Caloil Inc. (*Plaintiff*) *v.* **Attorney-General of Canada** (*Defendant*)

No. 1

Jackett P.—Ottawa July 31, Aug. 1, 1970.

Constitutional law—Trade and Commerce—National Energy Board Act, 1959, c. 46, Part VI—Regulation 20 of May 5, 1970—Licence for importation of gasoline—Condition that importer not transport any gasoline from one part of Ontario to another and so require purchaser—Ultra vires.

Regulation 20 made on May 5, 1970, pursuant to Part VI of the *National Energy Board Act*, authorized the Board to license the importation of gasoline into Canada east of a line drawn through Ontario subject to the condition (s.s.(4)) that the importer should not transport *any* gasoline from east of that line to elsewhere in Ontario or sell or deliver *any* gasoline except on condition that such gasoline be for consumption east of that line.

Held, Part VI of the Act and Regulation 20, which are laws in relation to the regulation of international trade, are *ultra vires* of Parliament in conferring on a board power to govern the movement within a particular Province of imported goods after their importation. Moreover Regulation 20 fails for the additional reason that it goes beyond regulating the movement of *imported* gasoline only.

Murphy v. *C.P.R.* [1958] S.C.R. 626, distinguished; *Reference re Farm Products Marketing Act* (*Ontario*) [1957] S.C.R. 198; *Shannon v. Lower Mainland Dairy Products Board* [1938] A.C. 708; *Home Oil Distributors Ltd v. A.G. of B.C.* [1940] S.C.R. 444; *Canadian Federation of Agriculture v. A.G. of Que.* [1951] A.C. 179, referred to.

ACTION for declaration that Part VI of *National Energy Board Act* and a regulation thereunder are unconstitutional and that plaintiff has the right to import petroleum products without restriction on their marketing.

Hon. L. Langlois, Q.C., for plaintiff.

R. Bédard, Q.C., for defendant.

JACKETT, P.—This is an action against the Attorney General of Canada for a declaration that Part VI of the *National Energy Board Act*[1] and a regulation made thereunder are unconstitutional and that, subject to the operation of other legislation, the plaintiff has the right and has always had the right to import petroleum products without any restriction on how they are marketed.

The plaintiff has imported, and distributed in Canada, petroleum products since August 28, 1963[2]. For the purposes of its business, it operates storage installations for petroleum products at the port of Montreal and at the port of Toronto, which installations have a capacity of 45,675,000 gallons and 5,600,000 gallons, respectively. Those installations are linked by a distri-

[1] S. of C. 1959, c. 46.

[2] In reciting the facts in these reasons, I am referring to the facts as agreed to by the defendant solely for the purpose of this action and for no other purpose whatsoever.

bution network to wholesalers and retailers doing business in the Province of Quebec and in the Province of Ontario. The plaintiff has assets worth at least $12,000,000 and furnishes employment for at least 1,200 employees.

The plaintiff acquires its petroleum products on the international market and imports such products by sea, by way of its Montreal storage installations, at an annual rate of around 178,500,000 gallons of which 63,000,000 gallons go into the Ontario market.

In May 1970 (the significance of which time will become apparent hereafter) the plaintiff had bound itself to buy on the international market, to supply its requirements for the year 1970, some 126,000,000 gallons of gasoline to be delivered by tankers at the rate of around 5,600,000 gallons per voyage. At the same time, the plaintiff had bound itself to deliver 63,000,000 gallons of gasoline in Ontario to be marketed in the region west of the Ottawa valley.

With that much reference to the background of the plaintiff I turn to Part VI of the *National Energy Board Act*. As it is the basic subject matter of these proceedings, I quote in full the parts of it that I regard as relevant:

PART VI

Gas and Power

81. Except as provided in the regulations, no person shall export any gas or power or import any gas *except under the authority of and in* accordance with a licence issued under this Part.*

82. (1) Subject to the regulations, the Board may issue licences, upon such terms and conditions as are prescribed by the regulations,

(*a*) for the exportation of power or gas, and

(*b*) for the importation of gas.

