamentary law and practice. It might be good policy indeed to reward successful speakers upon retirement with an appointment as representative of the Crown in the Dominion or one of the provinces. A suggestion has been made on several occasions that the governor-general and lieutenant governors should be recruited from the ranks of the higher judiciary. This method of selection would doubtless secure an excellent type of official but it would be open to the serious objection that the judiciary might thereby become involved in politics. The important matter in any case would be to select an outstanding man who commanded the respect and confidence of the country by reason of his unquestioned probity and fairmindedness.

There is a possibility, of course, that a strong minded governor might seek to glorify his office and to substitute his own will for that of his advisers. But this danger, it is believed, would be exceedingly small. Tradition and precedent alike have combined to fix the status of the governor and to assign to him the modest role that he can play. The governor's office has been considered a non-political position by long established custom. The acceptance of the appointment carries with it the necessary implication that the appointee has retired from politics. Constitutional precedents, moreover, have fairly clearly established the extremely narrow
limits of his discretionary authority. To exceed these limits would involve the risk of loss of office if not of impeachment proceedings. Still less can the governor-general escape from the control of his ministers or free himself from the strict application of the principle of responsible government. Even in the extreme case in which he might refuse to follow the advice of his cabinet he must find other ministers who are prepared to assume full retroactive responsibility for his independent action. The original decision may have been the act of the governor alone but the sole and exclusive responsibility is that of the succeeding and ratifying government.

The recent embroglio at Ottawa affords an excellent illustration of the practical workings of this principle. Lord Byng undoubtedly used his own judgment in refusing to grant a dissolution to Mr. King. But on accepting office, Mr. Meighen was constitutionally obliged to accept full responsibility for the governor-general's action in refusing a dissolution. The correctness of this principle is clearly established by many precedents, both English and colonial. Some of the more belligerent Liberal politicians were inclined at first to attack the governor-general personally but they were soon made to realize that these criticisms were not only politically inexpedient but were likewise constitutionally unsound and exceedingly dangerous in principle. Henceforth the fulminations of the opposition were directed against the Meighen government only.

The discussion thus far has been concerned only with the general principles which should be applied to this particular Canadian situation where cabinet and Commons were more or less at odds. The constitutional position of the governor, it is submitted, would be distinctly different if the cabinet were supported by a good working majority in the House of Commons. In this latter case the governor would be entitled to expostulate with the cabinet if he disapproved of their policy, and in exceptional cases to use his good offices to bring about a compromise or settlement between the government and opposition if matters should reach an impasse in parliament. But he would not be justified in dissolving the House in the face of both cabinet and parliament. In short, he could play the role of a mediator but not of a judge. The refusal to accept the advise of his ministers in such circumstances would be equivalent to a challenge of the authority of parliament itself, which the legislature would most strongly resent.
On almost all the occasions in which governors have attempted to override the House the results have turned out to be disastrous for the reputation and prestige of the governors concerned.

We must now turn to the consideration of the third question at issue, namely, the constitutionality of the mode in which Mr. Meighen organized his temporary ministry and attempted to put through the necessary supplies. The regular procedure to be followed by an incoming ministry in such circumstances has been clearly established by long parliamentary usage. The new premier on accepting the responsibility of forming a ministry should have asked for the adjournment of the House in order to constitute his government and to secure the return or re-election of his newly appointed ministers. Upon their election, the House should have proceeded with the cooperation or acquiescence of the opposition to grant the necessary supplies and to wind up the legislative business of the session. But Mr. Meighen, for some unexplained reason, chose to resort to a series of devious expedients to hold on to office until the close of the session. Upon his accession to the premiership, which automatically vacated his own seat in the House, he proceeded to set up a makeshift ministry of seven members under the temporary leadership of Sir Henry Drayton, not one of the members of which had taken the oath of office upon assuming the duties of their respective departments although they had all been sworn in as members of the Privy Council. In order to avoid the necessity of holding by-elections in their constituencies, the ministers in question were appointed by order in council, acting ministers only, without portfolio. According to English parliamentary practice, a minister of the Crown, upon receiving his portfolio, is called upon to take a special oath of office in addition to his oath as a privy counsellor, but in Canada, according to the Hon. Hugh Guthrie, Acting Minister of Justice, the practice was different and for the past thirty-five years no such oath had been required of ministers without portfolio. As acting ministers only they did not receive any fee or salary for their services and consequently were not guilty of a breach of the independence of parliament. The correctness of this view found further support in the opinions which were expressed by the clerk of the privy council and the deputy minister of justice, upholding the legality of the procedure in this case.

