

*In the
Supreme
Court of
Canada.*

No. 8.
Factum
of the
Attorney-
General of
Quebec—
continued.

By the Quebec Act, provision was made for the government by a Governor and a Legislative Council to consist of such persons resident there as His Majesty shall be pleased to appoint.

The Constitutional Act, 1791, dividing the Province of Quebec into the two separate Provinces of Upper and Lower-Canada, provided for a legislature in each Province composed of "a sufficient number of discreet and proper persons not fewer than seven to the Legislative Council for the Province of Upper-Canada and not fewer than fifteen to the Legislative Council for Lower-Canada."

By the Act of Union of 1840, 3 & 4 Vict. c. 35, the Provinces of Upper and Lower Canada were reunited and formed the Province of Canada with a legislature composed of the Legislative Council and Assembly of Canada. The Legislative Council to be composed of such persons being not fewer than twenty as Her Majesty shall think fit, such Legislative Councillors holding their seat for life, and the other provisions regarding them being largely similar to those concerning Senators under the British North America Act. 10

Very similar provisions were made for the Legislature of Nova Scotia from the date of its cession to Great Britain in 1713 and after the separation of a part of the Province into a separate Province to be called New-Brunswick, for such Province. 20

It is however to be observed that by section 88 of the British North America Act, 1867, it is provided that "The Constitution of the Legislature of each of the Provinces of Nova Scotia and New-Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act."

As in the case of England there is practically no trace of women having at any time either by express legislation or by custom or usage a right to vote.

How far the laws and customs of the former Provinces survived after Confederation in 1867 need not be enquired but it may well be that the Imperial Parliament in passing the British North America Act would have had some regard to the circumstances of the Provinces to be affected by the Act and have not introduced such a change into the supreme authority of government as would be involved in the admission of women to the franchise without express enactment. 30

It being scarcely questionable that it was a principle of the constitution at the time of Confederation that females had no share in the legislation of the country either directly or through persons representing them, legislation was considered necessary in order to enable women to sit in the House of Commons of Canada. 40

The Dominion Elections Act, 10-11 George V, c. 46, "An Act respecting the election of Members of the House of Commons and the Electoral Franchise."