

*Oil and Petroleum*

same powers under section 9. In fact, to impose a charge on the export of crude oil from Canada, that power to tax provincial governments or any provincial government corporation is requested if the province has chosen to extend authority to a corporation or the private sector. Therefore, in order to levy charges on crude oil, to subsidize Quebec and other provinces, such powers are required, whether through the private sector or a provincial corporation. In that sense, it is exactly the same type of policy as the excise law policy.

[English]

**Mr. Hamilton (Qu'Appelle-Moose Mountain):** Mr. Chairman, I want to thank you for your ruling; I think it was the correct ruling. My words now are in reply to the minister's remarks. I appreciate the difficulty of trying to put this point clearly. So far as the prerogatives of the Crown are concerned, I have left that question out of the amendment. It is an exotic field that I do not think we are expert enough here to explore. I am satisfied that I put my argument clearly enough in my speech last fall and again in the more careful statement I made today.

What this amendment is concerned about is the question of legislative authority. There is no question in my mind that this bill will give legislative authority to the federal government to impose an export tax. I also accept completely that the federal government has the power to impose an export tax.

Another part of the bill deals with price setting, and price setting is a power exercised only by the provincial governments. Related to this power to set prices is the value of the property concerned, and the property is clearly established under the constitution as being the property of the people in the province. In other words, we are moving in the legislative field into an area where it is very difficult to be absolutely sure the federal government has complete legislative authority.

The argument made by the federal government is that through its powers connected with interprovincial trade or trade outside the borders of Canada, it is given this legislative authority and, as I say, I accept that. But there is also an equally powerful law that provides that the property that is moving is property belonging to the people of the province concerned. So we are in a somewhat cloudy area here, and if the matter is brought before the courts I should like the justices of the courts to know that we in parliament were conscious of the difficulty and that we inserted into the act a clearly stated provision.

● (1550)

This clause arbitrarily states that this act is binding on Her Majesty in right of Canada and in right of any province. I am just adding these careful, extra words, that where the legislative authority of the Parliament of Canada does not extend to bind Her Majesty in right of a province, and only in that case, then to the extent that Her Majesty in right of the province consents thereto, it will be binding. So there would be nothing to stop the government, if it accepted my amendment, doing what it wants to do if it is convinced, on the advice of its law officers, that it is within its legislative authority to do so.

[Mr. Macdonald (Rosedale).]

If this matter is challenged in the courts and the courts rule that this part of the legislative action of the federal government is legitimate and should go forward, that is fine. If the courts should rule that another part of the legislative action is not legitimate, then we have covered our responsibilities as legislators by saying that if the courts rule that it is not legitimate, then we have this procedure to follow: the government gets the consent of the province if the courts rule it is a matter within provincial jurisdiction.

I think this amendment adds to the clarity of clause 3 and does not take anything away from the power the minister wants under this legislation or which he had before the legislation. I do not think I have to say anything more about it, as the argument has been made very clearly. We should vote on the matter now, but I want the record to show that we are simply trying to improve the legislation so we do not look silly if the courts turn down any of the federal government's actions under this legislation.

**Mr. Douglas (Nanaimo-Cowichan-The Islands):** Mr. Chairman, as I understand clause 3 from the minister's explanation, it simply states that the legislation we are now in the process of considering, when passed shall apply to any agency of Her Majesty either in right of the Government of Canada or in right of a provincial government. Whenever I am faced with legal jargon, I always have to get it down into nickel and dime words. I take it that if the national petroleum company which is to receive some 15 per cent of the oil from Syncrude is set up and is in operation, it will be subject to the same laws and same inspections as any other company in Canada handling oil. I take it that SaskOil of the province of Saskatchewan, which is drilling for and marketing oil, will also be in the same class as any private company and subject to the restrictions and controls laid down in this legislation. It seems to me, of course, that this has to be the case, otherwise it would be possible to subvert the intention of this legislation.

My difficulty about the amendment proposed by the hon. member for Qu'Appelle-Moose Mountain is that it suggests that where the legislative authority in this bill does not extend to bind Her Majesty in right of a province, the province must consent. But who is to determine when and to what extent the legislative authority in this legislation does not extend to the binding of Her Majesty in right of a province? Is the federal government going to make that determination? If the federal government makes that determination, and its decision is contrary to the opinion of the province, then of course the province will have to go to court.

The province will have to go to court, anyway, if under this legislation it feels that the federal government is using the authority given under the legislation in a manner that abridges its rights as set out in section 92 of the British North America Act. Therefore, I do not see what value the amendment adds to this particular clause. If there is an invasion of provincial rights, surely in the final analysis it will have to be settled in court. It is not going to be settled by allowing the federal government to determine whether in its opinion it has abridged the rights of a provincial government. To leave to the federal govern-