

*In the
Supreme
Court of
Canada.*

No. 10.
Reasons for
Judgment—
continued.
(a) Anglin,
C.J.C.—*con-
tinued.*

declaratory of a right inherent in every parliamentary body. (*Vide* clause 1 of the preamble to the B.N.A. Act and the quotation of Lord Lyndhurst's language made from MacQueen's Debates on The Life Peerage Question, at p. 300, by Viscount Haldane in Viscountess Rhondda's Claim (1).

It should be observed that, while the question now submitted by His Excellency to the court deals with the word "Persons," section 24 of the B.N.A. Act speaks only of "qualified persons"; and the other sections empowering the Governor General to make appointments to the Senate (26 and 32) speak, respectively, of "qualified Persons" and of "fit and qualified Persons." The question which we have to consider, therefore, 10 is whether "female persons" are qualified to be summoned to the Senate by the Governor General; or, in other words—Are women eligible for appointment to the Senate of Canada? That question it is the duty of the court to "answer" and to "certify to the Governor in Council for his information * * * its opinion * * * with the reasons for * * * such answer." *Supreme Court Act*, R.S.C. [1927] c. 35, s. 55, subs. 2.

In considering this matter we are, of course, in no wise concerned with the desirability or the undesirability of the presence of women in the Senate, nor with any political aspect of the question submitted. Our 20 whole duty is to construe, to the best of our ability, the relevant provisions of the B.N.A. Act, 1867, and upon that construction to base our answer.

Passed in the year 1867, the various provisions of the B.N.A. Act (as is the case with other statutes, *Bank of Toronto v. Lambe*) (2) bear to-day the same construction which the courts would, if then required to pass upon them, have given to them when they were first enacted. If the phrase "qualified persons" in s. 24 includes women to-day, it has so included them since 1867.

In a passage from *Stradling v. Morgan* (3), often quoted, the Barons of the Exchequer pointed out that : 30

"The Sages of the Law heretofore have construed Statutes quite contrary to the Letter in some appearance, and those Statutes which comprehend all things in the Letter they have expounded to extend but to some Things, and those which generally prohibit all people from doing such an Act they have interpreted to permit some People to do it and those which include every Person in the Letter they have adjudged to reach to some Persons only, which Expositions have always been founded upon the Intent of the Legislature, which they have collected sometimes by considering 40 the cause and Necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign Circumstances. So that they have been guided by the Intent of the Legislature, which they have always taken according to the Necessity of the Matter, and according to that which is consonant with Reason and good Discretion."

(1) [1922] 2 A.C. 339, at pp. 384-5.

(2) [1887] 12 A.C. 575, at p. 579.

(3) 1 Plowd. 203, at p. 205.