

bigger and more populous states." (Temperley, *Senates and Upper Chambers*, p. 15.) For the composition of Upper Chambers in the Colonies, see Temperley, p. 48. For the swamping of the Upper Chamber in the Colonies, see Temperley, p. 269, App. 6.

"The Federal state is the most complex and ingenious of modern political communities and its Upper Chamber usually exhibits one aspect of that ingenuity. One principle is, however, common in all such formations. The federation is based on a union of individuals, and of states, and that union is expressed in the constitution of the two Chambers. The lower one represents the rights and powers of the people—the total numerical majority. The Upper Chamber represents the rights and powers of the states in their separate and individual capacity. Population has always full representation in the Lower Chamber."

"In the unitary state the Upper Chamber only represents the rights of property or individuals or of the classes. In this respect then a Federal Senate always has an advantage which no Upper Chamber in a unitary state (as for example the House of Lords in England) can ever claim to possess, and it is this fact which lessens the possibilities of comparison and renders many apparent analogies totally misleading." (Temperley, p. 209.)

At page 224 Temperley says, "In theory the Senate of Canada possesses equal rights with those of the Lower House except that it can not originate money bills. It has, however, the full power either to amend or reject them."

Speaking of the Australian Senate, Marriott at page 168 says: "But like the American Senate, it accords to each state equal representation—a principle not asserted without strong and intelligible protests from the larger States. To the smaller States on the other hand, this principle was the condition precedent, the 'sheet anchor' of their rights and liberties. And, once asserted, it is fundamental and (except in unimaginable conditions) unalterable."

In a Return to an Address relating to the Constitution of Second Chambers, of the Honourable the House of Commons (Imperial), dated March 3, 1910, page 3, paragraph 2, the following appears:—

"2. It is provided by section 53 of the British North America Act that 'Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons.' There is no other provision limiting the power of the Senate with regard either to finance or to general legislation."

The South Australian Constitution contains a clause corresponding with our section 53 and Keith says of this at page 626 of volume 2:

"In financial matters, as the Constitution had carefully left the matter totally undetermined beyond providing for the origination of such Bills in the Lower House, it was only found possible to work at all by an informal agreement between the two Houses."

Keith in volume 1, page 567, says:

"In 1909 and 1910 minor questions had arisen in the case of New Zealand as to the position of the Council. In the former year the Council inserted an appropriation clause in a Reformatories Bill, which was validated *ex post facto* by a Governor's message being

obtained to cover it, and the Speaker decided that that procedure was adequate for the occasion. In 1910 the Upper House altered the Crimes Amendment Bill by inserting an appropriation clause, and there was rather a warm discussion, the Speaker ruling that either a Governor's message must be obtained and the House formally by resolve decide not to insist on its privileges, or the Bill must be laid aside. The former course was adopted after a lively debate."

Montreal, April 30, 1918.

The Honourable W. B. Ross,  
The Senate, Ottawa, Ont.

Dear Sir,—We have been asked if in our opinion the Senate has the power to amend Money Bills.

Sections 17 and 91 of the British North America Act place the Senate on exactly the same footing as the House of Commons as respects all legislation.

The only material derogation to this general rule is contained in section 53 which provides that Bills for appropriating any part of the public revenue or for imposing any tax or impost shall originate in the House of Commons.

The denial of the right to originate Money Bills does not involve the denial of the right to amend them. Nothing therefore in the text of the British North America Act takes away the latter right from the Senate.

The first paragraph of the preamble where it is stated that the provinces desire to be united federally with a constitution similar in principle to that of the United Kingdom is relied on.

These words being in the preamble have much less importance than if they were in the text. Further it is obvious that similarity in principle does not mean identity in detail; the Canadian constitution differs from the British constitution in many and important respects; the similarity in principle referred to in the preamble is intended to exist only to the extent stated in the text.

The third paragraph of the preamble states that it is expedient not only that the constitution of the Legislative authority in the Dominion be provided for but also that the nature of the Executive Government therein be declared, and the text of the Act contains many sections which merely restate rules of the British constitution such as section 53 already referred to.

If the above-mentioned words of the preamble meant that the British constitution applies to Canada except in so far as the text of the Act expressly derogates therefrom the third paragraph of the preamble and all those sections, particularly section 53, would be useless or meaningless.

The consideration of how the rule limiting the powers of the House of Lords in the United Kingdom came to be adopted affords an additional argument in support of the view suggested by the text of the British North America Act.

In the early days there was a conflict between the British House of Commons and the House of Lords on this question of the powers of the House of Lords in respect of Money Bills.