

chosen is election, not appointment; and, in no case, has the Provincial Synod restricted the power to elect. Even a Missionary Bishop is elected by the Provincial Synod for part of any existing Diocese only when that Diocese voluntarily takes advantage of, and submits to, Canon XI.

(2) If it be assumed that the Provincial Synod has any such power, it is very doubtful whether it can delegate it to the House of Bishops in the sense of conferring legislative powers on it. It is not unusual to delegate authority to perform a Ministerial Act, such as carrying out the division of a Diocese, as explained above. But that it is a very different thing from giving the right to pass resolutions having the force of Synod law. The Provincial Synod Canons have force only from the concurrent action of both Houses, and the words "House of Bishops" and the "Upper House" are apparently used in them as convertible terms, the only distinction being that where the House of Bishops is given power to act between, or during, the meetings of Synod in any matter which is, by the Canons left to them alone, they are called a House of Bishops. In those cases, they act as the delegate of the Provincial Synod.

Under Canons IV., VIII. and XI., they have power to perform Ministerial Acts—in the first case to appoint a Board of Preliminary Enquiry, and to form a Court for the Trial, which, however, derives its judicial power from the Canon. In the second case, they have power to accept an Episcopal resignation; and, in the third case, to be satisfied that adequate provision has been made for the support of a Missionary Bishop.

There is no instance in the Canons of any independent legislative power being conferred on the House of Bishops. Reading Canon IX. reasonably, I think it may fairly be classed as similar in intent to Canons IV., VIII. and XI., and as authorizing only Ministerial action; and reading it strictly, as I think it ought to be read, the result is the same. The Resolution, (or "Rule," relating to the \$40,000 condition) in question is undoubtedly legislation, in the sense that it makes the performance of the delegated action contingent on the opinion of the individual Bishops; I think, therefore, that it is *ultra vires*.

(3) If the Provincial Synod can delegate, then has Canon IX. conferred the power to pass the Resolution, (or "Rule"), in question? Its wording does not expressly give the right to refuse to divide a Diocese, but, on the contrary, its scope seems to contemplate and encourage sub-divisions. A power to divide, can, I think, give no authority to pass a Resolution, (or "Rule"), virtually prohibiting division. Powers such as those found in Canon IX. are intended to be exercised, and good faith requires that what cannot be done directly—(prohibition not having been expressly given), cannot be done indirectly. The results that I have arrived at are these:—

"(1) That Canon IX. contemplates action, which if not called into operation, does not affect the powers of individual Dioceses;

"(2) That the Provincial Synod cannot supervise, or veto, the acts of these Dioceses;

"(3) That it can delegate the function of dividing a Diocese, subject to the terms of the Canon, and;

"(4) That such delegation does not involve the right to legislate on the subject, or indirectly to prevent the operation of the Canon."

Toronto, April 6th, 1896.

FRANK E. HODGINS."