

Introductory Note

In May, 1913, the Nishga Tribe of Indians, inhabiting the Valley of the Naas River, for the purpose of overcoming the serious constitutional difficulties which had been encountered in seeking to secure a judicial determination of the rights of the Indians of British Columbia, presented to His Majesty's Privy Council a direct and independent Petition. In taking that action, the Petitioners had in view the interests not only of their own Tribe but also of all other Tribes of the Province. By Order-in-Council passed in June, 1914, the Government of Canada proposed certain conditions upon which the Government would help the Nishgas in bringing their Petition before the Judicial Committee of the Privy Council. These proposals having been brought before the Nishgas, they decided to bring before the Government counter proposals and offered to send delegates to Ottawa. In January last the Minister of the Interior decided to meet the Nishga Delegates, who thereupon came to Ottawa. During the months of February, March and April, the proposals of the Government and those of the Nishgas were discussed at a number of interviews. This pamphlet contains a record of these interviews, based, except in two instances specially noted, upon stenographic reports furnished by the Government, together with related documents, including Order-in-Council dealing with the Nishga proposals passed in June last. All papers are arranged in order of time with descriptive headings.

PETITION TO HIS MAJESTY'S PRIVY COUNCIL.

Lodged on 21st May, 1913.

In the matter of the territory of the Nishga nation or Tribe of Indians.

To the King's Most Excellent Majesty in Council.

The

Humble Petition of the Nishga Nation or Tribe of Indians sheweth as follows:—

1. From time immemorial the said Nation or Tribe of Indians exclusively possessed, occupied and used and exercised sovereignty over that portion of the territory now forming the Province of British Columbia which is included within the following limits, that is to say:—Commencing at a stone situate on the south shore of Kinnamox or Quinamass Bay and marking the boundary line between the territory of the said Nishga Nation or Tribe and that of the Tsimpshian Nation or Tribe of Indians, running thence easterly along said boundary line to the height of land lying between the Naas River and the Skeena River, thence in a line following the height of land surrounding the valley of the Naas River and its tributaries to and including the height of land surrounding the north-west end of Mitseah or Meziadan Lake, thence in a straight line to the northerly end of Portland Canal, thence southerly along the international boundary to the centre line of the passage between Pearse Island and Wales Island, thence south-easterly along said centre line to the centre line of Portland Inlet, thence north-easterly along said centre line to the point at which the same is intersected by the centre line of Kinnamox or Quinamass Bay, thence in a straight line to the point of commencement.
2. Your Petitioners believe the fact to be that, when sovereignty over the territory included within the aforesaid limits (hereinafter referred to as "the said territory") was assumed by Great Britain, such sovereignty was accepted by the said Nation or Tribe, and the right of the said nation or Tribe to possess, occupy and use said territory was recognised by Great Britain.
3. From time to time since assuming sovereignty over the said territory the Crown has by Proclamation and otherwise recognized the right of the said Nation or Tribe so to possess, occupy and use the said territory, and, in particular, by the Proclamation of His Majesty King George the Third issued on the 7th day of October 1763, having the force and effect of a Statute of the Parliament of Great Britain, it was (amongst other things) enacted as follows:—

"And whereas it is just and reasonable, and essential to Our Interest 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 in 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 Sources of any of the Rivers which fall into the Atlantick Ocean from the West and North West, 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 Lands 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 North West as aforesaid; and We do hereby strictly forbid, on Pain of our Displeasure, all Our living 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 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 the purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians;

