

Interim Supply

being established by this course of action. It is very clearly set forth in the White Paper that was filed by the Government itself just a few weeks ago relating to the amendment of the Constitution of Canada. This is a survey of the whole matter and was made under the direction of Hon. Guy Favreau, Minister of Justice, and dated February, 1965. At page 15 two principles were stated. I quote:

The first general principle that emerges in the foregoing résumé is that although an enactment by the United Kingdom is necessary to amend the British North America Act, such action is taken only upon formal request from Canada. No act of the United Kingdom parliament affecting Canada is therefore passed unless it is requested and consented to by Canada. Conversely, every amendment requested by Canada in the past has been enacted.

I ask the House to note the second general principle which is stated here, and I quote:

The second general principle is that the sanction of Parliament is required for a request to the British Parliament for an amendment to the British North America Act. This principle—

This is referring to the sanction of Parliament.

—was established early in the history of Canada's constitutional amendments, and has not been violated since 1895. The procedure invariably is to seek amendments by a joint address of the Canadian House of Commons and Senate to the Crown.

There you have it, Mr. Chairman. In a statement put out by the Minister of Justice just a matter of three or four months ago reviewing this whole matter, it is stated with the utmost clarity that the principle that you only do this with the consent of Parliament has not been violated since 1895. Now, without any reference to this House whatever, it is proposed that we violate a principle that has been established and set out in this clear way.

Mr. Martin (Essex East): May I ask my hon. friend a question? Will he not agree that that resolution, which I think was passed in 1871, was passed in respect of a situation altogether different from the situation now before us? It had to do with the provinces and the Parliament of Canada. This is a situation that was not envisaged by that resolution.

Mr. Brewin: As a matter of fact, Mr. Chairman, I was just going to answer that very point, which has been made by the Minister, because he made it before. Before I come to what I was going to say, however, may I give this by way of answer? According to page 15 of the Government's statement, from which I have just read, they were referring

to general principles, and those general principles were that the sanction of Parliament was required in requesting these amendments. There is no limitation whatever suggested in that statement. A principle had been established, and had not been violated since 1895. The procedure was invariably to seek amendments by a joint address of the Canadian House of Commons and Senate to the Crown.

I admit, of course, that there are differences in different cases; but this is a general principle, and I suggest a sound principle, that there be no amendment to the Constitution of Canada passed without submission to and approval of this Parliament. I know that the Secretary of State for External Affairs took the view before, as he suggested in his question, that this statement of principle is not applicable. He says that the matter only affects the Province of Quebec. But, Mr. Chairman, on the face of it that is not a correct statement. When an amendment is sought to the British North America Act it requires the intervention and advice of the federal executive, and the Parliament of Canada is involved. A very dangerous precedent is set when amendments to the Constitution of Canada are made on the request of the executive alone.

Now, Mr. Chairman, as most Members of the House will be aware, we in this party have no brief at all for second, non-elected chambers. We indeed, have made our views clear a number of times, even in this session when we were discussing the other place and what we thought of its position in the constitutional set-up. However, I want to suggest to this House that constitutions are of fundamental importance and should not be changed by methods of dubious legality and dubious constitutionality. Constitutions are not the possession of an elected assembly alone, subject to immediate change at the request of an executive. In our view the constitution primarily belongs to the people, and we believe the people of Quebec have the right to be consulted.

• (6:00 p.m.)

Nor can it be overlooked that the apparent reason for the rushing through of this amendment by reason of arrangements privately negotiated between the right hon. Prime Minister and the Premier of Quebec is, no doubt, that the Legislative Council stands as a barrier to the early enactment of the constitutional amending formula now known as the Fulton-Favreau formula.

I do not intend to repeat here the arguments for the view that the enactment of this