June 21, 1989
Vancouver, B.C.

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, this 21st day of June, 1989, in the matter of Delgamuukw versus Her Majesty the Queen at bar, my lord.

May I remind you, sir, you are still under oath?

THE WITNESS: Yes.

THE REGISTRAR: Thank you. And would you state your name for the record, please?

THE WITNESS: Robert Galois.

THE REGISTRAR: Thank you.

THE COURT: Willms.

CROSS-EXAMINATION CONT. BY MR. WILLMS:

Q I wonder if Exhibit 1033, tab 24, could be put to the witness. It's the first grey binder, the one I filled up, my lord.

A I have a document too following a request yesterday concerning a document that I referred to. I couldn't find the one that I thought of at the time, but I have found another document which is -- which speaks directly to the point at issue. This is the only copy that I have of it. I don't know what the procedure is from here, but shall I give it to somebody to make copies or read it in?

THE COURT: Well, we can do that. Perhaps you should show it to Mr. Adams first perhaps. It's a letter from Constable Brown to Fitzgerald?

MR. WILLMS: All right. My lord, that's agreeable. I can deal with that later. I think I can help the witness anyway on the point that he referred to. I think I -- did you find the document?

THE COURT: All right.

MR. WILLMS:

Q Now, just -- I'm showing you the second page of the letter of May 9th, 1985, from Mr. Rush to yourself which you'll recall was referred to in a later letter from Mr. Overstall to yourself as a part of the terms of reference for the work that you were to do, and you'll see that this is the second page, and the first item you did some historical review respecting the tensions between white settlers and Indian land-owners in the 1900 to 1920 period, and that is set out in part in your report; correct?

A I did deal with that topic. Yes.

Q Yes. The second item, the regulation of the traplines and development of the trapline registration system in the 1920's, that is not in your opinion report. Did you do any historical research into that topic?
A I did some very preliminary examination of sources, but I made no attempt to gather material for the trapline system on any careful or co-ordinated basis and I made no attempt whatsoever to analyse that material that I did collect.
Q All right. The third item suggested is the implementation of the Forest Act and Regulations in Gitksan and Wet'suwet'en territory in the 1940 to 1950 period. Once again, that is not in your opinion report. Did you do any historical research in respect of that issue?
A I did not -- very preliminary work collecting, as I recall, data from the annual reports of the Forestry Branch of the Department of Lands in which they provide just statistics on a regional basis of production of lumber, a variety of different statistics, sawmills operating, shingle mills, and I think that's about all that I did on that period. I may have looked at -- I think I actually looked very briefly at the Sloan report, but again I made no attempt to analyse the material that I did collect.
Q Did -- in respect of either two, the regulation of traplines or three, the implementation of the Forest Act and Regulations, did you ever express preliminary views in respect of the documents that you did review?
A I'm not sure if I -- I'm -- I didn't -- I never dealt with the trapline issue. I may have -- I'm not sure if I wrote up for the 1940's and 50's anything about the forest industry or not. I don't think I did, but I'm not absolutely sure about that. If I did it was very preliminary and I don't think I have anything on it.
Q You know that your report in respect of the economy ends at 1897 and in respect of protest actions ends at 1927?
A Yes.
Q Were those two dates dates chosen by you or were those dates that were given to you to end your analysis at?
A No, they were dates that I selected on the basis of information that I'd collected.

MR. WILLMS: My lord, perhaps the easiest thing would be to just put this page, replace the page 2 of the letter that is already at 1033-24 with this second page, or

add it to the tab.
THE COURT: I think it should be added to the tab. The discussion during the ruling I made yesterday may make -- I was going to say may make more sense, but that might not be universally accepted language, but might be more comprehensible.
MR. WILLMS:
Q Thank you. Now, yesterday, Dr. Galois, in respect of the 1888 incidents and the Roycraft and Fitzstubbs at Hazelton, you mentioned something about Indian badges and you suggested that subsequent events respecting Indian badges was somehow significant to a consideration of Roycraft and Fitzstubbs' attendance at Hazelton. Now, can you -- what did you mean by that? Can you explain that, please?
A As I recall, Fitzstubbs -- I'm not sure if he was actually in that meeting; may well have been -- attempted to get the chiefs to act as constables.
Q Yes.
A In other words, to accept the badges was the term that was used.
Q All right. And did -- what happened after that? Did --
A Well, there seemed to be some sort of acceptance of this on behalf of Fitzstubbs and Roycraft, but when it came to implement this things did not go particularly smoothly and a number of the chiefs rejected to accept the position that -- accepting the badge implied.
Q All right. Could Volume 2 of the documents be put to the witness, please, and would you turn in Volume 2, Dr. Galois, to tab 82? And at tab 82 of Volume 2 is a letter of April 23rd, 1889, from Fitzstubbs to the Attorney-General; correct?
A Yes.
Q Yes. Now, you'll see on the second page of the extract that you have put in here, which is -- it's -- skipping page 18, it goes from 17 to 19, but just starting at the top of page 19, Fitzstubbs says this:

> "They affect to slight the authority of the law, and have so ridiculed the idea of assumption of police duties by the chiefs that these last have shrunk from their acceptance with aversion, though they were at first emulous of them, except those at Kitsayookla who were sworn in last autumn and never complained that they are

constantly derided for the possession of the badge, by the adherents of the missionary at that place, before whose arrival, the people so gladly welcomed the advent of lawful authority, and to which, more than half it is said are now antagonistic. The knowledge upon which the above observations are founded came to me after a revival meeting under the direction of a native missionary Mr. Pierce held in this town towards the end of last January when the Government officials and whites were publicly vilified. I forward an almost verbatim report of the addresses at the meeting referred, and they are said to be mild in comparison with those usually delivered in the other villages. One cannot but admire the energy and persistence of the superintendent of this mission, but of 'Peace on earth and good will toward men' be one of his objects he had not, by the employment of partially educated and injudicious agents, whose propogandism is belligerent rather than beneficient either furthered its attainment, or displayed the faculty of wise selection."

Now, is that extract contextually significant in respect of the refusal to accept the badges?

A It's part of a very complex sort of activities. It has some relevance, but it's certainly no more significant than a large number of other documents which pertain to this event and subsequent events. I would add, for example, that one of the few who did accept was a Kispiox Indian who was called Big Louie who was subsequently found to be unacceptable because he had -- he had accepted the post simply because of the money in order to a potlatch and he spent a good deal of time going around counselling the Indians that there was no need to obey the potlatch law. There's quite a long file about that. I should add too that it was a very normal and customary reaction at this point in time amongst white officials to became missionaries for actions that they -- by Indians that they viewed as unacceptable.

MR. WILLMS: Yes.

THE COURT: It wouldn't be the Big Louie who was mentioned in Damon Runyon's book who had 19 arrests and no

convictions, was it? It must be a different Big Louie.

THE WITNESS: Big Louie got around, but I don't think that far, my lord.

