

ALLIED TRIBES

PETITION TO PARLIAMENT, JUNE 1926

The Petition of the Allied Indian Tribes of British Columbia humbly showeth as follows:

1. This Petition is presented on behalf of the Allied Indian Tribes of British Columbia by Peter R. Kelly, Chairman duly authorized by resolution unanimously adopted by the Executive Committee of Allied Tribes on 19th December, 1925.

2. When British Columbia entered Confederation Section 109 of the British North America Act was made applicable to all public lands with certain specific exceptions. By virtue of the application of this Section it was enacted that the public lands belonging to the Colony of British Columbia should belong to the new Province. By virtue of the application of the same Section as explained by the Minister of Justice in January, 1875, all territorial land rights claimed by the Indian Tribes of the Province were preserved and it was enacted that such rights should be an "interest" in the public lands of the Province. The Indian Tribes of British Columbia claim actual beneficial ownership of their territories, but do not claim absolute ownership in the sense of ownership excluding the title of the Crown. It is recognized by the Allied Tribes that there is in respect of all the public lands of the Province an underlying title of the Crown, which title at least for the present purposes it is not thought necessary to define.

3. In order to make clear what is meant by an "interest" the Petitioners quote the following words of Lord Watson to be found in the Indian Claims Case--L.R. 1897 A.C. at page 210: An interest other than that of the Province in the same appears to denote some right or interest in a third party independent of or capable of being vindicated in competition with the beneficial interest of the old Province.'

4. The position taken by the Allied Tribes was placed before Parliament by means of Petition presented to the House of Commons on 23rd March, 1920 and read in the House of Commons and recorded on 26th March, 1920 (Hansard, p. 825) and Petition presented to the Senate on 9th June, 1920, to all contents of which two Petitions the Petitioners beg leave to refer.

5. In the month of August, 1910, Sir Wilfrid Laurier, having been advised by the Department of Justice that the Indian land controversy should be judicially decided, met the Indian Tribes of Northern British Columbia at Prince Rupert and speaking on behalf of Canada said -- "I think the only way to settle this question that you have agitated for years is by a decision of the Judicial Committee, and I will take steps to help you."

6. By agreement which was entered into by the late Mr. J. A. J. McKenna Special Commissioner on behalf of the Dominion of Canada and the late Premier Sir Richard McBride on behalf of the Province of British Columbia in the month of September, 1912, and before the end of that year adopted by both Governments, it was stipulated that by means of a Joint Commission to be appointed, lands should be added to Indian Reserves and lands should be cut off from Indian reserves. By that agreement it was provided that the carrying out of its

stipulations should be a "final settlement of all matters relating to Indian affairs in the Province of British Columbia."

7. On the 30th day of June, 1916, the Royal Commission on Indian Affairs for the Province of British Columbia appointed in pursuance of the agreement above mentioned issued Report which was placed in the hands of both Governments.

8. In the month of September, 1916, the Duke of Connaught, acting as His Majesty's Representative in Canada and in response to a letter which had been addressed to him on behalf of the Nishga Tribes and the Interior Tribes, gave assurances communicated by His Secretary to the General Counsel of the Allied Tribes in the following words:

"His Royal Highness has interviewed the Honourable Dr. Roche with reference to your letter of the 29th May and your interview with me and I am commanded by His Royal Highness to state that he considers it is the duty of the Nishga Tribe of Indians to await the decision of the Commission, after which, if they do not agree to the conditions set forth by that Commission, they can appeal to the Privy Council in England where their case will have every consideration. As their contentions will be duly considered by the Privy Council in the event of the Indians being dis-satisfied with the decision of the Commission, His Royal Highness is not prepared to interfere in the matter at present and he hopes that you will advise the Indians to await the decision of the Commission."

9. The Allied Tribes have always been and still are unwilling to be bound by the agreement above mentioned and have always been and still are unwilling to accept as final settlement the findings contained in the Report of the Royal Commission.

10. In the year 1920 the Parliament of Canada enacted the law known as Bill 13 being Chapter 51 of the Statutes of that year authorizing the Governor-General in Council to carry out the agreement above mentioned by adopting the Report of the Royal Commission. From the preamble and the enacting words the professed purpose of the Bill appeared to be that of effecting settlement by actually adjusting all matters.

