

contend that the practice of the House of Lords should govern in such a case." He also on the last page of Vol. 1 of his works refers to the action of the Legislative Council of Quebec in throwing out a Supply Bill. He mentions the fact that it was a nominated House without the swamping power and seems by his mention of this to recognize that such a Council is different from those where such power exists.

The next matter of importance to note is that the British Constitution is unitary. The King and Lords and Commons have a jurisdiction one and undivided. Prior to the creation of the Dominion of Canada the Colonies within the scope of their constitutions were unitary. The Governor, Council and Assembly had the whole jurisdiction. The Crown can not create a Dominion and Canada received its constitution from the Imperial Parliament. The Dominion is the Colony and the Provinces are parts of this Colony. The Dominion appoints the Lieutenant Governors of the Provinces, who communicate through the Governor General with the Imperial Government.

The Constitution of the Dominion of Canada was therefore new in the line of Colonial Constitutions. The legal effect of the words of the British North America Act will have to be settled (as Acts of Parliament are construed) by the plain meaning of the words used. That Act begins with a recital that the Provinces have expressed a desire to be federally united with a Constitution similar in principle to that of the United Kingdom, and this it does by providing that the executive power and authority should continue and be vested in the Queen and that the legislative power should be in a Parliament consisting of the Queen and the two Houses. This is the main principle, but there are many details in working it out. One of these is the Constitution of the Senate of seventy-two members—never to exceed seventy-eight.

The Provinces first of all are divided into three districts, Ontario, Quebec and the Maritime Provinces, each to have twenty-four Senators and in the case of the Maritime Provinces twelve thereof were to "represent" Nova Scotia, and twelve New Brunswick. In the case of Quebec each of the twenty-four Senators is to "represent" one of the twenty-four Electoral Divisions. A Senator is required to be thirty years of age, to be worth four thousand dollars (\$4,000.00) and to reside in the Province for which he is appointed, and in Quebec to either reside or hold his property qualification in the Electoral District for which he is appointed. The appointments to the Senate are for life.

There are five things that are new,—age, property, residence, life tenure and the fixed number. In the old Provincial Constitutions these are not found. In those above mentioned (1791 and 1840) a Councillor was required only to be a British subject twenty-one years of age.

The Statute shows a fundamental difference between the Senate and the House of Lords. The Senators are appointed to represent the Provinces. The Members of the House of Commons are elected for constituencies and are summoned under Section 38 of the Act to attend. This puts them on the footing of Members of the English House of Commons and they serve for all Canada. See Black-

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stone, Book 1, Chapter 2, p. 159, where he says that the Members of the English House of Commons are summoned and that they serve for the whole Kingdom.

Then the Senate is an Upper House in a federation and not in a unitary State or Legislative Union as is the House of Lords. The Senate is more like that of the United States or the Upper House in Germany or Switzerland. If it is not the first duty of the Senate to protect Provincial interests it is impossible not to infer from the terms of the Act that this is a duty cast upon it. Why else the appointment by Provinces and Electoral Districts with the qualifications of property and residence? Why not an appointment to the Senate simply as in the House of Lords or the nominated Legislative Council already referred to? Such fundamental changes are not made for nothing. The first duty of the Senate is to protect and preserve Provincial rights and interests. No such duty is required of the House of Lords or of any of the Legislative Councils in the Provinces. More than that, from the Act it is quite clear that to enable the Senate to do this it was made an independent body by the abolition of the swamping power, and making the tenure of the position for life. It has, of course, other powers and duties consequent on its being an independent part of the Constitution.

The British North America Act imposes one extremely important limitation on the powers of the Senate. Sections 53 and 54 of the Act read:—

"(53) Bills for appropriating any part of the Public Revenue or for imposing any tax or impost shall originate in the House of Commons.

"(54) It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address or Bill for the appropriation of any part of the public revenue or of any tax or impost to any purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address or Bill is proposed."

It is worth noting that this last Section simply embodies the practice of the Imperial House of Commons. That House may reduce; it can not of itself increase the sum recommended by the Ministry. (See Todd's Parliamentary Government, Vol. 1, p. 702 and cases in notes thereto. See also Keith, p. 568.)

It is quite clear that if the House of Commons in Canada increased an amount recommended, the increase would be illegal unless a further recommendation should be had.

Section 53 embodies the only point on finance ever conceded to the House of Commons by the House of Lords. (See Todd, Vol. 1, p. 811.) When the House of Commons passes an appropriation or tax Bill it must be either for the sum recommended or for some smaller sum. When the Bill is for a smaller sum and the Ministry of the day continues to hold office it must be assumed that the Crown has assented to the reduction. (See Todd, Vol. 2, p. 391.) When such a Bill goes to the Senate the amount mentioned in the Bill is therefore the sum recommended by the Crown. The Senate could not increase this sum without coming in conflict with the prerogative of the Crown to say what money is wanted. (Todd, Vol. 1, p. 689.) The foundation of all Parliamentary taxation is the necessity for the public service