

at the session of that year, a special committee on the British North America Act was set up. This committee held many sessions from January, 1935, to June of the same year. Many experts in constitutional law were heard as witnesses, and finally a report was made to the House of Commons on the 19th of June, 1935. I wish to quote two paragraphs of this report, which will show that, even if they did not come to a final conclusion on the question, it was considered as very important, and it was thought advisable that the question should be finally settled as soon as possible.

I quote from the report:

The committee recognizes that there is a divergence of opinion with respect to the question of whether or not the British North America Act is a statutory recognition of a compact among the four original provinces of the dominion and as to the necessity or otherwise of provincial concurrence in amendments. Without expressing any opinion upon that question, the committee feels that in the present case, and at the present time, it is advisable in the interest of harmony and unity that there should be no consultation with the provinces with respect to the adoption of a definite mode of amendment or the enactment of amending legislation which might seriously alter the legislative jurisdiction of the provinces and the dominion.

The last part of the report reads as follows:

In view of the fact that the several provinces did not feel it advisable to give the committee the benefit of their views with respect to the method of procedure to be followed in amending the constitution, the committee is of the opinion that before any decision upon the subject matter of the resolution is finally made, that the opinions of the provinces should be obtained otherwise if at all possible and for that reason recommends that a dominion-provincial conference be held as early as possible in the present year to study the subject matter of the resolution. The proposed conference should have ample time in which to study every phase of the question.

In view of the above recommendation the committee expressly refrains from recommending any form of procedure for amendment so as to leave the proposed conference entirely free in its study of the question, except that the committee is definitely of the opinion that minority rights agreed upon and granted under the provisions of the British North America Act should not be interfered with.

One may ask himself why the fathers of confederation did not provide in their project of constitution the ways and means of amending it. I do not think any explanation can be found anywhere for the lack of this provision. The most probable reason was that they believed the terms of the confederation were broad enough for the settlement of any problem that could arise in consequence of the establishment of Canadian confederation. They must have thought that the clause regarding the residuary powers would make all the problems very easy to settle. There

[Mr. Dorian.]

is one thing certain: neither in the Quebec resolution nor in the London resolutions was there any question of adopting a procedure for the amending of the constitution.

It was not very long after the confederation that this question of amending the constitution arose. The first amendment took place in 1870 when the Manitoba Act was passed. Since some diversion of opinions had arisen on the question of constitutionality of section 146 of the British North America Act, the Canadian parliament in 1871 petitioned the imperial government to present to the parliament of the United Kingdom a law to dissipate any doubts.

In 1875, the imperial parliament adopted an amendment along the lines suggested by the governor general in council for the changing of section 18 of the British North America Act.

The third amendment was passed in 1886 when there was adopted a law intituled "an act respecting the representation of the parliament of Canada in territories which, for the time being, formed part of the Dominion of Canada, but are not included in any province." In other words, the object of the amendment was to empower parliament to provide for representation of territories in the Senate and House of Commons.

In April, 1907, the House of Commons and the Senate adopted a joint resolution asking the imperial parliament to pass a fourth amendment to permit the increase and regulation of federal subsidies to the provinces.

In 1915, another amendment was passed to increase the number of the senators and to alter the divisions of Canada in relation to the constitution of the senate.

An amendment was passed in 1916 to extend for a year the duration of the parliament elected in 1911. In 1930, a new amendment was passed to return the national resources to the western provinces. In 1940, an amendment was adopted by the parliament of the United Kingdom (to institute unemployment insurance amongst the class of subjects enumerated in section 91 of the British North America Act).

Finally, the last amendment was passed in 1943 under the following title: "an act to provide for the readjustment of the representation of the provinces in the House of Commons of Canada consequent to decennial census taken in the year 1941."

A few words of comment on these amendments will be, I think, worthy of interest. It must be noted, first, that the amendment of 1875 was passed by the imperial parliament at the request of the Canadian government, without any resolution of the parliament itself.