

## MEMORANDUM

## RE RIGHTS OF THE SENATE IN MATTERS OF FINANCIAL LEGISLATION

The Constitution and Powers and Practice of the House of Lords and the House of Commons are so well known that it is unnecessary to refer to them except so far as it is required to explain the Constitution and functions of the Canadian Senate. This enquiry will be limited to the powers of the Senate in respect of "Money Bills"—Bills appropriating any part of the revenue or imposing a tax.

The House of Lords has at present six hundred and odd members and all of these except about seventy owe their position to birth. The Crown has the prerogative to create an unlimited number of new Peerages. This is commonly known as the "Swamping power" and has often been described as the safety valve of the British Constitution. From recent legislation it is quite clear that the House of Commons supported by the Crown can impose any terms on the House of Lords. Till then that House had constitutionally co-ordinate powers with the House of Commons in "Money Bills" as in all Bills and had never formally abandoned them except as to originating money Bills. Todd, Vol. 1, p. 813, says,—Lord Derby in 1861 clearly showed that the Lords had never formally abandoned its rights to amend "Money Bills" and that in the opinion of eminent constitutional authorities they would be warranted in such an act should it be necessary to vindicate their freedom of deliberation and to prevent the enacting of a measure which they regarded as objectionable.

In 1661 the Commons asserted "that no Bill ought to begin in the Lords House which lays any charge or tax upon any of the Commons".

In 1671 the Commons affirmed that "in all aids given to the King by the Commons the rate or tax ought not to be altered by the Lords".

In 1678 the Commons Resolved "That all aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons and that all Bills for the granting of any such aids and supplies ought to begin with the Commons and that it is the undoubted and sole right of the Commons to direct, limit and appoint in such Bills the ends purposes consideration conditions limitations and qualifications of such grants which ought not to be changed or altered by the House of Lords".

The House of Lords protested but this was the practice thereafter. In 1861 the Commons asserted the right to include all financial proposals in the annual Supply Bill and thus not having the power to amend the Lords would have to pass the Bill or reject it as a whole. This was protested against by the Lords but was thereafter the practice. The power of the House of Lords over finance was practically gone from that day. This was the state of the practice concerning finance between the two Imperial Houses when the British North America Act was passed in 1867.

It will be noticed that these powers of the Commons and these disabilities of the Lords are not settled by a law but by practice and custom founded on Resolutions of the Commons backed up by threats to which the Lords yielded under protest. Mr. Asquith's Resolution (1910) "That it is expedient that the House of Lords be disabled by law from rejecting or amending a Money Bill, etc." is an admission of this fact.

Does the practice of the Imperial Parliament as settled in 1867 or as it was asserted to be before the Act just passed limiting the powers of the House of Lords govern the relations of the Senate and House of Commons on "Money Bills"?

Formerly there were many kinds of Colonial Constitutions granted by the Crown but they nearly all ultimately took the form of a Constitution consisting of the Crown a Council appointed by the Crown and an Elective Assembly.