

*Indian Act*

have no responsibility, but for the life of me I can see nothing but trouble in connection with the enforcement of this particular clause. I do not think the department will find more than twenty-five or thirty Indians that they feel should be enfranchised. I never heard of any serious difficulty in this connection. A white man who migrates to Canada must be here five years before he can become a citizen of this country. By becoming a citizen, he becomes enfranchised. But if he does not do that, nobody is going to compel him to do it, nor does the law compel him to do it, so that it is certainly not handing out preferred treatment to the Indian wards.

Mr. ELLIOTT: Do I take it that the minister states that there are in the department no treaties that protect the franchise, of which this legislation is a breach? Is he in a position to say that there is no such treaty in existence?

Mr. MURPHY: I make no such statement, but this amendment amply covers that point in case there is any such treaty. I am not giving my judgment upon treaties which may have been in existence for one hundred or two hundred years or a longer period of time. I do not feel that I am competent to pass upon this point, but I do not think that enfranchisement will be found mentioned in any treaty.

Mr. POWER: I never said so.

Mr. MURPHY: I am answering the hon. gentleman who has just taken his seat. This amendment certainly covers the point and the department will be governed in such cases by the opinion of the law officers of the crown. I do not feel myself competent to pass upon the question the hon. member has just asked as to whether these treaties will be violated by the provisions of this section. That is a question to be decided by the Department of Justice.

Mr. ELLIOTT: The minister is drafting an amendment to provide that there will be no violation of any treaty that may have been entered into, and he is doing this without looking up the treaties and knowing whether there is any such treaty that comes within that category, and, if so, what the terms of that treaty are. I would suggest that if we are going to discuss this amendment intelligently, the minister ought to do the committee the courtesy, if I may respectfully so suggest, of ascertaining what the terms of those treaties are. I have received from various Indians, Indians of different reserves, representation as to the terms of treaties. They think

[Mr. C. A. Stewart.]

they have treaties; as a matter of fact they are firmly of opinion they have. The minister, however, is the man above all members of the house who is in a position to ascertain what treaties there are. There is no question that there are treaties between the Indians and the crown.

Mr. MURPHY: I have so stated.

Mr. ELLIOTT: Before we proceed with this legislation we had better ascertain the terms of those treaties instead of simply inserting a clause of this kind.

Mr. MURPHY: I have read one of the sample treaties to the committee.

Mr. ELLIOTT: That does not bear on the matter at all.

Mr. MURPHY: There are many other treaties in existence. I have read some of them; I have not read them all. As I have stated, I shall be governed by the opinion of the law officers of the crown.

The hon. member for Quebec South has made the remark that the Indians are not in his opinion British subjects and that under the terms of some of these old treaties they possess certain inalienable rights that should not be taken away from them. I have a judgment which was given by Mr. Justice Riddell in March, 1921, on a question of fishing rights or the violation of fishing regulations in Ontario. The Six Nation Indians of Brantford and of Tyendinaga take the same position as that taken by the hon. member for Quebec South and I think it would be very pertinent if I read the judgment to the committee.

Mr. MACKENZIE (Vancouver): Which court was that?

Mr. MURPHY: The Court of Appeal of Ontario. I will not read all the judgment, but I will read the part that I think is pertinent to the subject under discussion, as follows:

It is well known that claims have been made from the time of Joseph Brant that the Indians were not in reality subjects of the king but an independent people—allies of His Majesty—and in a measure at least exempt from the civil laws governing the true subject. Treaties have been made wherein they are called "faithful allies" and the like and there is extant an (unofficial) opinion of Mr. (afterwards Chief) Justice Powell that the Indians so long as they are within their villages are not subject to the ordinary laws of the province.

As to the so-called treaties, John Beverley Robinson, Attorney General of Upper Canada (afterwards Sir John Beverley Robinson C. J.) in an unofficial letter to Robert Wilmot Horton, Under Secretary of State for War and Colonies, March 14, 1824, said: