

It therefore appears that lands reserved for Indians and subject to a title such as existed in the St. Catherines Milling case are vested in the Crown in the right of the province subject to the Indian title or interest, which though a mere burden is an interest other than that of the province in the same within the meaning of Section 109 and therefore apparently an interest independent of and capable of being vindicated in competition with the beneficial interest of the province. The title is in the Crown, burdened with the Indian interest and subject to this beneficial interest is in the province within which the lands lie."

Mr. MORIN: Is he referring to the Reserved Lands?

Mr. O'MEARA: No, the whole of the territory.

Hon. Mr. STEVENS: No, the language which you have read refers entirely to Reserves.

Mr. O'MEARA: I was just going on to explain that point. He uses the expression "It therefore appears that lands reserved for Indians, subject to a title such as existed in the St. Catherines Milling Case"—he uses the word "reserved" but the explanation is simple, honourable gentlemen; the Proclamation of 1673 uses the word "reserved."

Hon. Mr. STEVENS: He is dealing there with lands reserved and with nothing else.

Hon. Mr. MURPHY: The facts will speak for themselves.

Hon. Mr. McPHERSON: Personally, I want to go on record that the opinions quoted, whether expressed by Departmental officials, Ministers of Justice of the past or by anybody else, much as I may respect them, are not evidence of the facts in the case but merely of their opinions. This is an opinion of Dr. Newcombe?

Mr. O'MEARA: Yes, but it sums up a number of judgments of their lordships.

Hon. Mr. McPHERSON: It sums up his opinion of their judgments. The only reason I mention it now is because no doubt there will be a lot of these and I do not want to be bound by them as evidence of fact.

Mr. O'MEARA: Honourable gentlemen, I am prepared to prove absolutely, by bringing the evidence here, to point out what proves it.

Hon. Mr. STEVENS: The point I object to is this, that you quote that and you say that it applies to all the lands of British Columbia. The text itself clearly shows that it applies to lands reserved. There is no use in kidding ourselves about this; we have to face the facts. You cannot hypnotize yourself or your clients.

Mr. O'MEARA: May I read that sentence again, where he says that the title is in the Crown burdened with the Indian interest, and subject to this the beneficial interest is in the Province within which the lands lie.

Hon. Mr. STEVENS: Certainly.

Mr. O'MEARA: I submit it would be impossible to apply that language to an Indian Reserve in the sense to which Mr. Stevens refers.

Hon. Mr. McPHERSON: Did not he apply that to a case which was of that kind?

Mr. O'MEARA: The St. Catherines Milling Case has reference to the territory of a tribe and not to a reserve. We have the text of it here. Undoubtedly that case deals with the general question of Indian title. I have the St. Catherines Milling Case, to which Mr. Newcombe specially referred, which is to be found in 14 Appeal Cases 46; and beyond any doubt it shows that.

Hon. Mr. McLENNAN: Read the text of the report.

Mr. O'MEARA: I will read the headlines.

The CHAIRMAN: I did not catch the name of the case.