Mr. E. Lafleur. K.C.
with Hon. Lucien Cannon KC
+ Mr. C.P. Plaxton KC + Mr. Theobald Mathew

In the Privy Council.

No. 121 of 1928.

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

In the matter of a Reference as to the meaning of the word "Persons" in Section 24 of the British North America Act, 1867.

BETWEEN

HENRIETTA MUIR EDWARDS, NELLIE L. McCLUNG, LOUISE C. McKINNEY, EMILY F. MURPHY AND IRENE PARLBY - - *Appellants.*

AND

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC AND THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA - - *Repondents.*

CASE OF THE APPELLANTS.
CASE OF THE ATTORNEY-GENERAL OF CANADA.
CASE OF THE ATTORNEY-GENERAL OF QUEBEC.
CASE OF THE ATTORNEY-GENERAL OF ALBERTA.
RECORD OF PROCEEDINGS.
JOINT APPENDIX.

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In the Privy Council.

No. 121 of 1928.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of a Reference as to the meaning of the word " Persons " in Section 24 of The British North America Act 1867.

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AND

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC and THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA - - - - - - - - *Respondents.*

CASE OF THE APPELLANTS.

Record.

1. This is an appeal by special leave from a judgment of the Supreme Court of Canada dated the 24th April 1928, answering in the negative the question (referred to the Court for hearing and consideration by the Governor-General of Canada in Council under the provisions of Section 60 of the Supreme Court Act), " Does the word ' persons ' in Section 24 of the British North America Act 1867 include female persons ? " p. 38. pp. 3-4.

2. The appeal raises the question whether the Governor-General of Canada has the power to summon women to the Senate of Canada.

3. Of the Appellants, Henrietta Muir Edwards is the vice-president for the Province of Alberta of the National Council of Women for Canada ; Nellie L. McClung and Louise C. McKinney were for several years members of the Legislative Assembly of the said province ; Emily F. Murphy is a police magistrate in and for the said province ; and Irene Parlby is a member of the Legislative Assembly of the said province and a member of the Executive Council thereof.

C.L.C.S. Ltd.—WL7157

p. 3, l. 9. **4.** On the 27th August 1927 the Appellants petitioned the Governor-General in Council to refer to the Supreme Court certain questions touching the powers of the Governor-General to summon female persons to the Senate and on the 19th October 1927 the Governor-General in Council referred to the Supreme Court the aforesaid question.

Appendix.

p. 21, l. 22. **5.** Section 24 of the British North America Act is as follows:—

"24. The Governor-General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon qualified persons to the Senate; and subject to the provisions of this Act, every person so summoned shall become and be a member of the Senate and a Senator."

6. Section 24 is immediately preceded by a section setting out the qualifications of a Senator as follows:—

"23. The Qualifications of a Senator shall be as follows:—

p. 20, l. 47. "(1) He shall be of the full age of Thirty Years;

"(2) He shall be either a Natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union;

"(3) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in free and common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Francalleu or in Roture, within the Province for which he is appointed, of the value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same;

"(4) His Real and Personal Property shall be together worth Four Thousand Dollars over and above his Debts and Liabilities;

"(5) He shall be resident in the Province for which he is appointed;

"(6) In the case of Quebec he shall have his Real Property Qualifications in the Electoral Division for which he is appointed, or shall be resident in that Division."

pp. 20-22. **7.** Throughout the sections dealing with the Senate (Sections 21 to 36 inclusive), Senators are referred to by the pronouns "he," "him" and

p. 22, l. 15. "his," and Section 32 provides that "When a vacancy happens in the Senate by resignation, death, or otherwise, the Governor-General shall by summons to a fit and qualified person fill the vacancy."

8. In certain respects irrelevant to this appeal the said sections have been modified consequent upon the admission into Canada and the creation since 1867 of new provinces. p. 36, l. 23. p. 53, l. 8. p. 54, l. 4.

9. The word "person" or "persons" is also used in Sections 11, 14, 41, 42, 63, 75, 83, 84, 89, 93, 127, 128 and 133 of the British North America Act relating (*inter alia*) to the constitution of the Privy Council (Section 11), the appointment of deputies of the Governor-General (Section 14), the qualifications and disqualifications of members of and voters at elections for the House of Commons (Sections 41 and 42), the constitution of the Executive Councils of Ontario and Quebec (Section 63), the constitution of the Legislative Council of Quebec (Section 75), the qualifications and disqualifications of members of and voters at elections for the Legislative Assemblies of Ontario and Quebec (Sections 83 and 84), the privileges with respect to denominational schools of any class of persons (Section 93), provincial Legislative Councillors becoming Senators (Section 127), persons authorised to administer oaths to members of Senate and of House of Commons (Section 128), and the use of the English and French languages in Parliament and elsewhere (Section 133). Particular reference should be made to the provisos to Sections 41 and 84 (continuing the existing laws relative to "the qualifications and disqualifications of persons to be elected" and to voters), and to Sections 83, 128 and 133. The proviso to Section 41 is as follows :— pp. 19-32. p. 19, l. 20. p. 19, l. 47. p. 23, l. 19. p. 26, l. 19. p. 27, l. 33. p. 28, l. 24. p. 32, l. 14. p. 32, l. 35. p. 23, l. 31. p. 29, l. 3. p. 28, l. 24; p. 32, l. 23; p. 32, l. 35.

> "Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British subject, aged Twenty-one Years or upwards, being a householder, shall have a Vote." p. 23, l. 31.

The proviso to Section 84 is as follows :—

> "Provided that, until the Legislature of Ontario otherwise provides, at any Election for a Member of the Legislative Assembly of Ontario for the District of Algoma in addition to persons qualified by the Law of the Province of Canada to vote, every Male British Subject, aged twenty-one years or upwards, being a householder, shall have a vote." p. 29, l. 3.

The first paragraph of Section 133 is as follows :—

> "133. Either the English or the French language may be used by any Person in the Debates of the Houses of Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec." p. 32, l. 35.

p. 15, l. 37. **10.** By Section IV of Lord Brougham's Act 1850, which was in force at the time of the passing of the British North America Act, it is provided :—

> " Be it enacted, That in all Acts Words importing the Masculine Gender shall be deemed and taken to include Females, and the Singular to include the Plural, and the Plural the Singular, unless the contrary as to Gender or Number is expressly provided " ;

p. 39, l. 13. and by Section 1, Sub-section (1) of the Interpretation Act 1889 (which repealed Lord Brougham's Act)—

> " . . . in every Act passed after the year one thousand eight hundred and fifty whether before or after the commencement of this Act, unless the contrary intention appears, words importing the masculine gender include females."

p. 41. **11.** In 1849 the Province of Canada enacted an Interpretation Act p. 42, l. 1. (12 Vic. cap. 10) containing a provision similar to Section IV of Lord Brougham's Act above quoted. By statute of the said Province of the same p. 42. year (12 Vic. cap. 27) the Acts relating to the representation of the people in the Legislative Assembly of the Province were amended and consolidated, and by Section XLVI it was provided :—

> " And be it declared and enacted, that no woman is or shall be entitled to vote at any such election, whether for any County or Riding, City or Town."

p. 48, l. 27. The Revised Statutes of Nova Scotia (second series) 1859, cap. 1, contain a p. 49. similar Interpretation Clause, Section 7. By the same Statutes, Title II, cap. 5, the right to vote and to be a candidate for the Legislative Assembly is limited to male persons.

p. 54, l. 30. p. 55, l. 44. **12.** By Statutes of Canada 1918, 8-9 George V, cap. 20, and 1920, 10-11 George V, cap. 46, Section 38, female persons are given the right to vote and to be candidates at a Dominion election, and a female person has been elected and now sits as a member of the House of Commons.

p. 33. **13.** By the British North America Act 1871 the Parliament of Canada was authorised to establish new provinces in any territories forming for the time being a part of the Dominion of Canada, and at the time of such establishment to make provision for the constitution and administration of such provinces and for the passing of laws for the peace, order and good government of such province and for its representation in Parliament.

p. 53. **14.** The Alberta Act, Statutes of Canada 1905, 4-5 Edward VII, cap. 3 (Sections 3 and 8) making provision for the Constitution of the Province of Alberta provides :—

p. 53, l. 36. Section 3. " The provisions of the British North America Acts, 1867 to 1886, shall apply to the Province of Alberta in the

same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion, as if the said Province of Alberta had been one of the provinces originally united, except in so far as varied by this Act and except such provisions as are in terms made, or by reasonable intendment may be held to be, specially applicable to or only to affect one or more and not the whole of the said provinces.

Section 8. " The Executive Council of the said province shall be composed of such persons, under such designations, as the Lieutenant-Governor from time to time thinks fit." p. 54, l. 8.

15. By Statutes of Alberta, 1916, 6-7 George V, cap. 5, women were given the right to vote at elections of members to serve in the Legislative Assembly and to be elected as members of the said Assembly, but there has been no change in the statutory provisions relating to the composition of the Executive Council in the said Province. Women have been elected as members of the Legislative Assembly of the said Province and a woman has been and is now a member of the Executive Council of the said Province. There has been similar legislation in all the other provinces of Canada, save the Province of Quebec. p. 60, l. 18.

16. The reference was argued before the Supreme Court on the 14th March 1928. Counsel for the Appellants contended that the word " persons " in Section 24, includes female persons. Counsel for the Attorney-General of Alberta supported the Appellants' contention. Counsel for the Attorney-General of Canada contended that the word " persons " is limited to male persons and counsel for the Attorney-General of Quebec supported that contention. The Attorneys-General for the other provinces of Canada were duly notified but did not appear on the argument of the reference.

Record.

17. The Chief Justice of Canada in his Reasons for Judgment, in which Mr. Justice Lamont and Mr. Justice Smith concurred, held that by the common law of England women were under a legal incapacity to hold public office and that Parliament, which, when contemplating a striking constitutional departure from the common law, is never at a loss for language to make its intention unmistakeable, had, by clear implication, excluded women from membership in the Senate. The word " persons " *primâ facie* includes women, but the preceding word " qualified " (a reference to the qualifications specified in Section 23) excludes women because the terms of Section 23 import that men only are eligible for appointment. The Chief Justice referred to the masculine pronouns—" he " and " his "—and cited *Frost* v. *The King*, reported in [1919], 1 Irish Reports, page 81. Furthermore, Clause 2 of Section 23 includes only " natural-born " subjects and those " naturalised " under statutory authority, and not those who become subjects by marriage—a provision which one would have looked for had it pp. 39-50.

been intended to include women as eligible. Dealing with arguments raised by counsel for the present Appellants, the Chief Justice held that the adjective " qualified " was a conclusive answer to the argument based on the wider signification of the word " persons " in other sections, nor did the Interpretation Act or Lord Brougham's Act (which was treated as the material Act) have any application, as " persons " is not a word importing the masculine gender.

Chorlton v. *Lings*, reported in Law Reports, 4 Common Pleas, page 374, is conclusive against the Appellants alike on the question of the common law incapacity of women to exercise such public functions as those of a member of the Senate of Canada, and on that of their being expressly excluded from the class of " qualified persons " by the terms in which Section 23 is couched.

Dealing with Section 11, which provides for the constitution of a new Privy Council for Canada, the Chief Justice expressed the opinion that " the word ' persons,' though unqualified, is probably used in the more restricted sense of ' male persons.' For the public offices thereby created womenwere, by the common law, ineligible and it would be dangerous to assume that by the use of the ambiguous term ' persons ' the Imperial Parliament meant in 1867 to bring about so vast a constitutional change affecting Canadian women, as would be involved in making them eligible for selection as Privy Councillors."

pp. 50-58. **18.** The Judgment of Mr. Justice Duff is summarised in paragraphs 20 and 21.

p. 59. Mr. Justice Mignault concurred generally in the reasoning of the Chief Justice, and held the case covered by the authority of *Chorlton* v. *Lings*.

Appendix.

p. 21, l. 22. p. 20, l. 47. **19.** The Appellants respectfully submit that the word " qualified " as used in Section 24, refers to the qualifications set out in the preceding Section 23, and that the interpretation which the Chief Justice of Canada and the learned judges who concurred with him placed upon the word " qualified " is erroneous and cannot be supported ; and that the Chief Justice and learned judges wrongly applied the authorities cited by them. In particular the Appellants submit that the reasoning of the Chief Justice was erroneous in the following respects :—

(A) The case of *Frost* v. *The King* reported in [1919] 1 Irish Reports, p. 81, is no authority for saying that the masculine pronoun in Section 23 imports that men only are eligible for appointment. Mr. Justice Ronan at page 90 points out that Lord Brougham's Act changed the presumption from a presumption that a word importing the masculine gender excludes females to a presumption

that females are included; and the decision rested on the effect of Statutes of 1827 and 1840 to which the old rule of construction applied.

(B) In his Reasons for Judgment the Chief Justice assumes that by common law a wife took her husband's nationality on marriage. On the contrary the rule was "*Nemo potest exuere patriam*," and only by virtue of Section 16 of the Aliens Act 1844 (7 & 8 Vic. cap. 66) was any woman who marries a natural-born or naturalised British subject deemed and taken to be herself naturalised. Accordingly Clause (2) of Section 23 uses language apt to cover the case of those who become British subjects by marriage. p. 21, l. 1.

(C) No striking constitutional departure from the common law is involved if "persons," in Section 24, includes female persons, since Section 24 does not confer any right on "qualified persons." Membership of the Senate depends on a summons issued by the Governor-General acting on the advice of his ministers. The fact that in 1867 the issue of a summons to a female person would not have been within the contemplation of Parliament does not militate against the Appellants' contention that Parliament did not intend to use the word "persons" in Section 24 in the definitely restrictive sense of "male persons" in contradistinction to its general use elsewhere in the Act. p. 21, l. 22.

(D) The Quebec resolutions form the basis of the British North America Act. The Act was framed with due regard to the relevant existing Canadian legislation and to meet Canadian conditions. The legislation in the Provinces of Canada and Nova Scotia respectively shows that both legislatures, having regard to the provisions of their respective Interpretation Acts, considered the word "persons" in Acts relating to voting for membership in the legislative assembly, included both male and female persons and expressly limited such rights to male persons, and in the British North America Act, where Parliament intended to restrict the word "persons" to male persons it expressly so provided. (See provisos to Sections 41 and 81.) p. 23, l. 31. p. 29, l. 3.

(E) The case of *Chorlton* v. *Lings* reported in Law Reports, 4 Common Pleas, page, 374 was decided solely on the language of the Representation of the People Act 1867. That Act entitled "every man" with certain qualifications and "not subject to any legal incapacity" to be registered as a voter. Legal incapacity was not defined by the Act and for that reason only reference was necessary to the common law disabilities of women. The alternative ground of the decision was that, as the Act by its terms was to be construed as one with earlier Acts (notably the Reform Act 1832)

where the term " male person " was used, the word " man " did not import the feminine gender. Both grounds rested entirely on the wording of the Act and not on extraneous circumstances.

(F) *Chorlton* v. *Lings*, and similar cases cited interpreting domestic statutes relating to the franchise, are not applicable to the construction of such a statute as the British North America Act, creating the constitution of a new nation with legislative bodies having plenary powers. The question is not one of the granting or withholding of the franchise but of the granting or withholding of executive and legislative powers.

(G) The reasoning of the Chief Justice constrained him to hold that the word " persons " as used in Section 11 relating to the constitution of the Privy Council for Canada was limited to " male persons " with the resultant anomaly that a woman might be elected a member of the House of Commons, but could not be summoned by the Governor-General as a member of the Privy Council. Such a constitution would not be " similar in principle to that of the United Kingdom," and it is submitted that such an interpretation is contrary to the real intent of the British North America Act.

p. 19, l. 20.

Record.

pp. 50-58.

20. The contentions of the Appellants on these points are supported by the Reasons for Judgment of Mr. Justice Duff. Having reviewed the general character and purpose of the British North America Act and examined the contentions for the narrow construction of the word " persons," Mr. Justice Duff pointed out that there are three general lines of policy which the authors of the British North America Act might have pursued in relation to the common law incapacity of women, namely, to perpetuate the incapacity, to remove the incapacity, and to leave it to the Dominion Parliament or provincial legislatures to remove or to retain the incapacity. The word " persons " in Section 24 is consistent with any of these lines of policy. In Sections 41 and 84 " persons " includes women, as also in Sections 11 and 133. Such general inferences therefore as may arise from the language of the Act as a whole cannot be said to support a presumption in favour of the restricted interpretation. Turning to the reasoning based on the common law disabilities of women, Mr. Justice Duff doubted its applicability to the British North America Act. In 1867 it would have been a revolutionary step to appoint a woman to the Privy Council or to an Executive Council in Canada, or to make women eligible to the House of Commons or provincial legislatures or councils, yet it is quite plain, with respect to all these matters, that the fullest authority was given, and given in general terms, to Parliament and the legislatures. The value of the reasoning based on the " extraneous facts " becomes inconsiderable when compared with reasons deriving their force from the presumption that the Constitution in its executive branch was intended

to be capable of adaptation to whatever changes in the law and practice relating to the election branch might be progressively required by changes in public opinion.

21. On a special ground, however, Mr. Justice Duff answered the question referred to in the negative. Although attaching no importance to the use of the masculine personal pronoun in Section 23, he thought that Sub-section (3) points to the exclusion of married women, and, from examining the constitution of the Legislative Councils under Acts of 1791, 1840 and 1854, he drew the inference that the British North America Act contemplated a second chamber similar to those provided by the Acts of 1791 and 1840, the constitution of which should in all respects be fixed and determined by the Act itself. This constitution was to be in principle the same, though necessarily, in detail, not identical, with that of the second Chambers established by the earlier statutes, and under those statutes women were not eligible for appointment.

p. 57, l. 45.

Appendix.

p. 21, l. 8.

p. 7, l. 12; p. 12, l. 24; p. 16, l. 38.

22. The Appellants respectfully submit that the reasoning of Mr. Justice Duff was erroneous in the following respects :—

(A) The language of Sub-section (3) of Section 23 does not point to the exclusion of married women. A married woman could possess the property qualification required by this sub-section. Apart from statute a married woman could be equitably seized of freehold property for her own use and benefit and by an Act respecting certain separate rights of property of married women, Consolidated Statutes of Upper Canada, cap. 73, Section 1, it was provided :—

p. 21, l. 8.

> " Every woman, who has married since the Fourth day of May, one thousand eight hundred and fifty-nine, or who marries after this Act takes effect, without any marriage contract or settlement, shall and may, notwithstanding her coverture, have, hold and enjoy all her real and personal property, whether belonging to her before marriage, or acquired by her by inheritance, devise, bequest or gift, or as next of kin to an intestate or in any other way after marriage, free from the debts and obligations of her husband and from his control or disposition without her consent, in as full and ample a manner as if she continued sole and unmarried, any law, usage or custom to the contrary notwithstanding ; but this clause shall not extend to any property received by a married woman from her husband during coverture."

(B) At the date of the passing of the British North America Act 1867, the qualifications of the persons capable of being appointed or elected as members of the legislative council of the Province of Canada were those enacted by the legislature of the said province

p. 42.

p. 16. in 1856, pursuant to the power expressly given to the province by the Union Act Amendment Act of 1854. The legislative council so established in 1856 was different from those established by the Act of Union of 1840, mainly, in that :—

(1) It was an elected and not an appointed body.

(2) Each member was required to have a certain property qualification.

(3) Selection of members was made from the several electoral divisions of the province instead of being made at large.

The Senate, as constituted by the British North America Act 1867, is an appointed body, but in other respects resembles the legislative council existing in Canada immediately prior to passing the British North America Act rather than the legislative council as constituted by the Act of Union. Each senator is required to have a minimum property qualification.

p. 21, l. 8.

Canada, in relation to the constitution of the Senate, is divided into three divisions to be equally represented in the Senate, and, in the case of Quebec, each of the twenty-four senators representing the province is appointed from one of the twenty-four electoral divisions of the province.

It is submitted that the clauses of the British North America Act 1867 relating to the constitution of the Senate, follow generally the structure and phraseology of the Canadian Enactment of 1856 rather than the Imperial Acts of 1791 and 1840 ; and that, just as under the Union Act Amendment Act of 1854, there was no prohibition against the inclusion of women in the membership of the legislative councils of Canada, so, by the British North America Act of 1867, there is no prohibition against the summoning of a woman to the Senate of Canada.

(c) There is no sound reason for holding that the word " person " as used in Section 23 is limited to " male person " while holding that the word " person " as used in other sections of the British North America Act is used in its natural meaning and includes both male and female persons.

Record.

p. 58, l. 14. Appendix, p. 22, l. 18.

23. Mr. Justice Duff concedes that under Section 33 of the British North America Act, supplemented by Section 1 of the Confederation Amendment Act of 1875, and by Section 4, Chapter 10, R.S.C. 1927, " the Senate possesses sole and exclusive jurisdiction to pass upon the claims of any person to sit and vote as a member thereof, except in so far as that jurisdiction is affected by Statute . . . and the jurisdiction of the Senate is not confined to the right to pass upon questions arising as to qualification under Section 33," and that if a woman were summoned

by the Governor-General to the Senate the Senate could determine that she was entitled to be seated. It is submitted that in the foregoing Mr. Justice Duff has correctly interpreted the provisions of the British North America Act relating to the Senate, and that therefore " person " as used in Section 23 must include a female person, otherwise the Senate could not so determine.

24. The Appellants further submit that the position in Canada prior to Confederation in reference to women voting was different from that in Great Britain and that arguments based upon conditions in Great Britain are not applicable to the construction of the British North America Act. It is clear that as far back as 1820 women in Canada had voted at elections for members of the Legislative Assembly, and the development of the common law in reference to the eligibility of women for appointment to public offices has not been the same in Canada as in Great Britain. *Rex* v. *Cyr*, 1917, 2 Western Weekly Reports, 1185 ; in appeal, 1917, 3 Western Weekly Reports 849.

If women at common law were under a legal incapacity to hold public office, and consequently were not eligible for appointment to the Senate in 1867, that disability can be removed in Canada by appropriate legislation on the part of the Dominion and the provinces respectively, and once such legal incapacity is removed a woman becomes eligible for appointment to the Senate.

25. The Appellants further submit that the Imperial Parliament did not withdraw from the control of the Executives, the Parliament and the Legislatures created by the British North America Act, the right to determine whether women should or should not be eligible for any or all public offices, and that in framing the Canadian Constitution they conferred upon the Executives, the Parliament and the Legislatures so created, full power and authority to deal with such matters.

26. The Appellants humbly submit that the judgment of the Supreme Court of Canada is wrong and should be reversed and that the question should be answered in the affirmative, for the following, amongst other

REASONS.

(1) Because the word " persons " in its ordinary sense includes female persons.

(2) Because the word " persons " is used in sections other than Section 24, and in such other sections includes female persons.

(3) Because no intention is apparent to restrict the word "persons" in Section 24 to male persons, since, by the Interpretation Act, the use of the masculine personal pronoun indicates no such intention.

(4) Because the cases held by the Supreme Court to be conclusive against the Appellants' contentions when properly read are not applicable.

(5) Because, for the reasons given by Mr. Justice Duff, the Supreme Court should have rejected the arguments based on the common law incapacity of women.

(6) Because the use of the word "persons" in Section 24 to include female persons is not a striking constitutional departure, but is in accordance with the general tenor of the British North America Act.

(7) Because under Section 33 the Senate has power to seat women summoned by the Governor-General as a Senator, the word "persons" therefore must include female persons.

N. W. ROWELL.

FRANK GAHAN.

In the Privy Council.

No. 121 of 1928.

On Appeal from the Supreme Court of Canada.

IN THE MATTER of a Reference to the meaning of the word "persons" in Section 24 of the British North America Act, 1867.

BETWEEN

HENRIETTA MUIR EDWARDS, NELLIE L. McCLUNG, LOUISE C. McKINNEY, EMILY F. MURPHY and IRENE PARLBY *Appellants*

AND

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC and THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA *Respondents.*

CASE OF THE APPELLANTS.

BLAKE & REDDEN,
17 Victoria Street, S.W.1.

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ON APPEAL FROM THE SUPREME COURT OF CANADA.

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AND

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC AND THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA - - - - - - - - - - *Respondents.*

CASE OF THE ATTORNEY-GENERAL OF CANADA.

1. This is an appeal by special leave from the judgment of the Supreme Court of Canada pronounced on the 24th April, 1928, upon a reference by His Excellency the Governor in Council for hearing and consideration by the Court, pursuant to the provisions of section 60 of the Supreme Court Act, of the following question relative to the eligibility of women to be summoned to a place in the Senate or Upper House of the Parliament of Canada : RECORD. pp. 38, 39. pp. 3, 4.

"Does the word 'Persons' in section 24 of the British North America Act, 1867, include female persons?"

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RECORD.

2. The said reference was made upon the petition of the appellants as persons interested in the admission of women to the Senate of Canada.

3. The provisions of the British North America Act, 1867, relating to the constitution of the Senate and the qualifications of a Senator, viz., sections 21 to 36 inclusive, are set out with other sections of the said Act which have been adverted to in the discussion and consideration of the question referred, at pp. 18–33 of the Joint Appendix.

4. On the hearing of argument of the said reference on the 14th March, 1928, before the full Court (composed of Anglin, C.J., Duff, Mignault, Lamont and Smith, J.J.), counsel for the Attorney-General of Canada contended that the word " persons " in sec. 24 of the British North America Act was limited to male persons, and counsel for the Province of Quebec supported this contention. Counsel for the petitioners contended, on the other hand, that the word " persons " in that section included female persons, and this contention was supported by the counsel for the Attorney-General of Alberta. The Attorneys-General for the other provinces of Canada, though duly notified, did not appear on the argument of the said reference.

5. On the 24th April, 1928, the Court pronounced its judgment unanimously answering the question referred as follows :

p. 39. " The question being understood to be, ' Are women eligible for appointment to the Senate of Canada,' the Question is answered in the negative."

pp. 39–59. The reasons for judgment delivered by the several members of the Court are reported in (1928) S.C.R., pp. 276–304.

6. The Chief Justice of Canada, in his reasons for judgment (in which Mignault, Lamont and Smith, J.J. concurred), after citing the principles of construction which he considered to be applicable as affording guidance to the true determination of the question referred, proceeded as follows, at pages 282 and 283 of the report :

p. 43, l. 15. " Two outstanding facts or circumstances of importance bearing upon the present reference appear to be—

" (*a*) that the office of Senator was a *new* office first created by the B.N.A. Act.

" ' It is an office, therefore, which no one apart from the enactments of the statute has an inherent or common law right of holding, and the right of any one to hold office must be found within the four corners of the statute which creates the office and enacts the conditions upon which it is to be held and the persons who are entitled to hold it ; (*Beresford-Hope* v. *Sandhurst* (1889) 23 Q.B.D. 79, at p. 91, per Lord Colerdige, C.J.) ; '

" (*b*) that by the common law of England (as also, speaking generally, by the civil and canon law : *fœminæ ab omnibus officiis civilibus vel publicis remotæ sunt*) women were under a legal incapacity to hold public office, ' referable to the fact that (as

Willes, J., said in *Chorlton* v. *Lings*, L.R. 4 C.P. 374, at p. 392) in this country in modern times, chiefly out of respect to women, and a sense of decorum, and not from their want of intellect, or their being for any other reason unfit to take part in the government of the country, they have been excused from taking any share in this department of public affairs.' " RECORD.

And at pp. 284–288 of the report :—

" Prior to 1867 the common law legal incapacity of women to sit in Parliament had been fully recognized in the three provinces— Canada (Upper and Lower), Nova Scotia and New Brunswick, which were then confederated as the Dominion of Canada. p. 45, l. 8.

" Moreover, paraphrasing an observation of Lord Coleridge, C.J., in *Beresford-Hope* v. *Sandhurst* (1889) 23 Q.B.D. 79, at pp. 91, 92, it is not also perhaps to be entirely left out of sight, that in the sixty years which have run since 1867, the questions of the rights and privileges of women have not been, as in former times they were, asleep. On the contrary, we know as a matter of fact that the rights of women, and the privileges of women, have been much discussed, and able and acute minds have been much exercised as to what privileges ought to be conceded to women. That has been going on, and surely it is a significant fact, that never from 1867 to the present time has any woman ever sat in the Senate of Canada, nor has any suggestion of women's eligibility for appointment to that House until quite recently been publicly made.

" Has the Imperial Parliament, in sections 23, 24, 25, 26 and 32 of the B.N.A. Act, read in the light of other provisions of the statute and of relevant circumstances proper to be considered, given to women the capacity to exercise the public functions of a Senator? Has it made clear its intent to effect, so far as the personnel of the Senate of Canada is concerned, the striking constitutional departure from the common law for which the petitioners contend, which would have rendered women eligible for appointment to the Senate at a time when they were neither qualified to sit in the House of Commons nor to vote for candidates for membership in that House? Has it not rather by clear implication, if not expressly excluded them from membership in the Senate? Such an extraordinary privilege is not conferred furtively, nor is the purpose to grant it to be gathered from remote conjectures deduced from a skilful piecing together of expressions in a statute which are more or less precisely accurate. (*Nairn* v. *University of St. Andrews* (1909) A.C. 147, at p. 161). When Parliament contemplates such a decided innovation it is never at a loss for language to make its intention unmistakable. ' A judgment,' said Lord Robertson in the case last mentioned at pp. 165–6, ' is wholesome and of good example which puts forward subject-matter and fundamental constitutional law as guides of construction never to be neglected in favour of verbal possibilities.'

RECORD.

"There can be no doubt that the word 'persons' when standing alone *prima facie* includes women. (Per Loreburn, L.C., *Nairn* v. *University of St. Andrews* (1909) A.C. 147, at p. 161.) It connotes human beings—the criminal and the insane equally with the good and the wise citizen, the minor as well as the adult. Hence the propriety of the restriction placed upon it by the immediately preceding word 'qualified' in ss. 24 and 26 and the words 'fit and qualified' in s. 32, which exclude the criminal and the lunatic or imbecile as well as the minor, who is explicitly disqualified by s. 23 (1). Does this requirement of qualification also exclude women?

"*Ex facie*, and apart from their designation as 'Senators' (s. 21), the terms in which the qualifications of members of the Senate are specified in s. 23 (and it is to those terms that reference is made by the word 'qualified' in s. 24) import that men only are eligible for appointment. In every clause of s. 23 the Senator is referred to by the masculine pronoun—'he' and 'his'; and the like observation applies to ss. 29 and 31. (*Frost* v. *The King* (1919) Ir. R. 1 Ch. 81, at p. 91.) Moreover, clause 2 of section 23 includes only 'natural-born' subjects and those 'naturalized' under statutory authority and not those who become subjects by marriage—a provision which one would have looked for had it been intended to include women as eligible.

"Counsel for the petitioners sought to overcome the difficulty thus presented in two ways:

p. 46, l. 23.

"(*a*) by a comparison of s. 24 with other sections in the B.N.A. Act, in which, he contended, the word 'persons' is obviously used in its more general signification as including women as well as men, notably ss. 11, 14 and 41.

"(*b*) by invoking the aid of the statutory interpretation provision in force in England in 1867—13-14 Vict., c. 21, s. 4, known as Lord Brougham's Act—which reads as follows:

"'Be it enacted that in all Acts words importing the Masculine Gender shall be deemed and taken to include Females, and the Singular to include the Plural, and the Plural the Singular, unless the contrary as to Gender or Number is expressly provided.'

"(*a*) A short but conclusive answer to the argument based on a comparison of s. 24 with other sections of the B.N.A. Act in which the word 'persons' appears is that in none of them is its connotation restricted, as it is in s. 24, by the adjective 'qualified.' 'Persons' is a word of equivocal signification, sometimes synomymous with human beings, sometimes including only men. 'It is an ambiguous word,' says Lord Ashbourne, 'and must be examined and construed in the light of surrounding circumstances and consitutional law' (*Nairn* v. *University of St. Andrews* (1909) A.C. 147, at p. 162).

"In section 41 of the B.N.A. Act, which deals with the qualifications for membership of the House of Commons and of the voters at elections of such members, 'persons' would seem to be used in its wider signification, since, while in both these matters the legislation affecting the former Provincial Houses of Assembly, or Legislative Assemblies, is thereby made applicable to the new House of Commons, it remains so only 'until the Paliament of Canada otherwise provides.' It seems reasonably clear that it was intended to confer on the Parliament of Canada an untrammelled discretion as to the personnel of the membership of the House of Commons and as to the conditions of and qualifications for the franchise of its electorate; and so the Canadian Parliament has assumed, as witness the Dominion Elections Act, R.S.C. 1927, c. 53, ss. 29 and 38. It would, therefore, seem necessary to give the word 'persons' in s. 41 of the B.N.A. Act the wider signification of which it is susceptible in the absence of adjectival restriction.

"But, in s. 11, which provides for the constitution of the new Privy Council of Canada, the word 'persons,' though unqualified, is probably used in the more restricted sense of 'male persons.' For the public offices thereby created, women were, by the common law, ineligible, and it would be dangerous to assume that by the use of the ambiguous term 'persons' the Imperial Parliament meant in 1867 to bring about so vast a constitutional change affecting Canadian women, as would be involved in making them eligible for selection as Privy Councillors. A similar comment may be made upon s. 14, which enables the Governor General to appoint a Deputy or Deputies."

"As put by Lord Loreburn in *Nairn* v. *University of St. Andrews* (1909) A.C. 147, at p. 161 :

'It would require a convincing demonstration to satisfy me that Parliament intended to effect a constitutional change so momentuous and far-reaching by so furtive a process.'

"With Lord Robertson (ibid. at pp. 165-6), to mere 'verbal possibilities' we refer 'subject-matter and fundamental constitutional law as guides of construction.' When Parliament intends to overcome a fundamental consitutional incapacity it does not employ such an equivocal expression as is the word 'persons' when used in regard to eligibility for a newly created public office. Neither from s. 11 or s. 14 nor from s. 41, therefore, can the petitioners derive support for their contention as to the construction of the phrase 'qualified persons' in s. 24.

"Section 63 of the B.N.A. Act, the only other section to which Mr. Rowell referred, deals with the constitution of the Executive Councils of the provinces of Ontario and Quebec. But, since, by s. 92 (1), each provincial legislature is empowered to amend the constitution of the province except as regards the office of

RECORD.

Lieutenant-Governor, the presence of women as members of some provincial executive councils has no significance in regard to the scope of the phrase 'qualified persons' in s. 24 of the B.N.A. Act.

"(*b*) 'Persons' is not a 'word importing the masculine gender.' Therefore, *ex facie*, Lord Brougham's Act has no application to it. It is urged, however, that that statute so affects the word 'Senator' and the pronouns 'he' and 'his' in s. 23 that they must be 'deemed and taken to include Females,' 'the contrary' not being 'expressly provided.'

"The application and purview of Lord Brougham's Act came up for consideration in *Chorlton* v. *Lings* (1868) L.R. 4, C.P. 374, where the Court of Common Pleas was required to construe a statute (passed, like the British North America Act, in 1867) which conferred the parliamentary franchise on 'every man' possessing certain qualifications and registered as a voter. The chief question discussed was whether, by virtue of Lord Brougham's Act, 'every man' included 'women.' Holding that 'women' were 'subject to a legal incapacity from voting at the election of members of Parliament,' the court unanimously decided that the word 'man' in the statute did not include a 'woman.'"

After quoting from the reasons for judgment delivered by the learned Judges in that case, the learned Chief Justice (at page 290 of the Report) concluded as follows:

p. 49, l. 35.

"The decision in *Chorlton* v. *Lings* (L.R. 4, C.P. 374) is of the highest authority, as was recognized in the House of Lords by Earl Loreburn, L.C. in *Nairn* v. *University of St. Andrews* (1909) A.C. 147, and again by Viscount Birkenhead, L.C., in rejecting the claim of Viscountess Rhondda to sit in the House of Lords, with the concurrence of Viscount Cave, and Lords Atkinson, Phillimore, Buckmaster, Sumner and Carson, as well as by Viscount Haldane, who dissented (1922) 2 A.C. 339."

"In his speech, at p. 375, the Lord Chancellor said:—

p. 50, l. 2.

'It is sufficient to say that the Legislature in dealing with this matter cannot be taken to have departed from the usage of centuries or to have employed such loose and ambiguous words to carry out so momentous a revolution in the constitution of this House. And I am content to base may judgment on this alone.'

"In our opinion *Chorlton* v. *Lings*, L.R. 4, C.P. 374 is conclusive evidence against the petitioners alike on the question of the common law incapacity of women to exercise such public functions as those of a member of the Senate of Canada and on that of their being expressly excluded from the class of 'qualified persons' within s. 24 of the B.N.A. Act by the terms in which s. 23 is couched (*New South Wales Taxation Commissioners* v. *Palmer*) (1907) A.C. 179, at p. 184 so that Lord Brougham's Act cannot be invoked to extend those terms to bring "women" within their purview.

"We are, for these reasons, of the opinion that women are not eligible for appointment by the Governor-General to the Senate of Canada under Section 24 of the British North America Act, 1867, because they are not 'qualified persons' within the meaning of that section. The question submitted, understood as above indicated, will, accordingly, be answered in the negative." RECORD.

7. Mignault, J., while concurring generally in the reasoning of the Chief Justice, stated briefly, in a separate judgment, the grounds on which he based his answer to the question submitted, in part, as follows: (at pp. 302, 303 of the report).

"The real question involved under this reference is whether on the proper construction of the British North America Act, 1867, women may be summoned to the Senate. . . . The expression 'persons' does no stand alone in section 24, nor is that section the only one to be considered. It is 'qualified persons' whom the Governor General shall from time to time summon to the Senate (sec. 24), and when a vacancy happens in the Senate, it is a 'fit and qualified person' whom the Governor-General shall summon to fill the vacancy (sec. 32). On the proper construction of these words depends the answer we have to give. . . . p. 59, l. 1.

"The contentions which the petitioners advanced at the hearing are not new. They have been conclusively rejected several times, and by decisions by which we are bound. Much was said of the interpretation clause contained in Lord Brougham's Act, but the answer was given sixty years ago in *Chorlton* v. *Lings* (1868) L.R. 4, C.P. 374. It appears hopeless to contend against the authority of these decisions. p. 59, l. 20.

"The word 'persons' is obviously a word of uncertain import. Sometimes it includes corporations as well as natural persons; sometimes it is restricted to the latter and sometimes again it comprises merely certain natural persons determined by sex or otherwise. The grave constitutional change which is involved in the contention submitted on behalf of the petitioners is not to be brought about by inferences drawn from expressions of such doubtful import, but should rest upon an unequivocal statement of the intention of the Imperial Parliament, since that Parliament alone can change the provisions of the British North America Act in relation to the 'qualified persons' who may be summoned to the Senate."

8. Duff, J., after referring to the argument which had been advanced in favour of the limited construction of sec. 24 of the British North America Act, 1867, and the decisions cited in support of it, proceeded to state that he was unable to accept that argument, in so far as it rested upon the view that in construing the legislative and executive powers granted by the British North America Act, they must proceed upon a general presumption against the eligibility of women for public office. He had come to the conclusion that there was a special ground upon which the restricted construction p. 52, l. 33.

RECORD. of sec. 24 must be maintained, but before stating that he thought it right to explain why, in his view, the general presumption contended for had not been established. First, one must consider the provisions of the Act themselves, apart from "extraneous circumstances." It would, he thought, hardly be disputed that as a general rule the legislative authority of Parliament and of the legislatures enabled them, each in their several fields, to deal fully with the subject of the incapacity of women. One could not hold otherwise without refusing to give effect to the language of secs. 91 and 92, and, indeed, one felt constrained to say, without ignoring the fact that the authors of the Act were engaged in creating a system of representative government for the people of half a continent. Counsel did, in the course of argument, suggest the possibility that Parliament, in extending the parliamentary franchise to women, had exceeded its powers, but he did not think that was seriously pressed. There could be no doubt that the Act did, in two sections, recognise the authority of Parliament and of the Legislatures to deal with the disqualification of women to be elected, or sit, or vote, as members of the representative body or to vote in an election of such members. These sections were secs. 41 and 84, and the learned judge developed an argument in support of that construction of those sections. The subject of the qualification and disqualification of women as members of the House of Commons being thus recognized as within the jurisdiction of Parliament, was it quite clear that the construction of the general words of sec. 11 dealing with the constitution of the Privy Council was governed by the general presumption suggested? Inferentially, in laying down the "principle" of the British Constitution as the foundation of the new policy, the preamble recognized the responsibility of the Executive to Parliament, or rather to the elective branch of the legislature and the right of Parliament to insist that the advisers of the Crown should be persons possessing its "confidence" as the phrase was.

p. 54, l. 23.

p. 55, l. 1. It might be suggested, he could not help thinking, with some plausibility, that there would be something incongruous in a parliamentary system professedly conceived and fashioned on this principle, if persons fully qualified to be members of the House of Commons were by an iron rule of the constitution, a rule beyond the reach of Parliament, excluded from the Cabinet or the Government; if a class of persons who might reach any position of political influence, power or leadership in the House of Commons, were permanently, by an organic rule, excluded from the Government. In view of the intimate relation between the House of Commons and the Cabinet, and the rights of initiation and control which the Government possesses in relation to legislation and parliamentary business generally, and which, it cannot be doubted, the authors of the Act intended and expected would continue, that would not, he thought, be a wholly baseless suggestion.

The word "persons" was employed in a number of sections of the Act (secs. 41, 83, 84 and 133) as designating members of the House of Commons, and though the word appeared without an adjective, indubitably it was used in the unrestricted sense as embracing persons of both

sexes; while in secs. 41 and 84, where males only were intended, that intention was expressed in appropriate specific words. RECORD.

Such general inferences therefore as may arise from the language of the Act as a whole could not be said to support a presumption in favour of the restricted interpretation.

Nor was he convinced that the reasoning based upon the "extraneous circumstances" they were asked to consider—the disabilities of women under the common law, and the law and practice of Parliament in respect of appointment to public place or office—established a rule of interpretation for the British North America Act, by which the construction of powers, legislative and executive, bestowed in general terms was controlled by a presumptive exclusion of women from participation in the working of the institutions set up by the Act. This mode of approach, though recognized by the courts as legitimate, must obviously be employed with caution. p. 56, l. 6.

The "extraneous facts," upon which the underlying assumption was founded, must be demonstrative. It would not do to act upon the general resemblances between the questions presented here, and that presented in the cases cited. Those cases were concerned with the effect of statutes which might at any time be repealed or amended by a majority. They had nothing to do with the jurisdiction of Parliament or with that of His Majesty in Council executing the highest and constitutional functions under his responsibility to Parliament; and were not intended to lay down binding rules, for an indefinite future, in the working of a Constitution. And, above all, they were not concerned with broad provisions establishing new parliamentary institutions, and defining the spheres and powers of legislatures and executives, in a system of representative government. Passages in the judgments of seemingly general import, must be read *secundum subjectam materiam*.

In 1867, the learned judge proceeded to remark by way of illustration, p. 56, l. 23.
it would have been a revolutionary step to appoint a woman to the Privy Council or to an Executive Council in Canada—nobody would have thought of it. But it would also have been a radical departure to make women eligible for election to the House of Commons, or to confer the electoral franchise upon them; to make them eligible as members of a provincial legislature, or for appointment to a provincial legislative council. And yet it is quite plain that, with respect to all these last-mentioned matters, the fullest authority was given and given in general terms to Parliament and the legislatures within their several spheres; the "policy of centuries" being left in the keeping of the representative bodies, which with the consent of the people of Canada, were to exercise legislative authority over them.

In view of this, he did not think the "extraneous facts" relied upon were really of decisive importance, especially when the phraseology of the particular sections already mentioned was considered; and their value became inconsiderable when compared with reasons deriving their force from the presumption that the Constitution in its executive branch was intended to be capable of adaptation to whatever changes (permissible

RECORD. under the Act) in the law and practice relating to the election branch might be progressively required by change in public opinion.

p. 57, l. 5. *Sic.* For these reasons, the learned judge was not convinced of the existence of any such general resumption such as that contended for.

On the other hand, there were considerations which he thought specially and very profoundly affected the question of the construction of sec. 24, and the learned judge, in the following passages of his judgment (at pp. 300 and 301 of the Report), then proceeded to give his reasons for answering the question referred in the negative :

p. 57, l. 8. " It should be observed, in the first place, that in the economy of the British North America Act, the Senate bears no such intimate relation to the House of Commons, or to the Executive, as each of these bears to the other. There is no consideration, as touching the policy of the Act in relation to the Senate, having the force of that already discussed, arising from the control vested in Parliament in respect of the Constitution of the House of Commons, and affecting the question of the Constitution of the Privy Council. On the other hand, there is much to point to an intention that the constitution of the Senate should follow the lines of the Constitution of the old Legislative Councils under the Acts of 1791 and 1840.

" In 1854, in response to an agitation in the province of Canada, the Imperial Parliament passed an Act amending the Act of Union (17 and 18 Vic., Cap. 118 already mentioned) which fundamentally altered the status of the Legislative Council. Before the enactment of this Act, the Constitution of the Legislative Council had been fixed (by secs. 4 to 10 of the Act of Union) beyond the power of the legislature of Canada to modify it. By the Statute of 1854, that constitution was placed within the category of matters with which the Canadian Legislature had plenary authority to deal. Now, when the British North America Act was framed, this feature of the parliamentary constitution of the province of Canada, the power of the legislature of the province to determine the constitution of the second Chamber, was entirely abandoned. The authors of the Confederation scheme, in the Quebec Resolutions, reverted in this matter (the Constitution of the Legislative Council, as it was therein called) to the plan of the Acts of 1791 (save in one respect not presently relevant) and of 1840. And the clauses in these resolutions on the subject of the Council, follow generally in structure and phraseology the enactments of the earlier statutes.

" It seems to me to be a legitimate inference, that the British North America Act contemplated a second Chamber, the constitution of which should, in all respects, be fixed and determined by the Act itself, a constitution which was to be in principle the same though, necessarily in detail, not identical, with that of the second Chambers established by the earlier statutes. That under those

statutes, women were not eligible for appointment is hardly susceptible of controversy.

"In this connection, the language of sections 23 and 31 of the British North America Act deserves some attention. I attach no importance (in view of the phraseology of secs. 83 and 128) to the use of the masculine personal pronoun in section 23, and, indeed, very little importance to the provision in section 23 with regard to nationality. But it is worthy of notice that subsection 3 of section 23 points to the exclusion of married women, and subsection 2 of section 31 would probably have been expressed in a different way if the presence of married women in the Senate had been contemplated; and the provisions dealing with the Senate are not easily susceptible of a construction proceeding upon a distinction between married and unmarried women in respect of eligibility for appointment to the Senate. These features of the provisions specially relating to the constitution of the Senate, in my opinion, lend support to the view that in this, as in other respects, the authors of the Act directed their attention to the Legislative Councils of the Acts of 1791 and 1840 for the model on which the Senate was to be formed."

9. It is submitted on behalf of the Attorney-General of Canada that the judgment of the Supreme Court of Canada is right and ought to be affirmed and that the appeal therefrom ought to be dismissed for the reasons stated in the Reasons for Judgment delivered by the Judges of the Supreme Court of Canada, and for the following, amongst other

REASONS.

1. Because the relevant provisions of the British North America Act, 1867, ought to be construed to-day according to the intent of the Parliament which passed the Act, *i.e.*, by reference to the natural and ordinary meaning of the words used at the date when the statute was passed and so as to import all these implied exceptions which arise from a close consideration, not only of the object, the subject-matter, and all parts of the Act itself, but also of the then existing state of the law, in the light of which the Act must be read and interpreted.
2. Because the terms in which the provisions of the British North America Act, 1867, relating to the constitution of the Senate are expressed—the constituent title "Senator," a strictly masculine term and the masculine pronouns "he," "him," and "his" invariably employed throughout in reference to members of the Senate, the qualifications required of a Senator and the specified causes of his disqualification —in themselves all point to the soundness of the inference that men only were intended to be "qualified persons"

eligible for appointment to the Senate within the meaning of sec. 24 of the said Act.

3. Because the declared object of the British North America Act, 1867, was to unite the several Provinces therein mentioned into one Dominion under the British Crown " with a Constitution similar in principle to that of the United Kingdom," and there is no room for inference in the light of the then existing state of the common law of England and of the law and usages of the British Constitution, that the framers of that Act intended, without using language apt to express such an intention, to render women eligible to be summoned to the Upper Chamber of the Canadian Parliament, although excluded from the British.

4. Because by the principles of the common law and settled and uniform constitutional practice and principle as well in the several provinces united by the British North America Act, 1867, into the Dominion of Canada, as in England, women were under a legal incapacity to sit in Parliament, and if the framers of that Act had intended to remove that disability, as regards eligibility for appointment to the Senate of Canada, and effect a constitutional change so fundamental and momentous, they would have declared that intention in apt and explicit language and not by the furtive process of general words or of an indirect implication based upon an interpretation clause in a general Act like Lord Brougham's Act, 13 Vict. (1850), c. 21, s. 4.

