

Q. But what was the original date of it?—A. It is a consolidation. The first Water Act was in 1897.

Q. That was long subsequent to this Kamloops incident?—A. Yes.

Q. That was before Confederation?—A. Yes, prior to Confederation.

Mr. McPHERSON: It was in 1869.

Hon. Mr. STEVENS: It strikes me that in that case the Indians have a very just complaint.

Hon. Mr. STEWART: Mr. Ditchburn, in your opinion the Indians are correct in the statement that they have priority rights in these waters for irrigation purposes? I know the courts say they have not, but I am asking you if their contention that they have priority rights is correct?—A. The contention of the Indians is that they have always used the water with the land, and they could not use the land without having the water, in the dry belt.

*By Hon. Mr. Stevens:*

Q. Take the Okanagan district, in the bench land. The land is worthless without the water. They had the water on their land, and they used the two together, and the fact that they had not filed some formal application, I think, should not extinguish any right which they had by use.

*By the Chairman:*

Q. Was there any question about their not having the use of the water, in the trial?—A. I have not the evidence of the trial before me, and I do not think that was brought up. The Indians were using it, there is no doubt about that.

*By Mr. McPherson:*

Q. I wish that point made clear. I understand that the case was decided against the Indians, not because they had not an inherent right, but because they had not taken the statutory method of recording their claim?—A. There was no way of recording it.

Q. No matter about that, that was the way the decision went?—A. Yes.

Q. Now, has the department seen to it that claims are filed on all the reserves where there are water rights?—A. Undoubtedly, since then.

Q. So it cannot happen again?—A. No, you will remember that this was in the old colonial days, when there was no water right.

Q. There is no chance of the Indians losing another lawsuit through the same oversight?—A. No.

*By Mr. Hay:*

Q. How much territory is affected by this one claim that has been lost, that one water right?

*By Hon. Mr. Stevens:*

Q. To what degree in that Kamloops reserve—that is what Mr. Hay means—to what degree are they affected? Have they lost all their water?—A. No, they haven't lost it all. By a subsequent record we got the right between the British Columbia Cattle Company and the Department of Indian Affairs so that we go fifty-fifty on the water in Fall Lake. That was arrived at recently.

Q. Does that give them ample water for the cultivation of that reserve?—A. No, neither party has got enough. Neither the British Columbia Cattle Company nor the Indians have enough.