MONEY BILLS AND THE SENATE

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From the earliest times the House of Commons in England has insisted on extensive and exclusive privilege in relation to financial measures, the nature of which was finally recorded in a resolution adopted by that House on July 3, 1678. The rules of the House of Commons in Canada, by an almost verbatim reproduction of that resolution, assert the same privilege in Canada. The Senate, however, does not concede that it is subject to the same disabilities as the Lords in England and insists it has the right to amend by reduction an appropriation or taxation bill originating in the House of Commons. A report of a Senate Committee published in 1918 sharply disagrees with the Commons' rule. The issue flares up from time to time but it has never been finally resolved. The author examines the nature and origin of the privilege and concludes that historically, constitutionally and legally the House of Commons has the better argument.

I. THE PROBLEM

Section 53 of the British North America Act provides that "Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons," and section 54 provides that "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." Do these sections prohibit the Senate from amending appropriation and taxation bills that have originated in the House of Commons?

The House of Commons takes the position that the Senate may not amend. Rule 78 of the House of Commons says :

> All aids and supplies granted to His Majesty by the Parliament of Canada, are the sole gift of the House of Commons and all bills for granting such aids and supplies ought to begin with the House, as it is the undoubted right of the House to direct, limit and appoint in all such bills the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which are not alterable by the Senate.

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The Senate, on the other hand, takes the position that it has the right to amend. A committee of the Senate was appointed in 1918 to consider this question and its conclusions were set out in its report of May 9, 1918, as follows :

> 1. That the Senate of Canada has and always had since it was created, the power to amend Bills originating in the Commons appropriating any part of the revenue or imposing a tax by reducing the amounts therein, but has not the right to increase the same without the consent of the Crown.
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> 2. That this power was given as an essential part of the Confederation contract.
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> 3. That the practice of the Imperial Houses of Parliament in respect of Money Bills is no part of the Constitution of the Dominion of Canada.
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> 4. That the Senate in the past has repeatedly amended so-called Money Bills, in some cases without protest from the Commons, while in other cases the Bills were allowed to pass, the Commons protesting or claiming that the Senate could not amend a Money Bill.
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> 5. That Rule 78 of the House of Commons of Canada claiming for that body powers and privileges in connection with Money Bills identical with those of the Imperial House of Commons is unwarranted under the provisions of The British North America Act, 1867.
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> 6. That the Senate as shown by The British North America Act as well as by the discussion in the Canadian Legislature on the Quebec Resolutions in addition to its general powers and duties is specially empowered to safeguard the rights of the provincial organizations.
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> 7. That besides general legislation, there are questions such as provincial subsidies, public lands in the western provinces and the rights of the provinces in connection with pending railway legislation and the adjustment of the rights of the provinces thereunder likely to arise at any time, and it is important that the powers of the Senate relating thereto be thoroughly understood. [1]

In the past, differences between the two Houses seem to have been amicably settled and the issue has never been fought out to a final conclusion. It may well be that the House of Commons would emerge victorious, and, indeed, some senators have expressed this view. [2] But it would not necessarily follow that the House of Commons would be right; pressure of public opinion rather than strict legal argument might well force the Senate to give ground.

The purpose of this paper is not to predict who would ultimately win the battle in the event of a "fight to the finish" between the two Houses, but rather to consider the problem on its constitutional merits.

The position in England is clear. It was there established centuries ago that the House of Commons has complete control over revenue and expenditure, and that the House of Lords has no right either to initiate or

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[1] 54 CAN. SEN. J. 194 (1918). Appended to it and forming part thereof is a memorandum setting forth the arguments in support of the report. The report was adopted by the Senate. *See id.* at 241.

[2] [1952-53] CAN. SEN. DEB. at 437, 443.

to amend money bills. [3] Any alteration of a money bill, whether by increase or reduction, of its amount or of its duration, mode of assessment, levy, collection, appropriation or management, and any alteration in respect of the persons who pay, receive, manage or control it or in respect of the limits within which it is leviable, is regarded as a breach of the Commons' privilege. [4] Until the twentieth century the House of Lords did have the right to reject, but even this right was curtailed by the Parliament Act of 1911; [5] money bills normally do receive the assent of the Lords, but machinery is now available whereby money bills, and other bills, can become law without the assent of the Lords.

The position of the Commons and the Lords was set out fully in the Commons' resolution of July 3, 1678 in the following terms :

> That all aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons and all Bills for the granting of any such aids and supplies ought to begin with the Commons : and that it is the undoubted and sole right of the Commons to direct, limit and appoint, in such Bills, the ends, purposes, consideration, conditions, limitations, and qualifications of such grants; which ought not to be changed or altered by the House of Lords. [6]

Is the Senate of Canada in the same position as regards money bills? Or, to put it in another way, does the House of Commons of Canada enjoy the same privileges as the House of Commons in England? The preamble to the B.N.A. Act recites that the provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be united "with a Constitution similar in principle to that of the United Kingdom," and it is tempting to argue from this that the House of Commons in Canada enjoys the same privileges as the United Kingdom House of Commons. But the two constitutions could still be "similar in principle" without the entire privilege. And why, it may be asked, should the Senate be under the same disabilities as the Lords? Over a hundred years ago Lord Durham [7] reported that second chambers of the colonies should not be compared with the House of Lords,

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[3] T. MAY, CONSTITUTIONAL HISTORY OF ENGLAND at 98-99 (5th ed. 1875).

[4] T. MAY, PARLIAMENTARY PRACTICE at 830-31 (17th ed. 1964).

[5] The Parliament Act, 1911, 1 & 2 Geo. 5, c. 13.

[6] 3 J. HATSELL, PRECEDENTS OF PROCEEDINGS IN THE HOUSE OF COMMONS at 122-23 (1818).

[7] 2 LORD DURHAM'S REPORT at 325 (Lucas ed. 1912) :

> The analogy which some persons have attempted to draw between the House of Lords and the Legislative Councils seems to me erroneous. The Constitution of the House of Lords is consonant with the frame of English society; and as the creation of a precisely similar body in such a state of society as that of these Colonies is impossible, it has always appeared to me most unwise to attempt to supply its place by one which has no point of resemblance to it, except that of being a non-elective check on the elective branch of the Legislature.

and the Act of Union of 1840 contains provisions [8] in almost the same terms as sections 53 and 54 of the B.N.A. Act, 1867.

It will, therefore, be necessary to understand how the House of Lords lost its privilege to deal with money bills, and then determine whether these reasons should have any effect on the Canadian Senate's position. To do this, a review of English history is required.

