

Oil and Petroleum

I should like to return to clause 3 and parts II and III, which are the price-setting arrangements for which I suspect clause 3 was expressly designed in order to allow the federal government to regulate prices and do something it has not done before in peacetime. I shall return to this matter in the course of this debate, but I hope that before that the minister will have had an opportunity to reflect on the use of this particular clause in the bill and will express his views on possible changes.

Mr. Baldwin: Mr. Chairman, I shall adhere closely to my notes because of my limited time, but I would ask the indulgence of the House if I should stray a little beyond my allotted time. Because I propose to make some suggestions to the committee, perhaps members of the committee might give me special consideration.

The bill, of course, stands by itself so far as discussion in the committee is concerned, but it cannot be dissociated from other measures the federal government has passed or will introduce, namely, the energy allocation bill and the proposals to amend the Income Tax Act which, of course, will be discussed at a later date. You have to take them together, as a package, when looking at this issue. They all go to the question of the natural resources which belong to the provinces.

● (1530)

There has been a lot of glib talk about the constitution. I think it is necessary to go back to basics, to review our position, to strip away the overlay of academic and legal jargon which has been superimposed on the original foundation of the act. There are several sections of the constitution which this committee cannot ignore in examining the whole issue. Section 125 says, "no land or property belonging to Canada or any province shall be liable to taxation." Section 109 gives to the provinces all lands, mines, minerals and royalties within the several provinces of Canada, and so on. I will not go into the whole section because I think members of the committee are familiar with it. Finally, among others there is section 92(5) which reads:

... management and sales of the public lands belonging to the province and of the timber and wood thereon ...

The section provides that these shall be matters in respect of which legislatures may exclusively make laws. I suggest that, taken together, we can come to no other reasonable judgment than that these constitute a grant of ownership pure and simple, free from the rights of federal taxation so far as provincial ownership is concerned. This is not just a matter of being given jurisdiction over a subject matter, being given jurisdiction in respect of roads, education or public works within a province: this is an outright grant of title, without restriction.

This is borne out by the terms of the bill in 1930 by which the federal government of that date returned to the western provinces jurisdiction over the natural resources of which they had been deprived since 1905. In the debate which took place in the House at that time, it is very interesting to note what was said. I wish I had more time to go into it. Perhaps I will later on, although I hope not. There is a very interesting comment made by Mr. Stewart, at that time minister of the interior, who when dealing with the question of what was meant by royalties said:

[Mr. Munro (Esquimalt-Saanich).]

Mining leases and oil leases are in the same category; they are subject to fluctuations in royalties.

He was responding to a question from R. B. Bennett. The rest of the debate shows, beyond the shadow of a doubt, that royalties and the right to change them were included in the outright transfer to the provincial governments and constituted a rental. The provinces rented out the natural resources of which they were the owners and got royalties in return. This was accepted in the debate and was the subject of the legislation at that time. Furthermore, the language used in the confederation debates which took place from 1864 to 1867 shows that at that time natural resources provided one of the methods by which provinces were able to finance their undertakings. For that reason, unlike the division of the subject matters, it was an outright transfer and ownership fell squarely to the provinces.

Then there were some legal decisions. I will not go into all of them now, although I may later. There is an interesting judgment of 160 pages in the court of Saskatchewan. I may have occasion to read it into the record at some time. It might be of use to the government. I hope I will not have to, but it is possible. There is the case of *Attorney General of Ontario v. Mercer*, where it was held that these provincial powers were the attribution of royal territorial rights. I wish the Prime Minister were here; that great, confirmed royalist who from time to time competes with the right hon. member for Prince Albert for being the greatest royalist. That judgment refers to—

... the attribution of royal territorial rights for purposes of revenue and government to the provinces in which they are situate or arise.

There was another Ontario case which touches on this issue. The province of Ontario, in granting rights to a company within a timber berth, attached a condition by which the timber which was felled could not be exported out of the country to be sawn into lumber. That condition was attacked on the ground that it constituted an interference with the regulation of trade and commerce which of course is a federal matter. This case, tried by a trial judge, subsequently went to the Ontario court of appeal which rejected outright the argument that the condition attached by the province constituted an interference with the federal right to regulate trade and commerce. So it does appear, on the basis of existing jurisprudence, that certain rights are given to provinces to attach conditions to those natural resources of which they are the outright owners. Then there is the recent decision of Mr. Justice Hughes in the Saskatchewan case just decided, which upheld provincial laws relating to taxation and royalties with regard to minerals and petroleum products. As I say, that may be the subject of prolonged discussion later on.

So while admitting the wide power of general taxation given to the federal government, I suggest as strongly as I can that that power cannot, and must not, be used for the purpose of depriving a province of its property or as a blunt instrument designed to set aside the proper constitutional rights of the provinces. Such would be the result of the federal proposals now before the House, and in effect they have been so claimed by the Minister of Finance who makes it clear that the federal government feels the provinces are getting too much revenue from the rental they are charging for their petroleum resources. He has intro-