A MANUAL OF THE CONSTITUTIONAL HISTORY OF CANADA: FROM THE EARLIEST PERIOD TO 1901

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649223657

A manual of the constitutional history of Canada: from the earliest period to 1901 by $\,$ Sir J. G. Bourinot

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd. Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

SIR J. G. BOURINOT

A MANUAL OF THE CONSTITUTIONAL HISTORY OF CANADA: FROM THE EARLIEST PERIOD TO 1901



A MANUAL

OF THE

CONSTITUTIONAL HISTORY OF CANADA

FROM THE EARLIEST PERIOD TO 1901

INCLUDING THE BRITISH NORTH AMERICA ACT OF 1867, A DIGEST OF JUDICIAL DECISIONS ON IMPORTANT QUESTIONS OF LEGISLATIVE JURISDICTION, AND OBSERVATIONS ON THE WORKING OF PARLIAMENTARY GOVERNMENT

BY

SIR J. G. BOURINOT, K.C.M.G., LL.D., D.C.L.,

AUTHOR OF "PARLIAMENTARY PROCEDURE IN CANADA," "HOW CANADA IS GOVERNED," "CANADA UNDER BRITISH BULE," AND OTHER WORKS ON THE GOVERNMENT AND HISTORY OF THE DOMINION

NEW EDITION, REVISED AND ENLARGED

TORONTO
THE COPP, CLARK COMPANY, LIMITED

PREFATORY NOTE.

The present edition of this book, first published in 1888, has been thoroughly revised in order to make it as useful as possible to those students in our universities and colleges who are now required to consult it in their studies of our constitutional history. I have completed to date the summary of those judicial decisions which have so far laid down important principles for the interpretation of a constitution which has evoked much learned argument in our courts and legislatures. In the performance of this task I have not attempted to include any opinions or comments of my own, but have simply condensed the essential points of each decision in the language of the learned judges, as far as practicable, and left the student to seek further elucidation in the works of such conscientions commentators as Mr. Lefroy, I have also added a chapter on the practical operation of the principles of parliamentary government in the Dominion, for the information of those readers who have neither time nor opportunity to study the elaborate treatises of Todd, May, and Anson. The text of the British North America Act, and of the amending imperial statutes, is given in full at the end of the book. A complete list of the many authorities, cited in the text of this volume, will also be found useful to students who wish to investigate our constitutional history in the most thorough manner.

JNO. GEO. BOURINGT.

House of Commons, Ottawa. Dominion Day, 1901.

CONTENTS.

CHAPTER I.

A HISTORICAL REVIEW OF

PARLIAMENTARY INSTITUTIONS IN CANADA.

I. Canada under the French Régime, p. 1.—II. Government from 1760 to 1774, p. 5.—III. Quebec Act, 1774, p. 9.—IV. Constitutional Act, 1791, p. 13.—V. Union Act, 1840, p. 24.—VI. Federal Union of the Provinces, p. 37, British North America Act, 1867, p. 43.—VII. Constitution of the General Government, p. 47.—VIII. Constitution of Parliament, p. 57.—IX. Constitution of the Provincial Governments and Legislatures, p. 62.—X. Organization of the Northwest Territory, p. 73.—XI. Boundary Question, p. 77.—XII. Constitutional Provisions respecting Provinces, p. 79.

CHAPTER II.

A REVIEW OF QUESTIONS OF

LEGISLATIVE JURISDICTION.