But these contentions, it is submitted, fail to recognize the fundamental distinction which exists between the acts of a mere
de facto and a de jure government. There can be no question of the right of a duly constituted cabinet to appoint one of its members to take temporary charge of the affairs of a particular department during the absence or illness of the regular minister without thereby occasioning the resignation of the acting minister in question. This exception, like most other usages of the constitution, is based upon practical political convenience, since it enables the work of the department to be carried on with a minimum of interruption and at the same time without impairing the responsibility of the government for the conduct of the department. But the situation at Ottawa was entirely different. Here there was no duly constituted cabinet, no vacancy to be temporarily filled by a colleague, no legal responsibility for the administration of particular departments. The whole proceedings from beginning to end were a legal sham, a specious evasion of the statutory requirement that a minister must seek re-election, and a fraud upon the constitutional right of parliament to hold legally appointed ministers responsible for the conduct of their particular departments. In the words of Hon. N. W. Rowell:

"The course pursued of attempting to carry on a government without his ministers taking the oath of office or going back for re-election was entirely outside of, and foreign to, British constitutional practice, and in violation of the express statutory provision that members of the House accepting any portfolio thereby vacate their seats and must submit themselves for re-election. Individual cases of members of former administration being admitted as members of a cabinet without portfolio afford no excuse for seeking in defiance of the law to constitute a ministry in that way and to entrust that ministry with the administration of public affairs."

Since the government was not regularly constituted and its members were not duly sworn in as heads of their respective departments, it is difficult to see upon what constitutional ground the ministers either collectively or individually were entitled to ask supplies on behalf of the Crown. According to English constitutional law, a request for supplies can come only from the Crown through one of his Majesty's responsible ministers, in order to assure full legal responsibility for the voting and expenditure of public funds. But this sound rule of public policy would be defeated if a stop-gap ministry which was only intended to act until the government could be properly organized, were authorized to proceed with the passage of the budget. The House was well justified, therefore, on constitutional grounds, in refusing to recog-
nize the right of a body of temporary and unsworn ministers to
direct the business of the House and to ask for supplies for their
respective departments. "If Mr. Meighen," as Mr. Rowell well
says, "was not prepared to form a government according to law
and custom of our constitution, he should not have accepted the
task of forming a government."

If it be admitted that the cabinet was not regularly constituted
the question necessarily arises, was the governor-general justified
in granting Mr. Meighen's request for a dissolution upon the de-
feat of the ministry in the House? The attitude of the governor-
general, from the Liberal standpoint seems strangely inconsistent
if not partisan, in according to the Conservative ministry the right
of dissolution which had been refused to the Liberal leader a few
days earlier under similar circumstances. This striking change
of policy looked all the more peculiar in view of the fact that the
Liberal government, which had been duly constituted, had retained
the support of the House for several months and was never
formally defeated, whereas the Conservative ministry was of
doubtful origin, had maintained itself in office for a few days
only and was overthrown on a direct vote of want of confidence.

