

him to make it mean that he, the guardian, may claim a title in case he gets the assent of a majority of members of the tribe who choose to go to the meeting. This is not a question of election where people are called upon to choose between one man and another, or between one course of action and another; there is only one thing put to the Indian here, the law says the thing he is asked shall not be binding on him unless he, to the extent of a majority at all events, assents. When you come to consider that the purpose of this section is to provide a method whereby a minority of that tribe may be deprived of their property rights in the reserve against their will, which is in violation of every principle of the common law, I do not think I need add any reason for saying that this is a provision of law to be given the strictest possible interpretation. If you have 200 members of the tribe and 101 vote to surrender, the other 99 are deprived of their property against their will, without their consent. That is the law and you must bow to it, but here the department is stretching the law to mean that where you have 200 members of a tribe and you call a meeting which is attended by only 20, a majority of that 20 may grant a surrender, whereas if a majority of the members of the tribe stay away they do not assent and therefore the property does not pass. Under that interpretation if 20 men go to the meeting, and out of those 20, 11 assent and 9 dissent, the property of the other 180 members of the band is alienated. That proposition was put to the minister last year, and he said he thought that would be legal. He should have done as he did this year and say he did not know if it was legal or illegal. He thought it would be legal, but very inequitable. But he said in this case when there were present 203 out of 289 he thought that would be equitable. I would ask the House to consider what the legal position is if we are going to apply this doctrine. It simply is that the law means that the majority at a meeting can give away the property of the others who are not there when the minister thinks it is equitable, and the majority at a meeting cannot give away the property of the minority when the Minister of the Interior thinks it is inequitable. That is the interpretation the minister puts on the statute which parliament passed for the purpose of protecting the Indians. In other words, parliament went to the trouble of making a law which on its face apparently meant that it prescribed the conditions precedent to a valid surrender, while it only meant to say that it depends on what the Minister of the Interior for the time being may think about it. That is the most absolutely preposterous proposition to put before any intelligent man.

Mr. DOHERTY.

Looking at this transaction as the surrender of a reserve, while I have not found any authority interpreting a provision precisely in the words of this section, and have, therefore, to deal with the case as what the lawyers would call a question of first impression, I would have no hesitation in saying that if a man came to me with a title derived from a vote of that kind, if the Indians had vigilant guardians, I would never advise him to accept that title, although of course under such circumstances as we have here where the Indians have guardians who apparently consider that their first duty is to find a possible interpretation of the law which would work to deprive the Indian of his property without his consent I dare say the purchaser would be quite safe simply because the only protector of the Indian does not know the law or care what it is.

But there is more than that. The second proposition is absolutely startling. It appears by the report of Chief Justice Howell, it appears by the statement of the Minister of the Interior,—it is part of the justification of the minister for having conceded to the Indians individually portions of the property which was taken over in the surrender,—that these Indians, not as members of the tribe having a share in the reserve, but as individual citizens of Canada, settlers upon that property, were owners of particular portions of that reserve. I am not going back to Chief Justice Howell's report to show where that is. He puts it so clearly that it is not susceptible of dispute. There was a total vote at the meeting of 105 on the one side and 98 on the other, the majority in favour of the surrender being seven. It is stated by Chief Justice Howell and not questioned by the Minister of the Interior, that those 98 men owned particular portions of the reserve, just as I might individually own property, and their property has passed from them under that surrender when they voted that they would not surrender it because there were seven more Indians at that meeting who wanted to surrender their property than there were Indians who did not. So we have this provision made by the government to provide how you may surrender an Indian reserve, twisted to so operate that it will not only deprive those who happen to be in the minority at the meeting, but it will deprive the majority of the whole tribe who did not vote for it, of their share in the Indian reserve. But more than that, so careful of the interest of the Indian is his guardian that we have it twisted so that it will deprive, and it has deprived the Indian who owned, as I might or as the minister might own, a particular piece of property in the province of Manitoba, of his ownership in that property against his negative vote present at the meeting. I