I. Distribution of Legislative Powers, p. 80.—II. Decisions of the Privy Council of England, and of the Courts of Canada, on Questions of Legislative Jurisdiction: Controverted Elections, p. 85; Fire Insurance, p. 87; Temporalities Fund of the Presbyterian Church, p. 90; Sale, Manufacture, Prohibition and Regulation of Intoxicating Liquors, p. 92; Competency of a Provincial Legislature to License Brewers to Sell Liquors by the Wholesale, p. 92; Canada Temperance Act, p. 94; Liquor Traffic in the Provinces, p. 97; Prohibition of Sale of Liquors, p. 103; Fisheries, Harbours, and Navigable Waters, p. 109; Escheats, p. 115; Precious Metals Case, p. 118; Questions respecting Indian Lands, p. 119; Indian Claims Case, p. 122; Taxes on Incorporated Companies, p. 124; Education, p. 125; Powers and Privileges of the Governments and Legislatures of the Provinces, p. 127; Privileges of Provincial Legislatures, p. 130.—III. Rules of Construction and Constitutional Privileges laid down by Courts, p. 133.—IV. Disallowance of Provincial Acts, p. 142.—V. Position of the Judiciary, p. 149.

CHAPTER III.

GENERAL OBSERVATIONS ON THE PRACTICAL OPERATION OF PARLIAMENTARY GOVERNMENT IN CANADA.

I. Prefatory, p. 154.—II. Constitutional Relations between Great Britain and Canada, p. 155.—III. The Written and Unwritten Law of the Constitution, p. 159.—IV. Constitution of the Executive Government of the Dominion, p. 162.—V. Formation of a Ministry, p. 165.—VI. Responsibility of Ministers for Administration and Legislation, p. 171.—VII. Orders-in-Council, p. 181.—VIII. Procedure on Resignation of Ministers, p. 183.—IX. The Law and Usage of Parliament, p. 186. Conclusion, p. 188.

APPENDIX.

A.	British North America Act, 1867	191
В.	An Act Respecting the establishment of Provinces in the Dominion of Canada (34-35 Vict., c. 28)	231
C.	An Act to remove certain doubts with respect to the powers of the Parliament of Canada under section 18 of the B. N. A. Act, 1867 (38-39 Vict., c. 38)	232
D.	An Act respecting the representation in the Parliament of Canada of Territories which, for the time being, form part of the Dominion of Canada, but are not included in any Province (49-50 Vict., c. 35)	

LIST OF PRINCIPAL AUTHORITIES CITED IN THIS WORK.

Anson.—Law and Custom of the Constitution, 3d ed., by Sir W. R. Anson, 1897.

Bellefeuille, de. - Le Code Civil du Bas-Canada, 1889.

Blackmore.—Decisions of Speakers Denison, Brand and Peel, by Mr. Blackmore, of the South Australian Legislature, 7 vols., 1881-1895.

Blackstone.--Commentaries on the Laws of England, by Sir W. Blackstone.

Bourinot. Federal Government in Canada, Johns Hopkins University Studies, 1889; Canadian Studies in Comparative Politics, Trans. of Roy. Soc. of Can., 1890; Local Government in Canada, Ib., 1886; Canada under British Rule, 1900; How Canada is Governed, 1895.

Bourke.-Decisions of Mr. Speaker Lefevre, by Mr. Bourke, 1857.

Bramwell—Proceedings on Bills in the House of Commons, by G. Bramwell, 1833.

Campbell.—History of Prince Edward Island, by D. Campbell.

Canadian Archives, by D. Brymner, 1884-1900.

Can. Hans,—Canadian Hansard, Commons, 1875-1901.

Can. Law J.—Canada Law Journal.

Can, L. T.-Canadian Law Times.

Can. Com. J.—Journals of the House of Commons of Canada, 1867-1901.

Can. Sp. D. Decisions of Canadian Speakers, 1841-1900.

Can. Sess. P.—Canadian Sessional Papers, 1841-1900.

Can. Sup. Court R. -- Reports of the Supreme Court of Canada.

Cartwright,—Cases decided on the B. N. A. Act, collected by Mr. Cartwright, deputy attorney-general of Outario, 5 vols., 1882-1896.

Cassels.—Practice of the Supreme Court of Canada, by Robert Cassels, 1888.
Cav. Deb.—Debates, 1768-1770, by Sir H. Cavendish. Debates on the Quebec Act, published in 1839.

Christie,-History of Lower Canada, by R. Christie, 6 vols.