5. Because the terms of the treaty of union between the several Provinces, embodied in the Quebec Resolutions, 1864, and given effect by the British North America Act, 1867, considered in the light of the form and character of the legislatures which had formerly been established in the Canadian Provinces, afford strong grounds for the inference that it was the intention of the framers of the British North America Act, 1867, to make the constitution of the Upper House of the Canadian Parliament (designated in those resolutions the Legislative Council) in principle the same as, though necessarily in detail not identical with, that of the Upper House, known as the Legislative Council, under the constitutions established by the Constitutional Act, 1791 (31 Geo. III. c. 31), for the Provinces of Upper and Lower Canada respectively, and later by the Act of Union, 1840 (3 & 4 Vict., c. 35), for the Province of Canada; and under those statutes it is past question that women were not eligible for appointment to the Upper House.

6. Because if the meaning of the term " qualified persons " in section 24 of the British North America Act, 1867, be other-

wise ambiguous or obscure, the fact that from 1867 to the present time qualified men only have been considered eligible for appointment to a place in the Senate of Canada—and that this interpretation of the enactment has until quite recently remained unchallenged—must be allowed full efficacy as unbroken and continuous usage showing that the contemporaneous interpretation of the enactment by persons of authority has been uniformly consistent with what is now claimed on behalf of the Attorney-General of Canada to be its true legal interpretation.

7. Because the expression "qualified persons," in said sec. 24 of the British North America Act, 1867, in its context and on its true construction, necessarily and properly implies qualified male persons only, and that being the intention expressed, the general interpretation clause that words importing the masculine gender shall include females "unless the contrary is expressly provided" (Lord Brougham's Act, 13 Vict. (1850), c. 21, s. 4) or "unless the contrary intention appears" (The Interpretation Act, 1889, 52–53 Vict., c. 63, s. 1, ss. 1 (*a*)), does not apply and cannot be invoked to extend by implication the expression "qualified persons" to female persons.

LUCIEN CANNON.
E. LAFLEUR.
C. P. PLAXTON.

In the Privy Council.

No. 121 of 1928.

ON APPEAL
FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of a Reference as to the meaning of the word "Persons" in Section 24 of The British North America Act, 1867.

Between

HENRIETTA MUIR EDWARDS, NELLIE L. McCLUNG, LOUISE C. McKINNEY, EMILY F. MURPHY and IRENE PARLBY

Appellants

AND

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC, and THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA

Respondents.

CASE OF THE ATTORNEY-GENERAL OF CANADA.

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In the Privy Council.

No. 121 of 1928.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of a Reference as to the meaning of the word " persons " in Section 24 of the British North America Act 1867.

BETWEEN

HENRIETTA MUIR EDWARDS, NELLIE L. McCLUNG, LOUISE C. McKINNEY, EMILY F. MURPHY and IRENE PARLBY - - - - - - - *Appellants*

AND

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC and THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA - - - - - - *Respondents.*

CASE OF THE RESPONDENT

THE ATTORNEY-GENERAL OF THE PROVINCE OF QUEBEC.

Record.

1. This is an appeal by special leave granted on the 20th day of November 1928, from a judgment or opinion of the Supreme Court of Canada, dated the 24th day of April 1928, answering a question referred to the Court for hearing and consideration by the Governor-General of Canada in Council under the provisions of the Supreme Court Act. p. 60.

2. Section 24 of the British North America Act 1867, is as follows:—

" 24. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator."

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3. The question referred with the answer made by the Court is as follows :—

p. 38. Question : Does the word " Persons " in Section 24 of The British North America Act 1867 include female persons ?

p. 39. Answer : The question being understood to be " Are women eligible for appointment to the Senate of Canada," the question is answered in the negative.

4. Other sections of The British North America Act 1867, which appear to be material to the question are set out in the Joint Appendix hereto at page 18.

5. The question came before the Supreme Court for hearing on the 14th day of March 1928, the Court being composed of The Right Honourable p. 38. F. A. Anglin, Chief Justice, The Right Honourable Mr. Justice Duff and Justices Mignault, Lamont and Smith, and the reference having stood over for consideration judgment was pronounced on the 24th day of April 1928.

6. The judgment of the Court was unanimous, though for somewhat p. 39. different reasons as indicated in those delivered by the Chief Justice with p. 50. which Lamont and Smith, JJ., concurred and the separate reasons delivered p. 59. by Mr. Justice Duff and Mr. Justice Mignault.

7. Section 33 is :—

" 33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate."

p. 41, l. 38. The Chief Justice in his reasons points out—

That Section 33 only empowers the Senate to hear and determine any question respecting the qualification of a Senator after the person whose qualification is challenged has been appointed to the Senate.

p. 42, l. 5. That while the question submitted deals with the word " Persons," Section 24 of The British North America Act speaks only of " qualified persons."

p. 42, l. 23. That the provisions of The British North America Act bear to-day the same construction which the Courts would, if required to pass upon them, have given to them when they were first enacted.

The Chief Justice refers to a number of cases decided by the Courts in England and notably those of—

Chorlton v. *Lings* [1868] L.R. 4 C.P. 374, and

Nairn v. *University of St. Andrews* [1909] A.C., 147.

And he concludes: "In our opinion *Chorlton* v. *Lings* is conclusive against the petitioners alike on the question of the common law incapacity of women to exercise such public functions as those of a member of the Senate of Canada and on that of their being expressly excluded from the class of 'qualified persons' within s. 24 of The B.N.A. Act by the terms in which s. 23 is couched . . . " p. 50, l. 7.

Section 23—

"23. The Qualifications of a Senator shall be as follows:

"(1.) He shall be of the full age of Thirty Years;

"(2.) He shall be either a Natural-born Subject of the Queen, of a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union;

"(3.) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in free and common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Franc-alleu or in Roture, within the Province for which he is appointed, of the Value of Four Thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same;

"(4.) His Real and Personal Property shall be together worth Four Thousand Dollars over and above his Debts and Liabilities;

"(5.) He shall be resident in the Province for which he is appointed;

"(6.) In the case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division."

p. 50, l. 21. **8.** Mr. Justice Duff in his reasons for judgment maintains that the word "'Persons' in the ordinary sense of the word includes, of course, "natural persons of both sexes" and that the question is whether "we "are constrained in construing section 24 to read the word 'persons' in a restricted sense and to construe the section as authorising the summoning "of male persons only."

p. 52, l. 33. That he was unable to accept the argument in support of the limited construction in so far as it rests upon the view that in construing the legislative and executive powers granted by The British North America Act, we must proceed upon a general presumption against the eligibility of women for public office.

p. 53, l. 7. He had no doubt that The British North America Act did, in Sections 41 and 84, recognise the authority of Parliament to deal with the disqualification of women to be elected, or sit or vote as members of the representative body, or to vote in an election of such members.

p. 53, l. 42. But that the legislative authority of Parliament on the subject of qualification of members and voters was given under the general language of Section 91.

Sections 41 and 84 are :—

"41. Until the Parliament of Canada otherwise provides, all Laws in force in the several Provinces at the Union relative to the following Matters or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which Elections may be continued, the Trial of controverted Elections, and Proceedings incident thereto, the vacating of Seats of Members, and the Execution of new writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces.

"Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a Vote."

"84. Until the Legislatures of Ontario and Quebec respectively otherwise provide, all Laws which at the Union are in force in those Provinces respectively, relative to the following Matters,

or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the Assembly of Canada, the Qualifications or Disqualifications of Voters, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which such Elections may be continued, and the Trial of controverted Elections and the Proceedings incident thereto, the vacating of the Seats of Members and the issuing and Execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the respective Legislative Assemblies of Ontario and Quebec.

"Provided that until the Legislature of Ontario otherwise provides, at any Election for a Member of the Legislative Assembly of Ontario for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a vote."

The general powers of the Parliament under Section 91 are :—

"91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say,—

* * * * * * "

That the word "persons" is employed in a number of sections of the Act (Sections 41, 83, 84 and 133) as designating members of the House of Commons, and though the word appears without an adjective, indubitably it is used in the unrestricted sense as embracing persons of both sexes. p. 55, l. 15.

That the reasoning based on the extraneous circumstances—the disabilities of women under the common law, and the law and practice of Parliament in respect of appointment to public place or office—was inconsiderable when compared with reasons deriving their force from the presumption that the Constitution in its executive branch was intended to be capable of adaptation to whatever changes in the law and practice relating to the election branch might be progressively required by changes in public opinion. p. 55, l. 24.

p. 57, l. 12. The learned judge was however of opinion that there was no such consideration in relation to the Senate arising from the control vested in Parliament in respect of the Constitution of the House of Commons and affecting the question of the Constitution of the Privy Council, and that there was much to point to an intention that the constitution of the Senate should follow the lines of the Constitution of the old Legislative Councils under the Acts of 1791 (Appendix, p. 6), and 1840 (Appendix, p. 10) as amended by the Union Act Amendment Act, 17 and 18 Vic. c. 118, (Appendix, p. 16) to which he briefly refers.

p. 58, l. 20. The learned judge was further of opinion that the Senate possesses sole and exclusive jurisdiction to pass upon the claims of any person to sit and vote as a member thereof, and such jurisdiction is not confined to the right to pass upon questions as to qualification under Section 33, but extends to the question whether a person summoned is a person capable of being summoned under Section 24.

p. 59. **9.** Mignault, J., in a concise judgment, gives as his reasons for concurring with the answer of the Court :—

l. 5. That " the expression ' persons ' does not stand alone in section 24, nor is that section the only one to be considered . . .
l. 11. It would be idle to enquire whether women are included within the meaning of an expression which, in the question as framed, is divorced from its context."

l. 21. That the question was concluded by decisions by which the Court was bound, notably that in *Chorlton* v. *Lings* [1868] L.R. 4 C.P. 374.

l. 26. That " the word ' persons ' is obviously a word of uncertain
l. 29. import " and that " the grave constitutional change which is involved in the contention submitted on behalf of the petitioners is not to be brought about by inferences drawn from expressions of such doubtful import, but should rest upon an unequivocal statement of the intention of the Imperial Parliament . . ."

10. The Province of Quebec has a special interest in the question above that of any other of the Provinces since by Section 73 " the qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec."

Section 73 reads :—

" 73. The Qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec."

Though not referred to in the reasons of the Judges of the Supreme Court this section may well assist in determining the construction to be put on Section 24. Inasmuch as it is only " qualified persons " who can be summoned to the Senate it would follow, if women are qualified to be summoned to the Senate, they would also be qualified for appointment to the Legislative Council of Quebec by the Lieutenant-Governor of the Province under Sections 72 and 75.

Sections 72 and 75 are :—

" 72. The Legislative Council of Quebec shall be composed of Twenty-four Members, to be appointed by the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, one being appointed to represent each of the Twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding Office for the Term of his Life, unless the Legislature of Quebec otherwise provides under the Provisions of this Act."

" 75. When a Vacancy happens in the Legislative Council of Quebec by Resignation, Death, or otherwise, the Lieutenant-Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, shall appoint a fit and qualified Person to fill the Vacancy."

The judgments both of the Chief Justice and of Mr. Justice Duff direct particular attention to the fact that the office of Senator was a new office first created by The British North America Act, which no one, apart from the enactments of the statute, has an inherent or common law right of holding, and the right of any one to hold the office must be found in the statute which creates it.

Notwithstanding this, Mr. Justice Duff considers that The British North America Act contemplated a second Chamber which was to be in principle the same, though not identical, with that of the second Chambers established by the earlier statutes providing the Constitution of the old Legislative Councils under the Acts of 1791, 31 George III, c. 31 (Appendix, p. 6) and 1840, 3 and 4 Vict., c. 35 (Appendix, p. 10).

If this conclusion is correct it applies with still further force to the case of the Province of Quebec for though the second Chamber in the province, that is the Legislative Council of Quebec, was created by Section 71 of the British North America Act, yet it was not like the Senate an entirely novel office, but was in effect, a continuation of the Legislative Councils under the Acts of 1791 and 1840. Each of the 24 members to be appointed to the Legislativ Council was to be appointed for one of the 24 electoral divisions of Lower Canada specified in Schedule A to Chapter I of the Consolidated Statutes of Canada.

Even if it had been intended to make a new departure as regards the Senate, a body created by the Act for the first time, it might well have been that a different provision from Section 73 would have been made for the Legislative Council of the Province of Quebec.

11. The Province of Quebec has the further interest which, indeed, it shares in common with the other Provinces that the Senate having been specially established for the safeguard of the rights of the Provinces, this Province is deeply concerned with any changes which might be made in the composition of that body.

12. There are differences in the legal position of men and women other than those of the incapacity of women for appointment to public place or office. The common law of property is in many respects different as regards men and women.

The Attorney-General of Quebec submits that the answer of the Supreme Court is right for the following, amongst other

REASONS.

(1) Because the construction to be put on Section 24 of the Act must be governed by the intention of the Legislature in 1867, the time of the passing of the Act.

(2) Because prior to that date women had ever been under a common law incapacity to perform the duties of public office or place and particularly were excluded from holding a place in Parliament or voting for the election of a member thereof.

(3) Because Section 24 does not authorise the Governor-General to summon any persons to the Senate but only " qualified persons " and women were neither qualified by the common law or by the statutory provisions for the qualifications requisite for a Senator.

(4) Because there is nothing in the Act which can suggest that the use of the word " persons " in providing for the Constitution could be held to include the appointment of women to either executive or legislative office.

(5) Because the provisions of Section 73, providing that the qualifications of the Legislative Councillors of Quebec shall be the same as those of Senators for Quebec, would not be appropriate for the Legislative Council of Quebec if the Lieutenant-Governor could appoint women to the Legislative Council of the Province.

(6) Because there are other differences in the legal position of men and women than the capacity for appointment to public place or office.

(7) For the reasons appearing in the judgments of the Chief Justice concurred in by Lamont and Smith, JJ., and those of Duff and Mignault, JJ.

CHARLES LANCTOT.

AIME GEOFFRION.

In the Privy Council.

No. 121 of 1928.

On Appeal from the Supreme Court of Canada.

IN A MATTER of a Reference as to the meaning of the word "persons" in Section 24 of the British North America Act 1867.

BETWEEN

HENRIETTA MUIR EDWARDS, NELLIE L. McCLUNG, LOUISE C. McKINNEY, EMILY F. MURPHY and IRENE PARLBY - *Appellants*

AND

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC, and THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA

Respondents.

CASE OF THE RESPONDENT

THE ATTORNEY-GENERAL OF THE PROVINCE OF QUEBEC.

BLAKE & REDDEN,
17 Victoria Street, S.W.1.

In the Privy Council.

No. 121 of 1928.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of a Reference as to the meaning of the word "persons" in Section 24 of The British North America Act, 1867.

BETWEEN

HENRIETTA MUIR EDWARDS, NELLIE L. McCLUNG, LOUISE C. McKINNEY, EMILY F. MURPHY AND IRENE PARLBY ... ... *Appellants*

AND

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC, AND THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA ... *Respondents.*

CASE

OF THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA.

The Attorney-General for the Province of Alberta adopts and relies upon the Case of the Appellants and submits that the appeal should be allowed for the reasons therein mentioned.

J. F. LYMBURN.
N. W. ROWELL.

[11]

VACHER—64735

In the Privy Council.

No. 121 of 1928.

On Appeal from the Supreme Court of Canada.

IN THE MATTER of a Reference as to the meaning of the word "persons" in Section 24 of The British North America Act, 1867.

BETWEEN

HENRIETTA MUIR EDWARDS, NELLIE L. McCLUNG, LOUISE C. McKINNEY, EMILY F. MURPHY and IRENE PARLBY *Appellants*

AND

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC, and THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA - - *Respondents.*

CASE

OF THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA.

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ON APPEAL FROM THE SUPREME COURT OF CANADA.

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RECORD OF PROCEEDINGS.

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No. 121 of 1928.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of a Reference as to the meaning of the word "persons" in Section 24 of The British North America Act, 1867.

BETWEEN

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AND

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC, AND THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA - *Respondents.*

RECORD OF PROCEEDINGS.

In the Supreme Court of Canada.

No. 1. Order of Reference by the Governor General in Council.

No. 1.

Order of Reference by the Governor General in Council.

P.C. 2034.

CERTIFIED *to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 19th October*, 1927.

The Committee of the Privy Council have had before them a Report, dated 18th October, 1927, from the Minister of Justice, submitting that he has had under consideration a petition to Your Excellency in Council dated the 27th August, 1927 (P.C. 1835), signed by Henrietta Muir Edwards, Nellie L. McClung, Louise C. McKinney, Emily F. Murphy and Irene Parlby, as persons interested in the admission of women to the Senate of Canada, whereby Your Excellency in Council is requested to refer to the Supreme Court of Canada for hearing and consideration certain questions touching the power of the Governor General to summon female persons to the Senate of Canada.

In the Supreme Court of Canada.

No. 1. Order of Reference by the Governor General in Council— *continued.*

The Minister observes that by section 24 of the British North America Act, 1867, it is provided that :—

> " The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator."

In the opinion of the Minister the question whether the word " Persons " in said section 24 includes female persons is one of great public importance.

The Minister states that the law officers of the Crown who have considered this question on more than one occasion have expressed the view that male persons only may be summoned to the Senate under the provisions of the British North America Act in that behalf.

The Minister, however, while not disposed to question that view, considers that it would be an Act of justice to the women of Canada to obtain the opinion of the Supreme Court of Canada upon the point.

The Committee therefore, on the recommendation of the Minister of Justice, advise that Your Excellency may be pleased to refer to the Supreme Court of Canada for hearing and consideration the following question :—

> Does the word " Persons " in section 24 of the British North America Act, 1867, include female persons ?

E. J. LEMAIRE,
Clerk of the Privy Council.

No. 2. Order for Inscription of Reference and Directions. 29th October, 1927.

No. 2.

Order for Inscription of Reference and Directions.

IN THE SUPREME COURT OF CANADA

BEFORE THE HONOURABLE MR. JUSTICE NEWCOMBE

SATURDAY, the 29th day of October, A.D. 1927.

IN THE MATTER of a reference as to the meaning of the word " persons " in section 24 of the British North America Act, 1867.

Upon the application of the Attorney-General of Canada for directions as to the inscription for hearing of the case relating to the above question referred by His Excellency the Governor General, for hearing and consideration by the Supreme Court of Canada under the provisions of section 60 of the Supreme Court Act, and upon hearing read the Order in Council of the 19th October, 1927, (P.C. 2034), setting forth the said question, referred upon the prayer of the petition in the said Order in Council mentioned, upon reading the affidavit of Charles P. Plaxton filed herein, and upon hearing what was alleged by counsel for the applicant :

In the Supreme Court of Canada.

No. 2.
Order for Inscription of Reference and Directions.
29th October, 1927—*continued.*

IT IS ORDERED that the said case be inscribed for hearing at the February, 1928, sittings of this Honourable Court, as case No. 2 on the "Western" list.

AND IT IS FURTHER ORDERED that the respective Attorneys-General of the provinces of Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Alberta and Saskatchewan, and the petitioners be notified of the hearing of the argument of the said case by sending to each of them by registered letter on or before the 5th day of November, 1927, a notice of hearing of the said reference and a copy of the said Order in Council, together with a copy of this order.

AND IT IS FURTHER ORDERED that factums may be filed by the said Attorneys-General and on behalf of the petitioners as provided in Rule 80 of the Supreme Court Rules.

AND IT IS FURTHER ORDERED that notice of the said reference be given in the Canada Gazette on or before the 5th day of November, A.D. 1927.

E. L. NEWCOMBE,
J.S.C.

No. 3.

No. 3.
Notice of hearing, 29th October, 1927.

Notice of Hearing.

IN THE SUPREME COURT OF CANADA.

IN THE MATTER of a reference as to the meaning of the word "Persons" in Section 24 of the British North America Act, 1867.

TAKE NOTICE that the reference herein has, by order of the Honourable Mr. Justice Newcombe, dated 29th October, 1927, been inscribed for hearing at the February, 1928, sittings of the Supreme Court of Canada, and you are hereby notified of the hearing of the said reference pursuant to the terms of the said Order, copy of which, together with the Order in Council therein referred to, are hereunto annexed.

Dated at Ottawa this 29th day of October, A.D. 1927.

W. STUART EDWARDS,
Deputy Minister of Justice.

Department of Justice, Ottawa.

To the Attorneys-General of the Provinces of
Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Alberta and Saskatchewan.

And to
Mrs. Henrietta Muir Edwards, Macleod, Alberta.
Mrs. Nellie L. McClung, Calgary, Alberta.
Mrs. Emily F. Murphy, 11011–88th Ave., Edmonton, Alberta.
Mrs. Louise C. McKinney, Claresholm, Alberta.
Mrs. Irene Parlby, Alix, Alberta.

In the Supreme Court of Canada.

No. 4.

No. 4.

Extracts from The British North America Act, 1867.

(*Printed in Joint Appendix, page* 18.)

No. 5.

No. 5.

Extracts from The British North America Act, 1915.

(*Printed in Joint Appendix, page* 40.)

No. 6. Factum of the Appellants.

No. 6.

Factum of the Appellants.

PART I.

This is a Reference by the Governor-General in Council under the provisions of Section 60 of the Supreme Court Act, to ascertain the meaning of the word " Persons " in Section 24 of The British North America Act, 1867. This section provides:

> " The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator."

Record p. 3. The Petitioners are interested in the admission of women to the Senate of Canada. The Law Officers of the Crown have expressed the view that male persons only may be summoned to the Senate. The Petitioners contend that female persons may also be summoned under the provisions of The British North America Act, 1867, and this Reference has been made by the Governor-General in Council to ascertain the meaning of Record p. 4. the word " Persons " in Section 24 of The British North America Act, 1867. The question submitted is—" Does the word ' Persons ' in Section 24 of The British North America Act, 1867, include female persons? "

ARGUMENT.

1. There is nothing in the word " Persons " to suggest that it is limited to male persons. The word in its natural meaning is equally applicable to female persons and it is submitted it should be so interpreted.

2. The only limitation on the word " Persons " as used in Section 24 of The British North America Act, 1867, is the word " qualified," and for the meaning of " qualified " reference must be made to Section 23, which Appendix pp. 20–21. defines the qualifications of a Senator. While the masculine pronoun " He "

is used in Section 23, the Interpretation Act in force in Great Britain at the date of the enactment of The British North America Act, 1867, and known as Lord Brougham's Act, 13–14 Victoria, Cap. 21, section 4, provides as follows:

> " Be it enacted that in all Acts words importing the Masculine Gender shall be deemed and taken to include Females, and the Singular to include the Plural, and the Plural the Singular, unless the contrary as to Gender or Number is expressly provided . . . "

By express statutory enactment, therefore, Section 23 includes females, unless the contrary is expressly provided. It is submitted there is nothing in The British North America Act, 1867, expressly providing the contrary.

3. The word " Persons " is also used in Section 41 of The British North America Act, 1867, in reference to members of the House of Commons. Section 41 provides:

> " Until the Parliament of Canada otherwise provides, all Laws in force in the several Provinces at the Union relative to the following Matters or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which Elections may be continued, the Trial of controverted Elections, and Proceedings incident thereto, the vacating of Seats of Members, and the Execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces."

The effect of this section is to define the qualifications of members of the House of Commons, by reference to existing provincial legislation, instead of by express enactment, as in the case of Senators by Section 23.

4. By the Dominion Elections Act, 10-11 George V. Cap. 46, Section 38, it is provided " Except as in this Act otherwise provided any British subject, male or female, who is of the full age of twenty-one years may be a candidate at a Dominion Election." The Parliament of Canada has, by this Act, interpreted " Persons " in Section 41 as including females, and under this Act a female person has been elected a Member of the House of Commons.

It is submitted that the word " Persons " in Sections 24 and 41 should receive the same interpretation and that there is nothing in The British North America Act, 1867, to justify a different interpretation.

5. It is further submitted that there is no more justification for assuming that the Imperial Parliament has in any way limited the freedom of the Governor-General to summon to the Senate a female person having the qualification required by Section 23 of The British North America

In the Supreme Court of Canada.

No. 6. Factum of the Appellants—*continued.*

Act, 1867, than there is for assuming that it has limited the power of the Parliament of Canada to interpret "Persons" in Section 41 of the Act as including female persons.

6. Section 33 of The British North America Act, 1867, provides:

> "If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate."

If the Governor General summoned a female person, otherwise qualified, to the Senate, and the Senate exercising the powers given by this Section determined that she was qualified as a Senator, it is submitted that her position as a Senator could not be challenged. If this be so, then the question on the reference cannot be answered in the negative. The Petitioners submit that the question should be answered in the affirmative.

N. W. ROWELL,
of Counsel for Petitioners.

(*The Appendix to this Factum has been incorporated in the Joint Appendix prepared for the use of the Privy Council.*)

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

No. 7.

Factum of the Attorney-General of Canada.

I.

STATEMENT OF THE CASE.

1. By Order in Council of the 19th October, 1927, (P.C. 2034) (Record, p. 3), His Excellency the Governor General in Council was pleased to refer to the Supreme Court of Canada, for hearing and consideration, pursuant to section 60 of the Supreme Court Act, the following question touching the power of the Governor General to summon female persons to the Senate of Canada:

> "Does the word 'Persons' in section 24 of the British North America Act, 1867, include female persons?"

2. In the narrative of the said Order in Council, it is stated "that the Law Officers of the Crown who have considered this question on more than one occasion have expressed the view that male persons only may be summoned to the Senate under the provisions of the British North America Act in that behalf."

3. The decision of this question must be governed by the interpretation to be placed upon the provisions of the British North America Act, 1867, by which the Dominion of Canada was called into existence, and in particular those provisions of the Act which relate to the constitution of the Senate and the qualifications of the members of the Senate. These are section 17, which ordained that, "There shall be One Parliament for Canada, consisting

of the Queen, an Upper House styled the Senate, and the House of Commons," and sections 20 to 36 inclusive. (Appendix, pp. 20–22.) The Sections which are particularly important for the determination of the present question are sections 23 and 24, which read as follows :—

Qualifications of Senator.

"23. The Qualification of a Senator shall be as follows :—

(1) He shall be of the full age of Thirty Years :

(2) He shall be either a Natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union :

(3) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in free and common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Franc-alleu or in Roture, within the Province for which he is appointed, of the Value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same :

(4) His Real and Personal Property shall be together worth Four thousand Dollars over and above his Debts and Liabilities :

(5) He shall be resident in the Province for which he is appointed :

(6) In the case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

Summons of Senator.

"24. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator."

II.

ARGUMENT.

4. *Principles of Interpretation.*—In the interpretation of the provisions of the British North America Act, 1867, courts of law are, of course, bound to apply the same methods of construction and exposition which they apply to other statutes of a like nature (*Bank of Toronto* v. *Lambe*, 12 A.C. 575, 579,), and it is only within the latitude prescribed by those methods that the question referred can be correctly determined. In this view, it is submitted that the correct determination of the question referred must be governed by the following principles of construction :

1. That the expression "qualified persons" in said section 24 is to be interpreted in the sense it bore, according to the intent of the legislature,

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when the Act was passed: in other words, that which it meant when enacted it means to-day, and its legal connotation has not been extended, and cannot be influenced by, recent innovations touching the political status of women, or by the more liberal conceptions respecting the sphere of women in politics and social life which may, perhaps, be assumed now to prevail; and,

2. That, in construing the expression "qualified persons" as used in said section 24, (assuming in favour of the petitioners' contention that that expression is of doubtful import), regard is to be had not only to all parts of the Act itself, to the subject matter with reference to which the words are used, and to the object of the Act, but to the state of the law at the time when the Act was passed, and to the antecedent situation in the several provinces which were by that Act united into one Dominion.

5. "A long stream of cases," said Viscount Birkenhead L.C., in the *Viscountess Rhondda's case*, (1922) 2 A.C. 339, 369, "has established that general words are to be construed so as, in an old phrase, 'to pursue the intent of the makers of statutes': *Stradling* v. *Morgan*, 1 Plowd. 203, 205, and so as to import all those implied exceptions which arise from a close consideration . . . of the state of the law at the moment when the statute was passed." The rule upon this subject was well expressed by the Barons of the Exchequer in the case of *Stradling* v. *Morgan*, ibid., in which case it is said, "that the judges of the law in all times past have so far pursued the intent of the makers of the statutes, that they have expounded Acts which were general in words to be but particular, where the intent was particular;" and after referring to several cases, they said:—

> "From which cases it appears that 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 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 ever 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 to reason and good discretion."

"The same doctrine," said Turner L.J., in *Hawkins* v. *Gathercole*, 6 De G.M. & G. 1, 21, after quoting and approving the foregoing passages, "is to be found in *Eyston* v. *Studd*, and the note appended to it, also in Plowden (pages 459, 465), and in many other cases. The passages to

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."

These two cases, decided at an interval of some three hundred years, 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 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), " 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 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

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so qualified there should have been a further provision for their becoming British subjects by marriage.

7. The argument for the view that women are "qualified persons" within the meaning of said section 24, must, therefore, involve the proposition that this expression was intended to include female persons, and that where words importing the masculine gender elsewhere occur in the Act, including the word "Senator," they must be construed to include females, and as if Parliament had used the appropriate alternative words to designate persons of the feminine gender. In support of this contention, reliance will, no doubt, be placed on the provisions of Lord Brougham's Act, 1850 (Imp. Statutes, 13 Vict. c. 21), and of the Interpretation Act, 1889, (Imp. Statutes, 52–3 Vict. c. 63). The former Act, by its 4th section, provided :—

> "Be it enacted that in all Acts words importing the masculine gender shall be deemed and taken to include females. . . . . .unless the contrary as to gender. . . . . .is expressly provided."

The Interpretation Act, 1889, under the title "Re-enactment of Existing Rules," provided, by sec. 1, sub-s. 1, as follows :—

> "In this Act and in every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, [January 1, 1890] unless the contrary intention appears,—
>
> "(*a*) words importing the masculine gender shall include females."

From these provisions it seems to follow that, "unless the contrary intention appears" and not the more stringent "unless the contrary as to gender is expressly provided," is the test now to be applied to Acts passed by the Imperial Parliament since 1850, although until the 1st January, 1890, Lord Brougham's Act applied to those Acts. The Interpretation Act, in this respect, operates as a retrospective declaration of the effect of Lord Brougham's Act in regard to the matter dealt with in sec. 1 of the Interpretation Act. Section 41 of the latter Act repeals Lord Brougham's Act in its entirety.

On the strength of these enactments it may be contended that the provisions of the British North America Act, 1867, do not, expressly at all events, evince any intention obnoxious to the application to the provisions which deal with the constitution of the Senate of the gender glossary which those enactments prescribe, and that the various expressions used in those provisions in reference to a member of the Senate must, therefore, be construed to include females. Unfortunately for this contention there are a series of decisions, closely applicable, which strongly repel it. Before referring to these decisions, it will be convenient to consider what the position of women was under the law of England at the time the British North America Act, 1867, was passed, for this consideration must, it is submitted, strongly influence the decision of this case as it did the decision of the cases to be referred to. This inquiry appears to be required by the

language of the Act itself, seeing that the object of that Act, as the preamble in terms declares, was to give effect to the desire which the provinces of Canada, Nova Scotia, and New Brunswick had expressed (in the Quebec Resolutions adopted in 1864, as revised by the delegates from the different provinces in London in 1866) to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland "with a Constitution similar in principle to that of the United Kingdom." The constitution of the Senate as one of the constituent Houses of the Parliament of Canada is undoubtedly a vital part of the Constitution conferred upon the Dominion of Canada by the British North America Act, 1867, and this much is clear, that the constitution of that Parliament was intended to be so far similar in principle to that of the United Kingdom, that the privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof, respectively, though they may be so defined as to equal with, cannot exceed those, at the passing of the British North America Act, held, enjoyed, and exercised by the Commons House of the Parliament of the United Kingdom and by the members thereof: sec. 18 of the British North America Act, 1867, and the Parliament of Canada Act, 1875, (Imp. Statutes 38-39 Vict. c. 38). The provisions of the British North America Act, 1867, afford no reason for supposing that the constitution of the Senate, in regard to so important a matter as the definition of the class of persons to be regarded as legally qualified for appointment to a place in that Chamber was not intended to be similar in principle to that of the Parliament of the United Kingdom. At all events, on the assumption that there is ambiguity in the text of that Act upon that subject, it is a legitimate method of interpretation, plainly consistent with the declaration of the object of the Act and sanctioned by a long-settled rule of construction to read it by the light which the state of the law at the time it was passed throws upon it.

8. *Position of Women under the Common Law in* 1867.—By the common law of England—and it had not been modified when the British North America Act was passed in 1867—no woman under the degree of a Queen or a regent, married or unmarried, could take part in the government of the State. A woman was under a legal incapacity to be elected to serve in Parliament, and even if a peeress in her own right, she had no right, as an incident of peerage, to receive a writ of summons to the House of Lords: (Whitelocke's Notes Upon the King's Writ, (1766), vol. 1, p. 475; Colquhoun's Roman Law (1849), vol. 1, p. 580; Pollock & Maitland, History of English Law (1895), vol. 1, p. 466; *The Countess of Rutland's case*, 6 Rep. 52b; *Chorlton* v. *Lings* (1868) L.R. 4 C.P. 374, 391, 392, per Willes J.; *The Queen* v. *Crosthwaite* (1864) 17 Ir. Com. Law Rep. 463; *Viscountess Rhondda's Claim* (1922) 2 A.C. 339; *Robinson's case*, 131 Mass. Rep. 376, 377, per Gray C.J.). Women were, moreover, subject to a legal incapacity to vote at the election of members of Parliament: (Coke, 4 Inst. p. 5; *Olive* v. *Ingram*, 7 Mod. 263, 273; *Chorlton* v. *Lings*, ib. supra; *The Queen* v. *Crosthwaite*, ib. supra, per Deasy B., at p. 472; per Fitzgerald B., at

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p. 476; *Nairn* v. *University of St. Andrews* [1909] A.C. 147; *Robinson's Case*, ib. supra), or of the Knights of the Shire (*Chorlton* v. *Kessler*, L.R. 4 C.P. 397), or of town councillors (*The Queen* v. *Harrald*, (1872), L.R. 7 Q.B. Cas. 361), or of Town Commissioners under the Towns Improvement (Ireland) Act, 1854, (*The Queen* v. *Crosthwaite*, ib. supra), or to be elected members of a County Council (*Beresford-Hope* v. *Sandhurst* (1889) 23 Q.B.D. 79; *De Souza* v. *Cobden* (1891) 1 Q.B. 687.) They were also excluded, or rather excused, by the common law from taking part in the administration of justice either as judges or as jurors, with the single exception of inquiries by a jury of matrons upon a suggestion of pregnancy (Coke, 2 Inst. 119, 121; 3 Bl. Com. 362; 4 Bl. Com. 395; Willes J. in L.R. 4 C.P. 390, 391). And so, by inveterate usage, women were under a general disability, by reason of their sex, to become attorneys or solicitors (*Bebb* v. *Law Society* (1914) 1 Ch. 286; *Robinson's Case* (1881), 131 Mass. Rep. 376). More recently, it was held by the Court of Appeal in Ireland that a woman, by reason of her sex, was disqualified from being Clerk of Petty Sessions (*Frost* v. *The King* (1919) 1 Ir. Rep. (Ch.) 8; (1920) W.N. 178, H.L. (Ir.)

In *Chorlton* v. *Lings*, ib. supra, at p. 389, Willes J. referred to, as the highest authority produced by the appellant for the exercise of public functions by a woman, " the solitary and exceptional case " of the celebrated Anne, Countess of Pembroke, Dorset, and Montgomery, who took, by descent, the office of hereditary sheriff of Westmoreland and exercised it in person; at the Assizes at Appleby she sat with the judges on the Bench: Co. Litt. 326a, note 280. This is not the only instance of the kind to be found in the books. Pollock and Maitland in their History of English Law, vol. 1, p. 466, note 2, after observing that, " The line between office and property cannot always be exactly marked; it has been difficult to prevent the shrievalties from becoming hereditary," note that " for several years under Hen. III. Ela, Countess of Salisbury, was sheriff of Wiltshire," but that in this case " there was a claim to an hereditary shrievalty." Willes J. refers to the shrievalty of Westmoreland as " an office that could have been and usually is discharged by a deputy; although the countess, being a person of unusual gifts both of body and mind, thought fit to discharge the duties in person "; but the judgment of Gray C.J. in *Robinson's Case*, 131 Mass. Rep. 376, 378, contains an interesting discussion of this instance, in which he concludes that it is highly improbable in fact that the Countess did habitually discharge the duties of the office in person, and expresses the opinion that she could not have done so without violating the well settled law. " When such an hereditary office descended to a woman," stated Gray, C.J., p. 378-9, " she might exercise the office by deputy (at least with the approval of the Crown), but not in person; nor could it be originally granted to any woman because of her incapacity of executing public offices ": citing various ancient authorities.

9. Whether these cases are but instances of a general incapacity on the part of women at common law to hold any public office or perform any public function is by no means clear. In their work on the History

of English Law, before the time of Edward I, vol. 1, p. 468, Pollock and Maitland speak of a sure instinct already having guided the law to a general rule "which will endure until our own time." "As regards private rights, women are on the same level as though postponed in the canons of inheritance; but public functions they have none. In the camp, at the council board, on the Bench, in the jury box, there is no place for them." This statement must, however, be understood subject to what the authors say on a preceding page, (p. 465), that "Public law gives a woman no rights and exacts from her no duties *save that of* paying taxes and *performing such services as can be performed by a deputy.*"

In *R.* v. *Crosthwaite*, decided in 1864, ib. supra, (p. 475), Baron Fitzgerald quotes from the report in Jenkins' "Eight Centuries," 3rd ed. (6th Cent.) Case XIV of the Duke of Buckingham's case (1569), Dyer 285b, in which there was a question as to the holding of the office of High Constable of England by a woman to whom it had descended the following statement of that very learned judge (Judge Jenkins) :—

> "An office of inheritance to which adjudicature is annexed descends to two daughters, as in this case of the office of constable; after it has so descended it may be exercised by deputy; but such an office cannot be originally granted to any woman; for *feminae non sunt capaces de publicis officiis*."

stating it as a maxim, and the judgment of Baron Fitzgerald as well as of the other members of the majority of the Court in *Crosthwaite's case* and of Barton J. in the more recent case of *Frost* v. *The King* (1919) 1 Ir. Rep. (Ch.) 81, largely proceeds upon that view of the law. In *Beresford-Hope* v. *Sandhurst*, ib. supra, at p. 95, Lord Esher M.R., said : "I take it that by neither the common law nor the Constitution of this country from the beginning of the common law until now, can a woman be entitled to exercise any public function." And, again, in *De Souza* v. *Cobden*, ib. supra, p. 691, the same learned judge said, "that by the common law of England women are not in general deemed capable of exercising public functions, though there are certain exceptional cases where a well recognized custom to the contrary has been established." In *The Queen* v. *Harrald*, ib. supra, at p. 362, Cockburn C.J. said : "It is quite certain that by the common law a married woman's status was so entirely merged in that of her husband that she was incapable of exercising almost all public functions."

On the other hand, in *Chorlton* v. *Lings*, ib. supra, p. 388, Willes J., refers to the discussion in Selden's de Synedriis Veterum Ebraeorum of the origin of the exclusion of women "from judicial and like public functions," and he does not define what he meant by "like public functions," though his observations suggest that he entertained a wide view of the exclusion of women from the exercise of public functions. In the *King* v. *Stubbs* (1788) 2 T.R., 395, 397, and in Comyn's Digest, 5th ed., p. 189, there is given a list of offices which women were deemed capable of filling, which includes the offices of Marshall of England, Great Cham-

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berlain, Constable of England, Keeper of a Castle or gaol, Governor of a Workhouse, Commissioner of Sewers, Forester and Common Constable. But Gray C.J., says that this was for the reason that each of these offices might be executed by a deputy (*Robinson's case*, ibid., p. 379). Women were also decided to be capable of voting for and of being elected to the office of sexton of a Parish, "a sexton's duty being in the nature of a private trust": *Olive* v. *Ingram*, (1738) 7 Mod. 263; and so, also, of being appointed an overseer of the poor (*The King* v. *Stubbs*, ibid supra); but upon an exhaustive and learned review of the cases, in *Robinson's case*, ibid supra, p. 379, Gray C.J., concluded as follows:—

> "And we are not aware of any public office, the duties of which must be discharged by the incumbent in person, that a woman was adjudged to be competent to hold, without express authority of statute, except that of overseer of the poor, a local office of an administrative character and in no way connected with judicial proceedings."

This appears, on the authorities, to be a correct statement of the law, but the judgments of the dissenting judges in *The Queen* v. *Crosthwaite*, ib. supra, and of the judges who took part in the more recent decision of *Frost* v. *The King*, ib. supra, and also the judgment of the Court of Appeal in Alberta, in *Rex* v. *Cyr* (1917) 3 W. W. R. 849, in which it was held that a woman was under no disqualification in that province from being appointed a police magistrate, at least throw some doubt upon the general proposition that women were, by the common law, excluded from the exercise of all public functions. However, whatever doubt there may be about that general proposition, this much is clearly settled, that by the common law of England women were under a legal incapacity either to vote at the election of, or to be elected, a Member of Parliament, or, if peeresses in their own right, to have a seat and vote in the House of Lords.

10. The policy of the common law, in regard to the exclusion of women from public functions, appears to have followed substantially that of the Roman law, in which it was laid down in general terms "*feminae ab omnibus officiis vel publicis remotae sunt*": Ulpian lib. ii. D. tit. de reg. Juris. Ulpian witnessed, however, in his own lifetime a historic breach of this general principle, of peculiar interest in the present case. Lampridius, in his biography of the profligate Roman Emperor Elagabalus (Heliogabalus), A.D. 218-222, says that, when the Emperor held his first audience with the Senate (on his arrival in Rome in July, 219), he gave orders that his mother should be asked to come into the Senate Chamber and that on her arrival she was invited to a place on the Consul's Bench and there took part in the drafting of a decree and expressed her opinion in the debate. And Elagabalus, says Lampridius, was the only one of all the Emperors under whom a woman attended the Senate like a man, just as though she belonged to the senatorial order: The Scriptores Historiae Augustae, ed. of the Loeb Classical Library,

with an English translation by David Magie, Ph.D., Vol. II, pp. 113-131; Gibbon's History of the Decline and Fall of the Roman Empire, 2nd ed. by Milman, Vol. I, p. 158. Lampridius also says that the Emperor established a "*senaculum*" or women's Senate on the Quirinal Hill, which, under the presidency of his mother, enacted absurd decrees concerning matters of court etiquette. (op. cit. p. 113-115). The name "senaculum" (which properly denotes a place in which the Senators waited while the Senate was not in session) seems to have been applied to this gathering of matrons merely for the purpose of giving it a quasi-political importance (op. cit. p. 112, note 6). Elagabalus and his mother were slain by a mob in A.D. 222. "And the first measure enacted after the death of Antonius Elagabalus," says Lampridius (op. cit. p. 143), "provided that no woman should ever enter the Senate, and that whoever should cause a woman to enter, his life should be declared doomed and forfeited to the kingdom of the dead."

11. *The Decisions.*—Having thus dealt with the political position of women under the common law, it will now be convenient to refer to the pertinent decisions.

The leading case is that of *Chorlton* v. *Lings*, ib. supra, decided in 1868. It concerned the interpretation of the Representation of the People Act, 1867 (30-31 Vict. Cap. 102). The Reform Act of 1832 (2 Wm. 4, c. 45) in referring to the old rights of franchise, used the general word "person" with reference to the voter (s. 18), but the new franchise was conferred only on "every male person of full age and not subject to any legal incapacity," etc. (secs. 19 and 20). The Representation of the People Act, 1867, enacted that, "Every man shall be entitled to be registered as a voter . . . . who is qualified as follows . . . . is of full age and not subject to any legal incapacity," etc. (s. 3). By Lord Brougham's Act, (13-14 Vict. c. 21, s. 4) "Words importing the masculine gender shall be deemed and taken to include females unless the contrary as to gender is expressly provided." Upon this, it was contended that the word "man" in the Act of 1867 included "women," and that they were, therefore, entitled to be registered as voters. The Court (Bovill, C.J., and Willes, Byles and Keating, JJ.) held that it did not. Their decision rests on two principal grounds: (1) that at common law women were under a legal incapacity to vote for members of Parliament, and (2) that the subject matter and general scope and language of the Act of 1867, when read with the Reform Act of 1832, show that the legislature was dealing only with the qualification to vote of men in the sense of male persons, and that, notwithstanding Lord Brougham's Act, it could not be presumed to have intended, by the mere use of the word "man," to extend the franchise to women, who theretofore did not enjoy it.

> "There is," said Bovill, C.J., (p. 386), "no doubt that in many statutes, 'men' may be properly held to include women, whilst in others it would be ridiculous to suppose that the word was used in any other sense than as designating the male sex: and we must

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look at the subject-matter as well as to the general scope and language of the provisions of the later Act in order to ascertain the meaning of the legislature. I do not collect, from the language of this Act, that there was any intention to alter the description of the *persons* who were to vote, but rather conclude that the object was, to deal with their *qualification ;* and, if so important an alteration of the personal qualification was intended to be made as to extend the franchise to women, who did not then enjoy it, and were in fact excluded from it by the terms of the former Act, I can hardly suppose that the legislature would have made it by using the term 'man'."

" The application of the Act, 13 & 14 Vict. c. 21, contended for by the appellant is," said Willes, J. (p. 387), " a strained one. It is not easy to conceive that the framer of that Act; when he used the word 'expressly' meant to suggest that what is necessarily or properly implied by language is not expressed by such language. It is quite clear that whatever the language used necessarily or even naturally implies is expressed thereby. Still less did the framer of the Act intend to exclude the rule alike of good sense and grammar and law, that general words are to be restrained to the subject-matter with which the speaker or writer is dealing."

" The legislature up to the passing of the Act of 1867, was " Willes, J. said further (p. 388), " unquestionably dealing with qualifications to vote of men in the sense of male persons, and was providing what should entitle such individuals of mankind to vote at parliamentary elections : and, without going through the Act of 1867, I may say that there is nothing, unless it be the section now in question, to shew that the intention of the legislature was ever diverted from the question what should be the qualification entitling male persons to vote, to the question whether the personal incapacity of other persons to vote should be removed. The Act throughout is dealing, not with the capacity of individuals, but with their qualification."

" It further appears to me that the Lord Chief Justice is right in holding that, assuming Brougham's Act to apply, it would not have worked the change that is desired in favour of women, because the Act of 1867 does 'expressly' in every sense exclude persons under a legal incapacity, and women are under a legal incapacity to vote at elections."

" It is impossible to suppose," said Byles J. (p. 393), " that Parliament, while dealing with qualification, and qualification only, by the variation of a phrase, (which at the least *may* convey the same meaning as its predecessor in the Reform Act), intended to admit to the poll another half of the population."

12. A more recent decision of importance, decided by the House of Lords in 1908, is that of *Nairn* v. *University of St. Andrews* [1909] A.C. 147.

By sec. 27 of the Representation of the People (Scotland) Act, 1868 (31 & 32 Vict., c. 48), " every person whose name is for the time being on the register . . . . of the general council of such university, shall, if of full age, and not subject to any legal incapacity, be entitled to vote in the election of a member to serve in any future Parliament for such University," and by sub-s. 2 of sec. 28 of the same Act " all persons on whom the university to which such general council belongs has . . . conferred " certain degrees are to be members of the general council of the respective universities. The appellants, who were women, were graduates of the University of Edinburgh—a university within the meaning of the Act—and as such had their names enrolled on the general council of that university, and they claimed the right to vote in the election of the parliamentary representative of the university, on the ground that they were " persons " within the meaning of the Act.

Lord Loreburn L.C., after referring to the legal incapacity of women at common law from voting, said (pp. 160–161) :—

> " If this legal disability is to be removed, it must be done by Act of Parliament. Accordingly the appellants maintain that it has in fact been done by Act of Parliament . . . I will only add this much to the case of the appellants in general. It proceeds upon the supposition that the word " person " in the Act of 1868 did include women, though not then giving them the vote, so that at some later date an Act purporting to deal only with education might enable commissioners to admit them to the degree, and thereby also indirectly confer upon them the franchise. It would require a convincing demonstration to satisfy me that Parliament intended to effect a constitutional change so momentous and far-reaching by so furtive a process. It is a dangerous assumption to suppose that the legislature foresees every possible result that may ensue from the unguarded use of a single word, or that the language used in statutes is so precisely accurate that you can pick out from various Acts this and that expression and, skilfully piecing them together, lay a safe foundation for some remote inference. Your Lordships are aware that from early times Courts of law have been continuously obliged, in endeavouring loyally to carry out the intentions of Parliament, to observe a series of familiar precautions for interpreting statutes, so imperfect and obscure as they often are."