This criticism appears plausible at first sight but on analysis
proves to be faulty. At the time of the defeat of the King minis-
try there was reason to hope and possibly believe that another
ministry could be formed which would secure the support of the
House for the time being, at least. The prospects looked promis-
ing at first as the Progressives agreed to cooperate with Mr.
Meighen in putting through the business of the session, but when
they turned against the government a few days later on the ques-
tion of parliamentary privilege it became manifest that no stable
administration could be formed in the existing parliamentary con-
fusion. What then could the governor-general do? It was use-
less to turn to parliament for assistance since parliament did not
know its own mind. His ministers had been defeated it was
true, but by the narrowest of majorities; nevertheless, they were
still the government of the day, the only active and qualified body
to whom he could turn at that moment for counsel and advice.
From his standpoint there was but one course to pursue, namely,
to accede to the advice of the ministry and dissolve parliament in
the hope that the country would give a clear-cut decision upon
the questions at issue.
From the standpoint of the Liberal and Progressive majority in parliament, however, the government was not constitutionally entitled to a dissolution. In their eyes the whole organization of the ministry was tainted with illegality and parliament had expressly declared that the ministry was not legally competent to direct the business of the House. This was not an ordinary case of parliament expressing its disapproval of the policy of a recognized government. The question now raised was much more vital. It concerned the legitimacy, not the conduct of the government. The whole legal status of the government was at stake. In the judgment of parliament the Premier was the only member of the cabinet who was duly appointed. All the other ministers were mere interlopers who were exercising their functions in violation of the law of the land and of parliamentary privileges. Since the ministry was improperly established it necessarily followed that all its acts were invalid and it was not legally empowered to advise the governor-general in matters of state. The ministers, in short, were no more entitled to ask for the dissolution of the House than would have been any other seven members of the privy-council in no way connected with the government.

It is no easy matter to escape from the force of this reasoning. The ministry had shown little consideration for the formal requirements of the constitution or to the principle of parliamentary independence and parliament had struck back by challenging the legal status of the government itself. The legal rather than the political aspects of the controversy were now brought to the front. The political doctrine of ministerial responsibility had little application to the legal point at issue. The question was no longer one, should the governor-general follow the advice of his ministers but rather, had the governor-general a body of ministers with whom he could legally advise? Up to that time the constitutional position of the ministry had been doubtful but parliament had now placed upon it the brand of illegality, and from that moment, it is submitted, the ministry were no longer entitled to command the ear of the governor-general. They should at once have resigned to make way for a ministry whose legitimacy parliament was prepared to recognize. Upon the appointment and re-election of the new ministers the Premier would have been constitutionally entitled to ask for a dissolution, which would doubtless have been granted as a matter of course, in order to straighten out the parliamentary tangle. But whatever the final judgment may be as
to the legal status of the Meighen government there can be little
doubt but that its political tactics were not calculated to raise the
standard of parliamentary life. These clever devices had alto-
tgether too much the appearance of sharp practice, if not of inten-
tional violation of the spirit of the constitution. And it is very
evident from the election returns that the country at large did not
approve of such maneuvers.

The final phase of the constitutional controversy raged around
the cavalierly mode in which parliament was dissolved. Upon the
defeat of his ministry, Mr. Meighen asked the governor-general
for a dissolution, which was immediately granted, but unfortunate-
ly without complying with the customary formalities which accom-
pany the closing of the session. According to English constitu-
tional usage the King may dissolve parliament if the House is
then in session either by appearing in person or by royal commis-
sion. But the usual method is first to prorogue parliament and
then to issue a royal proclamation of dissolution. But Mr.
Meighen dispensed with all these constitutional observances. A
private messenger conveyed the information to the House that its
life was ended. Much more serious, however, from the standpoint
of the public interest, was the failure of the premier to secure the
assent of the governor-general to the various bills which had
passed both Houses and were awaiting his excellency's signature.
As a result of this hasty dissolution much of the business of the
session went by the board, to the serious inconvenience of the
public in some cases. The opposition were quite justified in the
circumstances, in arraigning the government both for its dis-
courtesy towards the House and for its flagrant departure from
parliamentary precedent.