MR. WILLMS:

Q Could Volume 3 of the document book, of the witness' document book, be put before him, and would you please turn in Volume 3 to tab 138, and at tab 138 there is a letter of July 19th, 1872, from Fitzstubbs to the Provincial Secretary, Mr. Robertson?

A Yes.

MR. WILLMS: And in that letter you'll see on the first page that Fitzstubbs refers to a report that the Indians on the Skeena have prevented both men from passing up, and then says on the second page in the last paragraph "I intend to leave here on Tuesday next to investigate the matter." And you recognize that Fitzstubbs is referring to the events of Kitsegukla where the river was closed?

MR. ADAMS: My lord, the reference -- the signature appears to me to be Fitzgerald rather than Fitzstubbs. I don't know whether my friend wants to pursue that with the witness.

MR. WILLMS:

Q Oh, Fitzgerald.

A Fitzgerald it is, yes. He at this time was the --

Q Stipendiary magistrate?

A Gold commissioner and magistrate at the Omineca mining district and he, on obtaining information of the events at Kitsegukla, did go there I believe.

Q All right. Now, I am going to show you a letter of August 31st, 1872 from Fitzgerald to the Attorney-General and you recognize this letter, do you not? You'll see on the first page he says about the three-hole punch that:

> "...I reached Hazelton on the 3rd instant, and found that the cause of the trouble between the Kit-sa-gook-lah Indians and the boatmen on the Skeena River was in consequence of the loss, by fire, of a village which was owned by the Indians."

A Yes.

Q So this is his report on his attendance, correct, and you recognize that?

A I'm just looking -- yes, I think.

Q So he explains on the second page:

> "I sent for Kit-tum-ska-nese the chief of the Ak-el-gate tribe of Indians and asked him for his assistance to settle the trouble between the Kit-sa-gook-lah Indians and the whites by conciliatory measures if possible and failing those, to obey my orders in arresting such Indians as I might point out.
>
> Kit-tum-ska-nese assented and manned two canoes with twenty of his tribe, and we proceeded to Kit-sa-gook-lah. On my arrival there I was informed that Constable R.A. Brown had returned from Skeena mouth with a message from His Excellency, the Lieutenant Governor, inviting the chiefs of the Kit-sa-gook-lah tribe to meet him at the mouth of the river and that the Indians had accepted the invitation and had gone down with the constable a few hours before we arrived."

Now, is this the document that you were referring to in respect of invitation?

A Yes, I think it is.

Q All right. And you noted when you reviewed this document that Fitzgerald wasn't there at the time that Brown extended the invitation? He arrived after Brown had left?

A Right.

Q Right. Now, is it your view as a historical geographer that this record of the events at Kitsegukla is contextually more significant than the accounts of the Indians who are actually there?

A It's a difficult question to answer in a very simple and short fashion, in part because neither document is perfect. What we have is two sides of an equation which are going to be viewed obviously somewhat different, and that is part of what I was trying to get at with my reconstruction of the events, so that one would expect I think a different -- somewhat different view of the events from both sides. So I think both have a certain validity, and when -- it's a question of weighing each against the other, which is what I try to do on a variety of different issues, and I should add too that this is not the only document which refers to the events by -- from the white side,

that the other document that I produced this morning speaks to that too.

Q All right. Well, perhaps I'll have a chance to review that and deal with that after the break. Is that other document -- does it refer to an invitation as well?

A It's Brown's -- a letter that he wrote just as he was about to depart to go up to Kitsegukla to meet with the chiefs and it does in fact use the term invite the Kitsegukla Indians or the chiefs down to confer with the Lieutenant Governor.

Q All right.

A And I take that then to be probably the best indication of what Brown's activities comprised, and I find that not inconsistent with my assessment of the Indian narratives, bearing in mind that -- the significant point that they dressed up in ceremonial regalia to go down to this meeting, and I regard that as very unlikely sort of behaviour for somebody who's being arrested, but it is the sort of behaviour that would be both appropriate and perhaps even necessary if one was going to meet with a white chief to come to some settlement of an outstanding dispute.

Q Right. And you know -- do you know whether Brown's letter was written before or after the Lieutenant Governor actually arrived to give Brown his instructions?

A Well, it's written after he had been down to Victoria to consult with -- to take the news of the events at Kitsegukla after his first visit there to inform them, and I presume that they then worked out the procedures that they wished to follow, and I would assume that he was given appropriate instructions because that -- he departed -- it indicates that he's about to depart on July the 27th, and I don't think that HMS Scout reached Metlakatla until August the 1st, so I don't think there was any other opportunity to give him any further instructions than he seems to have described as contained in that letter.

THE COURT: What was HMS Scout?

THE WITNESS: That was a British naval vessel, your honour.

THE COURT: What class, do you know?

THE WITNESS: Pardon?

THE COURT: What class?

THE WITNESS: I'm afraid I don't know. It may be described in one of the accounts. There's a good deal of correspondence back and forth between the Lieutenant

Governor and the senior naval officer at Esquimault all about obtaining use of the vessel to go there.

THE COURT: While we're on naval matters, can you tell me these canoes that they were using --

THE WITNESS: Uh-huh.

THE COURT: -- of what were they constructed?

THE WITNESS: Of cedar I think, your honour.

THE COURT: They wouldn't be the birch bark canoes?

THE WITNESS: No, no. They wouldn't be birch bark. That wasn't available there. These were river and ocean canoes and I -- as far as I'm aware they would have been constructed out of cedar.

THE COURT: Dug out?

THE WITNESS: Dug and burnt out I think, yes, and maybe slightly shaped as a result of putting stones in to heat up so that you could bend it in the same way that one did with the bent cedar boxes.

THE COURT: Thank you.

MR. WILLMS:

Q I'm showing you the document that you produced earlier. It's a letter of July 27th, 1872, and it's from Constable Brown to Fitzgerald; correct?

A Yes.

Q And you'll see the second page or the third page he says this:

> "I am now about to proceed to the above mentioned village Kit-sa-gook-lah to invite the chiefs to come down here to confer with His Honour, the Lieutenant Governor, who will arrive on HM Scout in a few days."

All right. Now, first of all, you'll agree with me that this is contextually relevant to why Fitzgerald describes it as an invitation, isn't it, because it's written to Fitzgerald?

A Yes, but Fitzgerald is unlikely to have received that at the time -- well, it's difficult -- does it -- it has received on there. I'm not sure it has a date. My question is I don't know whether Fitzgerald had received that letter when he wrote the letter that I have before me.

Q All right.

A Because I believe this is written August the 1st, isn't it?

Q August 31st.

A Oh, 31st.

Q Yes.
A That would make it a good deal more probable, but I'm not sure.
Q And the second thing that you'll agree with me is that Brown writes this letter before the Lieutenant Governor comes to Port Essington. That's what Brown says?
A Well, I don't think he ever went to Port Essington. You mean to Metlakatla.
Q Metlakatla, before his honour arrived?
A Well, as I stated, yes, I mean, the point being that Brown had been down to visit the Lieutenant Governor and had returned north in order to invite the Kitsegukla chiefs down to the coast to meet the Lieutenant Governor when he arrived. And when they did arrive, Brown had not yet returned, so that the Lieutenant Governor and HMS Scout went on to a number of other locations to settle outstanding business and returning to Metlakatla about, I don't know, the 7th, 8th, or 9th of August, by which time Brown had returned with the Kitsegukla chiefs.