Lord Ashbourne made the following remarks (pp. 162–163) :—

> " In 1868 the Legislature could only have had male persons in contemplation, as women could not then be graduates, and also because the parliamentary franchise was by constitutional principle and practice confined to men . . . .
>
> " I can, then, entertain no doubt that, when examined, ' person ' means male persons in the Act. The parliamentary franchise has always been confined to men, and the word ' person ' cannot by any

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> reasonable construction be held to be prophetically used to support an argument founded on a statute passed many years later."

Lord Robertson said (p. 164) :—

> " My Lords, the central fact in the present appeal is that from time immemorial men only have voted in parliamentary elections. What the appeal seeks to establish is that in the single case of the Scottish universities Parliament has departed from this distinction and has conferred the franchise on women. Clear expression of this intention must be found before it is inferred that so exceptional a privilege has been granted."

And, after stating his reasons for rejecting the appellants' contention that the word " person " in the Act of 1868 included women, he added, in conclusion (pp. 165–166) :—

> " I think that a judgment is wholesome and of good example which puts forward subject-matter and fundamental constitutional law as guides of construction never to be neglected in favour of verbal possibilities."

13. The decision of the Committee for Privileges of the House of Lords in *Viscountess Rhondda's Claim* [1922] 2 A.C. 339, is also noteworthy. In this case, Margaret Haig, Viscountess Rhondda, a peeress of the United Kingdom in her own right presented a petition praying that His Majesty might be pleased to order a writ of summons to Parliament to be issued to her. The petitioner based her claim to receive a writ of summons to Parliament in the right of her dignity, upon sec. 1 of the Sex Disqualification (Removal) Act, 1919, (9–10 Geo. V, c. 71), which provided that, " A person shall not be disqualified by sex or marriage from the exercise of any public function," etc.

The Committee decided, after an elaborate legal argument, by a vote of 22 to 4, that the claim of the petitioner had not been made out. The reasons for this decision are elaborately set out in the leading opinion of Viscount Birkenhead, L. C., in which, of the judicial members of the Committee, Lords Cave, Dunedin, Atkinson, Phillimore, Buckmaster, Sumner and Carson concurred. The decision proceeds upon two grounds (1) that a peerage held by a peeress in her own right is one to which at common law the incident of exercising a right to receive a writ of summons was not and never was attached, and (2) that the legislature, by the use of the vague and general words of the Sex Disqualification (Removal) Act, 1919, could not have intended to give peeresses the right to sit and vote and thus effect such a revolutionary change in the constitution of the House of Lords. " It is sufficient to say," said Lord Birkenhead, at p. 375, in stating his conclusions, " that the legislature in dealing with this matter cannot be taken to have departed from the usage of centuries or to have employed such loose and ambiguous words to carry out so momentous a revolution in the constitution of this House." " In my opinion," said Lord Cave, (p. 389), " the common law gave no right or title to a peeress to

sit in this House, or to receive a summons for that purpose. It was not the case of her having a right which she could not exercise. I think she had no right; for I agree with my noble and learned friend, the Lord Chancellor, that a common law right to do something which the common law forbids to be done is a contradiction in terms. If this is so, then the patent certainly gave the petitioner no right to sit; and the Act of 1919, while it removed all disqualifications, did not purport to confer any right. If the right to sit in this House is to be conferred on peeresses it must be by express words."

14. The next case is that of *Beresford-Hope* v. *Sandhurst* (1889) 23 Q. B. D. 79. The Municipal Corporations Act, 1882, sec. 11, sub-s. 3, enacted: "Every person shall be qualified to be elected and to be a councillor who is at the time of election qualified to elect to the office of councillor." The 63rd section of the same Act provided that: "For all purposes connected with and having reference to the right to vote at municipal elections, words in this Act importing the masculine gender include women." There can be no question, therefore, that women were entitled to elect to the office of councillor, but the question which the Court had to decide was whether, under the words of sec. 11, they were qualified to be elected. The Court held that they were not. Stephen, J., delivering the judgment of the Queen's Bench Division, after referring to the decision in *Chorlton* v. *Lings*, said (p. 84):—

> "If, for the sake of argument, it were admitted that the language of the Act was ambiguous, the passage quoted, which states a fact undoubtedly, and notoriously true, would be enough to make us feel that, if it is intended that women should be eligible for such offices as these, an exception would be made in a general rule of long standing, and such an exception ought to be made in perfectly plain language."

The judgment of Stephen, J. was affirmed by the Court of Appeal. In that Court, Lord Esher, M. R., after referring to the decision in *Chorlton* v. *Lings* as having established that women were incapable at common law of exercising the franchise, said (p. 96):—

> "But the case goes further. It says that, this being the common law of England, when you have a statute which deals with the exercise of public functions, unless that statute expressly gives power to women to exercise them, it is to be taken that the true construction is, that the powers given are confined to men, and that Lord Brougham's Act does not apply."

15. *The Queen* v. *Harrald* (1872) L.R. 7 Q.B. 361, strikingly exemplifies the reluctance of English courts to extend political rights to women. By the Imperial Act, 32-33 Vict., c. 55, s. 9, it was enacted that:

> "In this Act and the 5 & 6 Wm. 4, c. 76, and the Acts amending the same, wherever words occur which import the masculine gender the same shall be held to include females, for all purposes connected with and having reference to the right to vote in the election of councillors, auditors, and assessors."

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Objection was taken to the election of the defendant (who had a majority of one over the next candidate) to the office of town councillor of the Borough of Sunderland, on the ground that two married women had voted for him. The objection was allowed.

Cockburn C.J., said (p. 362) :—

> " This rule must be made absolute. It appears to me impossible to say that the vote of one of these married women is good, and the vote of the other (married after being put on the roll) is also most probably bad. . . . It is quite certain that, by the common law, a narried woman's status was so entirely merged in that of her husband that she was incapable of exercising almost all public functions. It was thought to be a hardship, that when women bore their share of the public burthens in respect of the occupation of property they should not also share the rights of the municipal franchise and be represented; and it was thought that spinsters and unmarried women ought to be allowed to exercise these rights. The 32 & 33 Vict., c. 55, accordingly, gave effect to these views, and enacted that wherever men were entitled to vote, women, being in the same situation, should thereafter be entitled; but this only referred to women possessed of the necessary qualification in respect of property and the payment of rates, and I cannot believe that it was intended to alter the status of married women. It seems quite clear that this statute had not married women in its contemplation."

Mellor J., said (p. 363) :—

> " But s. 9 of 32 & 33 Vict., c. 55, only removes the disqualification by reason of sex, and leaves untouched the disqualification by reason of status. So the Married Women's Property Act as to this leaves the status of a married woman untouched."

Hannen J., expressed the same opinion.

16. In *Bebb* v. *Law Society* (1914) 1 Ch. 286, in which the plaintiff sought a declaration against the Law Society that she was " a person " within the meaning of the Solicitors Act, 1843, and the Acts amending the same, and, therefore, entitled to admission to the law examinations, the Court of Appeal (composed of Cozens-Hardy M.R., and Swinfen Eady and Phillimore L.JJ.) dismissed her appeal from the judgment of Joyce J., on these grounds : That before the passing of the Solicitors Act, 1843, women were by the common law of England under a general disability, by reason of their sex, to become attorneys or solicitors; that this disability could be and was proved by inveterate usage, and that it could not be removed by a mere interpretation clause, such as that contained in the Solicitors Act, 1843, sec. 48, which enacted that, " Every word importing the masculine gender only shall extend and be applied to a female as well as a male," and unless " there be something in the subject or context repugnant to such construction."

17. It is submitted that these decisions afford strong authority for the view that the framers of the British North America Act cannot be presumed to have intended, in the absence of clear expression of such an intention,—

(1) to modify the English common law by conferring upon women the legal capacity or qualification to be appointed to a place in the Senate of Canada; and

(2) to render women eligible to sit in the Canadian Upper House, though excluded from the British.

It is to be noted that when Parliament intends to remove a legal disability existing under the common law, it does so by express language. The provisions of the Sex Disqualification (Removal) Act, 1919 (9-10 Geo. V, Imp., c. 71) have already been referred to. Illustrative also are the Parliament (Qualification of Women) Act, 1918, 8-9 Geo. V, (Imp.), c. 47), which, by sec. 1, provides that a woman shall not be disqualified by sex or marriage from being elected to or sitting or voting as a member of the House of Parliament; and the Representation of the People Act, 1918, (7–8 Geo. V. (Imp.), c. 64), which by sec. 4, confers upon women the parliamentary franchise.

18. *The Antecedent Situation in the Provinces.*—In its character of an Act enacted for the avowed object of giving effect to a treaty of union between the several provinces affected, the British North America Act, 1867, may not unreasonably be presumed to have been passed with a knowledge by the makers, not only of the existing state of the law in England (upon the model of whose constitution it was the intention that the new constitution should be fashioned) but also of the known facts of the political history of the united provinces—the existence, character and operations of the various provincial governments, and of the state of the common and constitutional law in the provinces in relation to the qualifications and disqualifications affecting the eligibility of persons to be admitted to a share in the legislative functions of government. Considered in the light of these additional aids to interpretation, the construction of the British North America Act, 1867, upon the point under discussion, stated above, receives strong confirmation.

19. *First*, what were the systems of government which existed in these provinces prior to and at the time of the Union in 1867, and were women ever admitted to a place in the legislative departments of the provincial governments?

The Province of Canada was formed by the union, under the Act of Union, 1840, (App. pp. 10–15), of the two provinces of Upper and Lower Canada, respectively, into which the Province of Quebec, as originally created by the Royal Proclamation of the 7th October, 1763, and enlarged by the Quebec Act, 1774, (App. pp. 3–5), had been divided under the Constitutional Act of 1791, (App. pp. 6–10). In the Province of Quebec, from its first establishment in 1763 until 1774, the government was carried on by the Governor and a Council composed of four named persons and

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"eight other persons to be chosen by you from amongst the most considerable of the inhabitants of or persons of property in our said province." (App. p. 63). The boundaries of the Province of Quebec were greatly extended by the Quebec Act, 1774, (App. pp. 3–5), and the government of the province was entrusted to a Governor and a Legislative Council, it being, as the Act declared, "at present inexpedient to call an Assembly." (App. p. 5). This Council was to consist "of such persons resident there", not exceeding twenty-three nor less than seventeen, "as His Majesty . . . . . shall be pleased to appoint," and was empowered, with the consent of the Governor, to make ordinances for the peace, welfare and good government of the province. (App. p. 5). The Constitutional Act, 1791, upon the division of the Province of Quebec into two separate provinces, to be called the Provinces of Upper and Lower Canada, respectively, by Imperial Order in Council of the 24th August, 1791, established for each province a legislature, composed of the three estates of Governor, Legislative Council and Assembly, empowered to make laws for the peace, order and good government of the province. The Legislative Council was to consist of "a sufficient number of discreet and proper persons", not less than seven for Upper Canada and fifteen for Lower Canada, appointed by the Crown for life. (App. p. 7). A curious provision (never acted on) was contained in this Act, viz., sec. 6, that whenever the King should confer any hereditary title of honour upon any subject, he might annex thereto an hereditary right to sit in the Legislative Council—that was, of course, by analogy to the House of Lords. The Assembly was to consist of a number of persons elected by the people, the constituencies and the number of representatives to be fixed by the Governor or Lieutenant-Governor in the first instance, the whole number in Upper Canada to be not less than sixteen, and in Lower Canada not less than fifty, to be chosen by a majority of the voters in either case. Under the Act of Union, 1840, the provinces of Upper and Lower Canada were reunited so as to constitute one province under the name of the Province of Canada, and provided with a legislature comprising a Legislative Council composed of "such persons, being not fewer than twenty, as Her Majesty shall think fit" to be appointed for life and having certain defined qualifications, and a Legislative Assembly in which each of the united provinces would be represented by an equal number of members. (App. pp. 12–13). In 1856, the Canadian legislature, under the authority of Imperial Act 17-18 Vict., c. 118, passed an Act (19-20 Vict., c. 140) which altered the constitution of the Legislative Council by rendering the same elective (App. pp. 42–45). The new Constitution, as thus altered, continued until the Union in 1867.

20. From 1719, when civil government was first established in the Province of Nova Scotia (following its cession to Great Britain by the Treaty of Utrecht, 1713), until 1758, the provincial government consisted of a Governor and a Council, which was both a legislative and executive body, composed of "such fitting and discreet persons," not exceeding twelve in number, as the Governor should nominate (App. p. 86). A

General Assembly for the province was called in 1757 (App. p. 90), and thereafter, the legislature consisted of a Governor and Council and General Assembly. In 1838 the Executive authority was separated from the Legislative Council which became a distinct legislative branch only. (App. pp. 91–92).

21. In 1784, part of the territory of the Province of Nova Scotia was erected into a separate province to be called New Brunswick, and a separate government was established for the province consisting of the Governor, a Council composed of certain named persons and "other persons to be chosen by you from amongst the most considerable of the inhabitants of or persons of property in our said province," but required to be "men of good life, well affected to our Government and of ability suitable to their employments," and a General Assembly "of the freeholders and settlers in the Province" (App. pp. 93–94). In 1832 the executive authority was separated and made distinct from the Legislative Council.

22. The establishment of legislatures of the bicameral type in each of these provinces was in imitation of the constitution of the British Parliament. The Constitutional Act of 1791 was, for instance, framed with the avowed object of "assimilating the Constitution of Canada to that of Great Britain as nearly as the difference arising from the manners of the people and from the present situation of the province will admit." (Despatch of Lord Grenville to Lord Dorchester, 20th October, 1789, quoted in Bourinot's Manual of the Constitutional History of Canada, p. 19) and with the recognition to the fullest extent, by 1848, of the principle of responsible government in the provinces of Canada, Nova Scotia and New Brunswick, the constitutions of these provinces became in the truest sense "similar in principle to that of the United Kingdom," or, in the words of Lieutenant Governor Simcoe, "an image and transcript of the British Constitution."

23. Were women, although legally disqualified from sitting or voting in either of the two Houses of the British Parliament, ever admitted to those functions in the legislature of any of the provinces; The answer is clearly in the negative. Although the word "persons" was in each instance used to describe the individuals who might be appointed to the Legislative Council in each province, and equally indefinite expressions such as "members" or "freeholders," to describe the persons qualified for election to the General Assembly, with no express disqualification of women for appointment or election (save as hereinafter mentioned), yet women were evidently considered to be disqualified by law, or at all events by inveterate usage, from serving in either capacity. An examination of the records fails to disclose a single instance in which a woman was either appointed a legislative councillor or elected to the Assembly in any of the provinces. (Vide, Certificate of Wm. Smith, (App. p. 99).

24. *Secondly,* were women ever admitted to the exercise of the parliamentary franchise in any of these provinces? In the first instance, they do not appear to have been expressly disqualified from voting in any of

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these provinces, but there is no record of their ever having voted in parliamentary elections except in the Province of Lower Canada. In 1820, during the general election of that year in Lower Canada, the votes of women appear to have been received at Trois Rivières (App. p. 70). On the other hand, the Returning Officer during the election in 1828 appears to have refused to receive the votes of women in the constituency of Upper Town, Quebec. His action was the subject of an indignant protest and reasoned plea for women suffrage to the House of Assembly in Lower Canada (App. pp. 71–73). The petitioners demanded that Andrew Stuart, the successful candidate, be unseated. Another petition on behalf of James Stuart, involving the right of women to vote, submitted the same day to the Assembly of Lower Canada, respecting the election in the Borough of William Henry (Sorel), alleged that the votes of women married and unmarried and in a state of widowhood had been illegally received in favour of Wolfred Nelson, the successful candidate, and therefore rendered void his election (App. pp. 74–76). A counter-petition was promptly drawn up and submitted to the House by Stuart's opponents, who, besides declaring that the allegations were unfounded, affirmed that Stuart had received the votes of many women. The House was reluctant to take up either case and after a number of postponements both were thrown over to the ensuing session and no action was taken on either of them. All doubts as to the position of women in regard to the exercise of the franchise were, however, definitely settled for the Province of Canada by the provincial statute 12 Vict. (1849) c. 27, which, by sec. 46, declared that "No woman is or shall be entitled to vote at any such election whether for any County, Riding, City or Town," (App. p. 42), a disqualification which was continued up to the time of the Union and no doubt beyond. (App. pp. 45–46).

25. In the case of the Province of Nova Scotia, there was in the early Acts governing the election of members of the General Assembly no express disqualification of women from voting (App. pp.47–48), but by the Revised Statutes of Nova Scotia, 1859, the exercise of the franchise was confined to *male* British subjects over twenty-one years of age, and a candidate for election was required to have the qualification which would entitle him to vote (App. p. 49). A similar restriction of the franchise to male persons was incorporated in Chap. 28 of the Acts of Nova Scotia of 1863 which was still in force at the time of the Union. In the Province of New Brunswick, the parliamentary franchise, though originally not so limited, was by the provincial Act, 11 Vict., c. 65, confined to male persons of the full age of twenty-one years who possessed certain property qualifications. (App. pp. 50–51).

26. *Thirdly*, what was the position of women by the common law in force in each province, at the time of the Union, in regard to their capacity to exercise public functions? The answer seems to be that they were under the same disabilities in the provinces that women were then subject to by the common law of England. In the provinces of Nova Scotia and New Brunswick, those provinces having been acquired by settlement of

British subjects, the whole of the English common law, with the exception of such parts only as were obviously inconsistent with the situation and condition of the colonists, has been held to be in force (see as to Nova Scotia, *Uniacke* v. *Dickson* (1848) James 287, 289, 299 and 300, and as to New Brunswick, *The King* v. *McLaughlin* (1830) 1 New Br.B. 218-221.) In the Province of Upper Canada the laws of England were, by the provincial Act 32 Geo. III., Chap. I, U. C., made the rule of decision in all matters of controversy relative to property and civil rights, and the English common law, except so far as purely local, was thereby introduced in its entirety. (*Keewatin Power Company* v. *Kenora*, 16 Ont. L.R. 184, 189, 190). In the province of Lower Canada, on the other hand, the French civil law was by the Quebec Act, 1774, made the rule of decision in all matters of controversy relative to property and civil rights. The decision of the Supreme Court of New Brunswick in the case of In *re Mabel P. French* (1905) 37 New Br. 359, affords authority for the view that the common law of England touching the disqualifications of women from exercising public functions formed part of the common law which was introduced by the settlement of Nova Scotia, of which New Brunswick was originally a part. The Court held in that case that at common law a woman could not be admitted to practice as an attorney and that this disability had not been removed either by Con. Stat. N.B. 1903, c. 68, by rule of Court, or by the regulations of the Barristers' Society. A similar decision was pronounced by the Court of Appeal of British Columbia in a case affecting the same woman—In *re Mabel P. French*, (1911) 17 B.C.R. 1. In the province of Ontario, as Irving, J.A., observed in the latter case, the benchers declared that they had no power to call a woman to the bar, and the Ontario Legislature recognized the correctness of their decision, empowering them to do so, if they thought proper: See Statutes of Ontario, 1892, Chap. 32 as amended by Chap. 27 of 1895. Under the French civil law in force in Lower Canada, the exclusion of women from the exercise of public functions was not less stringent than it was under the common law of England.

> "Les femmes ne sont pas," says de Ferrière, "Dictionnaire de Droit et de Pratique" (Paris, 1762), Vol. 1, p. 902, "admises aux Charges publiques, suivant les Lois Romaines, qui sont à cet égard suivies dans ce Royaume. Faeminae ab omnibus officiis civilibus vel publicis remotae sunt. Et ideo nec Judices esse possunt, nec Magistratum gerere, nec postulare, nec pro alio intervenire, nec procuratores existere."

As another French jurist forcibly described the position of women under French law, "Elle vit comme assujettie; mais elle meurt comme libre: voilà son véritable état." ("Le Droit Commun de la France," by Bourjon, (Paris, 1770) Tom 1, chap. 2, p. 2). The decision in *Langstaff* v. *Bar of the Province of Quebec*, 1916, 25 R.J. (K.B.) is illustrative. In that case the Court of King's Bench at Montreal, affirming the decision of the Superior Court, (Mr. Justice Saint-Pierre), reported in (1915) 47 R.J. (C.S.) 131, held that by the common and public law in force in the province

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of Quebec, women, on account of their sex, have always been excluded from the practice of the law and that the interpretative rule of the Civil Code, Art. 17, par 9, and of R.S.Q. 1909, Art. 21, which declares that the masculine gender includes both sexes, has no application in such a case.

It is submitted for these and other reasons which will be urged at the hearing, that the opinion expressed by the law officers of the Crown upon the question of the power of the Governor General to summon female persons to the Senate of Canada was correct and well founded and that the question referred ought, accordingly, to be answered in the negative.

LUCIEN CANNON,
EUGENE LAFLEUR,
CHARLES P. PLAXTON.

(*The Appendix to this Factum has been incorporated in the Joint Appendix prepared for the use of the Privy Council.*)

No. 8. Factum of the Attorney-General of Quebec.

No. 8.

Factum of the Attorney General of Quebec.

His Majesty's Attorney General for the Province of Quebec under Order, dated 29th of October 1927, made by the Honourable Mr. Justice Newcombe, one of the Judges of this Honourable Court, appears on this Reference and submits that:

The question referred by His Excellency the Governor General in Council to this Honourable Court for hearing and consideration is:—

> " Does the word ' Persons ' in section 24 of the British North America Act, 1867, include female persons? "

The Province of Quebec is specially interested in the determination of this question since by section 73 of the British North America Act, " the qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec."

The constitution of Canada, as it is expressly recognized in the opening recital of the British North America Act, 1867, is one similar in principle to that of the United Kingdom.

The intention of the provisions in that Act with respect to the Parliament of Canada was that, as nearly as different circumstances would permit, it should be modelled on and conform to the established principles and usages by which in the course of centuries the mother Parliament had come to be regulated.

Senators so far as may be resemble those of the Lords of Parliament, who are appointed for life by the Crown.

It is to be noted that section 24 referred to in the question does not direct the Governor General to summon " persons " to the Senate but only " qualified persons ".

The sections of the British North America Act, 1867, calling for consideration are the following:—

" 18. The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively shall be such as are from Time to Time defined by the Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof."

* * * * * *

" 23. The Qualification of a Senator shall be as follows:

(1) He shall be of the full age of Thirty Years;

(2) He shall be either a Natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union;

(3) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in free and common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Franc-alleu or in Roture, within the Province for which he is appointed, of the Value of Four Thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same;

(4) His Real and Personal Property shall be together worth Four thousand Dollars over and above his Debts and Liabilities;

(5) He shall be resident in the Province for which he is appointed;

(6) In the case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division."

" 24. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator."

* * * * * *

"31. The Place of a Senator shall become vacant in any of the following Cases:—

(1) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate;

(2) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or a Citizen, of a Foreign Power;

(3) If he is adjudged Bankrupt or Insolvent or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter;

(4) If he is attainted of Treason or convicted of Felony or of any infamous crime;

(5) If he ceases to be qualified in respect of Property or of Residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an Office under that Government requiring his Presence there."

"32. When a Vacancy happens in the Senate by Resignation, Death or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy."

"33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate."

"34. The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead."

* * * * * *

"72. The Legislative Council of Quebec shall be composed of Twenty-four Members, to be appointed by the Lieutenant-Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, one being appointed to represent each of the Twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding Office for the Term of his Life, unless the Legislature of Quebec otherwise provides under the Provisions of this Act."

"73. The Qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec."

"74. The Place of a Legislative Councillor of Quebec shall become vacant in the Cases, *mutatis mutandis*, in which the Place of Senator becomes vacant."

"75. When a Vacancy happens in the Legislative Council of Quebec by Resignation, Death, or otherwise, the Lieutenant-Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, shall appoint a fit and qualified Person to fill the Vacancy."

"76. If any Question arises respecting the Qualification of a Legislative Councillor of Quebec, or a Vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council."

"77. The Lieutenant-Governor may from Time to Time by Instrument under the Great Seal of Quebec, appoint a Member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another to his stead."

* * * * * *

"128. Every Member of the Senate or House of Commons of Canada shall before taking his Seat therein take and subscribe before the Governor General or some Person authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant-Governor of the Province or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule."

"THE FIFTH SCHEDULE.

OATH OF ALLEGIANCE.

I, A.B., do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.

NOTE.—The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the Time being is to be substituted from Time to Time, with Proper Terms of Reference thereto.

DECLARATION OF QUALIFICATION.

I, A.B., do declare and testify, That I am by Law duly qualified to be appointed a Member of the Senate of Canada [*or as the Case may be*], and that I am legally or equitably seised as of Freehold for my own Use and Benefit of Lands or Tenements held in Free and Common Socage [*or* seised or possessed for my own Use and Benefit of Lands or Tenements held in Franc-alleu or in Roture (*as the Case may be*),] in the Province of Nova Scotia [*or as the case may*

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be] of the Value of Four thousand Dollars over and above all Rents, Dues, Debts, Mortgages, Charges, and Incumbrances due or payable out of or charged on or affecting the same, and that I have not collusively or colourably obtained a Title to or become possessed of the said Lands and Tenements or any Part thereof for the Purpose of enabling me to become a Member of the Senate of Canada [*or as the Case may be*], and that my Real and Personal Property are together worth Four thousand Dollars over and above my Debts and Liabilities."

The meaning of the word " persons " as it occurs in section 24 of the British North America Act, 1867, can only be ascertained like that of any other word from its context. This principle of interpretation is of general application. In Hardcastle on Statutory Law, 4th ed., p. 146, it is said, " The best dictionary is but a guide to the true meaning of a word in a particular context . . . ."

" The true mode of ascertainment is that said to have been first used by Sir Thomas More, namely, that words cannot be construed effectively without reference to their context."

The definition in dictionaries does not help in the present case for it must be admitted that the word " person " may and apart from any context must include a woman.

Neither do the Interpretation Acts which both the Parliament of Great Britain and the Parliament of Canada have passed afford any assistance for each of them recognizes to the full the principle that the context in which words appear must be considered in determining their meaning.

The Imperial Statute, the Interpretation Act, 1889, 52-53 Victoria, c. 63, was not of course passed until long after the British North America Act but it professedly was a recognition of existing rules of construction. The full title of the Act is :

" An Act for consolidating enactments relating to the construction of Acts of Parliament and for further shortening the language used in Acts of Parliament."

" RE-ENACTMENT OF EXISTING RULES

" 1. (1) In this Act and in every Act passed after the year 1850, whether before or after the commencement of this Act, unless the contrary intention appears

(a) words importing the masculine gender shall include females."

. . . . . .

The first Canadian Interpretation Act, 31 Victoria, c. 1, it may be noted, is fuller, and perhaps better. It provides :—

" INTERPRETATION

* * * * * *

" 3. This section and the fourth, fifth, sixth, seventh and eighth sections of this Act, and each provision thereof, shall extend and apply to every Act passed in the Session held in this thirtieth year of

Her Majesty's Reign, and in any future Session of the Parliament of Canada, except in so far as the provision is inconsistent with the intent and object of such Act, or the interpretation which such provision would give to any word, expression or clause is inconsistent with the context,—and except in so far as any provision thereof is in any such Act declared not applicable thereto;—Nor shall the omission in any Act of a declaration that the " Interpretation Act " shall apply thereto, be construed to prevent its so applying, although such express declaration may be inserted in some other Act or Acts of the same Session."

* * * * * *

" 6. In construing this or any Act of the Parliament of Canada, unless it is otherwise provided or there be something in the context of other provisions thereof indicating a different meaning or calling for a different construction."

(1) * * * * * *

" 7. Subject to the limitations aforesaid,—in every Act of the Parliament of Canada, to which this section applies :—

First. * * * * *

Tenthly. Words importing the singular number or the masculine gender only shall include more persons, parties or things of the same kind than one and females as well as males and the converse.

Eleventhly. The word " person " shall include any body corporate and politic or party . . . . . to whom the context can apply according to the law of that part of Canada to which such context extends."

Many Acts of course contain their own interpretation clause and from some of these it might be gathered that the word " person " is not always to be taken in its widest sense. Thus in the English Trustee Act of 1850, it is provided that " person " used and referred to in the masculine gender shall include females as well as a male and shall include a body corporate.

Again it has been held that the word " person " in section 4 of the Vagrancy Act of 1824, 5 Geo. IV, c. 83 does not include a woman, (*Peters* v. *Cowie*, 46 L.J., M.C., 177, 2 Q.B.D. 131).

The expression " Male British Subject " does not occur in the British North America Act except in a special proviso to sections 41 and 84 regarding the election of a member for the district of Algoma.

We are therefore thrown back upon the context for the meaning of the word " person " in section 24 and very wide considerations are open for implications as to the restriction to be put on the word in the particular section.

As above pointed out, the British North America Act recites that the constitution is to be similar in principle to that of the United Kingdom and of course this must be held as of the constitution of the United Kingdom in the year 1867 not as it may be altered by any subsequent legislation.

In the Supreme Court of Canada.

No. 8. Factum of the Attorney-General of Quebec—*continued.*

In the year 1867, women had never been admitted to the floor of either House of Parliament; they did not even possess the suffrage. That was the law, a custom centuries old dating indeed from the institution of Parliaments.

A leading case on the subject to which reference will be made is that of *Chorlton* v. *Lings*, L.R. 4 C.P. p. 384, decided in 1868. The head note of that case reads as follows :—

> " The Representation of the People Act 1867 (30–31 Vict., c. 102) sec. 3, enacts that every ' man ' shall, in and after the year 1868, be entitled to be registered as a voter, and when registered to vote for a member or members to serve in Parliament for a borough who is qualified as follows, first, is of full age, and not subject to any legal incapacity.
>
> By Lord Brougham's Act (13–14 Vict., c. 21) sec. 4, in all Acts words importing the masculine gender shall be deemed and taken to include females, unless the contrary is expressly provided.
>
> *Held*, that women are subject to a legal incapacity from voting at the election of members of Parliament.
>
> *Held*, also, that the word ' man ' in the Representation of the People Act does not include woman."

In the case of *Nairn* v. *University of St. Andrews* [1909] A.C. 147 in the House of Lords, the head note is as follows :—

> " By s. 27 of the Representation of the People (Scotland) Act, 1868, ' Every person whose name is for the time being on the register . . . . of the general council of such university, shall, if of full age, and not subject to any legal incapacity, be entitled to vote in the election of a member to serve in any future Parliament for such university in terms of this Act ' ; and by s. 28, sub-s. 2, the following persons shall be members of the general council of the respective universities : ' All persons on whom the university to which such general council belongs has after examination conferred ' certain degrees, ' or any other degree that may hereafter be instituted.' The appellants were five women graduates of the University of Edinburgh, and as such had their names enrolled on the general council of that university, and they claimed as graduates and members of the general council the right to vote at the election of a member of Parliament for the university :—
>
> *Held* (affirming the decision of the Extra Division of the Court of Session), that the appellants were not entitled to vote in the election of the parliamentary representative of the university.
>
> There is no evidence of any ancient custom for women to vote in parliamentary elections."

In his judgment the Lord Chancellor, with reference to the right to vote of women in the past, said : " It is incomprehensible to me that any one " acquainted with our laws or the methods by which they are ascertained " can think, if, indeed, any one does think, there is room for argument on

" such a point. It is notorious that this right of voting has, in fact, been " confined to men. Not only has it been the constant tradition, alike of " all the three kingdoms, but it has also been the constant practice, so far " as we have knowledge of what has happened from the earliest times down " to this day. Only the clearest proof that a different state of things " prevailed in ancient times could be entertained by a Court of law in pro- " bing the origin of so inveterate an usage. I need not remind your " Lordships that numberless rights rest upon a similar basis. Indeed, the " whole body of the common law has no other foundation.

" I will not linger upon this subject, which, indeed, was fully " discussed in *Chorlton* v. *Lings*. If this legal disability is to be removed " it must be done by Act of Parliament." And the judgment concluded that the Representation of the People (Scotland) Act 1868 did not confer on women any right to vote.

The incapacity of women was really recognized by the Imperial Parliament in the legislation of 1918, the Representation of the People Act, 1918, 7-8 Geo. V, c. 64, which provides :—

" PART I.

FRANCHISES.

1. (1) A man shall be entitled to be registered as a parliamentary elector . . . . . if he, etc.

* * * * * *

4. (1) A woman shall be entitled to be registered as a parliamentary elector . . . . . if she, etc.

* * * * * *

And the Act 8-9 Geo. V, c. 47 " An Act to amend the law with respect to the capacity of women to sit in Parliament."

" 1. A woman shall not be disqualified by sex or marriage for being elected to or sitting or voting as a member of the Commons House of Parliament."

The position of women in this connection in this country prior to Confederation may be briefly traced as showing both from the legislation by which it was governed and the uniform practice thereunder what may have entered into the intention of the legislature in passing the British North America Act.

In the Province of Canada, as erected by the Royal Proclamation of the 7th of October 1763, immediately after the conquest the Government was carried on by the Governor and a Council composed of the persons who had been appointed Lieutenant-Governors of Montreal and Trois-Rivières, Chief Justice of the Province and the Surveyor General of Customs, and eight other persons to be chosen amongst the most considerable of the inhabitants of, or persons of property in the Province.

In the Supreme Court of Canada.

No. 8. Factum of the Attorney-General of Quebec—*continued.*

By the Quebec Act, provision was made for the government by a Governor and a Legislative Council to consist of such persons resident there as His Majesty shall be pleased to appoint.

The Constitutional Act, 1791, dividing the Province of Quebec into the two separate Provinces of Upper and Lower-Canada, provided for a legislature in each Province composed of "a sufficient number of discreet and proper persons not fewer than seven to the Legislative Council for the Province of Upper-Canada and not fewer than fifteen to the Legislative Council for Lower-Canada."

By the Act of Union of 1840, 3 & 4 Vict. c. 35, the Provinces of Upper and Lower Canada were reunited and formed the Province of Canada with a legislature composed of the Legislative Council and Assembly of Canada. The Legislative Council to be composed of such persons being not fewer than twenty as Her Majesty shall think fit, such Legislative Councillors holding their seat for life, and the other provisions regarding them being largely similar to those concerning Senators under the British North America Act.

Very similar provisions were made for the Legislature of Nova Scotia from the date of its cession to Great Britain in 1713 and after the separation of a part of the Province into a separate Province to be called New-Brunswick, for such Province.

It is however to be observed that by section 88 of the British North America Act, 1867, it is provided that "The Constitution of the Legislature of each of the Provinces of Nova Scotia and New-Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act."

As in the case of England there is practically no trace of women having at any time either by express legislation or by custom or usage a right to vote.

How far the laws and customs of the former Provinces survived after Confederation in 1867 need not be enquired but it may well be that the Imperial Parliament in passing the British North America Act would have had some regard to the circumstances of the Provinces to be affected by the Act and have not introduced such a change into the supreme authority of government as would be involved in the admission of women to the franchise without express enactment.

It being scarcely questionable that it was a principle of the constitution at the time of Confederation that females had no share in the legislation of the country either directly or through persons representing them, legislation was considered necessary in order to enable women to sit in the House of Commons of Canada.

The Dominion Elections Act, 10-11 George V, c. 46, "An Act respecting the election of Members of the House of Commons and the Electoral Franchise."

" QUALIFICATION OF ELECTORS.

" 29. (1) Save as in this Act otherwise provided every person, male or female, shall be qualified to vote at the election of a member who, not being an Indian ordinarily resident on an Indian Reservation,—

(*a*) is a British subject by birth or naturalization, and
(*b*) is of the full age of twenty one years, and
(*c*) .....
(*d*) .....

" QUALIFICATION OF CANDIDATES.

" 38. Except as in this Act otherwise provided, any British subject, male or female, who is of the full age of twenty one years, may be a candidate at a Dominion election."

If any such fundamental change had been contemplated as the placing of women on an equal footing with men there must certainly have been much consideration devoted to it at the time when the constitution to be provided for Canada was being settled. Certainly in the conferences leading up to the passing of the Act there never was any suggestion of such a possible change from the principle then to be found in the British constitution.

It cannot be overlooked in the consideration of the above quoted cases that the Representation of the People Act, 1867, was passed in the same session of the Imperial Parliament as the British North America Act, and it can hardly be supposed that if by the use of the word " man " in the former Act that Legislature did not intend to include women, it did so intend when using the word " person " in the British North America Act, this although the circumstances of the position of women had ever been the same in the two countries.

Finally it is necessary to look to the provisions of the Act itself relating to the Senate and Senators with the evidence which they furnish of the intention of the legislature.

Throughout the provisions, in speaking of senators, and the word itself is strictly a masculine term, the masculine gender alone is used. This affords a presumption that the appointment of male persons alone was intended since if so important an alteration, in then hitherto established constitutional practice, had been intended it would not have been left to depend on such a doubtful construction as might be gathered from the rule that the masculine includes the feminine when the context permits.

The privileges, immunities and powers of senators as provided in section 18 would certainly present great difficulties in the case of females. It cannot be overlooked in this connection that there is an essential difference between the status of single women and those who having entered the marriage state are under obedience to their husbands.

In the Supreme Court of Canada.

No. 8. Factum of the Attorney-General of Quebec—*continued.*

If it was the intention to include any females under the word " persons " a necessary distinction between the two classses would have been made with provision accordingly.

The same considerations must apply and with even greater force with regard to the qualifications in section 23 and the provisions for the vacating of the place of a senator in section 31.

It must be doubtful if in the year 1867 any married woman could strictly have the property qualification or be able to make the declaration in the Fifth Schedule to the Act.

All sorts of difficulties may be presented under section 31, for instance, a woman may become the subject or citizen of a foreign power if her husband does so.

For the above and other reasons to be presented at the argument, the Attorney General of Quebec submits that the question referred should be answered in the negative.

CHARLES LANCTOT.
AIMÉ GEOFFRION.

No. 9. Formal Judgment, 24th April, 1928.

No. 9.

Formal Judgment.

IN THE SUPREME COURT OF CANADA.

Tuesday, the twenty-fourth day of April, A.D. 1928.

Present :

The Right Honourable Francis Alexander Anglin, P.C., Chief Justice.
The Right Honourable Mr. Justice Duff, P.C.
The Honourable Mr. Justice Mignault.
The Honourable Mr. Justice Lamont.
The Honourable Mr. Justice Smith.

In the matter of a Reference with respect to the meaning to be assigned to the word " Persons " in section 24 of the British North America Act 1867.

Whereas by Order-in-Council of His Majesty's Privy Council for Canada bearing date the nineteenth day of October in the Year of Our Lord One Thousand Nine hundred and Twenty-seven " P.C. 2034," the question hereinafter set out was referred to the Supreme Court of Canada for hearing and consideration pursuant to section 60 of the Supreme Court Act, namely—

Does the word " Persons " in section 24 of the British North America Act 1867 include female persons ?

In the Supreme Court of Canada.

No. 9. Formal Judgment, 24th April, 1928—*continued.*

As whereas the said question came before this Court for hearing on the fourteenth day of March in the Year of Our Lord One thousand Nine Hundred and Twenty-eight, in the presence of Counsel for the Attorney General of Canada, the Attorney General of the Province of Quebec and Henrietta Muir Edwards, and others, petitioners.

Whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said Reference should stand over for consideration and the same having come on this day for determination, the following judgment was pronounced :—

" The question being understood to be ' Are women eligible for appointment to the Senate of Canada ' the question is answered in the negative."

(Sgd.) E. R. CAMERON,
Registrar.

No. 10.

Reasons for Judgment.

No. 10. Reasons for Judgment. (*a*) Anglin, C.J.C.

(*a*) ANGLIN C.J.C.—By Order of the 19th of October, 1927, made on a petition of five ladies, His Excellency the Governor in Council was pleased to refer to this court " for hearing and consideration " the question :

" Does the word ' Persons ' in section 24 of the *British North America Act*, 1867, include female persons ? "

Notice of this reference was published in the *Canada Gazette* and notice of the hearing was duly given to the petitioners and to each of the Attorneys General of the several provinces of Canada. Argument took place on the 14th of March last when counsel were heard representing the Attorney General of Canada, the Attorneys General of the provinces of Quebec and Alberta and the petitioners.

Section 24 is one of a group, or fasciculus of sections in the *British North America Act*, 1867, numbered 21 to 36, which provides for the constitution of the Senate of Canada. This group of sections (omitting three which are irrelevant to the question before us) reads as follows :

" THE SENATE.

" 21. The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators.

* * * * * *

" 23. The Qualification of a Senator shall be as follows:

(1) He shall be of the full age of Thirty Years;

(2) He shall be either a Natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of

In the Supreme Court of Canada.

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

Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union;

(3) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in free and common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Franc alleu or in Roture, within the Province for which he is appointed, of the value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same;

(4) His Real and Personal Property shall be together worth Four Thousand Dollars over and above his Debts and Liabilities;

(5) He shall be resident in the Province for which he is appointed;

(6) In the case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

" 24. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator.

" 25. Such Persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen's Proclamation of Union.

" 26. If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Three or Six Members be added to the Senate, the Governor General may by Summons to Three or Six qualified Persons (as the Case may be), representing equally the Three Divisions of Canada, add to the Senate accordingly.

" 27. In case of such Addition being at any Time made the Governor General shall not summon any Person to the Senate, except on a further like Direction by the Queen on the like Recommendation, until each of the Three Divisions of Canada is represented by Twenty-four Senators and no more.

" 28. The Number of Senators shall not at any Time exceed Seventy-eight.

" 29. A Senator shall, subject to the Provisions of this Act, hold his Place in the Senate for Life.

" 30. A Senator may by Writing under his Hand addressed to the Governor General resign his Place in the Senate, and thereupon the same shall be vacant.

"31. The Place of a Senator shall become vacant in any of the following Cases:—

(1) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate.

(2) If he takes an Oath or makes a Declaration or Acknowledgement of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen, of a Foreign Power;

(3) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter;

(4) If he is attainted of Treason or convicted of Felony or any Infamous Crime;

(5) If he ceases to be qualified in respect of Property or of Residence; provided that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an Office under that Government requiring his Presence there.

"32. When a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by summons to a fit and qualified Person fill the Vacancy.

"33. If any question arises respecting the qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate.

* * *

"35. Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers."

* * *

The *British North America Act*, 1867, does not contain provisions in regard to the Senate corresponding to its sections 41 and 52, which, respectively, empower the Parliament of Canada from time to time to alter the qualifications or disqualifications of persons to be elected to the House of Commons and to determine the number of members of which that House shall consist. Except in regard to the number of Senators required to constitute a quorum (s. 35), the provisions affecting the constitution of the Senate are subject to alteration only by the Imperial Parliament.

Section 33 which empowers the Senate to hear and determine any question that may arise respecting the qualification of a Senator, applies only after the person whose qualification is challenged has been appointed or summoned to the Senate. That section is probably no more than

In the Supreme Court of Canada.

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

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, 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 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 :

> " 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 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.

" In deciding the question before us," said Turner L.J., in *Hawkins* v. *Gathercole* (1),

> " we have to construe not merely the words of the Act of Parliament but the intent of the Legislature as 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 be justly considered to throw light upon the subject."

Two well-known rules in the construction of statutes are that, where a statute is susceptible of more than one meaning, in the absence of express language an intention to abrogate the ordinary rules of law is not to be imputed to Parliament (*Wear Commissioners* v. *Adamson* (2)); and,

> " as they are framed for the guidance of the people, their language is to be considered in its ordinary and popular sense," per Byles, J., in *Chorlton* v. *Lings* (3).

Two outstanding facts or circumstances of importance bearing upon the present reference appear to be

(*a*) that the office of Senator was a *new* office first created by the B.N.A. Act.

> " It is an office, therefore, which no one apart from the enactments of the statute has an inherent or common law right of holding, and the right of any one to hold the office must be found within the four corners of the statute which creates the office, and enacts the conditions upon which it is to be held, and the persons who are entitled to hold it" (*Beresford-Hope* v. *Sandhurst* (4), per Lord Coleridge, C.J.);

(*b*) that by the common law of England (as also, speaking generally, by the civil and the canon law : *foeminae ab omnibus officiis civilibus vel publicis remotae sunt*) women were under a legal incapacity to hold public office,

> " referable to the fact (as Willes J., said in *Chorlton* v. *Lings* (5), that in this country in modern times, chiefly out of respect to women, and a sense of decorum, and not from their want of intellect, or their being for any other such reason unfit to take part in the government of the country, they have been excused from taking any share in this department of public affairs."

The same very learned judge had said, at p. 388 :

> " Women are under a legal incapacity to vote at elections. What was the cause of it, it is not necessary to go into : but, admitting that fickleness of judgment and liability to influence have sometimes been suggested as the ground of exclusion, I must protest against its being supposed to arise in this country from any underrating of the sex either in point of intellect or worth. That would

(1) 6 DeG. M. & G., 1, at p. 21.
(2) (1876) 1 Q.B.D. 546, at p. 554.
(3) (1868) L.R. 4 C.P. 374, at p. 398.
(4) (1889) 23 Q.B.D. 79, at p. 91.
(5) L.R. 4 C.P. 374, at p. 392.

In the Supreme Court of Canada.

No. 10. Reasons for Judgment—*continued.* (*i*) Anglin, C.J.C.—*continued.*

be quite inconsistent with one of the glories of our civilisation, the respect and honour in which women are held. This is not a mere fancy of my own, but will be found in Selden, de Synedriis Veterum Ebraeorum, in the discussion of the origin of the exclusion of women from judicial and like public functions, where the author gives preference to this reason, that the exemption was founded upon motives of decorum, and was a privilege of the sex (*honestatis privilegium*): Selden's Works, vol. 1, pp. 1083-1085. Selden refers to many systems of law in which this exclusion prevailed, including the civil law and the canon law, which latter, as we know, excluded women from public functions in some remarkable instances. With respect to the civil law, I may add a reference to the learned and original work of Sir Patrick Colquhoun (*sic*) on the Roman Law, vol. 1, c. 580, where he compares the Roman system with ours, and states that a woman 'cannot vote for members of parliament, or sit in either the House of Lords or Commons.' "

As put by Lord Esher, M. R. (who, however, says he had " a stronger view than some of (his) brethren ") in *Beresford-Hope* v. *Sandhurst* (1)

> " I take the first proposition to be that laid down by Willes J., in the case of *Chorlton* v. *Lings* (2). I take it that by neither the common law nor the constitution of this country from the beginning of the common law until now can a woman be entitled to exercise any public functions. Willes J., stated so in that case, and a more learned judge never lived."

While Willes, J., had spoken of " judicial and like public functions " at p. 388, the tenor of his judgment indicates unmistakably that it was his view that to the legal incapacity of women for public office there were few, if any, exceptions. See *De Sousa* v. *Cobden* (3).

The same idea is expressed by Viscount Birkenhead L.C., in rejecting The Viscountess Rhondda's Claim to a Writ of Summons to the House of Lords (4).

> " By her sex she is not—except in a wholly loose and colloquial sense—disqualified from the exercise of this right. In respect of her dignity she is a subject of rights which *ex vi termini* cannot include this right."

Viscount Haldane, who dissented in the *Rhondda Case* (4), said, at p. 386 :

> " The reason why peeresses were not entitled to it (the writ of summons) was simply that as women they could not exercise the public function. That appears to have been the considered conclusion of James Shaw Willes J., one of the most learned and accurate exponents of the law of England who ever sat on the Bench. He says in *Chorlton* v. *Lings* (5) that the absence of all

(1) 23 Q.B.D. 79, at p. 95.
(2) L.R. 4 C.P. 374.
(3) [1891] 1 Q.B. 687, at p. 691.
(4) [1922] 2 A.C. 339, at p. 362.
(5) L.R. 4 C.P. 374.

rights of this kind is referable to the fact that by the common law women have been excused from taking any part in public affairs."

Reference may also be had to *Brown* v. *Ingram* (1); *Hall* v. *Incorporated Society of Law Agents* (2); *Rex* v. *Crossthwaite* (3), and to the judgment of Gray C.J., in *Robinson's Case* (4), and also to Pollock & Maitland's History of English Law, vol. 1, pp. 465-8.

Prior to 1867 the common law legal incapacity of women to sit in Parliament had been fully recognised in the three provinces—Canada (Upper and Lower), Nova Scotia and New Brunswick, which were then confederated as the Dominion of Canada.

Moreover, paraphrasing an observation of Lord Coleridge C.J., in *Beresford-Hope* v. *Sandhurst* (5), it is not also perhaps to be entirely left out of sight, that in the sixty years which have run since 1867, the questions of the rights and privileges of women have not been, as in former times they were, asleep. On the contrary, we know as a matter of fact that the rights of women, and the privileges of women, have been much discussed, and able and acute minds have been much exercised as to what privileges ought to be conceded to women. That has been going on, and surely it is a significant fact, that never from 1867 to the present time has any woman ever sat in the Senate of Canada, nor has any suggestion of women's eligibility for appointment to that House until quite recently been publicly made.

