

I should be exaggerating if I said, contempt—with which the minister disposed of the question this afternoon whether this transfer was legal or not. There are just two observations I would like to make upon this question of legality. So far as the minister is concerned, all that he knows about it is that, as he has informed us, it has always been done that way. Now, he has not told us whether the question ever has previously arisen whether the majority of the persons present at the meeting is the equivalent of the majority of the members of the tribe at a meeting, he has not told us whether that question has ever arisen or not, and whether the Department of Justice has ever passed upon the question or not. Of course, I am not in a position to know how many of these surrenders have been made, nor under what circumstances they have been made. But I feel quite safe in taking this position,—that no number of surrenders in which the question never arises, in which nobody ever raised the question, form any precedent for the determination of the question that now is raised. If we look at this statute, the first thing that we see is that the determination of the question is not left to the meeting. I quite agree that where you leave the determination of the question to a meeting of persons of certain classes, then the decision of the majority who are present at the meeting is the decision of the meeting, and governs so far as the decision of the meeting can govern. But it is to be pointed out that this statute is very careful not to leave the determination of the question to the meeting. It points out precisely what are the conditions precedent to the surrender of a reserve. And it is well, when we read this section, to remember that it is making an absolutely exceptional provision of law, a departure from a fundamental general rule,—namely, that a man cannot be deprived of his property without his own consent. I have no hesitation in laying down the proposition—certainly as regards the law of the province from which I come, and I think I can with as little hesitation authorize myself to lay it down as a proposition of the common law—that it does not matter how many owners there may be of a property, you cannot deprive any one of these owners of his property without his consent. This is a fundamental rule of the common law. This statute proposes to depart from that rule. Now, anybody who knows anything about the law—anybody who is not like the Minister of the Interior absolutely above the law and neither knows nor cares what it is—knows that when you come to interpret an exceptional disposition of the law, that is to say, a disposition creating an exception to the general rule,

you have to give it the strictest possible interpretation, you have to keep it within the absolute limits of what the words used require. What are the words used?

Except as in this part otherwise provided, no release or surrender of a reserve, or a portion of a reserve, held for the use of the Indians of any band, or of any individual Indian, shall be valid or binding, unless—

Here is the condition precedent:

Unless the release or surrender shall be assented to by a majority of the male members of the band of the full age of 21 years.

And then, while I do not want to attach too much importance to the punctuation, there follows a comma. There is the thing that is required and then the law goes on to say when and how that thing shall be done.

At a meeting or council thereof summoned for that purpose, according to the rules of the band,

So that the thing that is required is positive action on the part of a majority of the male members of the band; unless that is done no surrender shall be valid or binding. Not only must you have that done, but you must have it done at a meeting called in accordance with the rules of the band. The hon. minister interprets that as meaning that no matter how many people go to the meeting if you have a majority of the people at the meeting, you have complied with the law. The first answer to that is that it is not what the law says. The law does not say a majority of the male members of the band who are present at the meeting, the law says you must have the assent, the law is not contemplating voting, but you must have positive action on the part of a majority of the male members of the band, they must assent. A man who sits down and says nothing neither assents nor dissents, and what the law requires is the assent of the majority. It further requires as a protection to the people who may be deprived of their property against their will that that assent shall be given at a meeting held in the presence of the Indian Superintendent. Why? To prevent the possibility of people going around and buttonholing one Indian after another, and by one means and another, not in the presence of the superintendent his natural protector, inducing the individuals one by one to give their assent, until the assent of a majority of the members of the band has been secured. At a meeting is the additional protection added by the legislator who wants to protect these people whom he quite recognizes he is depriving, as individuals, of their distinct individual right to say each one whether or not he will part with his right in the reserve. This provision is twisted by his guardian against