

APPENDIX OF PREROGATIVE INSTRUMENTS

CANADA

THE instruments issued under the prerogative for the Government of Canada comprise (1) Letters Patent under the Great Seal constituting the office of Governor-General, (2) Royal Instructions under the Sign Manual and Signet to the Governor-General, and (3) the Commission to the Governor-General. The two former instruments are permanent, the last is issued anew with each change of Governor, but is not otherwise varied in form. The permanent letters patent and instructions were first issued in 1878, and represent the result of Mr. Blake's criticisms ;¹ they were revised in 1905, and show traces of the influence of the similar instruments for the Commonwealth.²

I

LETTERS PATENT passed under the Great Seal of the United Kingdom, constituting the Office of Governor-General and Commander-in-Chief of the Dominion of Canada.

Letters Patent, Dated 15th June 1905.

Edward the Seventh, by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India ; To all to whom these Presents shall come, Greeting :

Whereas by certain Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland bearing date at Westminster the Fifth day of October 1878, Her late Majesty Queen Victoria did constitute, order, and declare that there should be a Governor-General in and over Our Dominion of Canada, and that the person filling the said office of Governor-General should be from time to time appointed by Commission under the Royal Sign Manual and Signet :

¹ See above, pp. 158 seq.

² Clause V of the Instructions does not give the Governor-General power to pardon for an offence committed outside but triable in Canada. This power was given in the old Instructions, but, it seems, too close adherence to the Commonwealth model has resulted in its omission. See pp. 1415, 1416.

And whereas it is Our Will and pleasure to revoke the said Letters Patent, and to substitute other provisions in place thereof :

Now therefore We do by these presents revoke and determine the said recited Letters Patent, and everything therein contained, but without prejudice to anything lawfully done thereunder : And We do declare Our Will and pleasure as follows :

I. We do hereby constitute, order, and declare that there shall be a Governor-General and Commander-in-Chief¹ in and over Our Dominion of Canada (hereinafter called Our said Dominion), and appointments to the said office shall be made by Commission under Our Sign Manual and Signet.

And We do hereby authorize and command Our said Governor-General and Commander-in-Chief (hereinafter called Our said Governor-General) to do and execute, in due manner, all things that shall belong to his said office, and to the trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of *The British North America Act, 1867*, and of these present Letters Patent and of such Commission as may be issued to him under Our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him, under Our Sign Manual and Signet, or by Our Order in Our Privy Council, or by Us through one of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in Our said Dominion.

II. And We do hereby authorize and empower Our said Governor-General to keep and use the Great Seal of Our said Dominion for sealing all things whatsoever that shall pass the said Great Seal.

III. And We do further authorize and empower Our said Governor-General to constitute and appoint, in Our name and on Our behalf, all such Judges, Commissioners, Justices of the Peace, and other necessary Officers and Ministers of Our said Dominion, as may be lawfully constituted or appointed by Us.²

IV. And We do further authorize and empower Our said Governor-General, so far as We lawfully may, upon sufficient cause to him appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any office within Our said Dominion, under or by virtue of any Commission or Warrant granted, or which may be granted, by Us in Our name or under Our authority.

V. And We do further authorize and empower Our said Governor-General to exercise all powers lawfully belonging to Us in respect of the summoning, proroguing, or dissolving the Parliament of Our said Dominion.³

Title first given in these letters patent.

² This is to be understood as referring to federal officers (above, p. 700), and *de facto* the appointments are normally made under a statutory power. But this clause sanctions the use of the royal name, and so as to Clause IV.

³ The powers of summons of Senators is given to the Governor by 30 Vict. c. 3, s. 24, of summoning and dissolving the House of Commons by ss. 38 and 50 ; even without the clause he would have enjoyed the right to prorogue *ex necessitate*. Clauses III-V really are covered by the last words of Clause I.

VI. And whereas by *The British North America Act*, 1867,¹ it is amongst other things enacted, that it shall be lawful for Us, if We think fit, to authorize the Governor-General of Our Dominion of Canada to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion, and in that capacity to exercise, during the pleasure of Our said Governor-General, such of the powers, authorities, and functions of Our said Governor-General as he may deem it necessary or expedient to assign to such Deputy or Deputies, subject to any limitations or directions from time to time expressed or given by Us: Now we do hereby authorize and empower Our said Governor-General, subject to such limitations and directions as aforesaid, to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion of Canada, and in that capacity to exercise, during his pleasure, such of his powers, functions, and authorities, as he may deem it necessary or expedient to assign to him or them: Provided always, that the appointment of such a Deputy or Deputies shall not affect the exercise of any such power, authority, or function by Our said Governor-General in person.

