

"To talk of treaties with the Mohawk Indians residing in the heart of one of the most populous districts of Upper Canada upon lands purchased for them and given to them by the British government is much the same in my humble opinion as to talk of making a treaty of alliance with the Jews in Duke street or with the French emigrants who have settled in England." Canadian Archives, Q. 337, pt. II, pp. 367, 368.

I cannot express my own opinion more clearly or convincingly. The unofficial view expressed by Mr. Justice Powell at one time, he did not continue to hold.

The question of the liability of Indians to the general law of the land came up in 1822. Shawanakisikie of the Ottawa tribe was convicted at Sandwich of the murder of an Indian woman on the streets of Amherstburgh and sentenced to death. Mr. Justice Campbell respited the sentence as it was contended that Indians in matters between themselves were not subject to white man's law but were by treaty entitled to be governed by their own customs—Canadian Archives, Sundries, U.C., September, 1822. It was said that Chief Justice Powell had in the previous year charged the grand jury at Sandwich that the Indians amongst themselves were governed wholly by their own customs: Powell, when applied to by the lieutenant governor, denied this and sent a copy of his charge which was quite contrary—do, do., October, 1822, and all the Judges Powell, C.J., Campbell and Boulton, J.J. disclaimed knowledge of any such treaty, and concurred in the opinion that an Indian was subject to the general law of the province. The Indian was, however, respited that the matter might be referred to England, do. do. October, 1822. It was referred to the law officers of the crown who reported in favour of the validity of the conviction: the Lieutenant Governor, Sir Peregrine Maitland, was instructed that there was no basis for the Indian's claim to be treated according to his customary law, that the offence was very heinous, the prisoner bore the reputation of great ferocity and there appeared to be no ground for clemency—but as Maitland might be in possession of further facts, he was given discretionary power to mitigate the punishment—the warrant sent distinctly recognized the legality of the conviction and authorized the execution of the sentence, but left the discretion with the lieutenant governor. Canadian Archives, Q. 342, pp. 40, 41, 1826.

The law since 1826 has never been doubtful. I may say that I have myself presided over the trial of an Indian of the Grand River when he was convicted of manslaughter, and sentenced. I can find no justification for the supposition that any Indians in the province are exempt from the general law—or ever were.

And this is the point which is, I think, most pertinent to the subject under discussion:

But whatever may have been the status of the original Indian population the law as laid down by Blackstone in his Commentaries Bk. 1, p. 66, has never been doubted: "Natural-born subjects (as distinguished from aliens) are such as are born within the dominions of the crown of England, and aliens, such as are born out of it." He adds (p. 369): "Natural allegiance is therefore a debt of gratitude, which cannot be forfeited, cancelled, or altered by any change of time, place, or circumstances, nor by anything but the united concurrence of the legis-

lature": Eyre V. Countess of Shaftsbury (1722) 2 P.W. Ms. 102, at page 124. Halsbury's Laws of England, vol. 1, pp. 302, 303, says: "Persons born within the allegiance of the crown include everyone who is born within the dominions of the crown whatever may be the nationality of either or both of his parents," with certain well defined exceptions not of importance here. See the Imperial Acts (1914) 4 and 5 Geo. V. c. 17: (1918) 8 and 9 Geo. V. c. 38; and our Dominion Act (1919) 9 and 10 Geo. V. c. 38, c. 1 (Dom.).

I think, Mr. Chairman, that that very effectively answers the observations made by the hon. member for Quebec South, that the Indians are the subjects of the dominion and liable to our laws and to any legislation we may pass.

Mr. POWER: I thought I would have to take issue with the minister. The case he refers to was that of a Mohawk Indian, but if he will recall his history he will remember that the Mohawks, on account of their service to the British at the time of the rebellion in 1775, because of the outrages they committed on the American colonies at that time, were rewarded by the granting of lands in Ontario. That is the situation described by the minister, that they had obtained a grant from the British crown for having fought alongside the British in the American rebellion. But the case of the Hurons is altogether different. They were allies of the French, and I find—it does not clear up the whole point, I will admit—in the Constitutional Documents of Canada, the Articles of Capitulation of Montreal in 1760. It is to be found in Documents of the Canadian Constitution, 1759-1915, W. P. M. Kennedy, where at page 12, in article 40, I find this:

The savages or Indian allies of His Most Christian Majesty, shall be maintained in the lands they inhabit if they choose to remain there; they shall not be molested on any pretence whatsoever for having carried arms and served His Most Christian Majesty; they shall have, as well as the French, liberty of religion, and shall keep their missionaries. The actual Vicars General and the Bishop, when the Episcopal See shall be filled, shall have leave to send to them new missionaries when they shall judge it necessary.

There is this note at the time of the capitulation:

Granted, except the last article, which has been already refused.

The last article referred to the exercise of the Catholic religion, which was granted, as is well known, in so far as it was in accordance with the laws of England. The article preceding says:

None of the Canadians, Acadians or French, who are now in Canada, and on the frontiers of the colony, on the side of Acadia, Detroit,