(2) A licence issued under this Part may be restricted or limited as to area, quantity or time or as to class or kind of products.

. . .

85. The Governor in Council may make regulations for carrying into effect the purposes and provisions of this Part and, without restricting the generality of the foregoing, may make regulations respecting

. . .

(*b*) the duration of licences, not exceeding twenty-five years, from a date to be fixed in the licence, the quantities that may be exported or imported under licences and *any other terms or conditions to which licences may be subject** . . .

87. (1) The Governor in Council may by proclamation extend the application of this Part to oil.

(2) Upon the issue of a proclamation under subsection (1), the expression "oil or gas" shall be deemed to be substituted for the expression "gas" wherever it occurs in this Part and in section 88.

(3) The Governor in Council may by regulation exempt any class of oil or oil products or any area from the operation of all or any of the provisions of this Part.

As will have been noted, apart from the provision in section 87 contemplating an extension by proclamation, Part VI applies only to the exportation

* The italics are mine.

or importation of gas or power. No question is being raised at this time in this action in respect of Part VI, insofar as it applies to those subjects. However, on May 7, 1970, by proclamation of the Governor in Council under section 87, Part VI of the *National Energy Board Act* was extended to "oil". In the meantime, on May 5, 1970, the Governor in Council amended the National Energy Board Part VI Regulations. In the first place, it should be noted that a paragraph, paragraph (ra), was added to section 2 (1) of those regulations, which paragraph defines the word "Region", for the purpose of the regulations, to mean "a region as set out in Schedule A", and a Schedule A was added to the regulations reading:

SCHEDULE A

Region 1
The Province of Newfoundland
The Province of Nova Scotia
The Province of Prince Edward Island
The Province of New Brunswick

Region II
The Province of Quebec, and the following counties and townships in the Province of Ontario:
County of Carleton
County of Dundas
County of Glengarry
County of Grenville
County of Lanark
County of Prescott
County of Renfrew
County of Russell
County of Stormont
Township of Elizabethtown in the County of Leeds
Township of Kitley in the County of Leeds
Township of South Elmsley in the County of Leeds.

Region III
The Province of Ontario, except those counties and townships set out under Region II.

Region IV
The Province of Manitoba
The Province of Saskatchewan
The Province of Alberta.

Region V
The Province of British Columbia

Region VI
Northwest Territories
Yukon Territory.

Secondly, it should be noted that a section 20 was added to the Regulations, reading as follows:

20 (1) Subject to subsection (2), no person may export or import oil or oil products otherwise than under the authority of and in accordance with a licence issued by the Board.

(2) The provisions of subsection (1) shall not apply to
(*a*) Regions IV, V and VI;
(*b*) the importing of oil other than motor gasoline;
(*c*) the exporting of oil; or
(*d*) the importing of motor gasoline into Regions I, II and III in quantities not exceeding 200 gallons.

(3) For the purposes of this section "motor gasoline" means gasoline-type fuels for internal combustion engines other than aircraft engines and includes oil for use as a component in the blending of such fuels.

(4) The Board may issue licences to import motor gasoline through Customs ports in Regions I and II and the Board may make any or all of such licences subject to the condition that the importer *shall not, without the consent of the Board,**

(*a*) *transport or cause to be transported any motor gasoline** from Regions I or II to Region III, or

(*b*) sell or deliver to any third party any motor gasoline except on the condition that such sale or delivery is made for consumption within Regions I or II,

but the consent of the Board shall not in any case be required under paragraph (*b*) in respect of any quantity of motor gasoline sold or to be sold by the importer in Regions I or II to retailers engaged solely in the business of retailing within Regions I or II or directly to consumers purchasing in Regions I or II.

(5) The Board may incorporate in any licence issued under this section such terms as it deems necessary to secure compliance with these Regulations.

Other provisions of an ancillary character were also added to the Regulations but they are not material to the present action.

