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REPORT ON THE INDIAN TITLE IN CANADA
With Special Reference to British Columbia
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Index:

The Title Recognized by Europeans in General	Page 4
The Title Recognized by the English in Particular	15
The Title Recognized by the Government of British Columbia	37
The True Nature of the Indian Title	84

Ottawa, Canada.

August 20th., 1909.

To

The Honorable Frank Oliver

Superintendent General of Indian Affairs

OTTAWA, Canada.

Sir

In accordance with instructions received from you in April last to investigate and report upon the nature and present status of the Indian Title to certain lands known as 'Indian Lands' in Canada, with special reference to Indian Lands in British Columbia, I now have the honor to submit such report for your consideration.

I shall state my conclusions first, so that the purport and application of the evidence and argument herein set forth may the more readily be seen.

I submit:

1. That there was no intended, or authorized or actual dispossession at any time by any European Government of the Indians of North America from the lands actually occupied by them except by purchase or treaty.
2. That the British Government at no time ever authorized any Colonial Government to dispossess any nation or tribe of Indians in Canada from lands actually occupied by such nation or tribe.
3. That the lands actually possessed and occupied by the Indians of North America at the time of European discovery and colonization comprised but a very small area in comparison with the uninhabited tracts which were literally no man's land.
4. That the Indians of North America were not one indiscriminate mass of natives, but were divided into separate nations, differing as much from one another in language, customs, and general characteristics as did the European discoverers and colonists themselves - the Spanish, French, Dutch and English.
5. That the European Governments, and the Colonial Governments, officially recognized the fact that the Indians were divided into separate nations, and that they at no time considered the acts, admissions, or pledges of one nation of Indians to be binding upon or to affect the status of any other nation of Indians.

6. That the European colonists at first, and their respective Governments at all times, recognized the validity of the Indian Title, and recognized the national or tribal character of such title.
7. That the various Indian nations have never acknowledged any derogation from their original national or tribal title to lands occupied by them, except that in Canada through a period of three centuries they have by degrees acquiesced in a change from their original status as allies of the King to subjects under the special protection of the King, specially exempt from many of the duties and burdens of ordinary subjects, holding a peculiar personal relation with the King, based originally upon military service, and in its nature feudal.
8. That there is no allodial title in any Province, nor in the Dominion, to lands reserved for the Indians.
9. That just as the Dominion Government was charged by the Imperial Government under the British North America Act with the care of the Indians and the trusteeship of lands reserved for them, so the Provincial and Colonial Governments before ~~the~~ Confederation stood in the same position as guardians and trustees for the Indians under direction and ultimate control of the Imperial Government.
10. That the Indian Title was impliedly and specifically recognized in British Columbia by the Imperial Government, the Hudson's Bay Company, and the Colonial Governments, from the very first advent of whites to that Province.
11. That in so far as the Indians of British Columbia and their lands are concerned the 13th. Article of the Terms of Union, 1871, between the Dominion Government and the British Columbia Government, assented to by the Imperial Government, merely involved and effected a change of trustees by the Imperial Government; "the charge of the Indians and the trusteeship and management of the lands reserved for their use and benefit" was transferred from Provincial authorities to Dominion authorities, leaving the reversionary interest as it was.
12. That the reversionary interest in the Indian Lands was and still is in the Imperial Government.
13. That no declaration or act of the Dominion Government, or of any Provincial Government, nor of both acting conjointly, can without the express consent of the Indians concerned and of the Imperial Government, derogate from the Indian Title or appropriate the reversionary interest in Indian Lands. Such for instance as the 5th. Article of the Agreement between the Dominion and British Columbia Governments of 1876, whereby it is declared that any land taken from an Indian Reserve by reason of decrease in the number of Indians thereon shall revert to the Province.

ixx

14. That the Indian Title, as recognized and confirmed by the Imperial Government, cannot be derogated from by any subordinate Government, Colonial, Provincial or Dominion, and that the Imperial Government itself is bound by its own recognition and confirmation of the Indian Title.

15. That the present Indian Title is for all practical purposes the original Indian Title, carrying all the ancient essential incidents of ownership, altho the King's ordinary subjects are prohibited from purchasing Indian Lands without the consent of the King's representative, following the custom established from the time of the first English settlement in America.

16. That the Indians of any nation or tribe in Canada can, with the consent of the Dominion Government acting in its capacity as trustee under the Imperial Government, convey and give valid title in fee simple to purchasers of any part or the whole of their tribal lands, without the concurrence or consent of the Government of the Province in which such lands are situate.

17. That the Indian Lands comprise not only such lands as have been specifically recognized and surveyed and set apart as Indian Reserves, but also such lands as are and have been occupied by an Indian nation or tribe from time immemorial.

I submit the evidence and argument to establish the conclusions above set forth under the following headings:

(a) The Indian Title recognized generally by the Spanish, French, Dutch and English Governments and colonists.

(b) The Title recognized in particular by the English King and colonists.

(c) The Title recognized by the Government of British Columbia.

(d) The true nature of the Indian Title.

Four European Nations, the Spanish, French, Dutch and English began almost simultaneously the planting of colonies in North America early in the 17th century. There was a marked contrast in the treatment accorded by the governments of these nations and by these colonists to the natives of North America as compared with ~~Per~~ Mexico, Central America and South America. Mexico and Peru were found thickly populated by civilized nations, ruled over by stable and highly organized governments. These governments were overthrown the nations as such ceased to exist, the people were dispossessed of their lands, their cities were plundered. No pretence was made of recognition of any rights of possession either of real or personal property in the government or the people of Mexico or Peru.

Now the first thing to be always kept in mind in arriving at a true estimate of the Indian title to the lands occupied by them in North America is the very striking fact that the Indians were never dispossessed of their lands by any European Government. The main reasons for this contrast of treatment probably were:

(a) The Indians were Warriors and could resist European aggression very much more effectively than could the Peruvians or Mexicans; and could retaliate with as much cruelty for wrongs done them as could any of the Christian nations.

(b) The number of Indians in comparison with the vast area of North America was so small that sufficient territory to meet the needs of the European colonists consistent with all the rights claimed by the Indians in their respective territories was quite possible.

(c) The Indians had no gold, silver, precious stones or other form of compact wealth which could conveniently be stolen as had the Peruvians and Mexicans, and so there was no immediate object in attacking, subjecting or exterminating them. The Indian lacked the European instinct for owning things; hence he had no possessions. His whole passion was for the chase; his ~~only~~ use for land was to hunt over it. For this reason the only commodities to be had of the Indians were furs. Now the fur trade soon after the discovery of America came to be held in high estimation by the Europeans, especially by the French and English. Both these.....

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nations therefore found it in their direct interest to maintain the Indians in the various hunting lands occupied by them, and also to cultivate, and, in their rivalry, to complete for the friendship of the Indians.

(d) There was a genuine religious fervor exhibited by the French for the conversion of the Indians to Christianity and to a large extent by the British also, and even by the Dutch. This religious manifestation extended from the Spanish Missions of California to the French Missions of Quebec, and was fostered hand in hand with commerce by the European Governments according to their respective ideas, and, as time went on, in favor of the Indians as against the developing local interests of the colonists. The Commission given by Francis I to Roberval, after setting forth that the king had resolved to send him again to "the lands of Canada and Hochelaga, which form the extremity of Asia toward the West," declares the objects of the enterprise to be discovery, settlement and the conversion of the Indians. (*Parkman Pioneers of New France*). The zeal of the French Jesuits and Recollets in Canada is well known. But it was not Quebec only which was, to use Parkman's words 'half trading post, half mission.'

"Almost all the early royal charters and patents issued for British North America professed, among other things, the object of converting the Indians. King James I., in the Nova Scotia patent, (1621) declared, in reference to those countries, "as are either inhabited or occupied by unbelievers whom to convert to the Christian faith is a duty of great importance to the glory of God." In the preamble to the Pennsylvania charter during a subsequent reign, it is also stated to be a principle object "to reduce the savage natives by just and gentle manners to the love of civil society and Christian religion." And the first royal charter granted to the colony of Massachusetts Bay (1628) declared, "And for the directing, ruling and disposing of all other matters and things whereby our said people, inhabitants there, may be so religiously, peaceably, and civilly governed, as their good life and orderly conversation may win and invite natives of the country to the knowledge and obedience of the only true God and Saviour of Mankind, and the Christian faith: which, in our royal intention, and the adventurer's free profession, is the principle end of this plantation." The corporation which this charter established, bore, for its common seal, the figure of an Indian, erect, naked, a bow in one hand, an arrow in the other, with these words,—"Come over and help us."****' (*Douglas's Summary of the Settlements in North America, Vol.1, part 2, sec.VIII*) What the colonists did was to come over and help themselves.

Nevertheless a book published in New England in 1647, entitled "The Day Breaking if not the Rising of the Sun of the Gospel with the Indians in New England" (*Canadian Archives, P.348-1*) reveals some kindly religious feeling among the better class of the English colonists. The Dutch also, during ^{and after} the brief period of their control of New York, sent Missionaries among the Five Nations to spread Dutch Christianity, notable among whom were Megalopolensis, Kirkland and Zeisberger. This campaign for the conversion of the Indians to Christianity was no where in North America carried on by any extreme methods of persecution or intimidation, but was apparently based on genuine good will towards the Indians, and certainly had its effect in modifying the general rapacity of European Colonists in their dealings with the Indians. The same anxiety concerning the religious welfare of the Indians was shown by the British Government when the whites first went to British Columbia. I quote only one among many recorded official statements ~~XXXXXXXXXXXX~~. ~~XXXXXX~~. on the subject:

Extract from a despatch from the Right Hon. Sir E.B. Lytton to Governor Douglas, dated 31st July, 1859;

*****"Let me not omit to observe that it should be an invariable condition in all bargains and treaties with the Natives for the cession of lands possessed by them, that sustenance should be supplied to them in some other shape, and above all, that it is the earnest desire of Her Majesty's Government that your early attention should be given to the best means of diffusing the blessings of the Christian religion and of civilization among the natives.

(e) When the Mexican Government was overthrown by the Spaniards, the title to all lands in Mexico, which had been under control of that Government, vested in Spain by right of conquest; and likewise when the Government of Peru was overthrown. But in North America there was no one or two Governments or nations, the overthrow of which could by international law be held to vest in the conquerors the title to any vast territory. There were small independent nations and confederacies, whose numerical strength in no recorded case exceeded ten thousand warriors, and whose territories in no case extended over a few hundred square miles. There were vast areas of North America unclaimed by any Nation or man. A well known Canadian authority on Indian Affairs Mr. William Clint, in a paper read by him before the Historical

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Society of Quebec in 1878 (Canadian Archives, P.203G) said: 'At the time of the first settlement of Europeans on this Continent it is computed that the Native inhabitants of North America did not exceed two hundred thousand souls.' Catlin, the famous American explorer among the Indians, in his great work on the Indians of North America, whom he set forth to visit in 1830, estimated, as a result of many years spent among them, that they numbered about four hundred thousand in the United States in the early part of the 19th century. This is the highest estimate ever made of Indians living in the United States. As this report is being written, (June, 1909) it has just been said at the Tercentenary celebration at Lake Champlain in a public address before President Taft by Mr. Seth Law that there are as many Indians alive in North America to-day as there were when the Europeans first came as colonists in the 17th century. Whether this be true or not no estimate has ever been made by any qualified person placing the Indian population of North America at as high a figure as half a million when the Europeans first came to the Country. We can form some idea therefore of the great stretch ~~xx~~ of unoccupied territory by picturing the population, say of a city like Montreal scattered in a hundred tribes as the sole inhabitants of North America. To have acquired title by conquest to the lands in North America which were occupied by the Indians in the right of separate nations would have necessitated a separate conquest of each tract of land so occupied. As a matter of fact there is not a single instance of forcible conquest by the French or English of any Indian Nation; but equally as a matter of fact, there was a treaty with each Indian nation for the land acquired from it. There are a few instances of French and English acting as peace-makers between warring Indian tribes; there are instances of the French in Florida and in Quebec espousing the quarrels of one tribe as against another; and there are instances of the English Colonists contracting alliances with one tribe to war upon another, and of them occupying the territory of such vanquished tribe just as one Indian tribe would attack and possess itself of the territory of another; but there is not a single instance of the forcible or formal dispossession ~~by of any~~ European Government of any nation or tribe of Indians from the land occupied by it, and as far as ~~xxxx~~ possible they checked their colonists in forcibly dispossessing the Indians. And it is to be remembered that the validity of this Indian title does not depend upon the words or acts of the Colonists but upon the official words and acts of the European Governments to which such Colonists owed allegiance. Even the case of the Hudson Bay Company is only an apparent exception, which will be explained when dealing specifically with the nature of the Indian title. The Indian nations may have been often cajoled or outwitted in connection with the cession of their lands to Europeans, but always there was a recognition of the validity of the Indian title, and consideration satisfactory to the Indians at the time was always given for such lands. After the Revolutionary War the United States Government took over and continued the same policy as had been initiated by the British Government in the 17th century, that is the purchase of sovereignty by specific and separate treaty with each separate Indian Nation.

(f) It so hapened that there was no necessity for dispossession of the Indians by the French, Dutch or English in those parts of America where they first planted their colonies. When Champlain arrived at the present site of Quebec, in 1608, he found the Stadacona and Hochelaga which Jacques Cartier first visited had become extinct, and neither the Hurons nor the Algonquins had any objection to his founding French settlements at these places. The Hurons and Algonquins being at war with the Iroquois, Champlain offered to enter into a treaty of allegiance with them. His offer was accepted, and with momentous results. But the only point which I wish to make in this connection is that it resulted in a peaceful entry of the French into Canada, that the French became allies of the Hurons and Algonquins and the vacant lands settled by them were freely.

conceded to be French by right of occupation. The few Montagnais remaining in the vicinity of Stadacona and Hochelaga voluntarily sought and came under the protection of the French. Similarly the brief-lived French Huguenot Colony founded in Florida in 1564 by Rene de Laudonniere, subsequently destroyed by the Spanish, made a peaceful landing into unoccupied territory. There were at the time three Indian confederacies in Florida, and Laudonniere entered into a treaty of alliance with Satouriona, the Chief of one confederacy in a war with another confederacy known as the Thumagoas. (Parkman - **Pioneers of New France**) And when the Dutch arrived and founded New Amsterdam - now New York - in 1603 they also ~~founded~~ entered into peaceful possession of vacant territory. They came in contact with no Indians until they extended their possessions up the Hudson River and came in contact with the Five Nations, with whom they entered into a treaty of alliance known as the "Covenant Chain" to maintain friendly relations. There was no dispossession on the part of the Dutch - they held their possessions on the sea-board, and the Five Nations kept their inland hunting countries undisturbed until 1664, when the Dutch were superseded by the English. The English met the Sachems of the Five Nations and assumed the "Covenant Chain" of the Dutch, which was, and has remained, so far as the Five Nations (now the Six Nations) are concerned, unbroken ever since.

The English also entered into peaceful occupation of the New England Colonies. There was no need for any dispossession of the Indians, because, as piously explained by Mr. Daniel Gookin, the necessary number of Indians had already been removed by an all-wise Providence through the agency of a plague. Mr. Gookin is the earliest English writer who gives an account of the Indians from personal observation. His memoirs were written in 1674, and are entitled: **Historical Collections of the Indians in New England: Of their several Nations, Numbers, Customs, Manners Religion and Government before the English Planted There. By Daniel Gookin, Gentleman: One of the Magistrates of Massachusetts Colony in New England who hath been for sundry Years past and is at present betruſted and employed for the Civil Government and Conduct of the Indians in Massachusetts Colony, by Order of the General Court There. Dedicated to the High and Mighty Prince Charles, by the Grace of God King of Great Britain, France and Ireland, Defender of the Faith, at Cambridge in New England, December 7th, 1674.**

Writing of and describing the Indian Nations who had formerly occupied the New England States Mr. Gookin says: "The Pawkennaws were a great people heretofore. ***** This nation, a very great number of them, were swept away by an epidemical and unwonted sickness, An. 1612 and 1613, about seven or eight years before the English first arrived in those parts to settle the Colony of New Plymouth. Thereby Divine Providence made way for the quiet and peaceable settlement of the English in those nations. What this disease was that so generally and mortally swept away not only these but other Indians their neighbors I cannot well learn. Doubtless it was some pestilential disease. I have discoursed with some old Indians, that were then youths, who say that the bodies all over were exceeding yellow both before they died and afterwards. ***** The Massachusetts, being the next great people northward, inhabited principally about that place in Massachusetts Bay where the body of the English now dwell. Their Chief Sachem held dominion over many other petty governors. **** In An. 1612 and 1613 these people were also sorely smitten by the hand of God with the same disease mentioned in the last section; which destroyed the most of them and made room for the English people of Massachusetts Colony. There are not of this people left at this day above three hundred men. ***** Pawtucket is the fifth and last great sachemship of Indians. *** They also were a considerable people heretofore; about

three thousand men. But these also were almost totally destroyed as before mentioned, so that now there are not above two hundred and fifty men.***** This country is now inhabited by the English under the Government of Massachusetts. Also in the Colony of Virginia not only was peaceable entry made by the English, but at first they were welcomed by the Indians and unoccupied sea-coast lands were assigned to them. Details of this may be found in "Heckewelder's Account of the Indian Nations", ch.V: and "The Generall Historie of Virginia" by Captaine John Smith, 1632 - the adventurer whose life was rescued by Pocahontas. The encroachments and treachery of the Colonists soon brought on hostilities with the Indians, but these were in the nature of private colonial quarrels, and were never countenanced by the English Government.

And finally it is to be noted that the Spanish who elsewhere proved themselves the most ruthless and rapacious of conquerors, adopted a different rule in their dealings with the North American Indians. The Spanish attacked the French colony in Florida, and the French attacked the Spanish, in every case exhibiting as great barbarity and cruelty toward each other as ever did the Indians at their worst, but neither dispossessed the Indians of their lands in Florida or about the Mississippi. They were careful to plant their colonies in vacant unclaimed tracts along the sea coast, and to enter into treaties of alliance with the nearest Indian nations. In course of time, ~~the Indians~~ and for their own obvious benefit, and protection, the Indians of Florida acknowledged the Spanish King as their Great Father and Protector, just as, in the course of time the Indians of the British Provinces recognized the protective sovereignty of the British Crown. But during the whole period of the Spanish regime there ~~was~~ was a distinct recognition of the Indian title to the fullest extent. In a celebrated case touching the title of certain lands in Florida *Mitchell et al. v United States (9 Peters, Supreme Court Reports)* the Supreme Court of the United States in giving judgment said: 'But Spain did not consider the Indian right to be that of mere occupancy and perpetual possession, but a right of property in the lands they held under the guarantee of treaties, which was so highly respected that in the establishment of a military post by royal order the site thereof was either purchased from the Indians or occupied with their permission, as that of St. Marks. The evidence of Governor Folch given in 1827 on the nature of the Indian Title (under the Spanish) is very strong and full, and the high respect paid to it by all the local authorities so late as 1816 is strikingly illustrated in a Report of the Surveyor General of West Florida.'

Probably the main reason of those above detailed causing the general and early recognition by Europeans of the Indian Title was the ability of the Indian to fight, altho rival interests of religion and trade were also determining factors. Frontenac is reported as saying that the saving of the Indians' souls was worth more than the whole of New France, and the French persistently gave this Idea to the Indians, and concealed their design of establishing an Empire over their lands. The British Lords of Trade on the other hand, in their address to His Majesty on the 8th June, 1763, concerning the "most obvious Advantages arising from the Cessions," of New France state them

all the Indians in North America. Another obvious Advantage ~~attending~~ of the Cession will be the supplying of all the Indian Tribes upon the Continent of North America with European Commodities immediately through the Hands of English Traders." (Canadian Archives: A & W.I., vol 268)

But in any case, and whether it was the souls or the skins of the Indians which most concerned the Europeans, the historic fact is that there was no dispossession of Indian Nations vi et armis from the lands occupied by them such as occurred say in England under the successive Roman, Saxon, Danish and Norman conquerors, or in Mexico and Peru under the Spanish. In a Report such as this, which is not intended to be exhaustive, it would be out of place to quote too ~~freely~~ largely from original documents, or recognized authorities bearing on this point, but I submit, as sufficient for the present, extracts from two judgments of the Supreme Court of the United States. These judgments probably contain the earliest and most correct ^{judicial} expositions of the whole status of the Indian Title under various European Governments and Colonial Governments, and under the Government of the United States. And they confirm nearly all the conclusions stated at the beginning of this Report.

from which I quote is that
The first ~~xxxx~~ case, of Worcester v
The State of Georgia (6 Peters U.S. Supreme Court Reports)

This case arose out of the assumption by the State of Georgia of the ultimate ownership and control of the lands occupied by the Cherokees, situate in that State, much as the Province of British Columbia now claims ultimate ownership of the Indian Lands in that Province. The judgment of the Court, as delivered by Chief Justice Marshall, laid down the following propositions:

" The principle 'that discovery of parts of the continent of North America gave title to the government ~~whomsoever~~ by whose subjects or by whose authority it was made against all other European governments, which title might be consummated by possession,' acknowledged by all Europeans because it was in the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and of making settlements on it. It was

an exclusive principle which shut out the right of competition among those who had agreed to it; not one which could annul the previous right of those who had not agreed to it. (Apply this principle to Conclusion 13 of this Report) It regulated the rights given by discovery among the European discoverers, but could not effect the rights of those already in possession, either as aboriginal occupants or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to purchase, and did not found that right on a denial of the possessor to sell.

***** The relation between the Europeans and the Natives was determined in each case by the particular government which asserted and could maintain this primitive privilege in the particular place. The United States succeeded to all the claims of Great Britain, both territorial and political, but no attempt, so far as it is known, has been made to enlarge them. So far as they existed merely in theory, or were in their nature only exclusive of the claims of other European nations, they still retain their original character and remain dormant. (Apply this to the case of the Skeena Indians, who until recently had never been disturbed or threatened in the quiet possession of the lands occupied by them in British Columbia.) So far as they have been practically exerted they exist in fact; are understood by both parties, are asserted by the one and admitted by the other.

***** Soon after Great Britain determined on planting colonies in America the King granted charters to companies of his subjects who associated for the purpose of carrying the views of the Crown into effect, and of enriching themselves. The first of these charters made before possession was taken of any part of the country. They purport generally to convey the soil from the Atlantic to the South Sea. This soil was occupied by numerous and warlike nations, equally able and willing to defend their possessions. The extravagant and absurd idea that the feeble settlements made on the sea-coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea did not enter the mind or the common law of any European sovereigns respecting America. They conveyed what they might rightfully convey and no more. This was the exclusive right of purchasing such lands as the Natives were willing to sell.

***** Certain it is that our history furnishes no example from the first settlement of our country of any attempt on the part of the Crown to interfere with the internal affairs of the Indians, further than to keep out the agents of foreign powers who as traders, and otherwise, might seduce them into foreign alliances. The King purchased their lands when they were willing to sell, at a price they were willing to take; but never coerced a surrender of them. He also purchased their alliances and dependence by subsidies; but never intruded into the interior of their affairs, or interfered with their self-government so far as respected themselves only.

***** The third article of the Treaty of Hopwell acknowledges the Cherokees to be under the protection of the United States of America, and of none other. This stipulation is found in Indian treaties generally. It was introduced into their treaties with Great Britain ~~generally~~ and may probably be found in those with other European powers. Its origin may be traced to the nature of their connection with those powers, and its true meaning may be discerned in their relative situation. The general law of European sovereigns respecting their claims in America limited the intercourse of Indians, in a great degree, to the particular potentate whose ultimate right of domain was acknowledged by the others. This was the general state of things in time of peace. It was sometimes changed in war. The consequence was that their

supplies were derived chiefly from that nation, and their trade confined to it. Goods, indispensable to their comfort, in the shape of presents, were received from the same hand. What was of still more importance the strong hand of government was interposed to restrain the disorderly and licentious from intrusions into their country, from encroachments on their lands, and from those acts of violence which were often attended by reciprocal murder. The Indians perceived in this protection only what was beneficial to themselves - an engagement to punish aggressions on them. It involved practically no claims to their lands, no dominion over their persons. It merely bound the nation to the British Crown as a dependent ally, claiming the protection of a powerful friend and neighbor and receiving the advantages of that connection without involving a surrender of their national character. This is the true meaning of this stipulation, and is undoubtedly the sense in which it was made. Neither the British Government nor the Cherokees ever understood it otherwise.

***** The same stipulation entered into with the United States is undoubtedly to be construed in the same manner. They receive the Cherokee Nation into their favor and protection. The Cherokees acknowledge themselves to be under the protection of the United States and of no other power. Protection does not imply the destruction of the protected. The manner in which this stipulation was understood by the American Government is explained by the language and acts of the first President.

***** So with respect to the words "hunting grounds." Hunting was at that time the principal occupation of the Indians, and their land was more used for that purpose than for many other. It could not however be supposed that there existed any intention of restricting the full use of the lands they reserved. To the United States it could be a matter of no concern whether their whole territory was devoted to hunting grounds, or whether an occasional village and an occasional corn-field interrupted and gave some variety to the scene.

***** The Indian Nations had always been considered distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil from time immemorial; with the single exception of that imposed by irresistible power which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed; and this was a restriction which those European potentates imposed on themselves as well as on the Indians. The very term "nation" as generally applied to them means "a people distinct from others". The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian Nations, and, consequently, admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, and having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.

**** Georgia herself has furnished conclusive evidence that her former opinions on this subject concurred with those entertained by her sister states, and by the Government of the United States. Various acts of her legislature have been cited in the argument, including the contract of cession made in 1802, all tending to prove her acquiescence in the universal conviction that the Indian Nations possessed full right to the lands they occupied until that right should be extinguished by the United States with their consent. (It will be shown later

that British Columbia also by early official acts during colonial days acquiesced like the State of Georgia 'in the universal conviction that the Indian Nations possessed full right to the lands they occupied until that right should be extinguished' by or with the consent of the Imperial Government. See page of this Report.)

***** In opposition to the original right, possessed by the undisputed occupants of every country, to this recognition of this right, which is evidenced by our history in every change through which we have passed, are placed the charters granted by the monarch of a distinct and distant region, parcelling out a territory in possession of others, whom he could not remove and did not attempt to remove. The actual state of things at the time, and all history since, explain these charters; and the king of Great Britain at the treaty of peace could cede only what belonged to his crown. (Similarly the King of France in 1760 could only cede in Canada to the King of Great Britain what had been actually under his control.) These newly-asserted titles can derive no aid from the articles so often repeated in Indian treaties extending to them first the protection of Great Britain and afterwards that of the United States. For these articles are associated with others recognizing their title to self-government. The very fact of repeated treaties with them recognizes it; and the settled doctrine of nations is that a weaker power does not surrender its independence by associating with a stronger, and taking its protection. A weak state in order to provide for its safety may place itself under the protection of one more powerful without stripping itself of the right of government and ceasing to be a state.

***** The Cherokee nation then is a distinct community occupying its own territory, which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves, or in conformity with treaties and with acts of congress. The whole intercourse between the United States and this Nation is, by our constitution and laws, vested in the Government of the United States. (By substituting 'British Columbia' for 'Georgia'; 'Skeenas' for 'Cherokees', and 'Dominion' and 'Imperial' Government for 'Government of the United States' this case is very applicable to the situation in British Columbia to-day.)

A similar American case puts still

greater emphasis upon the inherent strength of the Indian Title. It is that of Mitchell et al. v United States (9 Peters U.S. Supreme Court Reports), to which I have already referred. This case arose over a claim made to lands in East Florida, the title to which was derived from grants by the Creek and Seminole Indians, ratified by local Spanish authorities before the cession of Florida by Spain to the United States. It was objected to the title claimed in this case that the grantees did not acquire under the Indian grants a legal title to the lands. This title was however confirmed by the Supreme Court, which in

giving judgment said:

By the law of nations the inhabitants, citizens or subjects of a ~~conquered~~ conquered or ceded country, territory or province retain all the rights of property which have not been taken from them by the orders of the conqueror. ***** A treaty of cession is a deed of grant by one sovereign to another, which transfers nothing to which he had no right of property; and only such right as he owned and could convey to the grantee. ***** One uniform rule seems to have prevailed in the British provinces in America by which Indian lands were held and sold from their first settlement, as appears by their laws - that friendly Indians were protected in possession of the lands they occupied, and were considered as owning them by a perpetual right of possession in the tribe or nation inhabiting them as their common property from generation to generation, not as the right of the individuals located on particular spots. Subject to this right of possession the ultimate fee was in the Crown and its grantees; which could be granted by the Crown or colonial legislatures while the lands remained in possession of the Indians; though possession could not be taken without their consent. ***** By thus holding treaties with these Indians, accepting of cessions from them with reservations, and establishing boundaries with them, the king waived all rights accruing by conquest or cession, and thus most solemnly acknowledged that the Indians had rights of property which they could cede or reserve, and that the boundaries of his territorial and proprietary rights should be such, and such only, as were stipulated by these treaties. This brings into practical operation another principle of law settled and declared in the ~~case of Campbell v Hall~~ English case of Campbell v Hall (Cowper's Reports, p. 213) that the Proclamation of 1763, which was binding on the king himself, and that a right of exemption once granted by proclamation could not be annulled by a subsequent act. ***** Indian possession or occupation was considered with reference to their habits and modes of life; their hunting grounds were as much in their possession as the cleared fields of the whites; and their rights to its exclusive enjoyment in their own way and for their own purposes were as much respected, until they abandoned them, made a cession to the government, or an authorized sale to individuals. In such cases their rights became extinct, the lands could be granted disencumbered of the right of occupancy or enjoyed in full dominion by the purchases from the Indians. Such was the tenure of Indian lands of Massachusetts, Connecticut, Rhode Island, New Hampshire, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina and Georgia. ***** When the United States acquired and took possession of the Floridas the treaties which had been made with the Indian tribes before the acquisition of the territory of Spain and Great Britain remained in force over all the ceded territory, as the law which regulated the relations with all Indians who were parties to them, and were binding on the United States by the obligation they had assumed by the law of the land. ***** The treaties with Spain and England before the acquisition of Florida by the United States, which guaranteed to the Seminole Indians their lands, according to the right of property with which they possessed them, were adopted by the United States, who thus became the protectors of all the rights they, the Indians, had previously enjoyed under Great Britain or Spain, as individuals or nations, by any treaty to which the United States thus became parties in 1803. ***** The Indian right to

the lands as property was not merely of possession; that of alienation was concomitant; both were equally secured, protected and guaranteed by Great Britain and Spain, subject only to ratification and confirmation by the license, charter or deed from the Government representing the King. *****
The laws made it necessary, when the Indians sold their lands, to have the deeds presented to the governor for confirmation. The sales by the Indians transferred the kind of right which they possessed; the ratification of the title of the Crown to the purchaser, and no instance is known of refusal of permission to sell, or of the rejection of an Indian sale.

But the Indian Title does not hold to lands not actually occupied by them, and, as already pointed out, such lands could only have constituted a small part of the inhabitable area of North America at the time of European colonization; even as they constitute but a small part to-day with, according to Mr. Seth Low, the same number of Indians alive now as then. As bearing on this point I quote a passage from M. de Vattel's standard work, The Law of Nations (Chitty's edition, p. 100, #309):

" There is a celebrated question to which the discovery of the New World has principally given rise. It is asked whether a nation may lawfully take possession of some part of a vast country in which there are none but erratic nations whose scanty population is incapable of occupying the whole. (A modern instance will be if the Japanese take possession of Australia.) We have already observed, in establishing the obligation to cultivate the earth that those nations cannot exclusively appropriate to themselves more land than they have occasion for, or more than they are able to settle and cultivate. Their unsettled habitation in those immense regions cannot be accounted a true and legal possession; and the people of Europe, too closely pent up at home, finding land of which the savages stood in no particular need, and of which they made no actual and constant use, were lawfully entitled to take possession of it and settle it with colonies. The earth, as we have already observed, belongs to mankind in general, and was designed to furnish them with subsistence. If each nation had from the beginning resolved to appropriate to itself a vast country that the people might live only by hunting, fishing and wild fruits, our globe would not be sufficient to maintain a tenth part of its present inhabitants. We do not therefore deviate from the views of nature in confining the Indians within narrower limits. However we cannot help praising the moderation of the English Puritans who first settled in New England, who, notwithstanding their being furnished with a charter from their sovereign purchased of the Indians the land of which they intended to take possession."