11. In course of debate regarding Bill 13 held in the Senate of 2nd June, 1920, Sir James Lougheed, leader of the then Government in the Senate, answering remarks of Senator Bostock by which was expressed the fear that if the Bill should become law the Indians might "entirely be put out of Court and be unable to proceed on any question of title," gave the following assurance (Debates of Senate--1920, p. 475 col. 2):

"I might say further, honourable gentlemen, that we do not propose to exclude the claims of Indians. It will be manifest to every honourable gentleman that if the Indians have claim- anterior to Confederation or anterior to the creation of the two Crown Colonies in the Province of British Columbia they could be adjusted or settled by the Imperial Authorities. Those claims are still valid. If the claim be a valid one which is being advanced by this gentleman and those associated with him as to the Indian Tribes of British Columbia being entitled to the whole of the lands of

British Columbia this Government cannot disturb that claim. That claim can still be asserted in the future."

12. Upon occasion of interview had with the Executive Committee of Allied Tribes at Vancouver on 27th July, 1923, the Minister of Interior speaking on behalf of the Government of Canada conceded that the Allied Tribes are entitled to secure judicial decision of the Indian land controversy and gave assurance that the Dominion of Canada would help them in securing such decision.

13. By Order-in-Council passed in the month of August, 1923, the Government of the Province of British Columbia adopted the Report of the Royal Commission.

14. By Memorandum which was presented to the Government of Canada on 29th February, 1924, the Allied Tribes opposed the passing of Order-in-Council of the Government of Canada adopting the Report of the Royal Commission upon the ground, among other grounds, that no matter whatever relating to Indian affairs in British Columbia having been fully adjusted and important matters such as foreshore rights, fishing rights and water rights not having been to any extent adjusted, the professed purpose of the Agreement and the Act had not been accomplished.

15. By Order-in-Council passed 19th July, 1924, the Government of Canada, acting under Chapter 51 of the Statutes of the year 1920 and upon recommendation of the Minister of the Interior adopted the Report of the Royal Commission.

16. From the Memorandum issued by the Deputy Minister of Justice on 29th February, answering questions which had been submitted by the Allied Tribes to the Government of Canada, the Order-in-Council passed on 19th July, 1924, and the Memorandum issued by the Deputy Minister of Indian Affairs on 9th August, 1924, it clearly appears as is submitted that both the Department of Justice and the Department of Indian Affairs regard the Statute Chapter 51 of the year 1920 as intended, not for bringing about an actual adjustment of all matters relating to Indian affairs, but for the purpose of bringing about a legislative adjustment of all such matters and thus effecting final settlement under the laws of Canada without the concurrence or consent of the Indian Tribes of British Columbia.

17. The Allied Tribes submit that, so far as Section 2 being the main enactment of Chapter 51 may be interpreted as being intended for accomplishing the purpose above mentioned and thus bringing to an end all aboriginal rights claimed by the Indian Tribes of British Columbia, that enactment is in conflict with the provisions of the British North America Act.

18. On the 15th January, 1925, the Executive Committee of the Allied Tribes unanimously adopted the following resolution:

"In view of the fact that the two Governments have passed Orders-in-Council confirming the Report of the Royal Commission on Indian Affairs, we the Executive Committee of the Allied Tribes of British Columbia are more than ever determined to take such action as may be necessary in order that the Indian Tribes of British Columbia may receive justice and are furthermore determined to establish the rights claimed by them by a judicial decision of His Majesty's Privy Council."

19. In the course of debate had in the House of Commons on the 26th of June, 1925 the Minister of Interior speaking on behalf of the Government of Canada in answer to the representations which had been made on behalf of the Allied Tribes recognized that the Allied Tribes are entitled to obtain from His Majesty's Privy Council decision of the Indian land controversy and agreed that the Government would give authoritative sanction for so doing.

20. With regard to the remark then made by the Minister that the Government would not be justified in providing funds unless "something very concrete" should be presented, the Allied Tribes submit that they have already presented "something very concrete" namely their own conditions proposed for equitable settlement by their Statement presented to the Government of British Columbia in response to request of that Government in the month of December 1919, and subsequently presented to the Government of Canada. [Claims of the Allied Tribes, 1919]

21. With regard to the general subject of the funds which as the Allied Tribes claim the Dominion of Canada is under the obligation of providing, the Allied Tribes have placed in the hands of the Superintendent-General of Indian Affairs the following Memorial:

THE ALLIED INDIAN TRIBES OF BRITISH COLUMBIA
TO THE SUPERINTENDENT GENERAL OF INDIAN AFFAIRS

By this Memorial of the Allied Tribes of British Columbia it is respectfully submitted as follows: The Allied Tribes submit that the Dominion is under obligation for providing all funds already expended and all funds requiring hereafter to be expended by the Allied Tribes in dealing with the Indian land controversy in establishing the rights of the Allied Tribes, and in bringing about final adjustment of all matters relating to Indian affairs in British Columbia.