II. History of Parliament in England [9]

Parliament originated with the early councils of the King. The Saxon Kings sought the counsel and consent of their wise men (Witenagemot), and Ilbert [10] says that on the eve of the Norman Conquest no English King had taken it on himself to legislate or tax without the counsel and consent of a national assembly. The Norman Kings continued to hold councils, but their councils (probably assemblies of the King's tenants-in-chief) were of a feudal character. Gradually this feudal body changed to a body more representative of the nation at large, but it continued to be feudal in character until the thirteenth century. In 1254, when Henry III was in great need of money, each sheriff was required to send two knights from his county to consider what aid they would give the King. These knights represented, not the tenants-in-chief, but all the free men of their county. In 1265, Simon de Montfort summoned to his Parliament representatives of cities and boroughs. Edward I held several great assemblies, which were usually called Parliaments, and by the time the model Parliament was held in 1295 the assembly was no longer a feudal court but a national assembly. Edward summoned separately archbishops, bishops, abbots, earls and barons; the archbishops and bishops were directed to bring with them other clerical representatives, and every sheriff was directed to have elected two knights of each shire, two citizens of each city and two burgesses of each borough.

This national assembly, however, was not a legislative body as we understand it today. The reason for summoning the Parliament was usually that the King required money; the subjects on the other hand had grievances for which they desired redress. Parliament was a petitioning body, and petitions were presented to the King in Parliament. A grant of money was made on condition that certain grievances would be redressed. The estates

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[8] The Union Act, 1840, 3 & 4 Vict., c. 35, § 57 provides that "all Bills for appropriating any Part of the Surplus of the Consolidated Revenue Fund, or for imposing any new Tax or Impost, shall originate in the Legislative Assembly of the said Province of *Canada*:" and that "it shall not be lawful for the said Legislative Assembly to originate or pass any Vote, Resolution, or Bill for the Appropriation of any Part of the Surplus of the said Consolidated Revenue Fund, or of any other Tax or Impost, to any Purpose which shall not have been first recommended by a Message of the Governor to the said Legislative Assembly during the Session in which such Vote, Resolution, or Bill shall be passed."

[9] For details, *see* C. ILBERT, PARLIAMENT, ITS HISTORY, CONSTITUTION AND PRACTICE at 7-31 (2d ed. 1920).

[10] *Id.* at 9.

came to strike a bargain; in return for a gift of money (raised by self-imposed taxes) the King granted concessions. When a bargain had been made, the commoners and most of the Lords went home, leaving it to the King and his close advisers to devise and work out the legislation. The statutes were not drawn up until after the assembly was dissolved, and there was always a risk that the law would not correspond to the petition on which it was based. Finally, in 1414, the King conceded that no law should be made a statute "by no manner of term or terms which should change the sentence and the intent asked." It then became the practice to send to the King, not a petition, but a bill drawn in the form of a statute, so that the King had no alternative but to assent or dissent. The practice of legislation by bill became settled about the end of the reign of Henry VI (1422-1461) and the two Houses thus became a legislative authority.

III. Taxation and Supply [11]

Prior to the Conquest and during the early Roman period the revenues of the Crown were derived from landed possessions and from certain fees and fines levied in the exercise of the royal prerogative, with feudal dues being added after the conquest. The earliest form of taxation, as distinguished from revenue, was possibly the Danegeld, first levied in 991 with the consent of the Witan. This was a tax on land and was continued after the Norman Conquest until 1162 during the reign of Henry II.

These revenues of the Crown were in the nature of class taxes rather than national taxes. It was not until the reign of Henry II (1154-1189) that the rudiments of national taxation began to appear. He was the first to attempt to tax incomes from sources other than land. Thus, the Saladin Tithe, levied in 1188, required supporters of the third crusade to pay a tenth part of their rents from land and income from merchandise. But it was not until the reign of Richard I that this method of taxation was used for national purposes, and during his reign it was established as a regular form of levy. From 1192 to 1290 it was negotiated separately with each shire by the officials of the Exchequer, and was assessed by a sworn jury of neighbours; after 1290 it became a grant made by the assembled Parliament. Until 1334 each estate voted its own liabilities and in a different proportion to the rest. Ultimately the estates joined in making the grant.

According to the theory of the three estates, each estate would tax itself separately. The clergy granted their subsidies in convocation and continued to do so until the seventeenth century. The Lords and Commons, before the end of the fourteenth century, joined in making the grant, but each House continued to tax itself independently of the other. Pike says :

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[11] For details, *see* D. Medley, English Constitutional History at 231-54, 491-546. (3d ed. 1902).

> In these cases, perhaps, the Commons, made, as it were, a proffer, and the Lords agreed to give of their moveables, at the same rate, and in addition to the military services which they owed. The Commons (now including both knights of the shires and burgesses) made the bargain, so to speak, as some representative burgesses had made it in the days before Parliaments, and the Lords became parties to the transaction. [12]

Because each estate taxed itself, as Pike says,

> [i]t was obviously not for the Lords to say what the Commons should contribute. The Lords, on the other hand, being in origin the great feudal land-owners, contributed to the necessities of the Crown or the State by the very terms on which they held their lands, and founded, at their own expense, the greater part of the army. This was a matter between them and the Crown with which the Commons could not interfere. [13]

Even in the earliest periods, while the assembly was still a feudal assembly, the principle was established :

> Whenever any extraordinary aid was necessary . . . to which the established revenue of the Crown, arising from its estates, or from those dues and services annexed to the lands, which were held immediately of the Crown, was not adequate . . . the Crown should . . . apply to the Estates . . . and should have no power in itself of levying this aid, without the consent of the people, and subject to such rules and conditions as they should choose to impose. [14]

Various attempts were made by the Crown to usurp this power, but it was finally declared in the Great Charter of 1215 that exceptional aids were not to be levied without the common counsel of the realm. In 1306, Edward I was obliged to consent to a statute stipulating "That no tallage or aid shall be taken or levied by Us, or Our Heirs in Our Realm, without the good will and assent of Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other freemen of the land." [15]

Early in the fourteenth century the Commons began to insist that their petitions should be satisfied before a grant was made. This feeling can be traced in the Parliament of 1339. It was implied in 1348 and again in 1373. In 1400 the Commons petitioned the King that before granting supplies they might receive answers to their petitions and, when this was refused, they adopted the practice of delaying the grant until the last day of the session. [16]

In 1341 Edward conceded the principle that an audit should be carried out to ensure that grants were used for the purposes intended.

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[12] L. PIKE, CONSTITUTIONAL HISTORY OF THE HOUSE OF LORDS at 339-40 (1894).

