

NWp
970.5
A784
c2

The Indian Land Situation in British Columbia.



A LECTURE

delivered in Aberdeen School, Vancouver, under the auspices
of The Art Historical and Scientific Association on 22nd April,
1910, by Rev. Arthur E. O'Meara, B. A.

THE VANCOUVER WORLD of 23rd April
contains the following editorial note:-

"Very interesting was the lecture delivered in the Aberdeen School, last night, by Rev. Arthur O'Meara, on 'The Indian Land Situation in British Columbia.' It is well that the public should possess a clear, concise and comprehensive appreciation of the situation and we do not know of any means by which this can be better obtained than perusal of an extended report of Mr. O'Meara's address. Such a report the Association is understood to have in preparation. The lecture is a valuable contribution to a difficult subject, a great deal of its value arising from the fact that it is, in the main, a narrative of historical events, rather than the production of a special pleader."

On the evening of Friday, 22nd April, 1910, in the Aberdeen School, Vancouver, under the auspices of The Art Historical and Scientific Association, Rev. Arthur E. O'Meara, B.A., delivered a lecture on the subject of "The Indian Land Situation in British Columbia." With him upon the platform were Mr. F. C. Wade, K.C., and Mr. H. W. C. Boak. Mr. Wade in introducing the lecturer, made reference to earlier associations with him during college days in Toronto and to acquaintance with his father, Rev. Dr. O'Meara, of Trinity College, Dublin, a gentleman who had always been a great friend of the Indians and had translated the Holy Scriptures into the language of the Indian. The present lecturer was also, he said, a strong friend of the red men and had made a special study of the question of their rights. It was rather a curious thing, he added, that so long ago as the time of Lord Dufferin it had been pointed out by that eminent statesman that in this Province we had overlooked the whole question of Indian land titles, notwithstanding the fact that there is reason for believing that the claim of the Indians of this Province is perhaps stronger than in the case of any other Province of the Dominion. He believed that British Columbia was the only Province in which the Indians rested their claim upon a proclamation issued by King George the Third which had never been repealed. He thought it important to remember that Indian reserves, as recognized by the British North America Act had never been adopted in British Columbia.

At the request of Mr. Wade, who was obliged to leave for the purpose of taking part in another meeting, Mr. Boak then took the chair.

The lecturer opened with a reference to the fact that he had been a missionary among the mining population of the Yukon Territory, and had had the privilege of doing something for the welfare of the Indians of that Territory and said: "Mr. Chairman, ladies and gentlemen,—The scope of the subject of this lecture is limited to the one matter of the Indian Land Situation in British Columbia, and I intend to treat the subject mainly by the historical method. I purpose mentioning the main facts and quoting from

public documents and other records and endeavoring to show the various views that have been held upon this subject, some of which are in striking contrast to one another. I propose to avoid advocating any particular view of my own regarding the question of Indian title in this Province.

“ Before the territory which now forms the Province of British Columbia became part of the British dominions, the Indian tribes were not only the owners of the various districts of the Province, but were also the sovereign owners of them. When, in 1579, British sovereignty began on this coast, with the establishing of ‘New Albion’ by Sir Francis Drake, you will find that this principle was applied: the sovereignty was changed, but the ownership was considered as unchanged. The Indian tribes, on their part, accepted the sovereignty of Great Britain, but the Sovereign of Great Britain recognized the Indians’ right of occupation. British sovereignty on the Pacific coast commenced with the establishing of the British Colony of New Albion at a point to the south of the present international boundary, and from time to time that sovereignty was extended northward and also extended westward from the eastern part of Canada, until we find it including the territory which is now known as British Columbia. Historical records show that when Sir Francis Drake landed, the ownership of the native tribes was recognized, and that before Drake proclaimed the sovereignty of Great Britain he secured from the natives a free surrender of their sovereignty.

“ That leads me to speak of a document of outstanding importance, a proclamation issued by King George the Third, in 1763. This proclamation states the general principle that when British dominions have not been ceded to or purchased by the Sovereign of Great Britain they are to be considered as reserved for the Indians. I will read the paragraph of that proclamation upon which the Indians of British Columbia are relying in support of their claim: ‘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 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 obtained.'

"Now, that royal proclamation was intended to apply in a sweeping, general way, to the British dominions in North America. The Indian Commissioners appointed by the Government of Canada in the year 1844, while Indian affairs were still under the direction of the Imperial Government, thus stated the effect of the proclamation: 'The subsequent proclamation of His Majesty King George the Third issued in 1763, furnished them (the Indians) with a fresh guarantee for the possession of their hunting grounds and the protection of the Crown. This document the Indians look upon as their Charter. They have preserved a copy of it till the present time and have referred to it on several occasions in their representations to the Government.'

