

*Anti-Inflation Act*

There are serious reasons for concern. I will not say what the Supreme Court of Canada may or may not decide. No one can possibly know. The court itself will not know, I think, until confronted with the legislation and the necessity to decide. As I say, there are serious doubts about this bill. Any lawyer, any sort of constitutional expert, will be aware of what happened after the First World War. The federal government of the day passed legislation which had a serious impact on prices. It was known as the board of commerce and fair prices act. The government enacted this law which dealt with prices in a way not altogether dissimilar from what is being proposed today.

The Supreme Court of Canada, in a decision approved over the years by the judicial committee and referred to by the Supreme Court of Canada on many different occasions, reaffirmed that there was no right of intervention by parliament in something which was prima facie within provincial jurisdiction under section 92 of the British North America Act merely because there was some declaration that the bill was for the peace, order and good government of Canada. That is the sort of language one reads in the preamble. The federal act was struck down by the court. I do not say that decision is necessarily final, as circumstances may not remain the same, but the decision has been reaffirmed and is a major obstacle to this bill.

I am aware, as others in the House are, that the tendency has been to interpret section 91(2) of the British North America Act, dealing with the regulation of trade and commerce, in a much broader way than was the case some years ago when the judicial committee was our only court of last resort on constitutional issues. I know that the provision may be expanded, and I am sure excellent arguments can be put forward to justify the law we are considering under the regulation of trade and commerce head. But the constitutional validity of this bill is by no means clear or certain.

I find particularly distressing something the government has not done. In the preamble to the bill there is no indication that the government treats this situation as a national emergency. It is well recognized that if something imperils the future of the country, that matter comes under the peace, order and good government provision of the act and would transcend purely provincial regulation. That is well known. It is also well known that the courts look at the preamble to a bill to determine whether it was enacted in response to some dire emergency. What do we find when we look at the preamble to the bill now before the House? I think the right hon. member for Prince Albert (Mr. Diefenbaker) touched on this point.

The first paragraph beginning with "whereas" speaks of inflation. It says it is contrary to the interests of all Canadians, that the containment and reduction of inflation has become a matter of serious national concern, and that therefore it is necessary to restrain profit margins, etc. But there is no word of an emergency in the preamble. It so happens that such words, or words similar to those in the preamble, have been considered by the courts and the courts have decided that they do not justify federal intervention into the provincial domain. You cannot say that a great many Canadians are concerned, or that something is a matter of serious national concern, or that it affects all Canadians, and bring it within federal competence unless

[Mr. Brewin.]

it is within one of the specific heads of section 91. If the matter is within section 92, Canadians must expect the provinces to have authority with respect to it.

The question is, is there a clearcut case of emergency? I am not saying there is no emergency which would justify government intervention. I think the ravages of inflation are so serious and so pervasive that they threaten our whole economy. I argue strongly that there is power to act under the peace, order and good government section. Yet I regret very much that the preamble to the bill, a preamble which the courts will examine, does not indicate that the government itself is treating the situation as a national emergency.

May I call it one o'clock, Mr. Speaker?

**Mr. Deputy Speaker:** Order, please. It being one o'clock, I now leave the chair until two o'clock p.m.

At one o'clock the House took recess.

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**AFTER RECESS**

The House resumed at 2 p.m.

**Mr. Brewin:** Mr. Speaker, this would be a good opportunity for me to abandon the party line for a little while.

**Some hon. Members:** Hear, hear!

**Mr. Brewin:** However, I really do not intend to do so. I was pointing out before lunch that one of the troubles with this legislation is that it envisages a total abdication of parliament's control over highly important legislation. The only serious thing there will be is regulations passed by the governor in council. We do not have any draft regulations; we are asked to say, "You have authority to handle this in any way you like." That is just not good enough. Some draft regulations should have been prepared which would fill in the substance of the legislation we are being asked to pass. It is not healthy for parliament to give blank cheques to the government on a matter of this sort.

The second point I was trying to make is that there is a serious cloud over this legislation by reason of the question of the constitutionality of the bill. This is not just a superficial matter to be shrugged aside or passed off by saying, in a vague way, that some of the law officers think it is all right. There is a formidable case for doubting the validity of the bill. It is not only a question of the final decision; it is the effect on the whole process of effecting the purpose of the legislation.

It is fairly obvious that ordinary wage earners and small businesses are not going to run to the courts to seek delays or to get involved in constitutional issues. That is a much too expensive business for them. However, the attack may well come from some interests who are dissatisfied with the guidelines as a whole and can use the courts and the constitutional issue that is involved for postponing the effective application of the act in their particular cases. It is one more instance where, unwittingly no doubt, the bill leans in favour of those who are in a strong position and against those who are in a weak position.