

a contract and covenants to do a certain thing, we must continue these covenants to the extent of our power. It comes down to the old point we have been discussing. Have we the power or have we not? If the federal authority has power to make and continue its covenant it ought to do so, and if it has not, then any Act by which it assumes to do so would be ultra vires. I would repeat that the federal power has given a contract and the person contracting with it knows that it can protect them under the covenant, surely it is the duty of the federal power to continue the protection.

Mr. LANCASTER. Yes, if the other party to the bargain knows the Dominion power can continue that protection. But then there is another way of looking at it. We are here as trustees dealing with the people's rights and liberties, and the people's rights and liberties not only as a Dominion but as provinces. For my part, I would not be worried about the other contracting party, except so far as it would cause him to consider a claim. I am not admitting it, but to make myself understood, I would say that the government of this country might be liable for any action for damages for breach of contract for having undertaken to deliver goods that it could not deliver. But that would not be a reason for passing legislation that would be ultra vires. If we did make a bargain in order to get some one to do something else, in order to get a benefit for ourselves, and if we found out afterwards that what we agreed to do we had no right to do, it might follow that the King would be liable to an action for damages if we carried out what we agreed to do, and thereby disappointed the person we were contracting with. It would not make it right for us, for the sake of getting out of an action for damages, to do something that might be entirely beyond our power.

Mr. L. G. McCARTHY. I have not considered the point the hon. gentleman has raised, and would not like to express off-hand an opinion as to what would be the result if the federal power, in creating a province, should create valid claims against us. But I am not admitting they would have a valid claim, but if they did, there would be a remedy. As to the question of exemption from taxation, that is a much larger question than is involved in this section 22. The Hudson Bay Company has no exemption from taxation, they are in a different position. They made a large surrender of lands for which they received a certain consideration in money, and the surrender was made under certain conditions on the part of each party. Now the Hudson Bay Company will have to live up to that covenant, be the land in the hands of the province or in the hands of the federal power. It is only right therefore that the covenant we have entered into to obtain the surrender, should be lived up to, if they on

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their part are bound to live up to their covenant. That is a position which is fair and reasonable. But exemption from taxation is a much larger question.

Mr. HAGGART. Why should the Hudson Bay Company be in a different position from an individual in respect to a deed from the Crown of those territories? If you embody this in an Act of parliament before you constitute the provinces—if you have the power to do it, if it is not ultra vires—you place the ownership of the land by the Hudson Bay Company in a different position from the ownership of land by an individual in that section of the country. To my mind you take away from the province the power of eminent domain, the right of taking land for public purposes. You have the right to take the land of any individual of the province for any purpose of the province, even without giving compensation for it. Now, if you have the power to do that under this Act, you place the property of the Hudson Bay Company in a peculiar position, in a different position. If they have the right to the property, and I believe they have, so far as the Crown can be bound in giving it, so far as the province or the Dominion does not exercise their power to legislate, then they have the right to do it in reference to property, they have all the rights which they can have without embodying them in this Act of parliament. I have stated that in granting autonomy to the province, the exclusive control over property and civil rights is given to the province. But you are making admittedly a curtailment of those rights, because, having made a bargain in the acquisition of that province by which the Hudson Bay Company have a right to certain properties in that province, we curtail that right to deal with them exclusively by saying that under that bargain they are removed from their jurisdiction. When we are on the two subjects—because they are virtually the same—

Mr. FITZPATRICK. No.

Mr. HAGGART. As to the right or the power.

Mr. L. G. McCARTHY. I do not think the two cases are the same. The Hudson Bay Company were the owners of this land, they deeded certain portions of their domain to the Crown, retaining a certain portion within themselves upon certain covenants which the Crown gave and upon certain covenants which they gave. Therefore they are not in the position of a person who has received his title from the federal power, and they being the original owners of the property, are in an entirely different position from the man who is granted a patent from the Crown.

Mr. HAGGART. The hon. gentleman's premises in the first instance are not cor-