[13] *Id.* at 337.

[14] J. HATSELL, *supra* note 6, at 91-92.

[15] *Id.* at 95.

[16] *See also*, 3 W. STUBBS, CONSTITUTIONAL HISTORY OF ENGLAND at 269-70.

The bulk of the burden of taxation fell upon the commoners, and a formula was adopted that placed the Commons in the foreground. Toward the end of the reign of Edward III grants were made "by the Commons with the advice and consent of the Lords." This formula was repeated during the reign of Henry IV in 1401 and 1402, and in 1407 the dominant position of the Commons was firmly established. [17]

In that year the King consulted the Lords as to the amount of aid necessary for the public defence. The Lords answered: "Considering the King's necessities on the one hand, and the poverty of his people on the other, a lesser aid would not be sufficient than a tenth and a half from the cities and boroughs, and a fifteenth and a half from the rest of the people; besides this, that it would be necessary to grant a prolongation of the duties on wools and leather, and of tonnage and poundage . . . ." [18] The King then sent a message to the Commons that certain of their number should come before him and the Lords to hear and report to the Commons "that which the King should signify in command to them." The record of the Commons states that "[t]hey were greatly disturbed; saying and affirming, that this was in great prejudice and derogation of their liberties." The King yielded, and granted the famous ordinance "The Indemnity of the Lords and Commons." It declared :

> That in this present Parliament, and in all Parliaments to come, in the absence of the King, it should be lawful, as well for the Lords by themselves, as for the Commons by themselves, to commune amongst themselves of all matters relating to the realm, and of the means to redress them: provided that neither the Lords on their part, nor the Commons on their part, should make any report to the King of any "grant granted by the Commons, and assented to by the Lords," nor touching any communication of the said grant, until the Lords and Commons should agree thereupon; and then that it should be done in manner and form as has been hitherto accustomed, that is to say, "by the mouth of the Speaker of the House of Commons for the time being." [19]

After the indemnity granted by Henry IV in 1407 the modern principle of grant and supply seems to have been fairly clearly established. Pike says :

> We thus find three points accepted in relation to the constitutional method of voting supplies. They were to be granted by the Commons, to have the assent of the Lords, and to be reported to the King by the Speaker of the House of Commons. There was nothing to prevent any suggestions from the Lords to the Commons; but they were not to have any appearance of dictation caused by the use of the King's name, and they were not to be preceded by any report to him. [20]

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[17] *Id.* at 62; 3 J. REDLICH, PROCEDURE OF THE HOUSE OF COMMONS at 115 (1908).

[18] J. HATSELL, *supra* note 6, at 148.

[19] *Id.* at 149.

[20] L. PIKE, *supra* note 12, at 341-42.

During the sixteenth and seventeenth centuries, the House of Commons consolidated its position, but not without many disputes with the Lords. At first the Commons were content to maintain the principle that aids and supplies should *begin* with them, and that the Lords should not *commence* any proceedings that might impose burdens upon the people. This position was unchallenged by the Lords throughout the fourteenth, fifteenth and sixteenth centuries. But in the seventeenth century the Lords began to insert in bills of aids or supplies matters that the Commons regarded as a breach of their privilege, and ultimately the Commons asserted that any interference was a breach of their privileges. Thus in 1689, in disagreeing with the Lords' amendments to the Poll Bill, the Commons said :

> All Money, Aids, and taxes, to be raised or charged upon the subjects in Parliament, are the gift and grant of the Commons in Parliament, and presented by the Commons in Parliament, and are, and always have been, and ought to be, by the constitution and ancient course and laws of Parliament, and by the ancient and undoubted rights of the Commons of England, the sole and entire gift, grant, and present of the Commons in Parliament; and to be laid, rated, raised, collected, paid, levied, and returned for the public service, and use of the government, as the Commons shall direct, limit, appoint, and modify the same : and the Lords are not to alter such gift, grant, limitation, appointment, or modification of the Commons in any part or circumstance, or otherwise to interpose in such Bills than to pass or reject the same for the whole, without any alteration or amendment, *though in ease of subjects.* As the Kings and Queens, by the constitution and laws of Parliament, are to take all, or leave all, in such gifts, grants, and presents from the Commons; and cannot take part and leave part; so are the Lords to pass all, or reject all, without diminution or alteration.[21]

But the reason for this development is not clear. Maitland says that "It is difficult to find any principle upon which this so-called privilege of the House of Commons can be founded," [22] and Holdsworth says :

> It can hardly be contended that the claim of the Commons was good in law. No doubt, as a general rule, grants of money had, from the latter part of the fourteenth century, originated with the House of Commons; and this had been recognized by Henry V in 1407. But there is no mediaeval authority in favour of their claim that such grants could not originate from the Lords, and that the Lords could not amend these grants.[23]

Originally each estate (and later each House) made its own grant, and it is logical that the one estate or House could not in any way interfere with the grants of the other. But it does not follow that the House of Commons has the *exclusive* right to tax and grant supplies. How did the Commons acquire the right to tax the Lords, and how did the Lords lose the right to tax themselves? The Commons themselves offered no explanation. Thus

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[21] J. HATSELL, *supra* note 6, at 452. [Emphasis added].

[22] F. MAITLAND, CONSTITUTIONAL HISTORY OF ENGLAND at 310 (1908).

[23] 6 W. HOLDSWORTH, HISTORY OF ENGLISH LAW at 250 (1924).

in 1671, in a dispute between the Lords and the Commons, the Commons said that their right was "so fundamentally settled that they could not give reasons for it—for that would be a weakening of the Commons' right and privilege." [24]

Holdsworth, [25] quoting Pike, says :

> The Great Rebellion, and the abolition of feudal tenures immediately after the Restoration, effected, in theory, at any rate, a complete revolution in the relation of the great land-holders of the State. Their obligation to provide a national army had ceased, and they constituted but a comparatively small portion of the whole population. Everything that was necessary for the public service had now to be raised by taxation in some form; and the members of the House of Commons represented almost the whole of the persons who were to be taxed. When, therefore, they claimed exclusive privileges in regard to Money Bills, they had not only some historical grounds for their pretensions, but also a powerful argument in the interests with which they were charged. [26]

In the conference of 1671 the Commons said that the proportion of the Lords in all taxes "in comparison to what the commonalty pay, is very inconsiderable" [27] and in 1666 the Commons objected to an amendment of the Poll Bill taxing the peers because "the tax is one and the same." [28]

More recently, May says that modern scholarship has formulated the doctrine that representation and the consent to taxation form the basis of the power of the Commons; that the origin of the theory of representation and the doctrine of consent are traced to an ecclesiastical origin by attributing to the Lateran Council of 1215 the motive source, to the practice of English Church Councils from 1226 onwards the precedents, and to ecclesiastical leaders the principle that taxation demands both representation and consent. May says further that it is now shown that the feudal doctrine of consent to taxation lacked the element of representation. [29] The connection between representation and taxation is also implied in the arguments the Commons used to maintain their position. Hatsell records the 1671 Conference, which includes the following :

> Your Lordships say, you are put to an ignoble choice, either to refuse the King's supplies when they are most necessary; or to consent to such ways and proportions, which neither your own judgment, nor the good of the government or people can admit.
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> *Answer.* We pray your Lordships to observe, that *this reason, 1st. makes your Lordships' judgment to be the measure of the welfare of the Commons of England: 2dly. It gives you the power to raise and increase taxes, as*

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[24] J. HATSELL, *supra* note 6, at 403.

