

## APPENDIX NUMBER 3.

**Opinions of Legal Gentlemen as to the powers of the Provincial and Diocesan Synods and of the House of Bishops.**

The following are the opinions of the legal Gentlemen to whom were referred questions as to the authority of the House of Bishops to control the independent action of Diocesan Synods, in regard to the "Rule" as to \$40,000 endowment as a condition of setting apart of new Dioceses and the election of Bishops thereto.

## 1. LEO H. DAVIDSON, ESQ., D.C.L., Q.C., MONTREAL.

In his reply, dated the 26th of March, 1896, Doctor Davidson said :

I know of no rule adopted by the Provincial Synod—that is, by both Upper and Lower Houses—fixing a sum of \$40,000 as requisite for the formation of a new Diocese.

If I mistake not, the Resolution, (*i.e.*, "Rule,") was one adopted by the House of Bishops alone, and, I think, not sitting as part of the Provincial Synod, but as an independent Body—namely, the House of Bishops. . . . .

I know that there has been a feeling in the Lower House against the provision requiring \$40,000; and the matter has come up on several occasions. . . . .

(In a subsequent Letter, dated the 31st of March, 1896, Doctor Davidson continued) :

I have always felt myself that the action of the House of Bishops in respect to the \$40,000 condition was *ultra vires*; and I very much question whether the Provincial Synod, itself could make such a provision, and so interfere with the free action of individual Dioceses. . . . .

L. H. DAVIDSON.

[The peculiar wording of Canon IX. of the Provincial Synod seemed to give the House of Bishops, either as the Upper House, or as a separate Body, certain powers, if, in the latter case, apart from the Provincial Synod itself. Having asked Doctor Davidson for his opinion in regard to this point, he gave the following explanation, in regard to it, in his Letter of the 31st of March :—]

Canon IX., on the sub-division of Dioceses\* (he said) was adopted by both Houses in 1871 and duly promulgated

\*This Canon is as follows: "The House of Bishops shall have the power of sub-dividing existing Dioceses, or of forming a new Diocese out of portions of existing Dioceses which may be contiguous, with the concurrence, or upon the application, of the Synod or Synods of the Dioceses affected; and it shall be the duty of such Synod or Synods to consider without delay any proposal for the sub-division of a diocese which may emanate from the House of Bishops." (1871).

*Note.*—Canon IX was sent down from the Upper to the Lower House, with eight other proposed Canons on the 14th of September, 1868. They were referred to the Committee on Canons.—(*Provincial Synod of 1868, pages 37, 41 and 79.*) In 1871 they were reported by that Committee, as amended, and passed.—(*Provincial Synod of 1871, pages 40, 42, 53-56, 57, 60-62, 64-66, 70-73.*)

I find, on turning to the Journal of the Provincial Synod for 1871, (page 71,) that when the Canon was under consideration, an amendment was moved that the words, "Provincial Synod," be substituted for, House of Bishops, in the first and last lines; but the amendment was lost.

It appears to me that, by the rejection of the amendment by the Lower House, it has authorized action by the House of Bishops, independently of the Provincial Synod for the sub-division of Dioceses, but subject to the terms of the Canon, and, as I read it, there is really no independent, separate power lodged in the House of Bishops as to sub-division, nor are they, by it, given any power of fixing the terms, or conditions, of sub-division.

If it were necessary to come to the Lower House, and have its concurrence in such a Canon at all, then it seems to me it necessarily follows that the House of