

pany or any other, must, like others be held to have known the law. They know that there is a British North America Act and that under the terms of that Act it is within the power and right of the Dominion parliament to establish provinces in the territory in respect of which they are asking exemption. That being so, could the company, even in equity, say that it would be wrong to establish such a province with the necessary powers of a province under the British North America Act? They must accept their bargain under the necessary qualification of the constitution. The establishment of a province in the territory affected by the bargain must be within the contemplation of both parties. Then, as under the British North America Act the right of taxation belongs to the province, and there being no qualifying words in that Act providing for the taking away of that power, it cannot be wrong for the province to exercise that power of taxation. It seems to me that in accepting these privileges the company accepts them under the law, and that under the law, the moment that the province is created, it has the right to tax. Surely, then, in fairness the company hardly say that the Dominion was bound to give them more than exemption from taxation while the Dominion held control—but the Dominion should exercise its powers under the bargain so long as it has that power.

Mr. L. G. McCARTHY. Will the hon. gentleman allow me to ask him a question? Has he looked into the question whether there is any exemption with regard to the Hudson Bay Company?

Mr. LANCASTER. I am not sure about that. I am not admitting that there is.

Mr. FITZPATRICK. The point is that we restrict the powers of the province to deal with these lands.

Mr. LANCASTER. Exactly. Under the British North America Act, section 92, there is no qualification—the province has an absolute right to tax. That Act was the law of the land when the contract was made, and the other parties to the contract cannot say they are inequitably treated if the Dominion says: We have given you exemption as long as we had the power to exempt, and we cannot go further. There might be other reasons why, in equity, the contract might be insisted upon, or rather it might be argued that there were good reasons for not being harsh with these companies, or that, putting it on a technical ground, we would be allowing the province to do a wrong. But, speaking for myself, I am not prepared to say that the province would do a wrong if it insisted on its right to tax.

Mr. FITZPATRICK. But my hon. friend should not forget to look at the matter from the point of view of the Dominion authority. We accepted the deed of the lands subject to

certain rights. We agreed to pay a certain amount of money for them, and if, in addition, we agreed to give these companies certain exemption could we in violation of that bargain, hand the lands over to these provinces without, at the same time, attaching to them the conditions upon which we received them? That is the point.

Mr. HAGGART. What about the Canada Pacific Railway?

Mr. FITZPATRICK. That is another question.

Mr. LANCASTER. Well, look at it from the standpoint of the Dominion authority. We agreed to give them exemption. What exemption? Why, of course, so long as we had power to exempt.

Mr. FIELDING. Is it claimed that we have no power to do it in the way now proposed?

Mr. LANCASTER. Yes, in effect that is it;—my contention would lead us to that point. Quite candidly I say that we have no power, now that we are giving up the right to tax, to insist that the province shall continue what we have done. We give up our right to tax to the province.

Mr. FIELDING. Even though we say otherwise?

Mr. LANCASTER. If the hon. gentleman (Mr. Fielding) means that we could try to force the province to give up that right, I can only say that the Act would be ultra vires. You cannot, as I understand the statute, make a bargain which will alter the powers of the provinces as provided for by section 92 of the British North America Act. Suppose—taking it the other way—you make a law giving the provinces authority to have their own customs, their own post office, and to deal with criminal law, and to control other matters that are within the jurisdiction of the Dominion. Section 92 of the British North America Act provides that certain things shall be in the control of the provinces 'exclusively'—that is the word that is used, and these things include even the amending of their constitution. Then, section 91 gives certain powers exclusively to the Dominion. When we make a bargain here, it must be assumed that we contemplate doing only what we have the right to do, and any person with whom we make a bargain must take the risk of what our powers are. When we create a province and it is brought to our attention that we have made a bargain which we cannot control so far as the province is concerned, we should not be called upon to go on record in this parliament with the declaration that the province is bound to do anything which the British North America Act says that it is not bound to do.

Mr. L. G. McCARTHY. Surely if, within its powers, the Dominion of Canada makes