THE TITLE RECOGNIZED BY THE ENGLISH

Bearing in mind always that there was no European dispossession of the Indians without their consent and without consideration satisfactory to them at the time, the next thing to bear in mind is that from the beginning of the 18th. century the Europeans from the Indian standpoint divided into two groups, the European colonists, who tended more and more to become unfriendly, and the European sovereigns, governments, soldiers and merchants, who continued friendly and disposed to uphold the rights of the Indians as against the interests of the colonists. The European trappers, traders and coureur-de-bois, need not be considered as a third group, as they became to all intents and purposes Indians themselves, just as did the factors and other local employees of the Hudson Bay Company. They formed no permanent settlements, they disliked the encroachment of colonists on good hunting districts, they adopted the Indian mode of life, they took Indian wives, the Indian's welfare was their welfare, and they were the channel through which ~~the~~ hitherto unknown conveniences and comforts of clothing, arms and rum were brought to the Indians. Classing ^{these whites} ~~them~~, therefore ^{with the} ~~as mere~~ Indians themselves, (**the importance of this will be shown later in dealing with the Hudson Bay Company's attitude toward the Indian Title**) we have the ^{other} Europeans divided ^{as in two} ~~as~~ ^{groups representing} ~~between~~ Imperial and colonial interests. The King, whether French or English, was always looked upon by the Indians as friendly to their peculiar ^{rights and privileges} ~~interests~~, first as an Ally and subsequently as a Protector and Great Father. But as time went on the expanding growth, the needs and fears and land hunger of the colonists, necessarily made them jealous of and antagonistic to Indian rights and privileges, and officially and unofficially, through such powers of local government

as were gradually accorded to them by the King they began a policy of ignoring or belittling the Indian Title, and they became more insistent in pursuit of this policy as they became numerically stronger. ~~History represented by the King~~
~~the King~~ A century later a repetition of this policy was begun by the whites in British Columbia. The Indians on the other hand at no time made, and to this day will not make, an appeal to a colonial, provincial or federal government in Canada as the sovereign power from whom they ask recognition of their title. Their appeal has always been from British Columbia made, and is now being made, direct to the King.

Among the Canadian Archives are to be found great numbers of old despatches, royal instructions, and letters from governors and military commanders and Indian superintendants, which evidence the determination of the English to recognize the Indian Title from motives of natural justice, religion, trade, good politics and general necessity of the situation in the 18th. century, and also indicating the gradual divergence of interest between the mother-country and the colonies in regard thereto. Doubtless also in the Colonial Office and Public Records of London, and in similar institutions at Washington and Boston, much more evidence of a like character is to be obtained. But in the brief time at my disposal in which to search documents I have been able to inspect ~~(in some cases despatches would be the more accurate term)~~ only a few of those in the Canadian Archives. The early general attitude of the English King and colonists toward the Indians has been shown in the two judgments of the United States Supreme Court, already quoted, but it may be as well to make a brief summary here of the situation in the New England colonies from the middle of the 17th. to the middle of the 18th. centuries. By entering into an alliance with the Hurons and Algonquins in 1609 the French incurred the lasting hostility of the Iroquois. The main body of the Iroquois acted as a protective body for the English against the French.

And the English cultivated friendly relations with the Iroquois even before they took over the "covenant chain" of the Dutch alliance in 1664. In 1648 the Colony of Massachusetts applied to the French at Quebec for a treaty of reciprocity. The French Governor D'Aillebout agreed to enter into such a treaty on condition that the English of Massachusetts should aid the French in subduing the Iroquois. This the English refused to do on the ground that the Iroquois had never molested them in any way. The Iroquois were informed of this French proposal, and thereupon renewed their war with ~~the French,~~ ^{the French,} determined to exterminate both them and their Huron and Algonquin allies. They did succeed in practically exterminating the Hurons in the war that followed, a broken remnant of that nation seeking the protection of the French at Quebec in 1650. They were given land on the Island of Orleans. In 1653 the Iroquois made peace with the French in order to exterminate the Eries, Ottawas and Andastes. ~~After~~ They completed this undertaking effectively in 1656, and then ~~doing this effectively they~~ embraced Christianity. The Catholics amongst them were given lands by the French at Sault St. Louis or Caughnawaga. The majority of the Iroquois however remained with the English and became Protestants. In 1687 James II was induced by representations of Governor Dougan of New York to authorize the Governor to protect the Iroquois. This was done by Royal Warrant dated 10th. November 1687. In the next year Governor Dougan was succeeded by Sir Edmund Andros, who claimed the Iroquois as British subjects, and by the terms of whose Commission British rule was claimed to extend westward to the Pacific. For commercial reasons the English sought to have the Iroquois effect an alliance with the Senecas and other Indian allies of the French in the West, and to seduce them from the French alliance. To offset this the French for a time paid their Indian allies a bounty of twenty crowns for each male Englishman captured and ten for each female, and a bounty of ten crowns for each English or Iroquois scalp.

I now submit some extracts from ancient books and papers. These facts are here recalled to emphasize the value put at the time by both French and English on maintaining Indian alliances, both from a political and commercial standpoint. The situation has changed so much in the last half century, the friendship and loyalty of the Indians being no longer of any political or commercial consequence to us, that we are apt to forget or overlook now the circumstances existing at the time when we entered into an obligation - when a promise was given for a promise - between ourselves and the Indians. The effect of all recorded communications, conferences and treaties with the Indians is that the Indians promise friendship and allegiance to the King, and military service when required. (They gave military service in 1776 and 1812, and offered it in 1837 and in 1899.) The King on his part promised to maintain and protect the Indians in possession of their lands, the lands occupied by them, 'as long as water runs and the Sun shines.' The Indians of Canada, and the Five Nations or Iroquois who removed from the United States into Canada after the Revolutionary War because they were 'King George Men' have never broken their promise to the King. But our Colonial and Provincial Governments, presuming to act in the name of the King, have insidiously evaded and made that promise of little or no effect, and this is particularly true of the Government of British Columbia after the Imperial Government entrusted it with carrying out the Imperial policy toward the Indians begun under the regime of Sir James Douglas. That Government to-day, in its attempt to dispossess the Skeena Indians from the lands occupied by them from time immemorial says through its Premier: "Of course it would be madness to think of conceding the Indians' demands, It is too late to discuss the equity of dispossessing the red man in America." (Montreal Star Report, July 31st, 1909.)

I now submit some extracts from ancient books, and from official records in the Canadian Archives, showing that the Indians were recognized and treated with as divided into separate nations; that at first they were termed and treated with as allies, by degrees assuming the status of subjects with rights and privileges distinct from ordinary colonial subjects; and that always, whether treated as allies or subjects the King gave instructions to respect the Indian Title to lands occupied by them; that his representatives solemnly and repeatedly assured the Indians that such title would be protected intact; and that at the Cession of Canada the French King stipulated that his Indian allies should be maintained in quiet possession of their lands the same as his French Canadian subjects, and that such stipulation was agreed to by the English King.

I quote first from the Memoirs of Daniel Gookin, already referred to, (page 7) and written in 1674. Mr. Gookin, having first explained how God in his foresight had swept off three nations of Indians by a great plague from the parts which were to be inhabited by the English colonists, thereby permitting peaceful occupation, then tells what was done by the English Puritans in recognition of the rights of the small remnant of these nations which survived, and which action was so generously praised by M. de Vattel, already quoted.

Ch. VI. " The General Court of Massachusetts on motion of Mr. Eliot appointed some of the most prudent and most pious Indians in every Indian village that had received the gospel to be rulers and magistrates among them to order their affairs both civil and criminal, and also of a more ordinary and inferior nature. ***** There are divers other laws and orders made by the General Court of Massachusetts relating unto the Indians, which are printed and published, but are too long here to recite particularly. The heads of them are: 1. Declaring the Indian Title to Lands from Genesis 1 & 28, ch. 1X; Psalms CXV, 16:2. The civil Indians to have lands granted them for towns: 3. Indians not to be dispossessed of what lands they have subdued, or from their fishing places: 4. None to buy lands from the Indians without license from the Court. ***** The reason why the English Government is concerned with the Indian affairs in point of rule and order is because all those praying Indians in Massachusetts Colony did long since before they began to worship God actually and solemnly

submit themselves unto the jurisdiction and government of the English in Massachusetts, as the records do declare. Besides the care taken as before for their government the General Court of Massachusetts hath bounded, stated and settled several townships and plantations of land unto these praying Indians of which we shall speak hereafter more particularly. (This is probably the first instance of the modern system of definitely bounded Indian Reserves.) Some of these villages are of larger, some of ~~smaller~~ lesser dimensions according to their numbers, and as there may be occasion the Court will grant more villages to the Indians. (Note the similarity of this procedure with that adopted by Sir James Douglas in British Columbia. See p) The reasons inducing to this are: First to prevent differences and contention among the English and Indians in future times as to the propriety of the land: Second to secure unto them and their posterity (This is practically a grant in fee) places of habitation, this being a provision in all grants that they shall not sell or alienate any part of those lands to any Englishman without the General Court's consent. (Here we find the beginning of and reason for the policy ever since maintained of restricting the right of Englishmen to buy - not restricting the right of the Indians to sell - the lands occupied by the Indians) For the Indians being poor as well as improvident are very prone to sell their land to the English, and leave themselves destitute. If any should object that it is not necessary that the English should grant these lands forasmuch as it was all their entire native country and propriety before the English came to ~~the~~ America, the answer is ready: First that the English claim right to their land by Patent from our King: Secondly, the English had the grant of most of the land within this jurisdiction by purchase or donation from the ~~English~~ Indian Sachems and Sagamores which were actually in possession when the English came over."

This is the first recorded policy of an English Colony toward the Indians; and it contains all the essentials of the Canadian policy to-day. It was considerably more magnanimous than the policy adopted by the Colonies of Vancouver Island and British Columbia, because the Puritan Colony found only the merest remnant of Indians in the lands colonized, and so were not under any special fear or apprehension compelling them to a generous recognition of ancient Indian rights. Whereas in British Columbia the whites for many years numbered but a few thousand among fifty thousand Indians, and fears were officially expressed on many occasions lest an Indian war should break out, and reserves after the time of Sir James Douglas were granted partly owing to such fears. I shall quote the British Columbia records on these points

later. But this fair attitude was not, however, long maintained by the English Colonists when there was no restraint imposed by the English Government. The Colonists were above the level of the Indians, and had the advantage of constantly arriving reinforcements, weapons and wealth, but they were as calculating, treacherous and cruel toward the Indian Nations as any of the Indians were ever shown to be toward each other or toward the Colonists. The English Colonists kept faith with the Iroquois as a matter of policy because they were very powerful and acted as a protection against the French. But the English Colonists in Massachusetts entered into an alliance with the Naragansetts whose country was Rhode Island, to make war upon the Pequots who held the country from Hudson River to Narragansetts. They maintained this alliance till the Pequots were exterminated. (See Hubbard's *Narrative of Trouble with the Indians, History of New England, London edition, 4 to 1677*). During the next war in which the English engaged, the Naragansetts remained true to their alliance with the English. The Pequots sought to conclude a treaty with their old enemies the Naragansetts to join against the English "using such arguments as to right reason seemed not only pregnant to the purpose but also, if revenge that bewitching and pleasing passion of man's mind, hath not blinded their eyes, most cogent and invincible; but they were by the good providence of God withheld from embracing these councils which might otherwise have proved most pernicious to the design of the English." (Hubbard's *Narrative, page 120*)

This design of the English appeared after the Pequots had been exterminated by the English with the assistance of their allies the Naragansetts. During the next Indian war known as King Phillip's war, the Naragansetts remained true to their alliance with the English, but immediately after the overthrow of the Indian chief known as King Phillip, the English designed the extermination of their faithful allies the Naragansetts, and without warning Governor Winslow fitted out a force and took them by surprise in the winter. The first gallant feat recorded on the side of the English Colonists in their campaign was that "five files of men sent out under Sergeant Bennet killed an Indian and his wife." (Hubbard's *Narrative, p. 50*) The moral plane of these colonists is indicated by the writings of their great Divine Reverend Dr. Cotton Mather.

After recounting how King Phillip was killed in his last battle - a bullet passing through his venomous and murderous heart and in that very place where he first contrived and commenced his mischief was this Agag now cut into quarters which were then hanged up while his head was carried in triumph to Plymouth where it arrived on the very day that the church there was keeping a solemn thanksgiving to God - God sent 'em in the head of a leviathan for a thanksgiving feast." (Mather *Magnalia Christi Americana or Ecclesiastical History of New England. Fol. ed. London 1702. book VII, ch. 6*)

In the same chapter he says: "Heaven so smiled upon the English hunting after them (the Pequots) that here and there whole companies of them were by the information of the Naragansetts trepanned into the hunter's lands particularly at one time some hundreds of them were seized by Captain Stroughten, with little opposition who put them on board one Skipper Gallop which proved a Charon's ferry boat unto them, for it was found the quickest way to feed the fishes with 'em." (book VII, ch. 6.) The Rev. Dr. Mather strove after the saving grace of humor, for relating the destruction of a place known as Bull's Garrison House he terms it "the surprisal of a remote garrison belonging to one Bull where

fourteen persons were baited to death by those terrible dogs the Narragansetts. (ibid)

In May, 1677, the Rev. Increase Mather wrote to his reverend brother the Doctor as follows:

"Sabbath Day se'enight the women at Marblehead as they came out of the Meeting House fell upon two Indians that were brought in ~~saxtix~~ as captives and in a tumultuous way very barbariously murdered them."

By way of contrast to the conduct of these Colonial Dames returning from divine service may be quoted an extract from an old book published in Boston in 1707, entitled: "Memorial of the Present Deplorable State of New England." It describes how in one of these wars with the Natives an Englishman

"had valiantly killed an Indian or two before the salvages took him. He was next morning to undergoe a horrible death, whereof the manner and the torture was to be assigned by the widow squa of the dead Indian. The French priests told him that they had endeavoured to divert the tygers from their bloody intention, but could not prevail with them; he must prepare for the terrible execution. His cries to God were hard, and heard. When the sentence of the squa was demanded, quite contrary to every expectation and the revengeful indignation so usual among these creatures, she only said: 'His death won't fetch my husband to life; do nothing to him.' So nothing was done to him."

As showing the moral state of the English colonists lower than that of the Indians as regards fidelity to pledges, their use of so-called 'praying Indians' as spies; their systematic and designed debauchery of the Indians; and their nauseous habit of doing it all in the name of God, consult their own and other contemporary writers such as Mather, Hubbard, Heckewelder, etc. Now the Imperial Government has been aware of this Colonial tendency to defraud and oppress the Indians from the earliest days, and, whether from motives of humanity or of trade, or both, has guarded the Indians as far as it was in a position to do so. Thus, as regards the Indians of British Columbia, we find Lord Carnarvon saying in a letter to Governor Douglas of the 11. April, 1859:

"I am glad to perceive that you have directed the attention of the House to that interesting and important subject, the relations of Her Majesty's Government and of the Colony to the Indian race. Proofs are unhappily still too frequent of the neglect which the Indian

experience when the white man obtains possession of their country, and their claims to consideration are forgotten at the moment when Equity most demands that the ~~protector~~ hand of the protector should be extended to help them."

In 1897, Lord Carnarvon undoubtedly justly appreciated the ^{attitude} ~~tendency~~ of the average colonist toward aboriginal races everywhere. ^{This attitude} ~~It~~ is well exhibited in an official communication written by a settler in British Columbia after the union of that Province with the Dominion. One Mr. A. Dods settled on some land at Cowichan, Vancouver Island, belonging to the Indians from time immemorial. Finding that the Indians would not give him quiet possession, and finding Dominion Indian Commissioner Powell inclined to sustain the Indians, ^{he wrote} ~~writes~~, to the Attorney General of British Columbia, and complained as follows:

"I cannot get wood off my land except by ~~ask~~ a sort of permission. I cannot build as I intended to do. Everybody says 'Sure what the devil is the good of a Government that can't put a few siwashes off a man's land.' I said always 'I'm waiting for Powell.' Now Powell has not fixt it, nor is there even a probability that he can or will. The idea that I have had from the first in this affair is that you must make the Indians respect your power. They have a hundred times more respect for a gunboat than all the talk in creation. (p. 133 B.C. Papers, hereafter quoted)

A remarkable case of restraint put by the Imperial Government upon colonists for the protection of the Indians occurred in New Hampshire in 1714, during the reign of Queen Anne.

~~New Hampshire in 1714.~~ The several branches of the Abenakis Indians (who later removed to Canada, settling in Quebec, where lands were assigned them) entered into treaties with Governor Sir William Phipps in 1693, with Governor the Earl of Bellemont in 1699, and Governor Joseph Dudley in 1702 and 1703, whereby they were assured of the protection of the English, and in return promised loyalty to the English cause. The Abenakis broke their treaties, and some of them attacked the English. They were defeated by the English, and sought peace. The history of the matter is set out in Canadian Archives, P 216 - 5 where it is said: "The colonists now looked upon them (the Abenakis) as a conquered race of heathens, and that their duty was to drive them out (of New Hampshire) and enjoy their lands in the manner of the Israelites of old." But instead of being allowed so to do, Governor Dudley entered into a new treaty with the Abenakis, wherein ^{quiet possession of} their lands formerly occupied is assured to them. This treaty sets forth that it is made "At Portsmouth in Her Majesty's Province of New Hampshire in New England the 13th. day of July in the 12th. Year of Our Sovereign Lady Anne." ^(a. d. 1714) In it the Abenakis confess to a breach of Fidelity and Loyalty, and promise allegiance thereafter, and to forbear all acts of hostility toward all the subjects of the Crown of Great Britain, and that they shall not attempt to take any lands then occupied by the English "Saving unto the Indians their own Grounds and free liberty for Hunting, Fishing, Fowling and all other Lawful Liberties and Privileges as on the 11th. August, 1693" (What is to say all the lands had by them at the time of the first treaty.)

Among the Canadian Archives is a pamphlet printed at London in 1710 (P 268 - 6) which describes a visit of "The Four Kings of Canada" to Queen Anne. As a matter of fact they were not Canadian Indians, but four Sachems of the Five Nations, and they visited England for the purpose of presenting to Queen Anne in person (following out the Indian custom of appealing direct to the Sovereign) the views of the Five

~~Nakkonn~~

Nations on questions regarding the international relations between the English and French colonies, and other matters of public policy affecting them. They were "conducted over the sea by Colonel Nicholson, late Governor of Maryland, and on Wednesday the 19th. April had an audience of her Sacred Majesty being introduced with the usual Ceremonies due to Sovereign Heads and their Embassadors. The Speech, as delivered to Her Britanic Majesty by an Interpreter follows: 'Great Queen: We have undertaken a long and tedious Voyage which none of our Predecessors could ever be prevailed upon to undertake. The Motive that induced us was that we might see our Great Queen and relate those Things we thought absolutely necessary for the Good of her and us her Allies on the other side of the Great Water.' ***** " The greatest consideration was shown officially to these Irroquois Sachems, and Queen Anne gave them a bible and communion service, which the Irroquois saved during the Revolutionary War from destruction by the Americans, and which are now preserved at Brantford, Ontario.

I now quote from a series of letters and documents in the Canadian Archives marked: Col. Bouquet Papers, A 25, ~~Annex~~ Being Papers relating to Indian Affairs from 1758 to 1765.

Extract from Letter from Captn. Bosomworth to Col. Bouquet. (At this time the war was on with the French.)

"Shippenburg, May, 1758.

***** Capt. Trent came here last night with Watratcher and a party of 25 Warriors. He is a very great Warrior, and a very leading man in the Nation, therefore we must take the greatest care of him. ***** "

Extract from Address by Colonel Bouquet to the Chiefs of the Deleware Indians at Pittsburg, Dec. 4th., 1758.

Present: Colonel Armstrong and several Officers; George Croghan, Esq. Deputy Agent to Sir William Johnson, Capatin Henry Montour, Interpreter:

Address by Col Bouquet:

"Brethern: The General waited here several days with the Army expecting to have seen you, but as he was very unwell he was obliged to set off without having the pleasure to see you, but has left me, who is next in command to receive and communicate to you what he intended to have said. I bid you heartily welcome and assure you I am glad to have the pleasure of seeing you here. ****

A string.

Brethern: We are not come here to take possession

of your hunting country in a hostile manner as the French did when they came amongst you, but to open a large and extensive Trade with you and all other Nations of Indians to the Westward who chuse to live in Friendship with us. You are sensible we are at war with the French and cant send Traders amongst you as we formerly did to be robbed and plundered by the Enemy, as our Traders formerly were to your knowledge; for which reason the General has left Two hundred men in order to protect our Traders and I can assure you that as soon as Goods can be brought up you will see a large Trade open for you and all other Nations in alliance with you, and you may depend upon it, your brethern the English are not the only most powerful people on this Continent x but most wealthy and inclined to serve you in every necessary you want on the cheapest terms.****

A String.

Brethern: The General has charged me as he marched away his Army out of your hunting country to recommend it strongly to you to send the French away out of your country as they are a restless and mischievous people and the Disturbers of your Peace.

The next day, December 5th, 1758 the Chief of the Delaware Indians made the following answer:

"Brethern: We excuse the General for not waiting to see us as he was so very unwell. Everything you have said is agreeable and well received by our Council." *****

Extract from address by Colonel Bouquet to the Head Warriors of the Cherokees and ~~Gakawaxz~~ Catawbas:

"I have desired this Solemn Council with the great men of the Cherokees and Catawba Nations to Settle with you several points of the utmost importance for our expedition, but before I introduce these matters I must express to you my satisfaction in meeting so many valiant Warriors and Wise Men united so closely with us as the Branches of the Same Tree. *** Our hearts are full of joy when we see out good Brethern and Faithful Allies."

Then is recorded a form of speech to be delivered to Indian Nations by General Amherst and by Mr. Post, soliciting their aid against the French in the war then ~~going~~ being waged.

Extract from General's speech:

"His Majesty did not send me to deprive any of you of your lands and property; on the contrary, so long as you adhere to his interest, and by your behaviour give proofs of the Sincerity of your Attachment to his Royal Person and cause, I will defend and maintain you in your just rights and give you all the Aid and assistance you might stand in need of to repress the dangers you might be liable to, from the Enemy thro' your attachment to us.

This I firmly mean to adhere to, so long as your conduct shall deserve it, but on the other Hand, if you do not behave as good and faithful Allies ought to, and renounce all Acts of Hostilities against his Majesty's Subjects, I shall retaliate upon you and I have the might so to do tenfold for every breach of treaty you shall be guilty of and every outrage you shall commit. But if any of his Majesty's subjects under my command kill or injure any of our Indian Brethern they shall upon due proof thereof, receive equal punishment. I mean not neither to take any of your Lands except in such cases where the necessity of his Majesty's Services obliges me to take Post where I must build Forts, but then the lands adjoining you will continue your own, and be not only equally good for your hunting, but be so much more secure against any interruption the Enemy might offer to give you for I know no medium between us and the French if we have not Forts.

Then in similar terms is recorded the form of speech to be delivered by Mr. Post, as follows:

"Brethern, I let you know that our great King has sent me into this country to lead and command all his Majesty's Warriors and that he has given me a sword to protect and defend his subjects and to act against his enemys.

"Brethern, As I have nothing more at heart than the good and welfare of the whole community I do assure all the Indian Nations that His Majesty has not sent me to derive you of your lands and property, on the Contrary, as long as you adhere to His Interests and by your behaviour give proofs of the Sincerity of your Attachment to His Royal Person and Cause, I will defend and maintain you in your just rights, and give you all the Aid and Assistance you might stand in need of, to repress the dangers you might be liable to from the Enemy thro' your attachment to us. This I firmly mean to adhere to as long as you behave as good and faithful Allies. But on the Contrary if any of you should commit any Act of Hostility or do any injury to any of His Majesty's subjects you are sensible that I must repeat it and retaliate upon them, and you know that I have the might so to do tenfold for every breach of treaty or outrage you could be guilty of. And if any of His Majesty's subjects under my command should kill or injure any of your Indian Brethern they shall upon due proof thereof receive equal punishment. I mean not neither to take any of your Lands. But as the necessities of His Majesty's service obliges me to take post and build forts in some part of your country to protect our trade with you and to prevent the Enemy from taking Possession of your Lands and hurt both you and us, as you are sensible that if we build not Forts the French will. In that case I assure you that no part whatever of your land joining the said Forts shall be taken from you, nor any of our people shall be permitted to hunt or settle upon them. But they shall remain your absolute property and I will even promise you some presents as a consideration of land where such Forts and Trading Houses are or may be built upon.

(Exactly the same procedure was adopted by the Spanish in Florida; they first obtained the Indians' permission before building a Fort for the Spanish King. See page 8) And as it is expensif and inconvenient for us to carry provisions for our Warriors from our Settlements to those Forts, and also to supply our Brethern and Indians when they come to see us, if you will lay out a space of ground adjoining every Fort to raise corn in that Case fix yourselves the limits of that part of your Lands so appropriated to us and you will receive a consideration for it such as will be agreed between you and us to your satisfaction. (In one respect this is in line with the policy of Sir James Douglas in British Columbia. He always insisted that the Indians themselves should fix the limits of the reserves of land within which no whiteman was to be permitted to settle, thus acknowledging the Indian Title. See quotations from his instructions hereafter.) ***** As a proof of the truth and sincerity of what I have said I give you this, Brethern, King, Captains and Warriors of Many Nations. Take notice of what I am going to say in the name of the Chief Commander of all His Majesty's forces on this Continent.

Extracts from Record of a Conference at Fort Pitt, 1763.

Fort Pitt, July the 26th, 1763

At a meeting of the Shingas, Tessecumnis, Grey Eyes, Wingeum, Turtle's Heart, Capt. Johnny, the Delawares and the Big Wolfe with four other Shawnese. Shingas spoke first as follows:

"Brothers:

I am glad it has pleased God we should live to meet and speak together this day in friendship." Then addressing himself to his own people, desired them to observe what was going to be said to us.

Tessecummie, then taking out a large Belt said:

"Brothers:

It gives me a great deal of satisfaction to have this opportunity of renewing our ancient friendship. And we are much obliged to you for sending us this small set of colours as a token of your friendship, by which we are this day enabled to Speak together.

"Brothers:

Listen now with attention at what I am going to say:- 'As it has always been your desire that we should hold fast by the chain of friendship, I now assure you that we have always done it, and do it still, and we hope you do the same, it is now in your powers to continue it.

'Brothers:

On your first coming to this place we were the first Nation you contracted a friendship with after ~~xem~~ this you extended a Belt of Friendship across this country the End of which reached those Nations over the Lakes towards the Sun setting, then as we were situated in the centre between you (of this country), you requested that we should hold fast by the middle of the Belt. this we assure you we have done, and with both hands; have held it close to our hearts. but now I see both ends let loose and now we are the only people to hold this Belt up by the middle. Brothers, let us be strong on both sides and take Pity of our Warriors, Wymen and children, let us be sincere, and speak from our Hearts and be honest in everything that passes now between us. I now take this Friendship Belt and lay it in the Fort where we request you will Assist us in preserving it. Brothers, don't imagine that what I have said comes from my lips only. I do assure that it comes from the bottom of our Hearts and we make no doubt but what this will give you the same pleasure if you are sincere as we really are. Brothers, you sent no word that you were so firmly seated here that you were not to be removed. Brothers, you have towns of your ~~own, you know this is our country, and that your having~~ own, you know this is our country, and that your having Possession of it must be offensive to all Nations, therefore it would be proper that you were in your own country where our Friendship might always remain undisturbed.

'Brothers:

Some time ago you desired that we would go out of your way, that you might Pass to those Nations that have disturbed the Chain of Friendship. You yourselves are the people that have done it. In the first place by coming with large Armies into our Country and building strong Forts. We were then the first people that Met you, having no distrust of your design, and nothing but good in our Hearts towards you, agreed to everything you desired, at the same time requested of you in the Strongest Terms not to extend your Forts any further than this Post. Notwithstanding this you crossed the Lakes, and what pass'd between the Nations living beyond that way and you, we are unacquainted with, but you see they have Slipped their hands free from their Friendship with you, and you have desired to know who struck you, we take the opportunity to make you sensible of it. Which I believe you can't help Thinking this is True, so you have nobody else to blame but yourselves for what has happened

Gave a large Belt. 10 Rows.

"Brothers:

We have endeavored to stop all parties we saw going against you, some we were able to prevail with, and others we were not, who, we suppose will prosecute the War against you our reason for not coming two days ago to speak with you was that we received the String of Wampum which I have now in my hand from all the Nations over the Lakes, the following is what they had to say upon it:

'GRANDFATHERS THE DELAWARES:-

By this String we inform you that we intend in a very short time to pass in a very great body thro' your Country on our way to the Forts of Ohio. Grandfathers, you know us to be a foolish people, we are determined to stop at nothing, and as we expect to be very hungry, we will seize and eat up everything that comes in our way. ~~Brother~~

Brothers, here is their wampum, you have heard what they design. If you go quietly Home to your Wise Men the furthest they will go, if not, you see what will be the consequences, so we desire that you remove off.

A String.

"Brothers:

We have now delivered everything we have to say. Consider it, and when you have a mind to answer us, fire a gun and we will come over to hear you. We hope when this is done to be able, each of us to rise up and go to our respective Homes."

Answer of Captain Esuyer: The Commanding Officer to his Brothers, the Delawares, July 27th, 1763.⁵

"Brothers:-

You must be certain of our Sincerity towards you, as we have never broke our treaties with you or any other Indian Nations: Since our first comeing into this Country. Therefore observe what I will now inform you. In your Speech yesterday to me, you complain that we have taken your Country, and build Strong Forts. Now Bröthers, these Forts was to protect you and your trade which you have often been told. With regard to your lands, we have taken none, only such parts as our Enemies, the French, did possess. You suffered them first to settle in the Heart of your country without Molestation and why should you pretend to turn us out of it now, who have always been friendly and kind to you.

Brothers:-

For these Reasons I now tell you that I will not abandon this Post. I have Warriors, Provisions and Ammunition enough to defend it three years against all the Indians in the Woods, and we shall never abandon it as long as a white man lives in America. I despise the Ottawas for ~~proposing us to leave this place and go Home.~~ and I am very surprised at our Brothers, the Delawares for proposing us to leave this place and go Home. This is our Home. You attacked us without reason or precaution; you have murdered and plundered our Warriors and Traders, you have took off our horses and cattle and at the same time you tell us that you are sincere. Therefore now Brothers, I will advise you to go Home to your Towns and take care of your Wymen and children and when we have occasion to speak to you we will send for you. If your Chiefs at any time have anything to say to us, they must go for the present to Bedford, where they will meet our great men and George Croghan, they will be well used and I will give them letters and Copies of the Speeches I receive from you. If anyone should appear near the Fort or fire upon m Warriors I shall not only return the fire but throw shells all about and fire canons at them with hundred and twenty balls in each, therefore kwep off, I don't want to hurt you.

S. Esuyer, Capt'n. Comm'nt.

Extract from The Articles of Capitulation:

Montreal 8th. September, 1760

Between their Excellencies

Major General Amherst, Commander
in Chief of His Britanic Majesty's
troops and forces in North America
Of the One part

And

The Marquis of Vaudreuil, Governor
and Lieutenant General for the
King in Canada
Of the Other part:

ARTICLE XL:

The Savages or Indian Allies of His Most Christian Majesty shall be maintained in the Lands they inhabit if they chuse to remain there; they shall not be molested on any pretence whatever for having carried arms and served His Most Christian Majesty; they shall have, as well as the French, liberty of religion, and shall keep their missionaries. ~~The~~

The actual Vicars General and the Bishop, when the Episcopal See shall be filled, shall have leave to send to them new missionaries, when they shall judge it necessary.

