

Section 1.—The Evolution of the Constitution of Canada Down to Confederation*

Subsection 1.—Constitutional Development of the Colonies Prior to Confederation

The French Régime.—The settlement of Canada commenced at a time when the extension of European trade and commerce throughout the world was being mainly carried on by chartered companies of merchants belonging to various nations, more particularly England, France and Holland. These companies each tried to monopolize the trade of the regions in which they established themselves, receiving from their sovereign charters which, theoretically at least, gave them monopolies so far as their compatriots were concerned, while against foreign competition they maintained their position with the sword, even when their respective mother countries, thousands of miles and months of time distant, were at peace. Among such companies of this period were the English and Dutch East India Companies, the Guinea Company, the Russia Company, the Virginia Company, and a little later, the Hudson's Bay Company. Similarly, in the earliest stage of French enterprise in Canada, several short-lived companies successively possessed a monopoly of trade and employed such men as Champlain as governors and explorers of the opportunities of the new territories. The charters of these companies were, however, cancelled for violation of their terms, and at last in 1627, the monopoly of trade and the right to make grants of land was conferred upon the Company of One Hundred Associates, in consideration of its undertaking to settle the country and support missionaries to Christianize the Indians. Governmentally, therefore, the first stage in Canadian history may be said to have been the autocratic government of a trading company. This company, however, failed to live up to its agreement and its charter was cancelled in 1663, when Canada became a royal province, governed like an ordinary French province of those days, by a Governor to whom, as personal representative of the King, were entrusted the general policy of the country, the direction of its military affairs and its relations with the Indian tribes. The Bishop, as the head of the Church, was supreme in matters affecting religion, and the Intendant, acting under the authority of the King, not of the Governor, was responsible for the administration of justice, for finance and for the direction of local administration. A Superior Council also existed, with certain administrative powers which were more formal than real. This system continued until the end of the French régime.

The British Colony.—From the capitulation of Quebec on Sept. 18, 1759, and of Montreal on Sept. 8, 1760, to the signature of the Treaty of Paris on Feb. 10, 1763, Canada was ruled by British military officers who instituted courts which applied French law, and administered the country as an occupied territory, the final disposition of which was as yet unsettled.

Upon the final surrender of the country by France under the Treaty of Paris, a Royal Proclamation of Oct. 7, 1763, defined the frontiers of the new Province of Quebec, and provided that, as soon as circumstances would admit, General Assemblies should be summoned, with power to enact laws for the public welfare and good government of the colony. In the meantime, Courts were constituted for

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