

Newfoundland

Hon. members will recall that following the radio address made by the Prime Minister, in which he had indicated that we should strive to provide for amendment of our own constitution without going outside of Canada for that purpose, I asked him whether it was intended to proceed with that matter during the present session, and he indicated that such was not the intention of the government. I also asked the Prime Minister if the provinces would be consulted when it was decided to proceed with that matter, and he said that they would. He has recognized the desirability of consulting the provinces about matters which affect our constitution, and the concern of the provinces about the sanctity of that constitution. In this case we have before us an amendment to the British North America Act. The draft bill, which is part of the resolution, says in section 2:

This act may be cited as the British North America Act, 1949, and the British North America Acts, 1867 to 1946, and this act may be cited together as the British North America Acts, 1867 to 1949.

This being so, we are called upon to adopt a resolution which has the effect of asking the government of the United Kingdom to amend the British North America Act by a majority decision of the parliament of Canada, without consulting the provinces. The question then arises whether the provinces have any interest in this subject.

The Prime Minister himself has made it clear that he believes the procedure being followed relates to the Statute of Westminster, and he referred to section 4 as explaining the procedure being followed by the parliament of Canada. As I have already indicated, the wording of the resolution conforms with the exact wording of section 4 of the Statute of Westminster.

The Prime Minister has pointed out that Newfoundland may not have carried forward all the formalities on their side, which in my opinion does not in any way affect what they might or might not do, if within the Statute of Westminster they had the legislative authority which defined their position as a dominion. And, in so far as we are concerned, I think we should remember that the provinces were conceded a very direct interest in the Statute of Westminster and were, in fact, consulted at that time.

Since this does raise what I believe to be a very important consideration, I would refer to the report of the Senate of Canada at the session of 1939, pursuant to a resolution of the Senate to the Hon. the Speaker by the parliamentary counsel relating to the enactment of the British North America Act, 1867, any lack of consonance between its terms and judicial construction of them, and cognate matters. In the printed report of those

proceedings, at page 134, is a letter from the then premier of Ontario, the Hon. G. Howard Ferguson, who, in writing to the Prime Minister of Canada, put forward his views, and submitted an extensive memorandum discussing this subject, which memorandum is printed in full detail after his letter.

Mr. St. Laurent: That is at page 134 of the appendices?

Mr. Drew: At page 134 of the appendices, yes. It is described as annex 4. The letter written by Mr. Ferguson is not a long one, although the memorandum is of some length. That letter, dated September 10, 1930, addressed to the then Prime Minister, which I believe I should read, states:

My dear Mr. Prime Minister:

You will recall that in some discussions we have had with reference to the report of the imperial conference, and, in particular, the recommendations made in the report of 1929, I have endeavoured to make clear to you the attitude of the province of Ontario.

The conference appears to have ignored the fact that the confederation of the provinces of Canada was brought about by the action of the provinces. Our constitution is really the crystallization into law by an imperial statute of an agreement made by the provinces after full consultation and discussion. The province of Ontario holds strongly to the view that this agreement should not be altered without the consent of the parties to it.

On behalf of this province I desire to protest most vigorously against any steps being taken by the dominion government, or the imperial conference, to deal with the provincial treaty until the matter has been submitted to the provinces and they have had ample time to give the subject proper consideration.

To pursue the course indicated by the report of 1929 will not only greatly disturb the present harmonious operation of our constitution, but I fear may seriously disrupt the whole structure of our confederation.

Ontario is genuinely alarmed about the situation, and I earnestly urge upon you, representing the dominion, and through you upon the imperial conference, that this whole matter be left in abeyance until it can be dealt with in a proper manner, and to the satisfaction of the parties to the original compact.

I am enclosing to you herewith a memorandum which embodies in a brief form the story of confederation, together with the views of a number of public men who were leaders in the movement; the interpretation of the courts upon the status of the province; and the recent trend of the dominion authorities upon the question.

With the story as a background, I am sure that a perusal of the reports of the last two conferences will convince you that the provinces have ample ground for serious alarm.

Yours very truly,

(Sgd.) G. H. Ferguson.

Then the memorandum follows. The provinces which joined to form confederation agreed with the method set out in section 146 of the British North America Act. Later, following these submissions, the provinces were consulted in regard to the provisions of the Statute of Westminster. That being so,