

which I have referred, I have selected only as containing the best summary with which I am acquainted of the law upon this subject. In determining the question before us, we have therefore to consider not merely the words of this Act of Parliament, but the intent of the Legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts, and from foreign (meaning extraneous) circumstances, so far as they can justly be considered to throw light upon the subject."

*In the
Supreme
Court of
Canada.*

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

These two cases, decided at an interval of some three hundred years,
10 furnish, when taken together, a complete exposition of the common law upon this subject: *Viscountess Rhondda's Claim* ib. supra, per Viscount Birkenhead, L.C., p. 370. The application of the principles which they embody is exemplified by many cases, but no more strikingly than in a series of cases (to be presently referred to) which have a peculiar value in relation to the matter now under consideration, since, in each case, there arose the question whether by general words Parliament had affected the parliamentary position of women.

6. *The Provisions of the British North America Act, 1867.*—The place or office of a Senator owes its creation solely to the provisions of the British
20 North America Act, 1867, and it is an office, therefore, which no one, apart from the enactments of the statute, can claim, not the right to hold (because obviously the selection of a Senator being within the absolute discretion of the Executive Government, no right can be asserted), but the legal qualification to be appointed to it. Section 21 provides that the members of the Senate "shall be styled Senators." In section 24, the persons whom the Governor General is authorized to summon to the Senate are described as "qualified persons," and the section declares that "every person" so summoned shall become and be "a member of the Senate and a Senator" In other provisions the word "persons" (s. 25), "qualified persons" (s. 26),
30 "any person" (s. 27), and "qualified person" (s. 32), are used with reference to the individuals who may be summoned to the Senate. The qualifications of a Senator are defined by section 23, and in that and other sections (29, 30, 31 and 34), the words "he," "him," and "his," repeatedly occur. These words, coupled with the constituent title "Senator"—which was adopted from the corresponding Latin word and in the Latin language there was no term to describe a Senatress, although the latter appears to be an English word, and in the Old French form "Senatresse" was used to designate the wife of a Senator—suggest *prima facie* that the connotation of the expression "qualified persons" in section 24 and of
40 the equivalent expressions in other sections of the Act was intended to be limited to male persons. The provisions of section 23, sub-s. 2, perhaps afford some support for this construction, for that subsection in providing for the qualification of a Senator, enacts that he shall be a British subject by birth or by naturalization, which was a sufficient provision if men only were qualified for appointment; but if women also were intended to be