

the case of *Rex v. Nat Bell Liquors, Limited*. Lord Sumner in that case said this:

In their Lordships' opinion the real question is whether the legislature has actually interfered with interprovincial or with foreign trade.

That is the real question to be determined.

**Mr. Pepin:** That was the question.

**Mr. Woolliams:** If this question were cleared up farmers would not need cash advances to the extent that they are now needed, because the cash problem on the farm would be partly, if not completely, remedied. The Court of Appeal then dealt with the Murphy case, which I will deal with in greater detail in a moment. In that case Mr. Justice Rand said:

What is forbidden is a trade regulation that in its essence and purpose is related to a provincial boundary.

I say to the government, why does it not instruct counsel appearing before the Supreme Court of Canada to adopt the national approach?

**Mr. Pepin:** He will.

**Mr. Woolliams:** Not only are these regulations affecting materially the free movement of trade but they are undermining the very foundations of confederation. There must be free trade between the provinces.

**Mr. Pepin:** Hear, hear!

**Mr. Woolliams:** In *Murphy v. CPR* Mr. Justice Cartwright said:

I am in general agreement with the reasons of my brother Rand and those of my brother Locke and would dispose of the appeal as they propose. I wish, however, to add a few words as to one of the submissions made by Mr. Finkelstein in the course of his full and able argument.

It was argued that section 32 of the Canadian Wheat Board Act forbids—

That is the section dealing with powers and regulations affecting the transporting of grain between provinces, thereby controlling interprovincial trade. The question was whether a man in Manitoba could ship his wheat from Manitoba to British Columbia.

**Mr. Pepin:** He can.

**Mr. Woolliams:** That point, although not directly argued in the Murphy case, was decided by the Manitoba Court of Appeal. That decision is now before the Supreme Court of Canada. I continue reading from the judgment:

It was urged that section 32 of the Canadian Wheat Board Act forbids a person who produces grain in one province to transport the grain so produced into another province to be there used by himself for his own purposes, that this prohibition is invalid, that it cannot be severed from the other provisions of the section and that consequently the whole section falls. The facts in the case at bar do not fall within the supposed case on which Mr. Finkelstein bases this argument but this circumstance does not affect the relevance of his submission to the issue of constitutional validity.

### *Prairie Grain Advance Payments Act*

• (8:30 p.m.)

He now comes to the crux:

It seems clear that the enactment of such a prohibition would be beyond the powers of any provincial legislature and so would appear prima facie to fall within the powers of Parliament under the opening words of section 91 of the British North America Act and to be valid, unless it contravenes section 121 of that Act.

I already referred to this; it is basically free trade between the provinces.

It may be that if, on its true construction, section 32 would have the effect of prohibiting the supposed transportation it would be in conflict with section 121 as being a prohibition which, to borrow the words of my brother Rand, "in its essence and purpose is related to a provincial boundary" and not being a regulation of trade or commerce (since there are difficulties in regarding a person as engaged in trade or commerce with himself) or a necessary incident of such regulation. If this be so it would furnish a strong reason for construing section 32 as excluding from its operation the transportation in the case supposed, but I do not find it necessary to reach a final conclusion on the point—

That point has never been directly before the Supreme Court of Canada. It is now directly before the Supreme Court of Canada in the Manitoba case. The reason the Minister of Justice, the Minister of Manpower and Immigration (Mr. Lang), who is in charge of the wheat board, and the Minister of Agriculture will not take a position on this subject and want to see me ruled out of order is because they do not want me to mention it. Why? They know that what I am talking about is the very essence of every one of these bills and the debate that applies thereto.

[Translation]

**Mr. Colin D. Gibson (Hamilton-Wentworth):** Mr. Speaker, I rise on a point of order.

The hon. member is presently dealing with a sub-judice matter since an appeal is underway. I therefore submit that the hon. member's speech amounts to a breach of our Standing Orders and that he should not interfere with a trial court decision which is now under appeal.

[English]

**Mr. Speaker:** The hon. member for Calgary North (Mr. Woolliams) and the hon. member for Hamilton-Wentworth (Mr. Gibson) are both learned in the law. They realize that we should be very careful in discussing matters which are before a court, perhaps even more so the Supreme Court of Canada than the lowest of our courts, although precedents do not establish a distinction between the highest and lower courts. I am sure that the hon. member for Calgary North is keeping this in mind.

It has been in the back of my mind that we must be careful in dealing with a matter that is before a court. Whether a case can be argued in the House of Commons which is at the same time being argued before a court of the country is an interesting point. I am sure the hon. member is keeping this in mind.

In any event, my understanding was when the hon. member began referring to this particular matter that he would not be very long and it was only part of his presentation. I must say that it has been longer than I