MR. WILLMS: My lord, could the letter of August 31st be 1038 -- 1033-A-8, and I will make copies of the letter of July 27th. I'd ask it be 1033-A-9.

THE COURT: All right. This letter of August 31st will be 8.

MR. WILLMS: A-8.

THE COURT: A-8, and what will be 9?

MR. WILLMS: Nine will be the letter from Brown to Fitzgerald of July 27th, 1872.

(EXHIBIT 1033-A-8: Letter dated August 31, 1872)
(EXHIBIT 1033-A-9: Letter dated July 27, 1872)

MR. WILLMS:

Q Now, you have Volume 3 of your document book?
A Yes.
Q Would you turn to tab 108, please? You will recall that my friend put passages from this tab to you in respect of resources and occupations of the Indian bands on the Skeena?
A I have to take your word for it. I honestly can't remember.
Q All right. Mine's marked up. What I've just put before you is the complete report from which the first two pages are taken at tab 108, and you will recall that the extracts at tab 108 are taken from a communication from Loring to the Superintendent of

Indian Affairs?
A Yes. This is Loring's annual report for -- and the date there is written July 25th, 1899.
MR. WILLMS: Right. Now, just -- you'll see that he deals with the various tribes, and at the bottom of the page, although you can't -- unfortunately the highlighting has partially obliterated it, but it's the Kitwanga band you'll see from the reference?
THE COURT: Which page?
MR. WILLMS: I'm on the first page of the extract that I handed up, my lord. It's got a 365 in the lower right-hand corner.
THE COURT: Yes. Okay.
MR. WILLMS:
Q And the first description is the Kitwanga band. And if you turn to the second page of the extract that I handed to you, Dr. Galois, you'll see that Loring describes the resources and occupation of the Kitwanga band as:

> "...catching salmon, keeping a few cattle, hunting, trapping, and gathering wild berries. The occupations of this band are varied, amongst the principal being that of working during the salmon season about the canneries of the east, getting out cord-wood along the river, hunting and trapping. Amongst the women, the occupations are: Keeping house, and getting and drying berries for winter's use."

Now, that reference is important, is it not, in the context of the economy of the region when you're assessing the economy of the Kitwanga band in 1899?
A Well, again, it's one document amongst a whole set that I examined. It's of some use. It's certainly -- it's not the best description I don't think. It's slightly out of the period that I was dealing with, and all that one has is a listing of different activities which are both traditional and non-traditional.
Q Yes.
A There's no -- unfortunately there's no indications of the relative importance of either, simply that -- of either the two categories.
MR. WILLMS: Now, just skipping over the Kitwancool village to page 211 where they discuss the Kitsegukla band,

you'll see under "Resources - Some of the people fish, hunt, and trap."

THE COURT: Where is the Kitsegukla --

MR. WILLMS: Kitsegukla is the band discussed on page 211. It's on the right-hand side, my lord.

THE COURT: Top one or the bottom one?

MR. WILLMS: The top one under "Resources - Some of the people fish, hunt and trap."

THE COURT: Yes.

MR. WILLMS:

> "The women, with their children, gather and dry the wild berry crop."
>
> And then under "Occupation".
>
> "The occupations of this band consist of working during the salmon season, in the canneries of the coast, getting out cord-wood along the river, hunting and trapping. The women, at the proper seasons, gather berries and dry them."

And just if you carry on up the river, which is the direction that Loring is going in his description, you'll see that he next describes at the bottom of the page the Gitanmaax band at Hazelton, and over on the top of the next page, the left-hand side, describes the resource --

THE COURT: I'm sorry, that one at the bottom is Gitanmaax?

MR. WILLMS:

Q Gitanmaax, my lord, Hazelton. The "Resources" are fishing, hunting, and trapping, gathering the wild berry crop, growing potatoes and hay, and then he says under "Occupation":

> "On account of Hazelton being the terminus of all communication with the coast and the consequent demand for labour, the Indians easily find employment at good wages, in packing into the interior, boating, mining, sawing lumber, getting out cord-wood, and not a few are working about the canneries of the coast, and hunt and trap in the winter. The women, assisted by their children, pick and dry wild berries."

And then going up the river, the next is the Kispiox band, and you'll see the resources have already been read to you -- have already been read by my friend so I won't read that again on the top of the right-hand page, but under "Occupation", again:

> "The young people of this band, during the salmon season, go to work at the canneries of the coast, in the mines, and follow various other occupations; during the winter, hunting and trapping. The women, with their children, gather the wild berry crop, and by drying, prepare it for winter's use."

Now, that's -- and then moving still further up the river over on to the Babine you'll see he's got the Kisgagas band, and I won't read "Resources" to you, my friend already read that, but you'll see under "Occupation":

> "Very few of these people go to the coast to work; they depend almost entirely on hunting and trapping, and till their potato-patches. The women, accompanied by their children, gather wild berries and dry them for winter's use."

And then the next Gitksan village is Kuldo'o, and my friend has already read you the "Resources" and "Occupation". I won't read you that again, but from reviewing this, did you note any historical or geographical significance about the occupational change as you moved up the river?

A Yes, I think I referred to that in my report. I mean, there is a geographical pattern here. The more isolated Gitksan villages one sees that there are few of what I called the non-traditional activities. Those are located primarily on the lower and particularly around Gitanmaax.

Q And you'll agree with me, Dr. Galois, that when you read Loring anyway it appears that the only location where you could describe almost exclusively or entirely natie traditional activities taking place is Kuldo'o?

A Yes, but one must remember, and I make some attempt to point this out too, that traditional and

non-traditional activities weren't necessarily incompatible. The same person could follow both because of the seasonal patterns of at least some of the traditional activity. There were adjustments that were called for and required.

Q Right. Do you recall from the historical record when it was that Kuldo'o was essentially abandoned?

A It's after the period that I looked at, in terms of the economy and society was still a functioning settlement at that point, as Loring's report for 1899 indicates.

Q All right. Now just turning, and my friend didn't put the Wet'suwet'en villages to you, but if you just carry on in the extract you'll see that Loring also dealt with "Hoquel-get" village, and this is on the -- you see the "Hoquel-get" village over from Kuldo'o village?

A Right.

Q And under "Buildings, stock and implements" he says:

> "This band owns six frame and thirty-four log houses and six stables; of stock, thirty-two head of horses, four cows, seven bulls and eight of young stock."

That is contextually significant in respect of non-traditional activities taking place?

A I think I indicated in my report that non-traditional activities took place amongst the Wet'suwet'en as well. Primarily, I think the most important was packing and in association with that they raised horses. And I think, I'm not sure, but there is an appendix to my report which indicates both the number and distribution of horses and cattle.

