The grant was until a comparatively late date by Letters Patent except in the case of Canada (1791) which was granted by Parliament as it contained provisions that the Crown could not grant by Letters Patent—(See Appendix I in Lord Grey's " The Colonial Government of Lord Russell"). They were all miniatures of the British Constitution.

There is no reasonable doubt that Legislative Councils which are miniatures of the House of Lords are constitutionally bound under penalty of being " swamped " to follow the practice of the House of Lords with regard to money Bills as of the date when the Provincial Constitution was granted. Whether such Councils would be bound to change their practice as the practice of the House of Lords changed has so far as we know never been agitated.

The Constitution of 1791 for the Provinces of Upper and Lower Canada provided for a Legislative Council of a named number for each province reserving to the Crown the right to name as many more as it saw fit. There was also provision for the creation of hereditary Councillors. Nothing was said about the relation of the Houses or money Bills. It is probable that Parliament assumed that the Council would follow the English Parliamentary practice and if it did not it could be " swamped ". The Council was an almost perfect miniature of the House of Lords.

The Constitution of 1840 when these two provinces were united was in the main the same. The Legislative Council was to consist of a certain-number (20) and power was reserved to add as many more as the Crown saw fit. The provisions in the Constitution of 1791 respecting hereditary Councillors was dropped. The Constitution of 1791 gave representative government. That of 1840 made responsible government possible. Section 57 provided that money Bills should originate in the Assembly but it was also provided that the Assembly should not originate a Bill unless recommended by the Governor.

There are several Constitutions in the Southern Hemisphere of practically the same structure. The Colonial Office said that those Councils should follow the practice of the House of Lords and not amend money Bills but might reject them. The Privy Council also decided against the Legislative Council of Queensland (which was a nominated Council with the " swamping " power) in its claim to amend money Bills.

In New South Wales the Council was to consist of at least twenty-one members but there was no legal limit to the total number. Marriot Second Chambers, p. 156, says,—" There have been various disputes chiefly on fiscal questions between the two Chambers and Parkes definitely asked for a recognition of the principle that Ministers might recommend to the Governor the creation of Councillors ". The Crown for the time refused but in 1889 Parkes was more successful in obtaining from Lord Carrington permission to add members to the Legislative Chamber at the convenience and discretion of the Executive. That principle closely akin to one which has long prevailed in the Mother country may now be regarded as securely enshrined among the constitutional conventions of the Colony ". At p. 163 he quotes from Wise's Commonwealth of Australia who, it seems, regarded a Government of two Chambers with an Upper House nominated by the Governor as the more workable one, as follows: " This plan gave the Second Chamber something of the influence and attributes of the House of Lords. It was constrained by its own traditions to yield before any manifestations of the popular will and could at any time be coerced by the appointment of new members." Todd Parliamentary Government in the Colonies, p. 821, gives the particulars of a case of " swamping " in New Zealand.

See also Keith Responsible Government in Dominions, p. 569.

It is quite clear that an Upper House in a Colony where the Executive has this " swamping power " is quite as helpless as the House of Lords in financial and in any measures that the Government of the day is determined to carry.