"We find, in the Imperial Statutes passed in 1803, 1821 and 1849, which followed up the royal proclamation of King George the Third, all the lands now forming the Province of British Columbia described as 'Indian Territories.' The Statute of 1849 reads: 'And whereas for the purpose of the colonization of that part of the said Indian territories called Vancouver's Island it is expedient that further provision be made for the administration of justice therein.'

"During the years 1850 and 1851 fourteen treaties were made between Sir James Douglas, then agent of the Hudson's Bay Company which then held from the Crown a lease of Vancouver Island, and various tribes of Indians. The consideration consisted of money and other benefits, and by means of a formal document, which describes itself as a sale upon its face, each tribe of Indians surrendered its title to the tract of land mentioned in the treaty. As a result of twelve of these treaties a tract of land lying within the

limits of the present City of Victoria was specially set aside and has since been held by the Provincial Government in trust for the Indians.

“The Imperial Statute passed in 1858 by which the first Colony of British Columbia was formed also refers to ‘Indian Territories’ and contains a recital stating that those who had previously settled upon various parts of this mainland had so settled ‘by the license and consent of Her Majesty.’ These words are quoted from the Imperial Statute of 1858.

“Passing now to the year 1861 and across the water to the Colony of Vancouver Island, we find another piece of historical evidence there. In that year the Legislative Assembly of the Colony of Vancouver Island presented a petition asking the Imperial Government to provide funds for extinguishing ‘the Indian title’ to the remaining lands of the Island. In replying to that petition, the Secretary of State for the Colonies said: ‘I am fully sensible of the great importance of purchasing without loss of time the native title to the soil of Vancouver Island.’ But the Imperial Government refused to furnish the funds, and for that reason the policy advocated by Sir James Douglas, that of purchasing the title of the Indians, was not carried out.

“Reports relating to the Hudson’s Bay Company presented to the Imperial Parliament, between the years 1857 and 1870 contain evidence that the whole of the mainland of what is now British Columbia was then known as ‘the Indian Territory.’

“In 1866 was formed the united Colony of British Columbia. Soon after that date the Government of the Colony adopted a view regarding the claims of the Indians which was the exact opposite of that which historical evidence would appear to support. This view was first expressed in the report of the Minister of Lands and Works, made in January, 1870, from which I now quote: ‘But the title of the Indians in the fee of the public lands, or any portion thereof, has never been acknowledged by Government, but, on the contrary, is distinctly denied. In no case has any special agree-

ment 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.'

"Passing now to the time of Confederation, we find that by Article 13 of the Terms of Union the following was provided: 'The charge of the Indians and the trusteeship and management of the lands reserved for their use and benefit shall be assumed by the Dominion Government and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the union. To carry out such policy tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose shall from time to time be conveyed from the local 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.'

"That closes the quotation from the Terms of Union. It is only necessary for me to mention two important facts—The first is that the Indian tribes were not in any way parties to the agreement represented by the Terms of Union, and the second is that those stipulations have never been carried out. For example, to this day no tracts of land have been conveyed by the Provincial Government to the Dominion Government.

"After Confederation there were negotiations between the Provincial and Dominion Governments, and in a memorandum dated the second day of November, 1874, and approved by His Excellency the Governor-General on the 4th of November, 1874, the Minister of the Interior says: 'The undersigned would respectfully recommend that the Government of the Dominion should make an earnest appeal to the Government of British Columbia if

they value the peace and prosperity of their Province—if they desire that Canada as a whole should retain the high character she has earned for herself by her just and honourable treatment of the red men of the forest, to reconsider in a spirit of wisdom and patriotism the land grievances of which the Indians of that Province complain apparently with good reason, and take such measures as may be necessary promptly and effectually to redress them.

“ A second report was issued by the Minister of Justice about the same time. I now quote from Judge Hodgins' book on ' Dominion and Provincial Legislation,' the following extract from the report made by the Deputy Minister of Justice of Canada in the month of January, 1875, which was adopted by the Minister of Justice and approved by the Governor-General in Council: ' Considering, then, these several features of the case, that no surrender or cession of their territorial rights, whether the same be of a legal or equitable nature, has been ever executed by the Indian tribes of the Province, that they allege that the reservations of land made by the Government for their use have been arbitrarily so made and are totally inadequate to their support and requirements, and without their assent, that they are not averse to hostilities in order to enforce rights which it is impossible to deny them and that the Act under consideration not only ignores those rights but expressly prohibits the Indians from enjoying the rights of recording or pre-empting lands, except by consent of the Lieutenant-Governor, the undersigned feels that he cannot do otherwise than advise that the Act in question is objectionable as tending to deal with lands which are assumed to be the absolute property of the Province, an assumption which completely ignores, as applicable to the Indians of British Columbia, the honor and good faith with which the Crown has in all other cases since its sovereignty of the territories in North America dealt with their various Indian tribes.'