Has the Imperial Parliament, in sections 23, 24 25, 26 and 32 of the B.N.A. Act, read in the light of other provisions of the statute and of relevant circumstances proper to be considered, given to women the capacity to exercise the public functions of a Senator? Has it made clear its intent to effect, so far as the personnel of the Senate of Canada is concerned, the striking constitutional departure from the common law for which the petitioners contend, which would have rendered women eligible for appointment to the Senate at a time when they were neither qualified to sit in the House of Commons nor to vote for candidates for membership in that House? Has it not rather by clear implication, if not expressly, excluded them from membership in the Senate? Such an extraordinary privilege is not conferred furtively, nor is the purpose to grant it to be gathered from remote conjectures deduced from a skilful piecing together of expressions in a statute which are more or less precisely accurate. (*Nairn* v. *University of St. Andrews* (6). When Parliament contemplates such a decided innovation it is never at a loss for language to make its intention unmistakable. "A judgment," said Lord Robertson in the case last mentioned, at pp. 165-6

> "is wholesome and of good example which puts forward subject-matter and fundamental constitutional law as guides of construction never to be neglected in favour of verbal possibilities."

(1) (1868) 7 Court of Sess. Cases, 3rd Series, 281.
(2) (1901) 38 Scottish Law Reporter, 776.
(3) (1864) 17 Ir. C.L.R. 157, 463, 479.
(4) (1881) 131 Mass., 371, at p. 379.
(5) 23 Q.B.D. 79, at pp. 91, 92.
(6) (1909) A.C. 147, at p. 161.

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

There can be no doubt that the word "persons" when standing alone *prima facie* includes women. (Per Loreburn L.C., *Nairn* v. *University of St. Andrews* (1)). It connotes human beings—the criminal and the insane equally with the good and the wise citizen, the minor as well as the adult. Hence the propriety of the restriction placed upon it by the immediately preceding word "qualified" in ss. 24 and 26 and the words "fit and qualified" in s. 32, which exclude the criminal and the lunatic or imbecile as well as the minor, who is explicitly disqualified by s. 23 (1). Does this requirement of qualification also exclude women?

Ex facie, and apart from their designation as "Senators" (s. 21), the terms in which the qualifications of members of the Senate are specified in s. 23 (and it is to those terms that reference is made by the word "qualified" in s. 24) import that men only are eligible for appointment. In every clause of s. 23 the Senator is referred to by the masculine pronoun—"he" and "his"; and the like observation applies to ss. 29 and 31. *Frost* v. *The King* (2). Moreover, clause 2 of section 23 includes only "natural-born" subjects and those "naturalized" under statutory authority and not those who become subjects by marriage—a provision which one would have looked for had it been intended to include women as eligible.

Counsel for the petitioners sought to overcome the difficulty thus presented in two ways:

(*a*) by a comparison of s. 24 with other sections in the B.N.A. Act, in which, he contended, the word "persons" is obviously used in its more general signification as including women as well as men, notably ss. 11, 14 and 41.

(*b*) by invoking the aid of the statutory interpretation provision in force in England in 1867—13-14 Vict., c. 21, s. 4, known as Lord Brougham's Act—which reads as follows:

> "Be it enacted that in all Acts words importing the Masculine Gender shall be deemed and taken to include Females, and the Singular to include the Plural, and the Plural the Singular, unless the contrary as to Gender or Number is expressly provided."

(*a*) A short but conclusive answer to the argument based on a comparison of s. 24 with other sections of the B.N.A. Act in which the word "persons" appears is that in none of them is its connotation restricted, as it is in s. 24, by the adjective "qualified." "Persons" is a word of equivocal signification, sometimes synonymous with human beings, sometimes including only men.

> "It is an ambiguous word, says Lord Ashbourne, and must be examined and construed in the light of surrounding circumstances and constitutional law" *Nairn* v. *University of St. Andrews* (3).

In section 41 of the B.N.A. Act, which deals with the qualifications for membership of the House of Commons and of the voters at elections of such

(1) [1909] A.C. 147, at p. 161. (2) [1919] Ir. R. 1 Ch. 81, at p. 91.
(3) [1909] A.C. 147, at p. 162.

members, " persons " would seem to be used in its wider signification, since, while in both these matters the legislation affecting the former Provincial Houses of Assembly, or Legislative Assemblies, is thereby made applicable to the new House of Commons, it remains so only " until the Parliament of Canada otherwise provides." It seems reasonably clear that it was intended to confer on the Parliament of Canada an untrammelled discretion as to the personnel of the membership of the House of Commons and as to the conditions of and qualifications for the franchise of its electorate; and so the Canadian Parliament has assumed, as witness the *Dominion Elections Act*, R.S.C., 1927, c. 53, ss. 29 and 38. It would, therefore, seem necessary to give to the word " persons " in s. 41 of the B.N.A. Act the wider signification of which it is susceptible in the absence of adjectival restriction.

But, in s. 11, which provides for the constitution of the new Privy Council for Canada, the word " persons," though unqualified, is probably used in the more restricted sense of " male persons." For the public offices thereby created women were, by the common law, ineligible and it would be dangerous to assume that by the use of the ambiguous term " persons " the Imperial Parliament meant in 1867 to bring about so vast a constitutional change affecting Canadian women, as would be involved in making them eligible for selection as Privy Councillors. A similar comment may be made upon s. 14, which enables the Governor General to appoint a Deputy or Deputies.

As put by Lord Loreburn in *Nairn* v. *University of St. Andrews* (1):

> " It would require a convincing demonstration to satisfy me that Parliament intended to effect a constitutional change so momentous and far-reaching by so furtive a process."

With Lord Robertson (*ibid.* at pp. 165–6), to mere " verbal possibilities " we prefer " subject-matter and fundamental constitutional law as guides of construction." When Parliament intends to overcome a fundamental constitutional incapacity it does not employ such an equivocal expression as is the word " persons " when used in regard to eligibility for a newly created public office. Neither from s. 11 or s. 14 nor from s. 41, therefore, can the petitioners derive support for their contention as to the construction of the phrase " qualified persons " in s. 24.

Section 63 of the B.N.A. Act, the only other section to which Mr. Rowell referred, deals with the constitution of the Executive Councils of the provinces of Ontario and Quebec. But, since, by s. 92 (1), each provincial legislature is empowered to amend the constitution of the province except as regards the office of Lieutenant-Governor, the presence of women as members of some provincial executive councils has no significance in regard to the scope of the phrase " qualified persons " in s. 24 of the B.N.A. Act.

(*b*) " Persons " is not a " word importing the masculine gender." Therefore, *ex facie*, Lord Brougham's Act has no application to it. It is

(1) [1909] A.C. 147, at p. 161.

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urged, however, that that statute so affects the word " Senator " and the pronouns " he " and " his " in s. 23 that they must be " deemed and taken to include Females," " the contrary " not being " expressly provided."

The application and purview of Lord Brougham's Act came up for consideration in *Chorlton* v. *Lings* (1), where the Court of Common Pleas was required to construe a statute (passed like the *British North America Act*, in 1867) which conferred the parliamentary franchise on " every man " possessing certain qualifications and registered as a voter. The chief question discussed was whether, by virtue of Lord Brougham's Act, " every man " included " women." Holding that " women " were " subject to a legal incapacity from voting at the election of members of Parliament," the court unanimously decided that the word " man " in the statute did not include a " woman." Having regard to the subject-matter of the statute and its general scope and language and to the important and striking nature of the departure from the common law involved in extending the franchise to women, Bovill C.J., declined to accept the view that Parliament had made that change by using the term " man " and held that

> " this word was intentionally used expressly to designate the male sex; and that it amounts to an express enactment and provision that every man, as distinguished from women, possessing the qualification, is to have the franchise. In that view, Lord Brougham's Act does not apply to the present case, and does not extend the meaning of the word ' man ' so as to include ' women.' " (386-7).

Willes J., said, at p. 387 :

> " I am of the same opinion. The application of the Act, 13-14 Vict., c. 21, (Lord Brougham's Act) contended for by the appellant is a strained one. It is not easy to conceive that the framer of the Act, when he used the word ' expressly,' meant to suggest that what is necessarily or properly implied by language is not expressed by such language. It is quite clear that whatever the language used necessarily or even naturally implies, is expressed thereby. Still less did the framer of the Act intend to exclude the rule alike of good sense and grammar and law, that general words are to be restrained to the subject-matter with which the speaker or writer is dealing."

Byles J., said, at p. 393 :

> " The difficulty, if any, is created by the use of the word ' *expressly*.' But that word does not necessarily mean ' expressly excluded by words ' . . . The word ' expressly ' often means no more than plainly, clearly, or the like; as will appear on reference to any English dictionary."

And he concluded :

> " I trust * * * our unanimous decision will forever exorcise and lay this ghost of a doubt, which ought never to have made its appearance."

Keating J., said, at pp. 394–5 :

> " Considering that there is no evidence of women ever having voted for members of parliament in cities or boroughs, and that

(1) 1868 L.R. 4 C.P. 374.

they have been deemed for centuries to be legally incapable of so doing, one would have expected that the legislature, if desirous of making an alteration so important and extensive as to admit them to the franchise, would have said so plainly and distinctly: whereas, in the present case, they have used expressions never before supposed to include women when found in previous Acts of Parliament of a similar character. * * * But it is said that the word 'man' in the present Act must be construed to include 'woman' because by 13-14 Vict., c. 21, s. 4, it is enacted that 'In all Acts, words importing the masculine gender shall be deemed and taken to include females, unless the contrary is expressly provided.' Now all that s. 4 of 13 and 14 Vict., c. 21 could have meant by the enactment referred to was, that, in future Acts, words importing the masculine gender should be taken to include females, where a contrary intention should not appear. To do more would be exceeding the competency of Parliament with reference to future legislation."

The later *Interpretation Act* of 1889 (52–53 Vict., c. 63), which (s. 41) repealed Lord Brougham's Act, substituted by s. 1, under the heading "Re-enactment of Existing Rules" for its words "unless the contrary as to Gender and Number is expressly provided" their equivalent, suggested by Mr. Justice Keating, "unless the contrary intention appears." *Frost* v. *The King* (1).

Keating J. concluded his judgment by saying (p. 396):

> "Mr. Coleridge, who ably argued the case for the appellant, made an eloquent appeal as to the injustice of excluding females from the exercise of the franchise. This, however, is not a matter within our province. It is for the legislature to consider whether the existing incapacity ought to be removed. But, should Parliament in its wisdom determine to do so, doubtless it will be done by the use of language very different from anything that is to be found in the present Act of Parliament."

Similar views prevailed in *The Queen* v. *Harrald* (2), and *Bebb* v. *The Law Society* (3).

The decision in *Chorlton* v. *Lings* (4) is of the highest authority, as was recognised in the House of Lords by Earl Loreburn, L.C., in *Nairn* v. *University of St Andrews* (5), and again by Viscount Birkenhead, L.C., in rejecting the claim of Viscountess Rhondda to sit in the House of Lords, with the concurrence of Viscount Cave, and Lords Atkinson, Phillimore, Buckmaster, Sumner and Carson, as well as by Viscount Haldane, who dissented (6).

(1) [1919] Ir. R. 1 Ch. 81, at pp. 89, 95.
(2) (1872) L.R. 7 Q.B. 361.
(3) [1914] 1 Ch. 286.
(4) L.R. 4 C.P. 374.
(5) [1909] A.C. 147.
(6) [1922] 2 A.C. 339.

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(*a*) Anglin, C.J.C.—*continued.*

In his speech, at p. 375, the Lord Chancellor said :—

> " It is sufficient to say that the Legislature in dealing with this matter cannot be taken to have departed from the usage of centuries or to have employed such loose and ambiguous words to carry out so momentous a revolution in the constitution of this House. And I am content to base my judgment on this alone."

In our opinion *Chorlton* v. *Lings* (1) is conclusive against the petitioners alike on the question of the common law incapacity of women to exercise such public functions as those of a member of the Senate of Canada and on that of their being expressly excluded from the class of " qualified persons " within s. 24 of the B.N.A. Act by the terms in which s. 23 is couched (*New South Wales Taxation Commissioners* v. *Palmer*) (2), so that Lord Brougham's Act cannot be invoked to extend those terms to bring " women " within their purview.

We are, for these reasons, of the opinion that women are not eligible for appointment by the Governor General to the Senate of Canada under Section 24 of the British North America Act, 1867, because they are not " qualified persons " within the meaning of that section. The question submitted, understood as above indicated, will, accordingly, be answered in the negative.

(*b*) Duff, J.

(*b*) DUFF, J.—The interrogatory submitted is, in effect, this : Is the word " persons " in section 24 of the B.N.A. Act the equivalent of male persons; " Persons " in the ordinary sense of the word includes, of course, natural persons of both sexes. But the sense of words is often radically affected by the context in which they are found, as well as by the occasion on which they are used; and in construing a legislative enactment, considerations arising not only from the context, but from the nature of the subject matter and object of the legislation, may require us to ascribe to general words a scope more restricted than their usual import, in order loyally to effectuate the intention of the legislature. And for this purpose, it is sometimes the duty of a court of law to resort, not only to other provisions of the enactment itself, but to the state of the law at the time the enactment was passed, and to the history, especially the legislative history, of the subjects with which the enactment deals. The view advanced by the Crown is that following this mode of approach, and employing the legitimate aids to interpretation thus indicated, we are constrained in construing section 24, to read the word " persons " in the restricted sense above mentioned, and to construe the section as authorizing the summoning of male persons only.

The question for decision is whether this is the right interpretation of that section.

It is convenient first to recall the general character and purpose of the B.N.A. Act. The object of the Act was to create for British North America, a system of parliamentary government under the British Crown, the executive authority being vested in the Queen of the United Kingdom.

(1) L.R. 4 C.P. 374. (2) [1907] A.C. 179, at p. 184.

While the system was to be a federal or quasi federal one, the constitution was nevertheless, to be "similar in principle" to that of the United Kingdom; a canon involving the acceptance of the doctrine of parliamentary supremacy in two senses, first that Parliament and the Legislatures, unlike the legislatures and Congress in the U.S., were, subject to the limitations necessarily imposed by the division of powers between the local and central authorities, to possess, within their several spheres, full jurisdiction, free from control by the courts; and second, in the sense of parliamentary control over the executive, or executive responsibility to Parliament. In pursuance of this design, Parliament and the local legislatures were severally invested with legislative jurisdiction over defined subjects which, with limited exceptions, embrace the whole field of legislative activity.

More specifically, the legislative authority of Parliament extends over all matters concerning the peace, order and good government of Canada; and it may with confidence be affirmed that, excepting such matters as are assigned to the provinces, and such as are definitely dealt with by the Act itself, and subject, moreover, to an exception of undefined scope having relation to the sovereign, legislative authority throughout its whole range is committed to Parliament. As regards the executive, the declaration in the preamble already referred to, involves, as I have said, as a principle of the system, the responsibility of the executive to Parliament.

The argument advanced before us in favour of the limited construction is this: Women, it is said, at the time of the passing of the B.N.A. Act, were, under the common law, as well as under the civil law, relieved from the duties of public office or place, by a general rule of law, which affected them (except in certain ascertained or ascertainable cases) with a personal incapacity to accept or perform such duties; and, in particular, women were excluded by the law and practice of parliamentary institutions, both in England and in Canada, and indeed in the English speaking world, from holding a place in any legislative or deliberative body, and from voting for the election of a member of any such body. It must be assumed, it is said, that if the authors of the B.N.A. Act had intended, in the system established by the Act, to depart from this law or practice sanctioned by inveterate policy, the intention would have been expressed in unmistakable and explicit words. The word "persons" it is said, when employed in a statute, dealing with the constitution of a legislative body, and with cognate matters, does not necessarily include female persons, and in an enactment on such a subject passed in the year 1867 *prima facie* excludes them.

In support of this view, a series of decisions and judgments, from 1868 to 1922, delivered by English judges of the highest authority, are adduced, in which it was held that such general words were not in themselves adequate evidence of an intention to reverse the inveterate usage and policy in respect of the exclusion of women from the parliamentary franchise, from the legal professions, from a university Senate, from the House of Lords; and in particular, two judgments of Lord Loreburn and Lord Birkenhead, which, pronounced with convincing force, against reading a modern statute in such a manner as to effect momentous changes in the political constitution of the

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country, by, in the one case, admitting women to the parliamentary franchise, and in the other, to the House of Lords, in the absence of words plainly and explicitly declaring that such was the intention of Parliament.

Section 24, of course, in applying this principle, must not be treated as an independent enactment. The Senate is part of a parliamentary system; and, in order to test the contention, based upon this principle, that women are excluded from participating in working the Senate or any of the other institutions set up by the Act, one is bound to consider the Act as a whole, in its bearing on this subject of the exclusion of women from public office and place. Obviously, there are three general lines or policy which the authors of the statute might have pursued in relation to that subject. First, they might by a constitutional rule embodied in the statute, have perpetuated the legal rule affecting women with a personal incapacity for undertaking public duties, thus placing this subject among the limited number of subjects that are withdrawn from the authority of Parliament and the legislatures; second, they might, by a constitutional rule, in the opposite sense, embodied in the Act, have made women eligible for all public places or offices, or any of them, and thus, or to that extent, also, have withdrawn the subject from the legislative jurisdiction created by the act. They might, on the other hand, with respect to all public employments, or with respect to one or more of them, have recognized the existence of the legal incapacity, but left it to Parliament and the legislatures to remove that incapacity, or to perpetuate it as they might see fit. For example, they might have restricted the Governor in Council, in summoning persons to the Senate under section 24, by requiring him to address his summons to persons only who are under no such legal incapacity, which would have made women ineligible, but only so long as such incapacity remained and at the same time had left it within the power of the Parliament to obliterate the cause of the disability. The generality of the word "persons" in section 24 is, in point of law, susceptible of any qualification necessary to bring it into harmony with any of those three possible modes of treating the subject.

I have been unable to accept the argument in support of the limited construction, in so far as it rests upon the view that in construing the legislative and executive powers granted by the B.N.A. Act, we must proceed upon a general presumption against the eligibility of women for public office. I have come to the conclusion that there is a special ground, which I will state later, upon which the restricted construction of section 24 must be maintained but before stating that, I think it is right to explain why it is I think the general presumption contended for, has not been established.

And first, one must consider the provisions of the Act themselves, apart from the "extraneous circumstances," except for such references as may be necessary to make the enactments of the Act intelligible.

It would, I think, hardly be disputed that, as a general rule, the legislative authority of Parliament, and of legislatures enables them, each in their several fields, to deal fully with this subject of the incapacity of women. You could not hold otherwise without refusing effect to the language of

secs. 91 and 92; and indeed, one feels constrained to say, without ignoring the fact that the authors of the Act were engaged in creating a system of representative government for the people of half a continent. Counsel did, in the course of argument, suggest the possibility that Parliament, in extending the Parliamentary franchise to women, had exceeded its powers, but I do not think that was seriously pressed.

There can be no doubt that the Act does, in two sections, recognize the authority of Parliament and of the legislatures, to deal with the disqualification of women to be elected, or sit or vote as members of the representative body, or to vote in an election of such members. These sections are 41 and 84.

I quote section 41 in full,

> "Until the Parliament of Canada otherwise provides, all Laws in force in the several Provinces at the Union relative to the following Matters or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which Elections may be continued, the Trial of controverted Elections, and Proceedings incident thereto, the vacating of Seats of Members, and the Execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces.
>
> "Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a Vote."

To appreciate the purport of this section, it is necessary to note that in all the confederated provinces, women were disqualified as voters, that in one of the provinces, they were excluded, *eo nomine*, from places in the Legislative Assembly, and that in another, they were expressly excluded, but referentially, by the disqualification of all persons not qualified to vote; the right to vote having been confined explicitly to males. The phrase therefore "disqualification of persons to be elected or to sit or vote as members of the House of Assembly or Legislative Assembly in the various provinces," denotes disqualifications, which include *inter alia* disqualifications of women, while at the same time, the section recognizes the authority of the Dominion to legislate upon that subject. Mr. Rowell seemed to suggest that the legislative authority of Parliament, on the subject of qualification of members and voters, is derived from this section. I do not think so. It is given, it seems to me, under the general language of section 91, which obviously in its terms embraces it; but that does not affect

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the substance of the argument founded upon the section, which recognizes in the clearest manner, and by express reference, the authority of Parliament to deal with the subject of the disqualification of women in those aspects, women being demonstrably comprehended under the *nomen generale* " persons". This section 41 is taken almost *verbatim* from section 26 of the Quebec Resolutions, upon which the B.N.A. Act was mainly founded. It is difficult to suppose that the members of the Conference, who agreed upon these Resolutions, were unaware that, in that section, they were dealing with the subject. Section 84 is expressed in the same terms, and there can, I think be no warrant for attributing to the phrase quoted (or to the word " persons " which is part of it), diverse effects in the two sections. Indeed, there can be no doubt, that the province of Canada had enjoyed full authority under the Act of Union (and probably the Maritime provinces as well) to legislate upon the constitution of the Legislative Assembly, and the right to vote in the election of members to that body. Nor is it, I think, doubtful that, under section 1 of the *Union Act Amendment Act*, 1854, the legislature of Canada had full power to deal with the subject of qualifications of members of the Legislative Council, and to determine (subject it is true, to any bill upon the subject being reserved for Her Majesty's pleasure), whether or not women (here again comprehended in that section under the generic word " persons ") should be eligible for places therein.

The subject of the qualification and disqualification of women as members of the House of Commons, being thus recognized as within the jurisdiction of Parliament, is it quite clear that the construction of the general words of section 11 dealing with the constitution of the Privy Council, is governed by the general presumption suggested? Inferentially, in laying down the " principle " of the British Constitution as the foundation of the new policy, the preamble recognizes, as stated above, the responsibility of the Executive to Parliament, or rather to the elective branch of the legislature, and the right of Parliament to insist that the advisers of the Crown shall be persons possessing its " confidence ", as the phrase is.

The subject of " responsible government," as the phrase went, had been for many years the field of a bitter controversy, especially in the province of Canada. The Colonial office had encountered great difficulties in reconciling, in practice, the full adoption of this principle with proper recognization of the position of the Governor as the representative of the Imperial Government. It was only a few years before 1867 that Sir John Macdonald's suggestion had been accepted, by which " Governor-in-Council " in Commissions, Instructions and Statutes was read as the Governor acting on the advice of his Council, which was thus enabled to transact business in the Governor's absence. There can be no doubt that this inter-relation between the executive and the representative branches of the government was, in the view of the framers of the Act, a most important element in the constitutional principles which they intended to be the foundation of the new structure.

It might be suggested, I cannot help thinking, with some plausibility, that there would be something incongruous in a parliamentary system professedly conceived and fashioned on this principle, if persons fully qualified to be members of the House of Commons were by an iron rule of the constitution, a rule beyond the reach of Parliament, excluded from the Cabinet or the Government; if a class of persons who might reach any position of political influence, power or leadership in the House of Commons, were permanently, by an organic rule, excluded from the Government. In view of the intimate relation between the House of Commons and the Cabinet, and the rights of initiation and control, which the Government possesses in relation to legislation and parliamentary business generally, and which, it cannot be doubted, the authors of the Act intended and expected would continue, that would not, I think, be a wholly baseless suggestion.

The word " persons " is employed in a number of sections of the Act (secs. 41, 83, 84 and 133) as designating members of the House of Commons, and though the word appears without an adjective, indubitably it is used in the unrestricted sense as embracing persons of both sexes; while in secs. 41 and 84, where males only are intended, that intention is expressed in appropriate specific words.

Such general inferences therefore as may arise from the language of the Act as a whole cannot be said to support a presumption in favour of the restricted interpretation.

Nor am I convinced that the reasoning based upon the " extraneous circumstances " we are asked to consider—the disabilities of women under the common law, and the law and practice of Parliament in respect of appointment to public place or office—establishes a rule of interpretation for the *British North America Act*, by which the construction of powers, legislative and executive, bestowed in general terms is controlled by a presumptive exclusion of women from participation in the working of the institutions set up by the Act.

When a statutory enactment expressed in general terms is relied upon as creating or sanctioning a fundamental legal or political change, the nature of the supposed change may, in itself, be such as to leave no doubt that it could have been effected, or authorized, if at all, only after full deliberation, and that the intention to do so would have been evidenced in apt or unmistakable enactments. In *Cox* v. *Hakes* (1), Lord Halsbury was content to rest his judgment on his conviction that, in a matter affecting vitally the legal securities for personal freedom, the " policy of centuries " would not be reversed by Parliament, by the use of a single general phrase; and in the decisions concerning the disabilities of women, from 1868 to 1922, a similar line of reasoning played no insignificant part, as we have seen. Such reasoning has also been considered to give support to the view that the prerogative of Her Majesty in relation to appeals, was left untouched by the *British North America Act; Nadan* v. *The King* (2); and by the (Australian) *Commonwealth*

(1) 15 App. Cas. 506. (2) [1926] A.C. 482, at pp. 494, 495.

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Constitution Act, Webb v. *Outrim* (1); and was applied by the Supreme Court of the United States in reaching the conclusion that the 14th Amendment of the United States Constitution did not compel the States to admit women to the exercise of the legislative franchise. *Minor* v. *Happissett* (2).

But this mode of approach, though recognized by the courts as legitimate, must obviously be employed with caution. The " extraneous facts " upon which the underlying assumption is founded, must be demonstrative. It will not do to act upon the general resemblances between the questions presented here, and that presented in the cases cited. Those cases were concerned with the effect of statutes which might at any time be repealed or amended by a majority. They had nothing to do with the jurisdiction of Parliament or with that of His Majesty in Council executing the highest and constitutional functions under his responsibility to Parliament; and were not intended to lay down binding rules, for an indefinite future, in the working of a Constitution. And, above all, they were not concerned with broad provisions establishing new parliamentary institutions, and defining the spheres and powers of legislatures and executives, in a system of representative government. Passages in the judgments, of seemingly general import, must be read *secundum subjectam materiam.*

Let me illustrate this by reference to the Canadian Privy Council and the Provincial Executives. In 1867, it would have been a revolutionary step to appoint a woman to the Privy Council or to an Executive Council in Canada—nobody would have thought of it. But it would also have been a radical departure to make women eligible for election to the House of Commons, or to confer the electoral franchise upon them; to make them eligible as members of a provincial legislature, or for appointment to a provincial legislative council. And yet it is quite plain that, with respect to all these last-mentioned matters, the fullest authority was given and given in general terms to Parliament and the legislatures within their several spheres; the " policy of centuries" being left in the keeping of the representative bodies, which with the consent of the people of Canada, were to exercise legislative authority over them.

In view of this, I do not think the " extraneous facts " relied upon are really of decisive importance, especially when the phraseology of the particular sections already mentioned is considered; and their value becomes inconsiderable when compared with reasons deriving their force from the presumption that the Constitution in its executive branch was intended to be capable of adaptation to whatever changes (permissible under the Act) in the law and practice relating to the election branch might be progressively required by changes in public opinion.

Then, assuming that the considerations relied upon are potent enough to enforce some degree of restrictive qualification, what should be the extent of that qualification? Should it go farther than limiting the

(1) [1907] A.C. 81, at pp. 91, 92. (2) 22 L.C.P. 627, at p. 630.

classes of persons to be appointed, or summoned, to those not affected for the time being by a personal incapacity under some general rule of law, leaving it to Parliament or the legislatures to deal with the rule or rules entailing such disabilities?

For these reasons I cannot say that I am convinced of the existence of any such general presumption as that contended for. On the other hand, there are considerations which I think specially affect, and very profoundly affect, the question of the construction of sec. 24. It should be observed, in the first place, that in the economy of the *British North America Act*, the Senate bears no such intimate relation to the House of Commons, or to the Executive, as each of these bears to the other. There is no consideration, as touching the policy of the Act in relation to the Senate, having the force of that already discussed, arising from the control vested in Parliament in respect of the Constitution of the House of Commons, and affecting the question of the Constitution of the Privy Council. On the other hand, there is much to point to an intention that the constitution of the Senate should follow the lines of the Constitution of the old Legislative Councils under the Acts of 1791 and 1840.

In 1854, in response to an agitation in the province of Canada, the Imperial Parliament passed an Act amending the Act of Union, (17 and 18 Vic., Cap. 118 already mentioned) which fundamentally altered the status of the Legislative Council. Before the enactment of this Act, the Constitution of the Legislative Council had been fixed (by secs. 4 to 10 of the Act of Union) beyond the power of the legislature of Canada to modify it. By the Statute of 1854, that constitution was placed within the category of matters with which the Canadian Legislature had plenary authority to deal. Now, when the *British North America Act* was framed, this feature of the parliamentary constitution of the province of Canada, the power of the legislature of the province to determine the constitution of the second Chamber, was entirely abandoned. The authors of the Confederation scheme, in the Quebec Resolutions, reverted in this matter (the Constitution of the Legislative Council, as it was therein called) to the plan of the Acts of 1791 (save in one respect not presently relevant) and of 1840. And the clauses in these resolutions on the subject of the Council, follow generally in structure and phraseology the enactments of the earlier statutes.

It seems to me to be a legitimate inference, that the *British North America Act* contemplated a second Chamber, the constitution of which should, in all respects, be fixed and determined by the Act itself, a constitution which was to be in principle the same, though necessarily, in detail, not identical, with that of the second Chambers established by the earlier statutes. That under those statutes, women were not eligible for appointment, is hardly susceptible of controversy.

In this connection, the language of sections 23 and 31 of the *British North America Act* deserves some attention. I attach no importance (in view of the phraseology of secs. 83 and 128) to the use of the masculine

personal pronoun in section 23, and, indeed, very little importance to the provision in section 23 with regard to nationality. But it is worthy of notice that subsection 3 of section 23 points to the exclusion of married women, and subsection 2 of section 31 would probably have been expressed in a different way if the presence of married women in the Senate had been contemplated; and the provisions dealing with the Senate are not easily susceptible of a construction proceeding upon a distinction between married and unmarried women in respect of eligibility for appointment to the Senate. These features of the provisions specially relating to the constitution of the Senate, in my opinion, lend support to the view that in this, as in other respects, the authors of the Act directed their attention to the Legislative Councils of the Acts of 1791 and 1840 for the model on which the Senate was to be formed.

I have not overlooked Mr. Rowell's point based upon section 33 of the *British North America Act*. Sec. 33 must be supplemented by sec. 1 of the *Confederation Act Amendment Act* of 1875, and by section 4 of c. 10, R.S.C., the combined effect of which is that the Senate enjoys the privileges and powers, which at the time of the passing of the *British North America Act* were enjoyed by the Commons House of Parliament of the United Kingdom. In particular, by virtue of these enactments, the Senate possesses sole and exclusive jurisdiction to pass upon the claims of any person to sit and vote as a member thereof, except in so far as that jurisdiction is affected by statute. That, I think, is clearly the result of sec. 33, combined with the Imperial Act of 1875, and the subsequent Canadian legislation. And the jurisdiction of the Senate is not confined to the right to pass upon questions arising as to qualification under sec. 33; it extends, I think, also to the question whether a person summoned is a person capable of being summoned under sec. 24. In other words, when the jurisdiction attaches, it embraces the construction of sec. 24, and if the Governor-General were professing, under that section, to summon a woman to the Senate, the question whether the instrument was a valid instrument would fall within the scope of that jurisdiction. I do not think it can be assumed that the Senate, by assenting to the Statute, authorizing the submission of questions to this Court for advisory opinions, can be deemed thereby to have consented to any curtailment of its exclusive jurisdiction in respect of such questions. And therefore I have had some doubt whether such a question as that now submitted falls within the Statute by which we are governed. It is true that an affirmative answer to the question might give rise to a conflict between our opinion and a decision of the Senate in exercise of its jurisdiction; but strictly that is a matter affecting the advisability of submitting such questions, and therefore within the province of the Governor in Council. As yet, no concrete case has arisen to which the jurisdiction of the Senate could attach. We are asked for advice on the general question, and that, I think, we are bound to give. It has, of course, only the force of an advisory opinion.

The existence of this jurisdiction of the Senate does not, I think, affect the question of substance. We must assume that the Senate would decide in accordance with the law.

In the Supreme Court of Canada.

No. 10.
Reasons for Judgment—*continued.*

(c) Mignault, J.

(c) MIGNAULT, J.—The real question involved under this reference is whether, on the proper construction of the *British North America Act*, 1867, women may be summoned to the Senate. It is not apparent why we are asked merely if the word " persons " in section 24 of that Act includes " female persons." The expression " persons " does not stand alone in section 24, nor is that section the only one to be considered. It is " qualified persons " whom the Governor-General shall from time to time summon to the Senate (sec. 24), and when a vacancy happens in the Senate, it is a " fit and qualified person " whom the Governor-General shall summon to fill the vacancy (sec. 32). On the proper construction of these words depends the answer we have to give. It would be idle to enquire whether women are included within the meaning of an expression which, in the question as framed, is divorced from its context. The real controversy, however, is apparent from the statement in the Order in Council that the petitioners are " interested in the admission of women to the Senate of Canada," and that His Excellency in Council is requested to refer to this court " certain questions touching the power of the Governor-General to summon female persons to the Senate of Canada." It is with that question that we have to deal.

The contentions which the petitioners advanced at the hearing are not new. They have been conclusively rejected several times, and by decisions by which we are bound. Much was said of the interpretation clause contained in Lord Brougham's Act, but the answer was given sixty years ago in *Chorlton* v. *Lings* (1). It appears hopeless to contend against the authority of these decisions.

The word " persons " is obviously a word of uncertain import. Sometimes it includes corporations as well as natural persons; sometimes it is restricted to the latter; and sometimes again it comprises merely certain natural persons determined by sex or otherwise. The grave constitutional change which is involved in the contention submitted on behalf of the petitioners is not to be brought about by inferences drawn from expressions of such doubtful import, but should rest upon an unequivocal statement of the intention of the Imperial Parliament, since that Parliament alone can change the provisions of the *British North America Act* in relation to the " qualified persons " who may be summoned to the Senate.

While concurring generally in the reasoning of my Lord the Chief Justice, I have ventured to state the grounds on which I base my reply to the question submitted, as I construe it. This question should be answered in the negative.

(d) Lamont, J.

(d) LAMONT, J.—I concur with the Chief Justice.

(e) Smith, J.

(e) SMITH, J.—I concur with the Chief Justice.

(1) (1868) L.R. 4 C.P. 374.

In the Privy Council.

No. 11.
Order in Council granting special leave to appeal to His Majesty in Council, 20th November 1928.

No. 11.

Order in Council granting special leave to appeal to His Majesty in Council.

AT THE COURT AT BUCKINGHAM PALACE.

The 20th day of November, 1928.

Present.

THE KING'S MOST EXCELLENT MAJESTY.

LORD STEWARD.
LORD EUSTACE PERCY.
SECRETARY SIR W. JOYNSON-HICKS.
SECRETARY SIR JOHN GILMOUR.
MAJOR-GENERAL SIR F. SYKES.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 16th day of November 1928 in the words following viz. :—

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Henrietta Muir Edwards Nellie L. McClung Louise C. McKinney Emily F. Murphy and Irene Parlby in the Matter of an Appeal from the Supreme Court of Canada in the Matter of a Reference as to the meaning of the word "Persons" in Section 24 of the British North America Act 1867 between the Petitioners Appellants and the Attorney-General for the Dominion of Canada the Attorney-General for the Province of Quebec and the Attorney-General for the Province of Alberta Respondents setting forth (amongst other matters) that the Petitioners reside in the Province of Alberta: that Henrietta Muir Edwards is the Vice-President for Alberta of the National Council of Women for Canada: that Nellie L. McClung and Louise C. McKinney were for several years members of the Legislative Assembly of the Province: that Emily F. Murphy is a Police Magistrate for the City of Edmonton: that Irene Parlby is a Member of the Legislative Assembly of the Province and a Member of the Executive Council thereof and that the Petitioners are persons interested in the right of women to participate in both the legislative and executive branches of the Government of Canada and of the Provinces thereof: that doubts having been raised as to the power of the Governor-General to summon a woman to the Senate of Canada the Petitioners on the 27th August 1927 petitioned the Governor-General in Council to refer to the Supreme Court of Canada for hearing and consideration certain questions touching the powers of the Governor-General to summon female persons to the Senate: that by Order in Council of the 19th October 1927 P.C. 2034 the Governor-General in Council referred to the Supreme Court for hearing and consideration pursuant to Section 60 of the Supreme Court Act the following question touching the power of the Governor-General to summon

No. 11.
Order in Council granting special leave to appeal to His Majesty in Council, 20th November 1928 —*continued.*

female persons to the Senate of Canada : ' Does the word " Persons " in Section 24 of the British North America Act 1867 include female persons ? ' : that the contention of the Petitioners is that the word ' persons ' as used in Section 24 of the British North America Act 1867 and in other sections of the Act includes female persons : that the Supreme Court on the 24th April 1928 answered the question in the negative : And humbly praying Your Majesty in Council to order that the Petitioners shall have special leave to appeal from the Judgment of the Supreme Court of Canada dated the 24th April 1928 or for such further or other Order as to Your Majesty may appear fit :

" THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and on behalf of the Attorney-General for the Dominion of Canada Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Canada dated the 24th day of April 1928 :

" AND Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

In the Privy Council.

No. 121 of 1928.

On Appeal from the Supreme Court of Canada.

In the matter of a Reference as to the meaning of the word "persons" in Section 24 of The British North America Act, 1867.

BETWEEN

HENRIETTA MUIR EDWARDS, NELLIE L. McCLUNG, LOUISE C. McKINNEY, EMILY F. MURPHY AND IRENE PARLBY

Appellants

AND

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC AND THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA

Respondents.

RECORD OF PROCEEDINGS.

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Westminster, S.W.1,
For the Appellants.

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EYRE AND SPOTTISWOODE, LTD., EAST HARDING STREET, E.C. 4.

In the Privy Council.

No. 121 of 1928.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of a Reference as to the meaning of the word "persons" in Section 24 of The British North America Act, 1867.

BETWEEN

HENRIETTA MUIR EDWARDS, NELLIE L. McCLUNG, LOUISE C. McKINNEY, EMILY P. MURPHY AND IRENE PARLBY ... ... *Appellants.*

AND

THE ATTORNEY GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY GENERAL FOR THE PROVINCE OF QUEBEC AND THE ATTORNEY GENERAL FOR THE PROVINCE OF ALBERTA ... ... *Respondents.*

JOINT APPENDIX.

INDEX OF REFERENCE.

VACHER—61751

In the Privy Council.

No. 121 of 1928.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of a Reference as to the meaning of the word "persons" in Section 24 of The British North America Act, 1867.

BETWEEN

HENRIETTA MUIR EDWARDS, NELLIE L. McCLUNG, LOUISE C. McKINNEY, EMILY P. MURPHY AND IRENE PARLBY ... ... *Appellants.*

AND

THE ATTORNEY GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY GENERAL FOR THE PROVINCE OF QUEBEC AND THE ATTORNEY GENERAL FOR THE PROVINCE OF ALBERTA ... ... *Respondents.*

JOINT APPENDIX.

No. 1.

Royal Proclamation erecting the Province of Quebec.

JOINT APPENDIX.

No. 1. Royal Proclamation erecting the Province of Quebec, 7th October, 1763.

GEORGE R.

Whereas we have taken into our Royal consideration the extensive and valuable acquisitions in America, secured to our Crown by the late definitive treaty of peace concluded at Paris the tenth day of February last; and being desirous that all our loving subjects, as well of our kingdom as of our colonies in America, may avail themselves with all convenient speed of the great benefits and advantages which must accrue therefrom to their
10 commerce, manufactures, and navigation; we have thought fit, with the advice of our Privy Council, granted our letters patent under our Great Seal of Great Britain, to erect within the countries and islands ceded and confirmed to us by the said treaty, four distinct and separate governments, styled and called by the names of QUEBEC, EAST FLORIDA, WEST FLORIDA, and GRENADA, and limited and bounded as follows, viz.:

JOINT APPENDIX.

No. 1. Royal Proclamation erecting the Province of Quebec, 7th October, 1763 —*continued.*

Firstly,—The Government of Quebec, bounded on the Labrador Coast by the River St. John, and from thence by a line drawn from the head of that river, through the Lake St. John, to the south end of the Lake Nipissing; from whence the said line, crossing the River St. Lawrence, and the Lake Champlain in forty-five degrees north latitude, passes along the high lands which divide the rivers that empty themselves into the said River St. Lawrence, from those which fall into the sea; and also along the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the mouth of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River St. John.

* * * * * * *

We have also, with the advice of our Privy Council, thought fit to annex the islands of St. John's and Cape Breton, or Isle Royale, with the lesser islands adjacent thereto, to our Government of Nova Scotia.

* * * * * * *

And whereas it will greatly contribute to the speedy settling our said New Governments, that our loving subjects should be informed of our paternal care for the security of the liberties and properties of those who are, and shall become, inhabitants thereof; we have thought fit to publish and declare, by this our Proclamation, that we have in the letters patent under our Great Seal of Great Britain, by which the said Governments are constituted, given express power and direction to our governors of our said colonies respectively, that so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our Council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America which are under our immediate government; and we have also given power to the said governors, with the consent of our said councils and the representatives of the people so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes and ordinances for the public peace, welfare, and good government of our said colonies, and of the people and inhabitants thereof, as near as may be, agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and in the meantime, and until such assemblies can be called as aforesaid, all persons inhabiting in or resorting to our said colonies may confide in our Royal protection for the enjoyment of the benefit of the laws of our realm of England; for which purpose we have given power under our great seal to the governors of our said colonies respectively to erect and constitute, with the advice of our said councils respectively, courts of judicature and public justice within our said colonies for the hearing and determining all causes as well criminal as civil according to law and equity, and, as near as may be agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentences of such courts in all civil cases to appeal under the usual limitations and restrictions to us in our Privy Council.

* * * * * * *

Given at our Court at St. James's, the seventh day of October, one thousand seven hundred and sixty-three, in the third year of our Reign.

GOD SAVE THE KING.

No. 2

The British North America (Quebec) Act 1774, 14 Geo. III Chapter 83 (Imperial).

An Act for making more effectual Provision for the Government of the Province of *Quebec* in *North America*.

Whereas His Majesty, by His Royal Proclamation, bearing Date the Seventh Day of *October*, in the Third Year of His Reign, thought fit to declare the Provisions which had been made in respect to certain Countries, Territories, and Islands in *America*, ceded to His Majesty by the definitive Treaty of Peace, concluded at *Paris* on the Tenth day of *February*, One thousand seven hundred and sixty-three: And whereas, by the Arrangements made by the said Royal Proclamation, a very large Extent of Country, within which there were several Colonies and Settlements of the Subjects of *France*, who claimed to remain therein under the Faith of the said Treaty, was left, without any Provision being made for the Administration of Civil Government therein; and certain Parts of the Territory of *Canada*, where sedentary Fisheries had been established and carried on by the Subjects of *France*, Inhabitants of the said Province of *Canada*, under Grants and Concessions from the Government thereof, were annexed to the Government of *Newfoundland*, and thereby subjected to Regulations inconsistent with the Nature of such Fisheries: May it therefore please Your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all the Territories, Islands, and Countries in *North America*, belonging to the Crown of *Great Britain*, bounded on the South by a Line from the Bay of *Chaleurs*, along the High Lands which divide the Rivers that empty themselves into the River *Saint Lawrence* from those which fall into the Sea, to a Point in Forty-five Degrees of Northern Latitude, on the Eastern Bank of the River *Connecticut*, keeping the same Latitude directly West, through the Lake *Champlain*, until, in the same Latitude, it meets the River *Saint Lawrence;* from thence up the Eastern Bank of the said River to the Lake *Ontario;* thence through the Lake *Ontario*, and the River commonly called *Niagara;* and thence along by the Eastern and South-eastern Bank of Lake *Erie*, following the said Bank, until the same shall be intersected by the Northern Boundary, granted by the Charter of the Province of *Pennsylvania*, in case the same shall be so intersected; and from thence along the said Northern and Western Boundaries of

The Territories belonging to Great Britain.

the said Province, until the said Western Boundary strike the *Ohio*: But in case the said Bank of the said Lake shall not be found to be so intersected, then following the said Bank until it shall arrive at that Point of the said Bank which shall be nearest to the North-western Angle of the said Province of *Pennsylvania*, and thence, by a right Line, to the said North-western Angle of the said Province; and thence along the Western Boundary of the said Province, until it strike the River *Ohio;* and along the Bank of the said River, Westward, to the Banks of the *Mississippi*, and Northward to the Southern Boundary of the Territory granted to the Merchants Adventurers of *England*, trading to *Hudson's Bay;* and also all such Territories, Islands, and Countries, which have, since the Tenth of *February*, One thousand seven hundred and sixty-three, been made Part of the Government of *Newfoundland*, be, and they are hereby, during His Majesty's Pleasure, annexed to, and made Part and Parcel of, the Province of *Quebec*, as created and established by the said Royal Proclamation of the Seventh of *October*, One thousand seven hundred and sixty-three.

annexed to the Province of Quebec.

II. Provided always, That nothing herein contained, relative to the Boundary of the Province of *Quebec*, shall in anywise affect the Boundaries of any other Colony.

* * * * * * *

IV. And whereas the Provisions, made by the said Proclamation, in respect to the Civil Government of the said Province of *Quebec*, and the Powers and Authorities given to the Governor and other Civil Officers of the said Province, by the Grants and Commissions issued in consequence thereof, have been found, upon Experience, to be inapplicable to the State and Circumstances of the said Province, the Inhabitants whereof amounted, at the Conquest, to above Sixty-five thousand Persons professing the Religion of the Church of *Rome*, and enjoying an established Form of Constitution and System of Laws, by which their Persons and Property had been protected, governed, and ordered, for a long Series of Years, from the First Establishment of the said Province of *Canada;* be it therefore further enacted by the Authority aforesaid, That the said Proclamation, so far as the same relates to the said Province of *Quebec*, and the Commission under the Authority whereof the Government of the said Province is at present administered, and all and every the Ordinance and Ordinances made by the Governor and Council of *Quebec* for the Time being, relative to the Civil Government and Administration of Justice in the said Province, and all Commissions to Judges and other Officers thereof, be, and the same are hereby revoked, annulled, and made void, from and after the First Day of *May*, One thousand seven hundred and seventy-five.

Former Provisions made for the Province to be null and void after May 1, 1775.

* * * * * * *

Canadian Subjects (religious Orders excepted) may hold all their Possessions, etc.

VIII. And be it further enacted by the Authority aforesaid, That all His Majesty's *Canadian* Subjects, within the Province of *Quebec*, the religious Orders and Communities only excepted, may also hold and enjoy their Property and Possessions, together with all Customs and Usages relative thereto, and all other their Civil Rights, in as large, ample, and beneficial Manner, as if the said Proclamation, Commissions, Ordinances, and other Acts and Instruments, had not been made, and as may consist with their Allegiance to His Majesty, and Subjection to the Crown and Parliament of *Great Britain;* and that in all Matters of Controversy, relative to Property and Civil Rights, Resort shall be had to the Laws of *Canada*, as the Rule for the Decision of the same; and all Causes that shall hereafter be instituted in any of the Courts of Justice, to be appointed within and for the said Province, by His Majesty, His Heirs and Successors, shall, with respect to such Property and Rights, be determined agreeably to the said Laws and Customs of *Canada*, until they shall be varied or altered by any Ordinances that shall, from Time to Time, be passed in the said Province by the Governor, Lieutenant Governor, or Commander in Chief, for the Time being, by and with the Advice and Consent of the Legislative Council of the same, to be appointed in Manner hereinafter mentioned.

* * * * * * *

His Majesty may appoint a Council for the Affairs of the Province;

XII. And whereas it may be necessary to ordain many Regulations for the future Welfare and good Government of the Province of *Quebec*, the Occasions of which cannot now be foreseen, nor, without much Delay and Inconvenience, be provided for, without intrusting that Authority, for a certain time, and under proper Restrictions, to Persons resident there: And whereas it is at present inexpedient to call an Assembly; be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs and Successors, by Warrant under His or Their Signet or Sign Manual, and with the Advice of the Privy Council, to constitute and appoint a Council for the Affairs of the Province of *Quebec*, to consist of such Persons resident there, not exceeding Twenty-three, nor less than Seventeen, as His Majesty, His Heirs and Successors, shall be pleased to appoint; and, upon the Death, Removal, or Absence of any of the Members of the said Council, in like Manner to constitute and appoint such and so many other Person or Persons as shall be necessary to supply the Vacancy or Vacancies; which Council, so appointed and nominated, or the major Part thereof, shall have Power and Authority to make Ordinances for the Peace, Welfare, and good Government, of the said Province, with the Consent of His Majesty's Governor, or, in his Absence, of the Lieutenant Governor, or Commander in Chief for the Time being.

which Council may make Ordinances, with Consent of the Governor.