"In order therefore to prevent such Irregularities for the future and to the End that the Indians may be convinced of Our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do with the Advice of Our Privy Council, strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those Parts of our Colonies where We have thought proper to allow Settlement; but that if, any 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 Colonies respectively, within which they shall lie; and in case they shall lie within the Limits of any Proprietary Government they shall be purchased only for the Use and in the Name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose: And We do, by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all Our Subjects whatever; provided that every Person who may incline to trade with the said Indians, do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of Our Colonies respectively, where such Persons shall reside; and also give Security to observe such regulations as We shall at any time think fit, by Ourselves or by Our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade; and We do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all Our Colonies respectively, as well Those under Our immediate Government as Those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Reward, taking especial Care to Insert therein a Condition that such Licences shall be void and the Security forfeited, in case the Person, to whom the same is granted, shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

"And We do further expressly enjoin and require all Officers whatever, as well Military as Those employed in the Management and Direction of Indian Affairs within the Territories reserved as aforesaid for the Use of the said Indians, to seize and apprehend all Persons whatever, who, standing charged with Treasons, Misprisions of Treasons, Murders, or other Felonies or Misdemeanours, shall fly from Justice, and take Refuge in the said Territory, and to send them under a proper Guard to the Colony where the Crime was committed of which they stand accused, in order to take their Tryal for the same."

4. The said Nishga Nation or Tribe is one of the nations or Tribes of Indians mentioned in the said Proclamation as being under the protection of the Sovereign, and all members thereof are Your Majesty's loyal Subjects.
5. No part of the said territory has been ceded to or purchased by the Crown, and no part thereof has been purchased from the said Nation or Tribe by the Crown or by any person acting on behalf of the Crown, at a public meeting or assembly or otherwise, or by any other person whomsoever.
6. No part of the said territory is within the limits of the territory granted to the Hudson's Bay Company.
7. By Statutes from time to time passed the Imperial Parliament, as your Petitioners submit, recognized the territory now known as British Columbia as being part of the "Indian Territories" as appears from the Statute 12 and 13 Vict. cap. 48, entitled "An Act to provide for the Administration of Justice in Vancouver's Island," and earlier Statutes therein recited, and from the Statute 21 and 22 Vict., Cap. 99, entitled "An Act to provide for the Government of British Columbia."
8. From time to time the Government of the Province of British Columbia and various persons acting in the name of the Crown, under the assumed authority of the "Land Act" of British Columbia, have made surveys of, granted records of pre-emption of, sold and issued patents for, various parts of the said territory.
9. Together with this Petition are presented two blue prints taken from maps of the said territory prepared in the office of the Surveyor-General at Victoria in the said Province, showing the various transactions of the 26th day of September, 1912, had been so entered into in respect of the portions of the said territory as aforesaid.
10. Your Petitioners allege that the said transactions and all other similar transactions which have been entered into in respect of any part of the said territory have been so entered into in violation of the provisions of the said Proclamation of King George Third and without competent authority.
11. From time to time Your Petitioners have delivered to surveyors of the said Government entered the said territory for the purpose of surveying portions thereof, and to persons entering the said territory for the purpose of pre-empting or purchasing portions thereof under the assumed authority of the "Land Act," written notices of protest, of which the following is one:—

"Whereas, we, the Indian people of the Aiyansh Valley, Naas River, British Columbia, being the lawful and original inhabitants and possessors of all the lands contained therein from time immemorial; and being assured in our possession of the same by the Proclamation of His Majesty, King George III., under date of October 7th, 1763, which Proclamation we hold as our Charter of Rights under the British Crown;

"And whereas, it is provided in the said Proclamation that no private person do presume to make any purchase from us of any lands so reserved to us, until we have ceded the same to the representatives of the Crown in public meeting between us and them;

"And whereas, up to the present time our lands have not been ceded by us to the Crown, nor in any way alienated from us by any agreement or settlement between the representatives of the Crown and ourselves;

"And whereas, our case is now before the Privy Council in England and we are expecting a settlement of the difficulty at present between ourselves and the Government of this Province at an early date;

"We do therefore, standing well within our constitutional rights, forbid you to stake off land in this valley, and do hereby protest against your proceeding further into our country with that end in view—until such time as a satisfactory settlement be made between the representative of the Crown and ourselves.