Q And then if you just turn the page you will see, start at the bottom of the page, the Moricetown band is described, and at the top of page 216 on the left-hand side Loring describes "Buildings, stock and implements":

> "This band owns twenty-eight log and six frame houses, and nine stables; of stock, fifty-three head of horses, four cows, three oxen and two bulls; and a few implements and gardening tools."

Those you recognize are indicators of an

agricultural economy?
A Yes, but there are other sources which indicate that this was relatively unimportant. I'm thinking particularly of Poudrier's comments on the attention that the people of Moricetown devoted to agricultural pursuits. That is in one of the tabs that's been cited and referred to, and I would add too that there are a number of other documents which refer to the persistent significance of traditional activities amongst the Wet'suwet'en, hunting and trapping primarily, but also fishing. And I think at one point in the 1890's in a letter Loring even goes so far as to say that the Wet'suwet'en are hunters and trappers solely. That's somewhat of an exaggeration, as Loring is somewhat wont to do, and one has to approach his statements with a certain degree of caution.

MR. WILLMS: Could this be 1033-A-10, my lord?

THE COURT: Yes.

(EXHIBIT 1033-A-10: Excerpt from Loring's annual report, Hazelton, July 25th, 1899)

MR. WILLMS: Dr. Galois, I'm now showing you the other extract in volume --

THE COURT: I'm sorry, what are you -- I'm sorry, you're now giving him something different?

MR. WILLMS: Yes, my lord, the last extract was the complete --

THE COURT: I thought you were handing me another copy of the same thing.

MR. WILLMS:

Q No, my lord. So the Hazelton July 25th, 1899, is A-10. And I'm just going to ask the witness to confirm that the last page at tab 108 of Volume 3 is taken from the Loring letter of July 18th, 1900 to the Superintendent of Indian Affairs, the document that I've just handed up?

A I'm sorry, which one do you want me to confirm?

Q This is a letter of July 18th, 1900?

A Right.

Q And you'll see the very last page --

A Oh --

Q -- at tab 108 is taken from the Loring extract that I've handed to you, and I just noticed, my lord, and I don't know if they're all the same way --

A That page is missing.

Q No, it's out of chronological order. It's mispaginated.

A Page 232 is it?
Q They're all there, they're just in the wrong order, but you'll see that the extract at tab 108 is really page 232 and 233 from the July 18th letter?
A Yes, I'm with you now.

MR. WILLMS: Correct. And, my lord, I just want to mark that as 1033-A-11.

THE COURT: All right.

(EXHIBIT 1033-A-11: Letter from Loring dated July 18,1900)

MR. WILLMS: And if you could now, Dr. Galois, turn to page 61 of your report, and I'd ask that Volume 4 be put to the witness. Please turn to tab 239 of Volume 4, and you'll see that the quote that you have on pages 61 to 64 of your report is taken from the document at Volume 4, tab 239.

THE COURT: What were the pages of the reports?

MR. WILLMS:

Q It's pages 61 to 64, my lord.
A What I have I think there is -- well, that's about Jean Baptiste.
Q Do you have Volume 4?
A I don't know.
Q Tab 239?
A This is 38 I'm looking at, 239.

THE COURT: This is on page 2 of tab 39 the quotation of page 61 of the report.

MR. WILLMS: Yes, I've got it. At 239 the witness -- the exhibit, my lord, appears to have it at tab 238 and --

THE COURT: I have it at 39.

MR. WILLMS:

Q Maybe we can all make sure that -- it's described in my friend's list. 239 is described as the minutes of the Wet'suwet'en meetings, so it appears that the document --
A I have a letter from Godfrey to --

MR. WILLMS: Oh, it's been switched. That should be tab 238.

MR. ADAMS: Yes, it's marked 238 at the top.

MR. WILLMS:

Q All right. Perhaps that could be squared away before we -- before I muddle the record up. Now, my question was the document at Volume 4, tab 239, is the document that you've quoted from at pages 61 to 64 of your report?
A Yes.

Q All right. Now, you'll see at the very beginning it says -- it describes the meeting July 15th, 1908?
A It's 1909.
Q 1909, and this is Vowell and Stewart with the Hagwilget Indians; correct?
A Yes.
Q And you'll see after Mr. Commissioner Stewart's address:

> "Chief McKenzie replies: We now will put before you our needs. On our hunting grounds we always have an habitation in the shape of a rough cabin, which may appear poor to others, but are dear to us, where we reside when there. We now wish that some of the grounds be secured for us. We people are in habit of somewhat a roving and roaming disposition.
>
> The whites have come and taken up great areas of land, and our reserves are very small. Many of us people have a great number of cattle and horses and we are very much pinched in on our reserves."

Now, first of all, are there any documents that you're aware of in the historical record where the Wet'suwet'en advised the commission that they did not want reserves secured to them subsequent to 1909?
A Subsequent to 1909 they didn't want reserves. As far as I can recall, the problem that the Wet'suwet'en were facing was the diminution of their land base and they were in a very difficult and a very defensive position and they -- they wanted a secure land base I think is basically the substance of their requirements and of their requests in various documents, and also on the redress for grievances that they had suffered as a result of the entry of whites into their territory, and there have been a whole list of dispossession cases.
Q Is the reference to cattle and horses contextually relevant to the question of reserves?
A As relevant as is the reference to hunting grounds.
Q Yes. And you'll agree -- you didn't quote David Francis in your report, but you'll agree that when you read through David Francis much of the discussion is about horses, cattle, and the problems that the small reserves have caused respecting pasturing stock and

cutting hay?

A Well, that's at the area where most of the packing took place and where presumably the horses were kept. It's not referring to the hunting grounds, whereas most of the document I think refers to the problem of access to hunting and fishing grounds.

Q Okay. Now, you started quoting from the document on page 2 with James Yami in your report, and then you carried on quoting until page 4 down to the last, but you didn't put in the last paragraph on page 4, and in the last paragraph on page 4 this is David Francis, chief, speaking.

> "Of the white men there are some very bad characters. Our agent has done all he could for us, and we obey all laws of our Faith and the Government. We always try to obey our agent. We are the children of the government, and we follow our leaders."

What documents after this date can you point to where a Wet'suwet'en chief says that he will not obey the laws of the government?

A I believe there's some documents in the case -- in some of the cases that are indicated here that persist into the 1920's. I believe Jean Baptiste, after he's been dispossessed several times, as a sort of last resort makes some sort of threats to fire or shoot. I mean he's in a very desperate strait by this time. People have been moved and moved and moved again and their habitations have been burnt down and they've essentially been ignored and they've had no redress for their grievances whatsoever. These grievances were repeated in 1910 in a different form to MacDougall, including maps of the various hunting areas and fishing sites, some of which they've been dispossessed from and some of which they wished to have secured.

Q But my question was focused on any statement in the historical record by a Wet'suwet'en chief that he would not obey the laws of the government?

