

*Newfoundland*

federal structure, the rights of the provinces, and minority rights, which are not always exactly the same thing—they may be wider than provincial rights—must be protected and must not be changed without the consent of those affected by them.

Whatever may have been the legal situation in the far distant past, and the actions which may have been taken arising out of that situation, I do not believe there is anyone in the house today who would challenge that principle, and very few people in the country who would desire to challenge it. But having gone so far in the acceptance of the compact theory of confederation, and I think we should go so far, I suggest that if we go beyond that point we get into very great difficulties.

**Mr. Hackett:** Will the hon. gentleman permit a question?

**Mr. Pearson:** Yes.

**Mr. Hackett:** Does he consider that the resolution before us contemplates an amendment to the British North America Act?

**Mr. Pearson:** The answer to that question is that I do not consider it means amendment of the British North America Act. My view on that point was explained last night at some length, and I thought with some effectiveness, by the Minister of Justice (Mr. Garson). At this time I do not wish to repeat that argument. I was about to say that if you go beyond the interpretation of the compact theory in our constitution which I have given, you get into a very strange position indeed. If you insist on a narrow legal interpretation of contract as something which cannot be changed without the parties to the contract agreeing to it, you get into, for instance, the certain difficulties arising from the preamble of the British North America Act. Those difficulties were pointed out in 1942 by the leader of the opposition (Mr. Drew) in a very interesting statement which I should like to put on the record. It is taken from the *Montreal Gazette* of November 13, 1942, and reads as follows:

Colonel Drew cited the preamble of the British North America Act, with its stipulated consideration that "such a union would promote the interests of the British empire."

That is from the preamble of the British North America Act. The article continues:

And he made the points that every right claimed under that contract—

The contract being the British North America Act.

—is dependent and contingent upon that condition.

That is the condition of the promotion of the interests of the British empire. I am sure the leader of the opposition would be the first to say that there was nothing sinister

[Mr. Pearson.]

in that statement, and nothing beyond a normal observation on the contract theory and its possible implications. But it does show that if you take a theory and apply it literally and too deeply you will get into a very difficult constitutional position. For instance, it would mean that not one single change should be made in our constitutional structure without the consent of every province, because it would be unthinkable that the provinces should be discriminated against in this respect, and that one province should have a right which another province did not have. That in its turn would mean that a majority of the people in the smallest province would be given a right of veto over every constitutional change in the country. That would mean about 61,000 people. If that course were adopted, and that is the logical implication of the constitutional theory which has been advanced under the compact theory, it would mean we would be saddled with a constitutional strait-jacket in this country which would make any progress and development quite impossible.

Is there any possibility, however, of the application of that kind of ridiculous suggestion to the amendment which we have before us today? Could the amendment be applied in any such form as that? I do not know; I do not know exactly what the amendment means.

**An hon. Member:** It does not say.

**Mr. Pearson:** I do not know because there are certain expressions in it which are pretty vague, and the importance of which can only be understood when they are interpreted. For instance, the operative part of the amendment reads:

Now therefore be it resolved, that the government of Canada be required to consult at once the governments of the several provinces and that upon a satisfactory conclusion of such consultations a humble address be presented to His Majesty in the following words.

Therefore the first obligation under the amendment is the obligation of consultation with the provinces, an obligation which was not applied to the provinces when any other new province came into confederation, and which therefore might be considered by the people of Newfoundland not as an honour, as was suggested by a member last night, but almost as an affront. It would be subjecting them to a constitutional procedure which was not adopted in the case of any other province on its entrance into confederation.

But what is this obligation of consultation? What does it mean? Would it mean that the federal government would merely tell the provinces what we have done, and then after a decent interval go ahead and pass an address? Would it mean that we would con-