

March 1-72.

## NISHGA CASE

(You have seen the film THIS LAND)

1. Introduction. How to settle issue of aboriginal title?  
Union a) Political - organize & negotiate <sup>politically, with govt</sup> (all BC Indians)  
NISHGAb) Legal - test case in Courts.

Ask the highest courts to decide

This has been urged on the Indians since 1910

[Laumer] speak NRC

If there was to be a test case, it has always been  
Nishga, as they have taken the lead since 1880's.

1910 Pr. Rupert Sir W. Laumer

"The only way to settle this question --- is by a decision  
of the Judicial Committee, and I will take steps to  
help you."

2. Statement of Claim, B.C. Supreme Court, 1967

- finally submitted to the courts

a) What it asks (had it)

b) ~~Implications - what would be the next steps?~~

~~- nobody says today - but as this is an old issue we can look back~~

~~- 1913 document gives some idea.~~

~~advantages of estab<sup>abrogated</sup>lishing rights~~

~~p. 58~~

~~(also reflects McKenna - McBride Agreement)~~

~~p. 59.~~

### 3. Some History

a. [1887 Commission to Enquire into the Condition...]

: The Nishya in 1887      Christian      2 drums. CE  
Methodist

Villages

Houses

sidewalks

fire brigade

street lamps

did not want Indian Agent, Indian Act, reserves

claim Aboriginal title

: Speeches on land ownership (reserves)

1910 Lower Speech

2 things to do - test case in courts  
- organize political strength

b) Dishya Petition - make a legal case

1913 Petition to Privy Council in London

(legally - much like Berger's case today)

invoked - Royal Proclamation as guaranteeing aborig. rights

- BNA Act.

lands - province - - subject to any interest other than that of Prov.

- 1875 report of Dept. of Justice

Asking for judgment that aboriginal title still alive

1914 Government response: Duncan Scott memo, accepted by O-in-C.

Exchequer Court (right of appeal to P.C) on conditions [p 57]

1. Indians agree that if they win they will surrender title

- according to past usage of Crown (treaties)

- accept Harrow's ac of McK.-McB. Comm.

Indians refused.

c Allied Tribes : Organize

Formation of Allied Tribes of BC. 1910 - 27

1926 Special Committee

Peter Kelly  
A. Paul  
AE O'Meara

Aftermath - Allied Tribes dissolved

Land Question dead for a generation.

d) Rebirth of Nishga Claim

1955 Nishga Tribal Council

- FML # 1 destruction of traplines
- got out old Nishga Petition and updated it
- wanted negotiation  
or would submit it to courts.

Slow adoption by Brotherhood.

Gradually became central issue once again

1960's - attempts to UNIFY BC Indians to  
negotiate settlement with Lang

1963-4 White & Bobson

1967 - Confederation falling apart,  
Union not yet formed -

So Nishga went to courts

e.) Decision: BC Supreme Court - Gould

If aboriginal title did exist, it was extinguished by Colonial declarations and statutes.

f.) Appeal - BC Court of Appeal

Davey  
Tysoe  
McBean

Judgment [May 1970] more strongly against ~~McBean~~

1. Aboriginal title is not a principle embodied in the law binding on the court
2. Royal Proclamation has never applied
3. Policy in Colonial BC extinguished any title.

g.) Supreme Court.

[Nov. 71]

Bergers case

Bergers letter.