A I think Jean Baptiste was a chief -- I'm not sure if he was -- but there was some -- some kind of reference in there. It's the Babine Agency land matters file. I couldn't tell you which specific letter in there. There are a large number of letters in there dealing with specific dispossession cases.

Q All right. Maybe we could turn -- you could deal at page 92 of your report to Jean Baptiste. Maybe we could turn to that?
A I'm not absolutely sure it is Jean Baptiste, but it may well be.
MR. WILLMS: Well, could Volume 8 of the document book be put to the witness, please?
THE COURT: Volume 8?
MR. WILLMS:
Q Volume 8, my lord, and if you could please turn to tab 547 of Volume 8, and you'll see at tab 547 a letter from Loring to Ditchburn dated March 20th, 1920?
A Yes.
Q And Loring starts off:

> "I have to acknowledge the receipt of your letter, dated the 26th ultimo, stating that from a Mr. McTavish of Victoria the owner of the...", I believe it's the north one-half, "...of lot 882, Cassiar Land District, you had been informed that it were occupied by an Indian of the name of Jean Baptiste and expressing the wish to be informed whether this Indian really occupied this land before it became alienated, etc."

And then you'll see there is a discussion regarding the lot and the information of what Jean Baptiste ahs on it, and you'll see at the very end Loring in the last paragraph says:

> "Moreover, I here beg to add that Jean Baptiste has a wife and five children, and claims to have been on the said land for the last twenty-one years."

Now, are you aware of prescriptive rights in respect of unalienated land?
A Prescriptive right? I'm not quite --
Q Let's put it this way. Are you --
A Can you clarify "prescriptive" to me?
MR. WILLMS: Are you aware of the significance of being on someone else's property for 20 years or more in respect of the land law at the time?
MR. ADAMS: Well, my lord is my friend asking the witness for a legal opinion on the land law at the time?
MR. WILLMS: No, no.

THE COURT: He's just asking him if he's aware of any such law.
THE WITNESS: No.
MR. ADAMS: The question was the significance, and I took that to be legal significance.
MR. WILLMS:

Q Well, let me break it down. Are you aware of the -- any land law at the time respecting being on privately owned property, that is, property owned by another for more than 20 years?
A I know that there were disputes about the length of time that a number of the Wet'suwet'en had been at particular locations, and this seems to be an example of that kind of a dispute. They were resolved variously. I'm not sure if that's what you're referring to.
Q I take that as you don't know whether there was anything in the land law at the time about 20 years on someone else's property whether that would give Jean Baptiste any rights against the owner of the property?
A As I understand it, the disputes were about whether the people were on the land before it was alienated. That's the only point that I'm aware of in terms of these disputes.
Q Well, if you could turn to the next tab at 548, there is a letter, and let me -- I can't see who -- of April 8th, 1920, a letter to Ditchburn, and let me just see if I can -- you've identified the author, Harris, a Mr. Harris at Bull & Mason. This is a lawyer's letter; correct?
A Right. Yes.
Q And it's a lawyer's letter written on behalf of a Mr. McTavish who claims that Mr. Baptiste is on his land; you know that?
A Right.
Q Right. And he says:

> "My client, Mr. G.S. McTavish, has today handed me your letter of the 7th with enclosures re the above. I note that the Indian, Jean Baptiste, claims that he has been on the said lands for the last twenty-one years. This is contrary to the sworn statement of H. W. Heal, who has resided in the Bulkley Valley since 1904, and who knew the said Jean Baptiste, and who has sworn to the fact that Jean Baptiste was living with his brother David Francis at the

time of Heal's arrival in the district, and lived with said brother for some years subsequent to that time, on Lot 794-A on the shore of McClure Lake, and that to Heal's personal knowledge, the said Jean Baptiste did not live on Lot 882 prior to 1908.

In view of this, there is no doubt that the Indian has no rights on the property whatsoever; and I would ask you to have him removed to a proper reserve immediately, so that the sale of this land may be carried on with."

Now, it appears from Loring's comments and then from this letter that there's a lot of discussion about 21 years. Did you not think that that was contextually significant?

A Well, it's -- the point would be -- I didn't take the 21 specifically to be significant. What I took to be significant was the claim that Jean Baptiste has resided there since before the land was alienated, and as I recall, I'm not absolutely sure about this, I don't have all of the details of these quite complicated disputes in my head, there was some question about the accuracy of Heal's claim, but I'm not absolutely sure about that.

Q All right. In any event, I think as you've already indicated, you're unaware of any land law and how 20 years factors into the land law of the time?

A As I said, my understanding of it was that was preceding the alienation of the land. That seemed to be the important point in those documents.

MR. WILLMS: All right. Now, could you turn in your report to page 73, please, and could Volume 6 be put before the witness?

THE COURT: Did you say page 73 of the report?

MR. WILLMS:

Q Page 73 of the report, my lord, Volume 6 of the documents, and in -- it's tab 380, my lord. You are discussing in this paragraph, Dr. Galois, the Royal Commission on Indian Affairs, and that is the commission that is set out at tab 380?

A These are the hearings --

Q The hearings, yes.

A -- of Fort Babine Agency, yes.

Q And you said -- you say in that paragraph on page 73, the very last line:

> "A few specific complaints were registered and all raised, in one form or another, the question of Indian title."

And there were extracts of this tab read to you in your evidence in chief, but I would like you to turn to page 25. Now, these are hand numbered in the upper right-hand corner?

A I should add that I was referring just to the Gitksan not the Wet'suwet'en in that statement.

Q Okay. Turn to page 25 and you'll see at the top after "The chairman explains to the assembled Indians to the scope and powers of the commission", it's -- Chief Mac Weeget addresses the commission. Handwritten 25. Are you with me?

A Yes.

Q And Chief Weeget is Gitksan?

A Yes, this is Andimoo.

Q And I'll -- you've already had the first five lines read by my friend so I won't reread that, but carrying on --

A Can I just read those lines, please?

Q Sure. All right. Then the chief carries on by saying:

> "For all these troubles that we have here, it is pretty heavy for us. If you were standing right out there and we tied your hands behind your back, it is just about the same way with us. Our title is gone and our land is gone."

And then just if you skip down, there's a discussion of the old people and creeks and mountains, but you will see about six lines up from the bottom of the quote from the chief the sentence "As I am telling you"?

A Yes.

Q

> "As I am telling you now, our title is gone already - we have been asking very kindly for a long time to get our land back for all my people."