Answer: Granted except the last article which has already been refused. (The requests referring to the Bishop & Vicars General are ~~made~~ made and refused, or reserved till the King's pleasure be known in Articles 29, 30, 31 & 32 preceding. But it is well worth noting that in their last authoritative official act in Canada the French Government stipulated for the maintenance of the Indian Title in the lands they inhabit; and also for their religious welfare; and takes farewell of them not as subjects but as the Allies of His Most Christian Majesty; a soldierly title which the British continued to apply to them officially while in need of their military assistance.)

I next submit an extract from a letter by Charles, Earl of Egramont, ^{who succeeded} ~~successor to~~ William Pitt, ~~the~~ ^{as} Secretary of State for the Southern Department, October 9th, 1761. At this time there was ^{two} two principle secretaries of State, one for the Northern and the other for the Southern Department so called, these distinctions referring to the ^{old} ~~division~~ ~~before~~ ~~them~~ of British Foreign Affairs in Europe. The American colonies came under the Secretary for the Southern Department. The following is an extract from a letter written by Egramont to the Lords of Trade dated 5th May, 1763, and ⁱⁿ it and the papers included with it, an account of the steps taken by the British Government to provide a suitable constitution and policy of administration for Canada, and other recently acquired territory in North America, ~~is~~ contained. They furnish the basis for the proclamation of October 7th, 1763. Also for the Commission and the extracts of the same date given to General James Murray, Governor of the Province. The original of these papers are in

the Public Record office in London, England, and certified copies are contained in the Canadian Archives. (Series A.&W.I. Vol. 268, p. 205.)

EXTRACT:

7
"Whitehall, May the 5th, 1863.

The second question which relates to the security of North America, seems to include Two Objects to be provided for: the first is the security of the whole against any European power: the next is the Preservation of the Internal Peace and Tranquility of the Country against Indian Disturbances. Of these two objects the latter appears to call more immediately for such Regulations and Precautions as Your Lordships shall think proper to suggest.

Tho' in order to succeed effectually in this point, it may become necessary to erect some Forts in the Indian country with their consent, yet His Majesty's Justice and Moderation inclines him to adopt the more eligible method of conciliating the Minds of the Indians by the Mildness of His Government by protecting their persons and property, and securing to them all the Possessions, Rights and Privileges they have hitherto enjoyed and are entitled to, most cautiously guarding against any Invasion or Occupation of their Hunting lands, the possession of which is to be acquired by fair purchase only; and it has been thought so highly expedient to give them the earliest and most convincing proofs of His Majesty's Gracious and Friendly Intentions on this Head, that I have already received and transmitted the King's Commands to this purpose to the Governors of Virginia and the two Carolinas and Georgia, and to the Agent for Indian Affairs in the Southern Department, as Your Lordships will see fully in the enclosed copy of my circular letter to them on the subject."

Extract from reply from Lords of Trade to Egramont. (Canadian Archives, A. & W. I. Vol. 268, p. 93.)

Whitehall, June 8th, 1763.

***** Having thus stated the most obvious advantages resulting from the Cession made to Your Majesty through the late Definitive Treaty, We submit to Your Majesty, as Our Humble Opinion, that they can only be secured and improved by immediate establishment of regular Government, in all such places where planting and settlement, as well as trade and commerce are the immediate objects. For in order to invite new settlers to risk their persons and property in taking up new land, as well as to secure the old inhabitants in the enjoyment of those rights and privileges reserved for them by the Treaty, such regular Government appears, both from reason and experience, of an absolute necessity. ***** It will therefore be sufficient to provide for the free trade of all Your Majesty's subjects under such Regulations. And such administration of Justice as is best suited to that end. Such, We apprehend, to be the case of New Foundland, where a temporary fishery is the only object, and this, we suppose, has been the reason which has induced Your Majesty to annex the Coast of Labrador to that Government; such is the case of

Senegal and the Principle upon which we suppose Your Majesty thought proper to put that River and Country under the Administration of the African Committee. And such, We apprehend, will be the case of that territory in North America which, in Your Majesty's justice and Humanity, as well as sound policy is proposed to be left, under Your Majesty's immediate protection, to the Indian tribes for their Hunting Grounds.

***** And We apprehend that no such delay can be attended with very material Inconvenience, since, if Your Majesty be pleased to adopt the general proposition of leaving a large tract of Country round the Great Lakes as an Indian Country open to Trade, but not to Grants and Settlements the Limits of such territory will be sufficiently ascertained by the bounds to be given to the Governors of Canada and Florida on the North and South, and the Mississippi on the West; and by the strict directions to be given to Your Majesty's several Governors of Your Ancient Colonies for preventing their making any new grants of land beyond certain fixed limits to be laid down in the instructions for that purpose.

But that no time will be lost in finally settling this important point of the Indian Country, it will be absolutely necessary that immediate orders be sent as well to Your Majesty's Commander in Chief of America as to Your Agents for Indian Affairs, that without delay they furnish every information in their power on this subject, and that they be directed to correspond with Your Majesty's Board of Trade for this purpose. *****

Egremont to the Lords of Trade: (Canadian Archives A.&W.I. Vol. 268. p. 205):-

Whitehall, July 14th, 1763.

My Lords:

Your Report, dated the 8th of March last Month, having ~~ixixxhsforaxthaxKingxamdxMiaxMajesty~~ been laid before the King, and His Majesty, having taken the Same into Consideration, I am, in Consequence thereof, to acquaint Your Lordships That the King approves the Erecting Three New Governments in North America under the Denominations Your Lordships propose, of Canada, East Florida and West Florida;

Having thus informed Your Lordships of the King's Intentions, with regard as to the extent of the New Governments to be erected in North America; I now repeat to you, That His Majesty entirely concurs in Your Lordship's Idea, of not permitting, for the present, any grant of Lands or New Settlements beyond the Bounds proposed in your Report;

His Majesty thinks it highly proper, that the Agents for Indian Affairs should correspond with Your Lordships in regard to the Indian Country, and should transmit such Information on this Subject as Your Lordships shall require from them; for which purpose you will send them the necessary Orders and Instructions;

I am &c.

EGREMONT.

Extract from Address to the King enclosed in letter from Lords of Trade to Egremont. (Canadian Archives Q 1, p.109)

Whitehall, August 5th, 1763.

***** We have taken this important Subject into our most serious consideration and do most humbly concur in Your Majesty's Opinion of the propriety of putting this Country under a particular Government, by a Commission under Your Great Seal, with a most precise description of its Boundaries in Order to ascertain the actual possession of its property, and with such powers, as may be necessary, as well to maintain and secure the free Exercise of the Indian Trade, which it is proposed all Your Majesty's subjects shall enjoy within it, under proper Regulations, as to prevent its becoming a refuge to Criminals and Fugitives:--But at the same time, we beg Leave to submit to Your Majesty the following Objections which have occurred to us, against the annexing this Country to any particular Government, especially to that of Canada.*****

We are apprehensive that, should this Country be annexed to the Government of Canada, a Colour might be taken on some future Occasion for supposing that Your Majesty's Title to it has taken its Rise, singly from the Cessions made by France in the late Treaty, whereas Your Majesty's Title to the Lakes and circumjacent Territory as well as to the Sovereignty over the Indian Tribes, particularly that of the Six Nation rests on a more solid and even a more equitable Foundation; and perhaps nothing is more necessary than the Just Impressions on this Subject should be carefully preserved in the Minds of the Indians, whose Ideas might be blended and confounded if they should be brought to consider themselves as under the Government of Canada.

We are apprehensive as the whole of this Country would become subject to the laws of a particular Government or Province, it would give that Province such superior Advantage in respect to the whole of the Indian Trade, which Your Majesty in Your Justice and Wisdom has determined to leave as open as possible, to all Your Subjects as might controul and obstruct it to the Prejudice of Your other Colonies.*****

If these Objections should appear of weight to Your Majesty, We would humbly propose, that a Commission under the Great Seal, for the Government of this Country should be given to the Commander in Chief of Your Majesty's Troops for the time being adapted to the Protection of the Indians and the Fur Trade of Your Majesty's Subjects; And We submit to Your Majesty whether any Inconveniences would arise from such Commission, which would not equally arise from a like Commission to a Governor of any of Your Majesty's particular Colonies.*****

In the meantime We humbly propose that a Proclamation be immediately issued by Your Majesty as well on Account of the late Complaints of the Indians, and the actual Disturbances in Consequence, as of Your Majesty's fixed determination to permit no Grant of Lands or any settlements to be made within certain fixed bounds, under pretence of Purchase or any other Pretext whatever, leaving all that territory within it free for hunting grounds of those Indian Nations Subjects ~~xxxxxxx~~ xxxxxxx of Your Majesty, and for the free Trade of all Your Subjects to prohibit strictly all infringements or Settlements to be made on such Grounds.*****

Above Letter Endorsed:

Whitehall, August 5th, 1763.

Lords of Trade:

Report concerning the Lands to be reserved for the Indians - Proposing that a Commission under the Great Seal be given to the Commander in Chief for the Government of that Country - with objections to the annexing them to any Province Proposing an immediate Proclamation concerning Indian Lands.*****

Enclosure in N*10.

Extract from letter from Halifax to the Lords of Trade.

(Canadian Archives A. & W. I. Vol.268, p. 217)

St. James, September 19th, 1763

My Lords:

Having laid before the King Your Lordships Representation, of the 5th of August last, transmitted to the late Earl of Egremont in your letter of the same date, I am commanded to acquaint Your Lordships that His Majesty, upon Consideration of the Reasons therein set forth, is pleased to lay aside the Idea of including within the Government of Canada, or of any established colony, the Lands which are to be reserved for the present, for the Use of the Indians.*****

His Majesty approves Your Lordships Proposition of issuing immediately a Proclamation, to prohibit for the present any Grant or Settlement within the Bounds of the Country intended to be reserved for the Use of the Indians;

And that the Speedy Settlement of the new Colonies might be promoted; the Friendship of the Indians more speedily and effectually reconciliated, and Provision be made for preventing Inconveniences, which might otherwise arise from the Want of Civil Jurisdiction in the Interior, and reserved Countries, by extending such Proclamation to the following purposes, viz:-

To make known the establishment and Limits of the four new Colonies, and the Additions made to the Governments of Newfoundland, Nova Scotia and Georgia.

To declare the constitution of the new Governments as established for the present and intended in future, and the general Powers which the Governors will have of granting Lands within them.

To prohibit Private Purchases of Lands from Indians.

To declare a free trade for all His Majesty's Subjects with all the Indians, under Licence, Security and proper Regulations.

Above Letter Endorsed:

St. James, September 19th, 1763.

My Lords:

Letter of Reference concerning the extent of the new Provinces - The Lands to be reserved for the use of the Indians by Proclamation - A free Trade with the Indians under proper licenses and Regulation - The Lands to be granted to Reduced Officers and Soldiers - And a Commission proposed to be given to the Commander in Chief for the Government of the Interior Country.

In accordance with the recommendations made by the Lords of Trade in the foregoing documents the King issued on the 7th. October, 1763, the famous Proclamation recognizing and confirming - not creating as some have supposed - the Indian Title. This is the Proclamation held in the case of *Campbell v Hall* (*Cowper's Reports*, p. 213) to have the force and effect of a Statute in Canada, and held by the Supreme Court of the United States in the case of *Mitchell v United States* (9 *Peters*) to which I have already referred (page 12) to be of the same force and effect in the United States, and not capable of being annulled. I quote here the sections of the Proclamation relied upon.

Extracts from Royal Proclamation of 1763.

*****"And whereas it is just and reasonable and essential to our interests and the security of our Colonies that the several nations or tribes of Indians with whom we are connected and who live under our protection should not be molested or disturbed in the possession of such parts of our Dominions and territories as, not having been ceded to or purchased by us, are reserved to them or any of them as their hunting grounds; We do therefore, with the advice of our Privy Council, declare it to be our Royal will and pleasure that no Governor or Commander-in-Chief in any of our Colonies of Quebec, East Florida or West Florida do presume, upon any pretence whatever, to grant warrants of survey or pass any patents for lands, beyond the bounds of their respective Governments as described in their Commissions; as also, that no Governor or Commander-in-Chief of any of our other Colonies or plantations in America do presume for the present and until our further pleasure be known, to grant warrants of survey or pass patents for any lands beyond the heads or courses of any of the rivers which fall into the Atlantic Ocean from the west or Northwest, or upon any lands whatever which not having been ceded to or purchased by us, as aforesaid are reserved to the said Indians or any of them."

"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 land and territories not included within the limits of our said three new Governments, 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 northwest 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 special leave and license for that purpose first obtained."

"And we do further strictly ~~enjoin~~ enjoin and require all persons whatever, who have either willfully 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 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."

Extract from Royal Instructions to Governor Murray.
(Canadian Archives, M.230,p.1).

Given the 7th December, 1763.

Article 60. And whereas our Province of Quebec is in part inhabited and possessed by several nations and Tribes of Indians, with whom it is both necessary and expedient to cultivate and maintain a strict good friendship and good Correspondance, so that they may be induced, by degrees, not only to be good neighbors to Our Subjects, but likewise themselves to become good Subjects to Us; You are therefore, as soon as you conveniently can, to appoint a proper Person or Persons to assemble, and treat with the said Indians, promising and assuring them of Protection and Friendship on our Part, and delivering them such Presents as shall be sent to you for that purpose.

Article 61. And you are to inform yourself with the greatest exactness of the Number, Nature and Disposition of the several Bodies or Tribes of Indians, of the manner of their lives, and the Rules and constitutions by which they are Governed or regulated. And You are upon no Account to molest or disturb them in the Possession of such Parts of the said Province, as they at present occupy or possess; but to use the best means you can for conciliating their affections, and uniting them to our Government reporting to Us, by Our Commissioners for Trade and Plantations whatever information you can collect with respect to these people, and the whole of your Proceedings with them.

Article 62. Whereas we have, by Our Proclamation dated the seventh day of October in the Third year of Our Reign, strictly forbid on pain of Our Displeasure all Our Subjects from making any Purchases or Settlements whatever, or taking possession of any of the Lands reserved to the several Nations of Indians with whom we are connected, and who live under Our Protection without our special leave for that Purpose first obtained; It is Our Express Will and Pleasure, that you take the most effectual Care that Our Royal Directions herein be punctually complied with, and that the Trade with such of the said Indians as depend upon your Government be carried on in the Manner and under the Regulations prescribed in Our said Proclamation.

Extract from Royal Instructions to Governor Carleton
(Canadian Archives, M.230, p.116)

Given the 3rd of January, 1775.

Extract from Letter from Lord Sydney to Colonel Joseph Brant. (the Indian Warrior). (Canadian Archives Q26-p.73)

Whitehall, 6th April, 1786.

Sir: ***** His Majesty, in consideration of the zealous and hearty exertions of His Indian Allies, in the support of His cause, and as a Proof of His most Friendly Disposition towards them, has been graciously pleased to consent that the Losses already certified by His Superintendent General shall be made good; that a favorable Attention shall also be shewn to the claims of others who have pursued the same system of Conduct, and that S. Guy Carleton, His Governor General of His American Dominions, shall take Measures for carrying His Royal Commands into execution immediately after His arrival at Quebec.

This liberal Conduct on the part of His Majesty, He trusts will not leave a doubt upon the Minds of His Indian Allies that He shall at all times be ready to attend to their future Welfare, and that He shall be anxious upon every occasion wherein their Interests and Happiness is concerned, to give them such further testimonies of Faith, and the honor and dignity of His Crown be afforded to them.

His Majesty recommends to His Indian Allies to continue United in their Councils, and that their Measures may be conducted with temper and moderation from which added to a peaceful demeanor on their part, they must experience many essential Benefits and be most likely to secure to themselves the possession of those rights and Priveleges which their Ancestors have heretofore enjoyed.

I am &c.,

SYDNEY.

Instructions to Lord Dorchester. (Canadian Archives M.230, p.231)

23rd August, 1786.

Article 31.....You are not to allow any settlements to be made beyond the boundaries ascertained to the different Posts among the Indian Nations, within the Limits of Our Province of Quebec in Alliance with Us, as such settlements may tend to disgust those Savages, excite their Enmity and perhaps finally destroy the Peltry-Trade which ought to be cherished and encouraged by every Means in your Power.

Extract from Royal Instructions to Governor Carleton.
(Canadian Archives, M.230, p.116)

Given the 3rd of January, 1775.

Article 31. The institution of inferior Judicatures with limited Jurisdiction in Criminal and Civil matters for the Illinois, Poste St. Vincenne, the Detroit, Missilimackinac and Gaspee has been already pointed out, and the Appointment of a Superintendent at each of these Posts is all ~~that is further~~ that is further necessary for their Civil concerns; But it will be highly proper, that the Limits of each of these Posts and of every other in the interior Country should be fixed and ascertained; and that no settlement be allowed beyond these limits; seeing that such settlements must have the consequences to disgust the savages; to excite their Enmity; and at length totally to destroy the Peltry Trade which ought to be cherished and encouraged by every means in your Power.

Article 32. It is Our Royal Intention, that the Peltry Trade of the Interior Country should be free and open to all our Subjects, Inhabitants or any of Our Colonies, who shall, pursuant to what was directed by Our Royal Proclamation of 1763 obtain Licenses from the Governors of any of Our said Colonies for that Purpose, under Penalties to observe such Regulations as shall be made by our Legislature of Quebec for that purpose;

Those Regulations, thereof, when established, must be made public throughout all our American possessions, and they must have for their object the giving every possible facility to that Trade, which the nature of it will admit, and as may consist with fair and just dealing towards the Savages, with whom it is carried on. The fixing stated times and places for carrying on the Trade, and adjusting modes of settling Tariffs of the Prices of Goods and Furs, and above all the restraining the sale of Spiritual Liquors to the Indians will be the most probable and effectual means of answering the ends proposed. These and a variety of other Regulations, incident to the nature and purpose of the Peltry Trade in the Interior Country, are fully stated in a Plan proposed by Our Commissioners for Trade and Plantations in 1764, a Copy of which is hereunto annexed, and which will serve as a guide in a variety of cases, in which it may be necessary to make provision by Law for that Important Branch of the American Commerce.

Article 10. That the said Agent or Superintendant shall have the conduct of all public Affairs relative to the Indians; but that neither the Commander in Chief of His Majesty's Forces in America nor any of the Governors or Commanders in Chief of any of the Colonies, or persons having Military Commands in any of the Forts within each of the said Districts, do hold any general meetings with the Indians or send any public Talks to them without the Concurrence of the Agent or Superintendant unless in cases of great Exigency, or when the said Agent or Superintendant may be in some remote part of his District.

Article 11. That the said Agents or Superintendants do in all Affairs of political consideration, respecting peace and war with the Indians, purchases of Lands, or other Matters, on which it may be necessary to hold any general Meetings with the Indians, advise and act in concert with the Governors (or the Governors and Councils as the Occasion may require) of the several Colonies within their Respective Districts; And that the said Agents or Superintendants shall be Councillors extraordinary within each Colony in their Respective Districts in like manner as the Surveyors General of the Customs for the Northern and Southern Districts of America.

Article 14. That the said Agents or Superintendants shall by themselves, or sufficient Deputies, visit the several Posts or Tribes of Indians within their Respective Districts once in every year, or oftener, as Occasion may require, to enquire into, and take an Account of the Conduct and Behaviour of the subordinate Officers at the said Posts and in the country belonging to the said Tribes; to hear Appeals; and redress all

Complaints of the Indians; make the Proper Presents; and transact all Affairs relative to the said Indians.

Article 16. That for the easy Attainment of Justice, the Evidence of Indians, under proper Regulations and Restrictions, be admitted in all Criminal as well as Civil causes, that shall be tried and adjudged by the said Agents or Superintendants, or by the said Commissaries; and that their Evidence be likewise admitted by the Courts of Justice in any of His Majesty's Colonies or Plantations in Criminal cases Subject to the same pains and Penalties in Cases of False Evidence, as His Majesty's Subjects.

Article 17. That the said Agents or Superintendants shall have power to confer such Honors and Rewards on the Indians, as shall be necessary; and of granting Commissions to principal Indians in their Respective Districts to be War Captains or Officers of other Military Distinctions.

Article 18. That the Indians of each Town in every Tribe in the Southern District shall choose a Beloved Man to be approved of by the Agent or Superintendant for such District to take care of the Mutual Interests both of Indians and Traders in such Town; and that such Beloved Men, so elected and approved in the several Towns shall elect a Chief for the whole Tribe who shall constantly reside with the Commissary in the Country of each Tribe, or occasionally Attend upon the said Agent or Superintendant as Guardian for the Indians and Protector of their Rights with Liberty to the said Chief to be present at all Meetings and upon all Hearings or Trials relative to the Indians before the Agent or Superintendant or before the Commissaries; and to give his Opinion upon all Matters under Consideration at such Meetings or Hearings.

Article 19. That the like Establishments be made for the Northern District, as far as the Nature of Civil Constitution of the Indians in this District, and the Manner of Administering civil affairs will admit.

Article 20. That no person having any Military Command in the Indian Country shall be capable of acting as Commissary for the Affairs of the Indians; in either of the above mentioned Districts respectively; nor shall such person having Military Command be allowed to carry on trade with the Indians, or to interpose his Authority in any thing, that regards the trade with, or civil Concerns of the Indians; but to give the Commissary or Civil Magistrate all Assistance in his power, whenever thereunto required.

Article 22. That the Agent or Superintendant, to be appointed for each District, as also the Commissaries residing at the Posts, or in the Indian Country within each District, shall take an Oath before the Governor or Chief Judge of any of the Colonies within their respective Districts, for the due Execution of their respective Trusts; and they and all other subordinate officers employed in the Affairs of the Indians, shall be forbid, under proper Penalties, to carry on any Trade with them, either upon their own Account or in Trusts for others, or to make any Purchase of, or accept any Grants of Lands from the Indians.

Article 41. That no private person, Society, Corporation or Colony be capable of acquiring any property in Lands belonging to the Indians, either by Purchase of, or Grant, or Conveyance from the said Indians, excepting only where the Lands lye within the Limits of any Colony, the soil of which has been vested in proprietors, or Corporations by Grants from the Crown; in which Cases such Proprietaries or Corporations only shall be capable of acquiring such property by purchase or Grant from the Indians.

Article 42. That proper Measures be taken, with the Consent and Concurrence of the Indians, to ascertain and define the precise and exact Boundary and Limits of the Lands, which it may be proper to reserve for them, and where no settlement whatever shall be allowed.

Article 43. That no purchases of Lands belonging to the Indians, whether in the name or for the use of the Crown, or in the Name and for the Use of the proprietaries of Colonies be made but at some general meeting, at which the principal Chief of each Tribe claiming a property in such lands are present; and all Tracts, so purchased shall be regularly surveyed by a Sworn Surveyor in the presence and with the assistance of a person deputed by the Indians to attend such Survey; and the said Surveyor shall make an accurate Map of such Tract, describing the Limits, which Map, shall be entered upon Record with the Deed of Conveyance from the Indians. (Note the similarity of this procedure with that followed by the Hudson Bay Company when it purchased lands from the Indians on Vancouver Island in 1850, 1851, and 1852; also with the procedure in vogue since that time.)

Article 59. And whereas Our Province of Quebec is in Part inhabited and Possessed by several Nations and Tribes of Indians with whom it is both necessary and expedient to cultivate and maintain a strict good Friendship and good Correspondance so that they may be induced, by degrees not only to be good Neighbors to Our Subjects, but likewise to be good Subjects to Us. You are therefore as soon as you Conveniently can, to appoint a proper Person or Persons to Assemble and treat with The said Indians, promising and Assuring them of Protection and Friendship on Our part and delivering them such presents as shall be sent to you for that purpose.

Article 60. And you are to inform yourself with the greatest exactness of the numbers, nature and disposition of the Several Bodies or Tribes of Indians, of the manner of their Lives and the rules and constitutions by which they are governed and regulated, and you are upon no account to molest or disturb them in the possession of the said Province as they at present Occupy and Possess, but to use the best means you can for conciliating their affections, and uniting them to Our Govern- ment, reporting to Us by one of Our Principal Secretaries of State and to Our Commissioners for Trade and Plantations whatever Information you can collect with respect to these People and the whole of Your Proceedings with them.

Article 61. And whereas we have by Our Proclamation dated 7th. day of October in the Third Year of Our Reign strictly forbid on pain of Displeasure all Our Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands reserved to the several Nations of Indians, with whom we are connected, and who live under Our Protection without Our Special Leave for that purpose first obtained.

It is Our ~~xxxxix~~ express will and pleasure that you take t the most effectual care that Our Royal Directions herein be punctually complied with, and that the Trade with such of the said Indians as depend upon your Government be carried on in the manner and under the Regulations prescribed in Our said ~~XXXXXXXXXXXX~~ Proclamation. (This is as express and strong a confirmation by the King of his Proclamation of 1763 in Favor of the Indians as can well be imagined; and never since then has the King done or authorized anything to be done to lessen the full force and effect of this confirmation, and of the said Proclamation.)

List of Indian Tribes in the Northern District of North America.

(A)

Mohocks; Oneidas; Tuscaroras; Onondagas; Cayugas; Senecas; Oswegachys; Nanticokes; Conoys; Tuteeves; Saponys; Caghnawagas; Canassadagas; Arundacks; Algonkins; Abenakis; Skaghquanoghronos; Hurons; Shawanese Delawares; Wiandots; Powtewatamis; Ottawas; Chipeweighs or Missis- agis; Kickapous; Meynomenys; Folsavoins; Puans; Sakis; Foxes; Twightwee Mascoutens; Plankashaws; Wawiahtonos; Keskaskias; Illinois; Sioux;

Micmacs; Norwidgewalks; Arsegunteckoes; Penobscots; St. John's.

B.

List of Indian Tribes in the southern District
of North America.

Cherokees; Creeks; Chickawawa; Catawabas; Beluxis;
Attucapas; Bayugas; Tunicas; Peluches; Ofugulas; Querphas.

Extract from letter by Fred Haldimand to General Sir John Johnso
(Canadian Archives B.115, Haldimand Papers.)

Sir: By a letter just received from Mayor Ross, I am concerned to learn that the Oneida Indians have refused to act, and that all the Indians have left Oswego on being denied permission to go to War. He adds that their discontent is such as to give him apprehensions of being daily insulted. So circumstanced, I think it very fortunate that you will have so early an opportunity of personally representing to them the impropriety of their conduct, and of persuading them that, however necessary it may have been thought to adopt the measure which gives them offence, they may firmly rely on a continuance of the King's favor and protection in all situations, and that it will not be less in his power or inclination to befriend them in peace, than in war, should the former be concluded, of which there is not, however, any certainty, but in all events, every attention will be paid to their situation as their attachment of services will never be forgotten, your own knowledge of these people and the aid you will have from Colonel Butts, Joseph and others of experience, will support arguments on this occasion to your most serious attention, to leave no means untried to preserve their affections.

With the subsequent development and conduct of the Department of Indian Affairs, constituted by the Imperial Government in Canada, in accordance with the policy and plans above quoted I will not now deal. It is enough to say here that since the proclamation of 1763, which was confirmed and enlarged by Royal Instructions to Governors ^MMurray in 1763, and Carleton, (afterwards Lord Dorchester) in 1768, 1775 and 1786, as already quoted, the Imperial Government has never in any manner whatever attempted to make void or allude the King's pledge then given to the Indians, or in any manner to derogate from the Indian title, but on the contrary, through ~~xxxxxxxxxxxx~~ Secretaries of State for the Colonies, and Governors General of Canada, has repeatedly protested against infringement of Indian rights by Colonial and Provincial Government. And it is perverse to say, as Henry J. said in his judgement in the Supreme Court of Canada in the case of the St. Catherines' Milling Company hereafter referred to, that the transfer of Indian lands was always made by the Crown. There is not a single instance on record in Canada of the Crown presuming to make a sale of Indian lands. The sale is always made by the Indians to the Crown or by the Indians to a third party, which sale is subsequently ratified by the Crown. Throughout the 19th century down to Confederation, the King, through the Imperial Government, continued to acknowledge the validity of the Indian Title. Sometimes the Crown itself bought land from the Indians for general public use, and sometimes to invest the proceeds for the sole use of the Indians and with their consent. I will not go into details of these transactions here as they are very voluminous, but will give one typical instance, than which I submit there could hardly be a stronger acknowledgement of the continuance, validity, and completeness of the title as contemplated in the ^{Proclamation} ~~title~~ of 1763 and the Royal Instructions following thereafter. Lieutenant Governor Sir Francis Head in August, 1836, in communicating the surrender of certain Indian lands in Upper Canada, to the Secretary of State for the Colonies said: "I have thus obtained

for His Majesty's Government from the Indians an immense portion of most valuable land." And although the Imperial Government in 1849 made a grant to the Hudson's Bay Company of the whole of Vancouver Island, yet in 1850, 1851 and 1852 we find Sir James Douglas buying from the Indians certain lands occupied by them on Vancouver Island for the Hudson Bay Company. Sir James Douglas took a title in fee simple from these Indians. This will be dealt with fully in the next section of this Report. It is to be remembered also that the Indians themselves never consented to anything less than full tribal ownership of the lands occupied by them; that prior to Confederation in 1867, the Provincial Government had legislative control over Indian lands only as trustees for the Indians under ultimate control of the Imperial Government; and that the whole course of legislation in the Canadian Provinces prior to Confederation was that the proceeds of Indian lands should be kept for the sole use of the Indians, and not go to the Province in which the lands were situate. (See 3 & 4 Victoria, ch.34, sec. 54; 12 Victoria c.9; 13 & 14 Victoria c.74; Consolidated Statutes of ~~Canada~~ Upper Canada 22 Victoria c.81; 23 Victoria c.51, sec.54; and also the course pursued by Governor Douglas in British Columbia as shown by official ~~records~~ despatches hereafter quoted.)

Before taking up the question as to the real nature of the Indian title, I will show, by official records, the recognition given to such title by the British Columbia Government.

THE TITLE RECOGNIZED BY BRITISH COLUMBIA

After the administration of Sir James Douglas there was an official colonial policy pursued in British Columbia which apparently was designed to lower the nature of the Indian Title till it should be regarded as a mere charity - ~~that~~ till the Indians should be held to be in no better position than tenants on suffrance of Crown Lands subject to colonial regulations as regards cutting timber and working mines thereon - having at best "squatters' rights" and no more.

Perhaps the most distinguished and efficient officer concerned with the Indians in British Columbia from after the ~~time~~ regime of Sir James Douglas until union with Canada in 1871, was Sir Joseph Trutch.

And probably the strongest argument ever made to lower the nature of the Indian Title was that of the Hon. Edward Blake before the Privy Council on behalf of the Province of Ontario in the case of St. Catharine's Milling Company v the Queen. (14 Appeal Cases, p. 46)

I quote hereunder statements by both of these gentlemen, made in their official and legal capacity respectively, regarding the Indian Title, because both their statements are untrue, as I will show by the official records, and where not untrue are misleading, and because being untrue and misleading they well exemplify the Colonial and Provincial attitude to this day as regards the rights of the Indian Nations.

On the 15th. November, 1869, Earl Granville, then Secretary of State for the Colonies, wrote to Governor Musgrave transmitting complaints made by the Aborigines Protection Society relative to the condition of the Indians on Vancouver Island. Governor Musgrave detailed Mr. Trutch at that time Commissioner of Lands and Works and Surveyor General to make an official reply to these complaints, and such

reply was made and enclosed in the form of a Memorandum attached to a letter from Governor Musgrave to Earl Granville the 29th. January, 1870. It may be referred to in "British Columbia Papers {connected with Indian Land Question, 1850 - 1875, Appendix B, p. 10 - 13." These papers were printed by the British Columbia Government officially in 1875, and in the extracts made from them hereafter will be referred to simply as "B.C. Papers."