* * * * * * *

JOINT APPENDIX.

No. 3.
The Constitutional Act, 1791, 31, George III., Chapter 31 (Imperial)

No. 3

The Clergy Endowments (Canada) Act, 1791, 31 Geo. III, Chapter 31 (Imperial).

(The Constitutional Act.)

An Act to repeal certain Parts of an Act, passed in the Fourteenth Year of His Majesty's Reign, intituled, An Act for making more effectual Provision for the Government of the Province of Quebec, in North America; and to make further Provision for the Government of the said Province.

Preamble. 14 Geo. III, Cap. 83, recited.

Whereas an Act was passed in the Fourteenth Year of the Reign of His present Majesty, intituled, *An Act for making more effectual Provision for the Government of the Province of* Quebec *in* North America: And whereas the said Act is in many Respects inapplicable to the present Condition and Circumstances of the said Province: And whereas it is expedient and necessary that further Provision should now be made for the good Government and Prosperity thereof: May it therefore please Your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That so much of the said Act as in any Manner relates to the Appointment of a Council for the Affairs of the said Province of *Quebec*, or to the Power given by the said Act to the said Council, or to the major Part of them, to make Ordinances for the Peace, Welfare, and good Government of the said Province, with the Consent of His Majesty's Governor, Lieutenant Governor or Commander in Chief for the Time being, shall be, and the same is hereby repealed.

So much of recited Act as relates to the Appointment of a Council for Quebec, or its Powers, repealed.

Within each of the intended Provinces a Legislative Council and Assembly to be constituted by whose Advice His Majesty may make Laws for the Government of the Province.

II. And whereas His Majesty has been pleased to signify, by His Message to both Houses of Parliament, His Royal Intention to divide His Province of *Quebec* into Two separate Provinces, to be called *The Province of Upper Canada*, and *The Province of Lower Canada;* be it enacted by the Authority aforesaid, That there shall be within each of the said Provinces respectively a Legislative Council, and an Assembly, to be severally composed and constituted in the Manner hereinafter described; and that in each of the said Provinces respectively His Majesty, His Heirs or Successors, shall have Power, during the Continuance of this Act, by and with the Advice and Consent of the Legislative Council and Assembly of such Provinces respectively, to make Laws for the Peace, Welfare, and good Government thereof, such Laws not being repugnant to this Act; and that all such Laws, being passed by the Legislative Council and Assembly of either of the said Provinces

respectively, and assented to by His Majesty, His Heirs or Successors, or assented to in His Majesty's Name, by such Person as His Majesty, His Heirs or Successors, shall from Time to Time appoint to be the Governor, or Lieutenant-Governor, of such Province, or by such Person as His Majesty, His Heirs and Successors, shall from Time to Time appoint to administer the Government within the same, shall be, and the same are hereby declared to be, by virtue of and under the Authority of this Act, valid and binding to all Intents and Purposes whatever, within the Province in which the same shall have been so passed.

His Majesty may authorize the Governor, or Lieutenant Governor of each Province, to summon Members to the Legislative Council.

III. And be it further enacted by the Authority aforesaid, that for the Purpose of constituting such Legislative Council as aforesaid in each of the said Provinces respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, by an Instrument under His or their Sign Manual, to authorize and direct the Governor or Lieutenant Governor, or Person administering the Government in each of the said Provinces respectively, within the Time herein-after mentioned, in His Majesty's Name, and by an Instrument under the Great Seal of such Province, to summon to the said Legislative Council, to be established in each of the said Provinces respectively, a sufficient Number of discreet and proper Persons, being not fewer than Seven to the Legislative Council for the Province of *Upper Canada*, and not fewer than Fifteen to the Legislative Council for the Province of *Lower Canada;* and that it shall also be lawful for His Majesty, His Heirs or Successors, from Time to Time, by an Instrument under His or their Sign Manual, to authorize and direct the Governor or Lieutenant Governor, or Person administering the Government in each of the said Provinces respectively, to summon to the Legislative Council of such Province, in like Manner, such other Person or Persons as His Majesty, His Heirs or Successors, shall think fit; and that every Person who shall be so summoned to the Legislative Council of either of the said Provinces respectively, shall thereby become a Member of such Legislative Council to which he shall have been so summoned.

No Person under 21 Years of Age, etc., to be summoned.

IV. Provided always, and be it enacted by the Authority aforesaid, That no Person shall be summoned to the said Legislative Council, in either of the said Provinces, who shall not be the full Age of Twenty-one Years, and a natural-born Subject of His Majesty or a Subject of His Majesty naturalized by Act of the *British* Parliament, or a Subject of His Majesty, having become such by the Conquest and Cession of the Province of *Canada*.

Members to hold their Seats for Life.

V. And be it further enacted by the Authority aforesaid, That every Member of each of the said Legislative Councils shall hold his Seat therein for the Term of his Life, but subject

nevertheless to the Provisions hereinafter contained for vacating the same, in Cases herein-after specified.

* * * * * * *

His Majesty may authorize the Governor to call together the Assembly.

XIII. And be it further enacted by the Authority aforesaid, That, for the Purpose of constituting such Assembly as aforesaid, in each of the said Provinces respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, by an Instrument under His or their Sign Manual, to authorize and direct the Governor or Lieutenant Governor, or Person administering the Government in each of the said Provinces respectively, within the Time herein-after mentioned, and thereafter from Time to Time, as Occasion shall require, in His Majesty's Name, and by an Instrument under the Great Seal of such Province, to summon and call together an Assembly in and for such Province.

and, for the Purpose of electing the Members, to issue a Proclamation dividing the Province into Districts, etc.

XIV. And be it further enacted by the Authority aforesaid, That, for the Purpose of electing the Members of such Assemblies respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, by an Instrument under His or their Sign Manual to authorize the Governor or Lieutenant Governor of each of the said Provinces respectively, or the Person administering the Government therein, within the Time hereinafter mentioned, to issue a Proclamation dividing such Province into Districts, or Counties, or Circles, and Towns or Townships, and appointing the Limits thereof, and declaring and appointing the Number of Representatives to be chosen by each of such Districts, or Counties, or Circles, and Towns or Townships respectively;

* * * * * * *

Number of Members in each Province.

XVII. Provided also, and be it enacted by the Authority aforesaid, That the whole Number of Members to be chosen in the Province of *Upper Canada* shall not be less than Sixteen, and that the whole Number of Members to be chosen in the Province of *Lower Canada* shall not be less than Fifty.

* * * * * * *

By whom the Members are to be chosen.

XX. And be it further enacted by the Authority aforesaid, That the Members for the several Districts, or Counties, or Circles of the said Provinces respectively, shall be chosen by the Majority of Votes of such Persons as shall severally be possessed, for their own use and Benefit, of Lands or Tenements within such District, or County, or Circle, as the Case shall be, such Lands being by them held in Freehold, or in Fief, or in Roture, or by Certificate derived under the Authority of the Governor and Council of the Province of *Quebec*, and being of the yearly Value of Forty Shillings Sterling, or upwards, over and above all Rents and Charges payable out of or in respect of the same; and that the Members for the several Towns or Townships within the said Provinces respectively shall be chosen by the

Majority of Votes of such Persons as either shall severally be possessed, for their own Use and Benefit of a Dwelling House and Lot of Ground in such Town or Township, such Dwelling House and Lot of Ground being by them held in like manner as aforesaid, and being of the yearly value of Five Pounds Sterling, or upwards, or, as having been resident within the said Town or Township for the Space of Twelve Calendar Months next before the Date of the Writ of Summons for the Election, shall *bona fide* have paid One Year's Rent for the Dwelling House in which they shall have so resided, at the Rate of Ten Pounds Sterling *per Annum*, or upwards.

Certain Persons not eligible to the Assemblies.

XXI. Provided always, and be it further enacted by the Authority aforesaid, That no Person shall be capable of being elected a Member to serve in either of the said Assemblies, or of sitting or voting therein, who shall be a Member of either of the said Legislative Councils to be established as aforesaid in the said Two Provinces, or who shall be a Minister of the Church of *England*, or a Minister, Priest, Ecclesiastic, or Teacher, either according to the Rites of the Church of *Rome*, or under any other Form or Profession of Religious Faith or Worship.

No Person under 21 Years of Age, etc., capable of voting or being elected;

XXII. Provided also, and be it further enacted by the Authority aforesaid, That no Person shall be capable of voting at any Election of a Member to serve in such Assembly, in either of the said Provinces, or of being elected at any such Election, who shall not be of the full Age of Twenty-one Years, and a natural-born Subject of His Majesty, or a Subject of His Majesty naturalized by Act of the *British* Parliament, or a Subject of His Majesty, having become such by the Conquest and Cession of the Province of *Canada*.

nor any Person attainted for Treason or Felony.

XXIII. And be it also enacted by the Authority aforesaid, That no Person shall be capable of voting at any Election of a Member to serve in such Assembly, in either of the said Provinces, or of being elected at any such Election who shall have been attainted for Treason or Felony in any Court of Law within any of His Majesty's Dominions, or who shall be within any Description of Persons disqualified by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors.

Voters, if required, to take the following Oath.

XXIV. Provided also, and be it further enacted by the Authority aforesaid, That every Voter, before he is admitted to give his Vote at any such Election, shall, if required by any of the Candidates, or by the Returning Officer, take the following Oath, which shall be administered in the *English or French* Language, as the Case may require:

I, A.B., do declare and testify, in the Presence of Almighty God that I am, to the best of my Knowledge and Belief, of the

JOINT APPENDIX.

No. 3. The Constitutional Act, 1791, 31 George III., Chapter 31 (Imperial). —*continued.*

full Age of Twenty-one Years, and that I have not voted before at this Election.

and to make Oath to the Particulars herein specified.

And that every such Person shall also, if so required as aforesaid, make Oath, previous to his being admitted to vote, that he is, to the best of his Knowledge and Belief, duly possessed of such Lands and Tenements, or of such a Dwelling House and Lot of Ground, or that he has *bona fide* been so resident, and paid such Rent for his Dwelling House, as entitles him, according to the Provisions of this Act, to give his Vote at such Election for the County, or District, or Circle, or for the Town or Township for which he shall offer the same.

His Majesty may authorize the Governor to fix the Time and Place of holding Elections.

XXV. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize the Governor or Lieutenant Governor, or Person administering the Government within each of the said Provinces respectively, to fix the Time and Place of holding such Elections, giving not less than Eight Days Notice of such Time, subject nevertheless to such Provisions as may hereafter be made in these Respects by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors.

* * * * * * *

No Member to sit or vote till he has taken the following,

XXIX. Provided always, and be it enacted by the Authority aforesaid, that no Member, either of the Legislative Council or Assembly, in either of the said Provinces, shall be permitted to sit or to vote therein until he shall have taken and subscribed the following Oath, either before the Governor or Lieutenant Governor of such Province, or Person administering the Government therein, or before some Person or Persons authorized by the said Governor or Lieutenant Governor, or other Person as aforesaid, to administer such Oath, and that the same shall be administered in the *English* or *French* Language, as the Case shall require: &c. &c.

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No. 4

No. 4. The Act of Union, 1840. 3-4 Victoria, Chapter 35 (Imperial)

The British North America Act 1840 [*The Act of Union*], 3-4 Vict., Chapter 35 (Imperial).

An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada.

[23rd July, 1840.]

"Whereas it is necessary that Provision be made for the "good Government of the Provinces of *Upper Canada* and "*Lower Canada*, in such Manner, as may secure the Rights and "Liberties and promote the Interests of all Classes of Her

" Majesty's Subjects within the same: And whereas to this end " it is expedient that the said Provinces be re-united and form " One Province for the Purposes of Executive Government and " Legislation:" Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the Authority of the same, That

Declaration of Union

it shall be lawful for Her Majesty, with the Advice of Her Privy Council, to declare, or to authorize the Governor General of the said Two Provinces of *Upper* and *Lower* Canada to declare, by Proclamation, that the said Provinces, upon, from, and after a certain Day in such Proclamation to be appointed, which Day shall be within Fifteen Calendar Months next after the passing of this Act, shall form and be One Province, under the Name of the Province of *Canada*, and thenceforth the said Provinces shall constitute and be One Province, under the name aforesaid, upon, from, and after the Day so appointed as aforesaid.

Repeal of Acts, 31 George III c. 31.

II. And be it enacted, That so much of an Act passed in the Session of Parliament held in the Thirty-first Year of the Reign of King George the Third, intituled *An Act to repeal certain Parts of an Act passed in the Fourteenth Year of His Majesty's Reign, intituled 'An Act for making more effectual 'provision for the Government of the Province of* Quebec *in* 'North America,' *and to make further Provision for the Government of the said Province*, as provides for constituting and composing a Legislative Council and Assembly within each of the said Provinces respectively, and for the making of Laws; and also the whole of an Act passed in the Session of Parliament held in the First and Second Years of the Reign of Her present Majesty, intituled *An Act to make Temporary Provision for the Government of* Lower Canada; and also the whole of an Act passed in the Session of Parliament held in the Second and Third Years of the Reign of Her present Majesty, intituled *An Act to amend an Act of the last Session of Parliament, for making temporary Provision for the Government of* Lower Canada; and also the whole of an Act passed in the Session of Parliament held in the First and Second Years of the Reign of His late Majesty King *William* the Fourth, intituled *An Act to amend an Act of the Fourteenth Year of His Majesty King* George *the Third, for establishing a Fund towards defraying the Charges of the Administration of Justice and the Support of Civil Government in the Province of* Quebec *in* America, shall continue and remain in force until the day on which it shall be declared, by Proclamation as aforesaid, that the said Two Provinces shall constitute and be One Province as aforesaid, and shall be repealed on, from, and after such Day: Provided always, that the Repeal of the said several Acts of Parliament and Parts of Acts of Parliament shall not be held to revive or

1 & 2 Vict. c. 9.

2 & 3 Vict. c. 53.

1 & 2 W. IV. c. 23, 14 Geo. III c. 28.

give any Force or Effect to any Enactment which has by the said Acts, or any of them, been repealed or determined.

Composition and powers of Legislature.

III. And be it enacted, That from and after the Re-union of the said Two Provinces there shall be within the Province of *Canada* one Legislative Council and One Assembly, to be severally constituted and composed in the Manner hereinafter prescribed, which shall be called "The Legislative Council and Assembly, of *Canada;*" and that, within the Province of *Canada*, Her Majesty shall have Power, by and with the Advice and Consent of the said Legislative Council and Assembly, to make Laws for the Peace, Welfare and Good Government of the Province of *Canada*, such Laws not being repugnant to this Act, or to such parts of the said Act passed in the Thirty-first Year of the Reign of His said late Majesty as are not hereby repealed, or to any Act of Parliament made or to be made, and not hereby repealed, which does or shall, by express Enactment or by necessary Intendment, extend to the Provinces of *Upper* and *Lower Canada*, or to either of them, or to the Province of *Canada;* and that all such laws being passed by the said Legislative Council and Assembly, and assented to by Her Majesty, or assented to in Her Majesty's Name by the Governor of the Province of Canada, shall be valid and binding to all Intents and Purposes within the Province of *Canada*.

Appointment of Legislative Councillors.

IV. And be it enacted, That for the Purpose of composing the Legislative Council of the Province of *Canada* it shall be lawful for Her Majesty, before the time to be appointed for the first meeting of the said Legislative Council and Assembly, by an Instrument under the Sign Manual, to authorize the Governor, in her Majesty's Name, by an Instrument under the Great Seal of the said Province, to summon to the said Legislative Council of the said Province such Persons, being not fewer than Twenty, as Her Majesty shall think fit; and that it shall also be lawful for Her Majesty from time to time to authorize the Governor in like Manner to summon to the said Legislative Council such other Person or Persons as Her Majesty shall think fit, and that every Person who shall be so summoned shall thereby become a Member of the Legislative Council of the Province of *Canada*: Provided always, that no Person shall be summoned to the said Legislative Council of the Province of *Canada* who shall not be of the full Age of Twenty-one Years, and a natural-born Subject of Her Majesty, or a Subject of Her Majesty naturalized by Act of the Parliament of Great Britain, or by Act of the Parliament of the United Kingdom of *Great Britain* and *Ireland*, or by an Act of the Legislature of either of the Provinces of *Upper* or *Lower Canada*, or by an Act of the Legislature of the Province of *Canada*.

Qualification of Legislative Councillors.

Tenure of Office of Councillor.

V. And be it enacted, That every Member of the Legislative Council of the Province of *Canada* shall hold his Seat therein

for the Term of his Life, but subject nevertheless to the Provisions hereinafter contained for vacating the same.

Resignation of Legislative Councillor.

VI. And be it enacted, That it shall be lawful for any Member of the Legislative Council of the Province of *Canada* to resign his Seat in the said Legislative Council, and upon such Resignation the Seat of such Legislative Councillor shall become vacant.

Vacating seat by absence.

VII. And be it enacted, That if any Legislative Councillor of the Province of *Canada* shall for Two successive Sessions of the Legislature of the said Province fail to give his attendance in the said Legislative Council, without the Permission of Her Majesty or of the Governor of the said Province, signified by the said Governor to the Legislative Council, or shall take any Oath or make any Declaration or Acknowledgment of Allegiance, obedience or Adherence to any Foreign Prince or Power, or shall do, concur in, or adopt any Act whereby he may become a Subject or Citizen of any Foreign State or Power, or whereby he may become entitled to the Rights, Privileges, or Immunities of a Subject or Citizen of any Foreign State or Power, or shall become bankrupt, or take the Benefit of any Law relating to Insolvent Debtors, or become a public Defaulter, or be attainted of Treason, or be convicted of Felony or of any infamous Crime, his Seat in such Council shall thereby become vacant.

Trial of Questions.

VIII. And be it enacted, That any Question which shall arise respecting any Vacancy in the Legislative Council of the Province of *Canada*, on occasion of any of the Matters aforesaid, shall be referred by the Governor of the Province of *Canada* to the said Legislative Council, to be by the said Legislative Council heard and determined: Provided always, that it shall be lawful, either for the Person respecting whose Seat such Question shall have arisen, or for Her Majesty's Attorney General for the said Province on Her Majesty's Behalf, to appeal from the Determination of the said Council in such Case to Her Majesty, and that the Judgment of Her Majesty given with the Advice of Her Privy Council thereon shall be final and conclusive to all Intents and Purposes.

Appointment of Speaker.

IX. And be it enacted, That the Governor of the Province of *Canada* shall have Power and Authority from Time to Time, by an Instrument under the Great Seal of the said Province, to appoint One Member of the said Legislative Council to be Speaker of the said Legislative Council, and to remove him, and appoint another in his Stead.

Quorum. Division.

X. And be it enacted, That the Presence of at least Ten Members of the said Legislative Council, including the Speaker, shall be necessary to constitute a Meeting for the Exercise of its Powers; and that all Questions which shall arise in the said Legislative Council shall be decided by a Majority of Voices of

Casting vote.

the Members present other than the Speaker, and when the Voices shall be equal the Speaker shall have the casting Vote.

XI. And be it enacted, That for the purpose of constituting the Legislative Assembly of the Province of *Canada*, it shall be lawful for the Governor of the said Province, within the Time herein-after mentioned, and thereafter from time to time as occasion shall require, in Her Majesty's Name and by an Instrument or Instruments under the Great Seal of the said Province, to summon and call together a Legislative Assembly in and for the said Province.

Representatives for each Province.

XII. And be it enacted, That in the Legislative Assembly of the Province of *Canada* to be constituted as aforesaid the Parts of the said Province which now constitute the Provinces of *Upper* and *Lower Canada* respectively shall, subject to the Provisions herein-after contained, be represented by an equal Number of Representatives, to be elected for the Places and in the Manner herein-after mentioned.

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The present Election Laws of the Two Provinces to apply until altered.

XXVII. And be it enacted, That until Provisions shall otherwise be made by an Act or Acts of the Legislature of the Province of *Canada* all the Laws which at the Time of the passing of this Act are in force in the Province of *Upper Canada*, and all the Laws which at the Time of the passing of the said Act of Parliament, intituled An Act to *make temporary Provision for the Government* of Lower Canada, were in force in the Province of *Lower Canada*, relating to the Qualification and Disqualification of any Person to be elected or to sit or vote as a Member of the Assembly in the said Provinces respectively (except those which require a Qualification of Property in Candidates for Election, for which Provision is herein-after made), and relating to the Qualification and Disqualification of Voters at the Election of Members to serve in the Assemblies of the said Provinces respectively, and to the Oaths to be taken by any such Voters, and to the Powers and Duties of Returning Officers, and the Proceedings at such Elections, and the Period during which such Elections may be lawfully continued, and relating to the Trial of controverted Elections, and the Proceedings incident thereto, and to the vacating of Seats of Members, and the issuing and Execution of new Writs in case of any Seat being vacated otherwise than by a Dissolution of the Assembly, shall respectively be applied to Elections of Members to serve in the Legislative Assembly of the Province of *Canada* for Places situated in those Parts of the Province of *Canada* for which such Laws were passed.

1 & 2 Vict. c. 9.

Qualification of Members.

XXVIII. And be it enacted, That no Person shall be capable of being elected a Member of the Legislative Assembly of the Province of *Canada* who shall not be legally or equitably seised as of Freehold, for his own Use and Benefit, of Lands

or Tenements held in Free and Common Soccage, or seised or possessed, for his own Use and Benefit, of Lands or Tenements held in Fief or in Roture, within the said Province of *Canada*, of the value of Five Hundred Pounds of Sterling Money of *Great Britain*, over and above all Rents, Charges, Mortgages, and Incumbrances charged upon and due and payable out of or affecting the same; and that every Candidate at such Election, before he shall be capable of being elected, shall, if required by any other Candidate, or by any Elector, or by the Returning Officer, make the following Declaration:

Declaration of Candidates for Election.

"I, *A. B.*, do declare and testify, that I am duly seised "at Law or in Equity as of Freehold, for my own Use and "Benefit, of Lands or Tenements held in free and common "Soccage [*or* duly seised or possessed, for my own use and "benefit, of lands or tenements held in Fief or in Roture "(*as the case may be*)] in the Province of *Canada*, of the "of the Value of Five hundred Pounds of Sterling Money "of *Great Britain*, over and above all Rents, Mortgages, "Charges, and Incumbrances charged upon or due and "payable out of or affecting the same; and that I have not "collusively or colourably obtained a Title to or become "possessed of the said Lands and Tenements, or any Part "thereof, for the Purpose of qualifying or enabling me to "be returned a Member of the Legislative Assembly of the "Province of *Canada*."

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No. 5

Lord Brougham's Act, 13-14 Victoria, Chapter 31 (Imperial).

An Act for shortening the Language used in Acts of Parliament.

[10th June, 1850.]

Acts of Parliament may be altered, etc., in the same Session.

Be it declared and enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That every Act to be passed after the Commencement of this Act may be altered, amended, or repealed in the same Session of Parliament, any Law or Usage to the contrary notwithstanding.

* * * * * * *

Interpretation of certain Words for future Acts.

IV. Be it enacted, That in all Acts Words importing the Masculine Gender shall be deemed and taken to include Females, and the Singular to include the Plural, and the Plural the Singular, unless the contrary as to Gender or Number is

expressly provided; and the Word "Month" to mean Calendar Month, unless Words be added showing Lunar Month to be intended; and "County" shall be held to mean also County of a Town or of a City, unless such extended Meaning is expressly excluded by Words; and the Word "Land" shall include Messuages, Tenements, and Hereditaments, Houses and Buildings, of any Tenure, unless where there are Words to exclude Houses and Buildings, or to restrict the Meaning to Tenements of some particular Tenure; and the Words "Oath," "Swear," and "Affidavit" shall include Affirmation, Declaration, affirming, and declaring, in the Case of Persons by Law allowed to declare or affirm instead of swearing.

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Commencement of Act.

VIII. Be it declared and enacted, That this Act shall commence and take effect from and immediately after the Commencement of the next Session of Parliament.

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No. 6.
The Union Act, Amendment Act, 17-18 Victoria, Chapter 118 (Imperial).

No. 6

The Union Act Amendment Act, 17-18 Victoria, Chapter 118 (Imperial).

An Act to empower the Legislature of Canada to alter the Constitution of the Legislative Council for that Province, and for other Purposes.

[11th August, 1854.]

"Whereas an Act of the Session of Parliament holden in "the Third and Fourth Years of Her Majesty, Chapter Thirty-"five, to reunite the Provinces of *Upper* and *Lower Canada*, "and for the Government of *Canada*, provides amongst other "things for the Establishment of a Legislative Council in the "Province of *Canada*, consisting of Members summoned thereto "by the Governor, under the Authority of Her Majesty as "therein specified: And whereas it is expedient that the Legis-"lature of the said Province should be empowered to alter the "Constitution of the said Legislative Council: And whereas the "said Act requires Amendment in other respect:" Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Power to the Legislature of Canada to alter the Constitution

I. It shall be lawful for the Legislature of *Canada*, by any Act or Acts to be hereafter for that Purpose passed, to alter the Manner of composing the Legislative Council of the

of the Legislative Council.

said Province, and to make it consist of such Number of Members appointed or to be appointed or elected by such Persons and in such Manner as to the said Legislature may seem fit, and to fix the Qualifications of the Persons capable of being so appointed or elected, and by such Act or Acts to make Provision, if they shall think fit, for the separate Dissolution by the Governor of the said Legislative Council and Legislative Assembly respectively, and for the Purposes aforesaid to vary and repeal in such Manner as to them may seem fit all or any of the Sections and Provisions of the said recited Act, and of any other Act of Parliament now in force which relate to the Constitution of the Legislative Council of *Canada*: Provided always, that any Bill or Bills which shall be passed by the present Legislative Council and Assembly of *Canada* for all or any of the Purposes aforesaid shall be reserved by the said Governor, unless he think fit to withhold Her Majesty's Assent thereto, for the Signification of Her Majesty's Pleasure, and shall be subject to the Enactments of the said recited Act of the Third and Fourth Years of Her Majesty, Chapter Thirty-five, Section Thirty-nine, which relate to Bills so reserved for the Signification of Her Majesty's Pleasure.

See p. 42-3

Provisions of former Acts of Parliament to apply to the new Legislative Council.

II. As soon as the Constitution of the Legislative Council of the Province of *Canada* shall have been altered under such Act or Acts so assented to by Her Majesty as aforesaid, all Provisions of the said recited Acts of Parliament of the Third and Fourth Years of Her Majesty, Chapter Thirty-five, and of any other Act of Parliament now in force relating to the Legislative Council of *Canada*, shall be held to apply to the Legislative Council so altered, except so far as such Provisions may have been varied or repealed by such Act or Acts of the Legislature of *Canada* so assented to as aforesaid.

Legislature of Canada may vary Acts constituting the new Legislative Council;

III. It shall be lawful for the Legislature of *Canada* from Time to Time to vary and repeal all or any of the Provisions of the Act or Acts altering the Constitution of the said Legislative Council: Provided always, that any Bill for any such Purpose which shall vary the Qualification of Councillors, or the Duration of Office of such Councillors, or the Power of the Governor to dissolve the Council or Assembly, shall be reserved by the Governor for the Signification of Her Majesty's Pleasure in manner aforesaid.

and to vary, etc., the Property Qualification of Members of Assembly.

IV. It shall be lawful for the Legislature of *Canada*, by any Act or Acts reserved for the Signification of Her Majesty's Pleasure, and whereto Her Majesty shall have assented as hereinbefore provided, to vary or repeal any of the Provisions of the recited Act of Parliament of the Third and Fourth Years of Her Majesty which relate to the Property Qualification of Members of the Legislative Assembly.

No. 7

The British North America Act, 1867, 30-31 Victoria, Chapter 3 (Imperial).

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith.

[29th March 1867]

Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America:

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I.—Preliminary.

1. This Act may be cited as The British North America Act, 1867.

2. The Provisions of this Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland.

II.—Union.

3. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of Canada, Nova Scotia, and New Brunswick shall form and be One Dominion under the Name of Canada; and on and after that day those three Provinces shall form and be One Dominion under that Name accordingly.

4. The subsequent Provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the day appointed for the Union taking effect in the Queen's Proclamation; and in the same Provisions, unless it is otherwise expressed or implied, the name Canada shall be taken to mean Canada as constituted under this Act.

5. Canada shall be divided into four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick.

6. The parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper

Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces. The part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

7. The Provinces of Nova Scotia and New Brunswick shall have the same limits as at the passing of this Act.

8. In the general Census of the Population of Canada which is hereby required to be taken in the year One thousand eight hundred and seventy-one, and in every tenth year thereafter, the respective Populations of the Four Provinces shall be distinguished.

III.—EXECUTIVE POWER.

9. The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

10. The Provisions of this Act referring to the Governor General extend and apply to the Governor General for the time being of Canada, or other the Chief Executive Officer or Administrator for the time being carrying on the Government of Canada on behalf and in the name of the Queen, by whatever title he is designated.

11. There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the persons who are to be members of that Council shall be from time to time chosen and summoned by the Governor General and sworn in as Privy Councillors, and members thereof may be from time to time removed by the Governor General.

12. All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant Governors of those Provinces, with the advice, or with the the advice and consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union, in relation to the Government of Canada, be vested in and exercise-able by the Governor General, with the advice or with the advice and consent of or in conjunction with the Queen's Privy Council for Canada, or any Members thereof, or by the Governor General individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.

13. The provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the advice of the Queen's Privy Council for Canada.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorise the Governor General from time to time to appoint any person

or any persons jointly or severally to be his Deputy or Deputies within any part or parts of Canada, and in that capacity to exercise during the pleasure of the Governor General such of the Powers, Authorities, and Functions of the Governor General as the Governor General deems it necessary or expedient to assign to him or them, subject to any limitations or directions expressed or given by the Queen; but the appointment of such a Deputy or Deputies shall not affect the exercise by the Governor General himself of any Power, Authority, or Function.

15. The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

16. Until the Queen otherwise directs, the seat of Government of Canada shall be Ottawa.

IV.—LEGISLATIVE POWER.

17. There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

18. The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate, and by the House of Commons and by the Members thereof respectively shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act, held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof.

19. The Parliament of Canada shall be called together not later than six months after the Union.

20. There shall be a Session of the Parliament of Canada once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one Session and its first sitting in the next Session.

The Senate.

21. The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators.

22. In relation to the Constitution of the Senate Canada shall be deemed to consist of three divisions:

1. Ontario;
2. Quebec;
3. The Maritime Provinces, Nova Scotia and New Brunswick; which three divisions shall (subject to the Provisions of this Act) be equally represented in the Senate, as follows: Ontario by twenty-four Senators; Quebec by twenty-four Senators; and the Maritime Provinces by twenty-four Senators, twelve thereof representing Nova Scotia, and twelve thereof representing New Brunswick.

In the case of Quebec each of the twenty-four Senators representing that Province shall be appointed for One of the twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated Statutes of Canada.

23. The Qualifications of a Senator shall be as follows:—

(1) He shall be of the full Age of thirty Years:

(2) He shall be either a natural-born Subject of the Queen, or a Subject of the Queen naturalised by an Act of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union :

(3) He shall be legally or equitably seised as of Freehold for his own use and benefit of lands or tenements held in Free and Common Socage, or seised or possessed for his own use and benefit of lands or tenements held in Franc-Alleu or in Roture, within the Province for which he is appointed, of the value of four thousand dollars, over and above all rents, dues, debts, charges, mortgages, and incumbrances due or payable out of or charged on or affecting the same :

(4) His Real and Personal Property shall be together worth four thousand dollars over and above his debts and liabilities :

(5) He shall be resident in the Province for which he is appointed :

(6) In the Case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

24. The Governor General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon qualified persons to the Senate; and, subject to the provisions of this Act, every person so summoned shall become and be a Member of the Senate and a Senator.

25. Such Persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their names shall be inserted in the Queen's Proclamation of Union.

26. If at any time on the Recommendation of the Governor General the Queen thinks fit to direct that three or six Members be added to the Senate, the Governor General may by Summons to three or six qualified persons (as the case may be), representing equally the three Divisions of Canada, add to the Senate accordingly.

27. In case of such addition being at any time made, the Governor General shall not summon any person to the Senate, except on a further like direction by the Queen on the like recommendation, until each of the three Divisions of Canada is represented by twenty-four Senators, and no more.

28. The number of Senators shall not at any time exceed seventy-eight.

29. A Senator shall, subject to the provisions of this Act, hold his place in the Senate for life.

30. A Senator may by writing under his hand addressed to the Governor General resign his place in the Senate, and thereupon the same shall be vacant.

31. The place of a Senator shall become vacant in any of the following cases :

(1) If for two consecutive Sessions of the Parliament he fails to give his attendance in the Senate :

(2) If he takes an Oath or makes a Declaration or Acknowledgment of

Allegiance, Obedience, or Adherence to a Foreign Power, or does an act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen, of a Foreign Power :

(3) If he is adjudged Bankrupt or Insolvent or applies for the benefit of any law relating to Insolvent Debtors, or becomes a public Defaulter :

(4) If he is attainted of Treason or convicted of Felony or of any infamous Crime :

(5) If he ceases to be qualified in respect of Property or of Residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an Office under that Government requiring his Presence there.

32. When a vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy.

33. If any Question arises respecting the Qualification of a Senator or a vacancy in the Senate the same shall be heard and determined by the Senate.

34. The Governor General may from time to time, by instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his stead.

35. Until the Parliament of Canada otherwise provides, the presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers.

36. Questions arising in the Senate shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

The House of Commons.

37. The House of Commons shall, subject to the Provisions of this Act, consist of One hundred and eighty-one Members, of whom Eighty-two shall be elected for Ontario, Sixty-five for Quebec, Nineteen for Nova Scotia, and Fifteen for New Brunswick.

38. The Governor General shall from time to time, in the Queen's Name, by instrument under the Great Seal of Canada, summon and call together the House of Commons.

39. A Senator shall not be capable of being elected or of sitting or voting as a Member of the House of Commons.

40. Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia, and New Brunswick shall, for the purposes of the election of Members to serve in the House of Commons, be divided into Electoral Districts as follows :

1.—*ONTARIO.*

Ontario shall be divided into the Counties, Ridings of Counties, Cities, parts of Cities, and Towns enumerated in the first Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return one member.

2.—*QUEBEC.*

Quebec shall be divided into sixty-five Electoral Districts, composed of the sixty-five Electoral Divisions into which Lower Canada is at the passing of this Act divided under chapter two of the Consolidated Statutes of Canada, chapter seventy-five of the Consolidated Statutes for Lower Canada and the Act of the Province of Canada of the twenty-third year of the Queen, chapter one, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the purposes of this Act an Electoral District entitled to return one member.

3.—*NOVA SCOTIA.*

Each of the eighteen Counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled to return two members, and each of the other Counties one member.

4.—*NEW BRUNSWICK.*

Each of the fourteen Counties into which New Brunswick is divided, including the City and County of St. John, shall be an Electoral District. The City of St. John shall also be a separate Electoral District. Each of those fifteen Electoral Districts shall be entitled to return one member.

41. Until the Parliament of Canada otherwise provides, all laws in force in the several Provinces at the Union relative to the following matters or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which Elections may be continued, the Trial of controverted Elections, and Proceedings incident thereto, the vacating of Seats of Members, and the Execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces.

Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British subject, aged Twenty-one Years or upwards, being a householder, shall have a Vote.

42. For the First Election of Members to serve in the House of Commons the Governor General shall cause Writs to be issued by such Person, in such form and addressed to such Returning Officers as he thinks fit.

The Person issuing Writs under this Section shall have the like powers as are possessed at the Union by the Officers charged with the issuing of Writs for the Election of Members to serve in the respective House of Assembly or Legislative Assembly of the Province of Canada, Nova Scotia, or New Brunswick; and the Returning Officers to whom Writs are directed under this Section shall have the like powers as are possessed at the Union by the Officers charged with the returning of Writs for the Election of Members to serve in the same respective House of Assembly or Legislative Assembly.

JOINT APPENDIX.

No. 7. British North America Act, 1867. 30-31 Victoria, Chapter 3 (Imperial) —*continued.*

43. In case a Vacancy in the Representation in the House of Commons of any Electoral District happens before the Meeting of the Parliament, or after the Meeting of the Parliament, before provision is made by the Parliament in this Behalf, the Provisions of the last foregoing Section of this Act shall extend and apply to the issuing and returning of a Writ in respect of such vacant District.

44. The House of Commons on its first assembling after a General Election shall proceed with all practicable speed to elect one of its Members to be Speaker.

45. In case of a vacancy happening in the Office of Speaker by Death, Resignation, or otherwise, the House of Commons shall with all practicable speed proceed to elect another of its Members to be Speaker.

46. The Speaker shall preside at all Meetings of the House of Commons.

47. Until the Parliament of Canada otherwise provides, in case of the absence for any reason of the Speaker from the Chair of the House of Commons for a period of forty-eight consecutive hours, the House may elect another of its Members to act as Speaker, and the Member so elected shall during the continuance of such absence of the Speaker have and execute all the powers, privileges and duties of Speaker.

48. The Presence of at least twenty Members of the House of Commons shall be necessary to constitute a meeting of the House for the Exercise of its Powers, and for that purpose the Speaker shall be reckoned as a Member.

49. Questions arising in the House of Commons shall be decided by a Majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote.

50. Every House of Commons shall continue for Five Years from the day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor-General), and no longer.

51. On the completion of the census in the year one thousand eight hundred and seventy-one, and of each subsequent decennial census, the representation of the four Provinces shall be re-adjusted by such authority, in such manner and from such time as the Parliament of Canada from time to time provides, subject and according to the following rules :—

(1) Quebec shall have the fixed number of sixty-five members :

(2) There shall be assigned to each of the other Provinces such a number of Members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the population of Quebec (so ascertained) :

(3) In the computation of the number of members for a Province a fractional part not exceeding one-half of the whole number requisite for entitling the Province to a member shall be disregarded; but a fractional part exceeding one-half of that number shall be equivalent to the whole number :

(4) On any such re-adjustment the number of members for a Province shall not be reduced unless the proportion which the number of the population of the Province bore to the number of the aggregate population of Canada at the then last preceding re-adjustment of

the number of members for the Province is ascertained at the then latest census to be diminished by one twentieth part or upwards:

(5) Such re-adjustment shall not take effect until the termination of the then existing Parliament.

52. The Number of Members of the House of Commons may be from time to time increased by the Parliament of Canada, provided the proportionate Representation of the Provinces prescribed by this Act is not thereby disturbed.

Money Votes; Royal Assent.

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.

55. Where a Bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his discretion, but subject to the Provisions of this Act and to Her Majesty's Instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the Signification of the Queen's Pleasure.

56. Where the Governor General assents to a Bill in the Queen's Name, he shall by the first convenient Opportunity send an authentic copy of the Act to One of Her Majesties Principal Secretaries of State, and if the Queen in Council within two years after Receipt thereof by the Secretary of State thinks fit to disallow the Act, such disallowance (with a Certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor General, by Speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the day of such Signification.

57. A Bill reserved for the Signification of the Queen's Pleasure shall not have any force unless and until, within two years from the day on which it was presented to the Governor General for the Queen's Assent, the Governor General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the Assent of the Queen in Council.

An entry of every such Speech, Message, or Proclamation shall be made in the Journal of each House, and a duplicate thereof duly attested shall be delivered to the proper Officer to be kept among the Records of Canada.

V.—PROVINCIAL CONSTITUTIONS.

Executive Power.

58. For each Province there shall be an officer styled the Lieutenant Governor, appointed by the Governor General in Council by instrument under the Great Seal of Canada.

59. A Lieutenant Governor shall hold Office during the Pleasure of the Governor General; but any Lieutenant Governor appointed after the Com-

JOINT APPENDIX.

No. 7. British North America Act, 1867. 30-31 Victoria, Chapter 3 (Imperial) —*continued.*

mencement of the First Session of the Parliament of Canada shall not be removable within five years from his Appointment, except for cause assigned, which shall be communicated to him in writing within one Month after the Order for his removal is made, and shall be communicated by Message to the Senate and to the House of Commons within one week thereafter if the Parliament is then sitting, and if not then within one week after the commencement of the next Session of the Parliament.

60. The Salaries of the Lieutenant Governors shall be fixed and provided by the Parliament of Canada.

61. Every Lieutenant Governor shall, before assuming the Duties of his Office, make and subscribe before the Governor General or some Person authorised by him Oaths of Allegiance and Office similar to those taken by the Governor General.

62. The Provisions of this Act referring to the Lieutenant Governor extend and apply to the Lieutenant Governor for the Time being of each Province, or other the Chief Executive Officer or Administrator for the time being carrying on the Government of the Province, by whatever title he is designated.

63. The Executive Council of Ontario and of Quebec shall be composed of such Persons as the Lieutenant Governor from time to time thinks fit, and in the first instance of the following Officers, namely:—the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown lands, and the Commissioner of Agriculture and Public Works, with in Quebec the Speaker of the Legislative Council and the Solicitor-General.

64. The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act.

65. All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exerciseable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice or with the Advice and Consent of the respective Executive Councils thereof, or in conjunction with those Councils, or with any number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant Governor of Ontario and Quebec respectively, with the Advice or with the Advice and Consent of or in conjunction with the respective Executive Councils, or any Members thereof or by the Lieutenant Governor individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the respective Legislatures of Ontario and Quebec.

66. The Provisions of this Act referring to the Lieutenant Governor in Council shall be construed as referring to the Lieutenant Governor of the Province acting by and with the advice of the Executive Council thereof.

67. The Governor General in Council may from time to time appoint an Administrator to execute the Office and Functions of Lieutenant Governor during his Absence, Illness, or other Inability.

68. Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the Seats of Government of the Provinces shall be as follows, namely:—of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

Legislative Power.

1.—*ONTARIO.*

69. There shall be a Legislature for Ontario consisting of the Lieutenant Governor and of One House, styled the Legislative Assembly of Ontario.

70. The Legislative Assembly of Ontario shall be composed of Eighty-two Members to be elected to represent the Eighty-two Electoral Districts set forth in the First Schedule to this Act.

2.—*QUEBEC.*

71. There shall be a Legislature for Quebec consisting of the Lieutenant Governor and of Two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

72. The Legislative Council of Quebec shall be composed of twenty-four Members, to be appointed by the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec. One being appointed to represent each of the twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding Office for the term of his life, unless the Legislature of Quebec otherwise provides under the provisions of this Act.

73. The Qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec.

74. The place of a Legislative Councillor of Quebec shall become vacant in the cases, *mutatis mutandis*, in which the place of Senator becomes vacant.

75. When a vacancy happens in the Legislative Council of Quebec, by Resignation, Death, or otherwise, the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, shall appoint a fit and qualified person to fill the Vacancy.

76. If any question arises respecting the Qualification of a Legislative Councillor of Quebec, or a vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council.

77. The Lieutenant Governor may from time to time, by Instrument under the Great Seal of Quebec, appoint a Member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his stead.

78. Until the Legislature of Quebec otherwise provides, the Presence of at least ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a Meeting for the Exercise of its Powers.

JOINT APPENDIX.

No. 7. British North America Act, 1867. 30-31 Victoria, Chapter 3 (Imperial) —*continued.*

79. Questions arising in the Legislative Council of Quebec shall be decided by a Majority of Voices, and the Speaker shall in all cases have a Vote, and when the Voices are equal the decision shall be deemed to be in the negative.

80. The Legislative Assembly of Quebec shall be composed of sixty-five Members, to be elected to represent the sixty-five Electoral Divisions or Districts of Lower Canada in this Act referred to, subject to alteration thereof by the Legislature of Quebec: Provided that it shall not be lawful to present to the Lieutenant Governor of Quebec for Assent any Bill for altering the limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule to this Act, unless the Second and Third Readings of such Bill have been passed in the Legislative Assembly with the concurrence of the Majority of the Members representing all those Electoral Divisions or Districts, and the Assent shall not be given to such Bill unless an Address has been presented by the Legislative Assembly to the Lieutenant Governor stating that it has been so passed.

3.—ONTARIO AND QUEBEC.

81. The Legislatures of Ontario and Quebec respectively shall be called together not later than six Months after the Union.

82. The Lieutenant Governor of Ontario and of Quebec shall from time to time, in the Queen's Name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

83. Until the Legislature of Ontario or of Quebec otherwise provides, a person accepting or holding in Ontario or in Quebec any Office, Commission, or Employment, permanent or temporary, at the nomination of the Lieutenant Governor, to which an annual salary, or any fee, allowance, emolument, or profit of any kind or amount whatever from the Province is attached, shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this section shall make ineligible any Person being a Member of the Executive Council of the respective Province, or holding any of the following Offices, that is to say, the Offices of Attorney General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such office.

84. Until the Legislatures of Ontario and Quebec respectively otherwise provide, all laws which at the Union are in force in those Provinces respectively, relative to the following Matters, or any of them, namely:—the Qualifications and Disqualifications of persons to be elected or to sit or vote as Members of the Assembly of Canada, the Qualifications or Disqualifications of Voters, the Oaths to be taken by Voters, the Returning Officers, their powers and duties, the Proceedings at Elections, the periods during which such Elections may be continued, and the trial of controverted Elections and the Proceedings incident thereto, the vacating of the Seats of Members and the issuing and execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Election-

of Members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Provided that, until the Legislature of Ontario otherwise provides, at any Election for a Member of the Legislative Assembly of Ontario for the District of Algoma in addition to persons qualified by the Law of the Province of Canada to vote, every Male British Subject, aged twenty-one years or upwards, being a householder, shall have a vote.

85. Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for four years from the day of the return of the Writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant Governor of the Province) and no longer.

86. There shall be a Session of the Legislature of Ontario and of that of Quebec once at least in every Year, so that twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first Sitting in the next Session.

87. The following provisions of this Act respecting the House of Commons of Canada shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say:—the Provisions relating to the Election of a Speaker originally and on Vacancies, the Duties of the Speaker, the Absence of the Speaker, the Quorum, and the Mode of voting, as if those provisions were here re-enacted and made applicable in terms to each such Legislative Assembly.

4.—*NOVA SCOTIA AND NEW BRUNSWICK.*

88. The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act; and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the period for which it was elected.

5.—*ONTARIO, QUEBEC, AND NOVA SCOTIA.*

89. Each of the Lieutenant Governors of Ontario, Quebec, and Nova Scotia shall cause Writs to be issued for the First Election of Members of the Legislative Assembly thereof in such form and by such person as he thinks fit, and at such time and addressed to such Returning Officer as the Governor General directs, and so that the first Election of Member of Assembly for any Electoral District or any Subdivision thereof shall be held at the same time and at the same places as the Election for a Member to serve in the House of Commons of Canada for that Electoral District.

6.—*THE FOUR PROVINCES.*

90. The following provisions of this Act respecting the Parliament of Canada, namely:—the provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in terms to the respective Pro-

JOINT APPENDIX.

No. 7. British North America Act, 1867. 30-31 Victoria, Chapter 3 (Imperial) —*continued.*

vinces and the Legislatures thereof, with the substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of one Year for two Years, and of the Province for Canada.

VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

Powers of the Parliament.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say :—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military, and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the issue of paper money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalisation and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the classes of Subjects enumerated in this Section shall not be deemed to come within the class of Matters of a local or private nature comprised in the Enumeration of the classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Exclusive Powers of Provincial Legislatures.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the classes of Subjects next hereinafter enumerated; that is to say:—

1. The Amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:—
    a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
    b. Lines of Steam Ships between the Province and any British or Foreign Country:
    c. Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

* * * * * * *

IX.—MISCELLANEOUS PROVISIONS.

General.

127. If any Person being at the passing of this Act a Member of the Legislative Council of Canada, Nova Scotia, or New Brunswick, to whom a Place in the Senate is offered, does not within thirty days thereafter by writing under his hand addressed to the Governor General of the Province of Canada or to the Lieutenant Governor of Nova Scotia or New Brunswick (as the case may be), accept the same, he shall be deemed to have declined the same; and any Person who, being at the passing of this Act a Member of the Legislative Council of Nova Scotia or New Brunswick, accepts a Place in the Senate, shall thereby vacate his Seat in such Legislative Council.

128. Every Member of the Senate or House of Commons of Canada shall before taking his Seat therein take and subscribe before the Governor General or some Person authorised by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant Governor of the Province or some Person authorised by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor General, or some Person authorised by him, the Declaration of Qualification contained in the same Schedule.

* * * * * * *

133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages.

* * * * * * *

XI.—ADMISSION OF OTHER COLONIES.