'The undersigned would also refer to the British North America Act, 1867, Section 109, applicable to British Columbia, which enacts in effect that all lands belonging to the Province shall belong to the Province 'subject to any trust existing in respect thereof and to any interest other than that of the Province in the same.'

'That which has been ordinarily spoken of as the 'Indian title' must of necessity consist of some species of interest in the lands of British Columbia.

If it is conceded that they have not a freehold in the soil, but that they have a usufruct, a right of occupation or possession of the same for their own use, then it would seem that these lands of British Columbia are subject, if not 'to a trust existing in respect thereof,' at least 'to an interest other than that of the Province in the same.'

" Now I come to speak of the answer to those reports which came from the Government of British Columbia. It is contained in a memorandum of the Attorney-General, Hon. G. A. Walkem, dated 7th August, 1875. In that full and interesting report, the Honourable the Attorney-General outlines the Colonial Indian policy. He adopts the views of the Minister of Lands and Works expressed in his report of January, 1870, and, at the same time, admits the urgent importance of a speedy settlement.

"This was followed, a short time afterwards, by definite action on the part of the Dominion Government. By memorandum dated 5th November, 1875, the Acting Minister of the Interior, the Hon. R. W. Scott, made proposals for dealing with the matter. Of these proposals I quote the first: 'That with the view to the speedy and final adjustment of the Indian Reserve question in British Columbia on a satisfactory basis, the whole matter be referred to three Commissioners, one to be appointed by the Government of the Dominion, one by the Government of British Columbia and the third to be named by the Dominion and Local Governments jointly.'

" A fact of special importance is this, that shortly afterwards the Provincial Government adopted the proposals that were submitted by the Dominion Government, but in the Provincial report accepting these proposals, proposal Number One was altered so that in the proposals as there set out the preamble and Number One taken together, were made to read as follows: 'On a memorandum

dated the third day of January, 1876, from the Honourable Attorney-General, reporting upon a minute of the Honourable the Privy Council of Canada, bearing date the 10th of November, 1875, and making the following propositions for the settlement of the Indian land question in this Province: 1st. That the adjustment of the question be referred to three Commissioners: one to be appointed by the Dominion Government, one by this Government, and the third to be jointly named by the two Governments.' Allow me to point out very specially that the Provincial Government thus altered probably the most important words of the whole proposals. Presumably the Dominion Government acquiesced in that alteration, for Commissioners were appointed and acted for some years.

" While in accepting these proposals the Provincial Government admitted the importance of 'a final settlement of the land question' yet from the reports upon which the Province then acted, namely, that of the Minister of Lands and Works made in January, 1870, and that of the Attorney-General made in August, 1875, it clearly appears that the Provincial policy on the subject fell short of being what would secure 'the speedy and final adjustment of the Indian reserve question in British Columbia on a satisfactory basis,' and contemplated setting aside only such village-sites, cultivated fields, fishing stations, fur trading posts, and other tracts of land as 'the progress of the settlement of the country' and 'the habits and pursuits of our natives' seemed to require.

" In September, 1876, the Earl of Dufferin made a famous address in Victoria, delivered before some thirty or forty persons, mainly members of committees who had met him. Before I quote from this address, allow me to point out that in expressing these views the Earl had behind him the report of the Department of the Interior and the report of the Department of Justice, and that he was following up those reports in his statements. I take the statements from the 'History of the Administration of the Earl of Dufferin,' written by Mr. George Stewart, Junior, at pages 457, 491, 494. Earl Dufferin said: 'From my first arrival in Canada I have been very much pre-occupied with the condition of the Indian

population in this Province. You must remember that the Indian population are not represented in Parliament and consequently that the Governor-General is bound to watch over their welfare with especial solicitude. Now, we must all admit that the condition of the Indian question in British Columbia is not satisfactory. Most unfortunately as I think there has been an initial error, ever since Sir James Douglas quitted office, in the Government of British Columbia neglecting to recognize what is known as the Indian title. In Canada this has always been done; no Government, whether provincial or central, has failed to acknowledge that the original title to the lands existed in the Indian tribes and communities that hunted or wandered over them. Before we touch an acre we make a treaty with the chiefs representing the bands we are dealing with, and having agreed upon and paid our stipulated price—oftentimes arrived at after a great deal of haggling and difficulty—we enter into possession, but not until then do we consider that we are entitled to deal with an acre. The result has been that in Canada our Indians are contented, well affected to the white men and amenable to the laws and government.’ Lord Dufferin, in the same address, also said: ‘I would venture to put the Government of British Columbia on its guard against the fatal eventualities which might arise should a sense of injustice drive the Indian population to violence or into a collision with our scattered settlers.’

