

The Constitution

amending formula. This whole thing is to be done under a deadline. That is a large package to submit to a deadline. I would like to look at each of these areas separately. I will begin with patriation.

I suppose the process could be called patriation. It is a name which has been invented for a specific purpose, although, the closer one looks at the process, the phonier it becomes. I have no hesitation in accepting the notion that Canada's constitutional forms, documents, acts, whatever, should be amendable and dealt with in this Parliament. But as much as I want to see the constitutional provisions within our grasp here for amendment—in other words, as much as I want to see patriation—I cannot help but be struck by the irony of the way the government is going about it in this resolution.

What we are being asked to do, and I find it quite incredible, is exchange one British statute for another. That is not patriation, it is a travesty of patriation. I want patriation. I do not want a travesty of patriation.

● (2100)

Let me explain. It has to be explained and it has to be understood not just by you, Mr. Speaker, but by all hon. members opposite as well as by the entire Canadian population. In my view, we are being conned at the present time into believing that what we are doing is patriating the BNA Act and other elements of the constitution.

Let us examine the process closely. We are being asked to approve a joint resolution. The Fathers of Confederation approved a joint resolution and once the context was agreed upon in 1864 and 1866, it was transmitted to the British parliament to be passed into law. It became the BNA Act, a British statute. There is no question about that.

Once the resolution before us today is approved by both Houses of Parliament it will be transmitted to the British parliament, with a prayer, a request, that the content of the resolution, known as the Canada Act, be approved by the British parliament. That is the exact procedure used in 1867 to bring the BNA Act and Canada into being.

We all recognize that the BNA Act is now described as an act of the British parliament which, of course, it is, and some shame seems to be attached to that. If the Canada Act is approved by the British parliament it will also be an act of the British parliament. It is true that the British parliament will not be able to amend it—they withdraw from that—but it will remain an act of the British parliament and it contains elements of the constitution that have never been there before. I suggest we must very carefully look at this notion of patriation and what it means in terms of the statute. It will have been drafted in Canada, like the resolution which became the BNA Act, but it will still have been approved by the British parliament.

Boiled down to its essentials it comes to this, Mr. Speaker: Canada's constitution as set out in the Canada Act—and there is more to it than that—will be an act of the British parliament. We must think about that, Mr. Speaker. We must not allow ourselves to be fooled. I wonder if we are being taken on

a ride down Tom Fool Hill? If the Prime Minister (Mr. Trudeau) has his way the British parliament will give us a new constitution. I emphasize this: the British parliament will be giving us this new constitution.

The Prime Minister sent two of his ministers to London. I suggest that in a manner of speaking what we are doing is hiding behind the skirts of Margaret Thatcher and asking her to do the dirty work that we are not prepared to do ourselves—to pass a law so that it will be effective here, and then we say, "Don't ever touch our constitution again." I suggest there is another way, one that has been proposed by this House and a shorter way. We could ask the British parliament to relieve themselves of those provisions of the statute of Westminster which enabled them to amend our constitution and we will do it here. The order of doing that would probably be the other way around—that we do it here and then ask them to deprive themselves of the right to interfere in our constitutional affairs, if you like. Meanwhile, we should not be taken in completely, utterly and entirely by the notion of patriation as it is being put across in much of the literature, printed and vocal, that is being issued across Canada.

Why are we proceeding by way of another British statute when there is a neater, tidier way of proceeding? The cabinet document that was leaked during the first ministers' meeting could give us some inkling why we are being asked to follow this route.

An hon. Member: It was not a cabinet document.

Mr. Munro (Esquimalt-Saanich): Apparently that is now being denied.

An hon. Member: It is not a cabinet document.

Mr. Munro (Esquimalt-Saanich): There is a document of advice to the Prime Minister as to the question of validity, and this is a very important point. As to the question of validity, the document states as follows on page 50:

—it is the view of the Department of Justice that a law passed by the U.K. parliament to patriate the constitution,—

Note the use of the word again.

—with an amending formula and other changes, could not be successfully attacked in the courts.

"Validity of the move", Mr. Speaker! Are they afraid of it being attacked in the Canadian courts—the validity of their action? They must be ashamed of it to judge by the way they are proceeding.

Of course, this resolution has yet to be passed by the U.K. parliament and therefore, in my judgment, the validity of the proposals could successfully be called into question in the courts before this is passed—not patriation as such, but the process by which this whole operation is being carried out.

Let me proceed to the second point, namely, that the British parliament is being asked to do a good deal more than just patriate the constitution. If that were all, then the British parliament would undoubtedly be delighted to patriate it and have done with it. But much more than that is being sought.