

*Procedure and Organization*

49. Questions arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote.

What does proposed standing order 75A do, Mr. Speaker? As I recall its wording, it proposes to put into the hands of the representatives of the parties the right to come to a decision which, automatically and with no further debate or discussion, shall become an order of this house. There are not 20 members who will make that decision. The standing order does not say that Your Honour must be present and so constitute the legal entity which the law requires in order to give effect to that decision.

May I also point out this further, collateral defect. Who are these representatives that are mentioned? Is there any certainty that they must be members of this house? Hon. members may say that I am quibbling only and that this is a technical irregularity. I suggest that when the government or a committee seeks to come to this house in order to suggest or impose changes or additions to the rules under which we operate, the government or the committee must be prepared to come here with a perfect case legally documented and based on our jurisprudence.

I suggest that the proposal would impose upon this house a standing order which would have the effect of placing in the hands of undefined and unnamed representatives the power to make an order as to allotment or limitation of time on any specific debate which shall automatically become an order of this house. I suggest this contravenes all the specific requirements of the British North America Act.

This is only the minor part of the point of order I propose to raise. Later on I will get into the particular aspect in a broader manner. It must be understood once and for all that, for all that has been said about this being a sovereign parliament and a sovereign house, this is not a technical expression of the facts. Unlike the mother of parliaments in the United Kingdom, this parliament derives powers. The rights and powers which this house has stem from statutes, the British North America Act and, I am ashamed to have to say, the Colonial Laws Validity Act.

I say in a collateral sense that while the Prime Minister (Mr. Trudeau) has been playing silly games with the constitution, hiding experts in dark corners and having conferences which have been ineffective, the main issue that faces this parliament, our right to

[Mr. Baldwin.]

be a sovereign parliament and to make our own laws and rules, remains in jeopardy. Consequently I anticipate the rebuttal which may well be made, that this house has the right to do anything it wants. It has not, Mr. Speaker. It should have, but it has not. It is bound by the provisions of some of the statutes. I intend to quote some of these statutes to Your Honour as I develop what I consider to be one of the major aspects of this particular argument.

If one examines the constitutions of most of the countries which have received their independence from the United Kingdom, it will be seen in the enabling legislation in the constitutional statutes,—and I can quote two, dealing with the provinces of Nova Scotia and Newfoundland,—that in each instance there was set out in the statute providing for independence power in the hands of the legislature to make its rules, provide for its procedure and protect its privileges.

I suggest if one searches through the British North America Act from beginning to end, it will be found that, apart from clauses 48, 49 and one or two others dealing with money bills and the signification of bills for His Excellency's signature, there is nothing investing this house with the right to make rules of order and rules of procedure.

Hon. members should bear in mind that we are a legislature with a derived authority, not an authority such as obtains in the United Kingdom parliament, one which is derived from the strength, early beginnings, traditions, practices, precedents and the moods of the British parliamentary practice. Under these circumstances we are then driven back to the only statute which in any way purports to provide for the consideration of the establishment of rules, practice and procedure.

As I promised, I will refer the house to the Nova Scotia Act, passed in 1884, to illustrate my point. Section 20 provides the house and the legislature of that province with authority to establish rules of practice and also rules for the protection of its privileges.

• (2:30 p.m.)

The Newfoundland Act, which established the province of Newfoundland some years ago, provided precisely the same thing in sections 4 and 8. Jamaica and all the other dependencies in the West Indies have specific provisions in their statutes.

Now all we have left to rely on, Mr. Speaker, is the Colonial Laws Validity Act of 1865, which in section 5(a) provides that a legislature, a representative legislature which is