

This is what Todd says on page 383 of the first volume, speaking of the prerogative of the Crown:

The term 'prerogative' may be defined as expressing those political yawers which are inherent in the Crown and that have not been conferred by Act of parliament and which accordingly continue within the competency of the Sovereign, except in so far as they have been modified or restrained by positive legislation. For the King's prerogative is a part of the law of the realm and hath bounds set unto it by the laws of England. All that is meant by 'prerogative' nowadays is the practical division which it is necessary to make between the duties of the executive and the duties of the legislative power.

Now upon this very point Todd has given the history of the case. At page 121 my hon. friend will read this:

After the death of Mr. Pitt in 1806, the King was obliged to accept of an administration taken chiefly from the Whig party, in which he had no confidence. The ministry of 'All the Talents,' under the presidency of Lord Grenville and Mr. Fox, was forced by political considerations upon the King. Before the arrangements were completed, a difficulty arose on a point of prerogative. During the negotiations Lord Grenville proposed to His Majesty some changes in the administration of the army by which the question was raised whether the army should be under the immediate control of the Crown through the commander in chief, or be subject to the supervision of the ministers.

The King at once contended that the management of the army rested with the Crown alone; and that he could not permit his ministers to interfere with it, beyond the levying of the troops, their pay and clothing.

Then at page 527, Todd proceeds as follows:

We have already seen that the control of the army and navy was the last of the prerogatives to be surrendered into the custody of responsible ministers. Even of late years there have been those who have contended that the administration of the military and naval forces of the kingdom should remain altogether in the hands of the executive without any interference with the same by either House of Parliament. But sound doctrine forbids a distinction to be drawn between the exercise of the royal authority over the army and navy and over other branches of the public service; upon all alike it is equally competent for either House of Parliament to tender its advice, and there can be nothing done in any department of state for which some minister of the Crown is not accountable to parliament.

Mr. R. L. BORDEN. What page is that?

Sir WILFRID LAURIER. Page 527.

Mr. HUGHES. Is the Prime Minister not confusing parliament with the cabinet? The point I have in view is this. At the time the right of purchase of commissions was done away with in the army, Gladstone completely overruled parliament, claiming that it was the prerogative of the Crown acting on

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the advice of the minister, not the prerogative of the Crown as represented by the cabinet and the sovereign.

Sir WILFRID LAURIER. My hon. friend will remember that the action of Mr. Gladstone was very severely criticised at the time. I am an admirer of Mr. Gladstone, but even the best men can make mistakes. Mr. Gladstone had been a Tory in his early days, and perhaps he was expressing his Tory ideas on that occasion. At any rate, I well remember that the action of Mr. Gladstone, which was approved by public opinion in one sense, was severely criticised from the parliamentary point of view. At this date I do not think that anybody can contend that the King of England can have any power, either with regard to the army or with regard to the navy, which he can exercise through anybody else except through his responsible ministers who are responsible to the parliament. This is the position we take in this instance, and we say that the constitution of England was introduced into Canada in 1867. At that time the prerogative of the Crown was limited to the authority of parliament in the matter of the army and navy, and therefore we have jurisdiction over the same.

Mr. HUGHES. Go back to the early part of last century. The contention then was that the control of the army and navy was the personal prerogative of the sovereign independent of the ministers or of parliament. That was contested, and the Prime Minister may remember that I had occasion formerly to bring before him an instance. I think when Duncan was commander in chief of the forces he claimed the right to pass over the minister and go direct to the sovereign and consult him in all matters with reference to the army. Palmerston was Secretary for War at the time, I think, it was in 1810 that the commander in chief took that position, and from that time onward the control of the army and navy was regarded as the prerogative of the Crown acting on the advice of ministers, only indirectly responsible to parliament but not directly responsible to parliament.

Sir WILFRID LAURIER. I suppose my hon. friend will have no objections to the minister being responsible to parliament. At all events, as minister of the Crown, he becomes responsible to parliament.

Mr. J. A. CURRIE. Does the right hon. gentleman claim that the prerogative as regards the militia forces was not contained in the Crown at the time of the union?

Sir WILFRID LAURIER. 1867?

Mr. J. A. CURRIE. Yes.

Sir WILFRID LAURIER. That is my contention, yes.

Mr. J. A. CURRIE. Has the Prime Minister read the Acts passed in 1861-62, passed by the British parliament? Todd is no auth-