The Allied Tribes so submit upon grounds briefly stated as follows:-

1. Well established precedent relating to judicial proceedings intended for establishing the rights of Indian tribes and in particular that of the Oka case, which was carried independently to the Judicial Committee of His Majesty's Privy Council by the Indians interested and of which the total cost was provided by the Parliament of Canada.
2. The fact that the Dominion of Canada being by virtue of the British North American Act and the "Terms of Union" trustee for the Indian Tribes of British Columbia and under all obligations arising from such trusteeship has by entering into the compact with British Columbia above mentioned rendered itself incompetent for taking effective action establishing the rights of the Indian Tribes of British Columbia, as is clearly shown by the Opinion of the Minister of Justice issued in the month of December 1913, and moreover has put itself in the position of a party in the case upholding the contentions of the Province of British Columbia, and by the acts

so stated has placed upon the Indian Tribes the absolute necessity of proceeding independently for establishing their rights.

3. The principle of compensation in respect of all aboriginal lands and other rights of the Indian Tribes of British Columbia, responsibility for which has already been conceded by the Dominion of Canada, and of which as the Allied Tribes submit the first item consists of the full expenditure required for establishing such rights of the Indian Tribes and bringing about an adjustment of all matters now requiring to be adjusted.

4. The assurances which on behalf of the Dominion of Canada have from time to time been given to the Indian Tribes of British Columbia and in particular that of Sir Wilfrid Laurier and those of the present Minister of the Interior.

5. The lands and funds held by the Dominion of Canada in trust for the Allied Tribes and being the full beneficial property of the Allied Tribes. Therefore the Allied Tribes now formally demand from the Dominion of Canada payment of the sum of one hundred thousand dollars being the total amount of such expenditures already incurred, and further demand from the Dominion of Canada that full provision be made for paying all additional funds which hereafter shall be required for such expenditures as shall be agreed upon between the Allied Tribes and the Dominion of Canada, or if necessary shall be determined by the Judicial Committee of His Majesty's Privy Council.

Dated at the City of Ottawa the June, 1926

Chairman of the Executive Committee
of Allied Tribes

To Honourable CHARLES STEWART,
Superintendent General of Indian Affairs, Ottawa.

22. The Government of Canada having definitely agreed as is above shown that the Dominion of Canada will facilitate securing from the Judicial Committee of His Majesty's Privy Council decision of the Indian lands controversy, the General Counsel of Allied Tribes entered upon discussion with the Minister of Justice regarding the particular method by which the securing of such decision will be facilitated, and offered to suggest for consideration of the Minister of Justice common ground which might be reached by the Government of Canada and the Allied Tribes in connection with the carrying forward of the independent judicial proceedings of the Allied Tribes.

23. In presenting this Petition to the Parliament of Canada as the Supreme Body representing the Dominion of Canada, the Allied Tribes declare that, while it is necessary for them to demand what they consider to be their rights from both the Province of British Columbia and the Dominion of Canada and even to contest the validity of an Act of the Parliament of

Canada, they desire and intend to act toward all Ministers of the Crown, all Members of both Houses of Parliament and all others concerned in a thoroughly reason-able and conciliatory way and that their one central objective is, by securing judicial decision of all issues involved, to open the way for bringing about an equitable and moderate settlement satisfactory to the Governments as well as to themselves.

Therefore The Petitioners Humbly Pray:-

1. That by amendment of Chapter 51 of the Statutes of the year 1920 or otherwise the assurance set out in paragraph 11 of this Petition be made effective and the aboriginal rights of the Indian Tribes of British Columbia be safe-guarded.
2. That steps be taken for defining and settling between the Allied Indian Tribes and the Dominion of Canada all issues requiring to be decided between the Indian Tribes of British Columbia on the one hand and the Government of Canada on the other hand.
3. That immediate steps be taken for facilitating the independent proceedings of the Allied Tribes and enabling them by securing reference of the Petition now in His Majesty's Privy Council and such other independent judicial action as shall be found necessary to secure judgment of the Judicial Committee of His Majesty's Privy Council deciding all issues involved.
4. That this Petition and all related matters be refer-red to a Special Committee for full consideration.

Dated at the City of Ottawa, the 10th day of June, 1926.

Peter R. Kelly,
Chairman of the Executive Committee of
Allied Tribes.