Now, is that particular discussion contextually significant in appreciating what you mean by question

of Indian title?
A Well, there are two points I think I would make in terms of that, first of all, is the reference to the petition in there of 1908 which we don't have any stamped copy, but which there are indications as to the contents.
Q Sorry, where does Chief Weeget refer to the petition?
A "I wish to hear about the petition that was made for the last seven years." Since 1915. There he's referring to the petition that was taken to Ottawa --
Q Right.
A -- by the Gitksan and a number of other chiefs from various different Indian peoples of British Columbia --
Q Yes.
A -- concerning the whole issue. The other point here is what exactly one means by title in this context. I mean --
Q Well, I'm just asking you if it's significant. I'm not asking you to interpret what the chief means here or tell me what the chief means.
A Well --
Q It's significant isn't it?
A It's part of the context of Gitksan protests dealing with the issue of title. It's no more significant than a considerable number of other documents.
Q If you turn to page -- hand numbered 39 in the upper right-hand corner, and this is a -- on this particular page a question and answer between the commissioner and Chief Spouk, S-p-o-u-k?
A Yes.
Q And he was a Gitksan chief?
A Yes. This is the Gitanmaax band.
Q Yes. And you'll see if you go down the questions and answers the commissioner asks a question of the chief: "Do you know how many people live on that reserve?" and the answer from Chief Spouk is "What is the reason you are asking me all these questions? What I want is to get my own land back again."
Now, is that statement contextually significant in assessing what you mean by the question of Indian title?
A In the sense that it refers to land which has been alienated without the agreement, I presume, of Chief Spouk, and also again I would refer you to the reference that he makes to the same petition of 1908.
Q Now, perhaps you could turn to page 51 of this tab and

this was in respect of the Wet'suwet'en, and --
A Moricetown Band.
Q Yes. It's -- the top of the page says "Royal Commission on Indian Affairs for the Province of British Columbia meeting with the Moricetown Band April 26th, 1915"?
A Right. Yes. It's just that the number on my copy is illegible.
Q Right. And my note of what you said about -- you said there were differences between the Moricetown hearings and the Gitksan hearings. You said first, there is a good deal of detailed -- good deal of detail about specific grievances which is given in the -- there is no reference to the overall issue of title, and a third point is that part of the information is provided not by an Indian, but by a white missionary, and there you're referring to the fact that Father Godfrey made the initial address?
A Yes. And I attempt to explain the reasons and the significance for that.
Q You did note though if you turn to handwritten 57, after Godfrey had finished speaking, at the bottom, the chief is called and sworn.

"Mr. Commissioner Macdowall: You have heard the address made by the Reverend Father on your behalf - do you take that as being your own address?
A The priest he said right."

So is that -- was that contextually significant to you, the statement by the chief there after the Reverend made the address?
A Well, it refers to the statement by one of the Wet'suwet'en chiefs, the -- one of the reasons for Godfrey making the speech is the absence of a considerable number of the chiefs because of the lack of warning that they were given about the date and timing of the hearings.
Q I'm just going to show you, Dr. Galois, an extract from a cross-examination of you and this is an extract respecting the cross-examination respecting Dewdney's laying out Hazelton?
A Right.
Q And you'll see at the top of the page discussion of 1871 Dewdney surveying Hazelton, and if you turn down to line 36, the question:

"Q All right. Well, I'm just trying to get -- I thought you said a few moments ago that prior to the late 1800's, I don't know, I can't remember whether it was 1897 or 1898, there wasn't any interference with this exclusive right -- claim to hunt, fish and gather fruit. And I'm suggesting to you that when Dewdney went in and laid out the townsite of Hazelton and laid out the reserve and laid out some pre-emptions, that that must have interfered with that?"

And your answer was:

"A Well, what I've been trying to suggest is that this was something which existed on paper rather than had any great significance as far as I can determine, on the ground."

Now, I'm showing you a letter of the 22nd of February, 1871, from the Colonial Secretary Pearce to Dewdney, and have you -- did you recall seeing this letter in your review of the historical record?

A I'm not sure. I think I better read it.

Q All right. You'll see at the beginning:

"The recent discoveries of gold on the Omineca and other rivers in the vicinity, render it desirable that a Pack Trail with proper bridges, etc., should be constructed from a point near the Forks of the Skeena, running in an Easterly direction to the North end of Babine Lake, crossing the Babine River at this point and thence in a North-easterly direction to Tatlah Landing or if practicable to a point at the North end of Tatlah Lake near the Bulkley House; and from this point in a north-easterly direction to Hogem," H-o-g-e-m, " and from thence to Germansen Creek."

And you recognize the forks of the Skeena being forks of the Skeena-Bulkley; that's what that was called?

A Yes. It was not named Hazelton until after Dewdney's visit.

Q Now, on the second page of the instructions from Pearce to Dewdney --
A Can I just finish reading through?
Q Well, I'd just like to put this extract to you and then you can certainly read whatever you want before you answer the question, but you'll see just above the three-hole punch, the lowest three-hole punch, Dewdney is instructed:

> "You will lay out roughly or post notices on all lands occupied or claimed by the Indians in the country through which your exploration may lead you and take such notes of them as will enable you to lay them down roughly on your plan."

All right. Now, my question to you is would an instruction like this -- is this document contextually significant when you consider what Dewdney was doing at Hazelton in 1871 in the historical sense?
A Yes. These are the instructions that, as you say, that Dewdney was given. My point, and I refer to this in the document that I correctly identified yesterday morning, was in terms of the report by Mr. MacDougall of the Hudson's Bay Company about the Hudson's Bay Post at Hazelton, and the lack of pre-emptions and survey lines in that point in 1890. And I can't remember the exact wording, but I think it is a document that is available and so that whatever the significance of Dewdney's actions, it did not persist on the ground or in terms, as I understand it, of the reserves -- the Indian reserves of the Department of Indian Affairs because when it came to establish Indian reserves under the Department of Indian Affairs the Gitanmaax reserves is indicated as being allotted by O'Reilly in 1891, and I don't think there's any reference to a preceding Indian reserve.
MR. WILLMS: Exhibit -- can this be 1033-A-12, my lord?
THE COURT: 12?
MR. WILLMS: Twelve.

(EXHIBIT 1033-A-12: Letter dated February 22nd, 1871 from Pearce to Dewdney)

THE COURT: Who did you say is the author of this?
MR. WILLMS: The author is the Colonial Secretary Pearce, P-e-a-r-c-e, and the recipient is Dewdney.

THE COURT: Yes. All right. All right. We'll take the morning adjournment. Thank you.
THE REGISTRAR: Order in court. This court stands adjourned for a short recess.

(PROCEEDINGS ADJOURNED FOR MORNING RECESS)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein to the best of my skill and ability.

_____
Tanita S. French
Official Reporter

(PROCEEDINGS RECONVENED PURSUANT TO THE MORNING BREAK)

THE REGISTRAR: Order in court.
THE COURT: Mr. Willms.
MR. WILLMS:
Q My lord. Just to finish up, Dr. Galois, with Dewdney and the town site of Hazelton, I'm showing you a correspondence, and the first part of the correspondence is a letter of May 20th, 1871, from Dewdney to Pearce written, as you can see from the first page, from the forks of Skeena River. Did you review this document or see this document in your review of the historical record?
A Yes, I have done.
MR. WILLMS: Okay. You'll see, if you turn to the third page of this letter from Dewdney to Pearce -- and he's speaking from the forks of the Skeena River. He's speaking from Hazelton.
THE COURT: You've lost me Mr. -- oh, this new one.
MR. WILLMS: The new one, my lord.
THE COURT: Yes, I have it.
MR. WILLMS:
Q This is Dewdney telling Pearce on May 20th, 1871, what he's done in accordance with the instructions. And I am now on the third page, my lord. And you'll see the paragraph:

"Since my arrival here I have selected a starting point for the trail, and reserved for the government all the lands situated between the Agwilgate River and the lower line of a Pre-emption taken up by" --

is that superintendent?
A Messrs.
Q Messrs Mitchell and Faron.
A Faron. F-a-r-r-o-n.
Q o-n.

