

Hon. Mr. STEVENS: That, I think, is not quite a fair way of putting it, Mr. Kelly. As I have already told you—

WITNESS: At that time, I think you agreed with me.

Hon. Mr. STEVENS: No, that is one thing I never did agree to in the last twenty years, or the nineteen years since I heard Mr. O'Meara first moot this claim for an aboriginal title. I never admitted it, and I never could bring my mind to see any solid ground for the aboriginal title. I do say this, that the Indians deserve, and we ought to accord them, the most generous treatment that we possibly can, and I have always advocated that we should try to bring the Indians to the position of independent citizenship as quickly as we can. That is my position, and has been throughout my whole life in British Columbia; but I have never yet been able to see any sound ground for admitting the existence of an aboriginal title, and the evidence we have received here up to the moment, has only confirmed my views.

WITNESS: It seems to me that the view taken by the Hon. Mr. Stevens confirms our contention that it must necessarily be settled by a judicial decision. We can argue on both sides of the table until we are black in the face, and we cannot get very far.

The CHAIRMAN: Just at that point, Mr. Kelly, I would like to read to you from page 54, of 1883 Law Reports Appeal Cases, the St. Catherine's Milling Company, vs. the Queen. Beginning at the bottom of the page:—

It was suggested in the course of the argument for the Dominion that inasmuch as the proclamation recites that the territories thereby reserved for Indians had never been ceded to or purchased by the Crown, the entire property and the land remained with them.

That is practically your contention.

That inference is, however, at variance with the terms of the instrument, which show that the tenure of the Indians was a personal and usufructuary right dependent upon the goodwill of the Sovereign.

There is a good deal more that I could read, but I think that covers the point.

WITNESS: Well, I would say, Mr. Chairman, the goodwill of the Sovereign has been to recognize whatever the aboriginal title of the Indian was in the past. It has always been so, and that has been very forcibly brought out in the report of the Minister of Justice in 1875, wherein he points out that very thing that the obligation of that goodwill was denied to the Indians of British Columbia.

*By Hon. Mr. Murphy:*

Q. Mr. Kelly, just before the Chairman read that extract, you said that the only way in which that question that you are submitting to this Committee can be settled, is by a judicial decision. Is that correct?—A. Yes, I said that.

Q. Do I understand you to take the position that that judicial decision should be rendered, not by the courts of Canada, but by the Imperial Privy Council?—A. We have been advised of that, but it seems to me, Mr. Chairman, that that is a matter of procedure.

Q. Have you any objection to submitting this question to the courts in Canada?—A. Not at all. Providing they are proper courts, not at all.

Q. I mean, the ordinary courts, to which all citizens have recourse. Do you object to go there?—A. Not at all. We do not object to that at all. The proper procedure is what we want. We do not want any unheard of procedure.

Q. No, you want the ordinary procedure?—A. Yes.