Two things stand out on a first reading of the amendments to the Regulations:

(*a*) while the proclamation extended the operation of Part VI to "oil", the effect of this was cut down, under section 87 (3), by the regulations so that the net effect was that Part VI was extended only to the importation of "motor gasoline", and

(*b*) the regulations authorize the National Energy Board to issue licences for the importation of motor gasoline through custom ports in any part of Canada east of a line part of which runs through Ontario and part of which is the Ontario-Quebec border and to make any or all of such licences subject to the condition that the importer shall not, without the consent of the Board, transport or cause to be transported "any motor gasoline" from a point east of that line to a point in Ontario west of that line, and shall not, without the Board's consent, sell or deliver to any third party any motor gasoline except on the condition that it is sold or delivered for consumption east of that line.

In other words, the Board was authorized to make a licence to import gasoline into a point east of the aforesaid line conditional on requirements designed to ensure that the Board would have absolute control over any movement into the part of Ontario west of the line, not only of any part of Ontario west of the line, not only of any part of the gasoline imported pursuant to the licence, but also of any other gasoline that the licencee might happen to have in the part of Canada east of the line.

To return to the facts, the Board has granted to the plaintiff two licences that were expressed to be subject to the aforesaid condition and has refused an application by the plaintiff for a further licence. While it may not be

* The italics are mine.

strictly relevant to this action, it is informative to see why this latter application was refused. Reasons for the refusal read in part as follows:

During the hearing the Board issued a statement as follows:

> I think it is important to state that the Board has a policy where an Applicant seeks the licence authorizing the importation of gasoline into I and II Regions, and it appears that the Applicant on previous occasions transferred motor gasoline from Region II to Region III, notwithstanding a condition in a previously held licence purporting to prohibit such transfer without the consent of the Board, in these circumstances, and once again without refusing to hear the Applicant, the Board will not be inclined to issue a licence unless there is something exceptional in the case.

* * *

The Board has given full consideration to all the evidence before it and concludes that the application must be dismissed. In arriving at this decision it has had particular regard to the following facts:

(1) Its information at the present time is that supplies are available to distributors in Region III and that refiners are making genuine and competitive efforts to meet demand.

(2) There has been no acquisition by the Applicant of Ontario-refined motor gasoline since 7 May, 1970, the effective date of the gasoline licensing provisions.

(3) The issuance of a licence would add to the ability of Caloil to make transfers, a matter of some importance in view of the fact that the Applicant was unable to assure the Board that it would comply with the terms and conditions of a licence, if granted.

(4) The Applicant has not demonstrated to the Board's satisfaction that special circumstances exist which constitute an undue hardship to the Applicant.

The Board considers it appropriate and desirable for it to accompany this decision with a statement of the policy it follows in regard to the issuance of licences to import gasoline.

It is prepared at this time to issue licences to import gasoline into Region I (the Atlantic Provinces) and Region II (Quebec and a part of Eastern Ontario—demarcation on attached map). The one restriction which the Board will apply to such licences is that no gasoline will be transferred by the importer or any person to whom the importer may sell, into Ontario west of the Ottawa Valley line, except with the consent of the Board. The Board has, therefore, conditioned accordingly all import licences it has issued and intends, in the absence of special circumstances in an individual case, to continue this practice until such time as it has developed a better method of assuring the discharge of its responsibilities respecting supplies of gasoline in Ontario west of the Ottawa Valley line.

The Board understands its responsibility regarding the movement of imported gasoline into Ontario west of the Ottawa Valley line, whether the movements are direct or by subsequent transfer, to be to limit the volumes to those which are necessary to ensure adequate supplies, to minimize any price increases to consumers and to meet special hardship circumstances of companies whose legitimate interests might be adversely affected by the policy. In approaching such matters, the Board will give full consideration to the fact that the Ontario refiners as a matter of policy have been called upon to supply Ontario west of the Ottawa Valley line with petroleum products refined from Canadian crude. It is recognized that the Ontario refiners cannot fully meet the competition of seasonal imports of gasoline, especially those associated with spot purchases of gasoline and tanker services in international markets. In its consideration of any applications by

importers for the Board's consent to transfer gasoline into Ontario west of the Ottawa Valley line the Board, however, will carefully assess any evidence relating to the availability of supply from the Ontario refiners.

