

Mr. MacNICOL: In subsection 2 (b) there are the words "qualify an alien to be the owner of a Canadian ship". Can the alien be the captain or master of a ship he owns trading between Canada and some foreign country, and if qualified as captain or master of a Canadian ship while he himself is an alien, can he carry on intercoastal trade in Canada?

Mr. MARTIN: That would be governed by the Merchant Shipping Act of 1934, which I think provides that the captain has to be a British subject.

Mr. MacNICOL: In paragraph (d), in line 3, there are the words "mediately or immediately." I interpret the word "mediately" to mean any time in the future, or some time later. Is that correct?

Mr. MARTIN: This had to be put in because, under the common law, an alien could not hold property.

Mr. MacNICOL: Have I interpreted the word "mediately" correctly?

Mr. MARTIN: Yes. That goes back to 1881 and was put in by Sir John A. Macdonald. I quote from the House of Commons debates of 1881, at page 1369:

But, notwithstanding, it is absolutely necessary that there should be concurrent legislation and that parliament should intervene and have power to deal with this alienage question as well. I believe in all the provinces, by provincial laws, aliens have the right to hold property. But the question of an alien is a matter altogether belonging to the crown or parliament. An alien cannot of course stay in the country except by special permission of the crown—he can only stay on sufferance. By the law of nations now settled, and the concurrence of many treaties between civilized nations, he has a right to trade between nations at peace. An alien can trade and hold property under statute; but he cannot for reasons of state, connected with the existence of the empire, become a permanent occupier or owner of the soil, and liable to all the duties and responsibilities attaching to such ownership. There is no clearer position than that the crown is not bound by an act unless the crown is specially mentioned in it.

Mr. MacNICOL: Would the minister give an explanation of the significance of the year 1883?

Mr. MARTIN: That is the date when the act came into force.

Mr. MacNICOL: I thought the minister mentioned 1881.

Mr. MARTIN: That was when the act was passed. It was proclaimed in 1883.

Mr. SHAW: Subsection 2 of section 29 states:

This section shall not operate so as to  
(a) qualify an alien for any office or for any municipal, parliamentary or other franchise.

It is assumed that the reverse is not true, that it disqualifies him; but what I find confusing is the reference to municipal franchise. It seems to me that the provincial governments determine who shall or shall not vote in the municipality. The same argument applies with respect to the holding of any office in the municipality. It comes to my mind that I had occasion three years ago to talk with the Royal Canadian Mounted Police to determine the eligibility of an alien to hold office in a municipal council. It was determined that he could. We checked the War Measures Act which stated specifically that an alien was not disqualified from holding municipal office. Why is specific reference made to municipal franchise, when that falls properly within the jurisdiction of the provinces?

Mr. MARTIN: My hon. friend will remember that under subsection 25 enumerated head, section 91 of the British North America Act, the power over aliens is given to the parliament of Canada. It is for that reason that we deal with this situation; we are the only body that can. Many hon. members must have had the experience of meeting with individuals who have been in the country for a long time and who perhaps are not aware of what they must do in order to become naturalized citizens and so on. There have been occasions where they have run for office and so on without being British subjects, and without having become naturalized. The dominion government is the only body that can deal with the matter.

Mr. REID: In view of the fact that property rights, under the British North America Act, come under the jurisdiction and authority of the various provinces, if a province passed a law denying an alien the right to hold property, would that affect this section? Which law would prevail?

Mr. MARTIN: I can only repeat what I said, under enumerated head subsection 25 of section 91, the federal parliament is given power over aliens, and the judicial committee has construed that particular section in question as being within our competence.

Section agreed to.

On section 30—Trial of alien.

Mr. SHAW: May I again refer to the matter that I brought up a moment ago? It is still a bit confusing to me. Am I correct in concluding that a provincial government has no right to state whether an alien can or