

Mr. O'MEARA: And that there is also created by that same instrument—Article 13—a power on the part of the Secretary of State for the Colonies to give the final word upon such demand.

Hon. Mr. STEVENS: Again I must call the attention of the Committee to the fact that it is a policy as liberal as that hitherto pursued by the British Columbia Government which shall be continued by the Dominion Government after Union. The basis of the Dominion Government treatment is a liberal policy, or a policy as liberal as that of the Colony before the Union.

Mr. MORIN: Is not your argument inconsistent with that, Mr. O'Meara?

Hon. Mr. STEWART: The Dominion Government is to have the land, and it is to have adequate land. Is not that the basis?

Mr. O'MEARA: May I remind the hon. member that, in the document now before this Committee, if my memory is correct, the Minister of the Interior of 1874 declared in very emphatic language that Article 13 was fully inadequate for meeting the situation, and he used very strong language as regards that.

Mr. MCPHERSON: Was that that the provisions of the Provincial Government prior had not been adequate?

Mr. O'MEARA: Well, he speaks very strongly on that subject.

Now, Mr. Chairman, I wish to submit to you an authority upon that subject which I shall submit is quite conclusive. I refer first, to a case decided by the House of Lords, and reported in Scott's Appeal Cases. First, Weller vs. Ker reported in Law Reports Scotch Appeals, Volume 1 at page 11. I refer to that as an authority but I leave that there because in a subsequent case, there has been made a very useful statement of the principle for which I am contending at this moment. I give this as the authority of the House of Lords, for the proposition that a power of that sort is a continuing power, and cannot be destroyed by any mere agreement. I refer also to this case in which the principle has been laid down, decided in the Chancery Division of the High Court of Justice in England, by Mr. Justice Kay. It is to be found in the Law Times reports Vol. 49 at page 259. I shall read a few words from the judgment of Mr. Justice Kay:

It is argued that by this release the power even if simply collateral is entirely destroyed under Section 52 of the Conveyancing Act of 1881. Assuming that this would be the case as to an ordinary collateral power, the first question is whether if it be a power given to trustees coupled with a duty it could be so destroyed, and I am clearly of opinion that in equity it could not, if that be the nature of the power. A trustee who has a power which is coupled with a duty is, I conceive, bound so long as he remains trustee, to preserve that power and to exercise his discretion as circumstances arise from time to time whether the power should be used or not, and he could no more by his own voluntary act destroy a power of this kind than he can voluntarily put an end to or destroy any other trust that may be committed to him.

Hon. Mr. STEVENS: What are you quoting from now?

Mr. O'MEARA: Mr. Justice Kay's statement of the principle. The case is "In re Eyre."

Hon. Mr. STEVENS: That is a case of a trusteeship of an individual, of a minor, the same as this other case you quoted.

Mr. O'MEARA: It is a trusteeship, and that is the principle.

Hon. Mr. STEVENS: Of an individual.

Mr. O'MEARA: Yes, of an individual.

Hon. Mr. STEWART: If it is on trusteeship generally, as far as we are concerned, we might accept it. We are not questioning the power of a trustee, not for a moment.

[Mr. O'Meara.]