[25] *Supra* note 23, at 251 & n.3.

[26] *Id.*

[27] J. HATSELL, *supra* note 6, at 424.

[28] *Id.* at 119.

[29] T. MAY, *supra* note 4, at 6-7.

> *well as to abate*; for it may sometimes, in your Lordships' judgments, be for the interest of trade to raise and increase a rate, as well as to lessen it: and then, still, you are brought to the same ignoble choice, unless you may raise the tax.
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> *But it is a very ignoble choice put upon the King and his people, that neither his Majesty must demand, and the Commons give, so small an aid, as can never be diminished, or else run the hazard of your Lordships re-examination of the rates; whose proportions in all taxes, in comparison to what the commonalty pay, is very inconsiderable.* [30]

Whatever the reasons, the Lords were in fact completely excluded from participation in matters of taxation and supply.

Meanwhile, the procedure for dealing with money bills became settled; it is still followed today in England and in Canada. Since the earliest times there was always a message from the sovereign requesting supply. This message was considered by the Commons and the underlying principle was that every opportunity [31] must be given for free and frequent discussion so that Parliament may not by sudden and hasty votes incur any expense or be induced to approve measures that may entail heavy and lasting burdens upon the country. The message is therefore fully considered by a committee of the House of Commons known as the Committee of Supply. This committee discusses and considers what amounts should be granted and for what purposes. The next question is, where is the money to come from, and in order to determine this matter a Committee of Ways and Means is established in the House of Commons to frame resolutions for the employment of the Consolidated Revenue Fund to meet the needs of supply, and for its replenishment when necessary by the imposition of taxation. This committee receives from the Chancellor of the Exchequer a financial statement of the year in the form of a budget speech, and having been informed of the financial balance and the proposed expenditures the resolutions are passed. These resolutions reach their final result in the Appropriation Bills, which authorize the employment of the Consolidated Revenue Fund, and the Finance Bill, which embodies fresh taxation or freshly adjusts taxation for the year. [32]

There are occasions when the House of Commons in England waives its privilege. [33] The Commons tolerates no amendments of any kind to the bills of aids and supplies, *i.e.*, the Appropriation and the Finance Bills. Any amendments by the Lords of such a bill, whether or not the amendment in itself involves interference with a charge, is regarded by the Commons as an intolerable breach of privilege. In the case of any other bills providing either for revenue or expenditure the Commons will regard as a breach of privilege only an amendment that in itself involves some interference in a charge.

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[30] J. HATSELL, *supra* note 6, at 424. [Emphasis added].

[31] J. BOURINOT, PARLIAMENTARY PROCEDURE AND PRACTICE at 404-05 (4th ed. 1916) and J. HATSELL, *supra* note 6, at 176.

[32] 1 W. ANSON, LAW AND CUSTOM OF THE CONSTITUTION at 291-92 (5th ed. 1922).

[33] T. MAY, *supra* note 4, at 837.

The conflict between the Lords and the Commons ultimately led to the practice of including appropriation and revenue matters in one bill or, in other words, the entire budget was included in the one measure. [34] The Commons regarded any amendment whatever to such a bill as a breach of privilege and the Commons could, and sometimes did, insert extraneous matter. This practice, however, of "tacking" is regarded as unparliamentary, [35] and is also considered by the Senate to be unparliamentary in Canada. [36]

The consolidation of the entire budget in one measure was one of the pressures used to force the passage of the Parliament Act in 1911. [37]

IV. The Nature of the Commons' Privilege

Originally the privilege was stated to be simply that "subsidy and supply ought to begin" in the House of Commons. Thus in 1592, when the Lords proposed to confer with the Commons on the grant of a subsidy, Sir Francis Bacon asserted that it was always the custom and privilege of the Commons "to make offer of the subsidies from hence." [38] In a debate in 1609 it was asserted that "subsidies always begin in the House." [39] In 1640, at a conference between the Lords and Commons, the representative of the Commons referred to one great privilege that was acknowledged by the Lords, namely, "that the matter of subsidy and supply ought to begin in the House of Commons." [40] On July 24, 1661, the Lords sent down a bill for paving streets but it was laid aside by the Commons and a bill of like nature was introduced in the Commons; this bill was sent to the Lords where it was amended; the entry made in the journals was that "the Commons cannot agree—because the people cannot have any charge or tax imposed upon them, *but originally by the Commons.*" [41] In 1662 the Lords amended a bill from the Commons and again the Commons disagreed because the amendments "are to lay a charge upon the people, *which ought not to begin with the Lords, but in this House.*" [42] On March 17, 1670, the Lords amended a Commons bill dealing with the taxation of brandy, and an entry was made in the Commons journals reading "Amendments coming from the Lords to the Bill of Brandy; which being for laying an imposition on the people, in breach of the privilege of this House, *where all impositions on the people ought to begin.*" [43]

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[34] W. Ridges, Constitutional Law of England at 94 (6th ed. 1937).

[35] J. Redlich, *supra* note 17, at 117. T. May, *supra* note 4, at 836; J. Hatsell, *supra* note 6, at 222.

[36] Senate Rule 71.

[37] The Parliament Act, 1911, 1 & 2 Geo. 5, c. 13.

[38] J. Hatsell, *supra* note 6, at 111.

[39] *Id.* at 112.

[40] *Id.* at 399.

[41] *Id.* at 116. [Emphasis added].

[42] *Id.* at 117. [Emphasis added].

[43] *Id.* at 120. [Emphasis added].

