

*British North America Act*

The view expounded this afternoon in this house by the Prime Minister and the view expounded by Laurier in that passage are as different as day is from night.

That view did not end with Sir Wilfrid Laurier. Speaking in this house in 1924, the late Right Hon. Ernest Lapointe said this, as reported on page 520 of *Hansard* of 1924:

Now this treaty cannot be changed, it has been the contention of many constitutional authorities, and I think it is only fair that no change should be accepted, without the consent of all those who were parties to it. It is a sacred treaty just as is any other treaty; it is no scrap of paper.

A treaty—that was the view of Lapointe: it was not to be changed apart from consultation with those who were parties to the treaty. Put that statement alongside the doctrine expounded in this house this afternoon by the Prime Minister and you will find that they can never be reconciled until kingdom come.

Then speaking in 1925, as reported on page 301 of *Hansard*, Mr. Lapointe said this:

I do not think there can be any attempt to change the mutual charter of both the dominion and the provinces by the arbitrary action of this parliament. I do not think it is possible to do it. To those who want changes, and I am willing to admit that there might be the necessity for changes, I would say that the only way to get them is the constitutional way, to ask the consent of the various parties to confederation.

That is all that the amendment that has been submitted to the house by my leader asks, that there shall be consultation with the provinces. Surely it is a reasonable request. That was certainly the view of the Liberal party until these later days.

I turn now to a very commendable speech made in this house on June 20, 1946, by the late Hon. P. J. A. Cardin. If I remember rightly this was the last speech made in this house by Mr. Cardin. It was a great and eloquent speech made by a man who had given long years of sincere public service in this house. Out of his long experience he made some significant observations upon a similar measure that was then under debate in the house, that an humble address be presented to His Majesty the King seeking an amendment of the British North America Act for the purpose of altering the basis of redistribution and membership in the house under section 51 of the British North America Act. Mr. Cardin was referring to the doctrine expounded in that debate by the present Prime Minister, then Minister of Justice, that except in connection with the subjects enumerated in sections 92, 93, 94 and 95, parliament had the right to obtain an amendment of the British North America Act without consulting the provinces. When the hon.

[Mr. Fleming.]

member for Calgary West asked if that doctrine applied to section 133 of the act, when he asked if parliament had the right to obtain from Westminster an amendment to the British North America Act in reference to section 133, the Prime Minister, then the Minister of Justice, answered, "Yes, legally, I say it can". The Prime Minister expounded the doctrine that parliament, without consulting the provinces, has the legal power to secure amendments to the British North America Act at Westminster which could have as their purpose the abolition of any language rights under section 133. Following that statement, referring to the doctrine expounded by the present Prime Minister, Mr. Cardin is reported at page 2667 of *Hansard* as follows:

And what is the consequence? We have heard the Minister of Justice say in reply to the hon. member for Calgary West (Mr. Smith) that the federal parliament would have the authority to make representations to the imperial parliament to amend the constitution by wiping out section 133 of the British North America Act which protects the French language in this country, and that without consulting the provinces. That is one consequence of the theory which has been expounded by the Minister of Justice in this house, contrary to the views expressed by his distinguished predecessor, the late Right Hon. Ernest Lapointe, and all public men in Canada since 1867.

In all the discussions which took place in regard to amending the constitution it has always been contended by all parties that we could never touch the privileges of any province, of any race or any religion, without giving them the opportunity of being consulted and of expressing in detail their views on the proposition.

At page 2671 Mr. Cardin concluded his remarks with these words:

The amendment asks for consultation with the provinces and the obtaining of at least their advice before proceeding with the resolution. I am in accord with that view, and in that stand I remain in the family of the old Liberals among whom I have been brought up in my political life. I stand with Blake; I stand with Laurier; I stand with Lapointe, and on that constitutional issue I also agree with leaders of the Conservative party in the past. No, I am not alone. I am at present preaching the gospel they all have preached, the gospel I myself have been advocating in my province and in Canada as a whole for the last thirty-five years.

That was a great speech by a great Canadian, and I put it to every Liberal member of the house: Do you stand today with the Prime Minister (Mr. St. Laurent) and the government in the doctrine that has been expounded by him today, or do you stand with Blake, with Laurier and with Lapointe? You cannot stand with the Prime Minister today and stand with Blake, Laurier, Lapointe and Cardin. When the amendment and the resolution come to a vote the Liberal members today will make their choice because they cannot vote for both. They will make their choice with respect to the doctrine of