~~*The title of the Indians to the land they occupy*~~

~~xxxxxx~~

"But the title of the Indians in the fee of the public lands, or of any portion thereof, has never been acknowledged by Government, but, on the contrary, is distinctly denied. In no case has any special agreement been made with any of the tribes of the Mainland for the extinction of their claims of possession; but these claims have been held to have been fully satisfied by securing to each tribe, as the progress of the settlement of the country seemed to require, the use of sufficient tracts of land for their wants for agricultural and pastoral purposes.

"In 1850 and 1851, shortly after the first settlement at Victoria by the Hudson Bay Company - at that time grantees from the Crown of the whole of Vancouver Island, with full executive powers of government - their agent, Governor Douglas, made agreements with the various families of Indians then occupying the south-eastern portion of the Island, for the relinquishment of their possessory claims in the district of country around Fort Victoria in consideration of certain blanket and other goods presented to them. But these goods presents were, as I understand, made for the purpose of securing friendly relations between those Indians and the settlement of Victoria, then in its infancy and certainly not in acknowledgment of any general title of the Indians to the land they occupy."

Before quoting the official records contradicting the above Memorandum, I would quote in connection with it the statements made by Mr. Blake in the St. Catharine's case, as contained in the reprint of his argument ~~is~~ filed with the Full Court of British Columbia on the 19th. day of November last by Counsel on behalf of the Province of British Columbia on reference of certain questions to said Court at the City of Vancouver.

"The Indian interest, such as it is, is not absolutely of right, but it has its foundation in grace and policy, in the political department of the Government. (page 2)

"I ask your lordships to mark that those territories of British Columbia are covered by the Proclamation of 1763 - that those territories are covered just as much as is the territory in question now by that very clause of the Proclamation under which this Indian interest is reserved. There the local Government dealt without hesitation, and under the authority granted to it, with the lands of the Indians, assigning them whatever morsels it thought fit, without any question or bargain or compact, not recognizing in them any

right to the soil, but reserving for them their residences, their burial grounds, and so on." (page 15)

Before quoting from the British Columbia Official Records it may be well to state briefly the chain of facts which constitute the official and judicial admission and recognition of the Indian Title in British Columbia, and which must estop the British Columbia Government from denial of that title.

a. The lands occupied by the Indians in British Columbia were included within the scope of the Proclamation of 1763. (See Blake's Argument pp.15-16-22)

b. The Proclamation of 1763 had the effect of a treaty, and rights granted and exemptions made under it could not be held to be annulled by any subsequent act of the Crown, as they were binding upon the Crown itself.

(See English Case: Campbell v Hall, Cowper's Reports, p.213: also American Case: Mitchell v United States, 9 Peters S.C.R.

c. On the 13th. January, 1849, the Hudson Bay Company received a Royal Grant of Vancouver Island, with full executive powers of government, and power to deal with lands except such as might be required by the Imperial Government for naval, military or other public purposes. But to such grant the words of Chief Justice Marshall in the case of Worcester v The State of Georgia (6 Peters) may well be applied:

" It could not effect the rights of those already in possession either as aboriginal occupants or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to purchase, and did not found that right on a denial of the ~~the~~ right of the possessor to sell. ***** European sovereigns respecting America conveyed what they might rightfully convey, and no more. That was the exclusive right of purchasing such lands as the Natives were willing to sell."

Now as a matter of fact the Hudson Bay Company conceded and acted upon this principle. During its regime it did not ~~presume~~ presume that the Royal Grant gave it any title on Vancouver Island to lands in actual occupation of an Indian tribe, but the Company did assume and jealously exercise "the exclusive right of

purchasing such lands as the Natives were willing to sell." The Royal Grant to the Hudson Bay Company in 1849 was quite consistent with the Proclamation of 1763, for only a small part of Vancouver Island was actually occupied by Indians. Of the lands which were occupied by the Indians, and which the Company required for its own purposes, the Company paid cash for these, and took from the Indian tribes concerned a regular instrument in writing which conveyed a title in fee simple, altho not expressed in the ordinary legal phrasing. (see form hereunder quoted.) Moreover, during the years 1850, 1851 and 1852 the Company distinctly acknowledged the Indian Title by right of occupation in ten separate districts, ever since recognized as Indian Reserves, and occupied by six different tribes, ^{known as} the Songhees, Sooke, Tsaikum, Chawilp, Tetahit and Nanaimo.

d British Columbia was constituted a Crown Colony in 1858, and on the 31st. July of that year Sir. E. B. Lytton as Secretary of State for the Colonies wrote to James Douglas, the ^{Hudson Bay Agent and the proposed} ~~newly appointed~~ ^{of the new Colony,} Governor, enjoining him to consider the best means of dealing with the Indians, and explaining that owing to the remoteness of the Colony, and his imperfect knowledge of the situation, he was reluctant to offer suggestions, saying: "This question is of so local a character that it must be solved by your knowledge and experience, and I commit it to you in the full persuasion that you will pay every regard to the interests of the Natives which an enlightened humanity can suggest." (Letter quoted ~~*****~~ hereunder)

Here then we have the Imperial Government approving so highly of the course pursued by Governor Douglas in his dealings with the Indians on behalf of the Hudson Bay Company that it entrusts him completely with the beginning of a Colonial policy to ward the Indians of British Columbia. The policy carried out therefore by Governor Douglas, always approved by the Imperial Government, must be taken to be

the Imperial policy. Governor Douglas always acted as if all the land occupied by the Indians belonged to the Indians, and he never presumed to put any restrictions upon them in the use of such land, except that he took early action to prevent the whites purchasing it from them. He recognized the tribal character of the Indian Title, and that no individual Indian had any right to sell any portion of the land belonging to his tribe. (See hereafter under heading 'True Nature of Indian Title') And Governor Douglas did not presume to fix the limits of the Indian Lands himself; he did not, as the Hon. Edward Blake says assign them whatever "morsels he thought fit, not recognizing in them any right to the soil." On the contrary he repeatedly gave express instructions to his officers that in determining what lands were open for settlement by the whites, and what were not, the various tribes of Indians should have all the land they claimed to occupy, and should themselves fix the limits of such lands (See letters hereunder quoted)

If in their dealings with the Indian lands both Sir James Douglas and Sir Joseph Trutch said the thing which is not let it be noted that Sir James, acting under Imperial authority said it to their prejudice. The former case is most important. Finding the attempts were being made by white persons to purchase the Indian lands at Victoria, and in order to put a stop to it, Governor Douglas caused a public notice to be inserted in the Victoria Gazette to the effect that these lands were "the property of the Crown" and that the Indians could not convey a legal title to them. Now he himself had taken legal title from them in 1850, 1851, 1852 without consulting the Crown in the matter, and nothing had occurred in the meantime to lessen the Indian title. But in a despatch to the Secretary of State for the Colonies dated 9th February, 1859 (hereunder quoted) he explains why he issued this notice which was not strictly correct. He says he ^{said} it so that the Indians would not be "dispoiled of their property". Moreover in the same despatch he refers to his plan for leasing some of this land "and to

apply all the proceeds arising therefrom for the exclusive benefit of the Indians." Now this simply could not have been constitutionally done were these lands Crown lands in the true sense; nor in such case could they have been referred to as the property of the Indians. It was a protective expedient on the Governor's part to protect the whites from securing these lands for a mere trifle. Because undoubtedly such sale itself would have been legal. The Proclamation of 1763 does indeed "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 special Leave and License for that purpose first obtained." But the Proclamation of 1763 in its application to British Columbia had never been followed by any further ~~application~~ Proclamation or Ordinance actually making a purchase of lands from the Indians invalid without the consent of the Crown; such as was done, for instance, by an Act of Congress in the United States in 1790, as follows:

"And be it enacted and declared, that no sale of lands made by any Indians, or any nation or tribe of Indians, within the United States shall be valid to any person or persons, or to any State, whether having the right to pre-emption of such lands or not, unless the same shall be made and duly executed at some public treaty held under the authority of the United States."

So the loving Subjects in British Columbia might have been quite willing to risk the royal displeasure in order to obtain these lands. Up to the time of Governor Douglas inserting this notice in the Gazette there was no law specially dealing with the rights of the Indians in British Columbia except the Proclamation. And it is to be kept in mind that the Indian lands declared by Governor Douglas to be "the property of the Crown" were not "Crown Lands" in the same sense as the vast unoccupied areas of British Columbia which at that time were literally "unoccupied, unreserved and unsurveyed" to use the terms of the first Land Ordinances of the Colony.

This point is of such prime importance that I would here show by what authority Governor Douglas dealt with the lands in the Colony, and also subject to what limitations his

British Columbia a Crown Colony, and such Act gave the Queen-in-Council authority to appoint an officer "as Governor of British Columbia to make provision for the administration of justice therein, and generally to make, ordain and establish all such laws, institutions and ordinances as may be necessary for the peace, order and good government of Her Majesty's subjects and others therein ***** and to "authorize and empower such officer to constitute a Legislature to make laws for the peace, order and good government of British Columbia, such Legislature to consist of the Governor and a Council or Council and Assembly, to be composed of such and so many persons, and to be appointed or elected in such manner and for such periods and subject to such regulations as to Her Majesty may seem expedient."

The Commission appointing James Douglas Governor of British Columbia was dated the 2nd. September, 1858, and in part reads as follows:

"And we hereby require and command you to do and execute all things in due manner that shall belong unto your said command and Trust we have reposed in you according to the several powers and authorities granted or appointed you by this Our present Commission and the Instructions herewith given you, or according to such further powers, directions and authorities as shall at any time hereafter be granted or appointed you, under Our Sign Manual and Signet or by Our Order in Our Privy Council or by us through one of Our Principal Secretaries of State and according to such reasonable laws as are now or shall hereafter be in force in Our said Colony."

"And We do by These Presents further give and grant unto you, the said James Douglas, full power and authority, by Proclamation or Proclamations to be by you from time to time for that purpose issued under the Public Seal of Our said Colony, to make, ordain and establish all such laws, institutions and ordinances as may be necessary for the peace, order and good government of Our subjects, and others residing in our said Colony and its Dependencies"

The Royal Instructions given to Governor Douglas on the same date as his Commission in part read as follows:

"If anything shall happen which may be of advantage or security to Our Colony and its Dependencies under Your Government which is not herein or by Our Commission provided for, We do hereby allow you to take orders for the present therein, giving unto Us through one of Our principal Secretaries of State speedy notice thereof,

that so you may receive Our ratification if We shall approve of the same."

As we have already noted Governor Douglas ~~practically received the authority~~ was practically given a free hand by Sir E.B.Lytton, then Secretary of State for the Colonies, in his letter to the Governor of the 31st. July, 1858, prior to his actual appointment.

On the 19th. November, 1858, Governor Douglas acting under the authority thus given him, issued a Proclamation making the Civil and Criminal laws of England, as they existed on that date, the laws of British Columbia, so far as they were not, from local circumstances, inapplicable to the Colony, and to remain in full force until legally altered.

On the 2nd. December, 1858, the Governor issued a Proclamation which constituted the first legislation relating to land in the Colony, and in which ~~he~~ he said:

"Now therefore I, James Douglas, Governor of British Columbia, by virtue of the authority aforesaid, do proclaim, ordain and enact that on and after the day or the date of this Proclamation it shall be lawful for the Governor for the time being of the said Colony by any instrument in print or in writing, or partly in print and partly in writing, under his hand and seal to grant to any person or persons any land belonging to the Crown in the said Colony, and every such instrument shall be valid as against Her Majesty, Her Heirs and Successors, for all the estate and interest expressed to be conveyed by such instrument in the lands therein described."

On the 14th. February, 1859, the Governor, wishing to define the terms and conditions under which ~~the~~ Crown Lands in British Columbia are to be offered for sale, issued another Proclamation, the first section of which was badly drafted, and could not possibly mean all it said, and would be of no effect if it did mean what it said. It is as follows:

"1. All the lands in British Columbia and all the mines and minerals therein belong to the Crown in fee." (This is construed to mean the Crown in the right of British Columbia)

Now this must be read subject to:

1. Such Indian Lands as were reserved by the Proclamation of 1763.
2. Such specific Indian Reserves as had been recognized by the Hudson Bay Company, acting under Imperial authority, in 1850, 1851 and 1852.
3. Such lands as had been reserved by the Imperial Government for naval and military purposes.
4. Such lands as the Hudson Bay Company had purchased from the Indians.
5. Such lands as had already been sold under the

Proclamation of 2nd. December, 1858.

6. Such lands as had been sold under the Governor's authority before his Proclamation of 2nd. December, 1858. That such a sale took place is proved by his despatch to the Secretary of State for the Colonies, dated 29th. November, 1858, in which he says: "The first operation disposing of public lands in British Columbia took place here on the 25th. instant."

From the above it is clear that the Governor could not have meant that "all the lands in British Columbia belong to the Crown in fee" altho in transmitting this Proclamation to the Secretary of State for the Colonies on the 19th. February, 1859, he repeats his error, saying:

"The Proclamation sets forth the constitutional rights of the Crown to all the lands in British Columbia, and to the mines and minerals therein." *The Governor could only have meant to proclaim the common law doctrine that the Crown is the Lord Paramount of all the lands in the Kingdom, and* ~~That the Governor meant~~

that, to use the terms thereafter employed in British Columbia, all the "unoccupied, unreserved and unsurveyed" lands and minerals therein belonged to the Crown in fee. *is This is* indicated in the 2nd. and 3rd. clause of this Proclamation. The 2nd. clause sets out how reservations for various purposes shall be made of "portions of unoccupied Crown Lands."

And the 3rd. clause says:

"It shall be competent for the Executive at any time to reserve such portions of the unoccupied Crown Lands, and for such purposes as the Executive shall deem advisable."

And in his covering letter of the 19th. ~~xxxxxxx~~ February, above quoted, the Governor says:

"Lands are to be offered for sale in the following classes, viz: town lands, general country lands, and lands for special settlement. All Crown minerals, lands and lands reported to contain minerals will for the present be reserved.

It is also our intention to make large reserves for roads, the erections of places of worship, schools and public purposes, and also for towns and villages in such a manner however as not to interfere with or retard the progressive improvement and settlement of the country."

In the whole letter is not a word said about reserves for Indians to be made out of Crown Lands, altho he was in continual correspondence about the Indians with the Secretary of State for the Colonies, and about their lands, and had already defined many districts as Indian Reserves. What then is the explanation? Did he

not intend to reserve any Crown Lands for the Indians as well as for roads, places of worship, towns and villages. No, he certainly did not. The Crown Lands belonged to the Crown for public purposes; the Indian Lands belonged to the Indians for the purposes of each separate tribe occupying them. The whole of Governor Douglas' administration, and instructions to his subordinates, proves beyond question that he distinguished between Crown Lands and Indian Lands. He knew personally the great areas unoccupied by any tribe of Indians. And he knew personally the small areas occupied by the several Indian tribes. And recognizing things as they were he took the Indians' word for it as to what constituted the limits of their several territories, and fixed their limits accordingly. During his administration he was not able to define the territories of all the tribes, more is the pity. But he did indicate what the Imperial policy was, and he carried out the Imperial trust as best he could. The lands occupied by tribes of Indians belonged to those Indians, and were so recognized. They were not tossed as "morsels" as Mr. Blake would have us believe. And the lands which were not occupied by the Indians were Crown Lands, open for settlement in accordance with the laws of the Colony. Governor Douglas' entire course of action in regard to the Indians is quite consistent with their rights under the Proclamation of 1763. Moreover he adopts exactly the same tone and attitude toward the Indians as did the Imperial governors and officers a century before his time in dealing with the Indians in Eastern America. The latter continually and officially referred to the Indians as brethern and allies, whose adherence they wished to secure to the British interests, and the King himself gave [special instructions for them to continue this course, for instance the Royal Instructions to Governor Murray, given the 7th. December, 1763 (Canadian Archives, M.230, p.1) Article 60 of which reads as follows:

Article 60: And whereas Our Province of Quebec is inhabited in part and possessed by several Nations and Tribes of Indians with whom it is both necessary and expedient to cultivate and maintain a strict good friendship, and good Correspondence, so that they may be induced by degrees not only to be good neighbors to Our Subjects(note that the King does not yet venture to claim them as subjects; they still being more properly termed allies) but likewise themselves to become good Subjects to Us: You are therefore as soon as you conveniently can to appoint a proper Person or Persons to assemble and treat with the said Indians, promising and assuring them of Protection and Friendship on Our Part, and delivering them such Presents as shall be sent to you for that purpose."

Governor Douglas, in his Despatch to the Secretary of State for the Colonies, dated at Victoria the 14th. March, 1859, (B.C. Papers p.16) shows that he has adopted the same attitude. He says:

3. "As friends and allies the Native races are capable of rendering the most valuable assistance to the ~~Empire~~ Colony(This, in part, would have been military service if the 'fifty-four forty or fight' attitude of the Americans had been maintained as regards the boundary of British Columbia.) while their enmity would entail on the settlers a greater amount of wretchedness and physical suffering, and more seriously retard the growth and material development of the Colony, than any other calamity to which, in the ordinary course of events, it would be exposed."

4. "In my Despatch No.4 of the 9th. February last, on the affairs of Vancouver's Island, transmitting my correspondence with the House of Assembly up to that date, there is a Message made to the House on the 5th. February, 1859, respecting the course I propose to adopt in the disposal and management of the land reserved for the benefit of the Indian population at this place, the plan proposed being chiefly thus: - That the Indians should be established on that Reserve, and the remaining unoccupied land should be let out on leases at an annual rent to the highest bidder, and that the whole proceeds arising from such leases should be applied to the exclusive benefit of the Indians." particulars

8. "Anticipatory reserves of land for the benefit and support of the Indian races will be made for that purpose in all of the districts of British Columbia inhabited by Native Tribes. Those reserves should in all cases include their cultivated fields and village sites, for which from habit and association they invariably conceive a strong attachment, and prize more for that reason, than for the extent or value of the land."

In connection with the above I would add an extract from a letter written by Governor Douglas after his term of office had expired to Indian Commissioner Powell. The letter is dated at Victoria the 14th. October, 1874, and reads in part as follows:

" As a safeguard and protection to these Indian Communities, who might, in their primal state of ignorance and natural improvidence, have made away with the land it was provided that these reserves should be the common property of the Tribe and that the title should remain vested in the Crown so as to be inalienable by any

of their own acts."

Thus we see that Governor Douglas, acting authority and under the instructions of the Imperial Government, recognized and the tribal character of such title the Indian Title, but declared that title vested in the Crown, by which he could only have meant that the right of escheat or reversionary interest was in the Crown, and this he did, as he plainly says, for the purpose of securing the of the Crown for the Indians ~~xxxxxx~~ protection against improvident sale ~~by the Indians~~ to the Colonists. He put Crown Lands and Lands reserved for Indians in two distinct classes. And here I would refer to four terms used in these Proclamations, Ordinances and Despatches concerning lands in British Columbia: viz. Public Lands, Crown Lands, Indian Reserves, Indian Settlements. Public Lands was I submit a loose popular term for any lands at that time in the Colony free and open to the public to come and go over unchecked, like the land known as a "village commons" - a wider term than Crown Lands. Crown Lands were all public lands in the Colony unoccupied and to which no one but the Crown had a valid claim. Indian Reserves were lands definitely bounded and recognized as belonging to one tribe or another of Indians. Indian Settlements were undefined areas of public lands occupied by Indian tribes.

Governor Douglas first uses the term public lands in his despatch of the 2nd. December, 1858 to the Secretary of State for the Colonies, referring to a sale which had been made of public lands of the 25th. November, 1858, before there was any Ordinance ~~xxxxxx~~ made or Proclamation issued authorizing such sale.

On the 4th January, 1860, the Colonial legislature passed an Act relating to land, the first clause of which reads as follows:

"That from and after the date hereof, British Subjects and aliens who shall take the oath of allegiance to Her Majesty and Her Successors, may acquire unoccupied and unreserved Crown land in British Columbia not being the site of an existent or proposed town or surfiferous land available for mining purposes or an Indian reserve or settlement, in fee simple, under the following conditions: * * *."

e. We now come to the next link, and it is a very important one, in the chain of recognition of the Indian Title in British Columbia. In 1861, the Colonial Legislature formally and officially recognized the existence of the Indian Title in the public lands, by a Petition to the Imperial Government asking for its aid in extinguishing such title. Thus it was a recognition not only of the existence of such title, but also of the fact that the Imperial Government would have to be consulted in the extinguishing of such title - that the Colonial Government had not the power of itself to extinguish that title. ~~The~~ Now there was no question whatever but that the Colonial Government had full control of Crown Lands - that power was the Proclamations and given by [^] the Ordinances above quoted, and which were ratified by the Imperial Government. Thus again the Colonial Legislature recognized the distinction between Crown Lands in the ordinary sense, that is unoccupied unclaimed Lands and public lands to which ~~the~~ an Indian Title adhered. I here quote the Despatch in full, transmitting said Petition from Governor Douglas to the Secretary of State for the Colonies. (B.C. Papers p.19)

Victoria, 25th March, 1861.

(No. 24.)

My Lord Duke, - I have the honour of transmitting a petition from the House of Assembly of Vancouver Island to Your Grace praying for the aid of Her Majesty's Government in extinguishing the Indian title to the public lands in this Colony; and setting forth, with much force and truth, the evils that may arise from the neglect of that very necessary precaution

2. As the native Indian population of Vancouver Island have distinct ideas of property in land, and mutually recognize their several exclusive possessory rights in certain districts, they would not fail to regard the occupation of such portions of the Colony by white settlers unless with the full consent of the proprietary tribes as national wrongs; and the sense of injury might produce a feeling of irritation against the settlers and perhaps disaffection to the Government that would endanger the peace of the country.

of Vancouver Island ; but the acquisition of the title is of purely colonial interest, and the Legislature must not entertain any expectation that the British taxpayer will be burthened to supply the funds, or British credit pledged for that purpose. I would earnestly recommend therefor to the House of Assembly that they should enable you to procure the requisite means, but if they should not think proper to do so Her Majesty's Government cannot undertake to supply the money requisite for an object which, while it is essential to the ~~people's~~ interests of the people of Vancouver Island is at the same time purely colonial in its character, and trifling in the charge it would entail.

I have, etc.

Newcastle.

The attitude of the Imperial Government as above set forth, is reasonable enough - it did not propose to make the Colony a present of the Indian Title or of its reversionary interest in the Indian Lands. On the other hand it did not object to the Colony buying that title from the Indians for fifteen thousand dollars, if the Indians were willing to sell for that amount. It would have been but a poor bargain for the Indians, nevertheless it would have been strictly in accord with the policy and conditions of the Proclamation of 1763. But the Colony did not act on the suggestion of the Imperial Government - it did not extinguish the Indian Title as advised to do at that time, and has not done so to this day.

By what occult process the Provincial Government can have acquired for nothing the Indian Title and reversionary interest which it now claims, and which the Colonial Government acknowledged it did not possess and which the Imperial Government advised it to secure by purchase, is a mystery. It is as if one should say the part is greater than the whole. For such lands and control of lands as were possessed by the Colonial Government was all that such Government could transfer to the succeeding Provincial Government at most, and as a matter of fact it did not transfer all these to the Provincial Government - some of the land and the control of the land was transferred to the Dominion Government. So that now the Provincial

Government has less than had the Colonial Government, and the Colonial Government did not have the Indian Title in the public lands of British Columbia, nor the reversionary interest in the Indian Lands.

f I now give the last official recognition by the Government of British Columbia of the difference ~~between Crown Lands and the accepted meaning of the term and Public Lands which the Indian Title adheres~~ between public lands which were Crown Lands and public lands to which the Indian Title adheres.

Under the Terms of Union whereby in 1871 British Columbia became a Province of Canada the Dominion Government undertook to construct a transcontinental railway connecting the Province with Eastern Canada. And in consideration of so doing, and of an annual payment of one hundred thousand dollars, the Province agreed to convey to the Dominion Government twenty miles of the public lands on each side of the line of such railway, which land has since been known as the Railway Belt. (11th. Article of Schedule to Imperial Order in Council, 16th. May, 1871)

And also, under the 13th. Article of the Terms of Union, British Columbia agreed with the Dominion Government that "tracts of land of such extent as it has hereto been the practice of the British Columbia Government to appropriate for that purpose shall from time to time be conveyed by the local Government to the Dominion Government in trust for the use and benefit of the Indians, on application of the Dominion Government; and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted the matter shall be referred for the decision of the Secretary of State for the Colonies."

~~Now in both these cases lands situate in British Columbia are to pass under control of the Dominion Government. And both in case of the public lands and the tracts of land~~

hitherto appropriated for the Indians the same word convey is used as regards the proposed transfer. But note the difference in the procedure adopted by the Provincial Government to effect such transfer. The Provincial Government issued a Crown Grant of the Railway Belt, saving rights of private owners and pre-emptors, to the Dominion Government. ~~It~~ Such was the proper course, for these lands were vested in the Crown in the right of British Columbia. But in the case of the lands which Messrs. Sproat, O'Reilly and other Dominion Commissioners appointed to define Indian Reserves found to be occupied by Indians, and accordingly constituted them into Indian Reserves, or added them to already existent Reserves in which they should have been included when such Reserves were originally defined, there was no Crown Grant made by the Provincial Government to the Dominion Government. There was no form of conveyance as from one having an estate or interest in these lands - there was not even a Quit Claim. Why? Because these lands were not Crown Lands in the sense of being lands vested in the Crown in the right of and for the benefit of the Province which the Provincial Government had inherited from the preceding Colonial Government. These lands, whether defined or not, were in a class by themselves. They were Indian Lands and Indian Settlements within the meaning and wording of the Proclamation of 1763, and of the official correspondence and instructions passing between the Secretary of State for the Colonies and Governor Douglas; they were within the class purchased by Governor Douglas for the Hudson Bay Company in 1850, 1851 and 1852 on Vancouver Island from the Indians, notwithstanding that the Hudson Bay Company had a Crown Grant which in general terms gave ~~them~~ ^{the Company} the whole of Vancouver Island without exception. They were within the class contemplated in the Petition of the Colonial Legislature of 1861, above referred to, asking the Imperial Government to extinguish the Indian Title to them; they were within the class specifically mentioned in the various Land Ordinances of the ~~XXXXXX~~

Colony. And so the Provincial Government had no power to make a grant of these lands, and so it did not assume to do so. Its only concern in the matter, since it had been relieved by the Imperial Government under the Terms of Union from the management and trusteeship of these Indian Lands, the Dominion Government taking its place in that respect, was to see that such lands as were taken by the Dominion Commissioners were in reality Indian Lands and not ordinary Crown Lands. And when it found that they were in reality Indian Lands all it could properly do was to signify its acquiescence in the action of the Commissioners - to confirm the verity of their survey. Sometimes it did this by Order-in-Council, such as that of the 20th. April, 1878, in which it is directed that "all Mr. Sproat's decisions in regard to Indian Land Questions in the Electoral District of Yale be regarded as final, excepting those of which he shall have received notice from Mr. Teague or Mr. Ussher, Government Agents, to lay over;" sometimes it did it by letter to the Dominion Commissioner from the Provincial Clerk of Records stating that the Chief Commissioner of Lands and Works (Province) had "accepted the Reserves" so defined, as in letters of the 23rd. May, 1881, and the 24th. January, 7th. February, 27th. February, 28th. March and 31st. March, 1882; and sometimes by letter direct from the Chief Commissioner of Lands and Works, as that of the 24th. October, 1887.

The Indian Reserves of Vancouver Island were at first recognized and defined by the Hudson Bay Company from 1850 to 1858. Reserves were next made under Imperial authority on Vancouver Island from 1858 until the 1st of June, 1870, and on the mainland of British Columbia until the 11st of April, 1865. They were next made under Colonial authority on Vancouver Island from the 11th April 1865 to the 1st July, 1871. Since that time they have been made by the Dominion Government through its Indian Commissioners, and acquiesced in by the Provincial Government as above described. Had any dispute arisen between the two Governments in regard to the areas to be included within such reserved the Imperial Government would, under the Terms of Union, settled such dispute through the Secretary of State for the Colonies. Always we find the Imperial Government retaining its interest directly or indirectly in the Indian lands and the welfare of the Indians. Even after it hands over the managements and trusteeship of the Indian lands to Colonial or Dominion authorities it yet exercises a degree of watchfulness over Indian interests - it never loses hold - it maintains the old direct connection between the King and the Indian. (See

despatches: Lytton to Douglas, 31st July, and 2nd, Sept. 1858;
Carmarvon to Douglas, 11th April, 1859;
Carmarvon to Earl Dufferin, 5th Feb. 1875 and
19th December 1875.)

Now by the agreement proposed by the Dominion Government by Minute of Council dated the 10th November, 1875, and accepted by the Provincial Government the 6th of January 1876, (which, be it always remembered was a mere matter of arrangement between the Dominion Government and the Provincial Government for expediting the performance of their duties in regard to the Indian lands, and to which agreement neither the Indians nor the Imperial Government were parties, or ever gave assent) there were to be three Commissioners appointed to allot and survey Indian settlements and constitute them into definite Indian Reserves. The Provincial Government found this method slow and objected to bearing any expense on account

of it. It made several alternative suggestions, among others that County Court Judges should perform this duty. The Provincial suggestions were not acted upon by the Dominion Government. Finally, on the 8th March, 1878, the Dominion Government of its own motion, appointed Mr. G. M. Sproat as sole Commissioner for the purpose of defining the Indian reserves. The Provincial Government did nothing to confirm this appointment, except indirectly by saying in the Order in Council of April 20th, above quoted, that "All Mr. Sproat's decision in regard to the Indian land question, in the elector of the District of Yale, he regarded as final, except, etc." On the 19th July, 1880, Mr. P. O'Reilly was appointed by the Dominion Government in Mr. Sproat's place, and the Provincial Government never confirmed such appointment in any way, except that it recognized the validity of Mr. O'Reilly's selection of the Indian lands. I now submit extracts from official records of British Columbia in addition to those already quoted bearing the Hudson Bay Company, Imperial and Colonial and Provincial attitude toward the Indian title in British Columbia, first drawing attention, however, to what appears to me another distinct recognition by the Government of British Columbia of the essential difference between ordinary Crown lands and Indian Lands.

From the earliest days of the Colony, any Indian could purchase or pre-empt any vacant Crown lands as freely as a white man, but no white man and no other Indian of another tribe or nation could settle upon, or acquire any interest whatever by purchase or otherwise in land defined as or recognized to be an Indian reserve or an Indian settlement in occupation by any particular tribe.

to use his exact words, "What I asked at most was this Indian Title? At most I submit that it was a right or easement to hunt or fish, over the tract, not transferrable, extinguishable only in favor of the Lord of the soil, and always subordinate to and carved out of the Crown title." (Blake's argument p. 72)

If this were true then the Hudson's Bay Company paid out its good money for nothing, as did also the Government of British Columbia when, upon the advice of Sir Joseph Trutch, it bought back land from the Indians. (see p.) But it is not true, as all Colonial history and official records relating thereto abundantly prove. As will hereafter be shown, the Indian title, if not a fee simple, was at the least, ~~a fee~~ ^{a fee} tail in each tribe. (See p.p.)

In addition to the Deed Poll by which the Indians surrendered their land to the Hudson Bay Company ~~there~~ there was an actual livery of seisin in accordance with old feudal form. All the Indians interested in the land were assembled, and upon the land, and in the presence of witnesses, a feoffment thereof was made - the gift of a fief or fee - all parties interested consenting thereto.

KOSAMPSOM TRIBE - ESQUIMALT PENINSULA AND COLQUITZ VALLEY.