New words were used in 1671 and in subsequent years. On April 13, 1671, the Lords having amended a bill for the imposition of a duty on foreign commodities, the Commons resolved "That on all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords." [44] And in 1678 the Commons resolved :

> All aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons; and that all Bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint, in such Bills, the ends, purposes, considerations, conditions, limitations, and qualifications of such grants; which ought not to be changed or altered by the House of Lords. [45]

The question arises whether the new language used in 1671 and in 1678 was simply a restatement of existing privileges, or whether it constituted new or extended privileges. The evidence seems to point to the conclusion that these resolutions were not regarded by the Commons as being an extension of their privilege, but only a more elaborate statement of the privilege they had always asserted. For example, in 1640 the Lords proposed that supply should have precedence over all other business. The Commons objected and resolved "that Their Lordships voting, propounding, and declaring, touching matters of supply . . . is a breach of the Privilege of this House." [46] At the conference between the Commons and the Lords that followed, Mr. Pym, speaking on behalf of the Commons, asserted the privilege "that the matter of Subsidy and Supply ought to begin in the House of Commons," [47] and insisted that the proposal of the Lords to give supply precedence over other business was a breach of this privilege. In support of his position, Mr. Pym said : "Now, my Lords, if you have voted this, you have not only meddled with matter of supply, but as far as in you lies, have concluded both the matter and order of proceeding; which the House of Commons takes to be a breach of their privilege . . . ." [48] Again on February 11, 1673, [49] the King in a speech from the throne recommended to the Commons the consideration of the means of providing a naval force, and on the same day the Lords sent a vote of thanks for His Majesty's speech, to which they desired the concurrence of the Commons. The Commons replied "That there being something in His Majesty's Speech which particularly relates to the House of Commons, it makes their concurrence with their Lordships, on this occasion, not so proper." [50]

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[44] *Id.*
[45] *Id.* at 122-23.
[46] *Id.* at 112-13.
[47] *Id.* at 399.
[48] *Id.*
[49] *Id.* at 121.
[50] *Id.*

In answering the Lords' claim that they had a right to amend taxation bills, the Commons said in 1671 that the records showed two things : "First, that all aids must begin with the Commons; else the Lords needed not to have conferred about the aids, but might have sent down a Bill. Secondly, that, when they are begun, the Lords can neither add or diminish; else it was in vain to adjust the matter by private conference beforehand, if the Lords could have reformed it afterwards." [51]

It is to be noted that the second item is linked with the first and is asserted as a corollary thereof. The statement of the Commons of 1689, [52] already quoted, is to the same effect. Hatsell says :

> In whatever mode the Lords have at any time attempted to invade this right, the Commons have uniformly and vigorously opposed the attempt; and have asserted and maintained this claim through such a long and various course of precedents, particularly from the time of the Restoration, that the Lords have now for many years desisted, either from beginning any Bill, or from making amendments to Bills passed by the Commons. [53]

May says : "For centuries they [the Commons] had resented any 'meddling' of the other House 'with matter of supply' "; [54] and

> The taxes are a voluntary gift and grant of the Commons alone. In legislation the three estates of the realm are alike concerned; but the concurrence of the peers and the Crown to a tax, is only necessary to clothe it with the form of a law. The gift and grant is of the Commons alone. *On these principles, the Commons had declared that a money bill was sacred from amendment. In their gifts and grants, they would brook no meddling.* [55]

The situation appears to be that after the Lords lost the right to initiate aids and supplies, the Commons applied the same principles to aids and supplies that were applicable in the earlier days when the Commons granted only for themselves. When each estate initiated its own grants, the Lords could not, and did not, in any way interfere with what had been initiated in the Commons; and when the Lords ceased to initiate, there was no change in the attitude the Commons had always taken to the aids and supplies they initiated. In other words, when the Lords lost the right to originate, they did not thereby acquire a new right they never had before, namely, the right to interfere with bills of aid or supply originating in the Commons. The Commons, on the other hand, neither gained nor lost—they simply held their ground, and refused to relinquish any of the privileges they had always held with respect to the aids and supplies they originated.

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[51] *Id.* at 414.

[52] L. PIKE, *supra* note 12.

[53] J. HATSELL, *supra* note 6, at 147.

[54] T. MAY, *supra* note 3, at 99.

[55] *Id.* at 104. [Emphasis added].

But if the Lords can reject, why cannot they amend? As the Commons said in 1671 "the form of law requires that both join in one bill, to give it the force of a law." [56] This is a different principle entirely and arises out of the development that no taxation can be imposed except by law, and the law-making authority is the King, the Commons and the Lords spiritual and temporal. In 1628 the Commons insisted that no man should be compelled to make or yield any gift, loan, benevolence, tax, and others, without common consent by act of Parliament, and this principle was enshrined in the Bill of Rights. [57] The King must assent also to clothe the bill with the form of law; he may reject, but he cannot amend. The issue did not squarely arise in England until 1860, [58] and the result of the conflict was inconclusive. But in the following year the whole budget was included in one bill. Since the Lords could not amend, they were forced into the position of having to accept or reject. This incident led to the practice of including the whole budget in one bill. In 1909, [59] the Lords refused to accept the government's scheme of taxation; Parliament was dissolved and the government was returned. The scheme was presented again, and this time, the Lords yielded. This was followed by the Parliament Act of 1911, [60] and it is now possible for a bill to become law without the assent of the Lords. But this development had nothing to do with the ancient privilege of the Commons with respect to money bills.

The House of Lords, too, has its own privileges, namely, judicature and the peerage. [61] There was one bill that originated with neither House, but with the Crown, namely, a bill for a general pardon. [62] Hatsell gives precedents for the assertion of the Lord's privileges. [63] He says :

> The conclusion to be drawn from the history of all these transactions is, that it should be the endeavour of both Houses, and of every member of each House of Parliament, to take care, and in their proceedings, not to transgress those boundaries, which the Constitution has wisely allotted to

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[56] J. HATSELL, *supra* note 6, at 413. The full text of the Commons' answer to the Lords when they asked that question in 1671 is quoted *id.* at 423, as follows :

> The King must deny the whole of every Bill, or pass it; yet this takes not away his negative voice. The Lords and Commons must accept the whole general pardon, or deny it; yet this takes not away their negative. The Clergy have a right to tax themselves; and it is a part of the privilege of their Estate. Doth the upper Convocation House alter what the lower grant? Or do the Lords or Commons ever abate any part of their gift? Yet they have a power to reject the whole. But, if abatement should be made, it would insensibly go to a raising, and deprive the Clergy of their ancient right to tax themselves.

[57] *Id.* at 100.

[58] W. RIDGES, *supra* note 34, at 95.

[59] *Id.*

[60] The Parliament Act, 1911, 1 & 2 Geo. 5, c. 13. This act provided that in certain circumstances money bills and other bills could, upon receiving royal assent, become law without having been passed by the House of Lords.

