

be improved?—A. I may explain, gentlemen, that under the old regime, that is by the Colonial Government, it is quite evident that the Indians were considered to have water rights with their land. That is proved in the case of the Kamloops Reserve where in 1869, two gentlemen named Todd and Thompson applied for water licenses for property known as lots 1 and 2 on the top of Paul Mountain, almost inside of the Kamloops Indian reserve.

Q. Applied to whom?—A. Applied to the stipendiary magistrate of that day, who was Mr. Peter O'Reilly. They applied for a water license, and the water record was given to them, with this provision:

Subject to the prior right of the Indians.

Acting on that assumed prior right of the Indians, the Government of British Columbia issued a water license to the Kamloops Indians, giving them one day of priority over and above Messrs. Todd and Thompson, which is now known as the Harper Ranch. That carried on for some time, but the British Columbia Cattle Company, who are also now interested in that Harper Ranch, took exception to the ruling of the Board of Adjudication under the British Columbia Water Act, and they appealed against the ruling to the Court of Appeal of British Columbia, contending that the record issued to Todd and Thompson did not constitute a record for the Indians as provided for under the British Columbia Water Act.

Q. You mean, did not constitute a basis of right?—A. Yes, did not constitute a record. The Department of Indian Affairs, of course, opposed the appeal, but we lost out. The date of priority was then reversed, putting the Todd and Thompson record ahead of the Indian record.

Q. That is, the one day priority given to the Indians was cancelled?—A. Yes, we lost it.

*By Mr. McPherson:*

Q. Was the basis of that ruling because the Todd and Thompson right was issued by the Government?—A. Issued by the Government.

Q. That is the Todd and Thompson right issued according to the Act and not according to the reservation?—A. Yes.

*By Hon. Mr. Murphy:*

Q. Are you sure of that?—A. (No answer.)

*By Hon. Mr. Stevens:*

Q. I think it would probably be this: the Court did not recognize that the Indians had filed an application, while Todd and Thompson did?—A. That is it exactly.

Q. Although the Colonial Government said that the Indians had a prior right, the Indians not having applied formally did not have it, which seems to me pretty narrow reasoning.

MR. MCPHERSON: Under the British Columbia law, the right must be maintained by filing the application.

HON. MR. STEVENS: Yes. At that time I doubt if there was such a regulation, but subsequently, there was.

WITNESS: Under the British Columbia Water Act, the interpretation of the word "record" is given, and it means some document filed with the Government of British Columbia.

*By Hon. Mr. Stevens:*

Q. What is the date of that Act?—A. This is the Act of 1924.

[Mr. W. E. Ditchburn.]