

Interim Supply

which lie ahead for this country if they are adopted. These I propose to indicate.

There is no better way of disclosing these pitfalls than by making this point. It may well be that a strong decisive government such as existed in 1961, one not subject to the pressures of provincial governments or required, in order to preserve its political life, to take advantage of and yield to pressures from provincial governments, would not have found such proposals dangerous. But a weak, indecisive government not knowing which way it is going or where it is going, like the hero in Stephen Leacock's book "riding madly in all directions", would find them dangerous, and they will be very dangerous in the future. I do not think I am compelled to take any part in this argument; I simply say I am opposed to it and I intend to give a few of the reasons for taking this position at this time.

In introducing the subject let me say that I think there is a complete misstatement in the wording of the communiqué which accompanied the proposed changes. According to the communiqué of October 14, 1964:

The conference of the federal and provincial governments, meeting in Ottawa on October 14, unanimously agreed on a formula to repatriate the constitution of Canada.

And later:

As a result, our constitution will have become, for the first time in the history of Canada, truly and wholly Canadian.

What nonsense is this? Even if these changes are approved by the parliament of Canada in an address, and even if they are approved in their present form without the substitution of a comma or the addition of a period, they will still form part of an act of the United Kingdom. The constitution does not become repatriated; it is still an act of the parliament of the United Kingdom and subject to repeal or amendment not only in Canada but in the parliament of the United Kingdom. I do not think there is any question of that.

If this precise formula is adopted I envisage this situation. Let us say that six of the most populous and wealthy provinces—

Mr. Pickersgill: Could I put another question to the hon. gentleman. He has raised a point of very great interest to me. He is suggesting that by accepting an address of this character and by adopting an act of this character the parliament of the United Kingdom would in words be divesting itself of legislative power. I assume that under the doctrine of the omnicompetence of parlia-

[Mr. Baldwin.]

ment what they do they can undo. I suggest that under the doctrine of the omnicompetence of parliament that is quite true; but has the hon. gentleman addressed himself to the other and very interesting question, that once this address was passed and the power vested in the parliament of this country we would no longer, in our courts or anywhere else, pay the slightest attention to any further legislation of the United Kingdom parliament even if their parliament were silly enough to do what might theoretically be possible.

Mr. Baldwin: I think the minister is assuming something which may not be correct. For example, once this address has been passed, let us assume that for some length of time no action is taken on it, even in Canada. In that case the courts of Canada will still be interpreting the constitution in the terms of a statute of the parliament of the United Kingdom, and I doubt very much whether the proposition suggested by the minister is a correct proposition at all. The constitution will continue to exist in Canada because it is a statute, and it is a statute of the United Kingdom.

However, that is not the point I am making. The point I am making is that the communiqué is completely erroneous in its assumption that there has been a repatriation of the constitution. There has not been a repatriation of the constitution. There has simply been in a limited way an extension to Canada of the right to amend the constitution under certain conditions.

May I call it one o'clock?

At one o'clock the committee took recess.

AFTER RECESS

The committee resumed at 2.30 p.m.

Mr. Baldwin: Mr. Chairman, just at the one o'clock adjournment I said that technically and theoretically even with this new proposed amendment we would still be in a position where the United Kingdom parliament could at any time amend or repeal the British North America Act, because to them it is just an act of parliament, although to us it is the constitution. Even in a practical sense that could be done, and I envisage a situation where the six most populous and wealthy provinces, along with the government of Canada, would be in favour of making a constitutional amendment. Under those circumstances the government of Canada would be strongly supported in this house, and would decide that it was in the best interests