

is the safeguard suggested by the Minister of Justice that if any provincial legislature should so far forget itself as to attempt to expropriate a right of this kind or any other property, without making due provision for compensation, it would be a matter for the consideration of the federal executive as to whether under such circumstances the Act constituting that spoliation of contractual rights should not be disallowed.

Mr. HAGGART. I must have been misunderstood, I was arguing entirely on the question of the powers to which the provinces had a right under the British North America Act. I stated that this clause was an interference with the powers which are by indentment given to the provinces, and that when you constitute a province it has a right to full powers over civil rights and property. I said this was a limitation of that power. I never expected that either the Dominion or a province would annul a contract without full compensation. These provinces know the bargain we made with the Hudson Bay Company and we should give them the full power to legislate which they are entitled to. I do not suppose they will do any injustice to the Hudson Bay Company any more than to any other individual. If they thought it necessary to annul or alter the contract between the Dominion government and the Hudson Bay Company, I have no doubt they would compensate the company to the fullest extent. That is not the question I was discussing. The question is: what right have we to put in an Act of parliament granting autonomy to provinces limitations of the powers which the British North America Act provides these provinces shall have. I say that this clause is a limitation of their power over civil rights and property. It may after all be no more than a notice, but I believe that it is ultra vires of this Dominion to make such a provision, although the Minister of Justice took a different view. He said that under the Imperial Act of 1871 the fullest possible powers were given this parliament, in granting autonomy to the provinces, to give them any form of constitution we liked. My argument is that your powers to grant autonomy to provinces are prescribed by the British North America Act and that anything else you embody in this Bill is ultra vires. The strongest argument advanced by the Minister of Justice in support of his theory was that in the Manitoba Act of 1870 we took power to legislate in matters of education, and that the law officers of the Crown in England as quoted by Lord Kimberley held that in their opinion the British North America Act gave the federal authorities sufficient power to pass the Manitoba Act without going to the Imperial parliament for an enabling Act. It was the only argument I heard in the whole debate in support of the Autonomy Bill. The Manitoba Act to a

certain extent is an alteration of the British North America Act, and until I read the opinion of the law officers in full I will not alter my opinion that you are governed by the British North America Act, and that anything you insert in this Bill which goes beyond the provisions of the British North America Act will be declared ultra vires by the courts. I was only arguing the question of power; I was arguing that the provinces have the power to annul these contracts or to do as they like with the property when it comes into their possession, but I said nothing at all as to the propriety of exercising that power.

Mr. FITZPATRICK. It must be remembered that there is something very peculiar about this provision that I am endeavouring to insert in this Bill. The Hudson Bay Company were in possession of these lands under an Imperial charter issued in 1670. They surrendered to the Queen those lands and territories acquired under that Imperial charter.

Mr. HAGGART. What do you mean by possession of the lands; do you mean they have a fee simple in it?

Mr. FITZPATRICK. That is a point that is arguable, but according to the deed of surrender, that would appear.

Mr. HAGGART. Or only the right to hunt over them; an easement.

Mr. FITZPATRICK. According to the terms of 'the surrender they would appear to be the lords and proprietors.' After they entered into possession of those lands and enjoyed them all these years, then under the authority of the Act of 1868 they surrendered these lands to the sovereign in the right of the imperial parliament, and to that surrender they attach a condition of exemption. Then the sovereign in the exercise of powers conferred by section 146 of the British North America Act handed over these lands to the Dominion with the right to enact laws for their peace, order and good government, subject to the same limitation with respect to this right under which the Crown took them under the deed of surrender. We have received them subject to that limitation, and we are now passing on that legislative jurisdiction to the province. Is it conceivable that we would be justified, when passing over the jurisdiction in these lands in eliminating that condition under which we received the power to legislate ourselves. That is my point.

Mr. HAGGART. I say the Dominion government should carry out the bargain it made with the Hudson Bay Company. If that company has the legal right to these lands under the British North America Act, why is it necessary to continue that right in creating the province? I know the history of this whole matter. I was in politics at the time Mr. McDougall and Chief Justice Draper were sent to England, and I