

referred in his speech today when he said: "This is a complex issue and we do not intend to touch it."

What is the basis for saying that pollution control is a provincial matter? It is an extended argument beginning with section 109 of the British North America Act which says, among other things, that all lands, mines, minerals and royalties shall belong to the several provinces of Ontario, Quebec, Nova Scotia and New Brunswick. Although there is a different means, the result is the same for the four western provinces. The argument, then, is that having accepted ownership the provinces have also acquired the water rights incidental to those lands. There is a Privy Council decision relevant to this point in the case of Burrard Power Company v. Regina, 1911. While this much is conceded, it must be borne in mind that ownership does not automatically grant immunity from legislation. In other words, the relevant consideration is not so much who owns the water as who has the legislative competence. The Criminal Code is full of examples of instances where the federal government has legislated, intervening in matters which are provincial, because it has been obliged to do so in order to fulfil its responsibility of legislating in cases where great problems have arisen, and where matters which normally would fall under provincial jurisdiction have become of such moment that the federal government felt called upon to intervene by way of legislation under the Criminal Code.

The argument for provincial legislative competence relies primarily upon section 92(5) of the B.N.A. Act which gives the provinces exclusive jurisdiction with respect to the management and sale of the public lands belonging to them. In diminishing degrees of importance the provinces may also argue on the basis of section 92(13) affecting property and civil rights, section 92(16) referring generally to all matters of a merely local or private nature in the province, and section 92(10) covering local works and undertakings.

The argument for federal competence has an electric nature similar to the provincial argument. The section primarily relied upon is 91(10) which gives the federal government legislative authority with regard to navigation and shipping, with supplementary authority from 91(9). In other words, every body of water which can be navigated in Canada is subject to the exclusive control of the federal government with regard to all matters concerning navigation. Section 91(12) which deals with sea coast and inland fisheries is equally

*Alleged Lack of Action to Combat Pollution* important. It provides the federal government with the legislative competence for the Fisheries Act, which, as I indicated earlier, is regarded as the panacea in this area of pollution control by the Minister of Fisheries. Furthermore, since the federal government alone is competent with regard to the criminal law, it could investigate pollution control through prohibitory measures. Finally, although the provinces have been given the authority to deal with local works and undertakings there is a specific exception attached to works which are declared to be for the general advantage of Canada or for the advantage of two or more of the provinces.

● (5:50 p.m.)

These are a number of the points to which I might have referred. What concerns me is that this problem may develop and expand until it hangs like a black cloud over the people of this country. While federal and provincial governments may still be arguing over questions of jurisdiction, and the federal government may still be engaged upon minor excursions into examinations, tests and studies of the subject, it may well be too late for the people of this country, through federal jurisdiction, to exercise the competence they have if they so see fit.

In the matter of restrictive trade practices, the federal government has used the criminal law as a means of regulating certain issues. On the question of the food and drug administration, the federal government has also relied on the criminal law as a means of dealing with such problems. I am not suggesting that this is the proper way to proceed, but I am suggesting—and here I agree with the minister—that there should be an opportunity for the federal government and the provincial governments together to work out a process of co-operative action.

For example, authority can be delegated. As of today it would be possible, without any changes to the constitution of this country, for both the federal and provincial governments to delegate to crown agencies that jurisdiction which is required, each within its own area of legislative competence, to deal with this problem. It is not enough not to talk about the problem or simply to make examinations or conduct studies. Before the problem is finally solved it will be essential to pass regulations and to apply sanctions, if necessary. Industry and those concerned must be told in no uncertain terms that they cannot go on indefinitely polluting the air and water that is so essential for our preservation as a society.