

Mr. O'MEARA: I will undertake to get them.

The CHAIRMAN: We do not want the undertaking, but we want the original document here now.

Mr. KELLY: That is the order of the Committee.

Mr. O'MEARA: It will take more than ten minutes to get it, I am afraid.

Hon. Mr. BARNARD: While Mr. O'Meara is getting the document, Mr. Kelly, I would like to hear for my own information something on the question, apart from the question of aboriginal title altogether—conceding for the sake of argument that it exists—how the position of the Indians, their course of conduct during all these years in accepting the benefits of The Indian Act, benefits which were not given to any other subjects in this country, and their occupation, and so on, is consistent with their now making a claim with regard to the aboriginal title? Surely they cannot have it both ways.

Mr. KELLY: Quite so. I think the point raised here is this, if a thing that has been going on and accepted did not do away with what had existed before,—that is the point you are making?

Hon. Mr. BARNARD: Yes, I would like to know what your suggestion is with regard to it.

Mr. KELLY: It is quite true that that is a matter of fact, and we do not question it for a moment, that the Indians of British Columbia have been treated as generously as other Indian tribes throughout the rest of the Dominion. But within recent years, shall I say during the past twenty-five to thirty years, Indian tribes have become curtailed in their activities. You know as well as I do, Senator Barnard, that they were a law unto themselves and roamed the forests and went wherever they wanted to go; they were the lords of all they surveyed. With the settling up of the country these rights were curtailed, naturally; and as they became curtailed more and more and as the fishing rights were interfered with and their hunting rights began to be interfered with, and regulations restricting their activities became more apparent, their thoughts naturally went back to the days when they were the lords of the land; and upon consulting advisers here and there, even as white men do, it came to the surface that their title had not been ceded.

If it had not been ceded, then, in view of the facts that their ancient rights were taken away, why should not a formal recognition be made and a consideration equivalent to that conceded to other tribes of Indians in other parts of the Dominion be granted to the Indians of British Columbia? That was at the back of all this trouble. I hope I have answered you.

Hon. Mr. BARNARD: Your answer appears to make it clear in this way, that the Indians accepted the situation as it was, accepted the benefits, and then, when they found out that the thing was not working out to their satisfaction, they want to go back on the deal, have all the expenditures and get the lands. It seems to me that this is what your argument amounts to, Mr. Kelly.

Mr. KELLY: Not exactly.

Hon. Mr. BARNARD: You know what estoppel is in law?

Mr. KELLY: I must confess I do not.

Hon. Mr. BARNARD: If two men act as if a contract were in existence, act mutually upon it, they cannot afterwards deny that it did exist.

Mr. KELLY: Provided a bargain has been struck?

Hon. Mr. BARNARD: No.

Hon. Mr. STEVENS: That is a principle of law which is very important which Mr. Barnard has suggested. Independent of written law or law courts, where two men, who may be wholly ignorant of the law, by mutual assent, go on on a certain line, share certain benefits, and so on, that becomes in the eyes of the courts a law or has the effect of a contract.

[Mr. O'Meara.]