

In 1678 the Commons resolved: "That all aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons and that all Bills for the granting of any such aids and supplies ought to begin with the Commons and that it is the undoubted and sole right of the Commons to direct, limit and appoint in such Bills the ends, purposes, considerations, conditions, limitations and qualifications of such grants which ought not to be changed or altered by the House of Lords."

The House of Lords protested but this was the practice thereafter. In 1861 the Commons asserted the right to include all financial proposals in the annual Supply Bill, and thus, not having the power to amend, the Lords would have to pass the Bill or reject it as a whole. This was protested against by the Lords but was thereafter the practice. The power of the House of Lords over finance was practically gone from that day. This was the state of the practice concerning finance between the two Imperial Houses when the British North America Act was passed in 1867.

It will be noticed that these powers of the Commons and these disabilities of the Lords are not settled by a law but by practice and custom founded on Resolutions of the Commons backed up by threats to which the Lords yielded under protest. Mr. Asquith's Resolution (1910) "That it is expedient that the House of Lords be disabled by law from rejecting or amending a Money Bill, etc." is an admission of this fact.

Does the practice of the Imperial Parliament as settled in 1867 or as it was asserted to be before the Act just passed limiting the powers of the House of Lords govern the relations of the Senate and House of Commons on "Money Bills"?

Formerly there were many kinds of Colonial constitutions granted by the Crown, but they nearly all ultimately took the form of a constitution consisting of the Crown, a Council appointed by the Crown and an Elective Assembly. The grant was until a comparatively late date by Letters Patent except in the case of Canada (1791), which was granted by Parliament as it contained provisions that the Crown could not grant by Letters Patent—(See Appendix I in Lord Grey's "The Colonial Government of Lord Russell"). They were all miniatures of the British Constitution.

There is no reasonable doubt that Legislative Councils which are miniatures of the House of Lords are constitutionally bound under penalty of being "swamped" to follow the practice of the House of Lords with regard to money Bills as of the date when the Provincial Constitution was granted. Whether such Councils would be bound to change their practice as the practice of the House of Lords changed has so far as we know never been agitated.

The Constitution of 1791 for the Provinces of Upper and Lower Canada provided for a Legislative Council of a named number for each province, reserving to the Crown the right to name as many more as it saw fit. There was also provision for the creation of hereditary Councillors. Nothing was said about the relation of the Houses or money Bills. It is probable that Parliament assumed that the Council would follow the English Parliamentary practice and if it did not it could be "swamped." The Council was an almost perfect miniature of the House of Lords.

The Constitution of 1840, when these two provinces were united, was in the main the same. The Legislative Council was to consist of a certain number (20) and power was reserved to add as many more as the Crown saw fit. The provision in the Constitution of 1791 respecting hereditary Councillors was dropped. The Constitution of 1791 gave representative government. That of 1840 made responsible government possible. Section 57 provided that money Bills should originate in the Assembly but it was also provided that the Assembly should not originate a Bill unless recommended by the Governor.

There are several constitutions in the Southern Hemisphere of practically the same structure. The Colonial Office said that those Councils should follow the practice of the House of Lords and not amend money Bills but might reject them. The Privy Council also decided against the Legislative Council of Queensland (which was a nominated Council with the "swamping" power) in its claim to amend money Bills.

In New South Wales the Council was to consist of at least twenty-one members but there was no legal limit to the total number. Marriot, *Second Chambers*, p. 156, says: "There have been various disputes, chiefly on fiscal questions, between the two Chambers and Parkes definitely asked for a recognition of the principle that Ministers might recommend to the Governor the creation of Councillors." The Crown for the time refused, but in 1889 Parkes was more successful in obtaining from Lord Carrington permission to add members to the Legislative Chamber at the convenience and discretion of the Executive. That principle, closely akin to one which has long prevailed in the Mother Country, may now be regarded as securely enshrined among the constitutional conventions of the Colony." At p. 163 he quotes from Wise's *Commonwealth of Australia*, who, it seems, regarded a Government of two Chambers with an Upper House nominated by the Governor as the more workable one, as follows: "This plan gave the Second Chamber something of the influence and attributes of the House of Lords. It was constrained by its own traditions to yield before any manifestations of the popular will and could at any time be coerced by the appointment of new members." Todd (*Parliamentary Government in the Colonies*, p. 821) gives the particulars of a case of "swamping" in New Zealand.

See also Keith, *Responsible Government in Dominions*, p. 569.

It is quite clear that an Upper House in a Colony where the Executive has this "swamping power" is quite as helpless as the House of Lords in financial and in any measures that the Government of the day is determined to carry. Besides these Councils could be summarily dismissed by the Crown. They had no property in their position, merely naked trusts (Despatch of Duke of Newcastle to Governor of Prince Edward Island, February 4th, 1862).

There are Constitutions where the Legislative Council is elective and necessarily the number fixed and no swamping can take place. In Tasmania the Council is elective. The number is eighteen. It has persistently claimed and exercised the right to amend money Bills. Keith (*Responsible Government in the Dominions*), p. 626, says, "that it is useless to