

before the western provinces ask that the executive be empowered to make rules preventing Ontario manufacturers of binders, plows and other agricultural implements from sending them into the West and competing with implements produced out there? How long will it be before the fishermen on one coast endeavour to prevent the sale in that part of the country of fish caught on the other coast, or perhaps in the inland lakes? One's imagination would be dull indeed if it did not picture numerous illustrations of the application of the principle involved in this bill, leading finally, through the efforts of pressure groups, to our having in Canada a condition similar to that in the Balkans—a whole series of small nations warring economically one against the other.

I am opposed to the principle in this bill, and it will certainly give me a great deal of pleasure to support the motion of my honourable friend from Waterloo (Hon. Mr. Euler) for a six-months hoist—which I hope will be agreed to and continued in perpetuity.

Hon. Thomas Vien: Honourable senators, I entirely agree with the honourable senator from Toronto-Trinity (Hon. Mr. Roebuck). Indeed, I am amazed, from a constitutional point of view, that the Minister of Justice could have approved of this bill. We have, today, a splendid opportunity for strikingly demonstrating the usefulness of the Senate. The Senate has been created, as has often been said, to prevent legislation of this kind from being enacted.

Section 6 of the bill says:

The Governor in Council may by regulation prohibit

- (a) importation into Canada or into one or more designated provinces,
- (b) exportation out of Canada or out of one or more designated provinces, or
- (c) sending or conveyance from any province to any other province or from any province to one or more designated provinces, of any class of products. . . .

Let us read section 121 of the British North America Act:

121: All articles of the Growth Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

It will now clearly appear to all, I think, that sections 4, 5 and 6 of this bill are unconstitutional, and *ultra vires* of parliament.

Some Hon. Senators: Hear, hear.

Hon. Mr. Vien: That fundamental provision, section 121 of the B.N.A. Act, has often come up before our courts, but its purpose and meaning was never more clearly defined and determined than in the judgment rendered by the Judicial Committee of the

Privy Council in the case of the Canadian Federation of Agriculture vs. Attorney General of Quebec, commonly called "the Margarine Case", and reported in 4, Dominion Law Reports, (1950) at page 689. The headnote of this decision will suffice to substantiate my submission that sections 4, 5 and 6 of this bill are *ultra vires*. That headnote is as follows:

The Parliament of Canada does not have legislative power to prohibit the manufacture, sale, offer or possession for sale of butter substitutes manufactured wholly or in part from any fat other than that of milk or cream. Hence, s. 5(a) of the Dairy Industry Act, R.S.C. 1927, c. 45 is, in those respects *ultra vires*. It is not legislation in relation to the regulation of trade and commerce since, according to the current of authority, the Dominion cannot regulate individual forms of trade and commerce confined to the province and, *a fortiori*, it cannot prohibit them. The fact that the prohibition extends to inter-provincial transactions does not enable the dominion to encompass transactions of manufacture and sale taking place wholly in one province.

Nor is s. 5(a) defensible as legislation in relation to the criminal law, since its pith and substance is protection of the dairy industry, and not the safeguarding of the public against something of a general or injurious nature to be abolished or removed.

The reason for this statement being here made is that the right of parliament to impose restrictions upon inter-provincial trade in certain goods had, in certain cases, been upheld. A federal law restricting inter-provincial liquor trade, for instance, was held by the Privy Council to be a safeguard "against something of a general or injurious nature to be abolished or removed."

The headnote continues:

Again, the legislation cannot be supported as being for the peace, order and good government of Canada since it relates to civil rights in each of the provinces, and there are no abnormal circumstances or exceptional conditions to override the normal distribution of powers in ss. 91 and 92 of the B.N.A. Act.

Hon. Mr. Dupuis: May I ask my honourable friend a question? Does he think that a province has the right to regulate trade as between itself and other provinces?

Hon. Mr. Vien: No, it has not.

Hon. Mr. Dupuis: I will put a specific case. Has the province of Quebec power to prohibit the importation into that province of any products exported from another province?

Hon. Mr. Vien: It cannot prevent the importation from another province of anything but liquor, or some other thing deemed to be of a general and injurious nature which should be abolished or removed. The liquor trade was held by the Privy Council to be something of a general or injurious nature which could be abolished or removed, and a federal law implementing provincial legislation governing the liquor trade was upheld.