

Mr. O'MEARA: The St. Catherines Milling and Lumber Company vs. The Queen, which is to be found in 14 A. C. 46. I was just wondering what I could find that is brief enough to read here.

Hon. Mr. MURPHY: That is what we are wondering too.

Mr. O'MEARA: I will read the Head Note. Mr. Chairman and gentlemen, this is a long judgment, and I will read the Head Note: "Section 109 of the British North America Act, 1867, gives to each Province the entire beneficial interest of the Crown in all lands within the boundaries which at the time of the Union were vested in the Crown, subject to such rights as the Dominion can maintain under sections 108 and 107. By Royal Proclamation of 1763, possession was granted to certain Indian tribes of such lands parts of our dominions and territories as not having been ceded to or purchased by the Crown were reserved for the present to them as their hunting ground. The Proclamation further indicated that all purchases from Indians of lands reserved to them must be made on behalf of the Crown by the Governor of the Colony in which the lands lie and not by any private person."

In 1873 the lands in suit situated in Ontario, which had been an Indian occupation until that date, under the said Proclamation, were to the extent of the whole right and title of the Indian tribes therein, surrendered to the Government of the Dominion for the Crown, subject to a certain qualified privilege of hunting and fishing.

Held: That by force of the Proclamation, the tenure of the Indians was a personal and usufructuary right dependent upon the goodwill of the Crown; that the lands were thereby and at the time of the Union, vested in the Crown, subject to the Indian title, which was an interest other than that of the Province in the same within the meaning of Section 129.

Mr. MCPHERSON: And which had been reserved to them under that Proclamation.

Hon. Mr. BELCOURT: A defined usufruct.

Mr. O'MEARA: A beneficial title.

Hon. Mr. BELCOURT: Their title means, not fee or anything of that kind; it is a usufruct; a usufructuary interest.

Mr. O'MEARA: Indian title does not mean fee, under any circumstances. It is a beneficial title. Now, Mr. Chairman and hon. gentlemen, the explanation of the point that is giving difficulty is simple. It is to be found in this: That the Royal Proclamation dealing with all lands occupied by the tribes all through the country uses the expression "Reserve." It reserves all that great territory for the Indians. That is the explanation, and that is the reason why that term "Reserve" is used.

Hon. Mr. STEVENS: No one can be surprised that your clients have been misled by your advice.

Mr. O'MEARA: On what point, Mr. Stevens?

Hon. Mr. STEVENS: On all points.

Mr. O'MEARA: Well, if my advice is as sound on other points as it is on this, I think it is all right; because every one who has studied this case knows absolutely that what was dealt with was the large territory that has been occupied by the tribes.

Hon. Mr. STEVENS: They know nothing of the kind.

Hon. Mr. BELCOURT: Will you tell us Mr. O'Meara what is the definition of the word "usufructuary"?

Mr. O'MEARA: Beneficial.

Hon. Mr. BELCOURT: No, it does not mean anything of the kind. It means an entirely different thing.

Mr. O'MEARA: Well, I submit that the word is the same.

[Mr. O'Meara.]