VII. And We do hereby declare Our pleasure to be that, in the event of the death, incapacity, removal, or absence of Our said Governor-General out of Our said Dominion, all and every the powers and authorities herein granted to him shall, until Our further pleasure is signified therein, be vested in such person as may be appointed by Us under Our Sign Manual and Signet to be Our Lieutenant-Governor of Our said Dominion;² or if there shall be no such Lieutenant-Governor in Our said Dominion, then in such person or persons as may be appointed by Us under Our Sign Manual and Signet to administer the Government of the same; and in case there shall be no person or persons within Our said Dominion so appointed by Us, then in Our Chief Justice for the time being of the Supreme Court of Our said Dominion, or, in case of the death, incapacity, removal, or absence out of Our said Dominion of Our said Chief Justice for the time being, then in the Senior Judge for the time being of Our said Supreme Court then residing in Our said Dominion and not being under incapacity.

Provided always, that the said Senior Judge shall act in the administration of the Government only if and when Our said Chief Justice shall not be present within Our said Dominion and capable of administering the Government.

Provided further that no such powers or authorities shall vest in such Lieutenant-Governor, or such other person or persons, until he or they shall have taken the Oaths appointed to be taken by the Governor-General of Our said Dominion, and in the manner provided by the Instructions accompanying these Our Letters Patent.

¹ s. 14. See e. g. *Canada Gazette*, xlv. 1459.

² It is not usual to appoint a Lieutenant-Governor for Canada, the Commonwealth, the Union, New Zealand, and Newfoundland.

VIII. And We do hereby require and command all Our Officers and Ministers, Civil and Military, and all other the inhabitants of Our said Dominion, to be obedient, aiding, and assisting unto Our said Governor-General, or, in the event of his death, incapacity, or absence, to such person or persons as may, from time to time, under the provisions of these Our Letters Patent, administer the Government of Our said Dominion.

IX. And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us or them shall seem meet.

X. And We do further direct and enjoin that these Our Letters Patent shall be read and proclaimed at such place or places as Our said Governor-General shall think fit within Our said Dominion of Canada.

In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster, the Fifteenth day of June, in the Fifth Year of Our Reign.

By Warrant under the King's Sign Manual.

MUIR MACKENZIE.

II

INSTRUCTIONS passed under the Royal Sign Manual and Signet to the Governor-General and Commander-in-Chief of the Dominion of Canada.

Dated 15th June 1905.

EDWARD R. & I.

INSTRUCTIONS to Our Governor-General and Commander-in-Chief in and over Our Dominion of Canada, or, in his absence, to Our Lieutenant-Governor or other Officer for the time being administering the Government of Our said Dominion.

Given at Our Court at Saint James's, this Fifteenth day of June, 1905, in the Fifth year of Our Reign.

WHEREAS by certain Letters Patent bearing even date herewith We have constituted, ordered, and declared that there shall be a Governor-General and Commander-in-Chief (hereinafter called Our said Governor-General) in and over Our Dominion of Canada (hereinafter called Our said Dominion), And We have thereby authorized and commanded Our said Governor-General to do and execute in due manner all things that shall belong to his said office, and to the trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of the said Letters Patent and of such Commission as may be issued to him under Our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him, under Our Sign Manual and Signet, or by Our Order in Our Privy Council, or by Us through One of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in Our said Dominion: Now, therefore, We do, by

these Our Instructions under Our Sign Manual and Signet, declare Our pleasure to be as follows :—

I. Our said Governor-General for the time being shall, with all due solemnity, cause Our Commission, under Our Sign Manual and Signet, appointing Our said Governor-General for the time being, to be read and published in the presence of the Chief Justice for the time being, or other Judge of the Supreme Court of Our said Dominion, and of the members of the Privy Council in Our said Dominion.

Our said Governor-General, and every other Officer appointed to administer the Government of Our said Dominion, shall take the Oath of Allegiance in the form provided by an Act passed in the Session holden in the thirty-first and thirty-second years of the Reign of Her late Majesty Queen Victoria intituled 'An Act to Amend the Law relating to Promissory Oaths';¹ and likewise he or they shall take the usual Oath for the due execution of the Office of Our Governor-General and Commander-in-Chief in and over Our said Dominion, and for the due and impartial administration of justice; which Oaths the said Chief Justice for the time being of Our said Dominion, or, in his absence, or in the event of his being otherwise incapacitated, any Judge of the Supreme Court of Our said Dominion shall, and he is hereby required to tender and administer unto him or them.

II. And We do authorize and require Our said Governor-General from time to time, by himself or by any other person to be authorized by him in that behalf, to administer to all and to every persons or person, as he shall think fit, who shall hold any office or place of trust or profit in Our said Dominion, the said Oath of Allegiance, together with such other Oath or Oaths as may from time to time be prescribed by any Laws or Statutes in that behalf made and provided.

III. And We do require Our said Governor-General to communicate forthwith to the Privy Council for Our said Dominion these Our Instructions, and likewise all such others, from time to time, as he shall find convenient for Our service to be imparted to them.

