

will agree that we have acted wisely in inserting this clause in the Bill. If the contention of my hon. friend from Lanark is right, I have no doubt what will be the action of the new legislature of Alberta. My hon. friend says that this clause by which we continue the exemption of the Canadian Pacific Railway property from taxation is absolutely null and void, that it is not worth the paper on which it is written. If that be so, the legislature of the province of Alberta will next session pass an Act to tax the property of the Canadian Pacific Railway Company, and then the question will have to be determined by the courts. If the courts decide that the statute passed in 1881 was ultra vires of this parliament and that we could not impose any such exemption of taxation on the new province, then, when we come to negotiate with the Canadian Pacific Railway Company, we shall have to negotiate with regard to taxation only so far as the Dominion is concerned, and not at all so far as the province is concerned. Is that not full justification of our policy and is not my hon. friend satisfied that in this, as in many other instances, he has been speaking before going into the subject and is altogether too quick in jumping at conclusions?

Mr. W. F. MACLEAN. Is it not evident now that I spoke most timely and that good has come out of the discussion, because the First Minister has expressed himself as largely governed by the opinion of the hon. member for Lanark (Mr. Haggart), and that hon. gentleman is of the opinion that the claim of the Canadian Pacific Railway is not worth anything? But the First Minister is putting into this Bill a clause that is ultra vires, if the contention of the hon. member for Lanark is well founded. In the old days the right hon. gentleman denounced the Canadian Pacific Railway contract as a most improvident bargain and he appealed to the people: Put me in power and I will remedy your grievance. He sang two songs then but he is only singing one now. He is only singing the song of the improvident bargain now, but I would ask him to sing the other one and remedy the grievance. According to the British North America Act each province has the right to impose direct taxation within the province in order to the raising of a revenue for provincial purposes. The province of Ontario is to-day exercising that right with regard to the railways in that province, and the legislatures of these new provinces will be able to tax the Canadian Pacific Railway notwithstanding these exemptions. That is a right which this parliament cannot take away from the province. Within the exclusive powers of provincial legislature there is also by subsection 1 of clause 92:

The amendment from time to time, notwithstanding anything in this Act, of the constitution of the province, except as regards the office of Lieutenant Governor.

193

That being the case and the jurisdiction of municipalities being a matter within provincial control, no act of ours, no contract or statute, can affect that jurisdiction; and if the right hon. gentleman persists with this legislation, the best the two provinces can do, as soon as they are organized, will be to pass such legislation as will compel the Canadian Pacific Railway to pay taxes. And if the new provinces cannot reach the Canadian Pacific Railway by means of municipal taxation, they can reach that company under the clause giving the provinces the right to impose direct taxation.

Sir WILFRID LAURIER. Everything said by my hon. friend is a vindication of the government. The construction of the hon. member for Lanark may be right but there are others who think he is wrong. It is a question on which I offer no opinion. It is one of those mysterious questions of law which had best be left to the judges to decide. But in the meantime there are two sides to it. There are some who pretend that the Act of 1881 is good and valid, and there are others who, like my hon. friend from Lanark, take the opposite view. If it is right and valid, we have to comply with it; but if it is null and void, so much the better.

Mr. SCOTT. As a taxpayer in the proposed province of Saskatchewan, I would be delighted if the hon. member for Lanark and the hon. member for South York were right in their contention that this legislation will be found to be ultra vires and that the provinces will have the power, regardless of this legislation and the Canadian Pacific Railway contract, to tax the Canadian Pacific Railway. But the facts, as we have them so far, are against that contention. We all know that our courts are governed to a considerable extent by precedent and unfortunately we have a precedent against us in this very matter. A portion of the Northwest Territories was added to the province of Manitoba in 1881 and a similar provision to this was put in the Bill adding that area to Manitoba. Litigation ensued and a few weeks ago a decision was handed down by the Supreme Court of Canada, which is entirely against the contention of my hon. friends. A municipality in the added portion of Manitoba levied taxes upon the Canadian Pacific Railway. The Canadian Pacific Railway protested and a suit was carried through the courts in Manitoba. The judgment in Manitoba was in favour of the company and has been upheld by the Supreme Court of Canada. The hon. member for South York is perfectly right however in his contention that this is a very serious matter for the new provinces. On the second reading of the Bill, I explained that it was the detail which gave the greatest amount of difficulty. As the matter stood in January last, the situation has become changed in some degree by the Supreme Court judgment