146. It shall be lawful for the Queen, by and with the advice of her Majesty's Most Honourable Privy Council, on Addresses from the Houses

of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-Western Territory, or either of them, into the Union, on such terms and conditions in each case as are in the Addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

147. In case of the Admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a representation in the Senate of Canada of four members, and (notwithstanding anything in this Act) in case of the admission of Newfoundland the normal number of Senators shall be seventy-six and their maximum number shall be eighty-two; but Prince Edward Island when admitted shall be deemed to be comprised in the third of the three divisions into which Canada is in relation to the constitution of the Senate, divided by this Act, and accordingly, after the admission of Prince Edward Island, whether Newfoundland is admitted or not, the representation of Nova Scotia and New Brunswick in the Senate shall, as vacancies occur, be reduced from twelve to ten members respectively, and the representation of each of those Provinces shall not be increased at any time beyond ten, except under the provisions of this Act for the appointment of three or six additional Senators under the direction of the Queen.

No. 8

The British North America Act, 1871, 34-35 Vict., Chapter 28 (Imperial).

An Act respecting the establishment of Provinces in the Dominion of Canada.

(29th June, 1871.)

Whereas doubts have been entertained respecting the powers of the Parliament of Canada to establish Provinces in Territories admitted, or which may hereafter be admitted into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited for all purposes as "The British North America Act, 1871."

2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion

JOINT APPENDIX.

No. 8. The British North America Act, 1871. 34-35 Victoria, Chapter 28 —*continued.*

of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament.

3. The Parliament of Canada may from time to time with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.

4. The Parliament of Canada may from time to time make provision for the administration, peace, order and good government of any territory not for the time being included in any Province.

5. The following Acts passed by the said Parliament of Canada, and intituled respectively: "An Act for the temporary government of Rupert's "Land and the North Western Territory when united with Canada," and "An Act to amend and continue the Act thirty-two and thirty-three Victoria, "chapter three, and to establish and provide for the government of the "Province of Manitoba," shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor-General of the said Dominion of Canada.

6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament, in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

No. 9. Order in Council admitting the Colony of British Columbia into the Union, 16th May, 1871.

No. 9

Order in Council admitting the Colony of British Columbia into the Union.

At the Court of Windsor, the 16th day of May, 1871.

Present: The Queen's Most Excellent Majesty, His Royal Highness Prince Arthur, Lord Privy Seal, Earl Cowper, Earl of Kimberley, Lord Chamberlain, Mr. Secretary Cardwell, and Mr. Ayrton.

Whereas by the "*British North America Act*, 1867," provision was made for the union of the Provinces of Canada, Nova Scotia and New Brunswick into the Dominion of Canada, and it was (amongst other things) enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on addresses from the

houses of parliament of Canada and of the legislature of the Colony of British Columbia, to admit that colony into the said union, on such terms and conditions as should be in the addresses expressed, and as the Queen should think fit to approve, subject to the provisions of the said Act; and it was further enacted that the provisions of any order in council in that behalf should have effect as if they had been enacted by the parliament of the United Kingdom of Great Britain and Ireland:

And whereas by addresses from the houses of parliament of Canada, and from the legislative council of British Columbia respectively, of which addresses copies are contained in the schedule to this order annexed, Her Majesty was prayed, by and with the advice of Her Most Honourable Privy Council, under the one hundred and forty-sixth section of the hereinbefore recited Act, to admit British Columbia into the Dominion of Canada, on the terms and conditions set forth in the said addresses:

And whereas Her Majesty has thought fit to approve of the said terms and conditions, it is hereby declared by Her Majesty, by and with the advice of her Privy Council, in pursuance and exercise of the powers vested in Her Majesty by the said Act of parliament, that *from and after the twentieth day of July, one thousand eight hundred and seventy-one, the said colony of British Columbia shall be admitted into and become part of the Dominion of Canada*, upon the terms and conditions set forth in the hereinbefore recited addresses. And, in accordance with the terms of the said addresses relating to the electoral districts of British Columbia, for which the first election of members to serve in the House of Commons of the said Dominion shall take place, it is hereby further ordered and declared that such electoral districts shall be as follows:

(*Here follows an enumeration of those electoral districts.*)

And the Right Honourable Earl of Kimberley, one of Her Majesty's principal secretaries of state, is to give the necessary directions therein accordingly.

ARTHUR HELPS.

Schedule.

Address of the Senate of Canada.

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,

We, your Majesty's most dutiful and loyal subjects, the Senate of Canada in parliament assembled, humbly approach your Majesty for the purpose of representing:—

That by a despatch from the Governor of British Columbia, dated 23rd January, 1871, with other papers laid before this house, by message from His Excellency the Governor-General, of the 27th February last, this house learns that the legislative council of that colony, in council assembled, adopted, in January last, an address representing to your Majesty that British Columbia was prepared to enter into union with the Dominion of Canada, upon the terms and conditions mentioned in the said address, which is as follows:—

JOINT APPENDIX.

No. 9. Order in Council admitting the Colony of British Columbia into the Union, 16th May, 1871 —*continued.*

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,

We, your Majesty's most dutiful and loyal subjects, the members of the legislative council of British Columbia, in council assembled, humbly approach your Majesty for the purpose of representing :—

That, during the last session of the legislative council, the subject of the admission of the colony of British Columbia into the union or Dominion of Canada was taken into consideration, and a resolution on the subject was agreed to, embodying the terms upon which it was proposed that this colony should enter the union.

That after the close of the session, delegates were sent by the government of this colony to Canada to confer with the government of the Dominion with respect to the admission of British Columbia into the union upon the terms proposed;

That after considerable discussion by the delegates with the members of the government of the Dominion of Canada, the terms and conditions hereinafter specified were adopted by a committee of the Privy Council of Canada, and were by them reported to the Governor-General for his approval;

That such terms were communicated to the government of this colony by the Governor-General of Canada, in a despatch dated July 7th, 1870, and are as follows :—

* * * * * * *

8. British Columbia shall be entitled to be represented in the Senate by three members, and by six members in the House of Commons. The representation to be increased under the provisions of "British North America Act, 1867."

9. The influence of the Dominion government will be used to secure the continued maintenance of the naval station at Esquimalt.

10. *The provisions of the "British North America Act*, 1867," *shall (except those parts thereof which are in terms made, or by reasonable intendment may be held to be specially applicable to and only affect one and not the whole of the provinces now comprising the Dominion, and except so far as the same may be varied by this minute) be applicable to British Columbia in the same way and to the like extent as they apply to the other provinces of the Dominion, and as if the colony of British Columbia had been one of the provinces originally united by the said Act.*

* * * * * * *

14. *The constitution of the executive authority and of the legislature of British Columbia shall subject to the provisions of the "British North America Act*, 1867," *continue as existing at the time of the union until altered under the authority of the said Act*, it being at the same time understood that the government of the Dominion will readily consent to the introduction of responsible government when desired by the inhabitants of British Columbia, and it being likewise understood that it is the intention of the Governor of British Columbia, under the authority of the Secretary of State for the colonies, to amend the existing constitution of the legislature by providing that a majority of its members shall be elective."

NOTE.—The address of the House of Commons is identical in its terms.

No. 10

The Parliament of Canada Act, 1875, 38-39 Vict., Chapter 38 (Imperial).

An Act to remove certain doubts with respect to the powers of the Parliament of Canada, under section 18 of the British North America Act, 1867.

(19th July, 1875.)

Whereas by section 18 of the British North America Act, 1867, it is provided as follows: "The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act, held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof."

And whereas doubts have arisen with regard to the power of defining by an Act of the Parliament of Canada, in pursuance of the said section, the said privileges, powers or immunities; and it is expedient to remove such doubts:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Section 18 of the British North America Act, 1867, is hereby repealed, without prejudice to anything done under that section, and the following section shall be substituted for the section so repealed:—

The privileges, immunities, and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the members thereof, respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.

2. The Act of the Parliament of Canada passed in the thirty-first year of the reign of her present Majesty, chapter twenty-four, intituled "An Act to provide for oaths to witnesses being administered in certain cases for the purposes of either House of Parliament," shall be deemed to be valid, and to have been valid as from the date at which the royal assent was given thereto by the Governor-General of the Dominion of Canada.

3. This Act may be cited as the Parliament of Canada Act, 1875.

No. 11

The British North America Act, 1886, 49-50 Victoria, Chapter 35 (Imperial).

An Act respecting the Representation in the Parliament of Canada of Territories which for the time being form part of the Dominion of Canada, but are not included in any Province.

[25th June, 1886.]

Whereas it is expedient to empower the Parliament of Canada to provide for the representation in the Senate and House of Commons of Canada, or either of them, of any territory which for the time being forms part of the Dominion of Canada, but is not included in any province:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Provision by Parliament of Canada for representation of territories.

1. The Parliament of Canada may from time to time make provision for the representation in the Senate and House of Commons of Canada, or in either of them, of any territories which for the time being form part of the Dominion of Canada, but are not included in any province thereof.

Effect of Acts of Parliament of Canada.

2. Any Act passed by the Parliament of Canada before the passing of this Act for the purpose mentioned in this Act, shall, if not disallowed by the Queen, be, and shall be deemed to have been, valid and effectual from the date at which it received the assent, in Her Majesty's name, of the Governor-General of Canada.

It is hereby declared that any Act passed by the Parliament of Canada, whether before or after the passing of this Act, for the purpose mentioned in this Act or in the British North America Act, 1871, has effect, notwithstanding anything in the British North America Act, 1867, and the number of Senators or the number of Members of the House of Commons specified in the last mentioned Act is increased by the number of Senators or of Members, as the case may be, provided by any such Act of the Parliament of Canada for the representation of any provinces or territories of Canada.

34 & 35 Vict., c. 28.

30 & 31 Vict., c. 3.

Short title and construction.

3. This Act may be cited as the British North America Act, 1886.

This Act and the British North America Act, 1867, and the British North America Act, 1871, shall be construed together, and may be cited together as the British North America Acts, 1867 to 1886.

30 & 31 Vict., c.3.

34 & 35 Vict., c. 28.

No. 12

The Interpretation Act, 1889, 52-53 Victoria, Chapter 63 (Imperial).

An Act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament.

[30th August, 1889.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Re-enactment of existing Rules.

Rules as to gender and number.

1. (1) In this Act and in every Act passed after the year One thousand eight hundred and fifty, whether before or after the commencement of this Act, unless the contrary intention appears:—

(a) words importing the masculine gender shall include females; and

(b) words in the singular shall include the plural, and words in the plural shall include the singular.

(2) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an Act passed in or before the year One thousand eight hundred and fifty.

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Supplemental.

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Repeal.

41. The Acts described in the Schedule to this Act are hereby repealed to the extent appearing in the third column of the Schedule.

* * * * * * *

Short title.

43. This may be cited as the Interpretation Act, 1889.

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SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
*	* *	*
13 & 14 Vict. c. 21.	An Act for shortening the language used in Acts of Parliament.	The whole Act.
*	* *	*

No. 13

The British North America Act, 1915, 5-6 George V, Chapter 45 (Imperial).

An Act to amend the British North America Act, 1867.

[19th May, 1915.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Alteration of constitution of Senate. 30 & 31 Vict., c. 3.

1. (1) Notwithstanding anything in the *British North America Act*, 1867, or in any Act amending the same, or in any Order in Council or terms or conditions of union made or approved under the said Acts or in any Act of the Canadian Parliament:—

(i) The number of senators provided for under section twenty-one of the *British North America Act*, 1867, is increased from seventy-two to ninety-six;

(ii) The Divisions of Canada in relation to the constitution of the Senate provided for by section twenty-two of the said Act are increased from three to four, the Fourth Division to comprise the Western Provinces of Manitoba, British Columbia, Saskatchewan, and Alberta, which four Divisions shall (subject to the provisions of the said Act and of this Act) be equally represented in the Senate as follows: Ontario by twenty-four senators; Quebec by twenty-four senators; the Maritime Provinces and Prince Edward Island by twenty-four senators, ten thereof representing Nova Scotia, ten thereof representing New Brunswick; and four thereof representing Prince Edward Island; the Western Provinces by twenty-four senators, six thereof representing Manitoba, six thereof representing British Columbia, six thereof representing Saskatchewan, and six thereof representing Alberta;

(iii) The number of persons whom by section twenty-six of the said Act the Governor-General of Canada may, upon the direction of His Majesty the King, add to the Senate, is increased from three or six to four or eight, representing equally the four divisions of Canada;

(iv) In case of such addition being at any time made, the Governor-General of Canada shall not summon any person to the Senate except upon a further like direction by His Majesty the King on the like recommendation to represent one of the four Divisions, until such Division is represented by twenty-four senators and no more;

(v) The number of senators shall not at any time exceed one hundred and four;

(vi) The representation in the Senate to which by section one hundred and forty-seven of the *British North America Act*, 1867, Newfoundland would be entitled in case of its admission to the Union is increased from four to six members, and in case of the admission of Newfoundland into the Union, notwithstanding anything in the said Act or in this Act, the normal number of senators shall be one hundred and two, and their maximum number one hundred and ten;

49 & 50 Vict., c. 35. (vii) Nothing herein contained shall affect the powers of the Canadian Parliament under the *British North America Act*, 1886.

(2) Paragraphs (i) to (vi) inclusive of subsection (1) of this section shall not take effect before the termination of the now existing Canadian Parliament.

Constitution of House of Commons. 2. The *British North America Act*, 1867, is amended by adding thereto the following section immediately after section fifty-one of the said Act:—

"51a. Notwithstanding anything in this Act, a Province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such Province."

Short title. 3. This Act may be cited as the *British North America Act*, 1915, and the *British North America Acts*, 1867 to 1886, and this Act may be cited together as the *British North America Acts*, 1867 to 1915.

No. 14

The Interpretation Act, Statutes of the Province of Canada, 1849, 12 Victoria, Chapter 10.

(25*th April*, 1849.)

Whereas it is desirable to avoid, by the Establishment of some general rules for the interpretation of Acts of the Provincial Parliament, the continual repetition therein of words, phrases and clauses, which are rendered necessary solely by the want of such rules. . . . Be it enacted . . .

That each provision shall extend and apply to each Act passed in this present Session or in any future Session of the Provincial Parliament except in so far as any such provision shall be inconsistent with the intent and object of such Act, or the interpretation which such provision would give to any word, expression or clause shall be inconsistent with the context, and except in so far as this Act or any provision thereof shall in any such Act be declared not applicable thereto; nor shall the omission in any Act of a declaration that this Act shall apply thereto be construed to prevent its so applying although such express declaration may be inserted in some other Act or Acts of the same Session.

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JOINT APPENDIX.

The Interpretation Act, 1849. 12 Victoria, Chapter 10.

—*continued.*

v. (7) Words importing the singular number or the masculine gender only, shall include more persons, parties or things of the same kind than one, and females as well as males, and the converse.

* * * * * * *

xxix. Nothing in this Act shall be construed to exclude the application to any such Act as aforesaid of any Rule of Construction applicable thereto and not inconsistent with this Act, or to exclude the application of any Rule of Construction in this Act to any Act passed in any Session before the present, if, without this Act such Rule would have been applicable thereto.

No. 15. An Act to amend the statutory provisions for the regulation of elections. 12 Victoria, Chapter 27.

No. 15

Statutes of the Province of Canada, 12 Vict. (1849), Chapter 27.

(30*th May*, 1849.)

An Act to repeal certain Acts therein mentioned, and to amend, consolidate and reduce into one Act, the several Statutory provisions now in force for the regulation of Elections of members to represent the People of this Province in the Legislative Assembly thereof.

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XLVI. And be it declared and enacted, that no woman is or shall be entitled to vote at any such election, whether for any County or Riding, City or Town.

No. 16. An Act to change the Constitution of the Legislative Council by rendering the same Elective. 19-20 Victoria, Chapter 140.

No. 16

Statutes of the Province of Canada, 19-20 Vict. (1856), Chapter 140.

An Act to change the Constitution of the Legislative Council by rendering the same Elective.

Whereas by an Act of the Parliament of the United Kingdom passed in the seventeenth and eighteenth years of the Reign of Her Most Gracious Majesty, chaptered one hundred and eighteen " to empower the Legislature of Canada to alter the Constitution of the Legislative Council for that Province, and for other purposes," it is enacted, That the Legislature of this Province may change the Constitution of the Legislative Council of the said Province, and may make other provisions relative to the same subject and to other subjects therein mentioned : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :—

No. 16.
An Act to change the Constitution of the Legislative Council by rendering the same Elective.
19-20 Victoria, Chapter 140
—*continued.*

I. The Legislative Council shall hereafter be composed of the present Members thereof, and of forty-eight Members to be elected, in the proportion and at the times and in the manner hereinafter provided; and to this end, the Province shall be divided into forty-eight Electoral Divisions, twenty-four in Upper Canada and twenty-four in Lower Canada, in the manner set forth in Schedule A.

II. The present Councillors shall continue to hold their seats as heretofore, subject to the conditions contained in the Imperial Act of the third and fourth Victoria, chapter thirty-five, "to re-unite the Provinces of Upper and Lower Canada and for the Government of Canada."

III. The elective Members shall be elected for eight years.

IV. No person shall be eligible or shall sit or vote as a Legislative Councillor unless he be a British Subject by birth or naturalization, resident in Canada, of the full age of thirty years, and be legally or equitably seized as of freehold, for his own use and benefit, of lands or tenements held in free and common soccage, or seized or possessed for his own use and benefit, of lands or tenements held in fief, *franc-aleu* or *roture* in this Province, of the value of two thousand pounds currency over and above all debts, charges and dues, nor unless his residence or his lands or tenements as aforesaid to the value aforesaid be within the limits of the Electoral Division for which he shall seek to be, or shall have been, elected.

V. No person shall be elected a Legislative Councillor who is a public defaulter, or shall have been convicted of felony, or of any infamous crime.

VI. No member of one House shall be elected a member of the other.

VII. The seat of an Elective Legislative Councillor shall be forfeited in any of the following cases: if he be a public defaulter, or become a Bankrupt, or insolvent, or take the benefit of any law whatsoever in relation to insolvent debtors, or be convicted of felony or of any infamous crime, or shall cease to hold a property qualification required by the fourth clause.

* * * * * * *

IX. The Writs of Election shall be in the form of Schedule B.

* * * * * * *

XII. The electors of Legislative Councillors shall, as regards their qualification, be the same as those of Members of the Legislative Assembly, and shall vote at the places at which they ordinarily vote at the election of the latter: The boundaries and extent of the Electoral Divisions are defined by Schedule A.

* * * * * * *

XIII. The laws relating to the election of Members of the Legislative Assembly, as regards the qualification of Electors, the issue and return of Writs of Election, Returning Officers, the powers and duties of Returning Officers and of Deputy Returning Officers, and of Election and Poll Clerks, the prevention or punishment of offences committed at elections or with respect to elections, to controverted elections, and to all matters connected with or incidental to elections, shall, except where such laws may be inconsistent with this Act, apply in analogous cases to elections of Legislative Councillors.

JOINT APPENDIX.

No. 16. An Act to change the Constitution of the Legislative Council by rendering the same Elective. 19-20 Victoria, Chapter 140 —*continued.*

XIV. Every candidate for election to the Legislative Council shall, if thereunto required by another candidate, or by an elector, or by the Returning Officer, make in person a written declaration in the form of Schedule C; and the provisions of the election laws which prior to the passing of this Act related to the declaration of qualification of candidates for election to the Legislative Assembly, shall, with the exception of the amount of property qualification, apply in a precisely similar manner to the declaration of qualification of the candidate for election to the Legislative Council.

* * * * * * *

Schedule B.

Province of Canada.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Returning Officer of Greeting:

Whereas

We therefore command you, firmly enjoining that having first made Proclamation in the said Electoral Division of , immediately after the receipt of this our Writ, and thereby notified (giving not less than eight days' notice thereof) a day and place for electing a Legislative Councillor to serve for the said Electoral Division of , in our Legislative Council, you cause on the said day and place a Legislative Councillor, the most fit and discreet, to be freely and indifferently chosen to represent the said Electoral Division of , in our Legislative Council, by those who shall be present at the day of election to be fixed by such Proclamation as aforesaid, and the name of such Legislative Councillor so chosen, in certain Indentures between you and those who shall be present at such election (whether the person so chosen shall be present or absent) you cause to be inserted, and cause the said person so chosen as aforesaid to come to the said Legislative Council, so that the said Legislative Councillor have full and sufficient power for himself and the commonalty of the said Electoral Division of severally from them to do and consent to those things which then and there by the favour of God shall happen to be ordained by the Common Council of our said Province, upon the said affairs, so that for default of such powers or through improvident election of such Legislative Councillor, the said affairs remain not undone in any wise.

And we will not that any minister of the Churches of England or Scotland, or a Minister, Priest, Ecclesiastic or Teacher, either according to the rites of the Church of Rome or under any other form or profession of religious faith or worship, by any means be chosen. And that you certify forthwith unto Us, into our Chancery at the City of , the said election so made, distinctly and openly, under your seal and the seals of those who shall be present at such election, sending unto Us one part of the said Indentures annexed to these presents, together with this Our Writ.

No. 16. An Act to change the Constitution of the Legislative Council by rendering the same Elective. 19-20 Victoria, Chapter 140 —*continued.*

In testimony whereof, We have caused these Our Letters to be made Patent, and the Great Seal of Our said Province of Canada to be hereunto affixed.

Witness,

At Our Government House, at the city of in Our said Province of Canada, the day of in the year of Our Lord One Thousand Eight Hundred and and in the year of Our Reign.

By Command,

A. B.,
Clerk of the Crown in Chancery.

Schedule C.

Declaration of Qualification.

I, A.B., declare and testify that I am of the full age of thirty years, that I am a British subject, and that I am a resident in (here insert name of Electoral Division in which Candidate resides), that I am duly seized at law (or in equity) as of freehold for my own use and benefit, of the following lands (or tenements) held in free and common soccage (or duly seized and possessed for my own use and benefit of lands) (or tenements) held *en fief* or *en roture* or *en franc-aleu* (as the case may be) that is to say, of (here insert a correct and clear description of the lands or tenements forming the property qualification of the candidate and of their local situation) which said lands (or tenements) I declare to be of the full value of two thousand pounds currency, over and above all rents, mortgages, charges and incumbrances charged upon or due or payable out of or affecting the same: and I further declare that I have not collusively or colourably obtained a title to or become possessed of the said lands (or tenements) or any part thereof, for the purpose of qualifying or enabling me to be returned as a Member of the Legislative Council of this Province.

No. 17

No. 17. An Act respecting Elections of Members of the Legislature. Con. Stats. of Canada, 1859. Chapter 6.

Consolidated Statutes of Canada, 1859, Chapter 6.

p. 452

An Act respecting Elections of Members of the Legislature.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

Who Shall Not Vote at Elections.

* * * * * * *

3. No woman is or shall be entitled to vote at any such Election, for any Electoral Division whatever.

Who May Vote at Elections.

4. The following persons, and no other persons, being of the full age of twenty-one years, and subjects of Her Majesty by birth or naturalisation, and not being disqualified under the preceding sections, or otherwise by law prevented from voting, shall, if duly registered or entered on the revised and certified list of voters according to the provisions of this Act, be entitled to vote at Elections of Members to serve in the Legislative Council or Legislative Assembly of this Province, that is to say:—

1. Every male person entered on the then last Assessment Roll, revised, corrected and in force in any City or Town entitled to send a Member or Members to the Legislative Assembly, as the owner or as the tenant or occupant of real property therein as bounded for municipal purposes, of the assessed value of three hundred dollars or upwards, or of the assessed yearly value of thirty dollars or upwards—or who is entered on such last revised and corrected Assessment Roll of any Township, Parish or Place, as the owner, tenant or occupant of any real property which is within the limits of any such City or Town for the purposes of Representation, but not for municipal purposes, of the assessed value of two hundred dollars at least, or of the assessed yearly value of twenty dollars, or upwards—shall be entitled to vote at any Election of a Member to represent in the Legislative Council the Electoral Division of which such City or Town forms a part—and shall also be entitled to vote at any Election of a Member to represent in the Legislative Assembly the said City or Town; subject always to the provisions hereinafter contained;

2. Every male person entered on the then last Assessment Roll, revised, corrected and in force in any Parish, Township, Town, Village or place, not being within any City or Town entitled to send a Member or Members to the Legislative Assembly, as the owner, tenant or occupant of real property of the assessed value of two hundred dollars or upwards—or of the yearly assessed value of twenty dollars or upwards, shall be entitled to vote at any Election of a Member to represent in the Legislative Council the Electoral Division of which such Parish, Township, Town, Village or place forms a part—and shall also be entitled to vote at any Election of a Member to represent in the Legislative Assembly the Electoral Division in which such Parish, Township, Town, Village or place is included: subject always to the provisions hereinafter contained.

* * * * * * *

No. 18

Statutes of the Province of Canada, 29-30 Victoria (1866), Chapter 51.

No. 18. An Act respecting Municipal Institutions of Upper Canada. 29-30 Victoria, Chapter 51.

An Act respecting the Municipal Institutions of Upper Canada.

(*Assented to* 15*th August*, 1866.)

* * * * * * *

Parliamentary Electors.

81. Every male person entered on the then last revised Assessment Roll for every city, town, village or township, as the owner or occupant of real property of the actual value—in cities, of six hundred dollars; in towns, of four hundred dollars; in incorporated villages, of three hundred dollars; and in townships, of two hundred dollars, shall be entitled to vote at all Parliamentary elections, subject to the provisions of the Act, chapter six, of the Consolidated Statutes of Canada, except sub-sections numbered 1 and 2 of section four of the said Act, which are hereby repealed, in so far as they relate to Upper Canada.

* * * * * * *

No. 19

Statutes of Nova Scotia, 37 Geo. III 1797, Chapter 3.

No. 19. An Act in amendment of an Act for the better regulation of Elections. 37 George III., Chapter 3.

An Act in amendment of an Act, passed in the Twenty-ninth year of the reign of His present Majesty, entitled, An Act for the better regulation of Elections.

Preamble. What constitutes the right of voting at an election and of an individual to be elected.

Whereas conveyances have heretofore been made, for the purpose of qualifying persons to vote in counties and towns within this Province, for members to represent them in General Assembly :

I. Be it enacted, by the Lieutenant-Governor, Council and Assembly, That each person hereafter to be chosen a member of Assembly, and each elector, at the time of giving his vote, in any election hereafter to be held in this Province, shall actually have an income of forty shillings per annum, in freehold estate, or shall have, within the county or town for which he shall vote, or be elected, in his own right in fee simple, a dwelling-house, with the ground on which the same stands; or one hundred acres of land, whereof five acres, at least, shall be under cultivation; such person, or persons, possessing any one of the before mentioned interests, shall be entitled to vote, or be elected, for the county or town, wherein the same shall be situate. *Provided* always, That no person shall be entitled to vote in any election, to be hereafter held in this Province, or shall be eligible to serve as a member of Assembly, who shall not have had the grant or conveyance, under which he holds as aforesaid, registered six months before the test of the writ for holding the election. *Provided also*, That nothing in this Act contained, shall be construed to extend to any person, or persons, holding by descent or devise, of the yearly value aforesaid.

No. 20

Statutes of Province of Nova Scotia, 57 George III (1817), Chapter 7.

No. 20. An Act for regulating Elections of Representatives to serve in General Assembly. 57 George III., Chapter 7.

An Act for regulating Elections of Representatives to serve in General Assembly.

* * * * * * *

11. And be it further enacted, That each person hereafter to be chosen a Member of Assembly, and each Elector, at the time of giving his Vote in any Election, hereafter to be held in this Province, shall actually have an income of Forty Shillings per annum, in Freehold Estate, or shall have, within the County or Town for which he shall Vote, or be Elected, in his own right, in fee simple, a Dwelling House, with the Ground on which the same stands, or One Hundred Acres of Land, whereof Five at least shall be under cultivation; such person or persons possessing any one of the before-mentioned interests, shall be entitled to Vote, or be Elected for the County or Town wherein the same shall be situate. Provided always, That no person shall be entitled to Vote in any Election, to be hereafter held in this Province, or shall be eligible to serve as a Member of Assembly, who shall not have had the Grant or Conveyance, under which he holds as aforesaid, registered six months before the test of the Writ, for holding the Election. Provided also, That nothing in this Act contained, shall be construed to extend to any persons, holding by descent, or devise, of the yearly value aforesaid.

No. 21

Revised Statutes of Nova Scotia (Second Series), 1859.

No. 21. Construction of statutes. Rev. Stats. of Nova Scotia, 1859. Chapter 1.

Title I.

Chapter 1.

Of the Promulgation and Construction of Statutes.

Construction of Acts; meaning of terms; general provisions.

* * * * * * *

7. In the construction of Acts, the following rules shall be observed, unless otherwise expressly provided for, or such construction would be inconsistent with the manifest intention of the Legislature, or repugnant to the context, that is to say: . . . . . every word importing the masculine gender only, may extend to females as well as to males.

No. 22

No. 22. Of the Qualification of Candidates and Electors. Rev. Stats., of Nova Scotia, 1859, Chapter 5.

Revised Statutes of Nova Scotia (Second Series), 1859.

Title II of the Legislature.

Chapter 5.

Of the Qualification of Candidates and Electors, and Frauds in Regard Thereto.

* * * * * * *

Privilege of voting extended to all natural born and naturalized subjects over 21 years of age.

2. Fifthly—All natural born and naturalized subjects of the crown of Great Britain, having been and being domiciled as hereinafter limited, and being males over the age of twenty-one years, shall be entitled to vote for members to serve in general assembly, that is to say, provided they shall at the time of voting have had their usual place of abode for at least one year next before voting in the counties for which they shall vote for county members, and in the townships for which they shall vote for township members; and provided also that such naturalized subjects so voting, and such natural born subjects as were not born in Nova Scotia shall, in addition, have resided in the province for at least five years next before voting; and provided also, that persons voting on residence shall only be entitled to vote in the electoral districts in which they reside at the time of voting and which districts must be in the counties and townships respectively, for representing which the candidates are to be elected at that election; and no person who shall have received aid as a pauper under any poor law in this province, or aid as poor persons from any public grant of government money, within one year before the day of polling, nor any Indian, shall be entitled to vote on residence.

Paupers and Indians disabled from voting under this Act.

* * * * * * *

Qualification of Candidates.

4. A candidate shall at the time of election have a qualification which would entitle him to vote, except that it may be situate in any part of the province, and the grant of conveyance thereof need not be registered.

No. 23

No. 23. An Act to regulate the election of members to serve in the General Assembly. 26 Vict. Chapter 28

Statutes of Nova Scotia, 26 Vict. (1863), Chapter 28.

An Act to regulate the election of members to serve in the General Assembly.

(29*th April*, 1863.)

Qualification of voters.

1. Every male subject of her Majesty, by birth, or naturalization, being of the age of twenty-one years, and not disqualified

No. 23
An Act to regulate the election of members to serve in the General Assembly.
26 Vict. Chapter 28.
—*continued.*

by law, who shall have been assessed for the year for which the registry hereinafter provided is made up, in respect of real estate, to the value of one hundred and fifty dollars, or in respect of personal estate, or of personal and real estate together, to the value of three hundred dollars, shall be qualified to vote at elections of members to serve in the House of Assembly, for the county, township, or electoral division in which he shall be so assessed.

* * * * * * *

38. A person capable of being elected a member of the assembly shall be a male British subject of the age of twenty-one years and upwards, and qualified to be an elector under the provisions of this Act in some county, township or electoral division of this province, or shall have a legal or equitable freehold estate in possession of the clear yearly value of eight dollars, and any candidate at any election shall, if required, by any other candidate or any elector or the sheriff make before the sheriff the following declaration:

I, A. B., do declare and testify that I am a British subject of the age of twenty-one years, and that I am duly qualified under the act to regulate the election of members to serve in the General Assembly* to be an elector in the county, township or electoral division of this province, and that my right to vote as said elector is in polling district number——in the county (*or township or electoral division*) *of*——. *If the candidate claims to be qualified as a freeholder, then after the asterisk insert the words* " in right of freehold property of the clear yearly value of eight dollars owned by me and described as follows "; (*here briefly describe the same, setting forth the county or township, or electoral division, where situate, and further particulars.*)

No. 24

No. 24.
An Act for regulating elections of representatives in General Assembly.
31 George III., Chapter 17.

Statutes of New Brunswick 1786 to 1836, 31 George III (1791), Chapter 17.

An Act for Regulating Elections, of Representatives in General Assembly, and, for limiting the duration of Assemblies, in this Province.

Be it enacted by the Lieutenant Governor, Council and Assembly.

* * * * * * *

III. And be it further enacted, That the Members to be chosen, to serve in such Assembly, shall be chosen, in every County, which hath right to chuse, by persons, whereof, every one of them shall have a Freehold in such County, of the clear value of twenty-five Pounds, in case such persons reside in such County; and in case such persons do not reside in such County,

No. 24.
An Act for regulating elections of representatives in General Assembly.
31 George III., Chapter 17.
—*continued.*

shall have a Freehold in such County, of the clear value of Fifty Pounds, free from all incumbrances; and shall have respectively possessed the same, and have had their title Deeds registered, Six Months, before the teste of the said writ: And the person to be chosen, shall be possessed of real Estate, of the value of Two Hundred Pounds, within the County, for which he shall be chosen; and shall have been possessed of the same, and the Deeds thereof duly registered, Six Months before the teste of the writ: And such as have the greatest number of votes of Electors, qualified as aforesaid, shall be returned by the said Sheriffs, Members, to serve in such Assembly, by Indentures, between the said Sheriff and the said Electors. Provided always, that no person, who shall have mortgaged his Lands, and remain in possession thereof, and receive the income therefrom, shall, by reason of such Mortgage, be debarred from giving his vote, or being elected as aforesaid.

No. 25

No. 25.
An Act relating to the election of Representatives to serve in the General Assembly.
11 Victoria, Chapter 65.

Public Statutes of New Brunswick (1848), 11 Vict., Chapter 65.

An Act relating to the Election of Representatives to serve in the General Assembly.

(30*th March*, 1848.)

* * * * * * *

17. The Members to be chosen to serve in such Assembly, shall be chosen in every County which hath right to choose, by male persons of the full age of twenty-one years, not subject to any legal incapacity, every one of whom shall have a freehold in such County, of the value of twenty-five pounds, in case such persons reside in such County; and in case such persons do not reside in such County, shall have a freehold in such County of the value of fifty pounds, and shall have respectively possessed the same, and have had their titles registered six months before the teste of the said Writ; and such Candidates qualified as by law is required, as have the greatest number of votes of Electors qualified as aforesaid, shall be returned by the Sheriffs, Members to serve in such Assembly, by indentures between the said Sheriff and the said Electors; provided always, that any person who may have mortgaged his lands, and remain in possession of the same, shall not be debarred from voting.

* * * * * * *

44. And be it enacted, that no person shall be capable of being elected a member of the Assembly of this Province who shall not be the age of twenty-one years, and who shall not be legally seized as of freehold for his own use and benefit of lands or tenements within this Province of the value of three hundred pounds currency. . . .

No. 26

Revised Statutes of New Brunswick, 1854.

No. 26. The Interpretation Act, 1854. Rev. Stats., New Brunswick, 1854, Chapter 161.

Title XLI., Vol. 1, Chapter 161.

The Interpretation Act.

In the construction of all Acts of Assembly the following rules shall be observed with respect to the following terms, unless otherwise expressly provided for or such construction would be inconsistent with the manifest intention of the Legislature or repugnant to the context, that is to say :—

* * * * * * *

"13. Every word importing the singular number, may extend to "several persons or things as well as to one person or thing; and "importing the plural number, to one person or thing as well as to "several persons or things; and importing the masculine gender, to "females as well as males."

No. 27

New Brunswick Statutes 1855, 18 Victoria, Chapter 37.

No. 27. An Act to regulate the election of members to serve in the General Assembly. 18 Victoria, Chapter 37.

An Act to regulate the Election of Members to serve in the General Assembly.

(*Passed* 12*th April*, 1855.)

1. Every male person of the age of twenty-one years or upwards . . . shall be qualified to vote for representatives of the County or City for which he shall be so assessed; . . .

* * * * * * *

20. A person capable of being elected a member of the Assembly shall be a male British subject of the age of twenty-one years or upwards. . . .

No. 28

Statutes of Canada (1870), 33 Victoria, Chapter 3.

No. 28. The Manitoba Act (1870). 33 Victoria, Chapter 3.

An Act to amend and continue the Act 32 and 33 Victoria, Chapter 3; and to establish and provide for the Government of the Province of Manitoba.

(*Assented to* 12*th May*, 1870.)

Whereas it is probable that Her Majesty The Queen may, pursuant to the British North America Act, 1867, be pleased to admit Rupert's Land and the North-Western Territory into the Union or Dominion of Canada, before the next Session of the Parliament of Canada :

And whereas it is expedient to prepare for the transfer of the said Territories to the Government of Canada at the time appointed by the Queen for such admission :

The Manitoba Act (1870). 33 Victoria, Chapter 3.

And whereas it is expedient also to provide for the organisation of part of the said Territories as a Province, and for the establishment of a Government therefor, and to make provision for the Civil Government of the remaining part of the said Territories, not included within the limits of the Province:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

* * * * * * *

3. The said Province shall be represented in the Senate of Canada by two Members until it shall have, according to decennial census, a population of fifty thousand souls, and from thenceforth it shall be represented therein by three Members until it shall have according to decennial census, a population of seventy-five thousand souls, and from thenceforth it shall be represented therein by four Members.

No. 29. The Alberta Act. 4-5 Edward VII., Chapter 3.

No. 29

The Alberta Act, Statutes of Canada, 1905, 4-5 Edw. VII., Chapter 3.

An Act to establish and provide for the Government of the Province of Alberta.

(*Assented to 20th July*, 1905.)

Whereas in and by the British North America Act, 1871, being chapter 28, of the Acts of the Parliament of the United Kingdom passed in the session thereof held in the 34th and 35th years of the reign of her late Majesty Queen Victoria, it is enacted that the Parliament of Canada may from time to time establish new provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such province and for the passing of laws for the peace, order and good government of such province and for its representation in the said Parliament of Canada.

And whereas it is expedient to establish as a province the territory hereinafter described, and to make provision for the government thereof and the representation thereof in the Parliament of Canada; Therefore, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as the Alberta Act.

* * * * * * *

3. The provisions of the British North America Acts, 1867 to 1886, shall apply to the province of Alberta in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion, as if the said province of Alberta had been one of the provinces originally united, except in so far as varied by this Act and except such provisions as

JOINT APPENDIX.

The Alberta Act 4-5 Edw. VII, Chapter 3. —*continued.*

are in terms made, or by reasonable intendment may be held to be, specially applicable to or only to affect one or more and not the whole of the said provinces.

4. The said province shall be represented in the Senate of Canada by four members : Provided that such representation may, after the completion of the next decennial census, be from time to time increased to six by the Parliament of Canada.

* * * * * * *

8. The Executive Council of the said province shall be composed of such persons, under such designations, as the Lieutenant-Governor from time to time thinks fit.

* * * * * * *

10. All powers, authorities and functions which under any law were before the coming into force of this Act vested in or exercisable by the Lieutenant-Governor of the North-West Territories, with the advice, or with the advice and consent, of the Executive Council thereof, or in conjunction with that Council or with any member or members thereof or by the said Lieutenant-Governor individually, shall, so far as they are capable of being exercised after the coming into force of this Act in relation to the government of the said province, be vested in and shall or may be exercised by the Lieutenant-Governor of the said province, with the advice or with the advice and consent of, or in conjunction with, the Executive Council of the said province or any member or members thereof, or by the Lieutenant-Governor individually, as the case requires subject nevertheless to be abolished or altered by the legislature of the said province.

No. 30. An Act to confer the Electoral Franchise upon women. 8-9 George V., Chapter 20.

No. 30

Statutes of Canada, 1918, 8-9 George V, Chapter 20.

An Act to confer the Electoral Franchise upon Women.

(Assented to 24th May, 1918.)

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

Women to be entitled to vote.

1. (1) Every female person shall be entitled to vote at a Dominion election who—

Qualifications.

(a) is a British subject;

(b) is of the full age of twenty-one years and upwards;

(c) possesses the qualifications which would entitle a male person to vote at a Dominion election in the province in which said female person seeks to vote : Provided that a married woman or an unmarried daughter living with her father or mother shall be deemed to have any necessary qualification as to property or income if the husband or either of the parents is so qualified.

When a woman is a British subject for purposes of this Act.

(2) For the purposes of this Act a female person shall be deemed to be a British subject—

(a) if she was born a British subject and is unmarried or is married to a British subject, and has not become a subject of any foreign power; or

No. 30. An Act to confer the Electoral Franchise upon women. 8-9 George V., Chapter 20 —*continued.*

(b) if she has herself been personally naturalized as a British subject, and has not since become a subject of a foreign power; or

(c) if she has become a British subject by marriage, or by the naturalization as a British subject of her parent while she was a minor, and in either case has done nothing (other than in the second case by marriage) to forfeit or lose her status as a British subject, and obtains and presents to the official or officials in charge of the preparation or revision of the voters' lists of the constituency while he is so engaged in such preparation or revision a certificate under the signature of a judge of any court of record or of any superior court, under the seal of the said court, certifying that such female person is of the full age of twenty-one years has resided in Canada a sufficient length of time, and is possessed of all requirements necessary to entitle her, if unmarried, to become naturalized as a British Subject, and that she has taken the oath of allegiance to His Majesty; or

(d) if, notwithstanding she is married to an alien, she was at the time of such marriage a British subject by birth and has not herself sworn allegiance to any foreign power: Provided, however, that this section shall not apply to the wife of an alien enemy.

Act to be construed one with the Dominion Elections Act and The Wartime Elections Act.

2. This Act shall be construed as one with the Dominion Elections Act, chapter six of the Revised Statutes of Canada, 1906, and The War-time Elections Act, chapter thirty-nine of the statutes of 1917, and in each of the said Acts the expression, "person" or "male person," or any similar expression, shall include a female person, unless a different meaning is required by the context or by the terms of this Act.

New voters' lists for by-elections in 1918 not required.

3. Notwithstanding anything in this Act contained it shall not be necessary by reason of any of the provisions thereof, to prepare new voters' lists for the purpose of any by-election to be held before the first day of January, 1919, and in the case of any such by-election any lawful lists available therefor may be used for the purposes of such by-election to the same extent and with the same validity as if this Act had not been passed.

No. 31

Statutes of Canada (1920), 10-11 George V, Chapter 46.

No. 31. Dominion Elections Act. 10-11 George V., Chapter 46.

An Act respecting the Election of Members of the House of Commons and the Electoral Franchise.

(*Assented to 1st July*, 1920.)

* * * * * * *

Qualifications of Candidates.

38. Except as in this Act otherwise provided, any British subject, male or female, who is of the full age of twenty-one years, may be a candidate at a Dominion election. (Sec. 69.)

JOINT APPENDIX.

No. 32. Dominion Elections Act. Rev Stats., Canada, 1927, Chapter 53.

No. 32

Dominion Elections Act, Revised Statutes of Canada, 1927, Chapter 53.

An Act respecting the Election of Members of the House of Commons and the Electoral Franchise.

* * * * * * *

Electors, qualifications for.

29. Save as in this Act otherwise provided, every person, male or female, shall be qualified to vote at the election of a member, who, not being an Indian ordinarily resident on an Indian reservation—

(a) is a British subject by birth or naturalization; and

(b) is of the full age of twenty-one years; and

(c) has ordinarily resided in Canada for at least twelve months and in the electoral district wherein such person seeks to vote for at least two months immediately preceding the issue of the writ of election;

(d) provided, however, that any Indian who has served in the naval, military or air forces of Canada in the war declared by His Majesty on the fourth day of August One thousand nine hundred and fourteen, against the Empire of Germany and, subsequently, against other powers, shall be qualified to vote, unless such Indian is otherwise disqualified under paragraphs (a), (b) and (c) of this section.

Change of elector's residence before general elections not ground for disqualification.

2. At a general election, any person who would have been qualified to vote in an electoral district if he had continued to reside therein shall remain so qualified to vote in such electoral district notwithstanding that he has, within the two months immediately preceding the date of the issue of the writ, changed his place of residence, from such electoral district to another.

He may vote where his name is on list.

3. If the name of any voter is on the voters' list of the district in which he previously resided and conditions prevent him from having his name placed on the voters' list in the district wherein he is resident at the time of polling, he may cast his vote in the constituency where his name is inscribed on the voters' list. 1920, c. 46, s. 29; 1922, c. 20, s.1.

* * * * * * *

Qualifications of Candidates.

Qualification of candidates.

38. Except as in this Act otherwise provided any British subject, male or female, who is of the full age of twenty-one years, may be a candidate at a Dominion election. 1920, c. 46, s. 38.

No. 33

Revised Statutes of Canada, 1927, Chapter 147.

No. 33. The Senate and House of Commons Act. Rev. Stats., Canada, 1927, Chapter 147.

An Act respecting the Senate and House of Commons.

* * * * * * *

Privileges and Immunities of Members and Officers.

Privileges, etc., of Senate and House of Commons defined.

4. The Senate and the House of Commons respectively, and the members thereof respectively, shall hold, enjoy and exercise—

(a) such and the like privileges, immunities and powers as, at the time of the passing of the *British North America Act*, 1867, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof, so far as the same are consistent with and not repugnant to the said Act; and

(b) such privileges, immunities and powers as are from time to time defined by Act of the Parliament of Canada, not exceeding those at the time of the passing of such Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof respectively. R.S., c. 10, s. 4.

No. 34

The Interpretation Act, Revised Statutes of Canada, 1927, Chapter 1.

No. 34. The Interpretation Act Rev. Stats., Canada, 1927 Chapter 1.

An Act respecting the Form and Interpretation of Statutes.

* * * * * * *

Rules of Construction.

General rules.

31. In every Act, unless the contrary intention appears:—

* * * * * * *

Masculine includes feminine.

(i) words importing the masculine gender include females.

No. 35

Statutes of the Colony of British Columbia, 1871, No. 3.

No. 35. An Act to amend and alter the Constitution of the Colony of British Columbia. Victoria, No. 3.

An Act to amend and alter the Constitution of this Colony.

[14th February, 1871.]

Preamble.

Whereas negotiations have taken place between the Government of this Colony and the Government of the Dominion of Canada, respecting the admission of this Colony into the Union or Dominion of Canada, constituted by the "British North America Act, 1867," and Terms for Union have been offered by the Government of the Dominion of Canada to the Government of this Colony, which Terms have been agreed to by the Legislative Council of this Colony, and have been embodied in

an Address, pursuant to the provisions of the "British North America Act, 1867," in that behalf, from the Legislative Council of this Colony, in the present Session, to Her Majesty the Queen:

And whereas the following provision is inserted in the Terms so offered and agreed to as aforesaid, viz.:—"The Constitution of the Executive authority and of the Legislature of British Columbia shall, subject to the provisions of the 'British North America Act, 1867,' continue as existing at the time of the Union, until altered under the authority of the said Act, it being at the same time understood that the Government of the Dominion will readily consent to the introduction of Responsible Government when desired by the Inhabitants of British Columbia; and it being likewise understood to be the intention of the Governor of British Columbia, under the authority of the Secretary of State for the Colonies, to amend the existing Constitution of the Legislature, by providing that a majority of its Members shall be elective":

And whereas since the time when those Terms were offered, Her Majesty, by an Order in Council, bearing date the 9th day of August, 1870, and made in pursuance of the "British Columbia Act, 1870," has established in this Colony the present Legislative Council, consisting of Nine Elective and Six Non-Elective Members, and has declared that it shall be lawful for the Governor, with the advice and consent of the said Council, to make Laws for the peace, order and good government of this Colony:

And whereas the Legislature now established in this Colony is a Representative Legislature, within the meaning of an Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the Session holden in the 28th and 29th years of the Reign of Her present Majesty, intituled "An Act to remove doubts as to the validity of Colonial Laws," and has power to make Laws respecting the Constitution, Powers, and Procedure of such Legislature:

And whereas it is desirable that this Colony should enter into the Union with the Dominion of Canada with a Constitution altered in some respects to that at present subsisting, and with an enlarged Legislative Assembly consisting of wholly elective members:

Be it enacted by His Excellency the Governor of the said Colony of British Columbia, with the advice and consent of the Legislative Council thereof, as follows:—

* * * * * * *

Composition of Executive Council: Officers included in the first instance.

3. The Executive Council of British Columbia shall be composed of such persons as the Governor from time to time thinks fit, not exceeding five, and in the first instance shall include the following Officers, namely: the Colonial Secretary, the Attorney General, and the Chief Commissioner of Lands and Works.

No. 36

Statutes of British Columbia, 1916, Chapter 76.

No. 36. An Act to extend the Electoral Franchise to women. 6 George V., Chapter 76.

An Act to extend the Electoral Franchise to Women.

[31st May, 1916.]

Preamble. Whereas it is expedient that the electoral franchise be extended to women upon the same terms as it is now exercised by men: Now, therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Short title. 1. This Act may be cited as the "Woman Suffrage Act."