(B.C. Papers, p. 6)

Know all men, we, the chiefs and people of the Kosampsom Tribe, who have signed our names and made our marks to this deed on the thirtieth day of April, one thousand eight hundred and fifty, do consent to surrender, entirely and forever, to James Douglas, the agent of the Hudson's Bay Company in Vancouver Island, that is to say, for the Governor, Deputy Governor and Committee of the same, the whole of the lands situate and lying between the Island of the Dead, in the Arm or Inlet of Camoson, and the head of the said Inlet, embracing the lands on the west side and north of that line to Esquimalt, beyond the Inlet three miles of the Colquitz Valley, and the land on the east side of the arm, enclosing Christmas Hill and Lake and the lands west of those objects.

The condition of or understanding of this sale is this, that our village sites and enclosed fields are to be kept for our own use, for the use of our children, and for those who may follow after us; and the land shall be properly surveyed hereafter. It is understood, however, that the land itself, with these small exceptions, becomes the entire property of the white people for ever; it is also understood that we are at liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly.

We have received, as payment, Fifty-two pounds, ten shillings sterling.

In token whereof, we have signed our names and made our marks, at Fort Victoria on the thirtieth day of April, one thousand eight hundred and fifty.

(Signed) HOOKOOWITZ his mark X,

Done in the presence of _____ and twenty others.

(Signed) ALFRED ROBSON BENSON, M.R.C.S.L.
JOSEPH WILLIAM MCKAY.

CHEWHAYTSUM TRIBE - SOOKE. (B.C. Papers p. 9)

Know all men, we, the chiefs of the family of Chewhaytsum, acting for, and on behalf of our people, who being here present have individually and collectively ratified and confirmed this our act. Now know that we, who have signed our names and made our marks to this deed, on the first day of May, one thousand eight hundred and fifty, do consent to surrender, entirely and for ever, to James Douglas the agent of the Hudson's Bay Company in Vancouver Island, that is to say, for the Governor, Deputy Governor and Committee of the same, the whole of the lands situate and lying between the Inlet of Whoyung and the Bay of Syusung, known as Sooke Inlet and the snow covered mountains in the interior of the Island.

The condition of, or understanding of this sale is this, that our village sites and enclosed fields are to be kept for our own use, for the use of our children, and for those who may follow after us; and the land itself, ~~with these small exceptions~~ shall be properly surveyed hereafter. It is understood, however, that the land itself,

with these small exceptions, becomes the entire property of the white people for ever; it is also understood that we are at liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly.

We have received, as payment, Forty five pounds ten shillings.

In token whereof, we have signed our names and made our marks, at Fort Victoria, on the first day of May, One thousand eight hundred and fifty.

(Signed) AL-CHAY-NOOK his x mark.
WE-TA-NOOGH his x mark.
CHA-NAS-KAYNUM his x mark.
Chiefs and representatives of the family of Chewhaytsum, who collectively have ratified the sale - about thirty in number.

Extract from Despatch in above Despatch: B.C. Papers p. 12

Therefore, the Indians possess an intelligent knowledge of their own rights, and appear to be determined to maintain them by all the means in their power, there can be no doubt that it is essential to the preservation of peace in British Columbia that the Natives should not only be protected against any encroachments on the part of the white people, but

Extract from a Despatch from the Right Hon. Sir E. B. Lytton, Bart. to Governor Douglas, dated 31st July, 1858. (B.C. Papers p. 12)

3. I have to enjoin upon you to consider the best and most humane means of dealing with the Native Indians. The feelings of this Country would be strongly opposed to the adoption of any arbitrary means or oppressive measures towards them. At this distance, and with the imperfect means of knowledge which I possess, I am reluctant to offer, as yet, any suggestions as to the prevention of affrays between the Indians and the immigrants. This question is of so local a character that it must be solved by your knowledge and experience, and I commit it to you, in the full persuasion that you will pay every regard to the interest of the Natives, which an enlightened humanity can suggest. Let me not omit to observe, that it should be an invariable condition, in all bargains or treaties with the natives for the cession of lands possessed by them, the subsistence should be applied to them in some other shape, and above all, that is the earnest desire of Her Majesty's Government that your early attention should be given to the best means of diffusing the blessings of the Christian Religion and of civilization among the natives.

Copy of Despatch from the Right Hon. Sir E. B. Lytton, Bart. to Governor Douglas: (B.C. papers p. 12)
No. 12. Downing Street. September 2nd, 1858.

Sir: In my despatch of the 31st July, No. 6, I directed your attention to the treatment of the Native Indians in the country which it has so recently been decided to establish as a British Colony. I regard that subject as one which demands your prompt and careful attention. I now transmit to you the copy of a letter from the Aborigines Protection Society, invoking the protection of Her Majesty's Government

on behalf of these people. I readily repeat my earnest injunctions to you to endeavor to secure this object. At the same time I beg you to observe that I must not be understood as adopting the views of the society as to the means by which this may be best accomplished.

I have, &c.,
(Signed) E.B.LYTTON.

Extract from Enclosure in above Despatch: *B.C. Papers. p. 13.*

"As therefore, the Indians possess an intelligent knowledge of their own rights, and appear to be determined to maintain them by all the means in their power, there can be no doubt that it is essential to the preservation of peace in British Columbia that the natives should not only be protected against wanton outrages on the part of the white population, but that the English Government should be prepared to deal with their claims in a broad spirit of justice and liberality. It is certain that the Indians regard their rights as natives as giving them a greater title to enjoy the riches of the country than can possibly be possessed either by the English Government or by foreign adventurers. The recognition of native rights has latterly been a prominent feature in the aboriginal policy of both England and the United States. Whenever this principle has been honestly acted upon, peace and amity have characterized the relations of the two races, but whenever a contrary policy has been carried out, wars of extermination have taken place; and great suffering and loss, both of life and property, have been sustained both by the settler and by the Indian. We would beg, therefore, most respectfully to suggest that the native title should be recognized in British Columbia, and that some reasonable adjustment of their claims should be made by British Government.

Copy of Despatch from the Right Hon. Sir. E. B. Lytton, Bart. to Governor Douglas. *B.C. Papers p. 15.*

No 62.

Downing Street,
December 30, 1858.

Sir: With reference to my Despatches of this day's date, on the present condition of British Columbia, I wish to add a few observations on the policy to be adopted towards the Indian tribes.

The success that has attended your transactions with these tribes induces me to inquire if you think it might be

feasible to settle them permanently in villages; with such settlement civilization at once begins. Law and Religion would become naturally introduced amongst the red men, and contribute to their own security against the aggressions of immigrants, and while by indirect taxation on the additional articles they would purchase, they would contribute to the Colonial Revenue some light and simple form of taxation, the proceeds of which would be extended strictly and solely on their own wants and improvements; might obtain their consent.

Sir George Gay has thus at the Cape been recently enabled to locate the Kaffirs in villages, and from that measure if succeeding Governors carry out, with judgment and good fortune the designs originated in the thoughtful policy of that vigorous and accomplished Governor, I trust that the prosterity of those long barbarous populations may date their entrance into the pale of civilized life.

I have, &c.

(Signed) E.B. LYTDON.

Governor Douglas to the Secretary of State for the Colonies.

No.4 - (B.C. Papers, p.15)

Victoria, Vancouver's Island,
9th February, 1859.

Sir: I have the honor of transmitting herewith for your information, my correspondance with the House of Assembly of Vancouver's Island on the public business of this Colony.

2. The subjects referred to in that correspondance are not of an important nature, with the exception of that marked letter, dated the 5th February, 1859, which touches on the subject of land reserved near the town of Victoria for the benefit of the native Indian population.

3. Attempts having been made by persons residing at this place to secure those lands for their own advantage by direct purchase from the Indians, and it being desirable and necessary to put a stop to such proceedings, I instructed the Crown Solicitor to insert a public notice in the Victoria Gazette to the effect that the land in question was the property of the Crown, and for that reason the Indians themselves were incapable of conveying a legal title to the same, and that any person holding such land would be summarily ejected.

4. In my communication before referred to, you will perceive that I have informed the House of Assembly of the Course I propose to adopt with respect to the disposal and managment of the Indian Reserve at Victoria; that is to lease the land, and to apply all the proceeds arising therefrom for the exclusive benefit of the Indians.

5. I have but little doubt that the proposed measure will be in accordance with the views of Her Majesty's Government and I trust it may meet with their approval, as it will confer a great benefit on the Indian population, will protect them from being dispoiled of their property, and will render them self-supporting, instead of being thrown as outcasts and burdens upon the Colony.

I have, &c.,
(Signed) JAMES DOUGLAS.

Extract from letter from Mr. Cox to the Chief Commissioner of Lands and Works. (B.C. Papers p. 20)

Rock Creek, 12th February, 1861.

Sir: I have the honour to inform you that I am this day in receipt of a Circular from the Colonel's Secretary, by which I perceive His Excellency the Governor has been pleased to appoint me Assistant Commissioner of Lands for this District.

I have, &c.,
(Signed) William Geo. Cox.

Extract from letter from The Chief Commissioner of Lands and Works to Mr. Geo. Cox. (B.C. Papers p. 21)

New Westminster, 6th March, 1861.

Sir: ~~XXXXXXXXXXXXXXXXXXXX~~ I have the honour to acknowledge the receipt of your communication of the 12th ultimo, requesting information as to the laws for controlling Indian Reservations also those for the letting of agricultural lands to aliens.

With regard to the former, I have received instructions from His Excellency the Governor to communicate with you on the subject and to request that "you will mark out distinctly all the Indian Reserves in your District, and define their extent as they may severly be pointed out by the Indians themselves." I would, at the same time, beg of you to be particular in scrutinizing the claims of the Indians, as I have every reason to believe that others (white persons) have, in some instances, influenced the natives in asserting claims which they would not otherwise have made, the object of such persons being prospective personal advantages previously covertly arranged with the Indians To instance this, I heard of men keeping Indian women, including them or their relations to put forward claims in order that they, (the white men) may so gain possession of the land.

I have, &c.,
(Signed) R.C. MOODY.

Extract Letter from the Colonial Secretary to the Chief Commissioner of Lands and Works. (B.C. Papers p. 21)

New Westminster,
5th March, 1861.

Sir: I am directed by His Excellency the Governor to request that you will take measures as soon as may be possible, for marking out distinctly the sites of the proposed Towns and the Indian reserved throughout the Colony.

2. The extent of the Indian Reserves to be defined as they may be severally pointed out by the Natives themselves.

I have, &c.,
(Signed) CHARLES WOOD,
For Colonial Secretary

Instructions to Sapper Turnbull. (B.C. Papers p. 22)

New Westminster, 1st May, 1861.

Sapper Turnbull: You will take an early opportunity of staking and marking out in the District you are now stationed all Indian villages, burial places, reserves, etc. as they may be pointed out to you by the Indians themselves, subject however, to the decision of the District Magistrate as to the extent of the land so claimed by them. Make sketches of the locality and give dimensions of claim, sending them to this office after acquainting the Magistrate of what you have done. Be very careful to satisfy the Indians so long as their claims are reasonable, and do not mark out any disputed lands between the whites and Indians before the matter is settled by the Magistrate, who is requested to give you every assistance. Report your Progress from time to time.

I have, etc.,
(Signed) R.M. Parsons, Capt., R.E.

The Chief Commissioner of Lands and Works to Mr. Brew. (B.C. Papers p. 23)

New Westminster, 13th May, 1862.

Sir: I have the honour to acquaint you that a portion of land, with five chains frontage on the North Arm of the Fraser has been laid out as an Indian Reserve, at a distance of ten chains west from the Suburban Lots of New Westminster.

I have, &c.,
(Signed) J. Grant, Capt. R.E.
For Chief Commissioner

The Colonial Secretary to the Chief Commissioner of Lands and Works.:- (B.C. Papers p. 24)

Colonial Secretary's Office,
18th June, 1862.

Sir: With reference to your letter of the 27th ultimo, on the subject of a purchase of a Suburban Lot of Land by an Indian, on the same terms as it could be purchased by a white man, I am directed by the Governor to inform you that there can be no objection to your selling lands to the Natives on the same terms as the same terms as they are disposed of to any purchasers in the Colony whether British Subjects or aliens.

I have, &c.,
(Signed) William A.G. Young.

Extract from Letter from Chief Commissioner of Lands and Works
to Governor Douglas in reply to foregoing letter, 11th June, 1862.

Lands & Works Department,
New Westminster, 11th June, 1862.

The Chief Commissioner of Lands and Works to the Colonial
Secretary. *B.C. papers. p. 25.*

Land and Works Department,
New Westminster, 11th June, 1862.

Sir: A question has arisen as to Indians pre-empting lands
precisely as a white man could. I understood His Excellency
to say that there is nothing to prevent their doing so,
provided, of course, they fulfil all the terms required by the
Pre-emption Proclamation.

I shall feel obliged by receiving official instruction
in respect to the above. Such instructions appear to be very
necessary in connection with the progress of the survey of
the country, the more so as I understand Indians are pre-
empting in "extended order" along the River and elsewhere to
considerable extent, and that such extent is likely to increas
very considerably and very rapidly.

I have, &c.,
(Signed) R.C. MOODY.

Governor Douglas to the Chief Commissioner of Lands and Works.
(B.C. Papers. p. 26.)

New Westminster, 27th April, 1863.

Sir: An application has been made to me this morning by
the Native inhabitants of Coquitlaⁿ River for an additional
grant of land contiguous to the Indian Reserve immediately
opposite Mr. Atkinson's premises.

That reserve, it appears, is so small, not exceeding
50 acres of land, as to be altogether insufficient to raise
vegetables enough for their own use.

I beg that you will, therefore, immediately cause
the existing reserve to be extended in conformity with the
wishes of the natives, and to include therein an area so
large as to remove from their minds all causes of dissatis-
faction.

Notwithstanding my particular instructions to you, tha
in laying out Indian Reserves the wishes of the Natives them-
selves, with respect to boundaries, should in all cases be
complied with, I hear very general complaints of the smallness
of the areas set apart for their use.

I beg that you will take instant measures to inquire
into such complaints, and to enlarge all the Indian Reserves
between New Westminster and the mouth of the Harrison River
before the contiguous lands are occupied by other persons.

I have, &c.,
(Signed) JAMES DOUGLAS.

Extract from Letter from Chief Commissioner of Lands and Works to Governor Douglas in reply to foregoing Letter. (B.C. Papers p 27.)

Lands & Works Department,
New Westminster, 28th April, 1863.

Sir:

I have the honor to acknowledge the receipt of a communication from Your Excellency, dated 27th instant, respecting an application from the Indians on the Coquitlam for an additional grant of land.***** The reserve in question was most carefully laid out, the Indians being present, and after they had themselves marked according to their own wishes the bond, the area was further enlarged. I resisted the appeal of the neighboring settlers, and acceded to the amplest request of the Indians.*****
***** In every case the wishes of the Indians are carefully consulted and the bounds are widely extended beyond the limits marked out by themselves. Any statement contrary to the above, made to Your Excellency from whatsoever quarter, is absolutely without foundation. The Interests of the Indian population are scrupulously, I may say jealously, regarded by myself and every officer and man under my command.***** Several full reserves have already been made, but I hear incidentally that there are other Indian villages and potato grounds with the sites of which the Lands and Works Department is not acquainted. I have

I have, &c.,
R.C.MOODY.

Extract from letter from the Colonial Secretary to the Chief Commissioner of Lands and Works. (B.C. Papers p. 28)

Colonial Secretary's Office,
11th May, 1863.

Sir:

I am desired by the Governor to acknowledge his receipt of this day of your letter of the 28th ultimo marked 'Confidential', relative to the Indian reserves in British Columbia. In reply thereto I am to acquaint you that His Excellency considers that the instructions contained in His letters to you of 5th March and 5th April, 1861, and 27th April, 1863, cover the whole question, and he requests that those instructions be carried out to the letter, and in all cases where the land pointed out by the Indians appears to the officer employed on the Service, to be inadequate for their support, a larger area is at once to be set apart.

I have, &c.,
WILLIAM A.G. YOUNG.

Extract from the Chief Commissioner of Lands and Works to Mr. Brew. *B.C. papers p. 28.*

New Westminster, 11th June, 1863.

Sir:

I shall feel obliged if you will be good enough to inform me when it will be in your power to dispatch a legal functionary to Keatzie, to settle the claim of the Indians as to the bounds of their lands. Surveyors shall be sent with him to mark it off by posts so soon as he shall adjust the dispute.

You may remember the interview with the Governor, in which he decided that the Indians, by the present condition of affairs, were defrauded of their just demands; and it appeared that the bounds being moved some moderate distance further east would meet their desires. It was then considered the best way ~~we~~ would be to send a sufficiently qualified person up to Keatzie who could understand the Indian language and rightly interpret the case, and that time this Department should carry out on the spot the decision arrived at.

I have, &c..

R.C. MOODY.

I have, &c..

WILLIAM MOODIE.

Instructions to Mr. Moodie (21st June 1863.)

Mr. William Moodie will proceed forthwith to mark out the Indian Reserves around the different Indian Villages on the Fraser River, between New Westminster and Harrison River, wherever reserves have not yet been declared and defined. He will also mark as Indian reserves any ground which has been cleared or tilled for five years by the Indians.

Mr. Moodie will mark out with survey and intermediate posts, wherever land the Indians claim as theirs and in any Indian Village where the quantity of land demanded by the Indians is not equal to ten acres for each family, Mr. Moodie will enlarge the reserve to that extent. Each town may be so constituted the head of a family.

Mr. Moodie will be allowed a month to execute these

Surveyor General's Office,
New Westminster; 11th June, 1863.

Mr. William McColl's Report.(B.C Papers p.43.)

New Westminster, 16th May, 1864.

Sir: In accordance with Mr. Brew's instructions of the 6th April, I have completed the staking off of the reserves alluded to in that document, (herewith returned).

I beg to inform you that, in addition to the written instructions, I had further verbal orders given to me by Sir James Douglas, to the effect that all lands claimed by the Indians were to be included in the reserve; the Indians were to have as much land as they wished, and in no case to lay off a reserve under 100 acres. The reserves have been laid off accordingly. (See the accompanying diagram).

I also beg to inform you that I have laid off more reserves than what was originally intended when the instructions were written.

List marked A was handed to me by Sir James Douglas and contained all the names of the reserved that were to be laid off; but afterwards documents B, C, and D were sent, giving a considerable larger amount of work than what was expected at first.

This explanation is given to show cause why the work was so much longer in hand than what was expected, one month being allowed. The work was one month and eleven days in hand. This I leave for your consideration.

I have, &c.,

WILLIAM MCCOLL.

Instructions to Mr. McColl.(B.C Papers p.43.)

Mr William McColl will proceed forthwith to mark out Indian Reserves around the different Indian Villages on the Fraser River, between New Westminster and Harrison River, wherever reserves have not yet been declared and defined. He will also mark as Indian reserves any ground which has been cleared and tilled for five years by the Indians.

Mr. McColl will mark out with corner and intermediate posts, whatsoever land the Indians claim as theirs; and at any Indian Village where the quantity of land demanded by the Indians is not equal to ten acres for each family, Mr. McColl will enlarge the reserve to that extent. Each grown man to be considered the head of a family.

Mr. McColl will be allowed a month to execute this task.

C.BREW.

Surveyor General's Office,
New Westminster; 6th June, 1864.

The men chiefly concerned with defining Indian reserves under instructions from Governor Douglas were Colonel Moody of the Royal Engineers, who came to the Colony in Command of an attachment of British troops, and who held a dormant commission as lieutenant Governor, which was only to take effect in case of death or incapacity of Governor Douglas; Chartres Brew, appointed Police Magistrate at Fort Langley on the Fraser River where the Colony of British Columbia was first proclaimed, and who was given very wide powers in regard to Indian matters by Governor Douglas; and Messrs McColl, Cox and Turnbull who were surveyors instructed by Governor Douglas to visit some of the Indian settlements and define them as Reserves.

The Imperial policy of a generous recognition of the Indian Title to lands occupied by them, which was so well begun by Governor Douglas and his officers began to be checked, immediately after his term of office had expired, by the Colonial authorities, having only the Interests of the white settlers at heart, and evidently inspired by the sentiment subsequently expressed, and already quoted, of Mr. Tod of Cowichan: "Sure, what the devil is the good of a Government that can't put a few Siwashes off a man's land." (B.C. Papers. p.133.) Sir James Douglas ceased to be Governor of Vancouver Island, and also of the mainland of British Columbia, in April, 1864. Immediately after, ^{the} restraining hand of Governor Douglas was removed, Sir Joseph Trutch, then Chief Commissioner of lands and Works, began a policy of whittling down the Indian Reserves and settlements to such an extent as to bring the Indians to the very edge of rebellion. Concerning his policy Father Grandidier of the Okanagan Mission said:

"**** Who will wonder at the dissatisfaction that has been growing amongst the Indians? The land was theirs and their forefathers before the whites came; that land has been wrenched from them in virtue of might, not right; not a cent has been given them to extinguish their title to the land.***** And it is not correct to say that no injustice has been done to the Indians in taking away their land because they did not cultivate it. For they were the owners of the land, and the title to a property is not rendered valueless because the property is left to decay.***** They had been left to struggle on the parcel of land allotted them, without any encouragement, any help, any agricultural implements from any quarter and because they are forebearing and peacefully disposed, they are to be granted a minimum possible of land.

***** They do not think that when a white man can pre-empt 320 acres, and buy as much more, besides the facility of leasing more, that they are unreasonable in asking 80 acres of their own land per family. ***** But if the Indians are persistently refused their demands, if they are deprived of their fathers' land without any hope of redress from the proper authorities their dissatisfactions will increase, meetings shall be held again, as it has been about their grievances, the end of which I am afraid to foresee. We may have very serious disturbances which it might be impossible to suppress except at the cost of human life and large expenditure of money. ***** If it my duty to teach the Indian to keep the Commandments of God, and obey the just laws of man, it is no less my obligation to spare no effort in order that justice be done to them, and that peace and security be preserved in my adopted country. (B.C.Papers, p.146-148.)

In the same year (1874) Indian Commissioner Powell wrote to the Department of Interior at Ottawa saying:

"If there has not been an Indian War it is not because there has been no injustice to the Indians but because the Indians have not been sufficiently united." (B.C.Papers, p.153.)

The deeds, instructions, and despatches already quoted from British Columbia records, show how false ^{was} the statements of the Hon. Edward Blake when he said that the Government of British Columbia 'dealt without hesitation and under the authority ~~xxxxx~~ granted to it, with the lands of the Indians, assigning them whatever morsels it thought fit without any question or bargain or contract, not recognizing in them any right to the soil.'

And now I will show how false were the statements of Sir Joseph Trutch that (1) 'In no case has any special agreement been made with any of the tribes of the main land.'

Special agreements were made with the Kamloops and Shuswap Indian tribes on the main land and Commissioner Trutch himself, when hesitating between a course of repudiating the reserves made under instructions of Governor Douglas and seizing the Fraser River Reserves by force, or purchasing these desired lands from the Indians, finally advised Governor Seymour 'to buy back these lands from the Indians,' as had already been done with the Kamloops and Shuswap Indians. (B.C.Papers.p.41.)

(2) 'That Governor Douglas made agreements with various families of Indians then occupying the South eastern portion of the Island, for the relinquishment of

their possessory claims in the district of country around Fort Victoria, in consideration of certain blankets and other goods presented to them, but these presents were, as I understand, made for the purpose of securing friendly relations between those Indians and the settlement of Victoria, and certainly not in acknowledgment of any general title of the Indians to the lands they occupied. (B.C. Papers, appendix p.11)

On the contrary, Governor Douglas took a title from the Indian tribes for money consideration by deed poll, and the fee-simple nature of such title thus acquired by the Hudson Bay Company has never been questioned.

I now submit for consideration official instructions and letters issued by the Colonial authorities and comment upon them will hardly be necessary as after the retirement of Sir James Douglas, ~~and~~ they so plainly indicate the niggardly Provincial policy inaugurated under Sir Joseph Trutch, and now shown in the last stage of its development by the reported announcement last month by the Premier of British Columbia that: "It is too late to discuss the equity of dispossessing the red man in America. *** When the interested Indians accepted the white man's machinery, for the policing and general direction of the country, they tacitly confessed themselves conquered. Surely we do not have to go to war and injure a helpless people to technically perfect a title to any part of Canada." (Press Despatches 31st July 1909)

In this pronouncement we find the logical outcome of the Colonial policy whenever freed from Imperial restraint - a complete denial of any inherent right of the Indians to the lands occupied by them before the arrival of white settlers. As Lord Watson said in the St. Catharine's Case: "A pretext is never wanted for taking land" (Blake's Argument, p. 53.)

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Extract from Mr. Nind to the Honorable the Colonial Secretary.

(B.C. Papers p. 29)

Lytton, 17th July, 1865.

Sir: I have the honour to address you on the subject of the Indian land claims above Kamloops and in its vicinity. That branch of the Shuswap tribe, which live on the ~~NAME~~ Upper Thompson and Shuswap Lakes, numbering, I am informed, less than five hundred souls, claim the undisputed possession of all the land on the north side, between the foot of the Great Shuswap Lake and the North River, a distance of nearly fifty miles where lie thousand of acres of good arable and pasture land, admirably adapted for settlement. I have heard of one cattle-grower, who paid their Chief, Nisqaimlth, a monthly rent for the privelege of turning his cattle on these lands.

Another branch of the same tribe, not so numerous as the first, claim all the available land on the North River, extending northward many miles above the mouth, which also possesses attraction to the settler. These Indians do nothing more with their land than cultivate a few small patches of potatoes here and there; they are a vagrant people who live by fishing, hunting and bartering skins; and the cultivation of their ground contributed no more to their livelihood than a few days digging of wild roots; but they are jealous of their possessory rights, and are not likely to permit settlers to challenge them with impunity; nor such is their spirit and unanimity would many settlers think it worth while to encounter their undisguised opposition. This, then has the effect of putting a stop to settlement in these parts. Already complaints have arisen from persons who have wished to take up land in some of this Indian territory, but who have been deterred by Indian claims

I have, &c.,

PHILIP HENRY NIND.

Extract from the Chief Commissioner of Lands and Works to the Colonial Secretary (B.C. Papers p. 30) Lands and Works Department, New Westminster, Sept. 20th, 1865.

Sir: In reference to Mr. Nind's letter to yourself of the 17th July, which has been referred to me for a report, I have the honour to state that the settlement of the boundaries of Indian Reserves is, in my opinion, a question of very material present and prospective importance, and should engage immediately the attention of all interested.

It appears most advisable that it should be at once constituted the definite province of some person or persons duly authorized for that purpose, to make a thorough enquiry into this subject throughout the Colony. To ascertain as exactly as practicable what lands are claimed by Indians, what lands have been authoritively reserved and assured to the various tribes, and to what extent such reserves can be modified with the concurrence of the Indians interested in them - either with or without money or other equivalent.

I am satisfied from my own observation that the claims of Indians over tracts of land, onw which they assume to exercise ownership, but of which they make no real use, operate very materially to prevent settlement and cultivation in many instances besides that to which attention has been

directed by Mr. Nind, and I should advise that these claims should be as soon as practicable, enquired into and defined.

I have, &c.,

JOSEPH W. TRUTCH.

From the Colonial Secretary's letter to me on this subject and of Mr. Nind's letter to the Colonial Secretary, and have requested Mr. Nind to furnish you with a copy of Mr. Nind's report on the reduction of the Reserves, and you will be pleased to take such steps towards the fulfillment of His Honor's instructions in this regard as may appear most advisable to you.

I have, &c.,

JOSEPH W. TRUTCH.

Extract from letter from the Colonial Secretary to the Chief Commissioner of Lands and Works. *B.C. Papers p. 30*
Colonial Secretary's Office,
26th September, 1865.

Sir: I am directed by the Officer Administering the Government to acknowledge the receipt of your letter of the 20th instant, on the Subject of Indian Reserves.

His Honor is fully impressed with the importance of defining those reserves throughout the Colony, but he is not prepared, at this late season of the year, to commence a general system such as you recommend. His Honor, however, thinks it very desirable that the Shuswap and Kamloops Reserves should be reduced, without further delay, to reasonable limits, as it would perhaps be a matter of greater difficulty to settle the affair should the route by Kamloops become the main thoroughfare to the Columbia River. I am therefore to request you to inform Mr. Noberly that the Government is very desirous of reducing the reserves to which Mr. Nind makes allusion in his letter of the 17th July last, and of which I forward a copy for your information and guidance; and that you will authorize Mr. Noberly to make enquiries on his way down and to reduce these reserves if he is of opinion that it can be effected without much dissatisfaction of the Indians.

I have, &c.,

CHARLES GOOD.
For the Colonial Secretary.

Letter from the Chief Commissioner of Lands and Works to the Colonial Secretary, B.C. Papers p. 31

Instructions to Mr. Moberly. *(B.C. Papers p. 31)*
New Westminster, October 10th,
1865.

Sir: The Indian Reserves at Kamloops and Shuswap laid out by Mr. Cox, being considered entirely disproportionate to the numbers and the requirements of the Indians residing in those Districts, His Honor has instructed me to direct you to make an investigation of the subject on your way back from the Columbia and to report, on your return to this place, whether in your opinion arrangements can be made to reduce the limits of these Reserves, so as to allow part of the lands now uselessly shup up in these Reserves to ~~the~~

be thrown open to pre-emption.

I enclose copies of an extract from the Colonial Secretary's letter to me on this subject and of Mr. Nind's letter to the Colonial Secretary, and have requested Mr. Nind to furnish you with a copy of Mr. Cox's report on the location of the reserve, and you will be pleased to take such steps towards the fulfilment of His Honor's instructions in this regard as may appear most advisable to you.

I have, etc.,

JOSEPH TRUTCH.

Extract from letter from Mr. Cox to Mr. Nind respecting Indian Reserves about Kamloops, dated 16th July, 1865. (B.C. Papers p. 31)
SHUSWAP RESERVE.- Just before leaving Kamloops, I received instructions from Governor Douglas to mark out all the Indian Reserves in the neighborhood. The Kamloops reserve extends about 4½ miles up the North River, and about ten miles up Thompson River. The Shuswap tribes called upon me to do the same for them, as some Frenchmen were encroaching upon their grounds. I could not mark off their boundaries at that time on the ground, but chalked out the position and extent of the Shuswap Reserve at Kamloops, for the Chief, and gave him papers to post up. There could be no mistake. I ~~xxxxxxx~~ shall send you, herewith, a sketch of same, as well as I can recollect it. The probability is that my papers have been removed, and the grounds allowed by me greatly added to.

(Signed)

W.G. COX.

Letter from the Chief Commissioner of Lands and Works to the Colonial Secretary (B.C. Papers p. 32)
Lands and Works Department,
New Westminster, January 17th, 1866.

Sir,- I have the honour to enclose for the information of the Officer administering the Government, a copy of report from Mr. Noberly on the subject of the Kamloops and Shuswap Indian Reserves, an investigation of which was undertaken by him in accordance with my letter of instructions of 10th October. I also enclose a sketch showing the position and extent of these reserves, together with copies of all the papers relating to them that can be found in this Department. On the general subject of these reserves, I have already offered an opinion in my letter to yourself of the 20th September.

It appears to me that, as stated by Mr. Noberly, these reserves are entirely disproportionate to the numbers or requirements of the Indian tribes to which they are represented to have been appropriated by Mr. Cox.

Two points remain to be determined, 1st.-Whether or not Mr. Cox's Agency in the matter is binding on the Government? And secondly-are the boundaries of the reserve now claimed by the Indians those which Mr. Cox really gave them assurance of?

On this first point I cannot form an opinion, as I am without any information as to the instructions given to Mr. Cox on the subject, but on the second I think there is reason to believe from what Mr. Cox stated to Mr. Birch, in my presence in August last, at Richfield, and from the rough sketch furnished in his own handwriting, a copy of which is enclosed, that the extent of one at least of these reserves, that of the Shuswap tribe has been largely added to by the changing of the position of the boundary stakes by the Indian claimants.