Colchester. - Diary and Correspondence of Lord Colchester.

Col. Off. List.-Colonial Office List, published yearly.

Conf. Deb.—Confederation Debates, 1865.

Coke. - Institutes of the Laws of England, by Sir E. Coke.

Cons. Stat.—Consolidated Statutes of Canada, Upper Canada and Lower Canada, 1859 and 1861; of New Brunswick, 1877.

Cooley.—A Treatise on the Constitutional Limitations which rest upon the Legislative Power of the States of the American Union, by T. M. Cooley, 6th ed., 1890.

Cox .- The Institutions of the English Government, by Homersham Cox.

Creasy.-Imperial and Colonial Constitutions, by Sir E. Creasy.

Cushing.—Law and Practice of Legislative Assemblies, by L. S. Cushing, 1856.

DeLolme.—The Constitution of England.

Dent.-Forty Years since the Union of 1841, by J. C. Dent, 2 vols.

D'Ewes.—Journals of Parliaments of Elizabeth, by Sir S. D'Ewes, 1682.

Dicey.—The Law of the Constitution, by A. V. Dicey, 3d ed., 1889.

Doutre.—Constitution of Canada, by Joseph Doutre, 1880.

Doutre et Larcau.—Histoire du droit Canadien, by Doutre et Larcau.

Dwarris. - Dwarris on Statutes, 1848.

E. Com. J.—Journals of the English House of Commons.

Edits, Ordonnances Royaux et Déclarations concernant le Canada, 3 vols., 1854-56, Quebec.

E. Hans,—Hansard's Parliamentary Debates, 3 series; vols. 1 to 21, of the first series, were published as Cobbett's.

English Law Reports.—Douglass; Knapp; Perry and Knapp; Meeson and Welsby; Carrington and Kirwan; Appeal Cases, Judicial Committee of Privy Council (App. Cas.); Lord Kenyon (Lord Ken.); Strange; Taunton (Taunt.); Chitty; Law Journals (L. J.); Wilson (Wils.); Russell and Mylne (R. and M.); Espinasse (Esp.); East.

English Standing Orders, &c. (Eng. S. O.)—1. Of the House of Lords and Commons relative to Private Bills, 1882. 2. Of the House of Lords except as to Local and Personal Bills, 1889. 3. Of the House of Commons relating to Public Business, 1707-1888. 4. Rules, Orders and Forms of Procedure, 9th ed., 1891, edited and enlarged by Sir R. F. D. Palgrave, Clerk of the House of Commons.

Federalist.—A Commentary on the Constitution of the United States, by Hamilton, Jay and Madison,

Garneau.—Histoire du Canada, by F. X. Garneau, new French ed. in 4 vols., 1882, and Bell's Translation, 2 vols.

Gemmill on Divorce.—The Practice of the Parliament of Canada upon Bills of Divorce, etc., by J. A. Gemmill, 1889.

Gray.—Confederation of Canada, by Hon. J. H. Gray.

Grey.—Colonial Policy of Lord John Russell's administration, by Earl Grey, 2 vols., 1853.

Grey, -Grey's Debates after the Restoration, 19 vols.

Hale on P.—Institution, Power and Jurisdiction of Parliament, by Lord Chief Justice Hale.

Hallam.—Constitutional History of England, by Henry Hallam; 3 vols., new English edition, 1881.

Hatsell.—Precedents of Proceedings in the House of Commons, by John Hatsell, 4 vols., 1818.

Hearn. - Government of England, by W. E. Hearn, 2nd ed., 1887.

Hodgins.—Reports of Ministers of Justice and Orders-in-Council on the subject of Provincial Legislation, 1867-87, 2 vols., by W. E. Hodgins.

Houston.—Constitutional Documents of Canada, by W. Houston, 1891.

Howe.—Letters and speeches of the Hon. Joseph Howe, by W. Annand.

Howells, St. Tr.-State trials, by T. B. and T. J. Howells.