“Passing now to say a word about the reserves which have been set apart for the Indians, let me say that what has been done under the agreement of 1876 by the Provincial Government has not been very different from what was done previously by the Government of the Colony. Without treaty or negotiation certain tracts of land were surveyed, and these the Government reserved from settlement. No new title, however, was created. The lands were not conveyed to the Indians, to the Dominion Government, or to any one. They were held still by the Provincial Government. On the other hand, the Indians did not surrender any title claimed by them in the reserved lands or any of the other lands in the district. Everything remained as to the title where it stood before.

“Now, in that connection it is of the utmost importance, in order that we may get really to the bottom of the Indian land situ-

ation in British Columbia, that we should endeavor to apply the historical principle. What I mean is that we should endeavor to set before our minds just what were the circumstances in which all that has been done was done. It is a very material fact that when during some years following 1876 reserves were being set apart, the Canadian Pacific Railway had not been built, settlers throughout this part of Canada were few and scattered, and the Indian tribes were just about as free to wander over these lands and to hunt over the great stretches of territory which had come down to them from their forefathers as those forefathers themselves had been.

“From time to time, efforts have been made by the Indians themselves to obtain what they consider justice. A very notable example of this is that in the year 1906 three Indian chiefs, taking with them an interpreter, made the journey from British Columbia to London, England, and had a short interview with His Majesty the King. They spoke to him and he to them, and everything was very pleasant; but the interview accomplished nothing. The chiefs did not even present any written document showing what their claims were. Having spent a large amount of money, they started back again to British Columbia.

“The next event of considerable importance is what was done by the British Columbia Government in the Fall of the year 1908. At that time the Provincial Government submitted to the Supreme Court of British Columbia eight questions relating to the Indian reserves. Now, these questions were exclusively questions between two governments, that of the Dominion and that of the Province of British Columbia, and they were framed from beginning to end upon the principle that the only rights to be considered are the rights of the two governments, and that the Indian tribes have no rights at all. That was the precise position that was taken by counsel for the Government of British Columbia upon argument, when the questions came before the Supreme Court. The questions were withdrawn, with a view to similar questions being submitted to the Supreme Court of Canada.

"I have before me these eight questions and also the full text of the agreement arrived at between the two governments in 1876, and I wish to compare the two documents. The agreement contemplates the appointment of three Commissioners. Those Commissioners were to visit various parts of the Province, investigate fully, and then fix and determine the number and the extent of the reserves to be allowed to each nation (meaning all Indian tribes speaking the same language). Now, that plan has never been carried into effect. Commissioners were appointed and worked for a few years, and they did set aside for various tribes or bands certain reserves; but the general plan contemplated in 1876 has never been fully carried out. And yet to-day the Government of the Province is claiming, as appears from Question 8, the right to take off slices from the reserves which have actually been set aside upon the ground that there has been decrease in the numbers of tribes occupying various reserves.

"In the Spring of 1909 the Indians made a move. They presented to His Majesty the King a petition setting forth their claims and asking that the question of their rights be submitted to the Privy Council, to be determined. That petition stands to-day referred to the Governor-General of Canada with the request that he send to the Imperial Government a report upon it. In the presenting of this petition upwards of twenty tribes of Indians have joined. It would appear that the immediate cause that led the Indians to take this action was the course adopted by the Province in submitting to the Supreme Court those questions involving a denial of the title claimed by the Indians.

"We are all familiar with the troubles which arose last year among the Indians of the Skeena River. Quite clearly the land question was at the very bottom of all those troubles.

"Now, in endeavoring to apply at this point the historical principle, at what results do we arrive?

"Three statements may be made with some confidence. First, there is a clearly defined issue between the Indian tribes of

British Columbia and the Provincial Government. On the one hand the Indians have earnestly contended, and still contend, that they hold a title in respect of the lands of British Columbia. In this contention they appear to be supported by the Royal Proclamation of George the Third, by the Imperial Parliament and the Colonial Office, by the Legislative Assembly of Vancouver Island, by the Department of the Interior and the Department of Justice of Canada, and by Lord Dufferin. On the other hand, the Colonial and Provincial Governments have for forty years as earnestly contended that the Indians hold no such title, and they have based their Indian policy mainly upon that view.