[61] J. HATSELL, *supra* note 6, at 67.

[62] *Id.* at 69.

[63] *Id.* at 46-66.

> them; nor to interfere in those matters, which, by the rules and practice of Parliament in former ages, are not within their jurisdiction. The determination of causes, whether upon Writs of Error, or by appeal from the Court of Chancery, had long been vested in the House of Lords . . . . On the other hand, the Lords ought not to intermeddle with, but to leave to the House of Commons, that jurisdiction and those rights, which they, on their part, are equally entitled to . . . . We see that, whenever either House has, from inadvertence, resentment, or any other cause, transgressed these bounds, and endeavoured to extend their own rights, or to usurp those which belong to the other, confusion and disorder have immediately followed; and in several instances the Crown has been obliged to prorogue or dissolve the Parliament, in order to put an end to those disgraceful scenes, which altercations between two branches of the legislature must exhibit to the subjects of Great Britain, and to all Europe.[64]

It has been suggested that the position of the House of Commons in England with respect to money bills was established and enforced by means of the authority to appoint an unlimited number of peers.[65] History does not bear out this theory.

The traditional method of resolving disputes between the Commons and the Lords was to send messages and, if necessary, to hold a joint conference. If no agreement or compromise could be arrived at the legislation was dropped and perhaps reintroduced at a later time. On occasion the King adjourned, prorogued or dissolved Parliament.

It is obvious that the fundamental principle that aids and supplies must originate in the Commons could not have originated or have been enforced by means of the "swamping power." If a bill to grant supplies or to impose a tax originated in the House of Lords, how could the threat of appointing an unlimited number of peers confer the exclusive privilege on the House of Commons?

The power to appoint an unlimited number of peers resided, not in the House of Commons, but in the King himself. It was not a weapon that could be invoked by the Commons, and yet the principles of taxation and grant of supplies were established by the House of Commons and not by the sovereign.

The position of the House of Commons was firmly established even before the Commons and the Lords had legislative functions. It was estab-

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[64] *Id.* at 81-83.

[65] 54 CAN. SEN. J. 194-99 (1918). The Senate memorandum uses strong language: These powers of the Commons and these disabilities of the Lords are not settled by a law but by a practice and custom founded on Resolutions of the Commons backed up by threats to which the Lords yielded under protest . . . . The House of Commons in England, by its use of the "swamping" power has reduced the House of Lords to a state of impotence in all financial matters . . . . When the House of Commons of Canada claims that it can drag the Senate beneath it as the Commons did the House of Lords in England and through the "swamping power" the answer is that it has not got this power . . . .

lished at a time when legislation was made by the King after a session of Parliament had concluded, and there was therefore no legal necessity of obtaining the assent of the Lords.

Finally, the "swamping" theory assumes that the King was allied with the Commons against the Lords; it was probably the other way around. Blackstone says :

> The Lords being a permanent hereditary body, created at pleasure by the King, are supposed more liable to be influenced by the Crown, and when once influenced to continue so, than the Commons, who are a temporary, elective body, freely nominated by the people. It would therefore be extremely dangerous to give the Lords any power of framing new taxes for the subject; it is sufficient that they have a power of rejecting, if they think the Commons too lavish or improvident in their grants.[66]

V. The Canadian Position

As has already been indicated, it is arguable that the words of section 53 embody the entire privilege of the House of Commons in England. This is the form in which the privilege was originally asserted, and, as we have seen, any interference, whether by way of amendment or otherwise, with a money bill was always regarded by the Commons in England as a breach of this privilege. The language of section 53 was first written into our constitutional documents in 1840, and at that time the Lords in England had for several centuries submitted to the privilege asserted by the Commons, with all its implications. It may well be that it was thought that these words were enough to place the House of Assembly of the United Canada of 1840, and the House of Commons of the Confederated Canada of 1867, in the same position as the House of Commons in England with respect to financial matters [67] and to subject the Upper House to the same disabilities. [68]

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[66] 1 Blackstone, Commentaries 169 (18th ed. T. Lee 1929).

[67] A. Todd, Parliamentary Government in the British Colonies at 706 (2d ed. 1884), in referring to § 53 of the B.N.A. Act, says that : "No further definition of the relative powers of the two Houses is ordinarily made by any statute; but constitutional practice goes much farther than this. It justifies the claim of the Imperial House of Commons (and by parity of reasoning, of all representative Chambers formed after the model of that House) to a general control over public revenue and expenditure—a control which has been authoritatively defined in the following words . . . ." (Here Mr. Todd quotes the language embodied in rule 78 of the House of Commons of Canada).

[68] The Senate memorandum argues that in colonial legislatures with nominated second chambers they have been held to the practice of the House of Lords, but in colonial legislatures which elected councils they have not, even though both classes of legislatures had clauses in their constitutions corresponding to §§ 53 and 54. But A. Todd, *id.* at 705-58, points out that there was an elected upper chamber in the Cape of Good Hope and in Victoria; and the strictest limitation of the powers of the upper chamber was insisted upon in conformity with the constitutional practice of the English Parliament; and in South Australia, where there was also an elected council, after some dispute between the two Houses, it was finally agreed that certain amendments might be made by the upper chamber to supply and taxation bills, but not to money clauses therein. It would appear, therefore, that even in cases where the upper chamber is elected, the lower chamber has been conceded the same rights as the Commons in England. Todd concludes with the remark that the relative rights of both Houses in matters of aid and supply must be determined, in every British colony, by the ascertained rules of British constitutional practice, and that a claim on the part of a colonial upper chamber to the position of equal rights with the assembly to amend a money Bill would be inconsistent with the ancient and undeniable control which is exercised by the Imperial House of Commons over all financial measures.

A second argument can be made that, apart from history and precedent and considering only the language of section 53, there is a necessary implication that the Senate cannot in any way amend a bill that by that section is required to originate in the House of Commons. If a bill is introduced in the House of Commons to levy a tax or grant a sum of money, and the tax or appropriation is reduced by an amendment in the Senate, it is arguable that the bill *as amended* did not originate in the House of Commons. Can it not be said that section 53 requires that the whole of the bill on which the ultimate law is founded must originate in the Commons? And that when a bill is amended in the Senate, it becomes a different bill and is not the same bill that originated in the Commons—even though it may be written on the same piece of paper?

