

**Crown ownership of Indian lands : brief outline**

/ collected by T&HRC.

[S.l. : s.n.], 1973. 2 p.

This report outlines the principles and terms of occupation applied by the British Crown to aboriginal lands in Canada.

Claims and Historical Research Centre : O.11

E92  
C77  
1973  
c. 1

Crown Ownership of Indian Lands

--"There was a great deal of learned discussion at the Bar with respect to the precise quality of the Indian right, but their Lordships do not consider it necessary to express any opinion upon the point. It appears to them to be sufficient for the purposes of this case that there has been all along vested in the Crown a substantial and paramount estate, underlying the Indian title, which became a plenum dominum whenever that title was surrendered or otherwise extinguished." (p.26, St. Catherine's Milling Case, 1888).

-- As a colonial power, when Britain occupied a land or territory as the result of discovery, exploration, conquest or international treaty, no British official ever doubted as to who owned that country - it belonged to the Sovereign, the manifestation of the British Crown.

-- Paramount title to all lands within that country was lodged in the British Crown - it became then a dominion of the Sovereign in right of the Crown, subject to British laws, as were all inhabitants. (Campbell v. Hall, 1774).

-- Internally there was no question of shared "sovereignty" for this would deny the exclusive sovereignty of the British monarch and would create an "ownership" paradox which British constitutional law would not, and could not permit.

-- It should be emphasized that the British Sovereign could, if he wished, create and confer certain prerogatives as a matter of grace and favour

-- for example, it was within the Royal prerogative of the Sovereign to create the concept of an "Indian" title and to "extinguish" this title as he saw fit, at his pleasure.

-- A clear espousal of Crown ownership of Indian lands can be found in the preliminary report of the Commissioners sent to investigate conditions in the area to be surrendered by the Robinson-Huron, Robinson-Superior Treaties.

-- In their report, Capt. Anderson (Indian Agent at Coldwater) and Alexander Vidal, said of Indian claims in the area to be ceded:

"...the claims of the present occupants are unquestionably as good as that of the Tribes who have received compensation for the cession of their rights in other parts of the Province; and therefore entitles them to similar remuneration...the Crown has always claimed 'The Territorial Estate and Eminent dominion in and over the soil, and although in Canada West, ever since its possession by the British Crown, the surrender of the right of hunting and occupancy has been purchased from the Indians; in other parts of British North America it appears not to have been regarded, as, for example in the Charter Grant of the Hudson's Bay Company, and in the treaties made with the United States and Russia, by which boundary lines were established and land transferred, without any reference to Indian claims; - it is also upon this assumption that the Crown reserves to itself the exclusive privilege of treating with the Indians for surrender or purchase of Position of the land...in fact, whatever may be given to them for the surrender of their rights, they must be gainers, for they relinquish nothing but a mere nominal title..." (December 5, 1849, Letter Books - Lands and Forests)

-- An understanding of the unfettered sovereign authority lodged in the British Crown prerogative concerning both basic land ownership in colonial possessions and the creation, recognition and extinguishment of interests on the part of their indigenous peoples is essential to any study of the evolutionary growth of Indian treaty activity within what is now Canada.