"A portion of it I have reserved as a town site, the remainder as an Indian Reserve for a tribe called the Kit-En-Macs.
On the proposed Town site I posted a notice (a copy of which I enclose) by it you will see that I have staked off a few lots, and should you think it advisable to lay out a small Town site here before I return, I should be obliged

> if you would forward me the necessary instructions. The work would not take more than a week, as the ground is open and free from any underbrush.
>
> Three lots have been taken, one by Messrs Cunningham & Hankin, one by a Mr." --

is that Rees, R-e-e-s?

A I would have thought it would be Reid.

Q Or Reid.

> "...& one by William Moore. And buildings will be put up at once.
>
> I trust you will agree with me that it is fortunate I have been enabled to reserve a small tract for a Town site. As is invariably the case all the land that was thought to be open for Pre-emption, was taken up in the vicinity of the supposed starting point, and this would not have remained unoccupied long -- not remained unoccupied, had not the parties who had settled above the Reserve been of the opinion that an Indian Reservation existed from the Mouth of the Agwilgate River two miles upstream."

Just pausing there, that certainly is contextually significant to the issue of not only Indian reserves in the area, but also exploitation of resources, isn't it?

A I'm not quite sure in terms of exploitation of resources.

Q Well, I'm talking about the pre-emption of land and the interference with the exploitation of resources on that pre-empted land. Isn't --

A One of the points --

Q -- that contextually significant?

A Well, the other part of the context is that none of the pre-emptions were carried through, as I understand it.

Q Oh, sorry, as you understand it. Thank you. Now, if you could turn to the last page of this document, we'll just deal with what the document says. You'll see on the very last page there is Pearce's signature, the colonial secretary, in the middle of the page at the bottom, and it appears -- I can't tell if that's 10 June '71. But he says this:

"Submitted for His Excellency's information. With regard to the Town site, I am quite ignorant what Instructions may have been given to Mr. O'Reilly on this point. I instructed Mr. Dewdney a long time before to secure any location that appeared to him suitable for a Town site, as well as to Reserve all Lands occupied by Indians and post up notices" --

THE COURT: "...and to post up notices..."
MR. WILLMS:

Q "...and to post up notices that such Lands were Reserved for them. It would be advisable, I think to lay out a few lots, which might be leased for the present, & sold by auction at a future time."

You'll see that that's a transmission from Pearce to the governor. It's to His Excellency. Correct?

A Yes.

Q Yes. And you'll see --

A Right.

Q -- immediately below Pearce's signature it says:

"I concur in Mr. Pearce's opinion. If I remember rightly, there were no instructions given to Mr. O'Reilly respecting a Town site."

And that -- you recognize those initials as Governor Musgrave's?

A Well, I didn't.

Q You don't. Oh. Is that not something that you paid attention to, the initials of the governor at the time?

A I think that's probably reasonable to assume, that that's what they are, yes.

Q Yes. And then you'll see just immediately under that:

"Forwarded for the information of Mr. Pearce, no special instructions were given to Mr. O'Reilly, respecting a reservation of a town site at Skeena."

So I'm going to suggest to you again that it is contextually very significant that Dewdney was instructed by the colonial secretary to go up and lay

out a town site and reserve land for Indians and he did that?

A He did that, but my point again, if one looks at the map which is attached to this document, one sees that neither the reserve nor the town site survived as in the form that they are there mapped.

Q Sorry, the town site -- there is no reserve at the forks of the Skeena?

A There is a reserve which is mapped there. However, neither that -- neither the boundaries of that reserve as marked there nor the town site as marked to my understanding survived in the form that they're there indicated.

Q To your understanding. Thank you.

A And one --

Q Can this be 1033-13, my lord?

A One can look at other documents to substantiate that.

MR. WILLMS: Yes. Well, I'm sure your counsel will be able to refer to all of those.

(EXHIBIT 1033A-13 - TAB 13, LETTER DATED MAY 20, 1871, FROM DEWDNEY TO PEARCE)

THE COURT: Dr. Galois --

THE WITNESS: Yes.

THE COURT: -- what do you understand them to be talking about here when they talk about the Agwilgate, capital A, River?

THE WITNESS: That's the Bulkley, your honour.

THE COURT: That's the Bulkley?

THE WITNESS: It's sometimes called the Agwilgate, and it's sometimes called the Watsonqua.

THE COURT: All right.

MR. WILLMS: My lord, I have no further questions.

THE COURT: I shouldn't stop you if that's what you're going to say. I wouldn't want to interrupt you.

MR. WILLMS: Please don't let me interrupt you, my lord.

THE COURT: Please.

MR. WILLMS: No, I was just going to say, my lord, that I have no further questions. I do want to point out that there is a document that we marked, 1033-15, which is a letter from Loring to Vowell of September 30th, 1904, which apparently I was the only person who was able to read, and your lordship suggested that I should provide a legible copy.

THE COURT: Yes.

MR. WILLMS: And we will attempt to do that.

THE COURT: All right.
MR. WILLMS: If we can't do that and my friends don't agree that what I read out is what the document says, I suppose we'll have to deal with that later.
THE COURT: All right. Thank you, Mr. Willms. I think Madam Reporter wanted a name or the spelling. Agwilgate looks like A-g-w-i-l-g-a-t-e. And could someone else spell Watsonqua?
THE WITNESS: W-a-t-s-o-n-q-u-a. That's one version. I'm not sure it's the authoritative version.
THE COURT: Thank you. Mr. Macaulay.

CROSS-EXAMINATION BY MR. MACAULAY:

Q Witness, you know that Reverend Tomlinson was an independent missionary near Kitwanga during the 1880s?
A He established a mission at Meanskinisht I think initially in 1888. He had previously been a missionary for the Church Missionary Society, which organization I believe he quit at sometime preceding 1888. I'm not sure of the exact date offhand.
Q He was a follower of Duncan?
A They were both members of the Church Missionary Society.
Q Oh, yes, but other people, such as Collinson, were also members of the Church Missionary Society?
A Yes.
Q But there was a Duncan faction, wasn't there?
A He was closely associated with William Duncan, yes. And --
Q And when Duncan left for Alaska, he left for -- to establish an independent mission on the Skeena?
A To the best of my recollection, Tomlinson quit the Church Missionary Society sometime prior to that.
Q Yes.
A I believe it had something to do with his being ordered to abandon the mission that he undertook for the Church Missionary Society at Ankatlas. That mission was closed in 1883.

