

THE SENATE

Tuesday, November 1, 1949

The Senate met at 3 p.m., the Speaker in the Chair.

Prayers and routine proceedings.

BRITISH NORTH AMERICA ACT AMENDMENT

ADDRESS TO HIS MAJESTY—MOTION

On the Notice of Motion:

That an humble Address be presented to His Majesty the King in the following words:

To the King's Most Excellent Majesty:

Most Gracious Sovereign:

We, Your Majesty's most dutiful and loyal subjects, the Senate of Canada in parliament assembled, humbly approach Your Majesty, praying that you may graciously be pleased to cause a measure to be laid before the Parliament of the United Kingdom to be expressed as follows:

An Act to amend the British North America Act, 1867, relating to the amendment of the Constitution of Canada.

Whereas the Senate and Commons of Canada in parliament assembled have submitted an Address to His Majesty praying that His Majesty may graciously be pleased to cause a measure to be laid before the Parliament of the United Kingdom for the enactment of the provisions hereinafter set forth:

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

1. Section ninety-one of the British North America Act, 1867, is amended by renumbering Class I thereof as Class IA and by inserting therein immediately before that Class the following as Class I:

"1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces, or as regards rights or privileges by this or any other constitutional act granted or secured to the legislature or the government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language, or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the writs for choosing the House; provided however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada, if such continuation is not opposed by the votes of more than one-third of the members of such house."

2. This Act may be cited as the British North America Act, 1949 (No. 2), and the British North America Acts, 1867-1949, and this Act may be cited together as the British North America Acts, 1867-1949 (No. 2).

Hon. Mr. Robertson: Honourable senators, I have asked the honourable senator from Vancouver South (Hon. Mr. Farris) to present the first motion on the Order Paper, which stands in my name.

Hon. J. W. de B. Farris: Honourable senators, the resolution that appears on the Order Paper—

Hon. Mr. Haig: Would the honourable gentleman move the resolution?

Hon. Mr. Farris: I thought the honourable leader (Hon. Mr. Robertson) had done that.

Hon. Mr. Haig: No, he did not.

Hon. Mr. Farris: Then I beg to move the resolution.

Honourable senators, this resolution asks the Imperial Parliament to amend section 91 of the Canadian constitution, known as the British North America Act. That section provides as follows:

It shall be lawful for the King, by and with the advice and consent of the Senate and House of Commons to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces, and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated.

The amendment will provide that the first of the enumerated headings in section 91, as amended, will be "Power to make laws" for:

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the class of subjects by this Act assigned exclusively to the legislatures of the provinces, or—
This is a further exception.

—as regards rights or privileges by this or any other constitutional Act granted or secured to the legislature or the government of a province, or—

This is the next exception.

—to any class of persons with respect to schools or as regards the use of the English or the French language, or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the writs for choosing the house; provided however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada, if such continuation is not opposed by the votes of more than one-third of the members of such house.

Honourable senators will see that this amendment proposes to give to the Parliament of Canada—the Senate and the House of Commons, with the assent of the Governor General—power to amend, in certain limited fields, the Imperial Act known as the British North America Act, passed in 1867. I emphasize the words "limited fields", because the exceptions that I have read indicate that the fields of amendment proposed to be extended to the Parliament of Canada are restricted to matters essentially pertaining to Canada as a whole, as distinguished from matters coming within the rights of the provinces or of any classes in the community.