Throughout the whole constitutional struggle it will be ob-
served both the Liberal and Conservative leaders showed little
consideration for the privileges of parliament and the House of
Commons was well within its rights in calling the respective gov-
ernments to account for their general attitude of disregard, if not
of disrespect, towards the representative of the people.

"Parliament," as Mr. Rowell well says, "was entitled to know
from Mr. Meighen, the composition of its real ministry, not his
so-called temporary ministry, to have the opportunity of voting
supplies to a real ministry to carry on the business of the country
and to have the work of the session saved by the governor-general
giving his assent to the bills passed and formally proroguing par-
liament just as it was entitled to pass upon the Customs Report
and the Stevens' amendment before it was dissolved."

To the Progressive party belongs most of the credit for de-
fending the rights of parliament. The members of the two old
parties were too deeply concerned in the struggle for office to stand
out against the policies of their respective leaders in defence of
the independence of the House. It was the Progressive group
which brought about the defeat of Mr. King on the Customs
scandal and of Mr. Meighen on the constitutional issue. On this
occasion, at least, it will be admitted the presence of a third party
in the House contributed greatly towards the furtherance of honest
government and the maintenance of the self-respect of parlia-
ment.

Although the constitutional issue loomed large in the parlia-
mentary debates at the close of the session, it assumed much more
modest proportions in the electoral campaign. In truth, the voters
were not greatly interested in the legal aspects of the controversy.
They knew that the constitution was not seriously in danger and
that both parties had been guilty of jockeying for a favorable
position; and they accordingly turned their attention to the dis-

cussion of the fiscal question, of local and sectional grievances
and of the personalities of the respective party leaders. The
Canadian public, it should be added, in marked contrast to the
American, has not been trained in the consideration of questions
of constitutionality. The practical working of responsible govern-
ment has tended to convert so-called constitutional issues into
questions of public policy to be decided upon grounds of political
morality or party expediency. The voters are prone to look back
of the legal phases of the struggle to inquire into the real eco-
nomic and social influences which have occasioned the legal prob-
lem. The factional character of the election returns clearly shows
the preponderance of racial and economic influences in the minds
of the electorate. There is little doubt, however, but that the
Liberal party will take advantage of its victory to demand not
only from the governor general but also from the British govern-
ment, a full recognition of the principle of ministerial responsibility
for all executive acts as a vindication of its claims to a status of
constitutional equality with the Mother Country in the British com-
monwealth of nations. It is significant that the premier's first
public declaration of policy contained an announcement that the
Honorable Vincent Massey would be appointed the first Canadian
diplomatic representative at Washington. The government was resolved to assert Canada's equal national status at the very outset.

Another important result of the election has been the restoration of the two-party system. The so-called Liberal-Progressive group has joined the Liberal party and its leader, Mr. Forke, has been admitted into the cabinet. Thanks to this combination, the government now commands an independent majority in the House over all other parties. Political stability has been re-established. For this result, at least, the whole country is profoundly thankful. The favorable outcome of the general election in this respect tends to confirm the belief of the Canadian public in the superior merit of their own form of government over that on this side of the line. The constitutional harmony of the executive and the legislature has been quickly restored, whereas the deadlock might have continued indefinitely under the American system. The demonstration of efficiency seems to be complete. It would be interesting to try to forecast the course of events if the election had been indecisive and had left the position of parties practically unchanged. It is possible, though highly improbable, in that case that the public might have been tempted to experiment with some modification of the presidential system or, as seems more likely, with an adaptation of the Swiss federal executive, as had been strongly advocated in the Australian national convention of 1891. But these speculations are futile in the circumstances. The elections clearly demonstrated that the Canadian people still cling to the two-party system and that that system in conjunction with the principle of responsible government affords to the democracy of the country a quick and effective means of ascertaining public opinion and of carrying that opinion into execution in both the legislative and administrative branches of the government. For the time being, at least, the country's political faith in the parliamentary system seems fully justified.