With Lord Brougham I repeat that "constitutions must grow if they are to be of any value; they have roots, they ripen, they endure".

We are called upon today to consider a motion for enabling our Canadian Parliament to amend the British North America Act in purely federal matters. This fact shows very clearly the steady progress of our constitutional development. Personally I think that the growth of our constitution is due to a process of what may be called natural evolution.

Why has nature followed here its normal course? It is because, instead of having a constitution of the rigid type, consisting exclusively of a solemn document, we have a truly living and somewhat flexible, partly-written constitution. This flexibility of our constitution is due to that great body of unwritten principles and understandings which we have inherited from our British parliamentary institutions. In his masterly work on the Government of Canada, R. M. Dawson proves very clearly, at page 72, that our "unwritten constitution is every whit as important as the British North America Act": indeed, much of the British North America Act—I quote again—"is transformed and made almost unrecognizable by the operation of the former,"—our unwritten constitution—"which in all these instances consists of established customs and usages which have grown up over a long period of years." In other words, much of the British North America Act has been transformed by precedents or conventions.

This is true of the process of transformation undergone by our parliamentary practice since 1869, particularly in this matter of constitutional amendments. The British North America Act on this point has been transformed by a series of long-established precedents.

Originally, what was the effect of the failure of the Act of 1867 to set up any general machinery for its amendment? Among others, H. M. Clokie has stated, as appears at page 31 of *Canadian Government and Politics*, that:

> Imperial control of Canadian domestic affairs was secured by the British Parliament's power of amending the constitution.

It was also believed that the necessity to obtain an Imperial Statute to amend the British North America Act was a safeguard for provincial rights. Thus, in a statement issued on January 31, 1936, on the question of amending the Act of 1867, Hon. Mr. McNair asserted that "the provinces left the power to change the confederation in the custody and control of Westminster".

In matters involving the exercise of provincial powers, it is agreed that there should be no attempt to effect arbitrary changes by unilateral action of the Dominion Parliament. Thus we may assume, for the sake of discussion, that provincial matters may be still to some extent "in the custody and control of Westminster". But, on the contrary, as stated by Mr. King in 1943—as quoted by the Montreal *Gazette* of July 16 of that year—when the Parliament of Great Britain is asked to amend the British North America Act, in relation to federal matters, "such amendments are made automatically and without question on the request of the appropriate representatives of the Canadian people". Thus the constitutional amendments of 1943, 1946, 1949, were adopted in London as a pure matter of course and with a minimum of delay, simply on the joint address of the two houses of this parliament. To quote Clokie again at page 206:

> From the British viewpoint it is clear that the Dominion Government is the authoritative voice of Canada . . .

I may also say, as Dawson does at page 148, that the present system imposes on the British Parliament

> . . . a thankless task, one in which it has no responsibility, but which may at any time expose it to criticism and attack from a dissatisfied province.

On July 10, 1940, the British Solicitor General stated with weary resignation:

> As a matter of mere legal machinery it is still necessary, until some better method is evolved for amendment of the British North America Act, for the extension of the Canadian powers to be passed by this parliament. But our parliament, in passing such legislation, is merely carrying out the wishes of the Dominion Parliament, and in that way the legal position is made to square with the constitutional position . . . We must operate the old machinery which has been left over at their request in accordance with their wishes.

This passage is to be found in *Hansard* of the British House of Commons, July 10, 1940, at page 1177.

To sum up, the necessity to apply to Westminster for the authorization to amend our constitution in purely federal matters has become a pure formality; it cannot be now construed as being a safeguard for anybody, and it is a vestige of a former epoch which has become only an obsolete function. This anachronism is quite incompatible with our status as an independent and sovereign member of the community of nations. However, those who oppose the present measure claim that it should not be adopted because it has not received the assent of the provinces. To this argument I answer that as early as 1869-1871 the Canadian Parliament formally rejected the theory that, even in federal matters, the terms of the British North America Act can be amended only with the consent of