It is most important that these questions be enquired into as soon as possible, and if it be decided that Mr. Cox's Reserves are to be observed, and that the tracts claimed by the Indians are only those which were actually made over to them by him, there will remain only to be determined whether it is advisable to purchase back from them such portions of these lands as are valuable for settlement.

Much of the land in question is of good quality and it is very desirable, from a public point of view, that it should be placed in possession of white settlers as soon as practicable, so that a supply of fresh provisions may be furnished for consumption in the Columbia River Mines, and for the accomodation of those travelling to and from the District.

I have, &c.,
(Signed) JOSEPH TRUTCH.

Extract from letter from Mr. Moberly to the Chief Commissioner of Lands and Works. (B.C Papers, p.34.)

New Westminster, December 22nd, 1865

***** I think by showing the Indians that their titles from Mr. Cox are of no value, and by a judicious expenditure, of a small sum of money, that arrangements can be effected to get the greater portion of these reserves quietly given up. It would be very desirable indeed to get all the land from the foot of Little Shuswap Lake to Kamloops entirely out of their hands.

As I did not feel myself justified in expending any money then, as the forceable reduction of the reserves by me would have created a bad feeling now, and probably led to future acts of violence on their part - which ought to be avoided by every possible means ***** I thought it better to postpone any further action in the matter until I could report to you.

I have, etc.,
W. MOBERLY.

Extract from report by Joseph W, Trutch for consideration of Governor Seymour, enclosed with letter to the acting Colonial Secretary, dated 28th August, 1867. (B.C. Papers, p.41.) *****

It is certainly very desirable that the extent ~~xxxxxxx~~ of the Indian reserves along the lower Fraser River should be definitely determined.***** By letter dated 6th April, 1864, Mr. Brew directed Mr. McColl to mark our Indian reserves around the different Indian villages on the Fraser between New Westminster and Harrison River, where reserves had not yet been declared and defined. Also to mark out as Indian reserves any ground which had been cleared and tilled for years by Indians; all lands claimed by the Indians as theirs, were to be marked out with corner and intermediate posts, and that all Indian Villages where the quantity of land claimed by the Indians was not equal to ten acres for each family, the reserve was to be enlarged to that extent, each grown man to be considered as a head of a family.

(It is very important to note this, in as much as it seems to be the ground for contending that British Columbia, ~~xx~~ prior to union with Canada, had a fixed policy of only allowing ten acres to each Indian family, as set forth in the Memorandum of ~~xx~~ Attorney General Walken, dated 17th August, 1875, to the Executive Council of British Columbia. It is true that the Speech of Governor Douglas to the Legislative Council of British Columbia in 1864, said that the Indian Reserves at that time partially defined, did not exceed ten acres to each family concern. But there was great variation, according to the character of the Indian tribes in the amount of land used by them. A tribe subsisting mainly by fishing would occupy very little land indeed as compared with an inland tribe engaged in cattle breeding and hunting. And it happened in some cases that these fishermen tribes did not in the opinion of Governor Douglas, and of Mr. Brew claim sufficient land for their needs. In such cases, the surveyors were instructed to enlarge the limits of the reserved to the extent of at least ten acres to a family. But over and over again Governor Douglas repeated his instructions to the effect that all the land claimed by the Indians should be allotted to them. This rule Trutch, as Commissioner of lands and works, after Governor Douglas's term of office had expired, did his best to repudiate and render of no effect).

See his letter quoted at page 79.

Additional verbal instructions were given by Sir James Douglas personally to Mr. McColl to the effect, as understood by Mr. McColl and subsequently stated in his report to Mr. Brew, dated the 16th May, 1864, that all lands claimed by Indians were to be included in their reserves, that the Indians were to have as much land as they wished, and that he was in no case to lay off a reserve under 100 acres.

Acting on this latter indefinite authority, rather than on the written instructions from Mr. Brew, McColl marked out reserves of the most unreasonable extent amounting, as estimated by himself, to 50, 60, 69, 109, and even to as much in one case as 200 acres for each grown man in the tribe. (at this very time, Mr. Trutch, who considered fifty acres as most unreasonable for an Indian, was granting freely to every white settler three hundred and twenty acres.) The sketch map sent in by McColl with his report is compiled from his own roughly distances alone; no actual survey was made by him. He seems to have merely walked over the ground claimed by the Indians, setting up stakes at the corners pointed out by them, including the lands they chose to ask for, and then to have estimated the acreage contained therein. These figures, therefore, cannot be relied on, but it was certain that the expense of some of the reserves staked out by McColl is out of all proportion to the numbers or acquirements of the tribe to which they are assigned. The Indians regard these extensive tracts of land

as their individual property; but of by far the greater portion thereof they make no use whatever, and are not likely to do so; and thus the land, much of which is either rich pasture or available for cultivation, and greatly desired for immediate settlement, remains in an unproductive condition - is of no real value to the Indians, and utterly unprofitable to the public interests. (This matter of what profits the Indians do or do not make out of their land was of course no affair in which Trutch could properly concern himself; he would have much resented any proposal to confiscate any part of his own lands in British Columbia on the ground that he was not making profitable use of them.) I am therefore of opinion that these reserves should in almost every case be very materially reduced. Two methods of effecting this reduction may be suggested - either (1) to disavow absolutely McColl's authority to make these reserves of the extravagant extent laid out by him, and instead, to survey off the reserve afresh either on the basis of Mr. Brew's letter of instruction to Mr. McColl, namely, ten acres to each grown man, or of such extent as may, upon investigation, be determined to be proportionate to the requirements of each tribe, or - (2) To negotiate with the Indians for the relinquishment of the greater portion of these lands which they now consider their own, on terms of compensation, in fact to buy the lands back from them.

The former of these systems was carried out last year in the reduction of the Kamloops and Shuswap Indian ~~tribes~~ Reserves, where tracts of land of most unreasonable extent were claimed and held by the local tribes under circumstances merely parallel to those now under discussion; and I think that a similar course may be very fairly and expediently adopted in this case.

)
not at all

The Indians have really no right to the lands they claim, nor are they of any actual value or utility to them; and I cannot see why they should either retain these lands to the prejudice of the general interests of the Colony, or be allowed to make a market of them either to Government or to Individuals.

conveyed these express instructions to the Chief Commissioners as shown by his letter of 11th May, 1858, which I have already quoted in (22, p. 65) under official instructions. Commissioner Trutch went on tour for the express purpose of repudiating the reserves defined by Sergeant McColl under instructions from Governor Douglas, as shown in the following letter:-

Extract from letter from Chief Commissioner to Mr. Trutch, 1858, regarding the reduction of reserves.

Extract from letter from the Colonial Secretary to the Chief
Commissioner of Lands and Works. **B.C. Papers, p.45.**)

"Colonial Secretary's Office,
6th November, 1867.

Sir: The Governor has had under his consideration the subject matter of your letter of the 25th August last, relative to the extent and boundaries of the Indian Reserves on the lower Fraser.***** As to the verbal instructions which Mr. McColl is said to have received from Governor Douglas, - that the Indians were to have as much land as they wished - it is apprehended that Mr. McColl entirely misinterpreted Governor Douglas' wishes.

I have, etc.,

WILLIAM A.G. YOUNG."

This shows how the Colonial Officials began to play into one another's hands in the game of wrenching lands from the possession of the Indians. As Colonial Secretary, Mr. Young had access to the written instructions of Governor Douglas in which he repeatedly directed that the Indians were to have as much land as they wished; or as they pointed out to be their own. And Mr. Young himself conveyed these express instructions to the Chief Commissioners as shown by his letter of 11th May, 1863, which I have already quoted in full. (p.66) Under official instructions Commissioner Trutch went on tour for the express purpose of repudiating the reserves defined by Sergeant McColl under instructions from Governor Douglas, as shown in the following letter-

Extract from letter from Chief Commissioner of Lands and Works to Colonial Secretary, (B.C. Papers. p.45)

Lands and Works Department,

New Westminster, 19th November, 1867.

Sir: I have the honour to report for the information of the Governor that in accordance with His Excellency's instructions conveyed to me in your letter of the 6th instant, I have, in Company with Captain Ball, the Magistrate of the District, visited all but four of the Indian reserves on the lower Fraser which were laid out by the late Sergeant McColl.***** I took occasion at each village to inform the Indians that McColl had no authority for laying off the excessive amount of land included by him in these reserves, and that his action in this respect was entirely disavowed.

I have, etc.,

JOSEPH W. TRUTCH.

In saying this to the Indians, there can be no question but that Sir Joseph Trutch deliberately misinformed them - he knew quite well that Sergeant McColl did have authority from Governor Douglas to lay off what he is pleased to call "excessive amounts of land" for Indian Reserves.

The instructions of Governor Douglas were as a matter of record known both to Trutch and Young, subsequently expressly confirmed by himself after he ceased to be Governor, in a letter to the Indian Department at Ottawa from Vancouver - B.C. dated 14th October, 1874. In this Sir James Douglas says: in reply to the Dominion Government's enquiry as to what particular basis of acreage he used in setting apart Indian Reserves:

"To this enquiry I may briefly rejoin that in laying out Indian reserves no specific number of acres was insisted upon. The principle followed in all cases was to leave the extent and selection of the lands entirely optional with the Indians who were immediately interested in the reserves; the Surveying officers having instruction to meet their wishes in every particular,***** This was done with the object of securing their natural or acquired rights.***** It was never intended that they should be limited or restricted to a possession of ten acres of land, on the contrary we are prepared, if such had been their wish, to have made for their use more extensive grants.** These latter reserves were necessarily laid out on a large scale, commensurate with the wants of these tribes.

This letter may be regarded and treated as an official communication.

I remain Sir,

Your obedient servant,
JAMES DOUGLAS.

(late Governor of British Columbia.)

In the light of this letter it will not be necessary to characterize the statements and conduct of Sir Joseph Trutch, Colonel Secretary Young and other Colonial officials who encroached on the Indian rights after the regime of Governor Douglas. This letter also fully vindicates Colonel Moody, Sergeant McColl, and Sapper Turnbull. These men were soldiers, and as such, accustomed to execute their instructions exactly as they received them from their superior officer. That they did so is proven by Governor Douglas himself; and that when Sir Joseph Trutch repudiated their official acts and materially reduced the Indian reserves define by them, he robbed the Indians of their land, is also proven

by the same authority. Many more documents may be found among the British Columbia records showing the injustice practised upon the Indians in respect to their lands by the Colonel authorities, as control over the Colony by the Imperial Government was relaxed.

In February, 1887, the Indians of Fort Simpson and Naas River sent delegates to interview the Provincial Government at Victoria to ask for a larger area of land to be free from Provincial restrictions as to cutting the timber on their lands. Their wishes were tersely, expressed by one of the delegates, when he said "we want to be free on the top of this land of ours." Others of the delegates asked for a treaty. They said: "our reserve is very little; and we have not got any timber land; neither have we got our hunting grounds. These are what we want and what we came for. We want you to cut out a bigger reserve for us, and what we want after that is a treaty."

The Premier told these Indians that there was no such thing as a treaty with Indians, and gave them to understand that certain lands had been given to them as a matter of charity, for which they should be very thankful. I quote the Premier's remark from the report of this conference issued by the Provincial Government, at page 256:

"Hon. Mr. Smithe: "There is no such law either English or Dominion that I know of, and the Indians or their friends, have been misled on that point. **** The land all belongs to the Queen. The laws provide that if a white man requires a piece of land he must go to the land office and pay for it, and it is his. The Indian is placed in a better position; a reserve is given to each tribe, and they are not required to pay for it. It is the Queen's land just the same, But the Queen gives it to her Indian children because they do not know so well how to make their own living, the same as a white man, and special indulgence is extended to them and special care shown."

I will conclude these quotations with one instance showing how the Colonial Government yielded to a show of force made by the Indians when a white settler, one Mr. Rogers, entered their reserve.

Extract from letter from Mr. Morley to the Chief Commissioner of Lands and Works. *B.C. Papers, p.58.*

"Maple Bay, April 27th, 1869.

My dear Sir:

In the case of dispute between Mr. Rogers and the Indians, I summoned Te-cha-malt on a charge of trespass, but as I found it was a case of dispute, as to the ownership of the land, and on the Indian promising not to interfere until I received further instructions from the Government, Mr. Rogers also agreeing to let the matter stand over, I have taken no further action. **** Te-cha-malt made use of very improper language, and was very insolent. He said he was the Chief, and that the land was his. He also said that Governor Seymour could not take the land from him, that if the Governor sent his gun-boat he would fetch his friends from all parts, and hold the land against him. He also said the Governor was a liar, and had not fulfilled his promise to pay for the land he had taken. And then told me he did not care for me or the prison either, that I had no power over the Indians,

I remain, etc,
JOHN MORLEY.

Extract from letter from the Chief Commissioner of Lands and Works to Mr. Morley (*B.C. Papers, p.60.*)

Lands and Works Department,
May 4th, 1869.

Sir:

In reference to the dispute between Mr. Rogers and the Cowichan Indians as to the section of land (Section 14 Range 7) Quamichan District, reported in your letter to me dated April 27th, I have the honour to inform you that this matter has already, before your report was received, been brought under the consideration of His Excellency the Governor on the complaint of the Chiefs of the tribes residing on the Cowichan Reserves, that the section, of land above named having formerly been part of the land reserved for their use, had been cut off by Mr. Pearse without their concurrence or knowledge.

His Excellency granted these Chiefs an opportunity of stating their case at a personal interview with himself, from which statement, corroborated to some extent by the evidence of Mr. Robertson, who was one of Mr. Pearse's surveying party when the reserves were laid out in 1867, it appeared that there must have been a misunderstanding between Mr. Pearse and these Indians as to the exact limits of the lands to be held in reserve for them, and being willing to take a favourable view of the claim of the Indians to the land in dispute, His Excellency has directed me to hold the section of land in question under reserve for their use, and to notify Mr. Rogers that his Pre-emption Record of this land, having been made by me under the mistaken supposition that the said land was open for pre-emption, must be cancelled.

I submit that the foregoing official records completely refute the statements already quoted of Sir Joseph Trutch and of the Hon. Edward Blake, that the Government of British Columbia never recognized any right or title of the Indians to lands in British Columbia; and that "there never was any question of bargain or contract with them, not recognizing in them any right in the soil;" (*Blake's Argument, p.15 and p.22*) and the further statement of Mr. Blake that: "British Columbia is the case of another territory also covered by the Proclamation inhabited by a very large number of warlike, and in some respects advanced Indians,, but in which also the Proclamation was never recognized or observed." (*Blake's Argument, p.69*) On the contrary the Indian title in British Columbia was an anterior, and subsistent title which was recognized and confirmed under the Proclamation of 1763, and subsequent Royal Instructions; which was a subsistent title when the Imperial Government made a grant of Vancouver Island to the Hudson Bay Company in 1849; which was a title admitted by the said Company as already shown; and which was a title that the Imperial Government expected the Colonial authorities to respect, as shown by the letter of instructions already quoted from Sir. E. B. Lytton to Governor Douglas before the latter assumed office, dated the 31st July, 1858, and which it is said: "it should be an invariable condition in all bargains or treaties with the Natives for the cession of lands possessed by them that subsistence should be applied to them in some other shape." (*B.C. Papers, p.12*)

Before dealing with the exact nature of the Indian title, I would here give a short summary of the recognition given to it in British Columbia:

1. The Indian title was recognized generally throughout North America by the British Government from the beginning of the 17th century.
2. The policy of recognizing the Indian title was confirmed by the King's Proclamation in 1763.
3. The Indian lands in British Columbia are covered by the said Proclamation.
4. The Proclamation was confirmed and enlarged by Royal Instructions to Governors Murray and Carleton in 1763, 1768, 1775 and 1786.

5. British Columbia was British territory prior to the cession of Canada by the French, and so, even if it could be established that the French had extinguished the Indian title, yet such title so far as British Columbia is concerned would not thereby be affected.
6. The Indian title, as an anterior and subsisting title in British Columbia, was recognized by the Hudson Bay Company in 1850.
7. Such title, was recognized by the Imperial Government in the dispatch of the Secretary of State for the Colonies, to Governor Douglas of the 31st July, 1858, and in subsequent despatches.
8. The title was recognized by Sir James Douglas in all his administrative acts.
9. The title was recognized by the legislature of British Columbia in 1861 by a petition to the Imperial Government asking it to extinguish the Indian title by purchase.
10. Such title, was never extinguished by the Imperial Government or by the Colonial Government, except by purchase from time to time of certain small areas.
11. After the regime of Governor Douglas the Indian title was infringed by Governor Seymour, Sir Joseph Trutch and other Colonial authorities and Indian reserves and settlements were cut down to the smallest possible extent, but the title was specifically recognized by them in certain cases where the Indians made a show of force, and in such cases, the Indian lands were ~~xxx~~ left in possession of the Indians, or bought and paid for with the consent of the Indians.
12. Protest was made by the Imperial Government against this treatment of the Indians through Lord Carnarvon as Secretary of State for the Colonies, and Lord Dufferin as Governor General of Canada, *in 1875 and 1876.*
13. In February, 1887, the Indian title is spoken of as a mere matter of charity by the Premier of British Columbia, the Hon. Mr. Smithe.
14. In July, 1909, the Indian title is absolutely denied by the Premier of British Columbia, the Hon. Mr. McBride.

X

It is perhaps hardly necessary to point out that the first admission of the Indian title made by the Imperial Government, the Hudson Bay Company and the first Colonial Government of British Columbia, in each case contrary to their own interests, prevents the belated and interested Provincial denial of title from having any weight whatever.

But there is one feature of the Indian title in British Columbia which seems in the past to have been entirely overlooked. I merely draw attention to it here, as it concerns individual and not tribal title.

Governor Douglas, on the 19th November, 1858, proclaimed the laws of England letting forth to be the laws of British Columbia so far as they could be made applicable. According to common law any person in England who had been in continuous quiet possession of land from time immemorial (defined by statute as twenty years) acquired good title by possession, and could maintain it against all others. Therefore if any person in British Columbia on the 19th November, 1858 had been in possession of an individual parcel of land from time immemorial, he would have acquired title by possession. I can find no law which would disqualify an Indian in respect to acquiring title by possession; and if he were to acquire title in this manner, I can find no law ~~by which~~^{of} the Provincial or Dominion Government which would authorize it to put any restraint upon him in dealing with such lands. His title would be distinct from the tribal title. But for that very reason it would be out of place to follow this feature of Indian ~~xxx~~ rights in this Report.

*Title by possession in common law
since was recognized.*

THE TRUE NATURE OF THE INDIAN TITLE.

Whatever be the true nature or extent of the Indian Title, and whether or not such title can be expressed adequately by any term known to the English Common Law, this thing at least is certain: the Indians have always claimed complete and unrestricted possession and use of the land occupied by their particular nation or tribe. And from the first advent of Europeans to Canada, the Indians have never abated one jot of their claim, except that from being Allies of the King they 'by degrees', to quote the language of Article 60 of the Royal Instructions to Governor Murray in 1763, and Article 59 of the Instructions to Governor Carleton in 1768, recognized the King as their Protector - their Great Father - and their relation to the King has always been regarded by them as more direct and personal in its nature than that existing between ordinary subjects and the King. The King directly by Royal Instructions, and also through His Military Commanders and Governors, solicited the Military Aid of the Indians, and ask them to remain His Allies, and in return promised to maintain and defend them in their just rights and in possession of their lands. This promise was made repeatedly to all the Indian Nations in Canada. The Indians kept faith with the King, and gave Military service in return for His Protection and quiet possession of their lands. The Indians thus became 'King George Men.' And this very term, 'King George Men' was adopted among the Indians of British Columbia to distinguish them from the 'Boston Men' or Americans. In the Chinook jargon, which was a trade language composed of French, English and various Indian words, devised by the Hudson Bay Company, and spoken by nearly all the Indian tribes with whom ~~they~~ ^{the Company} had dealings, ^{in British Columbia,} a "King George Indian" was an Indian

who acknowledged the sovereignty of the King, while a Boston Indian was one who regarded the President of United States as his 'Great Father'. No Indian in Canada has ever recognized the sovereignty of any Colonial, Provincial or Dominion Government - whenever his primitive rights to his land are threatened, he appeals direct to the King, or to the Governor or other officer whom he understands to be the King's personal Representative. I would here quote a few admissions made by British Officers who were in a position to know something of the title claimed by the Indians.

Remarks on the "Management of Indians in North America delivered in to Mr. Knox at the Secretary of States Office, White Hall, the latter end of February, 1777. (Canadian Archives. Haldimand Papers B. 115, - p.28).

"The Indians on the Continent of North America in general and those in particular that live any distance from the European Settlements consider themselves a free and independent people, liable to no subjection or subordination to any power."

Extract from Letter from Governor Douglas to the Secretary of State for the Colonies. (B.C. Papers p.19)

"As ^{the} native Indian population of Vancouver Island have distinct ideas of property in land, and mutually recognize their several exclusive possessory rights in certain districts, they would not fail to regard the occupation of such portions of the Colony by white settlers, unless with the full consent of the proprietary tribes, as national wrongs; and the sense of injury might produce a feeling of irritation against the settlers, and perhaps disaffection to the Government that would endanger the peace of the country."

Extract from Letter from Mr. Nind to the Honorable the Colonial Secretary. (B.C. Papers, p.29)
Lytton, 17th July, 1865.

Sir: ***** I have the honour to address you on the subject of the Indian land claims above Kamloops and in its vicinity. ***** The Indians do nothing more with their land than cultivate a few small patches of potatoes here and there; they are a vagrant people who live by hunting fishing and bartering skins; and the cultivation of their ground contributes no more to their livelihood than a few days digging of wild roots; but they are jealous of their possessory rights, and are not likely to permit settlers to challenge them with impunity, such is their spirit and unanimity, would many settlers think it worth while to encounter their undisguised opposition."

But to the ordinary Canadian citizen of to-day, not realizing the enormous changes in the condition of public affairs brought about during the past century, it comes rather as a surprise to be told that the

Indians have or claim to have any inherent title to land in Canada. They are prone to look upon Indians as undesirable and incapable public charges whom the Government is unable to deport to another country as in the case of undesirable immigrants, and consequently rounds them up and confines them in limited remote districts where they will not be a nuisance to the whites. And even the ordinary lawyer looks askance at the Indian title; it does not fit it with any system of land tenure in which he has been schooled; and to use Mr. Blake's own words, in the case above quoted, he does not like the "mystery and the magic of the Indian title", (Blake's argument p.28.) and sets out to get rid of it thus:

"But the simple proposition, removing "the mystery and magic" of the Indian title is this: I find A with an easement of occupancy; I find B the owner of the land subject to that easement of occupancy; I find A the occupant, according to the nature of his tenure entitled only to surrender his interest to the owner, not entitled to transfer it to a stranger. Who then are to bargain as to the terms? The two parties in interest, the occupant and the owner. The the occupant is recognized to be of an inferior race, and in an inferior state of civilization, to be under subjection and liable to imposition; therefore he is to have a guardian or a protector in the making of that bargain. But the bargain is still made between A and B, the two parties in interest; A, the occupant, having the protection of his guardian in the making of the treaty."

Mr. Blake, summing up the learning of many lawyers, finds the Indian title "an easement" ; "a burthen"; "an indeterminate right of hunting and fishing;" " a bounty;" "a grace;" "a right of chase and warren;" anything, in fact, but ownership.

Forgetting for the moment all learned European terms, and intricacies of Roman Feudal and Ecclesiastical tenures, let us ask what constitutes ownership, what are the primitive essentials of ownership recognized by all men? ~~and even by some of the more advanced animals.~~

Williams, in the first section of his standard work on Real Property says:

"What then is ownership? Without pretending to formulate a definition we may venture to assert that ownership chiefly imports the right of exclusive enjoyment of some thing. The owner in possession of a thing has the right to exclude all others from the possession or enjoyment of it; and if he be wrongfully deprived of what he

owns he has the right to recover possession of it from any person. This right to maintain and recover possession of a thing as against all others, may, I think, be said to be the essential part of ownership. As regards its other incidents, ownership may be absolute or else limited or restricted. This absolute ownership would seem to include the right or free as well as exclusive enjoyment. Another ~~incident~~ incident of absolute ownership is free power of disposition, that is the right of the owner to transfer as he will, the whole or any part of his rights over the thing owned. And in modern times, free power of disposition is generally incident to and indeed inseparable from any ownership. But the student will find that in earlier times those were regarded as owners whose right to maintain or recover possession was secured by law, though their power of disposition was limited. Again it is essential to absolute ownership that it should be of indeterminate duration; no limits of time must be set beyond which the enjoyment of the thing owned shall not endure."

From this we see that unrestricted power of alienation is not an essential incident of ownership. Now the Indians are not prohibited from selling their lands without consent of the Crown, but the Crown forbids all its other subjects buying Indian lands without its consent. However if we choose to take this as meaning the same thing, - that the Indian has not, "free power of disposition"- yet that does not mean that he is not the owner of the land. Even the white settlers in Upper Canada in the 18th century, at first held their land by virtue of a 'Certificate of Occupation' received from the Governor and Council of Quebec, and were not always free to alienate such land. This manner of tenure continued until provision was made by section 44 of the Constitutional Act of 1791 for the surrender to the Crown of such lands by the owner thereof, and the issue of a grant in lieu thereof, in free and Common Soccage. (Since 1645 in England free and Common Soccage was the ordinary free tenure, and Frankalmoign, the ordinary Ecclesiastical free tenure - a fee simple.) It is well to remember this because so much has been made of this restricted right of alienation by learned council anxious to reduce the Indian Title to a mere right of "chase and warren". So I submit that the restriction, or safeguard ^{it} as the Indian conceived ~~them~~, imposed by the King on the alienation of Indian lands did not deprive the Indian of any essential incident of ownership.

Now let us get to the root of the matter. The question is not at all fairly put by Taschereau J.

of Pope Paul ~~the 3rd~~, indeed, among other important matters, the when the St. Catherine's case was before the Supreme Court of Canada. In his judgment the learned judge asks: "When did the title pass from the Sovereign to the Indian? (**Supreme Court Reports, vol.13,p.47.**) The real question to be determined is: When, and upon what conditions, did the title pass from the Indian to the Sovereign? Always bearing in mind that the Indians were not one people any more than the Europeans are one people; did not claim all the land of North America or of Canada any more than the English claim Russia or the Spanish claim Sweden;) and were divided into separate Independent Nations occupying detached territories control over which could only be acquired by conquest or purchase or treaty of alliance or, as some contended, by the paramount right of the Pope to give Christian Sovereigns patents of title to non-Christian lands; what then was the beginning of the English King's Sovereignty over the Indians and of his reversionary interest or right of escheat in their lands in Canada? Did the title originate with a papal bull to the Spanish King, and descend through the French by right of conquest to the English? It is true that Pope Alexander VI had by a bull assumed to grant the whole Continent of America, together with all its islands, to his most Catholic Majesty, Ferdinand of Spain. But his Most Christian Majesty, Francis ~~the 1st~~ of France was unable to reconcile himself to the justice or validity of this papal bull, and is reported to have said: "My brothers, the Kings of Spain and Portugal have divided America between them, but I should like to know what clause in the last will of Adam bequeaths it to them and disinherits me." So in 1541, Francis appointed Monsieur de Roberval to be his viceroy over a great extent of North America. In these appropriations, the Indians were of course never consulted. But that, of course, did not in any manner lessen the Indian title. It was a great age for making claims. The Pope claimed to be the disposer of the Kingdoms of this world, but as a matter of fact he was not. The King of England claimed to be the King of France, but he was not, The King of France claimed to be the ruler of "the western extremity of Asia" because Jacques Cartier had discovered Hochelaga; but he was not. The rulers of those days were good claimers, but they could not make their claims good. By the bull

III

of Pope Paul ~~the 3rd~~, indeed, among other important matters, the natives of North America had at length been acknowledged to be real men - "ut-pote veros homines" - and not some exceptional species of monkey, as appears to have been at first conjectured. So that, as against the Indians, thus formally acknowledged to be descendants of Adam, Francis could not base any valid claim, the Indians had the same right to "inherit the earth" as had the French King. And this was formally acknowledged by the English among the very first laws which they enacted in America. They gave the Indians a biblical root of title to their lands, applying to them Genesis 1-28, ch. IX; and Psalm CXV, 16.

But even Francis, ~~who~~ altho he held no very flattering opinion of his proposed new subjects in Canada, did not profess to dispossess them of their lands, but stated his object to be to convert them to Christianity, if we are to judge at least by the expressions used in the Royal Commission to ~~Sarkis~~ Cartier, as follows:

"Francis, by the Grace of God King of France, to all to whom these Letters shall come, Greeting: To acquire a due knowledge of several countries, possessed by Savages living without the knowledge of God, and without the use of Reason, We have, etc. etc. (Lescarbot, *Histoire de la Nouvelle France*, liv 3, ch. 30)

His successor, Henry IV, used much the same language half a century later:

"Prompted above all things by signal zeal and devout resolution We have undertaken with the aid of God, the Author, Distributor and Protector of all Kingdoms and States, to guide, instruct and convert to Christianity and the belief of our Holy Faith the inhabitants of that country, who are barbarians, atheists, devoid of religion; and to bring them out of their present ignorance and infidelity, etc. etc. "(*ibid*, liv. 4, ch. 1)

But it will be useless to seek a religious basis for the King's sovereignty over the Indians. The Lords of the Privy Council in the *St. Catharine's Case*, above referred to, distinctly repudiate any title based upon the notion of any

inherent right in a Christian nation to possess itself of the lands of a non-Christian nation. I quote from the discussion which took place on this point: (Blake's Argument, p.52)

"Now I contend that from the very beginning the true result of the principles the theories and the practise with reference to the Indian title is opposed to the notion of the Indian having a practical fee simple or paramount title, or to any other notion than that the title to the soil was in the Crown and that the interest of the Indian, whatever you may call it, however extensive it may be, even if it be held to be of right,, yet was subordinate to, and carved out of the paramount and absolute legal estate of the Crown. That is the proposition which I shall endeavor to maintain by a brief review without tedious reference to the authorities. In the earliest days the first foundation of the titles of Christian nations to these countries was to be found at Rome. In

[The following text is extremely faint and largely illegible due to fading and bleed-through from the reverse side of the page. It appears to be a continuation of the argument or a separate section of text.]

the earliest days it was the Pope who claimed the right to grant away the kingdoms of this world as well as of the world to come. England and France also, later on, as protestant views and principles more prevailed, repudiated those intentions; yet not with any idea that there was no intrinsic right in Christian states as such to take the soil, but with the view that the right was not in the Pope. Thus it became the recognized doctrine of the Christian states that the discovery of heathen lands gave the discoverer, being a Christian state, the soil absolutely. Your Lordships pointed out that there was rather a difficulty about this title arising from discovery suggesting that it would not apply very happily if the Indians had come over and found out England -

THE EARL OF SHELBORNE: The argument about the Pope is a very extravagant one. The Pope's authority in those matters can hardly be made an argument at this time of day.

LORD WATSON: A pretext has never been wanted for taking land.

THE EARL OF SHELBORNE: It is the right of the stronger, the power to take from the weaker.

MR. BLAKE: That is quite true; but I venture to submit that, what is material is not the solidity of the foundation, or the justice and equity of the proposition, but whether in point of fact in those early days this was the foundation and the proposition - the thing which was put forward; being dependent for its success, as it doubtless was, on the right of the stronger. Of course the proposition that the stronger should make anything which he pleased the law, is a proposition which cannot fairly be put forward in argument at the present day -

THE EARL OF SHELBORNE: If that was the law, that would be quite proper whatever one might think of the foundation of that law. But that never was taken to be so in principle.

MR. BLAKE: This certainly has happened, my Lord with reference to the English occupation, that English charters were based upon this very theory, and that the Crown did assume to grant the soil as well as the sovereignty, and the jurisdiction - (See judgement of U.S. Supreme Court on this point before quoted. p.10).

