

*British North America Act*

fact that the power of disallowance has not been exercised since 1873, and that the reservation of legislation for the sovereign's approval under these sections did not long continue after that date. It seems to me that is one striking example of an amendment long overdue to remove a dead letter.

The Prime Minister maintained this afternoon that his government possessed a mandate to put this resolution into effect, and suggested that in the view of the government it was the first step it should take, even in advance of consultation with the provinces in relation to other matters arising out of the constitution.

I heard the statement made in the house by the Prime Minister about a year ago on this subject. I followed press reports of his speeches during the campaign, with some care, and I do say that unquestionably the government has a mandate, as I think every member in the house, regardless of party, must have a mandate from his electorate to seek for Canada the power to amend her own constitution. But I submit to you, sir, that the Prime Minister has yet to show the House of Commons where he has a mandate from the people of Canada to proceed by the method laid down in the resolution now under debate. Certainly it was not indicated in the speech he made to the house this afternoon.

Where is the mandate to select one field, a field the line of demarcation of which is not as clear to many people as it appears to be to the Prime Minister, and to say that without consultation with the provinces we are going right ahead with this subject in a manner which I think will prejudice the wider enterprise of seeking a comprehensive amending formula for the Canadian constitution in all its aspects?

Undoubtedly if the fathers of confederation did wrestle with this question of amending procedure, they had some difficulty with it. It is not free from difficulty yet. In his correspondence with the premiers of the provinces the Prime Minister referred to it as being a subject of great difficulty. Nevertheless, we should no longer continue to be the one dominion lacking this power.

But in my submission the formula by which a comprehensive amending procedure is to be achieved in Canada must be one that is acceptable to the provinces. It is the height of folly to proceed to carve up this subject. We are only inviting the defeat of any hope of effecting that comprehensive approach to the problem of devising an amending procedure which is long overdue.

So far as the government is concerned, the Prime Minister this afternoon tolled the death

knell of the compact theory of confederation. If those who follow him in this house follow him in his speech, then the Liberal party has today tolled the death knell of the compact theory. There are some things about the compact theory about which I should like to remind Liberal members in this house.

Whether or not that theory is precisely recognized by the courts in interpreting the British North America Act, it is an incontestable historical fact.

I should like to refer to the letter of October 5, 1949, from the premier of Quebec to the Prime Minister. In that letter reference is made to the statement made by Lord Carnarvon when the British North America bill was introduced by him into the Westminster parliament. Lord Carnarvon said:

The Quebec resolutions, with some slight changes, form the basis of a measure that I have now the honour to submit to parliament. To those resolutions, all the British provinces in North America were, as I have said, consenting parties, and the measure founded upon them must be accepted as a treaty of union.

When the bill was introduced in the British House of Commons by Mr. Adderley he said:

If again, federation has in this case specially been a matter of most delicate treaty and compact between the provinces . . . it is clearly necessary that there should be a third party *ab extra* to give sanction to the treaty made between them.

That was the view of the government which introduced in the Westminster parliament eighty-three years ago the bill that later became the British North America Act.

But the evidence does not end there. It was the view of the Liberal party in its best days in this country that the British North America Act, certainly the scheme of confederation which found its legislative embodiment in the British North America Act, was a compact. I should like to refer to the words of Sir Wilfrid Laurier, as reported on page 2199 of *Hansard* of January 28, 1907, when he said:

Confederation is a compact—

I ask Liberal members of this house who heard the remarks of the Prime Minister today when he completely repudiated the compact theory to put alongside his words those of Laurier, in 1907, who said, "Confederation is a compact." I quote from page 2199 again:

Confederation is a compact made originally by four provinces, but adhered to by all the nine provinces who have entered it, and I submit to the judgment of this house and to the best consideration of its members, that this compact should not be lightly altered. It should be altered only for adequate cause, and after the provinces themselves have had an opportunity to pass judgment on the same.