Franchise extended to women. 2. (1) Upon the coming into force of this Act, it shall be lawful for females to have their names placed upon the register of voters for an electoral district, and to vote at any election of members to serve in the Legislative Assembly, upon the same terms, in the same manner, and subject to the same conditions as males; and thereafter females shall be capable of being elected as members of the Legislative Assembly upon the same terms, in the same manner, and subject to the same conditions as males.

Amendment of register of voters on change of name through marriage. (2) Where the name of any female registered voter is changed in consequence of her marriage, it shall be lawful for the Registrar of Voters to cause the register of voters to be amended accordingly.

Coming into force of Act. 3. This Act shall come into force on the first day of March, 1917, on Proclamation of the Lieutenant-Governor in Council pursuant to the provisions of the "Prohibition and Woman Suffrage Referendum Act," being an Act of the present session.

No. 37

Statutes of British Columbia, 1920, Chapter 17.

No. 37. An Act to amend the "Constitution Act." 10 George V., Chapter 17.

An Act to amend the "Constitution Act."

(*Assented to* 17*th April*, 1920.)

* * * * * * *

4. Section 30 of said Chapter 44 (of the "Revised Statutes of British Columbia, 1911") is amended by adding thereto the following subsections:—

* * * * * * *

(3) Women shall be capable of being elected as members of the Legislative Assembly upon the same terms, in the same manner and subject to the same conditions as men.

No. 38

Revised Statutes of British Columbia, 1924, Chapter 45.

No. 38. An Act respecting the Constitution of the Province of British Columbia. Rev. Stats. 1924. Chapter 45.

An Act respecting the Constitution of the Province.

* * * * * * *

9. (1) The Executive Council of British Columbia shall be composed of such persons as the Lieutenant Governor from time to time thinks fit to appoint, not exceeding twelve, including the following officials: Provincial Secretary, Attorney-General, Minister of Lands, Minister of Finance, Minister of Agriculture, Minister of Mines, Minister of Public Works, Minister of Railways, Minister of Labour, Minister of Industries, Minister of Education and President of the Council, of whom not more than eight shall receive any salary.

* * * * * * *

21. Women shall be capable of being elected as members of the Legislative Assembly upon the same terms, in the same manner, and subject to the same conditions as men. (1920, Ch. 17, s. 4.)

No. 39

Statutes of Alberta, 1916, Chapter 5.

No. 39. The Equal Suffrage Statutory Law Amendment Act. 6 George V., Chapter 5.

The Equal Suffrage Statutory Law Amendment Act.

(*Assented to* 19*th April*, 1916.)

* * * * * * *

2. Notwithstanding any provisions therein contained women shall be upon an absolute equality with and have the same rights and privileges and be subject to the same penalties and disabilities as men in the following Acts . . . :—

(1) The Alberta Election Act, being Cap. 3, of the Statutes of Alberta, 1909, and Amendments thereto.

* * * * * * *

(9) An Act respecting the Legislative Assembly of Alberta, being Cap. 2 of the Statutes of Alberta, 1909, and Amendments thereto.

No. 40

Commission, Passed Under the Great Seal of Great Britain, Appointing James Murray to be Captain General and Governor in Chief of the Province of Quebec.

No. 40. Extract from Commission to James Murray, 21st November, 1763.

[21 Nov. 1763]

George the Third by the grace of God of Great Britain, France and Ireland, King Defender of the Faith and so forth; To our Trusty and well beloved James Murray Esquire, Greeting.

Commission to be Captain-General and Governor in

We, reposing especial trust and Confidence in the prudence, Courage and loyalty of you the said James Murray, of our

chief of the Province.

especial grace, Certain Knowledge and meer motion, have thought fit to Constitute and appoint, and by these presents, do Constitute and appoint you, the said James Murray to be our Captain General and Governor in Chief in and over our Province of Quebec in America.

* * * * * * *

Boundaries of the Province.

Bounded on the Labrador Coast by the River Saint John, and from thence by a line drawn from the head of that River through the lake Saint John to the south end of Lake Nepissin, from whence the said line Crossing the River Saint Lawrence and the lake Champlain in Forty-five Degrees of Northern Latitude, passes along the high lands which Divide the Rivers that empty themselves into the said River Saint Lawrence from those which fall into the sea, and also along the the north Coast of the Bay des Chaleurs and the Coast of the Gulfts of Saint Lawrence to Cape Rosiers, and from thence, Crossing the mouth of the River Saint Lawrence by the west end of the Island of Anticosty terminates at the aforesaid River Saint John.

The Governor is to act according to the powers and directions of this Commission and according to the King's Instructions.

Together with all the Rights members, and appurtenances whatsoever thereunto belonging.

And we, do hereby require and Command you to do and execute all things in due manner that shall belong to your said Command and the Trust we have reposed in you, according to the several powers and Directions granted or appointed You by this present Commission and the instructions and authorities herewith given unto you, Or by such other powers instructions or authorities as shall at any time hereafter be granted or appointed under our Signet and Sign Manual, or by our Order in our Privy Council, and according to such reasonable laws and statutes as shall hereafter be made and agreed upon by you with the advice and Consent of the Council and Assembly of our said Province under your Government, in such manner and form as is hereinafter expressed.

And our will and pleasure is that You the said James Murray do after the publication of these our Letters patent, and after the appointment of our Council for our said province in such manner and form as prescribed in the instructions which you will herewith receive, in the first place take the oaths appointed to be taken, etc., etc.

* * * * * * *

And we, do hereby give and grant unto you the said James Murray full power and authority with the advice and Consent of our said Council to be appointed as aforesaid, so soon as the Situation and circumstances of our said Province under your Government will admit thereof, and when & as often as need shall require, to summon and call General Assemblies of the Freeholders and Planters, within your Government, in such manner as you in your Direction shall judge most proper, or

JOINT APPENDIX.

No. 40. Extract from Commission to James Murray, 21st November, 1763 —*continued.*

according to such further powers, Instructions, and authorities as shall be at any time hereafter granted or appointed you under our Signet and Sign Manual, or by our Order in Our Privy Council.

And our will and pleasure is, That the persons thereupon duly Elected by the Major Part of the Freeholders of the respective parishes, or precincts, and so returned, shall before their sitting take the oath mentioned in the said act intitled (an act for the Further security of his Majesty's person & Government and the succession of the Crown in the Heirs of the late princess Sophia being protestants, and for extinguishing the hopes of the pretended Prince of Wales and his open and secret abettors) as also make and subscribe the fore-mentioned declaration : Which oaths & declaration you shall Commissionate fit persons under the publick seal of that our province, to tender and administer unto them and untill the same shall be so taken and subscribed, no person shall be Capable of sitting though Elected.

And we do hereby declare that the persons so Elected & Qualified shall be called the Assembly of that our province of Quebec; and that you the said James Murray, by & with the advice and Consent of our said Council and Assembly, or the major part of them, shall have full power & authority, to make, Constitute or Ordain, Laws Statutes & ordinances for the publick peace, Welfare, & good Government of our said province, and of the people and Inhabitants thereof, and such others as shall resort thereunto and for the benefit of us our heirs & successors : which said Laws Statutes and Ordinances are not to be repugnant, but as near as may be agreeable, to the laws & Statutes of this our Kingdom of Great Britain.

* * * * * * *

In Witness Whereof, We have Caused these our Letters to be made patent, Witness our Self at Westminster the Twenty first Day of November, in the fourth Year of our Reign.

By Writ of privy Seal,

(Signed)

YORKE & YORKE.

Recorded at the Treasury Chambers Whitehall the 28th Day of November 1763. (Signed)

T. TOMKYNS.

Recorded in the Registry Office in Quebec the 7th Day of June 1766. (Signed)

J. GOLDFRAP D. Reg.

No. 41.
Extract from Instructions for James Murray, 7th December, 1763.

[7 Dec. 1763]

No. 41

Instructions, Passed Under the Royal Sign Manual and Signet, for James Murray as Captain General and Governor in Chief of the Province of Quebec and the Territories dependent thereupon.

GEORGE R.
(L.S.)

Instructions to Our Trusty and Well-beloved JAMES MURRAY, ESQ., Our Captain-General and Governor-in-Chief in and over Our Province of Quebec in America, and of all Our Territories dependent thereupon.

Given at Our Court at St. James's the Seventh Day of December 1763 in the Fourth Year of Our Reign.

1. With these Our Instructions You will receive Our Commission under Our Great Seal of Great Britain, constituting You Our Captain-General and Governor-in-Chief in and over Our Province of Quebec in America, * * * * * * * * You are therefore to take upon You the Execution of the Office and Trust We have reposed in You, and the Administration of Government, and to do and execute all Things in due manner that shall belong to your Command, according to the several Powers and Authorities of Our said Commission under Our Great Seal of Great Britain, and these Our Instructions to You, or according to such further Powers and Instructions as shall at any Time hereafter be granted or appointed You under Our Signet and Sign Manual, or by Our Order in Our Privy Council.

2. And You are, with all due Solemnity, to cause Our said Commission to be published at Quebec, which We do appoint to be the Place of your Residence and the principal Seat of Government, in the Districts of Montreal and Trois Rivieres, and in such other parts of your Government as You shall think necessary and expedient, as soon as possible which being done, You are in the next place to nominate and establish a Council for Our said Province, to assist You in the Administration of Government, which Council, is, for the present, to be composed of the Persons, whom We have appointed to be Our Lieutenant-Governors of Montreal and Trois Rivieres, Our Chief Justice of Our said Province, and the Surveyor-General of Our Customs in America for the Northern District, and Eight other Persons to be chosen by You from amongst the most considerable of the Inhabitants of, or Persons of Property in Our said Province; which Persons so nominated and appointed by You as aforesaid (Five of which We do hereby appoint to be a Quorum), are to be Our Council for Our said Province, and to have and enjoy all the Powers, Privilege and Authority usually exercised and enjoyed by the Members of Our Councils in Our other Plantations, and also such others as are contained in Our said Commission under Our Great Seal of Great Britain, and in these Our Instructions to You; and they shall meet together at such Time or Times, Place or Places, as You, in your Discretion, shall think necessary and expedient: It is nevertheless Our Will and Pleasure, that the said Chief Justice, or Surveyor-General of Our Customs, shall not be capable of taking the Administration of the Government upon the Death or Absence of You Our Governor, or the Commander-in-Chief for the Time being.

JOINT APPENDIX.

No. 41. Extract from Instructions for James Murray, 7th December, 1763 —*continued.*

3. And You are forthwith to call Our said Council together, or such of them as can be conveniently assembled, and to cause Our said Commission to You to be read at such Meeting; which being done, You shall then take yourself, and also administer to Our Lieutenant-Governors respectively, and to the Members of Our said Council, the Oaths mentioned in an Act, passed in the first Year of the Reign of His Majesty King George the First, intituled, "An Act for the further Security of His Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors"—as also to make and subscribe, and cause them to make and subscribe the Declaration mentioned in an Act of Parliament made in the Twenty-fifth Year of the Reign of King Charles the Second, intituled, "An Act for preventing Dangers which may happen from Popish Recusants." And You and every one of Them are likewise to take an Oath for the due Execution of your and their Places and Trusts, with regard to your and their equal and impartial Administration of Justice; and You are also to take the Oath required by an Act passed in the seventh and eighth Years of the Reign of King William the Third to be taken by Governors of Plantations, to do their utmost that the Laws relating to the Plantations be observed.

4. And You are forthwith to transmit unto Our Commissioners for Trade and Plantations, in order to be laid before Us for Our Approbation or Disallowance, the Names of the Members of the Council so to be appointed by You, as aforesaid; as also a List of the Names and Characters of Eight other Persons in Our said Province, whom You judge properly qualified to serve in that Station; to the End that, if any of the Persons appointed by You, as aforesaid, shall not be approved and confirmed by Us, under Our Signet and Sign Manual, the Place or Places of such Persons so disapproved may be forthwith supplied from the said List, or otherwise, as We shall think fit.

5. And if it shall at any time happen, that, by the Death, Departure out of Our said Province, Suspension of any of Our said Councillors, or otherwise, there shall be a Vacancy in Our said Council, Our Will and Pleasure is, that You signify the same to Our Commissioners for Trade and Plantations by the first Opportunity, that We may, under Our Sign Manual, constitute and appoint Others in their Stead; to which End, You are, whenever such Vacancy happens, to transmit to Our said Commissioners, in order to be laid before Us, the Names of three or more Persons, Inhabitants of Our said Province, whom You shall esteem best qualified for such Trust.

6. But that Our Affairs may not suffer for want of a due Number of Councillors, if ever it shall happen, that there be less than Seven residing in Our said Province, We do hereby give and grant unto you, the said James Murray, full Power and Authority to chuse as many Persons out of the principal Inhabitants of Our said Province, as will make up the full Number of the Council to be Seven, and no more; which Persons, so chosen and appointed by You, shall be, to all Intents and Purposes, Councillors in Our said Province, till either they shall be confirmed by Us, or by the Nomination of Others by Us, under Our Signet and Sign Manual, Our said Council shall have Seven or more Persons in it.

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No. 41. Extract from Instructions for James Murray, 7th December, 1763 —*continued.*

11. And whereas it is directed, by Our Commission to You under Our great Seal, that so soon as the Situation and Circumstances of Our said Province will admit thereof, You shall, with the Advice of Our Council, summon and call a General Assembly of the Freeholders in Our said Province; You are therefore, as soon as the more pressing Affairs of Government will allow to give all possible attention to the carrying this important Object into Execution: But, as it may be impracticable for the present to form such an Establishment, You are in the mean time to make such Rules and Regulations, by the Advice of Our said Council, as shall appear to be necessary for the Peace, Order and good Government of Our said Province, taking Care that nothing be passed or done, that shall any ways tend to affect the Life, Limb or Liberty of the subject, or to the imposing any Duties or Taxes; and that all such Rules and Regulations be transmitted to Us, by the first Opportunity after they are passed and made, for Our Approbation or Disallowance. And it is Our Will and Pleasure, that when an Assembly shall have been summoned and met, in such manner as You, in your Discretion, shall think most proper, or as shall be hereafter directed and appointed, the following Regulations be carefully observed in the framing and passing all such Laws, Statutes and Ordinances, as are to be passed by You, with the Advice and Consent of Our said Council and Assembly; Viz.:

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No. 42

Instructions, Passed Under the Royal Sign Manual and Signet, for Guy Carleton as Captain General and Governor in Chief of the Province of Quebec and the Territories dependent thereupon.

No. 42. Extract from Instructions for Guy Carleton, 3rd January, 1775.

Instructions to Our Trusty and Wellbeloved Guy Carleton Esquire, Our Captain General and Governor in Chief in, and over Our Province of Quebec in America and of all Our Territories dependent thereupon. Given at Our Court at St. James's the Third Day of January, 1775. In the Fifteenth year of Our Reign.

3 Jan., 1775.

First, With these Our Instructions you will receive Our Commission under Our Great Seal of Great Britain, constituting you Our Captain General and Governor in Chief in, and over Our Province of Quebec in America, and all Our Territories thereunto belonging, as the said Province and Territories are bounded and described in, and by the said Commission. You are therefore to take upon you the Execution of the Office and Trust We have Reposed in you, and the Administration of the Government, and to do and execute all things in due manner, that shall belong to your Command according to the several Powers and Authorities of our said Commission under Our Great Seal of Great Britain, and these Our Instructions to you, or according to such further Powers and Instructions, as shall at any time hereafter be granted or appointed you under Our Signet and Sign Manual,

JOINT APPENDIX.

No. 42. Extract from Instructions for Guy Carleton, 3rd January, 1775 —*continued.*

or by Our Order in Our Privy Council; and you are to call together at Quebec (Which We do hereby appoint to be the place of your ordinary Residence, and the principal Seat of Government), the following persons whom We do hereby, with the Advice of Our Privy Council, constitute and appoint to be Our Council for the Affairs of Our said Province of Quebec, and the Territories thereunto belonging; Viz. Hector Theophilus Cramahé Esquire, Our Lieutenant Governor of Our said Province or Our Lieutenant Governor of Our said Province for the time being, Our Chief Justice of Our Province for the time being, Hugh Finlay, Thomas Dunn, James Cuthbert, Colin Drummond, Francis Les Vesques; Edward Harrison, John Collins, Adam Mabean,—De Lery,—St. Ours, Picodyde Contrecoeur, Our Secretary of Our said Province for the time being, George Alsopp,—De La Naudiére, La Corne St. Luc, Alexander Johnstone, Conrad Gugy,—Bellestres,—Rigauville, and John Fraser Esquires; All and every of which Person and Persons shall hold and enjoy his and their Office and Offices of Councillor or Councillors for Our said Province of Quebec, for and during Our Will and Pleasure, and his or their Residence within Our said Province, and not otherwise.

2. It is Our further Will and Pleasure, that any five of the said Council shall constitute a Board of Council for transacting all Business, in which their Advice and consent may be requisite, Acts of Legislation only excepted (in which Case you are not to act without a Majority of the whole) And it is Our further Will and Pleasure, that the Members of Our said Council shall have and enjoy all the Powers, Privileges and Emoluments enjoyed by the Members of Our Councils in Our other Plantations; and also such others as are contained and directed in Our said Commission under Our Great Seal of Great Britain, and in these Our Instructions to you; and that they shall meet together at such time and times, place and places, as you in your discretion shall think necessary, except when they meet for the purpose of Legislation, in which Case they are to be assembled at the Town of Quebec only.

* * * * * * *

5. And that We may be always informed of the Names and Characters of Persons fit to supply the Vacancies, which may happen in Our said Council, You are from time to time to transmit to Us, by one of Our Principal Secretaries of State, the names and Characters of such persons, Inhabitants of Our said Colony, whom you shall esteem the best qualified for that Trust; And you are also to transmit a duplicate of the said Account to Our Commissioners for Trade and Plantations, for their Information.

6. And if it shall at any time happen, that by the death or departure out of Our said Province, of any of Our said Councillors, there shall be a Vacancy in Our said Council, Our Will and Pleasure is; that you signify the same to Us by one of Our Principal Secretaries of State, and to Our Commissioners for Trade and Plantations, by the first Opportunity, that we may by Warrant under Our Signet and Sign Manual, and with the Advice of Our Privy Council, constitute and appoint others in their stead.

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No. 43

No. 43. Extract from Instructions for Lord Dorchester, Governor of Upper Canada, 16th September, 1791.

16 Sept. 1791. C. O. Instructions, Quebec, 1786-1791.

Extracts from Instructions Passed Under the Royal Sign Manual and Signet for Lord Dorchester, Governor of Upper Canada.

FROM COLONIAL OFFICE, LONDON.

[L.S.]
GEORGE R.

Instructions to Our Right Trusty and Wellbeloved Guy, Lord Dorchester, Knight of the Most Honourable Order of the Bath, Our Captain General and Governor in Chief in and over Our Province of Lower Canada; Given at Our Court at St. James's, the Sixteenth day of September, 1791, In the Thirty-first Year of Our Reign.

1st. With these Our Instructions you will receive Our Commission under Our Great Seal of Great Britain constituting you Our Captain General and Governor in Chief in and over Our Provinces of Upper Canada and Lower Canada, bounded as in Our said Commission is particularly expressed. In the execution therefore of so much of the Office and Trust we have reposed in you as relates to Our Province of Upper Canada, you are to take upon you the Administration of the Government of the said Province, and to do and execute all things belonging to your Command according to the several Powers and Authorities of Our said Commission under Our Great Seal of Great Britain and of the Act passed in the present year of Our Reign therein recited, and of these Our Instructions to you according to such further Powers and Instructions as you shall at any time hereafter receive under Our Signet and Sign Manual or by Our Order in Our Privy Council.

* * * * * * *

10. And Whereas We have thought fit to declare by Our Order in Council bearing date the 24th day of August last, that the Division of Our Province of Quebec shall commence on the——day of December next, and that from thenceforth the Lands and Territories therein described shall be two separate Provinces and be called the Province of Upper Canada and the Province of Lower Canada; you are, as soon as may be after such division shall take place, to summon by an Instrument under the Great Seal of Our Province of Upper Canada, to the Legislative Council of that Province, the following persons, whom We hereby authorize and direct You, so to summon to Our said Legislative Council of Upper Canada, viz., William Osgoode, Richard Duncan, William Robertson, Robert Hamilton, Richard Cartwright Junior, John Munro, Alexander Grant and Peter Russell, Esquires.

11. And Whereas by the aforesaid recited Act passed in the present year of Our Reign, it is provided that the Seats of the Members of Our Legislative Council shall become vacant in certain Cases mentioned in the said Act, It is Our Will and Pleasure, that if any Member of Our said Legislative Council shall at any time leave Our said Province and reside out of the same, you shall report the same to Us by the first opportunity through one of Our Principal Secretaries of State—And you are also in like manner to report whether such member of the said Council is absent by your per-

JOINT APPENDIX.

No. 43. Extract from Instructions for Lord Dorchester, Governor of Upper Canada, 16th September, 1791 —*continued.*

mission, or by the Permission of Our Lieutenant Governor or Commander in Chief of the said Province for the time being; and you are also in like manner; to report, if it shall come to your knowledge, that any such Member shall at any time take or have taken any Oath of Allegiance or Obedience to any foreign Prince or Power, or shall be attainted for treason in any court of Law within any of Our Dominions, that we may take measures thereupon as We shall think fit—And you are to take especial Care that the several Provisions of the said Act respecting the several Cases in which Persons may or may not be entitled to receive Writs of Summons to the said Legislative Council, or to hold their Places therein shall be duly executed.

* * * * * * *

13. And Whereas We have by Our said Commission given you full Power and Authority subject as therein is specified, and to these Our Instructions in that behalf to issue Writs of Summons and Election, and to call together the Legislative Council and Assembly of Our said Province of Upper Canada, and for the purpose of electing the Members of the Assembly of Our said Province of Upper Canada, have also given you full power and Authority to issue a Proclamation dividing Our said Province of Upper Canada into Districts or Counties, or Circles, and Towns or Townships, and declaring and appointing the number of Representatives to be chosen by each of such Districts or Counties, or Circles and Towns or Townships; now, Our Will and Pleasure is, that you shall issue such Proclamation as soon as may be, allowing nevertheless a reasonable time between the issuing thereof and the time of issuing the Writs of Summons and Election above mentioned.

No. 44

No. 44. Extract from Instructions for Lord Dorchester, Governor of Lower Canada, 16th September, 1791.

16 Sept. 1791. C. O. Instructions, Quebec, 1786-1791.

Extracts from Instructions Passed Under the Royal Sign Manual and Signet for Lord Dorchester, Governor of Lower Canada.

FROM COLONIAL OFFICE, LONDON.

[L.S.]
GEORGE R.

Instructions to Our Right Trusty and Wellbeloved Guy, Lord Dorchester, Knight of the Most Honourable Order of the Bath, Our Captain General and Governor in Chief in and over Our Province of Lower Canada; Given at Our Court at St. James's, the Sixteenth day of September, 1791. In the Thirty-first Year of Our Reign.

1st. With these Our Instructions you will receive Our Commission under Our Great Seal of Great Britain constituting you Our Captain General and Governor in Chief in and over Our Provinces of Upper Canada and Lower Canada, bounded as in Our said Commission is particularly expressed. In the Execution therefore of so much of the Office and Trust

No. 44. Extract from Instructions for Lord Dorchester, Governor of Lower Canada, 16th September, 1791 —*continued.*

We have reposed in you as relates to Our Province of Lower Canada, you are to take upon you the Administration of the Government of the said Province, and to do and execute all things belonging to your Command according to the several Powers and Authorities of Our said Commission under Our Great Seal of Great Britain and of the Act passed in the present year of Our Reign therein recited, and of these Our Instructions to you and according to such further Powers and Instructions as you shall at any time hereafter receive under Our Signet and Sign Manual or by Our Order in Our Privy Council.

* * * * * * *

10. And Whereas We have thought fit to declare by Our Order in Council bearing date the 24th day of August last, that the Division of Our Province of Quebec shall commence on the——day of December next, and that from thenceforth the Lands and Territories therein described shall be two separate Provinces and be called the Province of Upper Canada and the Province of Lower Canada; you are, as soon as may be after such Division shall take place, to summon by an Instrument under the Great Seal of Our Province of Lower Canada, to the Legislative Council of that Province, the following persons whom We hereby authorize and direct you so to summon to our said Legislative Council of Lower Canada; viz. William Smith, J. G. Chaussegros de Léry, Hugh Finlay, Picotté de Belestre, Thomas Dunn, Paul Roc de St. Ours, Edward Harrison, Francis Baby, John Collins, Joseph de Longueuil, Adam Mabane, Charles de Lanaudière, George Pownall, R. Anable de Boucherville, and John Frazer, Esqrs.

11. And Whereas by the aforesaid recited Act passed in the present year of Our Reign, it is provided that the Seats of the Members of Our Legislative Council shall become vacant in certain Cases mentioned in the said Act, It is Our Will and Pleasure, that if any Member of Our said Legislative Council shall at any time leave Our said Province and reside out of the same, you shall report the same to Us by the first opportunity through one of Our Principal Secretaries of State—And you are also in like manner to report whether such member of the said Council is absent by your permission, or by the Permission of Our Lieutenant Governor or Commander in Chief of the said Province for the time being; and you are also in like manner, to report, if it shall come to your knowledge, that any such Member shall at any time take or have taken any Oath of Allegiance or Obedience to any foreign Prince or Power, or shall be attainted for treason in any Court of Law within any of Our Dominions, that We may take measures thereupon as We shall think fit—And you are to take especial Care that the several Provisions of the said Act respecting the several Cases in which Persons may or may not be entitled to receive Writs of Summons to the said Legislative Council, or to hold their Places therein shall be duly executed.

* * * * * * *

13. And Whereas We have by Our said Commission given you full Power and Authority subject as therein is specified, and to these Our Instructions in that behalf to issue Writs of Summons and Election, and to call together the Legislative Council and Assembly of Our said Province of

JOINT APPENDIX.

No. 44. Extract from Instructions for Lord Dorchester, Governor of Lower Canada, 16th September, 1791. —*continued.*

Lower Canada, and for the purpose of electing the Members of the Assembly of Our said Province of Lower Canada, have also given you full power and Authority to issue a Proclamation dividing Our said Province of Lower Canada into Districts or Counties, or Circles, and Towns or Townships, and declaring and appointing the number of Representatives to be chosen by each of such Districts or Counties, or Circles and Towns or Townships; now, Our Will and Pleasure is, that you shall issue such Proclamation as soon as may be, allowing nevertheless a reasonable time between the issuing thereof and the time of issuing the Writs of Summons and Election above mentioned.

No. 45

No. 45. Letter from Judge Pierre Bedard to John Neilson, 1st July, 1820.

Letter from Judge Pierre Bedard to John Neilson, 1st July, 1820.

T. Riv. 1 Juillet 1820.

MON CHER MONSIEUR,

* * * * * * *

Ici l'élection du Bourg a été faite hier, Mr. Ogden et Mr. Badeaux ont été élus par les hommes et les femmes des T. Rivières car il faut que vous sachiez qu'ici les femmes votent comme les hommes indistinctement. Il n'y a que le cas ou elles sont mariées et ou le mari est vivant; alors c'est lui qui porte la voix comme chef de la communauté. Lorsque le mari n'a pas de bien et que la femme en a cest la femme qui vote. Le cas s'est présenté hier. J'ai actuellement un Domestique (qui s'appelle Michel) qui a achetté un emplacement dans la commune il y a un an ou deux et l'a fait batir. Les amis de sa femme lui avoient fait entendre que c'étoit la facon actuellement de passer les contrats au nom de la femme et que cela etoit plus seur, et Michel en consequence avoit fait passer le contrat au nom de sa femme. Il a été pour voter hier; on lui a demandé à faire le serment, il a declaré que l'emplacement etoit au nom de sa femme; en consequence on a envoyé chercher la femme qui a voté, pour Mr. Ogden et Mr. Ranvoisé le candidat malheureux.

* * * * * * *

Je vous souhaite une bonne santé et je suis
Mon cher Monsieur
Votre très Humble Servr
P. BEDARD.

J. NEILSON, Esquire,
Quebec.

No. 46

Petition of Electors of the Town of Quebec, 1828.

No. 46. Petition of Electors of the Town of Quebec, 4th December, 1828.

House of Assembly, Lower Canada.

December 4th, 1828.

Upper-Town of Quebec Election—Petition of Electors.

A Petition of divers Electors of the Upper Town of Quebec, whose names are thereunto subscribed, was presented to the House by Mr. Clouet, and the same was received and read; setting forth: That in July One thousand eight hundred and twenty-seven, William Fisher Scott was appointed Returning Officer for the election of two Citizens to represent in Parliament the Upper Town of Quebec, and that on the seventh of August a Poll was opened for that purpose near the Bishop's Palace: That the Candidates were Messrs. Joseph Remy Vallières de St. Réal, Andrew Stuart, George Vanfelson and Amable Berthelot: That the Polling was continued to the fifteenth August, when Messrs. Joseph Remy Vallières de St. Réal and Andrew Stuart were returned as duly elected: That, however, on the fourteenth, Mrs. Widow Laperrière did tender to Mr. Scott, the aforesaid Returning Officer, her vote, under oath, which Mr. Scott did refuse to take and enregister, whereupon a protest against such refusal was served. That the Petitioners allege that the following conclusions are to be drawn from this refusal: 1. That Mr. Scott acted contrary to law; 2. That the election of Mr. Stuart is void. That the Petitioners saw with extreme concern and alarm this refusal to take a vote tendered under oath, in the terms of law; and they allege that Mr. Scott had no discretion to exercise, that he was bound to follow the letter of the law, that he was not to sit as a judge of the law. That the Petitioners need hardly avert to the danger of such a power as Mr. Scott exercised. They will not place their dearest right, their elective franchise, in the hands of any one man, but especially they will not place it in the hands of an officer appointed by the Executive, and whose opinions and feelings under almost every circumstance must endanger the free choice of the people, and thus strike at the root of their liberties. That the Petitioners, therefore, deem this refusal to take a vote offered in the terms of the law, a most dangerous precedent, contrary to law, and tending to subvert their rights and constitutional privileges. That the Petitioners representation the second head, that, as the votes of the Widows were not taken, the return of Mr. Stuart is void, inasmuch as the free choice of all the electors was not made known. That the Petitioners may presume to trouble the House with the reasons which they deem conclusive as to the right of Widows to vote; neither in men nor women can the right to vote be a natural right: it is given by enactment. The only questions are, whether women could exercise that right well

JOINT APPENDIX.

No. 46. Petition of Electors of the Town of Quebec, 4th December, 1828 —*continued.*

and advantageously for the State, and whether they are entitled to it. That the Petitioners have not learned that there exist any imperfections in the minds of women which place them lower than men in intellectual power, or which would make it more dangerous to entrust them with the exercise of the elective franchise than with the exercise of the numerous other rights which the law as already given them. That, in point of fact, women duly qualified, have hitherto been allowed to exercise the right in question. That the Petitioners conceive that women are fairly entitled to the right, if they can exercise it well. That property and not persons is the basis of representation in the English Government. That the qualifications required by the Election Laws sufficiently shew this. That the same principle is carried into our own constitution. That the paying certain taxes to the State is also a basis of representation; for it is a principal contended for by the best Statesmen of England, that there can be "no taxation without representation." That the duties to be performed to the State may also give a right to representation. That in respect of property, taxation and duties to the State, the Widow, duly qualified by our Election Laws, is in every essential respect similarly situated with the man: her property is taxed alike with that of the man: she certainly is not liable to Militia duties, nor is the man above forty-five: she is not called to serve on a jury, nor is a physician: she cannot be elected to the Assembly, nor can a Judge or Minister of the Gospel. It may be alleged that nature has only fitted her for domestic life, yet the English Constitution allows a woman to sit on the Throne, and one of its brightest ornaments has been a woman. That it would be impolitic and tyrannical to circumscribe her efforts in society—to say that she shall not have the strongest interest in the fate of her country, and the security of her common rights: It is she who breathes into man with eloquent tenderness his earliest lessons of religion and of morals; and shall it be said that his country shall be forgotten, or that she shall mould his feelings while smarting under hateful laws. That the Petitioners allege that Widows exercise, generally, all the rights of men, are liable to most of the same duties towards the State, and can execute them as well. And they pray from the premises: 1. That the House declare Mr. Scott, the Returning Officer, guilty of malversation in office, and take measures to enforce the law in such case provided. 2. That the proceedings at the late Election for the Upper Town of Quebec, concluded on the fifteenth August One thousand eight hundred and twenty-seven, by the Return of Mr. Stuart, be declared void. The Petitioners further represent, that the Return of Mr. Stuart was made after a contestation of seven days, when all the votes, with a few exceptions, had been polled, and the Return was made in consequence of the small majority of nine votes. That the Petitioners are satisfied in their own

No. 46. Petition of Electors of the Town of Quebec, 4th December, 1828 —*continued.*

minds, that Mr. Berthelot had a considerable majority of legal votes. That the Petitioners would also represent, that extraordinary means of corruption by threats and actual dismission from employment, were used by the partizans of Mr. Stuart, both on the part of private individuals and on the part of Officers holding civil and military appointments; and they wish particularly to call the attention of the House to the fact, that it has come to their knowledge, that, in effect, owing to the interference of authorized overseers, the numerous class of voters labouring on His Majesty's works on the Cape came forward under the impression that they risked their employment if they did not vote for Mr. Stuart. That the Petitioners also beg leave to state, that the Records of the King's Bench, Quebec, will shew the conviction of one person, for voting without a right, whom some public-spirited individuals got punished as an example: they did not choose to prosecute about thirty more, of whom they still retain a list taken during the election. That the Petitioners also represent that, in their opinion, a fatal irregularity in keeping the Poll-book was practised when the votes were taken in another Poll-book than that of the Returning Officer, by a clerk not duly sworn. That the Petitioners, in conclusion, pray that the House may act upon the premises as it may deem fitting, and do as to justice appertaineth, in a case which the Petitioners conceive affect their liberties and dearest rights.

Mr. Clouet moved, seconded by Mr. Labrie, That the grounds and reasons of complaint set forth in the said Petition, if true, are sufficient to make void the election of the said Andrew Stuart, Esquire.

Ordered, That the consideration of the said motion be postponed till Tuesday next.

—*Journal of Assembly* 1828-29, *Vol.* 38, *pp.* 81-82.

No. 47

No. 47. Action of Petition of Electors of Town of Quebec, 11th March, 1829.

Action on Petition.

House of Assembly, Lower Canada.

March 11th, 1829.

On Motion of Mr. Clouet, seconded by Mr. Bourdages.

Lower-Town of Quebec Election deferred till next Session.

Ordered, That the further consideration of the Petition of divers Electors of the Upper Town of Quebec, against the Election and Return of Andrew Stuart, Esquire, be postponed till the next Session.

—*Journal of Assembly* 1828-29, *Vol.* 38, *p.* 680.

No. 48

Petition of Electors of Borough of William Henry, 1828.

House of Assembly, Lower Canada.

December 4th, 1828.

William Henry Election; Petition of Electors.

William Henry Election; Petition of Electors.

A Petition of divers Electors of the Borough of William Henry, whose names are thereunto subscribed, was presented to the House by Mr. Stuart, and the same was received and read; setting forth: That on the twenty-fifth day of July in the year of our Lord One thousand eight hundred and twenty-seven, a Poll was legally opened by Henry Crehassa, Esquire, Returning Officer, for the Election of a Burgess to serve as the Representative of the said Borough of William Henry, in the Provincial Assembly; James Stuart and Wolfred Nelson, Esquires, having offered themselves as Candidates: That although the said James Stuart was afterwards elected by a majority of legal votes, yet an apparent and colourable majority in favour of the said Wolfred Nelson, to the exclusion of the said James Stuart, was obtained by the admission of unqualified persons to vote, by various corrupt, illegal, criminal and unwarrantable means and practices destructive of the right of Election in the persons legally qualified to be Electors, and subversive of the constitutional franchise, rights and privileges of the Petitioners and of the whole body of Electors: That the Petitioners, as well in consideration of the justice due to the person who has been the object of their choice, as from regard to their own rights which have been grossly violated, deem it to be their duty to resist and oppose the illegal Return of the said Wolfred Nelson, and having recourse to the House for their interference, pray leave succinctly to represent the principal facts and grounds on which the said Return is to be considered an undue Return, and as being null and void in law: That many votes were given in favour of the said Wolfred Nelson, by persons without any qualification whatever, and whose want of qualification was even apparent on their own statements; such persons having been induced to vote and even to take the oaths to entitle them to do so, by criminal solicitations, and by assurances pressed upon them, before the Returning Officer himself, that they would incur no harm from such conduct, and that they would be guaranteed and indemnified by the said Wolfred Nelson and his partisans against all consequences: That the votes of women, married, unmarried, and in a state of widowhood, were illegally received for the said Wolfred Nelson, although the illegality of such votes was strenuously urged by the said James Stuart, and notwithstanding the opposition made

by him and by divers of the Electors to the admission of them: That in divers instances several persons were admitted to vote for the said Wolfred Nelson on one and the same alleged qualification; in others, persons under oath declared themselves proprietors of houses to which they had no right or title; in others, an arbitrary and untrue value, exceeding the real value, was assigned, even on oath, to property of which the value was not sufficient to confer a right of voting; and in almost all these cases an undue and improper influence by promises, by violence, and otherwise, was exercised over such persons even at the Poll, and in the presence and hearing of the Returning Officer, to stifle their scruples, and prevail on them to give their votes for the said Wolfred Nelson; nay, even to induce them to commit perjury by taking the Oath of qualification: That during the whole course of the Election, a number of persons, not resident within the Borough, and having no right to vote at the said Election, were collected and kept together for the purpose of overawing and intimidating Electors desirous of voting for the said James Stuart, from following their inclination, and these persons, by surrounding the Hustings, and by clamour and violence, obstructed and prevented Electors from voting for the said James Stuart, and most effectually violated and destroyed all freedom of Election: That after the said Election, to wit, in a Session of Oyer and Terminer and General Gaol delivery, held at Montreal, in November One thousand eight hundred and twenty-seven, Indictments were found against seven persons; viz. Antoine Aussaut, Nicholas Buckner, Joseph Claprood, Antoine Paul Hus alias Cournoyer, Louis Allard, Rosalie St. Michel, and Jean Baptiste Cantara, for wilful and corrupt perjury, in having sworn falsely at the said Election to entitle themselves to vote for the said Wolfred Nelson; and an Indictment was also found at the said Court against Louis Marcoux, one of the most active partisans of the said Wolfred Nelson at the said Election, for subordination of perjury: That in the last Term of His Majesty's Court of King's Bench for the District of Montreal, one of the said Indictments which had been removed by Certiorari into that Court, namely, the Indictment found against the said Joseph Claprood was tried by a Common Jury, and the said Joseph Claprood, upon the clearest evidence, was found guilty of the offence therein charged against him; the rest of the said Indictments still continue pending and undetermined. Under such circumstances, evincing that the Return of the said Wolfred Nelson has been obtained by the most illegal and criminal means, the Petitioners cannot doubt that the House will feel an anxious desire to do justice upon this representation; and they therefore humbly pray the House to take the premises into its serious consideration; and in granting relief to the Petitioners, that the House will be pleased to order the Clerk of the Crown in Chancery to attend the Bar of the House to amend the Return

for the said Borough, by erasing the name of the said Wolfred Nelson and inserting that of the said James Stuart in lieu thereof, and make such other and further Order in the premises as in the wisdom of the House shall appear fit.

Mr. Stuart moved to resolve, seconded by Mr. Solicitor General, That the grounds and reasons of complaint set forth in the said Petition, if true, are sufficient to make void the Election of the said Wolfred Nelson, Esquire.

Ordered, That the consideration of the said motion be postponed till Saturday next.

—*Journal of Assembly*, 1828-29, *Vol.* 38, *pp.* 82-84.

No. 49. Petition of other Electors of the Borough of William Henry, 12th December, 1828.

No. 49

Petition of Other Electors of the Borough of William Henry, 1828.

House of Assembly, Lower Canada.

December 12th, 1828.

William Henry Election; Petition of Electors.

William Henry Election:—Petition of Electors.

A Petition of divers Electors of the Borough of William Henry, whose names are thereunto subscribed, was presented to the House by Mr. Bourdages, and the same was received and read; setting forth: That the Petitioners have seen the copy of a Petition presented to the House by thirteen of the Electors of the Borough of William Henry, complaining of divers illegal proceedings practised in the last Election by the partisans of Wolfred Nelson, to obtain his Election to the prejudice of that of James Stuart, also a Candidate at the same Election, and requiring that the Return of Wolfred Nelson be declared null, and that the name of James Stuart be substituted in the place of that of the said Wolfred Nelson: That the Petitioners are the more astonished at the proceedings of the partisans of James Stuart, inasmuch as they are founded upon false and malicious grounds, and are entirely void of all foundation whatever, and that it is notorious that in the said Election they have themselves committed a great number of illegal and unconstitutional acts, destructive of the privileges and Elective Franchise of the inhabitants of the said Borough of William Henry: That the Petitioners, perfectly acquainted with all that then passed, feel themselves obliged to make a plain statement of the said acts committed, as well by the said James Stuart as by his partisans: That a great number of individuals were in some measure compelled to swear to the truth of their votes, notwithstanding they had not any right to vote: That the said James Stuart, in sovereign contempt of divine and human laws,

has profaned the sanctity of an oath, in causing the three oaths to be taken unnecessarily, without any distinction, requiring grey-headed old men to prove that they had acquired their one-and-twentieth year, and by people of known property: That the said James Stuart frequently turned himself to the Returning Officer, and said in a vulgar and indecent manner, "stuff the three oaths down their throats:" That the said James Stuart, to intimidate the Electors during the holding of the poll, did often, in the capacity of Attorney General, menace the partisans of Wolfred Nelson, by threatening to put them in the pillory, while on the contrary, he assured those in his favour, that they had nothing to fear, as he, James Stuart, was the King's Attorney General, and was the only person who had a right to prosecute them in case they should be attacked for having voted; that he himself held the hands of many of them on the Holy Evangelists, while the Returning Officer read them the oaths required—these persons expressing a great repugnance to taking an oath, because they thought themselves unqualified: That the said James Stuart received the votes of many women, and he himself sent to a great distance, to fetch them at a great expense, and putting aside all principle of honor and of delicacy, did, himself, and by his agents, in divers instances, make all his efforts, and employ all his well-known eloquence to a very respectable woman, whose husband had voted for him, in order to convince her, that upon the same principles on which her husband had voted, she might also give her vote, under the pretension that the property came from her, and that the oaths had not been required from her husband: That the said James Stuart, during the holding of the poll, caused many qualified Electors to be apprehended by Warrants, for having illegally voted, and unhappily he has prosecuted them with a degree of rage, which marks hatred and cruelty (even several of the Electors who were qualified to vote) before Grand Juries, until he had found a Jury which brought a Bill against them; and that on the contrary, he abstained, against justice and his duty, from prosecuting a great number of those who voted for him, although Warrants were issued against them; and it is but justice to mention, that many perjured themselves, which proves, that what he advanced at the poll, namely, that he was the only one who had the right to prosecute in this manner, is, that whilst it excites against the said James Stuart, not only the indignation of the public in general, but also of his own partisans, the most respectable of them have refused to sign a Petition to the House in favour of him: That it is true, that one of the Electors was found guilty of perjury, but, in fact, the said James Stuart himself ought to be charged with all the guilt, since it is notorious, that he endeavoured to get the votes of the said Electors, and that the said James Stuart, in concert with some Magistrates, persuaded him that he had a right

No. 49. Petition of other Electors of the Borough of William Henry, 12th December, 1828 —*continued.*

to vote, and that it is clear that if the said person had given him his vote, he would not have been prosecuted : That the Election was made under the view of the Governor, and it is notorious that His Excellency took an active part, as much by himself as by his subalterns, and that there exists facts which can prove this : That the said James Stuart did, himself, menace, and in divers instances publicly, an Officer of Government that he would complain to the Governor against him if he did not make himself more active at his Election. The Petitioners, firmly confiding in the truth of their assertions, hope that the House will be pleased to do justice to whom it is due, and that they will order that the false suggestions of James Stuart, and of his partisans, be put aside, and that Wolfred Nelson, duly elected, and possessing the true confidence of the great majority of the people of William Henry, be maintained in his seat.

William Henry Election— Petition concerning the same to be printed.

Mr. Bourdages moved, seconded by Mr. Proulx, That the following Petitions, to wit, that of the Electors of the Borough of William Henry against the Election of Wolfred Nelson, Member elect for the said Borough, that of the said Wolfred Nelson respecting the said Petition presented to this House and received, and that of divers Electors for the said Borough against the Petition of certain Electors for the same, complaining of the illegality of the Election of the said Wolfred Nelson, this day presented and received, be printed; and fifty copies thereof struck off for the use of the Members of this House,

The House divided on the question :—

Yeas 32
Nays 3

So it was carried in the affirmative, and Ordered, Accordingly.

—*Journal of Assembly*, 1828-29, *Vol.* 38, *pp.* 131-133.

No. 50. Action on Petition of Borough of William Henry Contested Election, 21st February, 1829.

No. 50

Action on Petition of Borough of William Henry Contested Election.

House of Assembly, Lower Canada.

February 21st, 1829.

William Henry contested Election— Commissioners appointed.

The Order of the Day for taking into consideration a Motion made by Mr. Bourdages yesterday, viz., "That the Petition of Wolfred Nelson, Esquire, a Member of this House, be referred to three Commissioners to be named for the purpose

Action on Petition of Borough of William Henry Contested Election, 21st February, 1929 —*continued.*

of enquiring into the allegations contained in the said Petition, and with respect to the qualification of the persons who signed the Petition against the legality of the Election of the said Wolfred Nelson, at the said Borough of William Henry," being read;

The House proceeded accordingly to take the said Motion into consideration.

And the said Motion being again read, and the question of concurrence being put thereon;

The House divided:

Yeas 25

Nays 4

So it was carried in the affirmative, and Resolved, Accordingly.

—*Journal of Assembly*, 1828-29, *Vol.* 38, *pp.* 527.

No. 51

Action on Borough of William Henry Election Contested Election.

No. 51. Action on Borough of William Henry, Contested Election, 11th March, 1829.

House of Assembly, Lower Canada.

March 11th, 1829.

William Henry Election deferred till next Session.

On Motion of Mr. Bourdages, seconded by Mr. De St. Ours,

Ordered, That the further consideration of the proceedings relating to the last Election for the Borough of William Henry, be postponed till the next Session.

—*Journal of Assembly*, 1828-29, *Vol.* 38, *pp.* 680.

No. 52

Commission of Lord Sydenham.

No. 52. Extract from Commission of Lord Sydenham, 29th August, 1840.

August 29th, 1840.

(Extracts.)

Pat. roll 4 Vict. Part 5. No. 10.

Baron Sydenham, Governor of Canada. } Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith To our Right trusty and Wellbeloved Councillor Charles Baron Sydenham Greeting Whereas by an Act made and passed in the Fourth year of our Reign intitled an Act to reunite the Provinces of Upper and Lower Canada and for the Government of Canada it is amongst other things Enacted that it shall be lawful for Us with the advice of our Privy Council to declare or to authorize the Governor General of the said two Provinces of Upper and Lower Canada to declare by Proclamation that the said Provinces upon from and after a certain day in such Proclamation to be appointed (such day being within fifteen Calendar months next after the passing of the said Act) shall form and

JOINT APPENDIX.