LORD WATSON: Without being in the least aware of how it was occupied.

MR. BLAKE: And sometimes actually knowing; and in some cases even saying "whether vacant or occupied by heathens" and that is the distinction which was taken. Respect was to be paid to the discovery and occupation by other Christian states in America, to the absolute disregard, the ignoring altogether of rights or interests on the part of any Pagan inhabitants. (This is historically incorrect: see Worcester v United States before quoted.)

THE EARL OF SHELBORNE: I think the word "christian" should be left out.

MR. BLAKE: I quite agree.

LORD WATSON: We know what has been done in the name of Christianity in taking possession of land.

MR. BLAKE: Yes, my Lord, my contention, however, is that, founded upon whatever fantastic, and, I might almost say, revolting notions -

LORD WATSON: I do not dispute the good title of the power who had taken possession.

THE EARL OF SHELBORNE: Where possession is taken and the law is established.

MR. BLAKE: However it may be as to principle, my contention is with reference to the fact, the historical fact. I maintain that the fact is in accordance with the view taken in the opinion of the Six Counsel which has been referred to, and that the current of the authorities is to the effect that the Indian title was such a title or interest as those who had possessed themselves of the land, who claimed and exercised full rights over it, the right to grant it, the right to use it, the right to occupy it, chose to assign to the Indians. (This also is historically incorrect) It was an entirely arbitrary title. Nobody pretends it was the original Indian title; nobody pretends it was known to the aboriginal Indians; nobody pretends that the notion of such a title as this with such limitations as these, was the notion which the aboriginal inhabitant conceived

if indeed he conceived of any title at all, to the soil of his country. But just such a title, just such an interest as from motives of justice, from motives of policy, from motives of convenience, or from the necessities of the case, the discoverer chose, in certain cases, to recognize or set up as existing in the Indian - just such a title or interest was all that the Indian had, yet always subordinate to the claims of the strong discoverer." (Mr Blake's statements here are false entirely, as shown by official records and the statements of contemporary ~~wixne~~ writers.)

THE EARL OF SHELBORNE: As a matter of fact the Indian was there and then we came, whatever became of the Indian right of jurisdiction, and then certain rights were recognized. You need not labour that.

But this is the very point which must be laboured. If the Christian claim be repudiated, and if there never was, as a matter of fact, any title acquired by conquest, then the original Indian title, where not extinguished by treaty, does remain in its entirety in spite of Mr. Blake's assertion that: "nobody pretends it was the original title; nobody pretends that it was known to the aboriginal Indians; nobody pretends that the notion of such a title as this, with such limitations as these, was the notion which the aboriginal inhabitant conceived, if indeed, he conceived any such title at all, to the soil of his country." But that is just what is pretended and is historically established - that is the title which the Indian has never yielded.

If the original Indian title is not to be considered extinguished by virtue of the paramount Christian right to expropriate the lands of mere non-Christian nations; if it was not extinguished by conquest; if it was formally in the 18th century recognized by the British Government as appurtenant to certain territories in Canada, as distinct from other territories; if there has been no title acquired by conquest of those territories since that time - then the Indian title to such territories, where not extinguished by treaty, purchase or abandonment, remains in its full original force and effect. Mr. Blake professes to doubt that the Indian conceived of having any title to his land, altho he must have known when he voiced such doubt, that the one great question for two centuries between the European Colonists and the Indians has been this very question

of the insistence of Indians upon their right to free and unrestricted use and enjoyment of the territories occupied by them in accordance with their ancient usage; and Mr. Blake must have known of the efforts of the Imperial Government to keep faith with the Indians and maintain them in the use and enjoyment of such right against the encroachments and usurpation of the Colonists. How then did an Indian regard land? This may well be answered by the plea of one of the Indian Delegates at the Conference held on the 3rd and 8th February, 1887, between the British Columbia Government and Indian Delegates representing Fort Simpson and Naas River Indian tribes. I quote from p.265 of the official report printed by the British Columbia Government.

"Arthur Gurney, (of Kincolesh, Naas River mouth): We have been sent by the Chiefs, who are all wishing and hoping for the one thing, which has been stated by those who have spoken to you; this one thing in regard to our lands." *****
"We want to be free on the top of this land of ours."

Individualistic to an extreme unknown among other peoples, the Indian was yet in one respect a communist - he had absolutely no notion of individual title to a specified tract of land as apart from the other members of his tribe. The land was something over which to roam, to hunt and to fish, and on which to plant corn - no other purpose would occur to the Indian mind - such constituted the full ownership and enjoyment of the land. And he was assured by his friend and ally the King, whom after a time he recognized as his Great Father, Chief or King, that, adopting his own expressive phrase, the land should be his "as long as the sun shines and the waters run." To the Indian such constituted the complete ownership - the whole title. For practical purposes he was as little concerned for anything beyond that as we would at present be concerned with the title to the air a mile over our heads. To have made ^{an Indian} ~~live~~ live on a small individual holding like a European ^{or an Asiatic} ~~Chinaman~~ would have been death to him. An Indian would not confine himself to an individual plot of ground any more than a fish in a pond would restrict

themselves to individual water lots. The Indian needed his whole country just as the fish need the whole pond. And this illustrates the nature of his title - it was a collective title in the tribe and each member of the tribe had an undivided, non-alienable right of occupancy bounded only by the limits of his country. But beyond those limits he might not go in the exercise of the ordinary vocation of agriculture, fishing and hunting. Intrusion of one tribe into the territory of another was casus belli. And in British Columbia during the Hudson Bay and early Colonist regime, there were frequent cases of individual Indians being killed for entering the recognized territories of another tribe. The Indian tribes then ~~owned~~ occupied and used their land to the fullest extent to which they conceived it could be rationally occupied and used. Each Indian nation or tribe was a corporate body owning the land for the use and benefit of its members. Now this primitive communal system of land tenure, if unknown to Europe, is at least not peculiar to the Indians of North America. At a dinner recently given in London in honor of a distinguished Canadian, Sir Percy Girouard, upon his relinquishing the Government of Northern Nigeria to become Governor and Commander in Chief of the East Africa Protectorate, Sir Percy is reported as saying; in reference to certain changes which he had made in the system of land tenure in Nigeria: "It was merely a change from a communal system of tenure such as was prevalent in most parts of Africa, to a national system of tenure which provided for the due expansion of the people and did not allow for the personal greed of any one." (Press Despatches, August 4th, 1909.) No Indian nation would or could recognize any right in any of its individual members to alien any part of tribal land. And that is why the Indians did not consider the right of free and unrestricted alienation to be any essential adjunct of ownership. And that is why the policy of the King to prevent the alienation by individual members of a tribe of any part of the tribal land to the Colonists appeared as the policy of a friendly Ally restraining his subjects whose interests were beginning to run counter to the interests of the Indians. And this was not the less so when the whole tribe as one corporate body agreed to sell their land or any portion of it - for in

such case the Indian saw the King retaining his own subjects to the extent of intervening as the friend and advisor of the Indian, and preventing the proposed sale being consummated except on terms fair to the Indian. In adopting this policy, it is immaterial whether the King did so from motives of justice and humanity or for reasons of trade; to the Indians it appeared as a policy designed for his protection. As said in the judgment of the Supreme Court ~~the motives of the King and what~~ of the United States in the case of Worcester v. State of Georgia, already quoted (p.II): "The Indians perceived in this protection only what was beneficial to themselves ÷ an engagement bound the nation to the British Crown as a dependent ally, claiming

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to punish aggressions on them. It involved practically no claims to their lands, no dominion over their persons. It merely....

judgment of the same court in the case of Mitchell v United States, already quoted.(p.I3). "One uniform rule seems to have prevailed in the British Provinces in America by which Indian Lands were held and sold from their first settlement, as appears by their laws; that friendly Indians were protected in possession of the lands they occupied, and were considered as owning them by a perpetual right of possession in the tribe or nation inhabiting them as their common property from generation to generation, not as the right of individuals located on particular spots!"

But whatever the motives of the King, and whatever the ideas of the Indians, the policy certainly was adopted by the King, and has been enforced ever since, of preventing his subjects from acquiring Indian lands except on fair terms, and in full recognition of Indian beneficial ownership. For such purpose the King always had a personal representative present at every treaty made between the Colonists and the Indians for the cession of land. This was not in derogation of the Indian title - there was no compulsion exercised over the Indian to force him to sell - the King, as a friendly ally, merely prevented his own subjects from taking an undue advantage in purchasing the lands of the Indians in alliance with him. One of Mr Blake's misleading suggestions to the Court in the St. Catherine's case was that the Indians were forced to sell their land whenever it suited the convenience of the white settlers.

LORD WATSON: Supposing the Indians said 'I will not take anything less than the price of the land was sold to the settler for. Would he not be justified?

MR BLAKE: I do not know whether he would be justified; but I suppose he might have the power to say so,

because it assumes a free bargain. It is true a gentle pressure has been always put upon the Indians.

SIR RICHARD COUCH: A pressure would be put.

MR BLAKE: Certainly, a gentle pressure has always been put upon the Indian, to which pressure he has always yielded. It has never happened that the Indian, altho 'tall talking' has been indulged in, has not yielded.

LORD WATSON: If that is so, it does not show that the Dominion Government ought to squeeze the occupants. (Blake's argument, p.31-32.)

The King has never 'squeezed' the Indians from their lands, however much the Colonial or Provincial Governments were disposed to do so. The Indian Tribes have never been forced to sell their land any more than has an individual owner in fee. Indian lands are subject to expropriation for public purposes, but this is an incident, common to all tenure of land throughout the Empire. In the words of Chief Justice Marshall, (see ante p.10) "The King, purchased their lands when they were willing to sell, at a price they were willing to take; but never coerced a surrender of them."

The King, after the Cession of Canada, at first officially acknowledged that the Canadian Indians were not his subjects. He did so in the Royal Instructions given to Governor Murray after the Proclamation of 1763, and he did so again in the Instructions given to Governor Carleton five years after that. The wording of Article 60 of Murray's Instructions and of Article 59 of Carleton's Instructions is the same. These Articles are as follows:

Murray's Instructions, 1763:

Article 60. And whereas Our Province of Quebec is in part inhabited and possessed by several ~~Indian~~ Nations and Tribes of Indians, with whom it is both necessary and expedient to cultivate and maintain a strict good friendship and good Correspondance, so that they may be induced, by degrees, not only to be good neighbors to Our Subjects, but likewise themselves to become good Subjects to Us.(See p 32)

Carleton's Instructions, 1768:

Article 59. And whereas Our Province of Quebec is in part inhabited and possessed by several Nations and Tribes of Indians with whom it is both necessary and expedient to cultivate and maintain a strict good friendship and good Correspondance so that they may be induced, by degrees not only to be good Neighbors to Our Subjects, ~~but~~ likewise to be good Subjects to us.(See p.35)

The Canadian Indians soon perceived that it was in their best interests to acknowledge the King as their Great Chief. And to the Canadian Indians was soon added the great majority of the Iroquois. The Iroquois or five Nations had already acknowledged the sovereignty of the English Crown in the

reign of King James, and had formally affirmed their allegiance in the reign of Queen Anne. They came over in a body to Canada during, and after, the Revolutionary War, and so kept faith with their Great Father

They have often since claimed to contribute an imperium in imperio.

has already been made to the fact that the notion of being King George was firmly rooted among the Indians very shortly after the Revolution, and by the time of the United States' independence, they had begun to regard the British as a foreign power. This is shown by the fact that when the British evacuated Boston Harbor in 1776, the Indians followed them to the North American Indians that while travelling among them in the Western States, near the Canadian border, he himself was taken for a Canadian, and that on his return he showed his King George medal which he carried on his breast under his coat, and told him when returning to British territory to tell his Great Father that 'he kept his face bright'. Being told that the King was long dead, and that a young woman now ruled in his stead, (his journey of return was in 1783) the old Chief retired to ponder over this important news. Finally he returned and told others to tell his Great Father that he still kept 'his Great Father's face bright'. The idea of personal allegiance to, and protection from, a great chief or King was grateful to the Indian mind. I submit that a feudal relation was established between the King and the Indian tribes. For what was it that essentially constituted the feudal relation of his - the feudum, fief or fee? It was the obligation of military service to be rendered by the occupant of the fief to his feudal chief whenever required or demanded by him, in return for which the whole power of such feudal chief was pledged to maintain his follower in quiet possession of his land. For what was the relation established in Canada in the 18th century between the King and the Indians? The Indians were to become the King's faithful allies of the King in return for which the King promised to maintain their undisturbed possession and enjoyment of their lands, if the King found it necessary for the purpose of maintaining his dominion or of extending the limits of his empire to send a party into the Indian country to be allowed to do so, but to be paid for their services and the necessary amount of land to be given to them as a reward.

The Indians of those days

evidently felt that they could better trust their interests to King George than to the revolting English Colonists. Reference has already been made to the fact that the notion of being 'King George Men' was firmly rooted among the Indians to the very shores of the Pacific, and by terming all citizens of the United States 'Boston Men', they commemorated the beginning of the English Colonial revolt against the King in Boston Harbor. Catlin relates in his great work on the North American Indians that while travelling among them in the Western States, near the Canadian border, he himself was taken for a Canadian, and that an old Chief showed him a King George medal which he carried on his breast under his coat, and told him when returning to British territory to tell his Great Father that 'he kept his face bright'. Being told that the King was long dead, and that a young women now ruled in his stead, (this journey of Catlin was in 1839) the old Chief retired to ponder over this important news. Finally he returned and told Catlin to tell his Great Mother that he still kept 'his Great Father's face bright.'

The idea of personal allegiance to, and protection from, a great Chief or King was grateful to the Indian mind. I submit that a feudal relation was established between the King and the Indian tribes. For what was it that essentially constituted the feudal relation or tie - the feodum, feudum, fief or fee? It was the obligation of Military service to be rendered by the occupant of the land to his feudal Chief whenever required or demanded by him; in return for which the whole power of such feudal chief was pledged to maintain his follower in quiet possession of his land. Now what was the relation established in Canada in the 18th century between the King and the Indians? The Indians were to become and remain faithful allies of the King in return for which the King promised to maintain them in undisturbed possession and enjoyment of their lands. If the King found it necessary for the purpose of maintaining his sovereignty or of extending the trade of his subjects to build a fort in the Indian Country he was to be allowed to do so, but in all cases to make payment for the necessary amount of land

do taken, and in every such case, stipulation was made by the King that his action was not to be construed as giving him possession of the surrounding Indian lands. The Indians were called upon by the King to give military service, and the Indians always faithfully answered to the King's call. Clearly this was the establishment and maintenance of a feudal tenure, and absolutely nothing has occurred since the 18th century to change the nature of that tenure. The Indian estate was one of freehold, for it was unlimited as to duration, and passed by inheritance. If the Indian does not hold his land in fee simple, he at the very least, holds it in fee tail. 'The tenant in fee simple, at first could not alienate his land without the license and confirmation of his feudal chief. (William's Law of Real Property", 20th Ed. p.p.66 and 67) 'The interest of the feudal Chief was of two kinds: his right of services and his chance of escheat.' (ibid.p.69)

'An estate in fee tail is an estate given to a man and the heirs of his body. This is such an estate as will, if left to itself, descend on the decease of the first owner to all his lawful issue - children, grandchildren, and more remote descendants so long as his posterity endures.' (ibid p.89)

In the case of the Indians the tribe is considered as an individual. By grasping this idea the whole 'mystery and magic' which Mr. Blake complains of in the Indian title disappears, and we are able to express such title in terms acceptable to the ordinary legal mind.

In addition to what has already been quoted from official records, (See p/p. 22 + 22½) I submit the following extracts from Military Despatches:

Extract from Despatch from General Gage to General Carleton: (Canadian Archives Q.10 p.122)

Boston, September 4th, 1774.

"As I must look forward to the worst, from the apparent Disposition of the people here, I am to ask your Opinion whether a Body of Canadians and Indians might be collected and confided in for the service in this country, should matters come to Extremities; and on what Plan, and what Measures

would be most efficacious to raise them, and for them to form a Junction with the King's Forces in this PProvince?"

Extract from Carleton's Reply:(Canadian Archives Q10, p.123)

Quebec 20th September 1774.
"The Canadians have testified to me the strongest Marks of Joy, Gratitude and Fidelity to the King for the late Arrangements made at Home in their favor; a Canadian Regiment would compleat their Happiness; the Savages of this Province I hear are in very good Humor, a Canadian Batallion would be a great Motive, and go far to influence them, but you know what sort of People they are."

Extract from Secret Despatch from Carleton to Gage:(Canadian Archives, Q. II,p.290)

Quebec, 4th February, 1775.
"Since it could not be done before, this would prove a fair opportunity for raising a batallion or two of Canadians; such a Measure might be of singular Use in finding Employment for, and consequently firmly attaching the Gentry to our Interests, in restoring them to a significance they have nearly lost, and through their Means obtaining a further Influence upon the lower Class of people, besides effectually securing many Nations of Savages.

As to the Indians, Government having thought it expedient to let matters go in that Channell, I have considered the late Sir William Johnson to whom I suppose Colonel Guy Johnson succeeds, as having their Political Concerns under his immediate direction, with which I never interfered further than their Commercial Interest or the Private Property they possess in the Country required, and upon this Principle Major Campbell's Comm ission was granted; however, if I am not greatly decieved in my Intelligence, not only the Domicilia's of the Province, but all the neighboring Indians are very much at your disposal whenever you are pleased to call upon them.

Extract from Royal Instructions to Governor Carleton. (Canadian Archives M 230,p.116.)

3rd January, 1775.

Paragraph 17 of plan enclosed for mannagement of Indian Affairs, referred to in 32nd Article of said Instructions.

17. That the said Agents or Superintendants shall have power to confer such honors and rewards on the Indians as shall be necessary; and of granting Permission to principal Indians in their respective Districts to be War Captains or Officers of other Military Distinctions.

Ectract from Petition of Sir John Johnson and Loyalists to the King, dated at London, 11th April, 1785.(Canadian Archives Q.62A - 1, p.339.)

"To the King's Most Excellent Majesty: The Petition of Sir John Johnson and others whose names are hereunto subscribed on behalf of the officers and soldiers of the Provincial Troops and Indian Department, who served under their Commands during the late Rebellion; and of other Loyalists their Associates, who have taken refuge in Canada:

"In consideration of the vast extent of this territory, a long and important and valuable communication which is not only the channel of the fur trade, but the residence of those nations of Indians who took part in support of the Royal Cause, the security, growth and extension of these settlements must evidently be an object of the utmost consequence, not only as it will secure and promote trade but as it will preserve those Indians in their adherence to Your Majesty. The United States are duly impressed with this Idea, and have already manafested a purpose of supplanting us in the Friendship of the Indians; and unless they are counteracted the British Interest with those Nations will very rapidly decline.

Extract from Despatch from Lord Sydney to Lieutenant Governor Hope, Quebec. (Canadian Archives, Q26-1, p.73. Indian Affairs were in a very critical condition at this time, there being once more, as in the days of French and English rivalry, two powers seeking to obtain a predominant influence with the Indians. This despatch indicates the policy of the British Government at the time.)

Whitehall, 6th April, 1786.

Sir: ***** The Affairs of the Indians have lately been a Subject of much Consideration - Joseph Brant, who arrived in the Packet with the late Lieu. Governor, has been charged with the transaction of two points of Business; the first to demand restitution for Losses sustained by the depredations of the Americans during the War; and the second, and more material Object, to be satisfied how far they might depend upon the support of this Country in case they should be engaged in Disputed with America, respecting their Lands.

***** The Losses of the Mohawks, according to the schedule certified by Sir John Johnson, the Lieu. Colonel Claus, amount to about £15,000 Sterling in which are included those sustained by Joseph Brant and his Sister, It has not, however, upon many accounts been thought advisable to admit their right to Compensation for sufferings, which are really nothing more than the usual effects of war, and which they have shared only in common with His Majesty's Subjects, But it has nevertheless been judged expedient, not only to gratify them for their former services, but to endeavor to secure their future friendship and confidence. Upon this ground a Sum equal to the amount of the Losses sustained by Joseph and his Sister has already been paid to him, to enable him to dispose of it to advantage in the purchase of Merchandise previous to his departure, and Assurances have been given that a favorable Attention will be shewn to the claims of the rest of the Indians still continuing attached to this Country, who have been Sufferers in the same way. *****

***Notwithstanding the reports which have been circulated by the American Deputies sent into the Upper Country, His Majesty's Ministers are of Opinion, that they will hardly attempt by force to remove the Indians, whilst they continue united, from the possession of the lands which they at present inhabit within the Territory to which His Majesty, by the late Treaty of Peace, has relinquished the Sovereignty, much less to commence Hostilities for the Possession of Detroit whilst there can remain even a probability that the Indians will not lend their Assistance in endeavoring to effect it.

***** To afford them open and avowed Assistance, should Hostilities commence, must at all events in the present state of this Country be avoided; But His Majesty's Ministers at the same time do not think it either consistent with justice or good policy entirely to abandon them, and leave them to the mercy of the Americans, as from motives of resentment it is not unlikely that they might hereafter be led to interrupt the Peace and Prosperity of the Province of Quebec.

Extract from Despatch from Lord Sydney to Colonel Joseph Brant. (the Indian warrior. (Canadian Archives Q.26-1, p.80.)

Whitehall, 6th April, 1786.

Sir:

The King has had under His Royal Consideration the two Letters which you delivered to me on the 4th January last in the presence of Colonel Johnson and other officers of the Indian Department; the first of them representing the Claims of the Mohawks for Losses sustained by them and other Tribes of Indians from the Depredations committed on their Lands by the Americans during the late War; and the second expressing the desire of the Indian Confederacy to be informed what Assistance they might expect from this Country in case they should be engaged in Disputes with the Americans relative to their Lands situated within the Territory to which His Majesty has relinquished His Sovereignty.

***** His Majesty in consideration of the zealous and hearty exertions of His Indian Allies, in the support of His Cause, and as a Proof of His Most Friendly Disposition towards them, has been graciously pleased to consent that the Losses already certified by His Superintendant General shall be made

good; that a favorable Attention shall be shewn to the Claims of others who have pursued the same system of conduct that Sir Guy Carleton, His Governor General of His American Dominion shall take Measures for carrying His Royal Commands into execution immediately after his arrival at Quebec. This liberal Conduct on the part of His Majesty He trusts will not leave a Doubt upon the Minds of His Indian Allies. That he shall at all times be ready to attend to their future Welfare and that He shall be anxious upon every occasion wherein their Interests and Happiness may be concerned to give them such further testimonies of His Royal favor and countenance as can, consistently with a due regard to the National faith, and the honor and dignity of His Crown, be afforded to them.

His Majesty recommends to His Indian Allies to continue United in their Councils, and that their Measures may be conducted with temper and moderation from which, added to a peaceable demeanor on their part, they must experience many essential benefits, and be most likely to secure to themselves the possession of those Rights and Priveleges which their ancestors have heretofore enjoyed.

Extract from Memoranda for Instructions. (Canadian Archives Q26 -1, p.57. These memoranda were embodied by Governor Carleton with the evident intention of securing specific instructions from the Imperial Government on certain important points, as to which he did not care to initiate a policy himself.)

What policy should the Governor General observe with the United States?

What with each separate State?

What with the Indians?

I have found no direct answer to these memoranda, but the Royal Instructions sent to Carleton (then become Lord Dorchester) on August 23rd, 1786, contain two articles to guide him regarding his conduct toward Indians. It was resolved to suppress the Jesuit Order in Canada, but in doing so, the Governor was particularly instructed to give no offence to the Indians.

Extract from Royal Instructions to Lord Dorchester dated 23rd August, 1786. (Canadian Archives M230, p.231.)

Article 2I; twelfthly:- It is also Our Will and Pleasure that all other religious Seminaries and Communities (that of the Jesuits only excepted) do for the present and until we can be more fully informed of the true state of them, and how far they are or are not, essential to the free exercise of the religion of the Church of Rome, as allowed within our said Province, remain upon their present Establishment. ***** That the Society of Jesuits be suppressed and dissolved and no longer continued as a Body Corporate or Politick, and all their Rights, Possessions and Property shall be vested in Us for such purposes as We may hereafter think fit to direct and appoint. But We think fit to declare Our Royal Intention to be that the Present Members of the said Society as established at Quebec, shall be allowed sufficient stipends and provisions during their natural Lives, that all Missionaries among the Indians whether established under the authority of or appointed by the Jesuit or by any other Ecclesiastical Authority of the Romish Church be withdrawn by degrees and at such times and in such manner as shall be satisfactory to the said Indians.

Article 3I. You are not to allow any Settlements to be made beyond the Boundaries ascertained to the different Posts among the Indian Nations within the Limits of Our Province of Quebec in Alliance with Us, ***

I submit that the historical and official records conclusively prove :

1. That the King at first treated with the Indians as Allies, independent as to their internal affairs and domestic concerns, but under his protection and superintendence as regards their dealings with his own subjects and foreign nations.

2. That the change from the status of Allies to that of acknowledged subjects, in a class distinct from the King's ordinary subjects, and holding lands by virtue of military service, was gradual; that such change was "by degrees" as the King himself officially expressed the hope would be the case.

(see ante p.p 75)

3. That we find the Indians sometimes referred to as Allies and sometimes as subjects. The reason of it was the dual status of the Indians; Nationally independent as among themselves, not independent as regards their national dealings with foreigners. In the time of King James, the Iroquois were induced by Governor Dugan to declare themselves British Subjects in order to obtain the assistance of the British in their wars with the French. When the Dutch 'Covenant Chain' with the Five Nations was taken over by the English in 1664, ~~xxxx~~ the Indians concern^{ed} were referred to as Allies. In the time of Queen Anne the four Sachems of the Five Nations who went to London to discuss matters concerning their relations with the French were treated by Her Majesty as ambassadors of a nation in alliance with her. (see ante p.22) During the wars with the French in Canada prior to 1760, the Indians fighting on the British side are officially termed Allies by the King's Generals and Officers in Command. In the Royal Instructions of 1763, 1768, and 1775 to Governor Carleton of Quebec, the King called the Canadian Indians his Allies. During the Revolutionary War, the Canadian Indians fighting for the King against the rebellious ^{English Colonists} to the south are officially termed Allies. In the letter written on behalf of the King by Lord Sydney to Colonel Joseph Brant, the 6th April, 1786, the King continues to call the Canadian Indians his Allies. In the Royal Instructions of 23rd August, 1786, to

Lord Dorchester, the King refers to the Indian Nations of Quebec as being in alliance with him. ^{And nearly a century afterwards} Governor Douglas, representing the King, officially referred to the Indians of British Columbia on the 14th March, 1859, as 'friends and Allies capable of rendering valuable assistance to the Colony;' (see ante p.47.)

4. That the King, by express words and deeds, and also impliedly from a long continued and consistent policy of conciliating and protecting the Indians, ^{in effect} said to them: "Be faithful Allies to me, support my cause and the British interests, render me military service, and in return I will maintain and protect you in the possession of the lands occupied by you in accordance with the usage and customs of your Ancestors."

[The Canadian Indians by the most solemn and formal ceremony known to them, and participated in by the King's representatives, (see accounts of proceedings at making of various early treaties with the Indians,) accepted the King's overtures, and acknowledged him as their one Big Chief, their Great Father, or, to use the Feudal term, their Lord Paramount.

5. That the King repeatedly called upon the Indians for Military Service in special Battalions distinct from the rest of the army, and that the Indians always answered the King's call. They did so in 1775, in 1812, ⁱⁿ 1837; they remained faithful to the King in 1885 when solicited to join in the Rebellion of the Half Breeds; and ^{they} offered their services during the Boer War. As between the King and the Indians it was a soldiers' agreement. And no one having a fair knowledge of the circumstances can honestly maintain that when this soldiers' agreement, - this feudal tie - was entered into, it meant other-wise than that the King pledged himself in return for Military services by the Indians to maintain them in sole and unhampered use and enjoyment of the lands actually occupied by them - lands which at the time were not accurately defined, but which could be defined as it became necessary. The generous way in which this recognition was to be made is indicated by the way in which Governor Douglas allotted Indian reserves in British

Columbia - he took the word of the Indians themselves as to what lands were actually occupied by them and regarded as their own. This soldiers' agreement has been faithfully adhered to by the King acting through the Imperial Government as to his part and by the Indians as to their part; but it has been continually assailed by every legal and illegal expedient that could be devised by the Colonial and Provincial Governments or rendered available by a perverted application of legal terms and phrases not contemplated by the King, and not known of by the Indians when they received the King's assurance that they would be maintained in possession of their lands. As was said by the Supreme Court of United States in the case of Mitchell v. United States (see ante p.15)

"Indian possession or occupation was considered with reference to their habits and modes of life; their hunting grounds were as much in their possession as the cleared fields of the whites; and their rights to its exclusive enjoyment in their own way, and for their own purposes, were as much respected until they abandoned them, made a cession to the Government or an authorized sale to individuals."

And the same Court said in the case of Worster v the State of Georgia (see ante p.11).

"So with respect to the words 'hunting grounds'. Hunting was at that time the principal occupation of the Indians, and their lands were more used for that purpose than for any other. It could not, however, be supposed that there existed any intention of restricting the full use of the lands they reserved."

Just because, in the St. Catherine's Case, Mr. Blake, in his anxiety to reduce the Indian Title, asserted it throughout his argument to be "a mere right of chase and warren" over certain lands which were given by grace of the Crown as a ^{"morsel"} territory to the Indians, and that such was the only use of land known to the Indians I would here quote some historical and official records proving that the Indians, were not utterly discouraged by the whites, made a considerable agricultural use of their land.

"The Indians, cut down the trees about two or three feet from the ground, then lop all the branches and burn them at the joints of the tree which kills it, and in time they take away the roots. Then the women carefully clean the ground among the stumps, and dig, step by step, a round hole, in each of which they sow nine or ten grains of Indian corn, which they have first carefully selected and soaked some days in water. This cultivation they continue until they have laid up two or three year's provision; either to secure food for themselves, should there occur any year of scarcity, or to exchange it with other nations for peltries or any other articles they may stand in need of. They every year plant their ~~own~~ corn on the same spots, which they turn up afresh with their little wooden hoes; the rest of the ground

in the intervals, being left uncultivated, and only cleared of weeds, so that they appear all like roads, so careful are they to keep them clean." (*Le Grand Voyage du Pays des Hurons &c.*, par Frere Gabriel Sagard, Recollet, ch.viii, Paris 1632.)

"The Indians, at the first settlement of the English, performed many acts of kindness towards them: they instructed them in the manner of planting ~~corn~~ and dressing Indian corn. By selling them corn when pinched with famine, they relieved their distresses, and prevented them from perishing in a strange land and uncultivated wilderness. (*Turnbull's History of Connecticut*.vol.i, ch.3.)

The same writer, noticing a season in which the English settlers suffered severly from a great scarcity says: "In this distressful situation, a committee was sent to an Indian settlement called Pocomtock, where they purchased such quantities that the Indians came down to Windsor and Hartford with fifty canoes at one time laden with Indian corn."

When Captain Endicot was deputed to march against the Pequots, in a campaign which has already been noticed, we read that:

"There were two plantations on the Island containing about sixty wigwams, some of them very large and fair. The Indians had also about two hundred acres of corn. After the English had spent two days on the Island, burning the wigwams, staving their canoes, and destroying their corn, they sailed for the Pequot country." (*ibid* ch.5)

LaHontan, writing of an expedition in Canada in which he was employed by Marquis of Denonville in 1687, against the Senecas, says, in speaking of a deserted Indian village:

"We found there no living thing to kill, except horses, cattle, poultry, and swine, but no men. Those of us who were most vexed at this dissapointment expended out ill humour upon the fields of grain. This we cut down by vigorous efforts of the sword, being employed five or six days in the gallant occupation. Animating each other we advanced about three leagues always carrying on war against our enemy + the Indian corn. (*LaHontan*.vol.1, let. 13.)