But perhaps the strongest argument in favour of the Commons can be founded on the theory that under our Constitution (similar in principle to that of the United Kingdom), representation and consent form the basis of the power of the Commons to grant money and impose taxes. As early as the twelfth century, when the Saladin Tithe was imposed, taxation and representation were connected; the tithe was assessed by a jury in some sense representative of the taxpayer and of the parish in which he lived, and the towns sent representative burgesses to Westminster to bargain with the Crown. Through the centuries, the principle was maintained that taxation required representation and consent. The only body in Canada that meets this test is the Commons. The elected representatives of the people sit in the Commons, and not in the Senate, and, consistently with history and tradition, they may well insist that they alone have the right to decide to the last cent what money is to be granted and what taxes are to be imposed.

The requirement of representation and consent led in England to the practice of considering the King's request for money in Committee of Supply, and then moving into a Committee of Ways and Means to consider and recommend how the money is to be obtained. To assist the committees in their deliberations, the government presents its budget for the year. Practice and precedent require that there should be full and free discussion, and the message from the sovereign, the Committee of Supply and the Committee of Ways and Means are inseparably bound together. The recommendations of the Committee of Supply are founded on the King's message, and the recommendations of the Committee of Ways and Means are founded on the conclusions of the Committee of Supply. As the Commons said in 1671 "the Lords can neither add nor diminish; else it was in vain to adjust the matter by private conference beforehand, if the Lords could have reformed it afterwards." [69]

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[69] J. HATSELL, *supra* note 6, at 414.

In Canada the procedure is the same. The message from the Governor General for an appropriation is directed to the Commons only, as section 54 contemplates, and, in accordance with English constitutional practice, taxation measures are recommended to the Commons by the Crown through a minister. The budget speech of the Minister of Finance is delivered to the Commons only, and the Governor General's message and recommendation, along with the budget speech, are fully debated in the Commons' Committees of Supply, and Ways and Means. Why, it may be asked, should this procedure be followed "if the Senate could have reformed it afterwards"? The Supply Bill is presented for royal assent by the Speaker of the House of Commons with the words "The *Commons of Canada* have voted supplies required to enable the government to defray certain expenses of the public service. In the name of the *Commons*, I present to Your Excellency the following Bill." And in the course of his speech on prorogation the Governor General addresses his thanks to the Commons alone.

The Senate takes the position that sections 53 and 54 of the B.N.A. Act of 1867 are the only limitations on the powers of the Senate in regard to money bills, that section 53 deals only with origination and that therefore in all other respects the B.N.A. Act leaves with the Senate co-ordinate powers with the House of Commons to amend money bills. [70] The Senate concedes that it cannot *increase* appropriations or increase taxation without the consent of the Crown. [71] This acknowledged limitation on the power of the Senate to *increase* is not to be found in section 53 or 54. Section 53 relates to both appropriation and taxation bills and requires that all such bills must originate in the House of Commons; it does not mention royal messages, recommendations or consent. Section 54, on the other hand, deals only with appropriation bills (the *appropriation* of any part *of* the public revenue, or *of* any tax or impost) and not with bills *imposing* or *levying* a tax or impost. There is a well established constitutional principle that a bill creating a charge upon the public revenue, or altering the incidence of or imposing new taxation upon the people, shall not be introduced in the Commons except upon the recommendation of the Crown, expressed through a minister, [72] but this principle does not come from section 54, because that section does not impose any restriction with respect to the imposition of taxation. Moreover, section 54 imposes a restriction only on the House

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[70] 54 CAN. SEN. J. 198 (1918), the Senate memorandum states that:
> The Senate . . . cannot directly or indirectly originate one cent of expenditure of public funds or impose a cent of taxation on the people. This is involved in sections 53 and 54 and the clauses of the Act defining the executive power. This is, however, the only limitation of the powers of the Senate in regard to "Money Bills" in the British North America Act. In all other respects the Act leaves with it co-ordinate powers with the House of Commons to amend or reject such Bills.

[71] The memorandum also says that: "When such a Bill (appropriation or tax Bill) goes to the Senate the amount mentioned in the Bill is therefore the sum recommended by the Crown. The Senate could not increase this sum without coming in conflict with the prerogative of the Crown to say what money is wanted." *Id.*

[72] W. RIDGES, *supra* note 34, at 84.

of Commons and not on the Senate. The Senate argues that section 53 takes away only the right to initiate, and not the right to amend; if this position is correct, then it must follow that section 53 permits the Senate to amend by increasing as well as by decreasing. There is nothing in section 54 that denies the Senate the right to amend a taxation bill by increasing the amount of the tax—the Senate is not mentioned in section 54 and taxation bills are not mentioned. [73] Yet the Senate concedes that it has no right to increase appropriations or to increase taxation without the consent of the Crown. From where does this limitation come? Clearly, not from section 54, and not from section 53 as interpreted by the Senate. The Senate memorandum [74] refers also to the clauses of the B.N.A. Act "defining the executive power" as a source of the limitation on the Senate's powers. But sections 9 to 16 have nothing to do with the subject under discussion and a reference to them in this context is wholly irrelevant. If the Senate admits that there are restrictions on its powers in regard to money bills outside the terms of sections 53 and 54, it destroys its own arguments. On the other hand, if sections 53 and 54 are the only restrictions on the Senate in respect of money bills, it must follow from the Senate's interpretation that it can increase taxation and appropriations.

It is also a fundamental constitutional principle in England that the Lords cannot alter the incidence of taxation, cannot alter its duration, mode of assessment, levy, collection, or management; [75] but there is nothing in

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[73] One might wonder why § 54 refers only to appropriations. Perhaps the answer may be found in Lord Durham's report. He says:

> the necessity of obtaining the previous consent of the Crown to money votes never having been adopted by the Colonial Legislatures from the practice of the British House of Commons, there is a perfect scramble among the whole body to get as much as possible of this fund for their respective constituents; cabals are formed, by which the different members mutually play into each other's hands; general politics are made to bear on private business, and private business on general politics; and at the close of the parliament, the member who has succeeded in securing the largest portion of the prize for his constituents, renders an easy account of his stewardship, with confident assurance of re-election.

And also:

> It is necessary that I should also recommend what appears to me an essential limitation on the present powers of the representative bodies in these Colonies. I consider good government not to be attainable while the present unrestricted powers of voting public money, and of managing of local expenditure of the community, are lodged in the hands of an Assembly. As long as a revenue is raised, which leaves a large surplus after the payment of the necessary expenses of the civil Government, and as long as any member of the Assembly may, without restriction, propose a vote of public money, so long will the Assembly retain in its hands the powers which it every where abuses, of misapplying that money. The prerogative of the Crown which is constantly exercised in Great Britain for the real protection of the people, ought never to have been waived in the Colonies; and if the rule of the Imperial Parliament, that no money vote should be proposed without the previous consent of the Crown, were introduced into these Colonies, it might be wisely employed in protecting the public interests, now frequently sacrificed in that scramble for local appropriations, which chiefly serves to give an undue influence to particular individuals or parties.