In these circumstances the plaintiff seeks a declaration by the court that Part VI and the regulations referred to are unconstitutional insofar as the importation of gasoline is concerned[3] and a declaration that, insofar as Part VI and the regulations are concerned, it is entitled to import gasoline without any restriction on where it may be marketed after it is imported.

I should at this point mention that, through the co-operation of counsel for the Attorney General of Canada, this action has been argued on an agreed statement of facts two days after the action was launched so that the plaintiff might have a remedy for its grievance before there is undue interference with its business if, indeed, the court finds that it has a grievance under the law.

The agreement of facts, in addition to agreeing on the facts to which I have referred, contains the following paragraphs:

2. Il est admis de part et d'autre que les faits ci-après décrits étaient à la connaissance du législateur lorsque la législation attaquée a été adoptée:

(*a*) le marché domestique canadien du pétrole s'alimente à trois sources:
  (i) le pétrole provenant des produits raffinés des puits d'huile de l'Ouest canadien;
  (ii) le pétrole provenant du raffinage au Canada, dans les régions connus comme les régions I et II, de l'huile brute importée des marchés internationaux; et
  (iii) le pétrole raffiné à l'étranger et importé des marchés internationaux;

(*b*) une concurrence existait entre les pétroles provenant des puits d'huile canadiens et ceux provenant des marchés internationaux, dans leur mise en marché aux fins d'alimenter le marché domestique.

It must be understood that this proceeding is in no way an appeal from the Board's decision granting a licence subject to the condition to which I have referred or from the Board's decision dismissing an application for a further licence. Having regard to sections 18 and 19 of the *National Energy Board Act,* any such appeal must be to the Supreme Court of Canada. This is an action for a declaration that Part VI of the *National Energy Board Act* and section 20 of the regulations are unconstitutional and for a consequential declaration as to the rights of the plaintiff.

In considering the constitutionality of Part VI and Regulation 20, it is important to have in mind that there is no prohibition, as such, of the movement of gasoline across provincial borders. For the purposes of the overall scheme, Canada has been divided into regions otherwise than by Provinces and there is a regulation of movement from one of such regions to another of

(*a*) imported gasoline, and

(*b*) any other gasoline belonging to the importer.

In particular, there is such a regulation of movement from one part of Ontario to another.

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[3] Counsel for the plaintiff so limited the relief sought in the course of argument.

Counsel for the defendant suggested that this latter aspect of the matter might be ignored as what the plaintiff desires to do is move gasoline from a point in Quebec to a point in Ontario. However, I reject this suggestion as, in my view, the regulation cannot be severed. It is either good insofar as it operates as a prohibition on movement from the Ottawa Valley to the rest of Ontario or it is wholly bad.

Neither Part VI, the regulation, nor the two together, purport to be a regulation by Parliament of inter-provincial trade as such and they cannot be supported on that head of Parliament's legislative power as were certain parts of the Canadian *Wheat Board Act* in *Murphy v. C.P.R.*[4]

Part VI is clearly a law in relation to the regulation of international trade—*i.e.,* importations into Canada and exportations from Canada—and it must, in my view, stand or fall as such because that is the way in which it is framed. Section 20 of the regulations must, as it was enacted to carry into effect the purposes and provisions of Part VI, be an integral part of a legislative scheme regulating importations into Canada or it is bad.

Since the *Reference re Alberta Statutes*[5], it has been unwise to attempt to define the powers of Parliament to make laws under section 91(2) of the *British North America Act, 1867,* in relation to matters falling within the class of subject "The Regulation of Trade and Commerce" or to put too much weight on earlier attempts to define such powers in an exhaustive way even when such attempts were contained in utterances that fell from judges delivering judgments of the highest courts.

