Besides these Councils could be summarily dismissed by the Crown. They had no property in their position merely naked trusts (Despatch of Duke of Newcastle to Governor of Prince Edward Island, February 4th, 1862).

There are Constitutions where the Legislative Council is elective and necessarily the number fixed and no swamping can take place In Tasmania the Council is elective. The number is eighteen. It has persistently claimed and exercised the right to amend money Bills. Keith (Responsible Government in the Dominions), p. 626, says, " that it is useless to contend that the practice of the House of Lords should govern in such a case ". He also on the last page of Vol. 1 of his works refers to the action of the Legislative Council of Quebec in throwing out a Supply Bill. He mentions the fact that it was a nominated House without the swamping power and seems by his mention of this to recognize that such a Council is different from those where such power exists.

The next matter of importance to note is that the British Constitution is unitary. The King and Lords and Commons have a jurisdiction one and undivided. Prior to the creation of the Dominion of Canada the Colonies within the scope of their constitutions were unitary. The Governor, Council and Assembly had the whole jurisdiction. The Crown can not create a Dominion and Canada received its constitution from the Imperial Parliament. The Dominion is the Colony and the Provinces are parts of this Colony. The Dominion appoints the Lieutenant Governors of the Provinces who communicate through the Governor General with the Imperial Government.

The Constitution of the Dominion of Canada was therefore new in the line of Colonial Constitutions. The legal effect of the words of the British North America Act will have to be settled (as Acts of Parliament are construed) by the plain meaning of the words used. That Act begins with a recital that the Provinces have expressed a desire to be federally united with a Constitution similar in principle to that of the United Kingdom and this it does by providing that the executive power and authority should continue and be vested in the Queen and that the legislative power should be in a Parliament consisting of the Queen and the two Houses. This is the main principle, but there are many details in working it out. One of these is the Constitution of the Senate of seventy-two members—never to exceed seventy-eight.

The Provinces first of all are divided into three districts, Ontario, Quebec and the Maritime Provinces, each to have twenty-four Senators and in the case of the Maritime Provinces twelve thereof were to " represent " Nova Scotia, and twelve New Brunswick. In the case of Quebec each of the twenty-four Senators is to " represent " one of the twenty-four Electoral Divisions. A Senator is required to be thirty years of age, to be worth four thousand dollars ($4,000.00) and to reside in the Province for which he is appointed, and in Quebec to either reside or hold his property qualification in the Electoral District for which he is appointed. The appointments to the Senate are for life.

There are five things that are new,—age, property, residence, life tenure and the fixed number. In the old Provincial Constitutions these are not found. In those above mentioned (1791) and (1840) a Councillor was required only to be a British subject twenty-one years of age.

The Statute shows a fundamental difference between the Senate and the House of Lords. The Senators are appointed to represent the Provinces. The Members of the House of Commons are elected for constituencies and are summoned under Section 38 of the Act to attend. This puts them on the footing of Members of the English House of Commons and they serve for all Canada. See Blackstone, Book 1, Chapter 2, p. 159, where he says that the Members of the English House of Commons are summoned and that they serve for the whole Kingdom.