

be free from such taxation for 20 years after the grant thereof from the Crown.

This provision, of course, was ratified and approved of by parliament by means of the statute to which I have just referred. No property of the company within the limits I have described has been subject to taxation from the time the railway was constructed up to the present. That contract, in my opinion, created a solemn obligation on the part of the Crown, ratified by parliament; and I submit that nothing can be done, justly, by this parliament to impair that solemn obligation.

Mr. R. L. BORDEN. I thought there was another statute which expressly provided—

Mr. FITZPATRICK. I am just coming to that. I would like the committee to take note of the fact that the section I have quoted provides expressly for the case we are now dealing with, that is to say, the formation of the Northwest Territories into a province. Now, this exemption is to extend to any province thereafter—that is after the section has been passed—to be established. The Act to which the leader of the opposition has referred, I presume, is 44 Victoria, Chapter 14, which provides for the extension of the boundaries of the province of Manitoba. Subsection (b) of section 2 of that Act provides as follows:

(b) The said increased limit and the territory thereby added to the province of Manitoba shall be subject to all such provisions as may have been or shall hereafter be enacted, respecting the Canadian Pacific Railway and the lands to be granted in aid thereof.

So that this parliament has given legislative sanction to the obligation we assumed under the original contract. My hon. friend from West Assiniboia (Mr. Scott) suggested that this matter was up for consideration incidentally in the Supreme Court in connection with a number of cases of municipalities, two in the Northwest Territories and one in Manitoba. These cases were to test the validity of by-laws taxing for school purposes the Canadian Pacific Railway Company's lands. In that case the argument was put forward that if Manitoba chose to commit a breach of this agreement by taxing these lands, there was no power to prevent this. Thus there was a direct test of the validity of this enactment. The point was dealt with by Mr. Justice Nesbitt who said in delivering judgment:

In the case of the tax levied in the Northwest Territories, to give effect to the contention of the appellants would, in reality, be to hold that the contract did not exempt the land while in the Northwest Territories, but to make it subject to taxation and to be exempt only when the contingency of provincial autonomy occurred, if it ever did occur within twenty years from the issue of the patents. Such a construction is so opposed to good sense and good faith and so foreign to the object of the contract that

apparently it never occurred to any one until after the opening of the argument of the case before the court in Manitoba. In my view the company's lands to be earned by building the railway were exempted for twenty years from the issue of the patent, from any Dominion taxation, or from provincial or municipal taxation, by any bodies subsequently obtaining provincial or municipal authorities in respect of such lands.

There is the opinion of a distinguished judge of the Supreme Court on this very point. And, in the face of the statute and of this construction put upon the statute, I conceive that it would be an absolute impossibility for us to do otherwise than to give effect to the provision of the contract I have referred to. As to the question whether we shall negotiate with the company to obtain a release from them of the rights under the agreement, that is a matter of policy and one that I have nothing to do with now. What I have to do with is to give effect to a solemn parliamentary contract.

Mr. R. L. BORDEN. Of course, in the case to which my hon. friend the Minister of Justice (Mr. Fitzpatrick) has made an allusion, Mr. Justice Nesbitt in the portion of the judgment dealing with the exemption in the province of Manitoba based his judgment to some extent at least on the ground that Manitoba had not attempted to repeal the provision.

Mr. FITZPATRICK. That is not the point I referred to at all, I referred to the Northwest Territories.

Mr. R. L. BORDEN. I refer to Manitoba, I was distinguishing it from the Northwest Territories. I do not know that there would be any special distinction between the case of Manitoba and this territory added to Manitoba, and the case of the Northwest Territories. In considering this section it is necessary to distinguish absolutely between the question of legislative power and the duty of observing a contract made between the Crown and a company—they are two absolutely distinct things. Let me illustrate that in this way. The Crown made a contract with the Canadian Pacific Railway Company, which has been ratified by Act of this parliament. The making of that contract does not take away from this parliament its legislative power; parliament may to-morrow destroy the effect of that contract by means of a statute, but it would be absolutely wrong, improper and even immoral to do so. So far as the legislatures of the new provinces are concerned, the matter is pretty much in the same position. I do not know whether the section which has been inserted in this Bill is intended as a constitutional limitation which deprives the new province of a certain power which it would otherwise have, or whether it is intended, as my hon. friend from La-