Veto Power.—Under section 56, it is provided that Acts of the Dominion Parliament, after receiving the assent of the Governor General, may within two years be disallowed by the Sovereign in Council. Similarly Acts of the provincial Legislature, after receiving the assent of the Lieutenant-Governor, may be disallowed within one year by the Governor General in Council.

This veto power on Dominion legislation has practically never been exercised by the Sovereign in Council.[1] In the case of controversies between the Dominion and the provinces, while the veto power has been exercised in the past, the present tendency is to let the matter be decided by the courts rather than disallow by an executive act legislation duly passed by the provincial legislatures. The argument is that if such legislation is annulled as *ultra vires* of the provincial legislature, then the Dominion Government, an executive body, has made itself the judge in its own case, which could be more properly decided by the courts; if legislation, admittedly *intra vires* of the provincial legislature, is annulled, on the ground of its immorality or unwisdom, then the annulling power has set itself up as an authority on morality and wisdom. The Dominion Minister of Justice, in 1909, on the question of disallowing the Ontario legislation with respect to the Hydro-Electric Power Commission, stated the case as follows:—

> "In the opinion of the undersigned, a suggestion of the abuse of power, even so as to amount to practical confiscation of property, or that the exercise of a power has been unwise or indiscreet, should appeal to your Excellency's government with no more effect than it does to the ordinary tribunals, and the remedy in such case is an appeal to those by whom the legislature is elected."

III.—EVOLUTION OF THE NATIONAL CONSTITUTION SINCE CONFEDERATION.[2]

Since no attempt was made in the British North America Act to define the relations between the British and the Canadian Governments, those relations have necessarily passed and are still passing through a stage of gradual development in which they are influenced to a remarkable extent by custom and convention and the creation of "new conventions of the Constitution." From the very commencement of our history as a nation there has been a gradual development of the powers of the Canadian Government, accompanied by a more liberal attitude on the part of British statesmen, largely due to the more advanced ideas of government which have permeated the administration of the mother country itself. In 1876, for example, the then Colonial Secretary proposed to issue permanent instructions to the Governor General providing that the latter should preside at meetings of the Council (a right which in the case of the Sovereign had long fallen into desuetude); that he might dissent from the opinion of the major part of the whole; and that in the exercise of the pardoning power in capital cases, he was to receive the advice of ministers, but to extend or withhold pardon or reprieve according to his own judgment (one of the last prerogatives to disappear in the case of the Sovereign).

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[1] This right has only been exercised in one rather technical case. In 1873 an Act of the Dominion Parliament empowered any committee of the Senate or House of Commons to examine witnesses upon oath when so authorized by resolution. "There was a confusion of opinion as to the competency of Parliament to enact it. The law officers of the United Kingdom eventually advised that the Act was *ultra vires*, and it was accordingly disallowed for that reason and not upon considerations of policy."—Borden, Canadian Constitutional Studies, p. 65.

[2] In this part of the article, considerable use has been made of Sir Robert Borden's recently published volume, "Canadian Constitutional Studies."