

Newfoundland

Mr. Smith (Calgary West): And you.

Mr. Garson: Definitely, myself most of all, because you had two or three days headstart on me. Those law officers must be given credit for some knowledge of the law, and credit for some common sense about the proper and legitimate way of achieving their objectives within the spirit of the British North America Act, almost exactly within its text, and certainly within the limits of proper democratic procedure. I apologize for going into all these matters. They are all obvious. They are notorious, and we all know about them. But if my hon. friends will fight the obvious and the notorious, then one must necessarily discuss the obvious and the notorious.

In the absence of a legislative assembly in Newfoundland that could pass an address which would have put this matter through without any question at all, they were thrown back upon what I would suggest to this assembly is a much more democratic procedure than even an address of a legislature. They went back to the fountainhead of all authority under any democratic government, the people themselves. They submitted two plebiscites, the second of which presented to the voters of that dominion a choice between responsible government on the one hand and union with Canada on the other. May I point out that it was only by voting for responsible government that Newfoundland could put itself in the position in which it would have a legislature to pass an address to meet the objections taken by my hon. friends on the other side. That is precisely what the people of Newfoundland voted against. On the merits—going back to the fountainhead of democratic authority, the people themselves—they deliberately chose union with Canada as against that responsible government which alone would enable this matter to be resolved in the perfectly perfectionist and constitutional manner that the legal experts opposite us would recommend. The people voted in favour of union, and I suggest that it is only by a very technical attitude that it can be argued that we have here any departure in substance from either the letter or the spirit of the constitution.

The constitution does not require assent from any province. It is true the constitution requires an address. I am informed that at a very early stage of the proceedings the government of Canada made it clear that it would be glad to receive an overture from Newfoundland to come into union, but it would have no part whatever in any of the arrangements whereby Newfoundland placed itself in a position to make that overture. Therefore all of the proceedings which my

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hon. friends are criticizing are proceedings which were conducted under the auspices of the Newfoundland government and the government of the United Kingdom. To put themselves in a position to make an overture to Canada, these two governments supplied what, under the circumstances, was the best substitute for an address that could be obtained. The resolution introducing this bill, as drafted by the legal experts of the United Kingdom, Newfoundland, and Canada, is the result. My hon. and learned friend, the hon. member for Calgary West, referred to a certain portion of the resolution reading as follows:

The agreement containing terms of union between Canada and Newfoundland set out in the schedule to this act is hereby confirmed and shall have the force of law notwithstanding anything in the British North America Acts, 1867 to 1946.

Then he says that, because of those words beginning "notwithstanding", he must as a lawyer hold that this must be an amendment to the British North America Act, because any time you use those terms in an act, unless it is merely for the extension of the act, it must be an amendment. Well, I think my hon. friend has a rather short memory, or perhaps he has not had much municipal experience. Anyone who has had experience of that sort can point to countless cases where municipalities come along with, say, a money bylaw. The circumstances are such that they cannot follow the procedure outlined in the municipal act, or there may have been some carelessness and they did not obey it. When they have committed this faux pas or omission, or if they find it impossible to comply with the procedural provisions of the municipal act, the usual thing is that the municipal bylaw which otherwise would be defective is ratified. It is ratified generally in the first place by order in council confirmed later by a provincial statute; and in many cases that provincial statute is said to be an amendment to the municipal act. The statute books are full of them; but it is an amendment only in the sense of curing some procedural difficulty in that specific *ad hoc* case.

Mr. Smith (Calgary West): But this is the British North America Act.

Mr. Garson: It does not make any difference; the principle is exactly the same, and the analogy is very close. There is no use in my hon. friend shaking his head; I took the opportunity during the dinner hour to check this up with people who know better than he does or I do—

Mr. Smith (Calgary West): Maybe.

Mr. Garson: —and they confirm my view. If my hon. friend stops to reflect, I think he