

*Income Tax***AFTER RECESS**

The House resumed at 8 p.m.

GOVERNMENT ORDERS**INCOME TAX ACT**

The House resumed consideration in committee of Bill C-49, an act to amend the statute law relating to income tax—Mr. Turner (Ottawa-Carleton)—Mr. Laniel in the Chair.

The Chairman: Order, please. House again in committee of the whole on Bill C-49, an act to amend the statute law relating to income tax. Shall clause 1 carry?

Some hon. Members: Carried.

Clause 1 agreed to.

Clauses 2 and 3 agreed to.

On clause 4.

Mr. Hamilton (Qu'Appelle-Moose Mountain): Mr. Chairman, my remarks will concern something which has occupied the minds of members on my side of the House. Many of us doubt the wisdom of passing at this particular time clause 4 of this bill and clauses related to it. It provides, in effect, that royalties and taxes paid by resource industries to provinces shall not be deductible for purposes of income tax.

I oppose this type of legislation on grounds that it is constitutionally incorrect. It is clear to me as a layman, and is clear to every schoolboy, that the resources of this country, whether land or mineral, belong to the people of the provinces, to be used by them as they see fit. This is what the British North America Act provides. The provinces have the right to all the emoluments which accrue from these resources, and may use them for their own purposes as they see fit. This is what the provinces agreed to in 1867. This undertaking was renewed when Alberta and Saskatchewan passed their resource bills in 1930. There is one thing which our constitution makes clear: Resources belong to the people of the provinces in which the resources are found.

Last fall, when we debated the petroleum administration bill, I said that we must be careful as parliamentarians not to interfere with the longstanding prerogatives of the Crown. I meant, we must not interfere with the rights of the people of Saskatchewan, the rights of the people of Ontario, or the rights of the people in any other province. If parliament interferes with rights over resources, it is interfering with the prerogatives of the people of the provinces.

● (2010)

On the constitutional issue, I do not think there is any question that this particular type of legislation, which appeared after the May 6 budget, was turned down by this House and then popped up again after the November 18 budget, is a clear infringement on what we call our consti-

[Mr. Speaker.]

tution. In plain, simple terms, the province has the legal and moral right to take all the wealth that comes from these resources. When we, the federal parliament, unilaterally challenge that right, we are challenging the constitution of this country.

It is agreed that the federal government has power to control trade between provinces and across our national boundary. It is agreed the federal government has the right to tax all forms of wealth that come from corporation taxes and any other type of tax. However, when you have a body of jurisprudence collected over the years of existence of this country as a nation that has always held where the law stands in relationship to the rights of a province to its own resources, any government, and that includes this government, should consider very seriously what they are trying to do in this unilateral action.

It might interest the committee to remember a case in Saskatchewan where a company or series of companies challenged the right of the province of Saskatchewan to take all of the increased value of oil which resulted from the oil increase in price in 1973. That case was heard. The federal arguments were all presented by able counsel, who argued that the provincial government in raising its royalties and taxes was interfering with the federal right to tax and with the federal control over trade. After a long deliberation, the judge turned down the federal case and gave his decision to the province.

At this very moment, the federal Minister of Justice is helping these companies in Saskatchewan appeal their case to the Court of Appeal in the province of Saskatchewan. The Minister of Justice has accepted the fact that if this case goes through to the Supreme Court and the federal government loses, then the arguments we have heard presented by the government on the right to do what they are doing in this area are null and void.

We know it will take at least all of this year to get the case before the Court of Appeal in Saskatchewan. If that appeal goes against the federal government, it will take another two or three years to get it through the Supreme Court, unless we ask for a special hearing in the national interest. The laymen across this nation who are not lawyers or judges but have an ordinary sense of justice and equity, when these facts are laid before them, will question the wisdom of this government deliberately attacking the whole foundation of the constitution and deliberately interfering with or ignoring what seems to be the decision in the courts of our land.

The second point I wish to make deals with legal jurisprudence about which I as a layman know as little as most. However, I have read some of these cases. Put into my words, they simply tell me this. If a government at any level goes ahead and taxes or does something that is purely within its constitutional right to do, then when another government at another level introduces a tax or does something purely within its constitutional provisions and rights, and that second act of either taxing or doing something interferes with, nullifies or voids the actions that the previous government took on the particular subject, that second action is null and void under the law. Even if that action by the second government is disguised in any form whatsoever, the judges of this land have held that if it interferes with the original act or tax of the