

Oil and Petroleum

for the common good of the nation an adequate share of their resources, skills and commitments.

I think the capacity for diversity and uniqueness which we have had in this country and which has been reflected in the positions taken in this House and in provincial legislatures has made Canada a good place in which to live. I am not prepared to sit idly by while measures are proposed by the government which to some extent and purpose contain good proposals, yet contain other things which in my opinion and in the opinion of a lot of other people fall squarely outside the right of this parliament to enact. That is what I propose to deal with in particular at this time.

We take exception to certain clauses, and I do not intend to debate them seriatim at this time, which purport to give the federal government power to unilaterally establish maximum prices. For example, it states in clause 36:

—establish maximum prices for the various qualities and kinds of crude oil to which this part applies that are produced, extracted or recovered in that province—

Clause 51 gives a similar right with regard to natural gas. I would point out that you cannot read clause 36 without also reading clauses 40 to 43. I feel that I must make reference to those. Without that, it is difficult to lay before the committee the reason why we intend, at the appropriate place, to move an amendment and to explain at this time the reasoning behind that proposal. I realize the amendment cannot be moved until we get to the clause. However, I think it would be useful for the government to know our position now. I quote from the bill:

40. No person shall engage in any transaction that involves

(a) the selling of any crude oil to a person for consumption elsewhere than in the exporting province, . . .

(d) the collecting, gathering, accumulation, mixing or blending of any crude oil for any of the purposes mentioned in paragraphs (a) to (c), or . . .

41. No person shall purchase any crude oil from any person in an exporting province who is not a licensee except when the crude oil is being purchased within that province for consumption therein.

42. No person other than a licensee shall sell any crude oil in an exporting province except when the crude oil is being sold within that province for consumption therein.

That is squarely in conflict with the existing jurisprudence with regard to the rights of the federal parliament. When we were involved in this debate last December I had just received a copy of the decision by Mr. Justice Hughes on a case involving the province of Saskatchewan and an oil company. I had not then had time to peruse the full detail of the reasons for judgment, but I have since had that opportunity. I understand the case is now before the appeal court of that province.

No one can read that case without coming to the conclusion that the very valid and intelligent reasons given by Mr. Justice Hughes, with which I am in complete accord, are squarely in conflict with the powers the federal government is attempting to have this parliament give it by the clauses to which I have referred. Without going into the details of the Saskatchewan case at this time—

Mr. Macdonald (Rosedale): What is the citation, please?

Mr. Baldwin: It is *Canadian Industrial Gas and Oil Limited v. the Government of Saskatchewan and the Attorney*

General for the province of Saskatchewan. I regret I am unable to give the full citation. I imagine the minister's officials have studied it with some care. It is a very lengthy judgment. The learned trial judge, in 161 pages, went into considerable detail. He dealt with all the existing constitutional authorities on this, I admit, very difficult and confusing problem of the rights of the federal government with regard to the regulation of trade and commerce.

The case was decided on a statement of facts which included a statement that of the oil recovered in the province of Saskatchewan, approximately 98 per cent was exported. In part the case dealt with the question of whether the royalties and taxes referred to in the regulations were direct or indirect taxes. We have no concern about that. A considerable amount of attention was paid to the fact that what the province proposed to do in fact constituted an imposition of a price mechanism and the fixing of prices of crude petroleum of which 98 per cent was being exported from the province. Mr. Justice Hughes referred to a number of judgments, one of which I shall give to my hon. friend: it was *Carnation Company Limited v. the Quebec Agricultural Marketing Board et al.* I think it is to be found in RSC, chapter 238, 1968.

• (1600)

In the latter case, the province of Quebec had enacted legislation which permitted the establishment of boards to provide for the sale of milk to plants for processing. The facts in that case established that the board had set up a pricing mechanism; it fixed the price at which products were purchased. It was shown that the greatest amount of the milk sold and processed would be exported from the province.

Mr. Justice Hughes, in the Saskatchewan case, referred to that case as well as to others and said it might well happen that because a province enacted statutes affecting the price at which a commodity was sold in the province, interprovincial or international dealings in that commodity would be affected. Nevertheless, if there was no direct intent to exercise some sort of direct control over interprovincial or international trade, the provincial action was valid. It was on the basis of the decision of the Supreme Court of Canada in the Carnation case and some other cases that the learned judge reached his decision. As has been pointed out, the decision has been appealed and it will probably go to the Supreme Court of Canada.

The Chairman: Order, please. I have allowed the hon. member to continue somewhat beyond his time because of the complexity of his argument. Perhaps he would now recognize that his time has expired or else seek the unanimous consent of the committee to continue. Is it agreed that the hon. member may continue?

Some hon. Members: Agreed.

Mr. Baldwin: Thank you, Mr. Chairman. I will try to wind up these remarks within a reasonable length of time. I suggest that if the reasons for the judgment of Mr. Justice Hughes, based on the decision of the Supreme Court in the Quebec case are valid, then the provinces have the right to fix prices in respect of commodities which they export even though the fixing of those prices