

11 OCT 1956

In the Privy Council
No 25 of 1896
On Appeal from the Supreme Court of Canada

In the Matter of the Arbitration for settlement of all questions relating or incident to the Accounts, and for the settlement of matters of account between the Dominion of Canada and the Provinces of Ontario and Quebec, and between the said two Provinces pursuant to 54 and 55 Vic. Cap. 6 Canada; 54 Vic Cap 2, Ontario; and 54 Vic. Cap. 4 Quebec.

The Attorney General for the
Dominion of Canada . . . Appellant
and
The Attorney General for the
Province of Ontario . . . Respondent

To The Queen's Most Excellent Majesty in Council

The humble Petition of Her Majesty's
Attorney General for the Dominion of
Canada, on behalf of the Dominion.

Sheweth,

1. This Appeal relates to proceedings before a Board of Arbitrators

appointed in pursuance of the Statutes of the Dominion of Canada and of the Provinces of Quebec and Ontario respectively above cited for the purpose of finally settling certain accounts between the Dominion and the two Provinces both jointly and severally and between the two Provinces.

2 On the 10th April 1893 an Agreement for submission to arbitration of the questions in dispute was executed on behalf of the three respective Governments of Canada Ontario and Quebec and Orders in Council adopting the Agreement of submission were passed by the three Governments concerned in the same month of April.

3 The Board of Arbitrators so constituted as aforesaid proceeded with and disposed of several of the questions in dispute set forth in the said Agreement of Submission and amongst others the following "clause I (d) The claims made by the Dominion Government on behalf of Indians and payment made by the Government to Indians to form part of the reference".

4 These claims were made by the Dominion as to part thereof against the former province of Canada and as to the other part thereof against the Province of Ontario and were based upon two Treaties made respectively on the 7th and 9th September 1850 between Your Majesty in right of the Province of Canada & represented by the Honorable William Benjamin Robinson of the one part and the principal Men of certain Tribes of Indians

of the other part whereby in consideration of the immediate payment of the sums of money and the payment of the perpetual annuities therein mentioned and a stipulation for the increase under certain circumstances of such annuities the Indians ceded and surrendered their right title and interest (with certain excepted reserves) to and in large tracts of land then inhabited and occupied by the Indians unto Your Majesty and Your Majesty's heirs and successors. The lands surrendered by the Indians are wholly situated in the Province of Ontario.

5 The following is the stipulation above referred to as to the increase of the annuities —

" The said William Benjamin Robinson on behalf of Her Majesty who desires to deal liberally and justly with all Her subjects further promises and agrees that should the Territory hereby ceded by the parties of the second part at any future period produce such an amount as will enable the Government of this Province without incurring loss to increase the annuity hereby secured to them, then, and in that case, the same shall be augmented from time to time provided that the amount paid to each individual shall not exceed the sum of One pound provincial currency, in any one year or such further sum as Her Majesty may be graciously pleased to order; and provided further that the number of Indians entitled to the benefit of this treaty shall amount to two thirds of their present number, which is Fourteen hundred.

and twenty two, to entitle them to claim the full benefit thereof And should they not at any future period amount to two thirds of Fourteen hundred and twenty two then the said annuity shall be diminished in proportion to their actual number".

6 After the execution of the Treaties and until the 1st July 1867 the date of the Union of the Provinces the former Province of Canada duly paid the fixed annuities amounting to about \$1.60 to each individual Indian.

7 After the Union the Dominion paid the fixed annuities up to the year 1874 and thereafter the Dominion has paid to the Indians annually increased annuities amounting to the sum of \$4 to each individual Indian.

8 The claim of the Dominion before the Arbitrators so far as is material to the present Appeal embraced a claim against the Province of Ontario for unpaid arrears of increased annuities from the date of the Union (1867) to the year 1874 amounting with interest to \$95,300 and a claim against the Province of Ontario for the amount of increased annuities actually paid by the Dominion to the Indians from 1874 to the 31st December 1892 amounting with interest to the sum of \$389,106.80. The said increased annuities in each case being made up of the difference between \$1.60 and \$4.00 to each individual Indian.

