Madam Speaker: Order, please. The hon. member has spoken for quite some time and he is arguing that, this motion being illegal, I should be in a position to say so and prevent it from coming before the House. I have to remind the hon. member that I have already ruled that I cannot do that. This is precisely what the Standing Orders enjoin me not to do. Therefore, that argument will lead the hon. member nowhere in proving to me that he does have a question of privilege.

Mr. Crosbie: Madam Speaker, all I request you to do, in your position as Speaker, is to find that there is a prima facie case. I am not calling on you to find that this procedure is illegal; that has already been done for you by the Newfoundland Court of Appeal. You need worry no more about that. The whole procedure is completely illegal.

Some hon. Members: Hear, hear!

Mr. Crosbie: What I am asking Your Honour to do is to find that there is a prima facie case to be considered, and to allow my colleague the hon. member for St. John's East to move his motion.

I have just one final quotation from pages 54 and 55 of a judgment that is going to go down as one of the great judgments of our judicial history. In 114 years there has not been a judgment which overreaches this judgment. It will go into the books with the Magna Carta.

The learned judge said this:

> Without getting into specifics, it is clear that a charter of rights and freedoms must infringe upon the powers of the provinces to legislate in respect of property and civil rights, as granted by Section 92 of the act of 1867. Further, amendments to the present Constitution of Canada which would affect provincial rights and powers cannot at present be made without provincial consent. Under the proposed amending formulae, there is no doubt (and this is not denied by the Attorney General of Canada) that the rights of one or some of the provinces could be altered, abridged or in fact displaced without the consent of those provinces.
>
> Finally, it is patently obvious on the face of it that the provisions of Section 52 of the proposed Constitution Act must affect the rights, powers and privileges of the provincial legislatures as its effect is to render void or repugnant legislation passed within a province which is otherwise 'intra vires' the legislature of that province.

● (1550)

It is very clear what the general nature of this legislation is and that all of the judges of the Newfoundland Court of Appeal found against it. Two of the five judges of the Manitoba Court of Appeal found against it. It is very clear that one can say, at the very least, that there is some doubt about the constitutionality of the resolution that this House has been asked to pass.

I should like to refer to Erskine May's Parliamentary Practice, the eighteenth edition. In looking at this edition of May, I was very pleased to realize that one of the historic cases in the history of privilege is dealt with at page 107. It is Crosbie's case—C-r-o-s-b-i-e; it is not even misspelled, Madam Speaker! At page 107 there appears the following:

> In 1640, Sir Pierce Crosbie, sworn as a witness in Lord Strafford's cause, being threatened with arrest, was allowed privilege, "to protect him during the time that this House examine him"

I call now upon the authority of Sir Pierce Crosbie. I had an uncle called Pierce, by the way, Madam Speaker, who apparently was named after Sir Pierce. Here we are, 341 years later and I am arguing a case of privilege before Your Honour. I hope the verdict will go as well as it did in 1640.

Some hon. Members: Hear, hear!

Mr. Crosbie: On page 64 of the eighteenth edition of May, in a discussion of the distinction between function and privilege proper, there appears the following passage:

> The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are "absolutely necessary for the due execution of its powers". They are enjoyed by individual members, because the House cannot perform its functions without unimpeded use of the services of its members; and by each House for the protection of its members and the vindication of its own authority and dignity.

If the government is put in a postion where it can force the members of this House to make a choice on a resolution or an act where there is grave doubt concerning its legality, then surely the services that we can perform in this House are being interfered with. As a matter of fact, as I mentioned earlier, it is in the nature of a conspiracy to deceive. This subject is dealt with at page 137 of May as follows:

> Conspiracy to deceive either House or any committees of either House will also be treated as a breach of privilege.

This is, in effect, an act of conspiracy by the government to deceive members of this House. How is that? It was an action taken to deceive the members of this House by a resolution brought before the House that was clearly intra vires and within the legislative jurisdiction of this House, when the government knew or ought to have known that there was a very, very serious legal question as to the whole procedure. The government knew from a matter that went to the Supreme Court of Canada two years ago and was found to be ultra vires despite what the government had said was a proper approach.

Is any evidence of this conspiracy needed, Madam Speaker? I would quote to you now from the October 6, 1980, edition of the Toronto *Globe and Mail*. In an article in that newspaper the present Minister of Justice (Mr. Chrétien) said this:

> Asked why the federal government does not refer its course of action to the Supreme Court of Canada for a ruling on the constitutionality of the process, Mr. Chrétien replied "because the Supreme Court is very unreliable and timing is very important. We have to do it now. The people want us to do it now."
>
> In any case, he said, "I am opposed to that route."

That is the very route that the Prime Minister is suggesting today that he has been brought kicking and screaming to—a route that his Minister of Justice said on October 5 that he was opposed to. He said: "I am opposed to that route". Well, the Minister of Justice has got the root and he has been brought to the route, and the Prime Minister has now thought better about the route that we are going to be asked to take.

This is why I say this is part of a conspiracy to defeat the proper course of justice in this House. The Minister of Justice himself tried to avoid the Supreme Court, giving as the reason that "the Supreme Court is very unreliable." Yes, the Supreme Court of Newfoundland is a very unreliable one from the point of view of constituted executive authority that wants