

where we have not any such shadowy or vague understanding as was relied upon for clause 16, but where there is a distinct, binding agreement made by the Crown at a time when these provinces were Territories, he denies that parliament has any right to legislate. He says that in the one case there is an absolute obligation in 1905 to continue legislation with regard to the schools, but there is not any obligation whatever to continue the contract made with regard to this tax exemption.

Mr. GALLIHER. I have not argued that it was ultra vires of the parliament in 1881 to make this law and to enter into this contract. But I say that if it was within their power to do so, that right goes on, and we can absolutely leave that alone and dispense with section 23 entirely.

Mr. R. L. BORDEN. I am afraid that I cannot appreciate or even understand my hon. friend's argument when he talks about this contract being ultra vires, a contract ratified by the parliament of Canada in 1881, when this parliament had the absolute right to deal with the Territories. I am not able to follow that.

Mr. FITZPATRICK. My hon. friend (Mr. Galliher) means to say, I think, that in 1881 we had power, but when these Territories became provinces then that power would be restricted.

Mr. R. L. BORDEN. It is a sufficient answer to say that the legislation which we are passing in clause 23 cannot have a greater operation than that which we passed in 1881. It seems to me that if it is ultra vires in the one case it necessarily follows that it is ultra vires in the other case.

Mr. GALLIHER. I think not.

Mr. R. L. BORDEN. Well, that is my argument at all events.

Mr. GALLIHER. I think not for the reason that by the virtue of the British North America Act the provinces are entitled to absolute control in regard to taxation, but we are limiting that control of taxation by this section 23. At the time we are granting them powers as provinces we are limiting the power of taxation by section 23 which says that it shall be subject to the existing agreement.

Mr. R. L. BORDEN. Well, I do not see the distinction of the hon. gentleman. Perhaps he can see it; I do not. It seems to me that the parliament of the Dominion in 1881 had the absolute right to deal with this contract in respect to a railway running through the Territories which were subject absolutely to the legislative jurisdiction of Canada.

Mr. GALLIHER. That may be true.

Mr. R. L. BORDEN. The hon. gentleman says that we have not the right to limit the constitution of these new provinces

Mr. GALLIHER. I do not say that at all.

Mr. R. L. BORDEN. Well, I do not know what the hon. gentleman does say then.

Mr. GALLIHER. I have not said that the parliament of Canada had not the right to make the law in 1881. If they had the right to make that law the instant that these Territories became provinces that right passes without this section 23 of this Act.

Mr. R. L. BORDEN. Very good. Then, in that view section 23 is absolutely harmless.

Mr. GALLIHER. Not harmless, because I say that by section 23 we are going further now. We are forming these Territories into provinces by this Act. We are giving them the right to exercise the power of taxation, but we are limiting that right by section 23.

Mr. R. L. BORDEN. Well, the hon. gentleman will have to be content with his own opinion. It seems to me to be absolutely clear that we had the right to make that contract in 1881. It became a contract binding upon the Crown in the right of the people of Canada and that binds the Dominion and the provinces after the Territories have been created into provinces. On the very lowest position that can be taken it is proper to insert in his Bill a notice to the provinces of the contract so entered into by the Crown ratified by parliament at a time when parliament had power so to legislate. I do not want to take up the time of the House, because this is a matter between the hon. member for Western Assiniboia, the right hon. Prime Minister and the Minister of Justice. I am not responsible for section 23. I think it is right to give notice to these provinces, but after all the Minister of Justice is responsible for this measure as he is responsible for a similar clause in the Bill in regard to the Hudson Bay Company. I have stated my view as to what should be done. The contract should be observed. There should be no expropriation without compensation. I think upon that we can all agree. It seems to me, as I have stated over and over again, that the right of the Dominion to legislate and the right of the provinces to legislate within their respective spheres of jurisdiction continue subject to the contract in both cases. I might, in conclusion, refer the hon. member for West Assiniboia (Mr. Scott) to some language of his upon a motion in regard to this same tax exemption which was introduced in 1901. The hon. gentleman then said:

If I thought this resolution would do the slightest good, I would vote for it.