Charlevoix, describing this same expedition says that the French encamped in one of the four large villages which composed the canton of the Senecas. There time was spent in ravaging the country." And above all, in burning four hundred thousand minots of corn. (A minot was an old French measure containing three bushels.) They also killed a prodigious number of swine which caused much sickness. (*Charlevoix*, *histoire de La Nouvelle France*, liv.XI.) The Bishop of Quebec, speaking of the same expedition, and

of the same village says:

"This village they burnt, and three others, together with the Forts; and it was supposed they destroyed about six hundred thousand minots of new corn, and thirty thousand of old, in order to starve the country, so that it might be impossible for the savages to subsist themselves. It was thought necessary for many reasons to remain contented for this year with these advantages; a great deal had been accomplished by securing the trade, humbling the Iroquois, and causing their scalp to be carried throughout all the land."(estate present de l'Eglise et de la Colonie Francoise dans la Nouvelle France, per M.l'Eveque de Quebec, p.262,-Paris,1688.)

In an expedition also, which was conducted by Chevalier de Beauharnois, against several Indian tribes in the Interior, Father Crespel, who was present, states that not being able to find the inhabitants of a village they had taken possession of, they could "only burn their cabins to the ground, and destroy all their Indian corn, the food upon which they principally subsist.

Having advanced a little farther, for the purpose of attacking another village of the Winnépagoes, they found it also deserted. "We therefore," says Crespel, "employed some time in entirely ruining the crops, in order that the Indians might be starved." (Voyage du Pere Crespel au Nouveau Monde,p.21.) The Englishman explorer,Captain Carver, visited this same nation of Indians in 1766, and found them raising : "a great quantity of Indian corn,beans, pumpkins, squash and watermelons with some tobacco.(Carvers,travels,p.37) These Indians, being remote from Europeans, prospered in agriculture. In 1820, Doctor Morse found them to be nearly six thousand in number, possessing horses, and cultivating corn, potatoes, pumpkins, squashes and beans, and described them as "remarkable Provident" (Morse's Indian Report to the American Government, appendix, pp 48 and 59.)

And many tribes of the Indians of British Columbia likewise were engaged in agriculture and stock-raising. Sir Joseph Trutch admits this when he contends that the Indians were fully satisfied through the British Columbia Government "securing to each tribe as the progress of the settlement ~~XXXXXXXXXXXXXXXXXXXX~~ of the country seemed to require,the use of sufficient tracts of land for their wants, for agricultural and pastoral purposes." (B.C.Papers,appendix ,p.11)

These early records show that modern ignorance concerning the agricultural pursuits of the Indians was not shared by the explorers and colonists of the 17th. and 18th. centuries, and cannot be imputed to the King and his representatives when they pledged themselves to maintain the Indians in possession of their lands. They knew that the Indians made as full use of their lands at that time as did the colonists themselves. Hunting was indeed the main occupation of the able-bodied men of the various tribes, and it was the Indian occupation in which, for trade reasons, the Europeans were most concerned, but, as Father Crespel points out, the main subsistence of the Indians was derived from agriculture, and the plan conceived by the French as the best way to destroy an Indian nation was to destroy their corn, and so starve them. Mr. Blake, in order to support his "easement to hunt and fish" theory of the Indian Title would have us believe that ^{hunting and fishing} ~~such~~ was the only use of land known to the Indian, that he was a mere vagrant hunter living from hand to mouth on the game he found, such as man is pictured to have been in the Stone Age. . History proves this notion to be false. The Indians were divided into distinct political communities, ruled by hereditary chiefs, acting in all national concerns by and with the advice and consent of a Grand Council of the Elder Warriors or Beloved Men, as they are variously called. The Indians had permanent towns, and large areas devoted to growing corn, and they cultivated also melons and pumpkins, and raised cattle and swine. In view of this I submit that it cannot now be honorably or logically ~~maintained~~ contended that all that was in the mind of the King and his representatives, when promising the Indian protection and maintenance in possession of his lands, was "an easement of the Indian to hunt and fish." (Blakes's Argument, p. 72) In the words of Chief Justice Marshall, already quoted, "Hunting was at that time the principal occupation of the Indians, and their land was more used for that purpose than for any other. It could not however

be supposed that there existed any intention of restricting the full use of the lands they reserved. (See ante p.9)

Reference has been made particularly to the argument of the Hon. Edward Blake before the Privy Council in the St. Catharine's case because on the 19th. November last before the Full Court of British Columbia learned counsel on behalf of the Government of that Province claimed reversionary rights in the Indian Lands of the Province, and in support of his contentions submitted printed copies of Mr. Blake's Argument to the Court, as if it were final and conclusive, saying: ~~xxxxxxx~~

"It has the advantage of the judgment in that it contains not only conclusions similar to those which the Privy Council afterwards arrived at, but a vast amount of historical reference and information generally on the subject." (Court Stenographer's Report Bodwell's Argument)

The "vast amount of historical reference and information" will be found upon examination to be vastly perverted and inaccurate. Indeed to completely refute Mr. Blake's argument does not require one to be learned in the law so much as to have a fairly accurate knowledge of colonial history and official transactions in connection with the Indians. But many of Mr. Blake's inaccurate statements appear to have been unchallenged by learned counsel for the Dominion Government. The reason for this was perhaps because Dominion Counsel were only concerned with Dominion interests. There were only two parties before the Court - the Dominion Government and the Government of Ontario. But as a matter of fact there are four parties in interest, and in any case which will authoritatively settle the questions raised by the Government of British Columbia last November respecting Indian Lands in that Province these four parties should be heard - that is to say, the Imperial Government, the Indians, the Dominion Government and the Provincial Government. For, as Lord Watson suggests, the interests of the Indians and of the Dominion Government might not always be one - the trustee might have an adverse interest. I quote from Blake's Argument, pp 25 & 26:

Lord Watson: That is one kind of case. That is one view of it. Then there is another; whether they could by any possibility arrange with the Indians to take a cession, the Indians not receiving the full benefit of the prices derived from the ceded lands?

Mr. Blake: To take a cession of a portion of the land?

Lord Watson: Could they so deal with the Indians as to take an advantage to themselves assuming that the property would pass? This is not precisely the same question.

Mr. Blake: No. One question is, whether they could so arrange as to utilize the whole beneficial interest in the property for the benefit of the Indians; the other question is whether they could divide the spoils. "

The Indians should be ~~represented~~ ^{counsel} by ~~council~~ solely upholding their claims, and unconcerned with mere questions of advantage as between the Dominion and Provincial Government.

While it would be out of place, perhaps, to meet Mr. Blake's argument in detail in this report, yet there are some few parts of it, in addition to those already commented upon, to which I would draw attention before concluding. From the first to the last of the 72 pages of his argument, Mr. Blake continually insists upon one point as of supreme importance, namely, that it was a matter of policy only which induced the English to make the representations which they did to the Indians, to issue proclamation and instructions in their favor, and to enter into treaties with them. I quote a few of his statements: (Blake's argument.)

"The Indian interest, such as it is, is not absolutely of right, but it has its foundation in grace and policy, in the political Department of the Government." (p. 1.)

"Just such a title, just such an interest, as from motives of justice, from motives of policy, from motives of convenience, or from the necessities of the case, the discoverer chose, in certain cases, to recognize or set up as existing in the Indian, - just such a title or interest was all that the Indian had; yet always subordinate to the claims of the strong discoverer." (p. 54)

"That is my whole argument. In a word it was and is a question of expediency and policy." (p. 54)

"My argument will be directed to proving this: first, to show that such interest as the Indian had in Canada cannot properly be called a right; that it was originally a question of policy and discretion, and continued so to be; and next, ~~that~~ even if you put it upon the footing of a right, yet it was a right under the Proclamation, lower than any contention of my learned friend's and one which was obviously carved out of the Crown title, and leaves the Province the main interest in the land." p 55.

Vattel, in his great work on "The Law of Nations" from which I have already quoted, says:

"Treaties are no better than empty words if nations do not consider them as respectable engagements, as rules which are inviolably observed by sovereigns, and held sacred throughout the whole earth. The faith of treaties, that firm and sincere resolution, that invariable constancy in fulfilling our engagements, of which we make profession in a treaty - is therefore to be held sacred and inviolable between the nations of the earth, whose safety and repose it secures; and if mankind be not wilfully deficient in their duty to themselves, infamy must ever be the portion of him who violates his faith.*** "

"Since public treaties, even those of a personal nature, concluded by a king, or by another sovereign who is invested with sufficient power, are treaties of State, and obligatory on the whole nation, real treaties which were intended to subsist independently of the person who has concluded them, are undoubtedly binding on his successors; and the obligation which such treaties impose on the State passes successively to all her rulers as soon as they assume public authority' The case is the same with respect to the rights acquired by those treaties. They are acquired for the State, and successively pass to her conductors."

It has already been pointed out how whenever the issue was directly raised in English and American Courts, they held the Proclamation of 1763 to have the same force and effect as a formal treaty. (See pp)

By the treaty of Fort Stanwick, in 1768, ~~xxxxxx~~ £10,000 was paid by Sir William Johnson, on behalf of the King, to extinguish the Indian title in certain parts of the English Atlantic Provinces, the Indians thereby agreeing to 'grant, sell, release and confirm to our sovereign Lord, King George The Third.' Referring to this treaty, Lord Watson said: 'It proceeds on the express assumption that the Indians have absolute rights over the land in question.' (Blake's argument, p.33.) To avoid the effect of this, Mr. Blake made one of the most unfortunate statements in the whole of his argument. He said: " Yes, my Lord, there are a great many expressions of that kind scattered about in such documents. In fact, it was not thought wrong to please the Indians, whenever they could be so gratified, by swelling words, always provided that the English got from them just what they wanted." (Blake's argument, p.33.) And in answer to the curious expression the Earl of ^{Selborne} ~~Stalborne~~ who said: "There is not magic in the " Mr Blake said: "No; it is simply a bargain. language which my learned friend has good will."

Mr. Blake argues against the legal obligation of Proclamation, Instructions, Speeches and Treaties concerning Indian rights whenever they are not expressed in ordinary legal phrases; but when he finds cases in which no lawyer can quarrel with the form of words used, then he says the words are 'swelling' and do not mean what they say, and that the English did not think it wrong to use formal terms to gratify the Indians, yet holding themselves free to subsequently repudiate the obligations thereby created. How much more honest, and in accord with fundamental principles of all law, is the meaning given by the Supreme Court of United States to these words. In the case of Worster v State of Georgia, already quoted, (see p.11) Chief Justice Marshall said :"

"The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings by ourselves, and having each a definite and well understood meaning. We have applied them to the Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense."

Moreover, all history shows that throughout their dealings with the ~~English~~ Indians, the English did not attempt to deceive them, or take advantage of them, or to break faith with them,- that is if Mr. Blake meant by 'the English' the Imperial Government. The Indians have never had anything to complain of at the hands of the Imperial Government; It was by the American and Canadian Colonists, by the Colonial and Provincial Governments, that the Indian title, and the Indian right to the full use and enjoyment of their lands ~~have been~~ ^{was} continuously assailed.

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I would also draw attention to the so-called allodial title, which Mr. Blake continually, and I submit, incorrectly, attributes to the Provinces. He says, for instance:

"Thus I contend that the old Province in this case possessed the allodium, and the Province of Ontario since Confederation, has possessed the allodium, subject to this Indian burden, whatever it may be." (Blakes Argument, p.11)

"This Indian interest was universally subject to these limitations, namely, that it was not transferrable by the Indians, that it was not alienable by the Indians, that it was surrenderable or extinguishable only in favor of the allodial owner whether the Crown or a local proprietor or a chartered colony or in favor of the individual owner. (Blake's Argument p. 25.)"

THE EARL OF SELBORNE: "The Province would maintain against the purchaser, I suppose, the jus regale that it had before, that is to say, it would have the right of escheat and whatever royal right there would be in mines and royalties and so on."

MR BLAKE: "It may be so; but to retain ~~xx~~ the casual rights to which your lordship refers, would be something very different from the allodial title burdened with a limited right of occupancy."

THE EARL OF SELBORNE: "That is not quite clear to me. As long as the Indian right exists, the rights of the Province seem to be hardly beneficial." (Blake's Argument, p.31.)

"What then at the date of 1867 was the right of Old Canada? I contend that it was the absolute allodial title, uncontrolled, unaffected by any enforceable or legal claim of the occupying Indians, though generally, on the score of policy and custom, discretion and good will, made available in Upper Canada by means of compact with the Indians. But assume that the right of Old Canada was much lower. What was it at the lowest? I contend that I have shown that it was the allodial title, the lordship, the ownership of all jura regalia, comprehending escheat, burdened only by the claims of the Indians to hunt and fish." (Blake's Argument, p.72.)

It will be seen by the above that Mr. Blake assumes that a Canadian Province is a sovereign state, that what is called ownership of lands by 'the Crown in the right of the Province' (a misleading phrase) exhausts the whole title - that the Crown in the right of the Province is the ultimate lord paramount, ^{or} as Mr. Blake puts it, the Province has the allodial title. Such simply cannot be the case. Allodial title, by its very nature cannot subsist on any colony, province, Dominion or dependency of the British Empire. Allodial title is something which no individual can possess under our system of land tenure. The individual holds his land always subject to expropriation and to other public burdens and incidents involved in any tenure derived from the feudal system. And just as an individual holds his land

under limitations and restrictions, so does a Crown Colony and so does every province of Canada. Provincial public lands, or Crown lands as they are called, are subject to expropriations at any time by the Dominion Government for national purposes such as fortifications, military depots, military roads, railways and canals. Prior to Confederation, colonial and provincial lands were subject to expropriation at any time by the Imperial Government for Imperial purposes. And there can be no question that the Imperial Government to-day could, at its discretion, expropriate any land in Canada for Imperial purposes. Similarly, although in the American Union each state is held to be sovereign yet the State ownership is not allodial, because it is subject to expropriation for national purposes by the Federal Government at Washington, which, in the last ~~XXXXX~~ resort is Lord Paramount. No state of the American Union although called sovereign, could for instance, dispose of its lands to a foreign power, nor would it be permitted by the Federal Government to acquire title to Indian lands by conquest, as the Premier of British Columbia recently intimated might become necessary in order to perfect the alleged provincial title to Indian lands. (see p.71) And if ^{no} so-called sovereign state of the American Union has the allodium, certainly no province of Canada can with any show of reason, claim to have it. Allodium is defined to be:

"Free absolute independent ownership; an estate held in absolute dominion, without owing any rent, fealty, service or duty to any superior on account thereof. Land is not held in allodium either in England nor the United States. In United States it is held subject to the right of the State to take when it decides the land is required for public purposes. The land is also held only on the payment of a sum of money, or any service the State sees fit to impose; On failure to pay, or perform the service, the State can forfeit the land or hold for its own use or benefit or grant to another. (Law Dictionary Arthur English, Am.ed. p.1399.)

One other feature of Mr. Blake's argument may be noted in conclusion, and that is the confusing way in which he uses the term "the Crown." Sometimes he means the Imperial Government, sometimes the Dominion Government, and often the Government of Ontario. Mr. Blake continually speaks of the Indian Title as something carved out of the title of the Crown, meaning thereby the original title of the Crown in the right of the Imperial Government, acquired by the cession of Canada. Then without in any manner bridging the gap between he will attempt to carry over to the Government of Ontario all that he has gained thereby using always the term "the Crown." Now Ontario is not a Kingdom. Neither does the Constitution acknowledge any co-equal, co-ordinate three-in-one trinity of Crowns in the right of the Imperial Government, the Dominion Government and the Ontario Government. Mr. Blake himself has supplied the figure which destroys that fallacy. He speaks of titles being "carved out" of the title of the Crown. The Crown title was once entire; out of it has been carved various subordinate titles, Indian, Colonial, Provincial and Federal. Let us consider Canada only. We may say that ~~xxxxxxx~~ just after the cession of Canada the Crown title was entire and intact, except as to the rights of private owners granted by treaty, or previous charter. Then began the carving process. Assuming that the Indian Title began de novo under the Proclamation of 1763, as Mr. Blake contends, ~~xxxxxxxxxxxxxxxx~~ that surely cannot mean that it was carved out of the title of the Crown in the right of a Province and Government not then in existence. It was carved then out of the title of the Crown in the right of ^{and it} the Imperial Government, ~~xxx~~ was ~~xxxx~~ the first slice off the Crown title, and was prior to any British colonial title in Canada. So much was gone from the original Crown title, and all subsequently created Colonial Government titles were thus subject to the Indian Title. Moreover the right of escheat or reversionary interest left in the Crown in the right of the Imperial Government in the

Indian lands was never transferred by the Imperial Government to any Colonial, Provincial or Federal Government. That such a transfer is necessary in order to vest such reversionary interest is shown by the fact that the Imperial Government did make an actual transfer of its estate in other lands in Canada known as the Ordinance lands. Mr. Blake, speaking of the British North America Act said:

"It was not intended to transfer to Canada either the Indian interest or the interest of the Province. Each still belongs, so to speak, to its owner." (Blake's argument, p.) Here, of course, Mr. Blake is assuming that the Province is the owner of the reversionary interest in the Indian lands although he advances no evidence to establish this assumption. But Chief Justice Hunter of British Columbia, in the case already referred to, which was submitted to the Full Court of that Province in November, 1908, during the course of the argument by counsel for the Province, made some most illuminating remarks on this point. I quote from the Court stenographer's Report:

Hunter C.J.: It seems to me in this a pretty reasonable claim would be it was only the British Columbia trusteeship that was transferred to the Dominion of these lands in favor of the Indian - not the lands, but only the trusteeship.

Mr. Bodwell: But it says: further down, the lands shall be conveyed?

Hunter C.J.: I know, but that is merely following out the idea. The essential idea of the thing was that the Dominion was to be a substitute, as it were, for the Province. The reversionary interest is not discussed at all; that is left where it was.

Mr. Bodwell: The way I look at it is this, that the Dominion was to be a trustee for the Indians, and that they would have the title of trustee.

Hunter C.J.: They are to be substituted as trustees for the Province.

Mr. Bodwell: The Province was not trustee of the Indians: but the Indians were wards of the Province; but the Province was not the trustee.

Hunter C.J.: Yes: they had constituted themselves trustees of these lands for the Indians as long as they occupied them. What I meant to say was, it seemed to me reasonably clear that the reversionary interest of the Province was not dealt with in these terms, it is left as it was, only all the time substituting one trustee for the other."

Now subject to the Indian Title, whether we regard the latter as an anterior subsisting title or as having been 'carved out' in 1763, the title of the Crown in the right of the Imperial Government remained intact so far as British Columbia is concerned until the year 1849. In that ~~year~~

year the Hudson Bay Title to Vancouver Island was carved out, but, as already shown, the Hudson Bay Company recognized the anterior Indian Title to such lands as were occupied by the Indians. In 1858 the Hudson Bay Title went back to the Crown, which was thus once more intact, subject to the Indian Title. Then the Crown carved out a Colonial title by which the Colony became entitled in the right of the Crown to all unclaimed, unsurveyed and unreserved Crown lands. Then the Crown was interested in the lands of British Columbia in three different ways: through the Imperial Government as to all lands reserved or required for military or naval purposes; as Lord Paramount having the right of escheat in all Indian lands; and through the Colonial Government as to all other lands not privately owned. Eventually most of the lands reserved for military and naval purposes were transferred, ^{by the Imperial Government} to the Dominion Government, with the exception of those at Esquimalt. But the original reversionary interest in the Indian lands has never been parted with by the Imperial Government. This might have been done very properly in 1871 when the Imperial Government took the slice of title which it had carved out for the Colonial Government of British Columbia and re-apportioned it between the Dominion Government and the newly formed Provincial Government. Or it might have been done in 1861 when the Colonial Legislature asked the Imperial Government to extinguish the Indian Title by purchase. Nevertheless it has not been done, and the Indians to-day are technically correct in making appeal direct to the King through the Imperial Government whenever they think their title is being infringed ^{by} any Provincial Government, or when they think their trustee, the Dominion Government, is not properly protecting their interests and title to their lands.

In concluding this Report I would respectfully suggest that the present trouble between the Skeena Indians of British Columbia and the white settlers now taking possession, under warrant of the Provincial Government, of portions of the lands claimed by the Skeenas, should be ~~taken~~

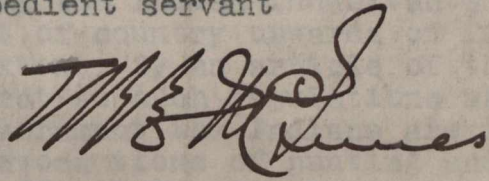
taken advantage of in order to secure a final authoritative judgment on the nature and validity of the Indian Title in Canada in general, and of the title of the Indians to lands occupied by them from time immemorial, but never defined, ^{officially} as Indian Reserves in particular. The proper issues could be raised by action of ejectment taken by the Dominion Government as trustee and guardian of the Indians whose rights are being invaded by white settlers. And in any such action all parties who have, or claim to have, an interest should be before the Court. Such parties I believe to be the Indians particularly concerned, and the Imperial, Dominion and Provincial Governments.

All of which is respectfully submitted.

I have the honor to be

Sir

Your obedient servant



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St. Catherine's Milling and Lumber Company 21

Appellants

and

The Queen on the Information of the Attorney 27

General for Ontario 9

Respondents

On Appeal from the Supreme Court of Canada: 21

14 Appeal Cases (1889), p. 46. 14

Statement of case by Lord Watson in delivering judgment. 57

"On the 3rd. of October, 1873, a formal treaty or contract was concluded between commissioners appointed by the Government of the Dominion of Canada on behalf of Her Majesty the Queen of the one part, and a number of chiefs and headmen duly chosen to represent the Salteaux Tribe of Ojibbeway Indians of the other part, by which the latter for certain considerations released and ~~was~~ surrendered to the Government of the Dominion for Her Majesty and her successors the whole right and title of the Indian inhabitants whom they represented to a tract of country upwards of fifty thousand square miles in extent. By an article of the treaty it is stipulated that subject to such regulations as may be made by the Dominion Government the Indians are to have the right to pursue their avocations of hunting and fishing throughout the surrendered territory with the exception of those portions of it which may, from time to time, be required or taken up for settlement, mining, lumbering or other purposes. Acting on the assumption that the beneficial interest in these lands had passed to the Dominion Government their Crown Timber Agent on the 1st. May, 1883, issued to the Appellants, the St. Catherine's Milling and Lumber Company a permit to cut and carry away one million feet of lumber from the specified portion of the disputed area. The Appellants having availed themselves of that licence a writ was filed against them in the Chancery Division of the High Court of Ontario at the instance of the Queen on the information of the Attorney General of Ontario, praying: (1) A declaration that the Appellants have no rights in respect of timber cut by them upon the lands specified in their permit: (2) An injunction restraining them from trespassing on the premises and from cutting any timber thereon: (3) An injunction against the removal of timber already cut and: (4) A decree for the damage occasioned by their wrongful acts. The Chancellor of Ontario on the 10th. June, 1885, decerned with costs against the Appellants in the terms of the first three of these conclusions, and referred the amount of damage to the Master in Ordinary. The judgment of the learned Chancellor was unanimously affirmed on the 20th. April, 1886, by the Court of Appeal for Ontario, and an appeal taken from their decision to the Supreme Court of Canada was dismissed on the 20th. June, 1887, by a majority of four of the six judges constituting the Court."

Headnote to the above Case.

"Section 109 of the B.N.A. Act of 1867 gives to each Province the entire beneficial interest of the Crown in all lands within the boundaries which at the time of the Union were vested in the Crown, subject to such rights as the Dominion can maintain under sections 108

and 117. Attorney General of Ontario v Mercer, 8 Appeal Cases, 767, followed. By Royal Proclamation in 1763 possession was granted to certain Indian Tribes of such lands "parts of our dominions and territories" as, not having been ceded to or purchased by the Crown, were reserved "for the present" to them as their hunting grounds. The Proclamation further enacted that all purchases from the Indians of land reserved to them must be made on behalf of the Crown by the governor of the Colony in which the lands lie, and not by any private persons.

In 1873 the lands in suit, situate in Ontario, which had been in Indian occupation until that date under the Proclamation were, to the extent of the whole right and title of the Indians therein, surrendered to the Government of the Dominion for the Crown, subject to certain qualified privilege of hunting and fishing.

Held that by force of the Proclamation the tenure of the Indians was a personal and usufructuary right dependent upon the good will of the Crown; that the lands were thereby, and at the time of Union, vested in the Crown subject to the Indian Title, which was "an interest other than that of the Province in the same" within the meaning of section 109.

Held also that by force of the said surrender the entire beneficial interest in the lands, subject to the privilege, was transmitted to the Province in the terms of section 109, and the Dominion power of legislation over lands reserved for the Indians is not inconsistent with the beneficial interest of the Province therein.

The above is the case referred to in the concluding parts of this Report, and is the case under authority of which the Province of British Columbia advances its present claims to the reversionary interest in Indian Lands situate within its boundaries.

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CORRESPONDENCE RESPECTING INDIANS IN THE BRITISH
NORTH AMERICAN COLONIES. p. 30

Earl of Gosford to Lord Glenelg, 13th July 1837.
Enclosure No. 1.

Enclosure in No. 11.

To His Excellency the Earl of Gosford, Captain General and
Governor in Chief of the Province of Lower Canada, &c. &c. &c.

present

Report of a Committee of the Executive Council /
the Honourable Mr. Smith, Mr. De Lacy, Mr. Stewart, and Mr.
Cochran, on your Excellency's Reference of the 7th October
1836, respecting the Indian Department.

x

x

x

APPENDIX A

1st. The Iroquois of Sault St. Louis with a
Population of 932 Souls, own a Seigniory which was granted
to the Jesuits in 1680 for the Conversion, Instruction and
Subsistence of this Tribe, and contains a Surface of Twenty-
one Square Miles, or about 40,000 Acres. Of this Property
the far greater Part has been conceded on the seignioral
Tenure at the ordinary low Rate of seignioral Rent; but
the tract reserved by the Indians for their own use contains
20,000 Acres, of which, however, only 2,230 Acres are
cultivated, chiefly by the old men and women of the Tribe,
for the common benefit; and the Produce for 1835, as stated
in a Return before the Committee, may at a moderate Estimate
be valued at 750 \$ or 800 \$. Although the conceded Land
on the Front of the Seigniory is of indifferent Quality, the
Rear is represented as better adapted for Agriculture. And
as the seignioral Dues and Profits, which amount to about
200 \$.per annum, added to the value of the Produce of their
Labour , as above stated, and the Annuity , and the Annuity
of 62 \$ 10s received by them from the State of New York

as Compensation for Land surrendered by them, form an aggregate Income of nearly 1,000 ^f per Annum, the Committee conceive, that with these Advantages, and by educating the younger Indians in Habits of Industry, by encouraging the Tribe to cultivate more extensively their reserved Tracts, and by allowing no further Concessions to be made of their unceded Land, the Indians of this Settlement might in a few years be made in a great measure if not wholly independent of the Supply of Presents.

That these might be continued only to such as from Age, Infirmary, or other Causes might be incapable of maintaining themselves, and that at no very distant Period the seignioral Revenues of the Tract might be applied as a Fund solely for these latter Objects, and for Education of Youth.

x x x

Fifteenth Enclosure in No. 11. pg 50

No. 1.- Indians of the Sault St Louis.

A number of the able-bodied Indians of this Post are employed as Pilots for Rafts and Bateaux during the Season of Navigation; but it is stated by the Chiefs, that in most Instances the Money which their Young Men acquire in this Way is spent in Liquor before they return to their Village. There are some active Hunters in this Tribe, who subsist in part by the Chace during the winter months.

The cultivation of the land is left principally to old Men and the Women; the latter also employ themselves occasionally in making up Moccasins, Snow Shoes, and Baskets for sale; but the principal support of these and all other Indians in Lower Canada is derived from fishing and hunting.

One Man, Three Women and Two Children at this Village (of the Families of Indians wounded in Action during the late war) receive gratuitous Rations from Government.

The Seigniory of Sault St Louis was granted to the Jesuits in the Year 1680, "pour contribuer a la Conversion, Instruction et Subsistence des Iroquois". This Concession was made by Two separate Grants. The first from Louis the Fourteenth, dated 29th May 1680, confined to a Front of Two Leagues; the second from the Comte de Frontenac, dated 31st October 1680, being an addition to that Front of One League and a Half, or thereabouts, by a Depth of two leagues.

The following conditional Clause is extracted from the Titles:- "a la charge que la ditte terre nommee le sault, appartiendra toute deffrichie a sa Majestie lors que les dits Iroquois l'abandonneront."

The Seigniory continued under the Superindendence and Management of the Jesuit Priests, until the 15th April 1762, when it was entirely and exclusively vested in the Iroquois, under the Supervision of the Indian Department, by the Ordonnance of that Date of Major General the Honourable Thomas Gage, Governor of Montreal.

The Land is of an indifferent Quality along the Front of this extensive Tract; in the rear Concessions, and those on the River la Fortue, it is better adapted for Agricultural Purposes.

The Revenue of the Iroquois Indians of the Sault St. Louis, arising from rents, Lods et Ventas, and the Value of the Wheat received as Toll at their Mill during the Five years ended in 1834, had averaged £ 205, 13s, 2 d. Currency per Annum; a great Portion of this Income was expended in the Repairs of the Mill, the Salary of the Miller, and the Support of the Church at Caughnawaga. The Chiefs of this Tribe receive an Annuity from the State of

New York of $\text{\$}$ 62, 10s Currency, for lands sold to the people of that State under a Treaty executed in the City of New York on the 31st of May 1796.

The Terms and Conditions of the new Titles or Declarations under the Letters Patent de Terrier, of 19th December 1827, are such as are usual, and have been stipulated in the Grants made in the Seigniories heretofore belonging to the late Order of Jesuits in this Province.

The Seigniorly of the Sault St. Louis is at present under the immediate management of an Agent duly authorized. He is required to render an attested Account of the Transactions of his Agency to the 31st October in each Year and to explain to the Iroquois Chiefs in full Council (in the Presence of the Missionary and the Superintendent of Indians in the District) the Particulars of the several Charges and Credits therein ; and, finally, to transmit the Account and Vouchers to the Secretary of Indian Affairs for the Information of the Commander of the Forces or Governor-in-Chief.

The Iroquois have 2,230 acres of Land under Cultivation in their Seigniorly, after the Indian Manner. Their Crops, in the Year 1835, amounted to 64 Bushels of Wheat, Three Hundred and twelve bushels of Oats, 3,391 Bushels of Indian Corn, 818 Bushels of Peas and Beans, 2,776 Bushels of Potatoes, being the Joint Stock of the Tribe, consisting of 932 Souls.

There are not any amongst these Indians who derive the whole of their Support from Agriculture, but they are all in part subsisted from this Source.

CERTIFIED A TRUE *Extract*

G. M. Matheson

In Charge of Records
Department of Indian Affairs.

Extract from a letter from Governor Hunter to the Lords of Trade, dated New York, Aug. 27th, 1714.

An Act for the Treasurer's paying to his excellency a sum of money for presents to the Indians, and for his expences in going to Albany, All I shall remark upon this bill is that the sum is not sufficient to purchase the presents, those Indians now expect who are grown very uneasy for want of it. They want to have the hatche(t)s taken out of their hands, as they call it, but the truth is, that they have been hitherto so accustomed to presents from the time of their first settlement, when they were considerable, and the Province weak, that it is now grown into a sort of tribute which they most certainly expect, and the Assembly unwillingly give, so that I must either resolve to be a loser myself, or vent a disturbance on the frontiers, which cannot be for her Majesty's interest, and have accordingly appointed the 15th of Sept. for the day of meeting the five Nations as they are called, at Albany, and do not doubt but to set all matters so with them that they may be quiet and the county enjoy perfect security.