an agreement with the government of a producer-province for the purpose of establishing mutually acceptable prices for crude oil. Clause 23 is particularly interesting. It says in part:

When an agreement is entered into with a producer-province under section 22, the Governor in Council may, by regulation, establish maximum prices . . .

Clearly, Bill C-32 seeks to encroach on provincial property and civil rights, an area coming under the authority of provincial legislatures. Hon. members should not disagree on this—the ownership of petroleum lies in the province in which the petroleum is found.

This afternoon the Minister of Energy, Mines and Resources suggested that before this legislation was brought before the House the Justice Department had been consulted as to its constitutional validity. Although it is not incumbent on the minister to file an opinion with the committee, he assisted us by referring to the Caloil Inc. case. I assumed the minister was referring to Caloil Inc *v.* the Attorney-General of Canada, 1970 Exchequer Court Reports, page 535. I am sure the minister, and the law officers advising him know that that decision was based on extremely limited facts. It was based on a regulation of the National Energy Board concerning oil imported from outside Canada. I am sure the minister and his law officers also know that an earlier, similar case had been decided. That was Caloil Inc. *v.* Attorney-General of Canada, reported in 1970 Exchequer Court Reports at page 512. Significantly, this is the case on which the minister bases his argument in favour of the constitutionality of Bill C-32, which represents an extraordinary encroachment into the field of provincial responsibility and jurisdiction.

The court found, in the Caloil Inc. No. 1 case, that the regulation as drafted was ultra vires the federal government because it purported to determine the activities of a company dealing with oil which had its origin in Canada. The regulation was changed, and there arose the second law case, known as the No. 2 case, and reported at page 551 of 1970 Exchequer Court reports. I shall read part of the judgment handed down in the No. 2 case because I think all hon. members ought to consider how tenuous is the authority put forward by the minister for the extraordinary encroachment into provincial government jurisdiction. I begin quoting from page 551 of the judgment, which says in part:

Regulation 20, before amendment, indiscriminately included "any motor gasoline in the hands of the licensee even if it is produced in Canada" . . . an extensive clause which, going beyond the boundaries of interprovincial trade, trenched on the free exercise of civil rights in the provinces . . .

The judge then asked himself the following question:

Was this shortcoming not rectified in the recent text which provides instructions on the quantities imported, the time of importations, the region of Canada where such oil would be consumed?

The judge went on to say:

It goes without saying that everyone is in agreement on the commercial nature of such major transactions and recognizes the right vested in the federal authority to prohibit any product, when necessary, from entering the country. As the venerable philosophical adage observes, "He who can do more can do less". In the present case, for purposes that the board had to provide for, the regulation of this vital trade must be exercised where it takes place, namely, in all points of the ten provinces, and of the two territories of Canada. Then, the amendment decreed by the Order in Council of August 12 empowers the board to specify in what quantities, at what times and to which regions gasoline can be imported, from its place of origin to its area of consumption; it brands it to some extent—

I ask the minister to note the following words:

—and prevents its confusion with oil extracted in Canada. It may be that this is a subtle distinction; however it appears sufficient to me.

The judgment goes on to deal with a matter of great importance if we are to consider where the line between federal jurisdiction and provincial jurisdiction is to be drawn. I continue quoting the judgment:

According to jurisprudence, which has been consistent, there should be a dividing line in such matters to indicate whether provincial civil rights are being encroached upon or whether the federal authority is exercising its responsibility for regulating both international and interprovincial trade. This was the opinion expressed by Mr. Justice Rand in Murphy v. C.P.R. when he wrote, at page 641:—

The judge quoted from that case, as follows:

This diversity in structure and the scope and character of power over interstate trade and commerce, although illuminating in its disclosure of variant constitutional arrangements, suffices to require an independent approach to and appraised of the question before us. Section 91(2) of the act of 1867 confides to parliament, "Notwithstanding anything in this act", the exclusive legislative authority to make laws in relation to "The Regulation of Trade and Commerce". By what has been considered the necessary corollary of the scheme of the act as a whole, apart from general regulations, applicable equally to all trade, and from incidental requirements, this authority has been curtailed so far but only so far as necessary to avoid "the infringement, if not the virtual extinction" of provincial jurisdiction over local and private matters including intraprovincial trade—

If the federal government uses the authority of the Caloil decision to support its argument that Bill C-32 is constitutionally valid, I suggest that all hon. members ought to look at the judgment for themselves, and I contend that the second Caloil case would lead one to a conclusion different from the one the minister suggested to us this afternoon.

The federal government, under clause 36 of the bill, is asking for extraordinary powers with which to control the market of a product which belongs to a province. If this is allowed to happen, if the government is allowed to control a market without showing that there is some overriding national interest for bringing a product, the control of which is vested in the province, under federal authority, then the government will be given the power without needing to declare any emergency to control the price of any product in any province, merely because that product will cross a provincial boundary. Surely the constitution of Canada never envisaged that power being given to the federal government under the trade and commerce provisions of the BNA Act. This is very interesting because there has never been an attempt to impose an extraordinary power such as that couched in clause 36 on a provincial resource outside of a national emergency such as a war. The reason is obvious. Clearly it is not the intent and the purpose of the federal powers in the constitution to do so.

● (2030)

If this bill goes through in this way, the precedent is set. While it may not necessarily be right in law and it may some day be challenged, there will be a clear precedent of a federal government deciding to use one part of Section