2 LORD DURHAM'S REPORT 92-93 (Lucas ed. 1912). The same considerations, of course, would not apply to a bill imposing a tax.

[74] *See supra* note 65.

[75] T. MAY, *supra* note 4, at 830-31.

sections 53 and 54 that deals with these matters. Again, if the Senate conclusions are sound, it must necessarily follow that the Senate could change the incidence of taxation, could postpone the coming into force of a taxation bill, could limit its duration, and otherwise control or interfere with the imposition and collection of the revenue.

By a logical extension of the Senate conclusions, it would follow that the Senate could

(1) increase or decrease taxation;
(2) increase or decrease appropriations;
(3) alter the purposes of appropriations;
(4) postpone the operation or limit the duration of taxation bills;
(5) alter the incidence of taxation;

all without full and free discussion by the elected representatives of the people, without a budget from the Minister of Finance, without a Committee of Supply, without a Committee of Ways and Means, and without a message or recommendation from the Governor General. Could it then be said that Canada has a Constitution "similar in principle to that of the United Kingdom"? [76] Is it not more logical, having regard to history, precedent

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[76] 54 CAN. SEN. J. 199-204 (1918). The Senate memorandum states also that the "first duty of the Senate is to protect and preserve Provincial rights and interests" and that "if the Senate has not the power to amend Money Bills it has no practical power to see fair play to the Provinces." It is difficult to appreciate the relevance of these assertions. The reduction of provincial subsidies, or of taxes to pay provincial subsidies, could hardly be said to "protect and preserve Provincial rights and interests."

The Senate memorandum, as well as the private legal opinion of April 30, 1918, annexed thereto, display at times a certain looseness of logic. For example, the memorandum refers to resolutions of the Commons as follows:

> In 1661 the Commons asserted "that no Bill ought to begin in the Lords House which lays any charge or tax upon any of the Commons."
> In 1678 the Commons Resolved "That all aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons and that all Bills for the granting of any such aids and supplies ought to begin with the Commons and that it is the undoubted and sole right of the Commons to direct, limit and appoint in such Bills the ends purposes considerations conditions limitations and qualifications of such grants which ought not to be changed or altered by the House of Lords."

The memorandum then says:

> Again why did the Imperial Parliament when passing the British North America Act insert as Section 53 only a part of the Resolution of 1678 knowing that the power of imposing the practice of the House of Lords by the swamping power was gone? The contention that it expressed part of the 1678 Resolution and left the other part to be implied or settled by a practice of the House of Lords is not a reasonable one. The fact is that it was the Resolution of 1661 that was so inserted.

Clearly, § 53 is not the resolution of 1661. The latter resolution deals only with bills laying a charge or tax, whereas § 53 deals with appropriations as well as with taxes. In the private legal opinion of April 30, 1918, it is stated that: "It is remarkable that of the two restrictions on the rights of the Lords which the Commons by its resolution of 1678 tried to impose, namely: the denial of the right to originate and the denial of the right to amend Money Bills, the British North America Act while mentioning the first in section 3 should not mention the second against which the Lords specially protested." These comments overlook the very real probability that the concluding words of the resolution of 1678 are merely a clarification of the first part, and not additional privileges; in any case, the comments quoted above ignore the first point of the resolution that "All aids and supplies . . . are the sole gift of the Commons." If aids and supplies (that is to say, taxes and appropriations) are the *sole gift* of the Commons, it must necessarily follow that it is not for the other chamber to say that the gift should be greater or less.

and convention, to interpret the preamble to the B.N.A. Act and section 53 thereof as endowing the House of Commons of Canada with all the ancient privileges of the British House of Commons with respect to financial measures?

Section 18 of the B.N.A. Act does not appear to have any bearing on the present problem. It provides, in effect, 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 shall be such as are defined by act of Parliament, but they are not to exceed those of the United Kingdom House of Commons and the members thereof. This provision has been implemented by section 4 of the Senate and House of Commons Act, [77] which simply confers upon the Senate, the House of Commons and the members thereof the privileges of the United Kingdom House of Commons and the members thereof.

The fact that privileges of members are mentioned would seem to indicate that this section in the B.N.A. Act was intended to relate to the privileges of Parliament, such as the right to commit for contempt, the power to order attendance, the right to control reporting of debates, and the privileges of members, namely, freedom of speech and freedom from arrest, rather than the rights and privileges of the separate Houses of Parliament in relation to each other.

Section 53 deals particularly with an exclusive privilege of the Commons in relation to the Senate, and it is reasonable to assume that section 18 does not deal with the kind of privilege under discussion. Section 54 is a limitation on the House of Commons and not a privilege.

VI. Conclusion

On occasion, the Senate has amended money bills and the question arises whether this can constitutionally be done. In England the Lords have made amendments to money bills and the amendments have been accepted by the Commons. This is regarded as a waiver of their privilege. But can the Commons in Canada waive the privilege conferred by section 53? It could hardly be contended that the Commons could confer a power on the Senate in violation of the B.N.A. Act. But non-compliance with either

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More to the point is the opinion of John S. Ewart of April 27, 1918, also attached to the memorandum. He says :

> There can be no doubt that the difference between the British House of Lords and the Canadian Senate referred to in the Memorandum are of substantial character, but, after all, the two Houses, with reference to the subject under consideration occupy the same position. For the members of neither House are elected by the people, and the privilege of the Assembly with regard to money bills has always been based upon the fact that the House was composed of popularly elected members.

[77] Can. Rev. Stat. c. 249 (1952).

section 53 or 54 would apparently not affect the validity of the statute. Once an act of Parliament has passed, it must be taken as the law [78] so that when a statute appears on its face to have been duly passed the courts must assume that all things in respect of its passage have been rightly done. [79]

If the validity of the statute cannot be questioned then it would seem that the Commons could accept any Senate amendment, and the statute, when it receives royal assent, must take effect according to its terms. The enforcement of sections 53 and 54 would therefore appear to be a matter for Parliament rather than the courts.

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[78] The King v. Irwin, [1926] Can. Exch. 127.

[79] Edinburgh Ry. Co. v. Wauchope, 8 Cl. & Fin. 710, at 725, 8 Eng. Rep. 279, at 285 (H.L. 1842), Lee v. Bude & Torrington Junction Ry. Co., L.R. 6 C.P. 577, at 582 (1871).