“ Let me pause for a moment and emphasize this point, that throughout this lecture I am in no sense entering upon a controversy with the present Government of British Columbia. Far from it. Having in mind all that has been done in forty years, and the fact that the same view has been taken by other Provincial and Colonial Governments for all these forty years, I do not see how the present Government could be expected to abandon that view unless satisfied by a decision of the Judicial Committee or some other incontestible proof of the incorrectness of the view so held and acted upon.

“ A second statement is that the two Governments have never yet come even near to a real solution of the problem.

“ A third statement that may be made is that when the agreement of 1876 was made, it appears that the Dominion Government desired to arrive at a final adjustment of the question upon the basis of some satisfactory dealing with the claims of each Indian nation, but the Provincial Government was not prepared to go beyond dealing with existing conditions and requirements.

“ In coming to a close, permit me to say that in the first place it seems to me that the problem, so long as it remains unsolved, will prejudicially affect many interests. Take, for example, the Indian tribes. These people face the future, and in facing the future they face the intruding of the wave of settlement, and they face the incoming of the railways; and as they look out into the

future they do not know what that future contains for them. Their very national, or tribal, existence seems to be threatened, and they do not see what we are going to give them instead of it. Because of their uncertainty they are dissatisfied, gravely dissatisfied.

"It will affect other interests besides the interests of the Indians. It will affect the interests of the settlers. What happened within the last year? Why was it that last year the settlers on the Skeena River did not feel secure in the matter of their lives, and many of them sent their families out from that part of the Province? The simple answer is the Indian land question on the Skeena River.

"The unsolved problem will prejudicially affect the business interests of this Province. Very marked indication of this will be found both in your great city and in the city of Victoria. Take the trouble over the large reserve now in the heart of Victoria. Similar questions arise with regard to some reserves in or near Vancouver. I am also informed that in various parts of the Province similar questions have arisen. Right at the bottom of these local questions lies this broad question of the title of the Indian tribes to the land.

"We may be sure also that the unsolved problem will affect both the public interests and the missionary interests of this part of Canada.

"Is it possible to suggest on what principles the problem can be solved? I think there are three things which must be borne in mind. If there is to be a solution it must be by means of a final settlement. Let me quote the Hon. R. W. Scott: 'The undersigned submits that no scheme for the settlement of this question can be held to be satisfactory which does not provide for its prompt and final adjustment.' The second principle I suggest is that if there is to be a final settlement, that settlement must be based upon justice. Beyond doubt, there is a problem to be solved. Is it not equally clear that it must be settled by some method of force or by some method of justice? Which is it to be? I answer that question by

quoting words used by the Hon. G. A. Walkem in 1875: 'The common dictates of humanity, apart from the moral lessons of education, silently but eloquently appeal to our better nature to shun oppression, and to protect and assist the ignorant and helpless. Such principles of action are not new. They have been happily engrafted upon our Constitution, which, in the case of the Indian, views a disregard of his rights as oppression, and that oppression as a synonym for slavery.'

"The third principle is that a just settlement, and, therefore, a final settlement, can only be arrived at by a mutual understanding between the white people and the Indian tribes. That can be said with regard to every inter-racial problem. We have the white man's point of view and the Indian's point of view. It is only when the white man understands something of the Indian's and the Indian understands something of the white man's that there will be a coming together and a final and just settlement. May I venture, as I am addressing an audience that knows full well the white man's point of view, to give you the Indian's point of view, as I have heard it expressed by some of themselves. They say: 'God made us and our forefathers, as well as the white man and his forefathers. God made these valleys and mountains and rivers. God stocked the mountains with the game and the rivers with the fish, and God gave all these to our forefathers.'

"Let me close by suggesting what may be expected as some of the results of the solution of the problem. In the first place it will bring justice to the Indian tribes of this Province. In the second place, I am convinced, and I believe you will be convinced, that that which will bring justice to the Indian tribes will also bring advantage to all others concerned, and that the more completely it brings justice to the Indians, the more completely will it bring advantage to all the other interests. In considering this Indian land problem we must have before us the great fact that justice is one of the supreme laws of the Universe, one of the laws of the Great Creator of the Universe, and therefore we must conclude that it is the just settlement of this problem which will bring the greatest advantage to all the interests of the Province."

The Chairman, in conveying to Mr. O'Meara a vote of thanks which had been passed, said the lecture had made all present feel that there was a serious question to be dealt with in this Province and one that they should all be anxious to see settled in a fair and honorable manner—a manner that would do credit to the Province and at the same time allay the suspicions and remove the dissatisfaction of their Indian fellow-subjects.

