The practical effect will be, apparently, to establish in the case of such wells, a maximum royalty payable of twelve and one half per centum during the period ending May 31, 1951; thereafter there will be no restriction on the authority of the province to exact royalties.

An examination of the forms of the leases granted by the dominion and the relevant regulations persuades me that there was no contractual or other limitation on the power of the proper authority—that is the governor in council prior to the transfer agreement and the proper provincial authority since—to fix any rate of royalty. The leases expressly provided that the royalties payable were such as might from time to time be prescribed.

It is true that maximum royalties of five per centum during the first five years of the lease and ten per centum thereafter were established on the 29th day of October, 1920, by order in council, but these could have been varied by the proper authority from time to time without breach of contract. This view is supported by the decision of O'Connor J. in the recent case of Anthony vs. attorney general for Alberta and minister of lands and mines, 1942, 1 W.W.R. 833, in which he held in effect that the lieutenant governor in council would not, in fixing timber dues, be affecting or altering contracts contrary to paragraph 2 of the natural resources transfer agreement provided that the dues so fixed were not prohibitive.

In other words, in the very case cited by the hon. member for Calgary West on that point the court found that so long as the dues were not prohibitive the province had the right to vary them. This was under licences issued prior to the transfer of the agreement. The letter then goes on to refer to the case upon which the hon. member for Calgary West based his main argument, and which excited the support of the leader of the opposition. The letter continues:

The decision in the case of Spooner Oils Limited v. Turner Valley Gas Conservation Board, 1933, S.C.R. 629, has no bearing upon the question of royalties for the reason that the rate of royalties was not in issue in that case. The dominion lease in issue was granted under the regulations of March, 1910 and 1911. The chief justice held that regulations enacted subsequent to the granting of the lease should not apply, but this decision has no significance in connection with the question of royalties for the reason that it was expressly provided in the lease that the royalties should be at such rate as might from time to time be specified by order in council.

It is my opinion that the royalties in connection with these dominion leases could have been varied by dominion authority, without any breach of contract or of the regulations, had the transfer of resources not taken place. Perhaps I should add in conclusion that the purpose of section two of the Alberta natural resources transfer agreement, as was pointed out by the privy council in the case In re refund of dues under timber regulations, 1935 A.C. 184, was to substitute the province for the dominion as the authority responsible for carrying out contracts granted prior to the agreement.

That is not all I wish to place before the committee. The resources were transferred to Alberta under legislation passed by this parliament in May, 1930. The then member for Acadia asked a question of the Hon. Charles Stewart, who was handling the legislation. They were dealing with this very point, and I quote from the record:

Mr. Gardiner: Coming back to the question we discussed a moment ago, would the minister explain what position an oil lease would be in when these natural resources are transferred to the province? Would it be possible for the provincial legislature to amend the contracts in so far as oil leases are concerned, or are they only temporary or for a specified time?

Mr. Stewart (Edmonton): Mining leases and oil leases are in the same category; they are subject to fluctuations in royalties.

They are subject to fluctuations in royalties once they have passed to the province.

Otherwise all the provisions of the contract would have to be carried out.

That is the other provisions as to term of the lease, renewable features and the like. It goes on:

That is, the terms of the contract, whatever the agreement was, will have to be carried out. If the province made a general regulation increasing the royalties on oil, it would apply to these leases but they have no more authority than we possess at the moment because we do not guarantee to keep the royalties at a fixed amount under the terms of the lease. The only exception to that is that grazing leases are for a specified term of years and on a rental basis.

Mr. Gardiner: So that practically all leases would come under the jurisdiction of the legislature except certain specified leases, which would be very few?

Mr. Stewart (Edmonton): Quite right.

That clearly indicates that at the time this legislation went through the house, the intention was that the federal government should pass over to the provincial government all its rights and obligations in its leases and contracts and that the provincial government would accept them, and that was the purpose of section 2 of the transfer agreement. But while the province would be obliged to live up to the conditions of the lease in all other matters excepting royalties, the opinion of the law offcers of the crown is clear from the letter I have read that the power of the federal government in the matter of royalties passed over to the province.

What is sought by this legislation? If there is strenuous opposition to the legislation I rather think, at this stage, that the legislation cannot go through; but I point this out very seriously to the members of the committee, that the whole purpose of this amendment is to stabilize the situation in Alberta and to get oil production, and anybody who knows any-