"Issued by the members of the Indian Land Committee elected by the Indians of the Upper Naas."

12. On the 3rd day of March, 1911, delegates representing the said Nishga nation or Tribe waited upon the Government of British Columbia, asserted our title of the said Nation or Tribe in respect of the said territory, and protested against the refusal of that Government to recognize such title.
13. Notwithstanding the facts stated in the last preceding two paragraphs hereof of the Government of British Columbia and the various persons to whom reference has above been made, have persisted in the course set forth in paragraph 8 hereof.
14. Your Petitioners are aware of the provisions of the agreement made in the year 1871 and set out in Article 13 of the "Terms of Union," and they are also aware of the provisions of an agreement made between a Special Commissioner of the Government of Canada and the Premier of British Columbia on the 24th day of September, 1912, relating to the matter of the so-called reserves, and approved by the Government of Canada on the 27th day of November, 1912, subject to a certain modification mentioned in the Order in Council made on that day. Your Petitioners humbly submit that nothing contained in either of the said two agreements does or can take away any of the rights which they claim.
15. In view of all that has been hereinbefore stated Your Petitioners, claiming to hold a tribal title to the whole of said territory both by aboriginal right and under the said Proclamation, and having no other recourse for securing justice, humbly place this Petition before Your Majesty as the source and fountain of all justice, having supreme authority over all persons and matters within Your Majesty's dominions, and possessing and exercising upon and with the advice of Your Majesty's Privy Council original judicial jurisdiction.

Your Petitioners most humbly pray that your Majesty in Council may be pleased to take into Your Most Gracious Consideration the matters hereinbefore set forth, and in exercise of the original jurisdiction to which reference has above been made and all other jurisdiction relating to such matters possessed by Your Majesty in Council, and upon report made to Your Majesty in Council by a Committee of the whole of Your Majesty's Privy Council, or upon report so made by the Judicial Committee or other Committee of the Council to which Your Majesty in council may see fit to refer the same, may adjudge such matters and determine all questions arising therefrom for decision.

In particular Your Your Petitioners humbly pray that Your Majesty in Council may be pleased:—

- (1) To adjudge and determine the nature and extent of the rights of the said Nishga Nation or Tribe in respect of the said territory.
- (2) To adjudge and determine whether, as Your Petitioners humbly submit, the "Land Act" of British Columbia, now in force (Revised Statutes of British Columbia, 1911, Chapter 129), and any previous Land Act of that Province, in so far as the same purport to deal with lands thereby assumed to be the absolute property of the said Province and to confer title in such lands free from the right, title or interest of the Indian Tribes, notwithstanding the fact that such right, title or interest has not been in any way extinguished, are ultra vires of the Legislature of the said Province.

Your Petitioners also humbly pray that Your Majesty may be pleased, in pursuance of the above-mentioned provisions of the said Proclamation of King George the Third, to take such measures as may be found necessary for the protection of the Nishga Nation or Tribe in the exercise and enjoyment of the rights so adjudged and determined.

Your Petitioners also humbly pray that Your Majesty in Council may be pleased to grant to them such further or other relief in the premises as to Your Majesty in Your Great Wisdom shall seem meet.

Your Petitioners also humbly pray that all such orders or directions as to matters of practice or procedure may be made or given as to Your Majesty may seem meet.

Your Petitioners also humbly pray that upon consideration of this Petition by Your Majesty in Council or any Committee of the Privy Council your Petitioners may be heard by their Counsel.

And Your Petitioners will ever pray, etc.

This Petition is presented by the Nishga Nation or Tribe of Indians through their Agents Messrs. Fox and Preece, of 15 Dean's Yard, Westminster, Solicitors, in pursuance of a resolution passed at a meeting of the said Nishga Nation or Tribe, held at the Village of Kincolith, situated on the Naas River in the Province of British Columbia, on Wednesday, the 22nd day of January, 1913.