There has, however, never been any question as to Parliament's power under section 91(2) to regulate the flow of goods into or out of Canada.

Parliament can, furthermore, in the exercise of its power to regulate the flow of goods out of Canada, regulate such flow once the goods get into international trade channels. Compare: *Murphy v. C.P.R.*[6]; *Reference re Farm Products Marketing Act* (Ontario)[7]; and *Regina v. Klassen*[8]. A provincial legislature can, on the other hand, regulate the flow of goods inside the Province when they are destined for consumption or use in that Province. See: *Shannon v. Lower Mainland Dairy Products Board*[9]; *Home Oil Distributors Ltd v. Attorney-General of British Columbia*[10], and *Reference re*

[4] [1958] S.C.R. 626.
[5] [1938] S.C.R. 100 per Duff, C. J., at pp. 121-2.
[6] [1958] S.C.R. 626.
[7] [1957] S.C.R. 198.
[8] (1959) 29 W.W.R. 369.
[9] [1938] A.C. 708.
[10] [1940] S.C.R. 444.

Farm Products Marketing Act (Ontario), *supra.* Neither Parliament nor a provincial legislature can validly enact a law regulating the flow of goods in trade channels or circumstances that are under the legislative authority of the other. Compare: *Reference re Natural Products Marketing Act, 1934*[11] and *The King v. Eastern Terminal Elevator Co.*[12] with *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction*[13]. Just where the line is to be drawn between the two legislative jurisdictions cannot always be readily ascertained as appears from the differences of opinion expressed to the Governor in Council in the *Reference Re Farm Products Marketing Act* (Ontario)[14] concerning the question whether a sale of a hog produced in Ontario to an Ontario packing plant (i) is necessarily an "intra-provincial" transaction that can be regulated from a trade or commerce point of view by the provincial legislation, (ii) is only an intra-provincial transaction, in that sense, to the extent that the ultimate products are consumed in the Province, or (iii) is not an intra-provincial transaction, in that sense, at all, if some of the products of the plant are sold or intended for sale beyond provincial limits.

While there is, as I have indicated, a difference of opinion as to whether an article produced in a Province and being sold to a processor in the Province is, from a trade point of view, within the legislative jurisdiction of Parliament or the provincial legislature, I do not find the same difference of opinion with regard to the legislative jurisdiction over the marketing in the Province of imported goods. In *Shannon v. Lower Mainland Dairy Products Board*[15], after holding that the provincial marketing scheme there under attack did not encroach on section 91 (2) of the *British North America Act* because the legislation was "confined to regulating transactions that take place wholly within the Province, and are therefore within the sovereign powers granted to the legislature", Lord Atkin said, at pp. 718-9:

> ... Their Lordships do not accept the view that natural products as defined in the Act are confined to natural products produced in British Columbia. . . But the Act is clearly confined to dealings with such products as are situate within the Province.

In *Home Oil Distributors Ltd v. Attorney-General of British Columbia*[16], a provincial scheme for regulating and controlling the coal and petroleum industries within British Columbia and which expressly authorized a Board to fix the prices of coal or petroleum products at wholesale or retail, was held to be good, by application of the *Shannon* (*supra*) case, although the attack had been made on it that it was a provincial attempt to interfere with international trade in petroleum products and there can be no doubt that at least part, if not all, of the regulated product under consideration was imported.

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[11] [1937] A.C. 377.
[12] [1925] S.C.R. 434.
[13] [1931] S.C.R. 357.
[14] [1957] S.C.R. 198.
[15] [1938] A.C. 708.
[16] [1940] S.C.R. 444.

I reach the conclusion then that, on the authorities to which my attention has been drawn, once goods are imported into Canada, they ordinarily fall, from the point of view of trade regulation, into the same category as goods produced in Canada and fall to be regulated, from the trade point of view, by Parliament or the legislatures depending on whether they find their way into paths leading to destinations in or outside the Province where they are situate.

