

upon the provincial legislatures a power not heretofore enjoyed. I shall not go over the argument so ably made this afternoon by my colleague, the hon. member for St. Lawrence-St. George. I shall content myself in a single sentence to point out that in the exercise of this power there is an effort to exercise jurisdiction which, under the constitution, belongs to the federal power. For many years the privy council has declared certain legislation beyond the competence of the legislatures or, as we lawyers say, *ultra vires*, and the law fell by the wayside. An instance in which Alberta sought to impose a tax in connection with coal mining was held to be bad, just as was the first fuel oil tax which British Columbia sought to impose. Other taxes in other provinces were held to be bad, because there was an effort on the part of the provincial legislatures to tax by indirect means when they had no authority or power so to do. Finally the second fuel oil tax of British Columbia came before the judicial committee for consideration in 1933. At that time it was pointed out that it was quite clear from the terms of the statute that it proposed to make the consumer of the fuel oil liable for the tax and it thereby became a direct tax, as distinguished from an indirect tax.

All taxes are paid by somebody and whether it be the last person or the first is not at the moment a matter of importance. For many years this distinction between direct and indirect taxation was the subject of much litigation, and this continued until the judicial committee decided in the fuel oil case that this power could be validly exercised in the manner and form provided by that statute. For that reason I point out that there is no necessity for this statute inasmuch as the principle established by that case gives the province every power it should have. In view of our exercising the powers we do, to confer upon the provinces the wider power of indirect taxation cannot but have reference to some form of taxation that one finds it difficult to conceive of in view of the judgment of the committee in that case.

A sales tax in Alberta is valid to-day, just as is the sales tax in New Jersey or New York city. If you buy a dollar's worth of goods, you have to provide two coppers or two cents as the tax imposed upon the consumer. Under the provisions of the sales tax in Alberta, a purchaser pays two cents, and so on as his purchases increase. That is a tax paid by the consumer. What indirect power to be vested in the legislature can one conceive of that could be validly exercised except for the purpose of, as I shall presently

point out, crippling the power exercised by the dominion?

Let us go a step further. I trust the house followed me when I pointed out that section 92 of the British North America Act, to which this is to be an amendment, provides the matters in relation to which the provincial legislatures may exclusively make laws. When this new section becomes effective we shall have taken from this parliament the power of indirect taxation to the extent that we have conferred it upon the provinces.

Mr. LAPOINTE (Quebec East): Oh, no.

Mr. BENNETT: Just let us make it clear.

Mr. LAPOINTE (Quebec East): Section 92 does not take away the powers of section 91.

Mr. BENNETT: We have now taken the power away. We have conferred upon the provinces a right of indirect taxation which we ourselves were exercising and of which we have divested ourselves for the purpose of enabling them to exercise it.

Mr. LAPOINTE (Quebec East): I think that is going too far.

Mr. BENNETT: These are the words:

In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say,—
Retail sales ...

If that exclusive power is conferred, that power cannot be exercised by the dominion. That power rests either with the dominion or with the provinces. If it can be exclusively exercised by the provinces—I will read it in a moment if it is so desired—it cannot be exercised by the dominion. There was before the privy council a very important case in which judgment was given by Lord Watson. This was to ascertain whether the subject matter of legislation was within the competence of the province. If it is within the competence of the province, it is exclusive and the federal power cannot be exercised. We had the power to impose both direct and indirect taxation, but after we have changed section 92 with respect to retail sales, the provinces will have exclusive jurisdiction, the federal power having divested itself of that authority. I do not think my friend the Minister of Justice followed me. I was not saying that it was broad enough to cover everything. I stated that it covered only retail sales. Under this resolution the power to tax retail sales becomes exclusively the power of the provincial legislatures.