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CHAPTER III

THE HOUSE OF LORDS

The House of Lords consists of three different classes of Peers. (1) Hereditary Peers of England and United Kingdom, (2) Representative Peers and (3) Peers by virtue of Office.

The first question that must be raised and answered in order to understand the Constitution of the House of Lords is this. What is the title of the Peers to sit in the House of Lords ?

Peers of England and the United Kingdom

The title of the English Peers and the Peers of the United Kingdom is founded on the King's writ of summons addressed to each Peer individually to come and to attend Parliament. The English Peerage is created by the King by Letters Patent. No difficulty arises, therefore, with regard to persons holding Peerage by Letters Patent. The only question that arises is whether the King could create a Peerage for life. This was at one time a matter of controversy and the controversy was whether a life-Peer created by the King entitles the Peer to sit in the House of Lords. But the issue was decided finally in the Weynesdale Peerage case in 1856 in which two things were decided. (1) That the King had the right to create any class of life-peer or hereditary but (2) the life-Peer cannot sit as a member of the House of the Lords and the King could not send such a Peer a writ of summons. The reason assigned was that the hereditary character of the Peerage was by custom, if not by law, an integral feature of the Peerage and the King while entitled to exercise his right to create a Peerage was not entitled to abrogate the custom.

What about the right of the Peers whose Peerage was not created by Letters Patent ? Their right also was founded upon the King's writ of summons.

Two questions, however, were long agitated with regard to the writ of summons to such Peers. Could every Peer claim the writ of Summons ? Was the King free to address or not to address

the summons to any Peer? On behalf of the Peers it was contended that only Peers who held their Peerage by what is called tenure by Barony were entitled to summons and that no other Peer was entitled to summons, nor was the King free to address the summons to a Peer who fell outside that class. On the other hand it was contended on behalf of the King that the writ was not a special privilege confined to Peers by Barony nor was there any limitation upon the King's right to address the summons to the Peers. The controversy was in the long run settled and two rules can now be laid down as rules governing the right to writ by Peers whose Peerage is not evidenced by Letters Patent.

(1) Tenure by Barony is no ground for a claim to a writ from the King.

(2) The King was bound to summon by a writ to sit in the House of Lords a descendant of a person, who had received a writ and taken his seat in that House in accordance therewith. In other words the descendant of a person, however distant and whatever the break in the interval, who can be proved to have received a writ from the King can claim a similar writ by a hereditary right. The English Peerage, therefore, is a hereditary Peerage and all hereditary English Peers are, therefore, entitled by their hereditary right to a writ of summons from the king and be members of the House of Lords.

(3) Although the right is a hereditary right it is subject to two rules, (1) The rule of Primogeniture and (2) The rule of male descendant.

Representative Peers

The representative peers fall into two classes. Representative Peers of Scotland and representative Peers of Ireland. The title of the representative Peers of Scotland is founded on the treaty of Union between England and Scotland which took place in 1707 and which made them into a Common Kingdom under a Common King and was called the United Kingdom of Great Britain. Prior to its Union with England, Scotland had its own Peerage with its hereditary right to sit. The Union of Ireland with Great Britain

took place in 1800. As in the case of Scotland, Ireland has also its own Peerage with hereditary right to sit in the old Irish Parliament. On the amalgamation of Ireland and Scotland by their respective treaties of Union with England, the question arose as to how much representation was to be allowed to the old Scottish and Irish Peers in the new Parliament of Great Britain and Ireland. The English Peers claimed for every one of themselves the right to sit in the new Parliament. The Scottish and the Irish Peers claimed similar right for every member of their own class.

In the settlement that was arrived at, it was agreed (1) that the English Peers should be allowed each to sit in the new Parliament. (2) The Scottish Peers were allowed to elect sixteen (16) out of their number as their representatives in the new Parliament. (3) The Irish Peers were allowed to elect 28 out of their number. The Scottish Peers are elected for the duration of a single Parliament. When Parliament is dissolved, there takes place a new election of the 16 representative Scottish Peers by the Peers of Scotland. The Irish representative Peers on the other hand are elected for their lives, and there is no new election of Irish Peers when Parliament is dissolved. A new election takes place only when a vacancy takes place in the representative Irish Peers by death or by any other disqualifying cause.