That is not to say that there might not well be laws enacted by Parliament, in the exercise of its power to regulate imports into Canada, the very nature of which would call for attaching restrictions on the imported product. Laws permitting goods to be brought into Canada solely for the purpose of transportation across the country or laws prohibiting importation of dangerous goods except for experimental purposes are examples that occur to me. Ordinarily, however, on the authorities to which I have referred, when goods are brought into Canada to supply a part of the consumption requirements of the country, once imported they merge with the other goods in the country and do not maintain a separate identity from the point of view of jurisdiction to regulate trade inside Canada. Imported goods are no different, as far as that jurisdiction is concerned, from other goods, once they are imported.

In my view, therefore, it is not a proper part of the sort of international trade regulation law that Part VI typifies to confer on a board power to govern the movements within a particular Province of imported goods after they have been imported.

However, section 20 of the Regulations under Part VI could not be supported even if it were a proper part of such a scheme for Parliament to regulate the movement of imported goods as such. Section 20 does not purport to confer authority on the National Energy Board to regulate the movement of imported gasoline. What it does purport to do is to authorize the imposition of a prohibition on a licencee, as a condition of getting a licence, against transporting, without the consent of the Board, "any motor gasoline" from east of the aforesaid line into the balance of Ontario. In other words, this term operates on any motor gasoline in the hands of the licencee even if it is produced in Canada. This certainly is not a law that purports to regulate imported goods.

Once it becomes clear that the regulation of the movement of gasoline affected by the condition authorized by section 20 (4) is not an integral part of a law regulating international or interprovincial trade as such, the attempt to regulate such movement must fail on the authority of *Canadian Federation of Agriculture v. Attorney-General for Quebec and Others*[17] where an attempt to support a statutory prohibition against margarine under section 91 (2) was rejected by the Judicial Committee on the following analysis of the authorities by Lord Morton at pp. 192-5:

> ... Their Lordships gratefully accept his analysis, without repeating it, and proceed to the consideration of the first argument of counsel supporting the appeal,

[17] [1951] A.C. 179.

that the prohibition is legislation in relation to the regulation of trade and commerce. In considering this argument their Lordships are faced yet again with the difficult task of choosing between the conflicting claims of the Dominion legislature, based on s. 91, head 2, of the Act and of the Provincial legislatures, based on s. 92, head 13. On the one hand, it is said that an enactment which seeks to encourage an imporatnt industry in the Dominion by prohibiting all citizens of the Dominion from embarking upon another competing industry can accurately be described as an enactment for the regulation of trade and commerce. On the other hand, it is said that the prohibition covers the manufacture and sale of the goods in question within, for instance, the Province of Quebec, and that the right of a citizen of that province to engage in such manufacture and sale is an important civil right in the province and comes directly within head 13 of s. 92; it is thus one of the classes of subjects assigned by the Act exclusively to the legislatures of the provinces.

If these conflicting claims had never before been considered by the Board their Lordships would be faced with a task of great difficulty, but similar conflicts, on different sets of facts, have been resolved over and over again in past years. Their Lordships think that a decision in favour of the validity of this prohibition would be contrary to the current of authority and, in particular, to certain recent decisions of the Board. They find it unnecessary to pass in review the decisions before the year 1936 which bear on this point. These decisions are summarized with clarity and accuracy in the masterly judgment of Duff, C.J., in the *Natural Products Marketing* case [1936] S.C.R. (Can.) 398. The decision of the Supreme Court in that case was upheld and the judgment of Duff, C.J., was approved by the Board [1937] A.C. 377, and their Lordships regard the *Natural Products Marketing* case [1937] A.C. 377 as having a very important bearing on the present appeal. The Act then under consideration provided for the establishment of a Dominion Marketing Board whose powers included powers to regulate the time and place at which, and the agency through which, natural products to which an approved scheme related should be marketed, and to determine the manner of the distribution, and the quantity, quality, grade or class of the product that should be marketed by any person at any time.