9 On November the 20th, 21st, 22nd and 23rd 1894 the Arbitrators sat to hear and determine the claims of the Dominion Government and on 13th February 1895 the Arbitrators made their unanimous

award.

10 The said Award so far as it relates to the present Appeal was as follows—

"6. That the ceded territory mentioned became the property of Ontario under the 109th section of the British North America Act 1867 subject to a trust to pay the increased annuities on the happening after the Union of the event on which such payment depended, and to the interest of the Indians therein to be so paid. That the ultimate burden of making provision for the payment of the increased annuities in question in such an event falls upon the Province of Ontario; and that this burden has not been in any way affected or discharged.

"7. That interest is not recoverable on the arrears of such annuities accruing after the Union, and not paid by the Dominion to the Tribes of Indians entitled

"8. That in respect of the matters hereinbefore dealt with the Arbitrators have proceeded upon their view of disputed questions of law.

"9. That as respects the increased annuities which have been paid by the Dominion to the Indians since the Union, any payments properly made are to be charged against the Province of Ontario in the Province of Ontario account as of the date of payment by the Dominion to the Indians, and so fall within and be affected by our previous ruling as to interest on that account."

11 By an Order dated the 26th March 1895 it was declared that

the Arbitrators had proceeded upon their view, on a disputed question of law in so far as paragraph 9 of their Award dealt with the question of the liability of the Province of Ontario for the increased annuities paid since the Union.

12 The Province of Ontario appealed to the Supreme Court of Canada against the findings of the Arbitrators set out in the 6th and 9th paragraphs of the Award.

13 On the 15th and 16th May 1895 the Appeal was argued in the Supreme Court of Canada before the Chief Justice Sir Henry Strong and Justices Taschereau, Gwynne Sedgwick and King.

14 On the 9th December 1895 judgment was given by the Supreme Court of Canada. The Chief Justice and Mr. Justice Sedgwick held that the Appeal of Ontario should be allowed and Mr. Justice Taschereau concurred in their judgment. Mr. Justice Gwynne and Mr. Justice King held that the Appeal of Ontario should be dismissed and the Award of the Arbitrators confirmed.

15 By the judgment of the Supreme Court of Canada, dated 9th December 1895 it was ordered that the Award of the Arbitrators should be varied by substituting for paragraph 6 thereof the following—

"The ceded Territory mentioned became the property of Ontario under the 109th Section of the British North America Act 1867 absolutely and free from any trust charge or lien in respect of any of the annuities, as well those presently payable as those deferred and agreed to be paid in augmentation of

the original annuities upon the condition in the Treaties mentioned".

And further by striking out the 7th and 9th paragraphs of the said Award.

16 The Dominion of Canada feeling themselves aggrieved by the said Judgment of the Supreme Court of Canada are desirous of appealing to Your Most Gracious Majesty in Council and on the 13th March 1896 the Attorney General for the Dominion of Canada did present a Petition for Special Leave to Appeal from the said Judgment.

17 Your Majesty upon the report of the Judicial Committee of Your Majesty's Most Honorable Privy Council was upon the 13th day of May 1896 graciously pleased to order that the said Attorney General for the Dominion of Canada should be allowed to enter and prosecute an Appeal against the said Judgment of the Supreme Court of Canada of the 19th December 1895 and to order that the certified copy of the Record under the Seal of the Supreme Court which had been transmitted to England for the purpose of the said Petition should be treated as the Record in the said Appeal.

Your Petitioner the above named Attorney General on behalf of the Dominion of Canada therefore most humbly prays —

That Your Majesty in Council will be graciously pleased to take the said Appeal into Your most gracious consideration and grant him Your Majesty's

Order of Summons upon the Respondents to
appear and put in his answer thereto and
that service of the said Order of Summons upon
the Agent of the said Respondent may be
declared good service and that an early day
may be appointed for the hearing of the said
Appeal and that the said Judgment of the
Supreme Court of Canada of the 9th December
1895 may be reversed altered or varied and
that Your Petitioner may have such other relief
in the premises as to Your Majesty in your
great wisdom shall seem meet.
And your Petitioner will ever pray V^r