

It is true Mr. Gellatley's record ante-dates even the date upon which the Westbank reserve was set apart for the Indians, so that his position is strong in law; but it can nevertheless be shown that the Indians had the use and enjoyment of this water long before the date of Mr. Gellatley's record and that should make the Indians' right to the water as strong in equity as Mr. Gellatley's is in law. The strength of the Indians' present position in law (so far as I understand it) is that Gellatley has no right on the Indian reserve under the Indian Act without permission. Once that permission is given, it would seem to me that the Indians' present legal stronghold would be gone, and it would seem advisable to make the withholding of permission count as much as possible in forcing Gellatley to agree to arbitration or compromise of some kind by means of which the Indians will be assured of water, or at all events, not be subject to the whim of Mr. Gellatley.

The proper and most obvious solution of the difficulty would be to have Mr. Gellatley get his water from Okanagan Lake by pumping. His land is practically all of it delta land from the lake bottom and only a few feet (possibly not more than 5 or 6 feet) above the mean water level of the lake. That would leave the water of the creek and springs for the Indians who could not get water by pumping from the lake without a cost that would be prohibitive, for their land is all high above the lake. The Department might allow Gellatley something towards installation and maintenance of a
pumping

001938

RG 10, C-11-2, vol. 11301

INDIAN AFFAIRS
AFFAIRES INDIENNESNational Archives of Canada
Archives nationales du Canada