

between the taxpayer and someone else. Their lordships are unable to find, on examination of the act, any justification for the suggestion that the tax is truly imposed in respect of the transaction by which the taxpayer acquires the property in the fuel oil, nor in respect of any contract or arrangement under which the oil is consumed, though it is of course possible that individual taxpayers may recoup themselves by such a contract or arrangement; but this cannot affect the nature of the tax. Accordingly their lordships are of opinion that the tax is direct taxation within the meaning of section 92, head 2, of the British North America Act.

It is clear therefore that this Fuel Oil Act of British Columbia, imposing a tax upon every consumer of fuel oil according to the quantity which he has actually consumed, is valid and that it is direct taxation because it is exacted from the very persons who it is intended or desired should pay it.

Any lawyer or layman who reads and compares carefully that decision of 1933 and the decision of 1927 may clearly determine, I believe, the difference between an indirect and a direct tax in regard to sales made in Canada.

Mr. FINN: Were both those judgments which the hon. gentleman has read delivered by the same tribunal?

Mr. CAHAN: Yes, the judicial committee of the privy council—a different personnel from year to year, I assume, but the same judicial tribunal.

Under this proposed amendment, if it goes into effect, the provincial legislature will be enabled to levy an annual tax or a monthly tax upon the gross retail sales of each and every department store, general store, merchant, druggist or village grocery, compel returns to be made by each and all of the retail sales which each of them has made, and enforce payment of such a tax, for which compensation may in turn be collected in the increased prices charged for all commodities sold and comprised in such retail sales.

The provincial legislature, if this amendment is adopted, may impose and collect such taxes from certain commodities—I repeat, from certain commodities—and exempt other commodities from such taxes. The provincial legislature in any of the provinces may, if this amendment goes into effect, impose such taxes on the products of other provinces when retailed in the one province which enacts the legislation, while exempting from tax the commodities produced in that province which exercises its legislative jurisdiction by imposing indirect taxation. This fact opens up a very broad inquiry. The very basis of the British North America Act

[Mr. Cahan.]

was that customs duties on interprovincial trade were abolished, and therefore, under section 122 of the British North America Act, all customs and excise duties were vested in the parliament of Canada and in the government of Canada. But this proposed amendment will clearly authorize each of the several provinces to impose discriminatory excise taxes upon the retail trades, and so in effect retard or practically preclude interprovincial trade with the other provinces, and so impose these taxes as to raise a protective wall of excise duties, instead of a protective wall of customs duties, against the trade of that province with the other provinces of Canada. This proposed amendment, I suggest, nullifies the most important provision of the British North America Act with regard to the imposition of taxes and will thus retard or preclude free interprovincial trade between the several provinces of Canada.

Mr. THORSON: The dominion government will still have the power of disallowance of provincial legislation.

Mr. CAHAN: That is another thing. I have not seen any such stubborn and vigorous resistance, on the part of this or previous governments, to any prejudicial provincial legislation as to suggest that they will have the courage to disallow, as my hon. friend suggests, provincial legislation of that kind. Take it for what it is worth, but as a matter of fact my opinion is that the power to disallow provincial legislation should play a very important part in the administration of dominion and provincial affairs; but this government will recognize, as previous governments have recognized, that a province which is powerful and strong, and whose political support is required for other purposes, will not be restricted by the administration of effective veto power.

Mr. MACKENZIE KING: We might leave out the last qualification.

Mr. CAHAN: Effective veto power?

Mr. MACKENZIE KING: No,—“whose political support is required.” I do not think that needs to be mentioned.

Mr. CAHAN: Well, perhaps not. I was not applying it to the right hon. gentleman; I was applying it generally. We who have watched the development of political affairs, and especially of partisan organizations, in Canada for a number of years know that there are powerful influences of that kind which may be brought to bear against the exercise of the veto power in respect of provincial legislation prejudicially affecting any other province of Canada.