No. 52. Extract from Commission of Lord Sydenham, 29th August, 1840 —*continued.*

be one Province under the name of the " Province of Canada " and thenceforth the said provinces shall constitute and be one Province under the name aforesaid upon from and after the day so appointed as aforesaid. And whereas in pursuance and exercise of the powers so vested in us by the said recited Act We did on the tenth day of August One thousand eight hundred and forty with the advice of our Privy Council authorize the Governor General of the said two Provinces of Upper and Lower Canada to declare by Proclamation that the said Provinces upon from and after a certain day in such Proclamation to be appointed such day being within Fifteen Calendar months next after the passing of the said Act should form and be one Province under the name of the Province of Canada. Now know you that we reposing especial trust and confidence in the prudence courage and loyalty of you the said Charles Baron Sydenham of our especial grace certain knowledge and mere motion have thought fit to constitute and appoint and do by these presents constitute and appoint you the said Charles Baron Sydenham to be during our pleasure our Captain General and Governor in Chief in and over our Province of Canada comprising Upper Canada and Lower Canada . . . And whereas it is therefore expedient that an executive Council shall be appointed by Us for the affairs of our Province of Canada. Now We do hereby declare our Pleasure to be that there shall be an Executive Council for the Affairs of our Province of Canada. And that the Members thereof shall hold their Places therein during our Pleasure And we do hereby declare our pleasure to be that the said Executive Council shall consist of such persons as shall from time to time for that purpose be appointed by Us by Instruments under the Great Seal of our said Province of Canada which Instruments shall be issued by you in our name and on our behalf in pursuance of Warrants under our Sign Manual and Signet authorizing such Appointments provided nevertheless and it is our further pleasure that in the event of the death Incapacity resignation suspension or absence from the said province of any Member of the said Executive Council so to be appointed by Us in manner aforesaid it shall be competent to you the said Charles Baron Sydenham And we do hereby authorize you without any such previous Warrant under our Signet and Sign Manual as aforesaid by an Instrument under the Great Seal of our said Province in our name and on our behalf to appoint some other person or persons to act as an Executive Councillor or Executive Councillors provisionally and until our further pleasure shall be known in the place and stead of any such person or persons so dying or being incapacitated or having resigned or having been suspended or being absent from the said Province And we do further declare our pleasure to be that every such person or persons so provisionally appointed as aforesaid shall by virtue

No. 52.
Extract from Commission of Lord Sydenham, 29th August, 1840
—*continued.*

of such Provisional Appointment and until our further pleasure shall be known be to all intents and purposes an Executive Councillor or Executive Councillors for the affairs of our said Province as fully and effectually to all intents and purposes as if such person or persons had been so appointed in pursuance of a Warrant or Warrants under our Sign Manual and Signet expressly authorizing the appointment of such person or persons.

No. 53

No. 53.
Extract from Lord Sydenham's Instructions, 30th August, 1840.

Lord Sydenham's Instructions.

(Extracts)

30 Aug. 1840.

The Rt. Hon. Lord Sydenham Instructions Canada

VICTORIA R.

Instructions to Our Right Trusty & Right Well-beloved Councillor Charles Baron Sydenham Our Captain General and Governor in Chief in and over Our Province of Canada in America, or in his absence to Our Lieutenant Governor or the Officer Administering the Government of Our said Province for the time being. Given at Our Court at Windsor the Thirtieth day of August, 1840, in the Fourth year of Our Reign.

* * * * * * *

Third. And Whereas We did by the said Commission declare Our Pleasure to be that there should be an Executive Council for the Affairs of our Said Province of Canada. Now We do hereby command you that you do forthwith transmit to Us the names of such Persons as may in your opinion be most fit and proper to be appointed Members of Our said Executive Council. And in order that no inconvenience may arise to the Public Service, We do hereby authorize you from time to time to appoint such and so many Persons as may appear to you requisite, to be Members of that Board subject to the signification of Our Pleasure thereupon and to administer to each of the Persons so appointed such of the Oaths mentioned or referred to in Our said recited Commission, as shall be applicable to the case of the Individual to whom the same shall be administered, and We do further Authorize you, should it in your opinion be necessary for the Public Service to remove or suspend any of the Members of Our said Executive Council whether appointed provisionally by you or in conformity with a Warrant under Our Sign Manual;—but in that case you will immediately report to Us through One of Our Principal Secretaries of State, the causes of such removal or suspension as the case may be.

JOINT APPENDIX.

No. 54

Commission to Richard Philips as Governor of Placentia and Nova Scotia.

July 9, 1719.

No. 54. Extract from Commission to Richard Philips, 9th July, 1719.

(Extract)

D Con Philips As Comiss-

George by the Grace of God &c To our Trusty and Wellbeloved Richard Philips Esquire Greeting Know yee that Wee reposing especial Trust and Confidence in the Prudence Courage and loyalty of you the said Richard Philips out of our especial Grace certain Knowledge and meer mocon have thought fit to Constitute and appoint And by these presents do Constitute and appoint you the said Richard Philips to be our Governor of Placentia in Newfoundland and our Captain General and Governor in Chief in and over our Province of Nova Scotia or Accadie in America and Wee do hereby Require and Command you to do and Execute all things in due manner that shall belong unto your said Command and the Trust Wee have reposed in you according to the several powers and Directions Granted or appointed you by this present comission and the Instructions herewith given you or by such further powers Instructions or Authorities as shall at any time hereafter be granted or appointed you under our Signet and Sign Manual or by our Order in our Privy Council and according to such reasonable laws and Statutes as hereafter shall be made and assented to by you with the Advice and Consent of our Council and Assembly of our said Province hereafter to be appointed And for the better Administration of Justice and management of the Publick Affairs of our said Province We Hereby Give and Grant unto you the said Richard Philips full power and Authority to choose Nominate and appoint such fitting and discreet persons as you shall either find there or carry along with you not exceeding the Number of Twelve to be of our Council in Our said Province till our further pleasure be Known any five Whereof We do hereby appoint to be a Quorum.

No. 55

No. 55. Extract from Instructions for Richard Phillips, 19th June, 1719.

B.T.N.S. Vol. 32, p. 428. 1719. June 19

Instructions for Richard Philips, Esq., His Majesty's Governor of Placentia in Newfoundland : and Captain General and Governor in Chief of the Province of Nova Scotia, or Accadie in America.

Given at

1° With these His Majesty's Instructions you will receive a Commission under the Great Seal of Great Britain, constituting you His Majesty's Govr of Placentia in Newfoundland, and Captn. General & Govr in Chief in and over the Province of Nova Scotia or Accadie in America.

2° You are therefore to fit yourself with all convenient speed, & to repair to the said Province where being arrived, you are to take upon you ye execution of the Trust reposed in you, and as soon as may be, to call together

the persons whom you are Empowered by your Commission to appoint as Councillors there & before them to publish the said Commission & to take yourself and afterwards Administer to the Said Councillors the Oaths therein mentioned.

3° You are to send to His Majesty by one of his principal Secretaries of State, and to the Comrs. for Trade & Plantations the Names & Characters of such persons as shall be appointed by you of the said Council, to whom you shall allow freedom of Debate and Vote, in all Affairs of publick concern that may be debated in Council.

4° You are neither to Augment nor Diminish the Number of the said Council, nor suspend any of the Members thereof, without good & sufficient cause, which you are to signify to His Majesty & to the Comrs. for Trade and Plantations as aforesaid.

5° But you are to signify His Majesty's Pleasure unto the Members of the Said Council, that if any of them shall Absent themselves from the Province, and continue Absent above the space of Twelve Months together without leave from you, or from the Govr. or Commandr. in Chief of the Said Province for the time being first obtained, under your or his hand and Seal, or shall remain Absent for the Space of two Years or the greater part thereof successively without His Majesty's leave given them, under His Majesty's Royal Sign Manual, their place or places in the Said Council shall immediately thereupon become Void, And that His Majesty will forthwith appoint others in their Stead.

6° And whereas His Majesty is sensible, that Effectual care ought to be taken to oblige the Members of ye Said Council to a due attendance therein, in Order to prevent the many inconveniences that may happen for the want of a Quorum of the Council to transact Business as Occasion may require. It is His Majesty's Will and Pleasure, that if any of the Said Members shall wilfully absent themselves when duly summoned without a just and lawful Cause, and Shall persist therein after Admonition, you suspend the said Councillors so Absenting themselves till His Majesty's further pleasure be known, giving, His Majesty timely notice thereof, and that this be signify'd to the several Members of the Council & entred on the Council Books as a Standing Rule.

7° And that His Majesty may be always informed of the Names and Characters of persons fit to supply the Vacancies, which shall happen in the sd Council, you are to transmit unto His Majesty by one of His principal Secretaries of State & to the Commissrs for Trade & Plantations with all convenient speed, the Names & Characters of twelve persons Inhabitants of the said Province, whom you shall Esteem the best qualify'd for that Trust, and so from time to time when any of them shall die, depart out of the said Province, or become otherwise unfit, you are to nominate so many other persons to His Majesty in their Stead, that the List of twelve persons fit to supply Vacancies in the said Council, may be always compleat.

8° But you shall not take upon you to fill up any Vacancies that may happen in the Said Council, after the Same Shall be constituted as aforesaid, without His Majesty's leave first obtained, unless the Number of Councillors remaining in your Government be under Seven; And in that case, you are only to compleat them to the Number of Seven & no more.

JOINT APPENDIX.

No. 55. Extract from Instructions for Richard Phillips, 19th June, 1719 —*continued.*

9° And the better to Enable His Majesty to compleat what may be further wanting towards the Establishing a Civil Governmt in the Said Province, you are to give unto His Majesty by one of his principal Secretaries of State, and to the Commissrs for Trade & Plantations, by the first Opportunity after your arrival there, a true State of the Said Province, particularly with respect to ye Number and Qualifications of the People that either are there or hereafter shall resort thither, of what Number it may be proper to constitute an Assembly? What persons are proper & fit to be Judges Justices or Sherrifs? And any other matter or thing, that may be of use to His Majesty in the establishing a civil Governmt as aforesaid.

10° In the mean time till such a Government shall have been Established you will receive herewith a Copy of the Instructions given by His Majesty to the Governmt of Virginia, by which you will conduct yourself, till His Majesty's further pleasure shall be Known, as near as the circumstances of the Place will Admit, in such things as they can be applicable to, and where you are not otherwise directed by these instructns. But you are not to take upon you to Enact any Laws till His Majesty shall have appointed an Assembly & given you directions for your proceedings therein.

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—*Public Archives of Canada, Nova Scotia Instructions, Series M, Vol.* 581.

No. 56

No. 56. Extract from Constitution of Provincial Council of Nova Scotia, 1720.

Constitution of Provincial Council of Nova Scotia, 1720.

Richard Philipps Esqr. Captain General and Governor in Chief in and over His Majesty's Province of Nova Scotia Governor of Annapolis Royal in said Province, and of Placentia in Newfoundland, and Collonel of one of His Majesty's regiments of Foote Haveing made choice of the following Gentlemen as Members of His Majesty's Council for the Province aforesaid, they were summoned to attend his Excellency on Munday the 25th April 1720 at the Honble the Lieut. Governor's House in His Majesty's Garrison of Annapolis Royal where accordingly being mett

PRESENT

His Excellency the General The Honble Lieut Governor Arthur Savage Esqr.
Major Lawrence Armstrong
Major Paul Mascarene
The revd. John Harrison, Esqr.
Cyprian Southack, Esqr.
Hibbert Newton, Esqr.
William Skene, Esqr.
William Shirreff, Esq.
Peter Boudre, Esqr.

His Excellency administered to each of the members the oaths mentioned in An Act passed the first yeare of His Majesty's Reigne intituled an Act

Evtract from Constitution of Provincial Council of Nova Scotia, 1720 —*continued.*

For the further security of His Majesty's Person & Government, and the Succession of the Crowne in the heires of the late Princess Sophia being Protestants, and for extinguishing the hopes of the Pretended Prince of Wales, and his open and secret abettors also they took and subscribed the Declaration mentioned in an Act of Parliament made in the 25th yeare of the reigne of King Charles the second, intituled an Act for preventing Dangers which may happen from Popish Recusants and an Oath for their due Execution of their Places and Trusts, with regard to the equal and impartial administration of justice in all causes which shall come before them. Then took their Places at the Council board.

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No. 57

No. 57. Extract from Commission to Governor Cornwallis, 6th May, 1749.

Commission to the Honourable Edward Cornwallis as Governor of Nova Scotia.

May 6, 1749.

(Extract)

GOVERNOR OF NOVA SCOTIA COMMISSION

GEORGE THE SECOND by the Grace of God of Great Britain France and Ireland King defender of the Faith &c To our Trusty and Wellbeloved the Honourable Edward Cornwallis Esqr. Greeting Whereas We did by our Letters Patent under our Great Seal of Great Britain bearing date at Westminster the Eleventh day of September in the Second Year of our Reign constitute and appoint Richard Phillips Esquire Our Captain-General and Governor-in-Chief in and over our Province of Nova Scotia or Accadie in America with all the Rights, Members and Appurtenances whatsoever thereunto belonging for and during our Will and Pleasure as by the said recited Letters Patent relation being thereunto had may more fully and at large appear Now Know You that We have revoked and determined and by these Presents Do revoke and determine the said recited Letters Patent and every Clause Article and thing therein contained and further know You that We reposing especial Trust and Confidence in the Prudence Courage and Loyalty of You the said Edward Cornwallis of our especial Grace certain knowledge and meer motion Have thought fit to constitute and appoint and by these presents Do Constitute and appoint You the said Edward Cornwallis to be our Captain-General and Governor-in-Chief in and over our province of Nova Scotia or Accadie in America with all the Rights Members and Appurtenances whatsoever thereunto belonging And We do hereby require and Command You to do and Execute all things in due Manner that shall belong unto your said Command and the Trust We have reposed in You according to the several powers and authorities Granted or appointed You by this present Commission and the Instructions herewith given You or by such further Powers Instructions and authorities as shall at any time hereafter be Granted or appointed You under our Signet and Sign Manual or by our Order in our Privy Council and according

JOINT APPENDIX.

No. 57. Extract from Commission to Governor Cornwallis, 6th May, 1749 —*continued.*

to such reasonable Laws and Statutes as hereafter shall be made or agreed upon by you with the advice and consent of our Council and the Assembly of our said Province under your Government hereafter to be appointed in such manner and form as hereafter expressed And for the better Administration of Justice and Management of the Public Affairs of our said Province We hereby Give and Grant unto You the said Edward Cornwallis full power and authority to Chuse Nominate and Appoint such fitting and Discreet persons as you shall either find there or carry along with You not exceeding the Number of Twelve to be of our Council in our said Province as also to Nominate and Appoint by Warrant under your Hand and Seal all such other Officers and Ministers as You shall Judge proper and necessary for our Service and the Good of the People whom We shall Settle in our said Province until our further Will and Pleasure shall be known . . .

We do hereby Give and Grant unto you full power and authority to Suspend any of the Members of our said Council to be appointed by you as aforesaid from Sitting Voting and Assisting therein if you shall find just Cause for so doing And if it shall at any time happen that by the Death Departure out of our said province Suspension of any of our said Councillors or otherwise there shall be a Vacancy in our said Council (any Five whereof We do hereby appoint to be a Quorum) Our Will and pleasure is that you Signify the same unto us by the first opportunity that We may under our Signet and Sign Manual Constitute and appoint others in their stead—But that our Affairs at that distance may not Suffer for want of a due Number of Councillors if ever it shall happen that there be less than Nine of them residing in our said province We do hereby Give and Grant unto you the said Edward Cornwallis full power and authority to Chuse as many persons out of the Principal Freeholders Inhabitants thereof as will make up the full Number of our said Council to be Nine and no more which persons so chosen and appointed by you shall be to all intents and purposes Councillors in our said province until either they shall be confirmed by us or that by the Nomination of others by us under our Sign Manual and Signet Our said Council shall have Nine or more Persons in it And We do hereby Give and Grant unto you full power and authority with the Advice and Consent of our said Council from time to time as need shall require to Summon and call general Assemblys of the said Freeholders and Planters within your Government according to the Usage of the rest of our Colonies and Plantations in America And our Will and Pleasure is that the persons thereupon duly Elected by the Major part of the Freeholders of the respective Counties and Places and so returned shall before their sitting take the Oaths mentioned in the said Act Entitled (An Act for the further Security of his Majesties Person and Government and the Succession of the Crown in the Heirs of the late Princess Sophia being Protestants and for extinguishing the Hopes of the pretended Prince of Wales and his open and Secret Abettors) as also make and Subscribe the aforementioned Declaration (Which Oaths and Declaration you shall Commissionate fit Persons under our Seal of Nova Scotia to tender and administer unto them and until the same shall be so taken and Subscribed no Person shall be capable of Sitting tho Elected) And We do hereby Declare that the persons so Elected and Qualified shall be called and Deemed the General

No. 57.
Extract from Commission to Governor Cornwallis, 6th May, 1749
—*continued.*

Assembly of that our Province of Nova Scotia And that you the said Edward Cornwallis with the advice and Consent of our said Council and Assembly or the Major part of them respectively shall have full power and authority to make constitute and Ordain Laws Statutes and Ordinances for the Publick Peace Welfare and good Government of our said Province and of the people and Inhabitants thereof and such others as shall resort thereto and for the benefit of us our Heirs and Successors which said Laws Statutes and Ordinances are not to be repugnant but as near as may be Agreeable to the Laws and Statutes of this our Kingdom of Great Britain.

No. 58

Instructions to Governor Cornwallis.

No. 58.
Extract from Instructions to Governor Cornwallis, 29th April, 1749.

Nova Scotia B.T. Vol. 34. p.1. 1749. April 29th.

Instructions for our Trusty and Wellbeloved Edward Cornwallis Esqr. Our Captain General and Governor in Chief in and over Our Province of Nova Scotia or Accadie in America.

Given at Our Court at.....the.....Day of.....in the..... year of Our Reign.

* * * * * * *

58th. You are to send unto Us by one of Our Principal Secrys. of State and to Our Commissioners of Our Treasury and Our Commissioners for Trade and Plantations for Our Approbation the Names and Characters of such Persons as shall be appointed by you of Our Council for Our said Province and of all other Officers and Ministers, which you are by Your Commission impowered to appoint, and the better to enable Us to compleat what may be further wanting towards the establishing a Civil Government in Our said Province, you are to give unto Us by one of our Principal Secretaries of State and to Our Commissioners for Trade and Plantations by the first opportunity after your arrival there, an exact Account of the Number and Qualifications of the People there, and with respect to any other Matter or Thing that may be of use in the Establishing a Civil Government as aforesaid.

59th. And Whereas we have thought proper that the Persons whom you shall appoint to be Our Council for Our said Province of Nova Scotia should be assisting to you or the Commander in Chief of Our Said Province for the time being in all affairs relative to Our Service, you are therefore to communicate unto Our said Council such and so many of these Our Instructions wherein their Advice and Consent are required, as likewise all such other from time to time as you shall find convenient for Our Service to be imparted to them.

60th. You are also to permit the Members of Our said Council to have and enjoy freedom of Debate and Vote in all Affairs of publick concern that may be debated in Council.

61st. And that We may be always informed of the names and Characters of Persons fit to supply the Vacancies which shall happen in Our said

JOINT APPENDIX.

No. 58. Extract from Instructions to Governor Cornwallis, 29th April, 1749 —*continued.*

Council, You are to transmit unto Us by One of Our Principal Secretaries of State and to Our Commissioners for Trade and Plantations with all convenient speed the Names and Characters of twelve Persons inhabitants of Our said Colony whom You shall esteem the best qualified for that Trust and so from time to time when any of them shall die, depart out of Our said Colony, or become otherwise unfit, you are to nominate so many other Persons in their stead that the List of twelve Persons fit to supply the said Vacancies may be always compleat.

62nd. Whereas by Our Commissn to You You are impowered in case of the Death or Absence of any of Our sd Council of the said Province to fill up the Vacancies in the said Council to the number of nine and no more, You are from time to time to send unto Us as aforesaid and to Our Commissioners for Trade and Plantations the names and Qualities of any Members by you put into the said Council by the first Convenience after your so doing.

63rd. You are neither to augment nor diminish the number of Our said Council as it is hereby established, nor to suspend any of the Members thereof without good and sufficient Cause nor without the consent of the Majority of the said Council, and in case of the suspension of any of them you are to Cause your Reasons for so doing together with the Charges and proofs against the said Persons and their Answers thereunto to be duly enter'd upon the Council Books to be kept by a proper Person to be appointed by you to be Clerk of Our said Council, who is likewise to enter therein all the Proceedings of the said Council and forthwith to transmit copies thereof to Us as aforesaid and to Our Commissioners for Trade and Plantations, nevertheless if it should happen that you should have Reasons for suspending any Councillor not fit to be communicated to the Council you may in that case suspend such Person without their Consent; but you are thereupon immediately to send to Us by One of Our Principal Secrs of State and to Our Commissioners for Trade and Plantations an Account thereof with your Reasons for such suspension, as also for not communicating the same to the Council and Duplicates thereof by the next opportunity.

64th. You are to signify Our Pleasure unto the Members of Our sd Council that if any of them shall hereafter absent themselves from Our said Province and continue absent above the Space of twelve months together without Leave from you or from the Commander in Chief of the said Province for the time being first obtained under your or his hand and Seal, or shall remain absent for the Space of two years successively without Our Leave given them under Our Royal Signature, their Place or Places in the said Council shall immediately thereupon become void, and that We will forthwith appoint others in their stead.

65th. And Whereas We are sensible that effectual care ought to be taken to oblige the Members of Our said Council to a due attendance therein, in order to prevent the many Inconveniences that may happen for want of a Quorum of the Council to transact Business as Occasion may require, It is Our Will and Pleasure that if any of the Members of Our said Council residing in Our said Province shall hereafter wilfully absent themselves, when duly summon'd, without a just and Lawful cause and shall persist therein after Admonition, you suspend the said Councillors so

absenting themselves till Our further Pleasure be known giving Us timely notice thereof; And We do hereby Will and require You that this Our Royal Will and Pleasure be signified to the several Members of Our Council aforesaid, and that it be enter'd as a standing Rule in the Council books.

* * * * * * *

86th. And whereas by Our aforesaid commission you are authorised and impowered to summon and Call General Assemblys of Freeholders and Planters within Our said Province, you are therefore so soon as you shall see expedient to issue Writs in Our Name directed to the Sheriff or other proper officer in each Township, directing them to summons the Freeholders of the said Township, and to proceed to the Election of two Persons to represent them in General Assembly, which Election shall be held in each Township respectively, and at such time as you shall think proper; in which said Writ the Time and Place for the Meeting of the said Assembly shall also be specified.

87th. And it is Our Will and Pleasure that you signify to Our General Assemblies of Nova Scotia, if occasion should require, that they have no right to adjourn themselves otherwise than de Diem in Diem, excepting Sundays and Holidays, without Leave from you or from the Commander in Chief of Our said Province for the time being first asked and obtained.

* * * * * * *

113th. You shall administer or cause to be administered the Oaths appointed in the aforesaid Act, Entitled *an Act for the further Security of His Majesty's Person and Government and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants and for extinguishing the Hopes of the Pretended Prince of Wales and His open and Secret Abettors*, to the Members and Officers of Our Council and Assembly, and all Judges, Justices and other Persons that hold any Office or Place of Trust or Profit in Our said Province, whether by Virtue of any Patent under Our Great Seal of Great Britain or the Publick Seal of Nova Scotia or otherwise; and you shall also cause them to make and subscribe the aforesaid Declaration, without the doing of all which you are not to admit any Person whatsoever into any publick Office, nor suffer those that shall have been admitted to continue therein.

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JOINT APPENDIX.

No. 59. The Calling of the General Assembly. of Province of Nova Scotia, 3rd January, 1757.

No. 59

The Calling of the General Assembly of the Province of Nova Scotia, 1757.

At a Council holden at the Governor's House in Halifax on Monday the 3rd Jany, 1757.

Present :

The Lieutenant Governor

Councrs.

Jonn. Belcher
Jno. Collier
Chas. Morris
Benj. Green
Robt. Grant

His Excellency the Governor, together with His Majesty's Council, having had under mature consideration the necessary and most expedient measures for carrying into Execution those parts of His Majesty's Commission and Instructions which relate to the calling General Assemblies within the Province, came to the following Resolution thereon, Vizt.

That a House of Representatives of the Inhabitants of this Province, be the civil Legislature thereof in conjunction with His Majesty's Governor or Commander in Chief for the Time being, and His Majesty's Council of the said Province; the first House to be Elected and convened in the following manner, and to be stiled the General Assembly.

* * * * * * *

That no Person shall be chosen as a member of the said House, or shall have a Right of voting in the Election of any member of the said House, who shall be a Popish Recusant, or shall be under the age of Twenty one years, or who shall not at the time of such Election, be possessed in his own Right of a Freehold Estate within the District for which he shall be elected or shall so vote, nor shall any Elector have more than one vote for each member to be chosen for the Province at large, or for any Township; and that each Freeholder present at such Election and giving his vote for one member for the Province at large, shall be obliged to vote also for the other Eleven.

* * * * * * *

Signed

CHAS. LAWRENCE.

Signed
Jno. DEPORT
Sec. Conc.

No. 60

Lord Durham's Instructions as Governor General of Nova Scotia.

No. 60. Extract from Instructions for Lord Durham, 10th February, 1838.

C.O. Entry book 15, p. 340.

1838. Feb. 10.

(Extracts)

VICTORIA R.

Instructions to Our Right Trusty and Right Wellbeloved Cousin and Councillor John George Earl of Durham Knight Grand Cross of the most Honourable Order of the Bath our Captain General & Governor in Chief in and over Our Province of Nova Scotia or in his absence to Our Lieutenant Governor or Officer Administering the Government of Our said Province for the time being Given at Our Court at Buckingham Palace this 10th day of February 1838 in the First Year of Our Reign.

First. With these Our Instructions you will receive Our Commission under the Great Seal of Our United Kingdom of Great Britain and 341.
Ireland constituting you Our Captain General and Governor in Chief in and over Our Province of Nova Scotia and the Islands and Territories thereunto belonging you are therefore with all convenient speed to assume and enter upon the execution of the Trust We have reposed in you.

Second. And Whereas We have by Our said Commission appointing you Our Captain General and Governor in Chief as aforesaid declared Our Pleasure to be that there shall be within Our said Province of Nova Scotia two distinct and separate Councils to be respectively called the Legislative Council and the Executive Council of Our said Province with certain powers and Authorities therein mentioned, and have further declared Our pleasure to be that the said Executive Council and Legislative Council respectively should hereafter consist of Such and so many Members as shall for that purpose be nominated and appointed by us under Our Royal Sign Manual and Signet or as shall be provisionally appointed by you the said John George Earl of Durham until Our Pleasure therein shall be Known provided always that the total number of the Members for the time being of such Executive Council resident within Our said Province shall not at any time by any such provisional Appointment by you be raised to a greater number in the whole than nine, and that the total number of the Members of such Legislative Council resident within Our said Province shall not at any time by any such provisional appointment by you be raised to a greater number in the whole than fifteen.

* * * * * * *

Now we do hereby authorize and empower you the said John George Earl of Durham to nominate and appoint provisionally such persons as you shall think fit to be Members of Our said Executive and Legislative Councils respectively who shall hold their said appointments provisionally until Our further pleasure shall be Known. Provided nevertheless and We do hereby require you forthwith to transmit to Us through one of Our principal Secretaries of State the names and qualifications of the several Members so provisionally appointed by you to be Members of Our said Executive

JOINT APPENDIX.

No. 60. Extract from Instructions for Lord Durham, 10th February, 1838. —*continued.*

and Legislative Councils respectively to the intent that the said appointments may be either confirmed or disallowed by Us as We shall see Occasion.

* * * * * * *

Fifth. You are not to suspend any of the Members of either of Our said Councils without good and sufficient cause, nor without the consent of the Majority of the Members of Our said respective Councils signified in Council after due examination of the charge against such Councellor and his answer thereunto and in case of the suspension of any of them you are to cause your reasons for so doing together with the charges and proofs against such Councellor and his Answer thereunto to be duly entered upon the Council Books and forthwith to transmit Copies thereof to us through one of Our principal Secretaries of State, nevertheless if it should happen that you should have reasons for suspending any Legislative or Executive Councillor not fit to be communicated to the said respective Councils you may in that case suspend such person without their Consent, but you are thereupon immediately to Send to us through One of Our principal Secretaries of State an Account of your proceedings therein with your reasons at large for such suspension.

Sixth. And whereas effectual care ought to be taken to oblige the Members of Our said respective Councils to a due attendance therein in order to prevent the many inconveniences, that may happen for want of a quorum of the said respective Councils to transact business as occasion may require. It is Our Will and pleasure that if any of the Members of Our said respective Councils residing in Our said Province shall hereafter Willfully absent themselves from the said Province and continue absent above the space of Six Months together without leave from you first obtained under your hand and Seal or shall remain Absent for the space of One Year without Our leave given them under Our Royal Signature his or their place or places in the said respective Councils shall immediately therefrom become void, And that if any of the Members of Our said respective Councils residing in Our said Province shall Wilfully absent themselves hereafter from the said respective Councils when duly summoned by you without good and sufficient cause and shall persist in such absence after being thereof Admonished by you, you are to suspend such Councillors so absenting themselves till Our further pleasure be Known therein, giving immediate notice thereof to Us through One of Our principal Secretaries of State. And We do hereby Will and require you that this Our Royal pleasure be signified to the several Members of Our said respective Councils and that it be entered in the respective Council Books as a Standing rule.

Seventh. You are to Communicate to Our said Council such and so many of these Our instructions Wherein their advice and consent are mentioned to be requisite and likewise all such others from time to time as you shall find convenient for Our Service to be imparted to them.

No. 61

Commission to Thomas Carleton as Governor of New Brunswick.

No. 61. Extract from Commission to Thomas Carleton, 1784.

Patent Roll—24 *George III*, *Part* 8, *No.* 9.

Thomas Carleton Esq. Governor of New Brunswick

GEORGE THE THIRD by the Grace of God of Great Britain France and Ireland King, Defender of the Faith and so forth To our Trusty and well beloved Thomas Carleton Esquire Greeting we reposing especial trust and confidence in the Prudence Courage and Loyalty of you the said Thomas Carleton of our especial Grace certain knowledge and meer motion have thought fit to constitute and appoint you the said Thomas Carleton to be our Captain General and Governor in Chief of our Province of New Brunswick . . . . . and likewise that you take the usual oath for the due Execution of the Office and Trust of our Captain General and Governor in Chief of our said Province for the due and impartial administration of justice and further that you take the Oath required to be taken by Governors of Plantations to do their utmost that the several laws relating to Trade and the Plantations be observed all which said Oaths and Declaration our Council in our said Province or any five of the members thereof have hereby full Power and authority and are required to tender and administer unto you and in your absence to our Lieutenant Governor if there be any upon the Place all which being duly performed you shall administer unto each of the members of our said Council as also to your Lieutenant Governor if there be any upon the Place the said Oaths mentioned in the said first recited Act of Parliament altered as above as also cause them to make and subscribe the aforementioned Declaration and administer to them the Oath for the due Execution of their Places and Trusts and we do hereby give and grant unto you full Power and Authority to suspend any of the members of our said Council from sitting voting and assisting therein if you shall find just cause for so doing and if it shall at any time happen that by the Death Departure out of our said Province suspension of any of our said Councillors or otherwise there shall be a vacancy in our said Council (any five whereof we do hereby appoint to be a Quorum) our Will and Pleasure is that you signify the same unto us by the first opportunity that we may under our Signet and Sign Manual constitute and appoint others in their stead but that our affairs at that distance may not suffer for want of a due number of Councillors if ever it shall happen that there be less than nine of them residing in our said Province we do hereby give and grant unto you the said Thomas Carleton full Power and Authority to choose as many persons out of the Principal Freeholders Inhabitants thereof as shall make up the full number of our said Council to be nine and no more which persons so chosen and appointed by you shall be to all intents and purposes Councillors in our said Province until either they shall be confirmed by us or that by the Nomination of others by us under our Sign Manual and Signet, our said Council shall have nine or more persons in it and we do hereby give and grant unto you the said Thomas Carleton full Power and authority with

JOINT APPENDIX.

No. 61. Extract from Commission to Thomas Carleton, 1784 —*continued.*

the advice and consent of our said Council to be appointed as aforesaid as soon as the Situation and Circumstances of our Province under your Government will admit thereof and when and as often as need shall require to Summon and call general Assemblies of the Freeholders and settlers in the Province under your Government in such manner and according to such further Powers Instructions and Authorities as shall at any time hereafter be granted or appointed you under our signet and Sign Manual or by our order in our Privy Council and our Will and Pleasure is that the Persons thereupon duly elected by the major part of the Freeholders of the respective Counties and Places and so returned shall before their sitting take the Oaths mentioned in the first recited Act of Parliament altered as above as also make and subscribe the afore mentioned Declaration which Oaths and Declaration you shall Commissionate fit Persons under our Seal of New Brunswick to tender and administer unto them and until the same shall be so taken and subscribed no person shall be capable of sitting tho' elected and we do hereby declare that the persons so elected and qualified shall be called and deemed the General Assembly of that our Province of New Brunswick and that you the said Thomas Carleton with the advice and consent of our said Council and Assembly or the Major part of them respectively shall have full power and authority to make constitute and ordain Laws Statutes and Ordinances for the Publick Peace Welfare and good Government of our said Province and of the people and Inhabitants thereof and such others as shall resort thereto and for the benefit of us our heirs and successors . . . . . .

No. 62. Extract from Instructions to Governor Carleton, 28th July, 1784.

No. 62

Instructions to Governor Carleton.

INSTRUCTIONS to Our Trusty and Wellbeloved Thomas Carleton, Our Captain General and Governor in Chief in and over Our Province of New Brunswick in America.

Given at Our Court at St. James's the 28th day of July 1784 in the twenty fourth year of our Reign.

First. With these Our Instructions, you will receive Our Commission under Our Great Seal of Great Britain, constituting you, Our Captain General and Governor in Chief in and over Our Province of New Brunswick In America, you are therefore to fit yourself with all convenient speed to repair to which we do for the present appoint to be the place of your Residence in Our said Province of New Brunswick, and being arrived there, you are to take upon you the execution of the Office and Trust, We have reposed in you, and the Administration of the Government, and to do and execute all things in due manner, which shall belong to your Command, according to the several Powers and Authorities of Our said Commission, under Our Great Seal of Great Britain, and these Our Instructions to you, according to such further Powers and Instructions, as

No. 62. Extract from Instructions to Governor Carleton, 28th July, 1784 —*continued.*

shall hereafter be granted, appointed, or given you, under Our Signet and Sign Manual, or by Our Order in Our Privy Council.

2. And you are with all due Solemnity to cause Our said Commission to be published at and such other Ports of your Government, as you shall think necessary and expedient, as soon as possible after your arrival; which being done, you are in the next place to nominate and establish a Council for Our said Province, to assist you in the administration of Government, which Council is for the present, to be composed of the following Persons, (Viz) George Duncan Ludlow Esqr., Our Chief Justice of Our said Province, and Beverley Robinson, James Putnam, Abijah Willard, Gabriel Ludlow, Isaac Allen, Joshua Upham, Edward Winslow, William Hazen, Daniel Bliss, Gilfred Studholme and Jonathan Odell Esquires and other Persons &c. Our Chief Justice of Our said Province, and and other Persons to be chosen by you from amongst the most considerable of the Inhabitants of, or Persons of Property in Our Said Province, which Persons so nominated and appointed by you as aforesaid (Five of whom We do hereby appoint to be a Quorum) are to be of Our Council for Our said Province, and to have & enjoy all the Powers, Privileges and authorities usually exercised and enjoyed by the Members of Councils in Our other Plantations, & also such others as are contained in Our said Commission under Our Great Seal of Great Britain, & in these Our Instructions to you; and Our said Council shall meet at such Time and Times, place & places as you in Your Discretion shall think necessary and expedient; It is nevertheless Our Will and Pleasure that the said Chief Justice shall not be capable of taking upon himself the Administration of the Government upon the Death or Absence of you Our Governor, or of the Commander in Chief of Our said Province for the time being.

* * * * * * *

5. And that We may be always informed of the names and Characters of Persons fit to supply the Vacancies, which may happen in Our said Council, you are in case of any vacancy, to transmit to Us, by one of Our principal Secretaries of State, the names and characters of three Persons Inhabitants of Our said Colony, whom you shall esteem the best qualified for that Trust, and you are also to transmit a Duplicate of the said Account to the Committee of Our Privy Council for Trade and Plantations, for their Information.

* * * * * * *

7. And in the choice and nomination of the Members of Our said Council, as also of the Chief Officers, Judges, Assistants, Justices of the Peace and other Officers of Justice, you are always to take care, that they be men of good Life, well affected to Our Government, and of abilities suitable to their Employments.

8. You are neither to augment, nor diminish the number of Our said Council, as it is at present established, nor to suspend any of the members thereof, without good and sufficient cause, nor without the consent of the majority of Our said Council, signified in Council, after due examination of the charge against such Councillor, and his answer thereunto; And in case of the Suspension of any of them, you are to cause your reasons for so

JOINT APPENDIX.

No. 62. Extract from Instructions to Governor Carleton, 28th July, 1784 —*continued.*

doing, together with the charges and proofs, against the said Persons, and their answers thereunto, to be duly entered upon the Council Books, and forthwith to transmit Copies thereof to Us, by one of Our principal Secretaries of State, and also Duplicates to the Committee of Our Privy Council for Trade and Plantations for their Information, nevertheless if it should happen that you have reasons for suspending any Councillor not fit to be communicated to the Council, you may in that case suspend such person without their Consent, but you are thereupon immediately to send to Us by one of Our principal Secretaries of State an Account of your Proceedings therein, with your Reasons at large for such suspension, as also for not communicating the same to the Council, and Duplicates thereof by the next opportunity, and you are also to transmit a Duplicate of such Account to the Committee of Our Privy Council for Trade and Plantations for their Information.

No. 63. Extract from Quebec Resolutions, 10th October, 1864.

No. 63

Report of Resolutions adopted at a Conference of Delegates from the Provinces of Canada, Nova Scotia, and New Brunswick, and the Colonies of Newfoundland and Prince Edward Island, held at the City of Quebec, 10th October, 1864, as the Basis of a proposed Confederation of those Provinces and Colonies.

1. The best interests and present and future prosperity of British North America will be promoted by a Federal Union under the Crown of Great Britain, provided such Union can be effected on principals just to the several Provinces.

2. In the Federation of the British North American Provinces the System of Government best adapted under existing circumstances to protect the diversified interests of the several Provinces and secure efficiency, harmony and permanency in the working of the Union,—would be a general Government charged with matters of common interest to the whole Country and Local Governments for each of the Canadas and for the Provinces of Nova Scotia, New Brunswick and Prince Edward Island, charged with the control of local matters in their respective sections—Provision being made for the admission into the Union on equitable terms of Newfoundland, the North-West Territory, British Columbia and Vancouver.

3. In framing a Constitution for the General Government, the Conference, with a view to the perpetuation of our connection with the Mother Country, and to the promotion of the best interests of the people of these Provinces, desire to follow the model of the British Constitution, so far as our circumstances will permit.

4. The Executive Authority or Government shall be vested in the Sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well understood principles of the British Constitution by the Sovereign personally or by the Representative of the Sovereign duly authorized.

5. The Sovereign or Representative of the Sovereign shall be Commander-in-Chief of the Land and Naval Militia Forces.

6. There shall be a General Legislature or Parliament for the Federated Provinces, composed of a Legislative Council and a House of Commons.

7. For the Purpose of forming the Legislative Council, the Federated Provinces shall be considered as consisting of three divisions: 1st, Upper Canada; 2nd, Lower Canada; 3rd, Nova Scotia, New Brunswick and Prince Edward Island, each division with an equal representation in the Legislative Council.

8. Upper Canada shall be represented in the Legislative Council by 24 Members, Lower Canada by 24 Members, and the three Maritime Provinces by 24 Members, of which Nova Scotia shall have ten, New Brunswick, Ten, and Prince Edward Island, Four Members.

9. The Colony of Newfoundland shall be entitled to enter the proposed Union, with a representation in the Legislative Council of four Members.

10. The North-West Territory, British Columbia and Vancouver shall be admitted into the Union on such terms and conditions as the Parliament of the Federated Provinces shall deem equitable, and as shall receive the assent of Her Majesty; and in the case of the Province of British Columbia or Vancouver, as shall be agreed to by the Legislature of such Province.

11. The Members of the Legislative Council shall be appointed by the Crown under the Great Seal of the General Government and shall hold Office during Life; if any legislative Councillor shall, for two consecutive sessions of Parliament, fail to give his attendance in the said Council, his seat shall thereby become vacant.

12. The Members of the Legislative Council shall be British Subjects by Birth or Naturalization, of the full age of Thirty Years, shall possess a continuous real property qualification of four thousand dollars over and above all incumbrances, and shall be and continue worth that sum over and above their debts and liabilities, but in the case of Newfoundland and Prince Edward Island, the property may be either real or personal.

13. If any question shall arise as to the qualification of a Legislative Councillor, the same shall be determined by the Council.

14. The first selection of the Members of the Legislative Council shall be made, except as regards Prince Edward Island, from the Legislative Councils of the various Provinces so far as a sufficient number be found qualified and willing to serve; such Members shall be appointed by the Crown at the recommendation of the General Executive Government, upon the nomination of the respective Local Governments, and in such nomination due regard shall be had to the claims of the Members of the Legislative Council of the Opposition in each Province, so that all political parties may as nearly as possible be fairly represented.

15. The Speaker of the Legislative Council (unless otherwise provided by Parliament) shall be appointed by the Crown from among the members of the Legislative Council, and shall hold office during pleasure, and shall only be entitled to a casting vote on an equality of votes.

16. Each of the twenty-four Legislative Councillors representing Lower Canada in the Legislative Council of the General Legislature, shall be appointed to represent one of the twenty-four Electoral Divisions men-

JOINT APPENDIX.

No. 63. Extract from Quebec Resolutions, 10th October, 1864 —*continued.*

tioned in Schedule A of Chapter first of the Consolidated Statutes of Canada, and such Councillor shall reside, or possess his qualification in the Division he is appointed to represent. —

17. The basis of Representation in the House of Commons shall be Population, as determined by the Official Census every ten years; and the number of Members at first shall be 194, distributed as follows :—

Upper Canada	82
Lower Canada	65
Nova Scotia	19
New Brunswick	15
Newfoundland	8
and Prince Edward Island ...	5

18. Until the Official Census of 1871 has been made up there shall be no change in the number of Representatives from the several sections.

19. Immediately after the completion of the Census of 1871 and immediately after every Decennial Census thereafter, the Representation from each section in the House of Commons shall be re-adjusted on the basis of Population.

20. For the purpose of such re-adjustments, Lower Canada shall always be assigned sixty-five members, and each of the other sections shall at each re-adjustment receive, for the ten years then next succeeding, the number of members to which it will be entitled on the same ratio of representation to population as Lower Canada will enjoy according to the Census last taken by having sixty-five members.

21. No reduction shall be made in the number of Members returned by any section, unless its population shall have decreased relatively to the population of the whole Union, to the extent of five per centum.

22. In computing at each decennial period, the number of Members to which each section is entitled, no fractional parts shall be considered, unless when exceeding one half the number entitling to a Member, in which case a member shall be given for each such fractional part.

23. The Legislature of each Province shall divide such Province into the proper number of constituencies, and define the boundaries of each of them.

24. The Local Legislature of each Province may from time to time alter the Electoral Districts for the purposes of Representation in the House of Commons and distribute the representatives to which the Province is entitled in any manner such Legislature may think fit.

25. The number of Members may at any time be increased by the General Parliament,—regard being had to the proportionate rights then existing.

26. Until provisions are made by the General Parliament, all the Laws which, at the date of the Proclamation constituting the Union, are in force in the Provinces respectively, relating to the qualification and disqualification of any person to be elected or to sit or vote as a member of the Assembly in the said Provinces respectively—and relating to the qualification or disqualification of voters, and to the oaths to be taken by voters, and to Returning Officers and their powers and duties,—and relating to the proceedings at Elections,—and to the period during which such

Elections may be continued, and relating to the Trial of Controverted Elections, and the proceedings incident thereto, and relating to the vacating of seats of Members and to the issuing and execution of new Writs in case of any seat being vacated otherwise than by a dissolution,—shall respectively apply to elections of Members to serve in the House of Commons, for places situate in those Provinces respectively.

No. 63. Extract from Quebec Resolutions, 10th October, 1864 —*continued.*

No. 64

Certificate of Wm. Smith, Assistant Keeper of Public Records of Canada.

No. 64. Certificate of Assistant Keeper of Public Records of Canada.

IN THE SUPREME COURT OF CANADA.

In the matter of a reference as to the meaning of the word " persons " in section 24 of the British North America Act, 1867.

I hereby certify that I have made a careful examination of the lists containing the names of the Executive and Legislative Councils, and Houses of Assembly since the establishment of Civil Government in the province of Quebec in August 10, 1764, including those of Upper and Lower Canada into which the province of Quebec was divided by the Constitutional Act of 1791, and of the province of Canada, formed by the union of Upper and Lower Canada by the Act of 3-4 Victoria, c. 35; of the province of Nova Scotia since the formation of the first Council in 1719; and of New Brunswick since its erection into a province separate from Nova Scotia in 1784, in each case down to 1867; and that in none of these lists have I found the name of a person of the female sex.

WM. SMITH,
Assistant Keeper of Public Records of Canada.

In the Privy Council.

No. 121 of 1928.

On Appeal from the Supreme Court of Canada.

IN THE MATTER of a Reference as to the meaning of the word "persons" in Section 24 of The British North America Act, 1867.

BETWEEN

HENRIETTA MUIR EDWARDS, NELLIE L. McCLUNG, LOUISE C. McKINNEY, EMILY F. MURPHY AND IRENE PARLBY .. .. *Appellants,*

AND

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC AND THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA *Respondents.*

JOINT APPENDIX.

BLAKE & REDDEN,
17, Victoria Street, S.W.1,
for the Appellants.

CHARLES RUSSELL & CO.,
37, Norfolk Street, W.C.2,
for the Attorney-General of Canada.

BLAKE & REDDEN,
for the Attorney-General of Quebec.

Rowell, K.C.

Anglin not now appearing

C. J. at p. 50, l. 6. sums up opinion of majority.

Not to be approached as an act creating a franchise.

But as an act creating a constitution which gives sovereign power to deal with all local matters.

Senate is part of the system of Govt. set up in the Act.

Other sections contain the same word "persons".

Sec. 11. Majority of Supreme Court held that "person" here means male persons.

Women admitted to vote.
1914 War Time Election Act.

Anomalous if woman could not be M.C. although elected to H. of C.

Since 1864 - word "persons" in
s. 41 + 24 have been interpreted to
include female persons.

They legislated to include or to
exclude them.

Even since interpretation act -
Statutes have expressly excluded
women.

Before 1864 legislation expressly
excluded woman - not Common
law exclusion -

Public policy constantly changing.

Frost v. King -

If there is an incapacity, Parl.t can remove it.

L.C. If the King can summon a woman to S.C., can the Gov. Gen. do it.

Could King do it before the Sen disqualification (Removal) Act. (1919).

(1912) A.C. p. 571 - power of dominion to make references.

(This was in absence of Express provisions under "peace order & good government" clause.

"Persons" shd. receive its natural meaning. ✓

Sec. 14. Deputy of Gov. Gen. - no reason why woman shd. not be appointed

Indep. Act 1849 - Ap. p. 42.

Stat. 1849 re voting of women Ap. p. 42.

Clement 332, 335

1. Bkg act gives power over all domestic matters

2. Power to change

3. Persons include females acc to ordinary meaning

4. Word was used to cover future development

5. In other sections females are include.

5. Masculine pronoun not conclusive — Interp Act

6. In sec 41. where they intend to limit they use "male"

Ct. C. 1859. p. 46 – exclusion of women from voting.

Stat. Can. 1866 – Ap. p. 47

Nova Scotia Acts – Ap. pp. 48, 49.

New Brunswick – pp. 50, 51, 52.

In 1866 J.S. Mill brought subject up by motion to extend franchise to women.

Proposed in Reform Bill of 1867 to substitute "persons" for "men".

S. 23 (2) 7 & 8 Vic. Ch. 66 – Naturalization of women by marriage. (1844)

7. Qualifications in S. 23 are comprehensive & cannot be added to.

8. Nothing in 23 affording argument against inclusion of women.

9. Cases are based on diff. provisions.

10. Nothing in ~~history of the Council~~ Act showing policy of exclusion.

12 Lord Chancellor may remove in Capacity.

Sec. 23 (3) – Sess. Ap. pp. 3, 5, 6.

Even if woman could not qualify, the whole subject was within the competence of the legislatures

Duff, J. overlooked the historical situation in N.S. & N.B.

(1928) A.C. 124 – Legislative Council in Nova Scotia
Commission to Lord Durham – p. 111.

There may be a distinction as to maritime provinces

There it depends on prerogative

(Duff, J. pointed out that Legislative control of Leg. Council was abandoned by B.N.A. Act.) p. 57

Sahan -

Governor Gen. Darling

Dr wd. be restriching the Royal pre-
rogative to exclude men -

Sec. 41. Proviso -
Legis d'art. could introduce
female suffrage in Victoria
& not elsewhere.

Sec. 24. Can have same Colonies -

Colonies within which constitutions
might grow

2° = Line of defence -

If at Common Law women are disqualified, the disqualification can be removed by Legislation in Canada.

If Canada can do it, then "person" has the wide meaning.

(Not so, because the Legislature could substitute another word for "person" - i.e. Expressly say that women as well as men are eligible).

Acts - qualifying women

1874.- Cons. Sts. p. 9.
1885 -
1898 - " " p. 11, s. 5.
1926 - " "

In 1916 - women became entitled to vote in 4 Western provinces.

1917 - Dom Act - Cons. Sts. p. 12
1918 - Sts. p. 54.
1920 p. 55.