

measure mistaken, but no doubt the view was held in good faith. They proceeded with the negotiation of the treaty without consulting the Province. The latter, although it claimed the lands to be surrendered, or the greater part thereof, raised no objection and did not ask to be represented in such negotiation. By this treaty the burden of the Indian title was extinguished. In the case of *The St. Catharines Milling and Lumber Company v. The Queen* (14 App. Cas. 60), in which it was decided that the ceded territory within the Province of Ontario belonged to the Province, subject to the burden of the Indian title therein, Lord Watson, delivering the judgment of the Judicial Committee of the Privy Council, and dealing with the question of the liability of the Province to contribute to the Dominion in respect to the obligations incurred by the Dominion in obtaining the surrender of the Indian title, expressed the following opinion:—

"Seeing that the benefit accrues to her, Ontario must of course relieve the Crown and the Dominion of all obligations involving the payment of money, which were undertaken by Her Majesty, and which are said to have been in part fulfilled by the Dominion Government."

*Held*, following that expression of opinion, that the Province of Ontario is, in respect of the obligations incurred by the Crown, and the Dominion under the said treaty, which involve the payment of moneys, and which are referable to the extinguishment of the Indian title in the lands described therein, liable to contribute to the payments of money made by the Dominion thereunder in the proportion that the area of such lands within the Province bears to the whole area covered by the treaty.

3. While the question of the true boundaries of the Province of Ontario was in course of determination, the Dominion authorities, under an agreement for a conventional boundary, administered a part of the territory in dispute, and derived revenues therefrom, for which the Province in this action, set up a counterclaim.

*Held*, that the Province could not maintain its counterclaim for the moneys so collected by the Dominion without submitting to the enforcement of the equity existing in favour of the Dominion in respect of the obligations incurred in obtaining a surrender of the Indian title.

*Semble*: The fact that a part of the benefit arising from the surrender of the lands mentioned in the treaty accrued to the