In addition to these three ancient territorial Peerages existing from before the time of the Union, there has been created a fourth category of Peerage known as the Peers of the United Kingdom with a right to sit in the House of Lords. Such a Peerage could be conferred by the King even on a Scottish Peer or an Irish Peer in which case if the Peerage is hereditary, the holder would be entitled to sit in the House of Lords notwithstanding of the treaties of Union with Ireland and Scotland.

Peers by virtue of Office

The Peers who sit in the House of Lords by virtue of office fell into two divisions (1) The Lords spiritual and (2) the Lords of appeal in ordinary. By law twenty-six, officials of the Church are

entitled to sit in the house of Lords. Of these, the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester have the right to sit in the House of Lords as Lords Spiritual. Of the remaining 21 spiritual Peers, 21 diocesan Bishops in order of seniority of appointment have a right to sit in the House of Lords. So when one of the 21 Bishops dies or resigns, his place in the House of Lords is taken not by his successor but by the next senior diocesan Bishop.

The Lords of Appeal in ordinary

The House of Lords, besides being a Legislative Assembly, is also a Court of Judicature. It is for most purposes, the final and the highest Court of Appeal from the King's Courts in England, Scotland and Ireland. This judicial function being the function of the House of Lords as such, there is nothing to prevent any Peer of Parliament from taking part in the decisions of any appeal that would be brought before the House in its judicial capacity. The House of Lords in the main is a body of lay Peers not versed in the intricacies of law and not possessing any legal training. To allow such a body to permit to discharge the functions of the highest Judiciary involved a great danger to the cause of justice. It was, however, not possible to take away this jurisdiction from the House of Lords altogether. As a compromise, the Act of 1876 called the Appellate Jurisdiction Act was passed. It retained the Jurisdiction of the House of Lords as the final Court of Appeal but provided that no appeal should be heard and determined by the House of Lords unless there were present at such hearing and determination at least three Lords of Appeal. The Lords of Appeal consist of (1) The Lord Chancellor for the time being, (2) such sitting Lords in the House as have held high judicial office and (3) the Lords of Appeal inordinary, appointed by the King.

The Appellate Jurisdiction Act of 1876 which gave the power to the Crown to appoint Lords of Appeal inordinary to sit in the House of Lords, made the tenure of those Lords of Appeal as Peers dependent on the continuance of his discharge of his judicial functions as a Lord of Appeal. In 1887, however, this was altered and the tenure of a Lord of Appeal inordinary is now a life tenure.

Having stated the composition of the House of Lords, we may next proceed to consider certain questions that arrive in connection therewith. The first is this. What is the title of the Peers to sit in the House of Lords? The title of the Peers to sit in the House of Lords is not founded upon election by a Constituency as is the case with the members of the House of Commons. Their title is founded by a writ of summons addressed to each Peer individually to come and attend Parliament. It is a kind of nomination by the King although the power to nominate is strictly regulated and does not leave any discretion in the King to revoke and alter the course of nominations from Parliament to Parliament.

While the right of the Peer is founded on the writ of summons issued by the King, there are certain restrictions on the King's right to summon Peers. An Alien Peer that is a Peer who is not a British subject cannot be summoned to sit in Parliament.

A second question that must also be considered relates to the admissibility and divesting by the Peer of his title. A Peerage is a non-transferrable dignity and the title to it cannot be transferred by sale or by gift to another. It can be claimed by another only by inheritance in accordance with the rules of heritage. Similarly a Peer cannot surrender his title and cease to be a Peer. The principle which governs the Peerage is, once a Peer always a Peer.

A third question must relate to the difference between Peerage and the House of Lords. Popularly the expression Peers of the Realm and the House of Lords are used synonymously. Legally speaking there is a difference between the two. A person may be a Peer of the Realm and yet not be a member of the House of Lords. The case of a life-Peer is an illustration in point. A life-Peer is a Peer of the Realm and yet he cannot be a member of the House of Lords, because of the rule that the Peer who is a Peer otherwise than by virtue of office must be a hereditary Peer in order that he may get a right to sit in the House of Lords. Contrariwise, a person may be a member of the House of Lords, although he is not a hereditary Peer. The case of the spiritual Lords and the Lords of Appeal in ordinary is an

illustration in point. The Archbishops and Bishops as also the Lords of Appeal in ordinary are entitled to writ of summons from the King to the House of Lords, the former while they hold their offices and the latter during their life-time. Yet they are not Peers in the legal sense of the term inasmuch as Peerage connotes a hereditary right

