

James Bay Power Project

Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.

In other words, that was the transfer of jurisdiction to the government of Canada. In schedule (A) of an address to Her Majesty there is an explanation of what is involved here. Schedule (A) is an address to Her Majesty the Queen from the Senate and House of Commons of Canada. It is addressed to the Queen's Most Excellent Majesty and reads:

That in the event of your Majesty's Government agreeing to transfer to Canada the jurisdiction and control over the said region, the Government and Parliament of Canada will be ready to provide that the legal rights of any corporation, company, or individual within the same shall be respected, and placed under the protection of courts of competent jurisdiction.

This is the part I wish to emphasize:

And furthermore, that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

That raises the question of what were the equitable principles of the British Crown. These are part of our constitutional documents. In that connection one must go back to the royal proclamation of 1763. The royal proclamation in part reads:

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments—

One of these was the government of Quebec.

—or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid.

And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained.

And, We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.

And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians; In order, therefore, to prevent such irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians, of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement; but that, if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie—

[Mr. Barnett.]

As the minister of Indian affairs has at least indirectly admitted today, under the British North America Act he has upon him the responsibility of acting as an agent of Her Majesty in connection with the treatment that is outlined in that proclamation which has been passed on. I submit it is inherent in the acts of 1898 and 1912 which enlarged the original boundaries of the province of Quebec. This is clearly a prior condition to any entry upon these lands for such purposes as hydroelectric development. The Minister of Energy, Mines and Resources (Mr. Macdonald) suggested, and I freely admit it, that apart from this and some of the other federal areas of jurisdiction referred to here it is a matter for the province of Quebec.

I submit this government is not making clear that it is prepared to abide by the constitution of this country and see that the Indians enjoy the constitutional protections set out in some of the documents to which I have referred. That clarification we have not had so far today from a government spokesman. I submit that before any move is made this question must be clarified. Anything else will constitute trespass.

Unfortunately, because of my observations of federal government action in parts of Canada which still remain directly under their jurisdiction as far as land resources are concerned, I am not very hopeful that the Indians, when they have the forthcoming meetings with the minister to which he referred, will receive very much backing from him in negotiations with the province of Quebec. I am inclined to believe, in light of recent events, that some time since 1912 at least the rest of us in Canada have turned our backs upon the constitution and the statutes enacted by parliament.

What in fact is happening is that the government of Canada, and in many cases the governments of the provinces, are going blithely ahead in their own sweet way as if such documents did not exist. From my point of view, that is the nub of the question that must be debated and settled in this House of Commons prior to any participation by the federal government with the government of Quebec in the question of hydroelectric development in the James Bay region. That is why I am very happy that the hon. member for Parry Sound-Muskoka brought this matter forward, especially in light of the continuing lack of any clearcut statement from the government, because it gives us an opportunity to seek, if we can, to persuade the government to fulfil its constitutional responsibilities.

• (1610)

Hon. Jack Davis (Minister of the Environment): Mr. Speaker, first I would like to thank the hon. member for Parry Sound-Muskoka (Mr. Aiken) for moving this motion. Obviously, judging from the response from all corners of the House, there is not only a lively interest in the subject but also a good deal of thinking has been done about it in recent weeks and months. In his motion, he refers to three main areas of concern: one, interference with the relocation of Indians, and this matter has been dealt with by the Minister of Indian Affairs and Northern Development (Mr. Chrétien); two, altering the course of navigable waters protected under the Navigable Waters Protection Act, and this has been dealt with by several speakers this afternoon; and finally, three, the effect on