Lord Atkin, in giving the judgment of the Board, said (ibid 386-7):

> There can be no doubt that the provisions of the Act cover transactions in any natural product which are completed within the province, and have no connection with inter-provincial or export trade. It is therefore plain that the Act purports to affect property and civil rights in the province, and if not brought within one of the enumerated classes of subjects in s. 91 must be beyond the competence of the Dominion legislature. It was sought to bring the Act within the class (2) of s. 91—namely, The Regulation of Trade and Commerce. Emphasis was laid upon those parts of the Act which deal with inter-provincial and export trade. But the regulation of trade and commerce does not permit the regulation of individual forms of trade or commerce confined to the province. In his judgment the Chief Justice says [1936] S.C.R. (Can.) 412: 'The enactments in question, therefore, in so far as they relate to matters which are in substance local and provincial are beyond the jurisdiction of Parliament. Parliament cannot acquire jurisdiction to deal in the sweeping way in which these enactments operate with such local and provincial matters by legislating at the same time respecting external and inter-provincial trade and committing the regulation of external and inter-provincial trade and the regulation of trade which is exclusively local and of traders and producers engaged in trade which is exclusively local to the same authority: *The King* v. *Eastern Terminal Elevator Co.* [1925] S.C.R. (Can.) 434.' Their Lordships agree with this, and find it unnecessary to add anything.

As appears from this passage, the regulation of trade and commerce which is assigned to the Dominion legislature by head 2 of s. 91 does not permit the

regulation of individual forms of trade and commerce confined to the province. If such regulation is not permitted, it seems to their Lordships that, *a fortiori,* the prohibition of individual forms of trade and commerce confined to the province is not permitted. By the prohibition now in question, every citizen of (e.g.) the Province of Quebec is prohibited from manufacturing and selling certain named substances, even if he manufactures only in that province and sells only in that province. It is true that the prohibition applies equally to inter-provincial transactions, but the passage from Duff, C.J.'s judgment, set out and approved by the Board in the *Natural Products Marketing* case, seems fatal to any argument based on this fact. So also do the observations of Lord Haldane when delivering the judgment of the Board in the *Dominion Insurance* case [1916] 1 A.C. 588, 595:

> It will be observed that s. 4 deprives private individuals of their liberty to carry on the business of insurance, even when that business is confined within the limits of a province. It will also be observed that even a provincial company operating within the limits of the province where it has been incorporated cannot, notwithstanding that it may obtain permission from the authorities of another province, operate within that other province without the licence of the Dominion Minister... Such an interference with its status appears to their Lordships to interfere with its civil rights within the province of incorporation, as well as with the power of the legislature of every other province to confer civil rights upon it. Private individuals are likewise deprived of civil rights within their provinces.

The truth is that the present case is typical of the many cases in which the Board has felt bound to put some limit on the scope of the wide words used in head 2 of s. 91 "in order to preserve from serious curtailment, if not from virtual extinction, the degree of autonomy which, as appears from the scheme of the Act as a whole, the provinces were intended to possess"—see per Duff J., in *Lawson v. Interior Tree Fruit & Vegetable Committee of Direction* [1931] S.C.R. (Can.) 357, 366. The necessity for putting such a limit leads to the rejection of counsel's first argument.

In my view, therefore, the legislative scheme contained in Part VI of the *National Energy Board Act* and section 20 of the National Energy Board Part VI Regulations is beyond the power of Parliament insofar as it authorizes the prohibition of the importation of motor gasoline except subject to the condition set out in section 20 (4).

The position is therefore that, by reason of this legislative scheme, the plaintiff has been prevented from importing motor gasoline into Canada except subject to a regulatory regime that is beyond the powers of Parliament to impose and he is therefore entitled to a declaration that it is unconstitutional and that, insofar as that scheme is concerned, it is entitled to import motor gasoline without any restriction as to how it is marketed after it has been imported. This is not to say that there will be any declaration as to the validity of sections 81 and 82 of the *National Energy Board Act* when they are invoked and applied otherwise than in accordance with an invalid regulation.