

Newfoundland

behind the confederation understanding or agreement in 1867, there was also another aspiration behind it, and it was voiced, perhaps most strongly, by the great architect of confederation, Sir John A. Macdonald, for in large measure, he was the architect of confederation, even if he could not claim credit for originating the idea.

Then Senator Crerar, as he now is, went on to deal with the question of a united northern British America.

As reported at page 332 of *Hansard*, the then Prime Minister, the present right hon. member for Glengarry (Mr. Mackenzie King) used these words:

There is in the first place the question of the right to amend our own constitution, a question which one might describe at present as theoretical or academic, although it may come to have in the course of time some very practical bearings. There is secondly the question of the method by which this country should proceed to secure amendment of its constitution should it decide such a step to be desirable and necessary.

And then later on he said:

All of that particular phase of the question was so fully and conclusively argued by the Minister of Justice yesterday that this house, I believe, is practically unanimously of the view that if an amendment of the kind is to be sought, due regard should be had to the view that a compact was made at the time of confederation, and that an amendment of the importance that such an amendment certainly would have, ought only to be proposed after there had been a conference and agreement between the dominion and the provinces.

The amendment to which the then Prime Minister was referring was an amendment that would alter the basis of the amendment of our constitution, and make it possible to have it amended by parliament after consultation and in agreement with the provinces.

How important it is that the rights of confederation in so far as the provinces are concerned be respected was indicated again the other day when the Prime Minister (Mr. St. Laurent) referred to the rights under section 133 of the British North America Act, and indicated that in his legal opinion, based upon his experience as a fine constitutional lawyer, those rights could be taken away by a vote of a simple majority of parliament.

That viewpoint if accepted goes a long way along the road to destroy the basis upon which—and I use the words of the former Prime Minister—the compact of confederation was founded and arrived at. If it is going to be open to a simple majority of parliament, without consultation with the provinces, to make amendments, then the rights guaranteed minorities under the British North America Act—and I am not referring to powers under section 92, but rather to those other rights in which the provinces have an interest, or in which minorities in the provinces have an interest—could be torn asunder and destroyed by the overwhelming weight of a majority in parliament.

The hon. member for Rosetown-Biggart (Mr. Coldwell) speaking in the house on July 5, 1943, indicated how far the British parliament would go in passing an amendment to our constitution, regardless of any provincial rights which might be involved. The hon. member, as reported at page 4345 of *Hansard*, said:

Let me say to him and those who believe with him that, from conversations again and again with members of the British House of Commons, some of them within the last few days, I am convinced that whenever Canada asks for an amendment of the British North America Act—which is, in effect, our constitution—no matter what amendment we may ask, the parliament of Great Britain will accede to the request and adopt the proposed amendment.

If his conclusion is correct—and that was the considered opinion of the hon. member for Rosetown-Biggart at that time; and apparently he has not changed that opinion in the past four or five years, because he used similar terms in the debate on redistribution—then the danger of permitting of amendments to the constitution, without consultation with the provinces, is intensified. It is placed in clear relief.

The amendment is not something new. We stood for this in 1946, as we have stood for the rights of the provinces since confederation. In 1946 we pointed out the danger to constitutional rights when there was held before this House of Commons an invitation to circumvent the constitution in order to secure additional members. We pointed out that short-cuts of amendment would make a pathway which would ultimately lead to permanent highways that would be dangerous to the future of the compact of confederation. In 1946 we took a stand that followed the stand taken throughout the years by Sir John A. Macdonald, Sir George Etienne Cartier, Aylesworth, Blake, Meighen and Bennett and, above all, as taken by Mr. Lapointe who, throughout the years, pressed for the necessity of the assurance that the pact of confederation be not amended in whole or in part except after consultation with—and he went so far as to say “with the consent of”—the provinces.

In 1946, on the occasion of the debate on the matter of the address, an amendment was moved by myself which placed our views then before the Canadian people—and this amendment is almost a complete reiteration of the 1946 amendment. I urged then, as I do now, the necessity for the preservation inviolate of rights under the constitution if there is to be unity in this land. At that time I quoted the words of Edmund Burke, which were applicable then as they are now, when he said:

Our constitution is like our island, which uses and restrains its subject sea; in vain the waves roar. In