In the Supreme Court of Canada.

No. 7. Factum of the Attorney-General of Canada—*continued.*

so qualified there should have been a further provision for their becoming British subjects by marriage.

7. The argument for the view that women are "qualified persons" within the meaning of said section 24, must, therefore, involve the proposition that this expression was intended to include female persons, and that where words importing the masculine gender elsewhere occur in the Act, including the word "Senator," they must be construed to include females, and as if Parliament had used the appropriate alternative words to designate persons of the feminine gender. In support of this contention, reliance will, no doubt, be placed on the provisions of Lord Brougham's Act, 1850 (Imp. Statutes, 13 Vict. c. 21), and of the Interpretation Act, 1889, (Imp. Statutes, 52–3 Vict. c. 63). The former Act, by its 4th section, provided :—

> "Be it enacted that in all Acts words importing the masculine gender shall be deemed and taken to include females. . . . . .unless the contrary as to gender. . . . . .is expressly provided."

The Interpretation Act, 1889, under the title "Re-enactment of Existing Rules," provided, by sec. 1, sub-s. 1, as follows :—

> "In this Act and in every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, [January 1, 1890] unless the contrary intention appears,—
>
> "(*a*) words importing the masculine gender shall include females."

From these provisions it seems to follow that, "unless the contrary intention appears" and not the more stringent "unless the contrary as to gender is expressly provided," is the test now to be applied to Acts passed by the Imperial Parliament since 1850, although until the 1st January, 1890, Lord Brougham's Act applied to those Acts. The Interpretation Act, in this respect, operates as a retrospective declaration of the effect of Lord Brougham's Act in regard to the matter dealt with in sec. 1 of the Interpretation Act. Section 41 of the latter Act repeals Lord Brougham's Act in its entirety.

On the strength of these enactments it may be contended that the provisions of the British North America Act, 1867, do not, expressly at all events, evince any intention obnoxious to the application to the provisions which deal with the constitution of the Senate of the gender glossary which those enactments prescribe, and that the various expressions used in those provisions in reference to a member of the Senate must, therefore, be construed to include females. Unfortunately for this contention there are a series of decisions, closely applicable, which strongly repel it. Before referring to these decisions, it will be convenient to consider what the position of women was under the law of England at the time the British North America Act, 1867, was passed, for this consideration must, it is submitted, strongly influence the decision of this case as it did the decision of the cases to be referred to. This inquiry appears to be required by the