IV. Our said Governor-General is to take care that all Laws assented to by him in Our name, or reserved for the signification of Our pleasure thereon, shall, when transmitted by him, be fairly abstracted in the margins, and be accompanied, in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such Laws; and he shall also transmit fair copies of the Journals and Minutes of the proceedings of the Parliament of Our said Dominion, which he is to require from the clerks, or other proper officers in that behalf, of the said Parliament.²

V. And We do further authorize and empower Our said Governor-General, as he shall see occasion, in Our name and on Our behalf,

¹ 31 & 32 Vict. c. 72.

² It is rather curious that the Instructions to the Federations and the Union should contain a clause omitted in 1892 from the Australian Instructions to please Mr. Higinbotham; see above, p. 168; below, p. 1591, n. 1.

when any crime or offence against the Laws of Our said Dominion¹ has been committed for which the offender may be tried therein, to grant a pardon to any accomplice, in such crime or offence, who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one; and further, to grant to any offender convicted of any such crime or offence in any Court, or before any Judge, Justice, or Magistrate, within Our said Dominion, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our said Governor-General may seem fit, and to remit any fines, penalties, or forfeitures which may become due and payable to Us. Provided always, that Our said Governor-General shall not in any case, except where the offence has been of a political nature, make it a condition of any pardon or remission of sentence that the offender shall be banished from or shall absent himself from Our said Dominion. And we do hereby direct and enjoin that Our said Governor-General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of the Privy Council for Our said Dominion, and in other cases the advice of one, at least, of his Ministers; and in any case in which such pardon or reprieve might directly affect the interests of Our Empire, or of any country or place beyond the jurisdiction of the Government of Our said Dominion, Our said Governor-General shall, before deciding as to either pardon or reprieve, take those interests specially into his own personal consideration in conjunction with such advice as aforesaid.

VI. And whereas great prejudice may happen to Our service and to the security of Our said Dominion by the absence of Our said Governor-General, he shall not, upon any pretence whatever, quit Our said Dominion without having first obtained leave from Us for so doing under Our Sign Manual and Signet, or through one of Our Principal Secretaries of State.

E. R. & I.

III

COMMISSION passed under the Royal Sign Manual and Signet, appointing Field Marshal His Royal Highness the Duke of Connaught and (of) Strathearn, K.G., K.T., K.P., G.C.B., G.C.S.I., G.C.M.G., G.C.I.E., G.C.V.O., to be Governor-General and Commander-in-Chief of the Dominion of Canada.

Dated March 6, 1911.

¹ i. e. not offences against provincial laws, as he was empowered to do up to 1905. See p. 1561, n. 2, for the omission of reference to crimes triable in the Dominion though committed outside, an omission which occurs also in Union Instructions, clause ix. In the Union the Governor-General would seem to have no power to pardon offences against provincial as opposed to Union laws, for 'laws of the Union' can hardly be pressed to mean 'laws in force in this Union'. Cf. p. 1574, n. 1.

GEORGE R.I.

George the Fifth, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India: To Our most dear and entirely beloved Uncle and most faithful Counsellor Arthur William Patrick Albert, Duke of Connaught and Strathearn, Knight of Our Most Noble Order of the Garter, &c., Greeting.

WE do, by this Our Commission under Our Sign Manual and Signet, appoint you, the said Duke of Connaught and Strathearn to be, during Our pleasure, Our Governor-General and Commander-in-Chief in and over Our Dominion of Canada, with all the powers, rights, privileges, and advantages to the said Office belonging or appertaining.

II. And We do hereby authorize, empower, and command you to exercise and perform all and singular the powers and directions contained in certain Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date at Westminster the Fifteenth day of June 1905, constituting the said Office of Governor-General and Commander-in-Chief, or in any other Letters Patent adding to, amending, or substituted for the same, according to such Orders and Instructions as Our Governor-General and Commander-in-Chief for the time being hath already received, or as you may hereafter receive from Us.

III. And further We do hereby appoint that, so soon as you shall have taken the prescribed oaths and have entered upon the duties of your Office, this Our present Commission shall supersede the Commission under the Sign Manual and Signet of His late Majesty, King Edward the Seventh, bearing date the Sixteenth day of June, 1905, appointing Our Right Trusty and Right Well-beloved Cousin Albert Henry George, Earl Grey, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George (now a Member of Our Most Honourable Privy Council and also Knight Grand Cross of Our Royal Victorian Order), to be Governor-General and Commander-in-Chief in and over Our Dominion of Canada.

IV. And We do hereby command all and singular Our Officers, Ministers, and loving subjects in Our said Dominion, and all others whom it may concern, to take due notice hereof and to give their ready obedience accordingly.

Given at Our Court at Saint James's this Sixth day of March, 1911, in the First year of Our Reign.

By His Majesty's Command,

L. HARCOURT.