THE COURT: I'm sorry to interrupt you, Mr. Macaulay, but I think we have to get a spelling for the place where the mission was established in 1888.
MR. MACAULAY: Meanskinisht.
THE COURT: I'm sure Madam Reporter needs a spelling.
THE WITNESS: Do you wish me to --
MR. MACAULAY:

Q You can have a try, Dr. Galois.
A M-e-a-n-s --

THE COURT: I'm sorry, M-e-a-n?
THE WITNESS: a-n. -- s-k-i-n-i-s-h-t. It would be nice to see that down. I'm not sure that --
THE COURT: Well, we'll all spell it the same way. Now, the other spelling, the other word you gave us.
MR. MACAULAY:
Q Ankatlas.
A Ankatlas.
THE COURT: Yes
THE WITNESS: A-n-k-a-t-l-a-s.
THE COURT: Thank you.
THE WITNESS: And that's about seven miles north of Kispiox.
MR. MACAULAY:
Q So that by 1884 or 1885 he was an independent?
A He had left the Church Missionary Society somewhere in there, and he remained primarily on the northwest coast. He went back to England one time. I think that was before 1883. Went down to Victoria once or twice.
Q And his son was a Methodist missionary?
A His son subsequently became a Methodist missionary. He, I believe, was in 1919 the Methodist missionary at Kispiox. I'm not sure when he took up that appointment, but I have seen a letter that indicates that he was at Kispiox at that date.
MR. MACAULAY: Now, have you in your researches looked at a letter from Magistrate Fitzstubbs to the Attorney-General dated April 23rd, 1889? Perhaps you could show the witness. Tab 21. My lord, I believe my friend Mr. Willms had made brief reference to this letter. I've made a transcription, which I hope is reasonably accurate. The letter itself is fairly legible. It just goes faster with a transcription.
THE COURT: Thank you. Shall we call this book 1034?
MR. MACAULAY: 1034, if your lordship pleases. Would that be 1034-1?
THE COURT: Oh, wait a minute. Maybe we have a 1034.
THE REGISTRAR: The numerical number I think is 1059.
THE COURT: Oh.
MR. MACAULAY: I'm happy with any number.
THE COURT: How do we get from 1033 so quickly up to 1059?
THE REGISTRAR: Well, these were put in --
THE COURT: Yes.
THE REGISTRAR: -- way back in the direct.
THE COURT: Oh, yes, of course.
THE REGISTRAR: All of this has been put in since.
THE COURT: This is an interrupted witness. That's the

explanation. So the next number will be 10 --
THE REGISTRAR: 1059.
MR. MACAULAY: 1059.
THE COURT: Thank you.
MR. MACAULAY: If that could be dash 1, tab 1.
THE COURT: Yes.

(EXHIBIT 1059-1 - TAB 1, EXTRACT FROM AGCAN DOCUMENT NO. 12380, LETTER DATED APRIL 23, 1889)

MR. MACAULAY:
Q Have you seen that letter before?
A Yes, I have.
Q And can I draw your attention to page 2, either of the transcript or the original?
A The pagination is the same?
Q The pagination's the same. At the bottom where the author says:

"In the interval between that date..."

A What date?
MR. MACAULAY: And he's referring to the end of last year, that is, the end of 1888, and the writing of the letter.

"In the interval between that date and the present their behavior has been commendable, and I think if not influenced by baleful teaching they will gradually subside into observance of and respect for law, though at present they view its ascendancy with jealousy and dislike."

And then over the page:

"By baleful teaching mean the lessons of disloyalty and discontent inculcated by the Methodist teachers, chiefly native on the river, who seem to furnish a Mission other than religious and to desire to fan a race antipathy into race hatred. These teachers are reported to be actuated by a feeling inimical to the Government, who, they instruct the Indians, will deal unfairly and harshly by them in the matter of the land."

And then farther down on page 3:

"The knowledge upon which the above observations are founded came to me after a revival meeting under the direction of a native missionary Mr. Pierce held in this town towards the end of last January, when the Government Officials and whites were publicly vilified."

And then the letter has a number of enclosures, as you will see, and we haven't got a transcription for them, but they're easy to read. My lord, I'm directing the witness' attention to the first enclosure, which is headed "At a meeting under the direction held in Kitta Moldoh's house at Hazelton on or about the 19th of January, 1889. The following is the substance of the addresses by the several speakers named." And then the first speaker said:

"My brothers and sisters I am very glad to meet you once more this evening to speak to you. Every white man who comes here is paid to come or comes to make money, but we have not come for money."

And then a little further down the page:

"Every store keeper" --

THE COURT: Just a moment. How far down the page?
MR. MACAULAY: Middle of the page, my lord.

"Every store keeper here tries to get as much as they can out of you and cheat you."

And then -- and the next statement I want to draw your attention to is that of Jack Cade. There's one by Edward Sexsmith, and here's Jack Cade.
THE COURT: Not the same Jack Cade?
MR. MACAULAY: Not the same Jack Cade.
THE COURT: I hope not.
MR. MACAULAY: At the bottom of the -- that page where he says:

"It is the white man's fault that this village cannot be made Christian. I know it from experience. When I used to work in the mines they have often said to me there is no Jesus, no God, and they do everything that is bad and teach it to us. Young men and women have

nothing to do with them. Do not go with them or work for them."

And then further along:

"...they are nothing but bearded devils, do not trust any white man who comes here unless he is a teacher. Have nothing to do with the whites, they all mislead you. Even the judge here."

THE COURT: "...the judge is here" --
MR. MACAULAY: "...the judge is here" --
THE COURT: -- "to deceive you."
MR. MACAULAY: -- "to deceive you."

And then the next one, Big Louie. This is a statement -- the same Big Louie, my lord. This is a statement following the event. It's not one of the statements, but it's still an enclosure with this letter. Part way down the page he says:

"Having the Crown I thought I should also join the Church as I considered they go together. Mr. Pearce answered he would receive me, but that the Crown I have carried no honor with it."

And then in the middle of the page:

"...God's word was stronger than the law."

And further on, and I quote again:

"He said if I came to them I must put the Crown in my left hand, it is degrading, and God's word in my right hand."

And over the page:

"At another meeting Mr. Pearce said we were to do nothing that the whole people did -- that the white people did, that they were a bad race of people, that they did not obey God's law in the least."

And finally -- oh, well, I've got a couple more -- Peter John, the statement of Peter John, in which he recounts that about Christmas of 1888, and I quote

now:

"Pearce came into my house and frantically called upon me to flee this town where all was darkness and corruption and danger from the presence of the whites."

At the bottom:

"Pearce came only to warn me against the Whites."

And then finally, the statement of Esther, Esther Beresford, witnessed by Margaret Hankin, the interpreter, in which she says:

"The cause of all the calamities here is the white race. They teach you all that is bad, and blind you, keep you in ignorance of what is good."

And:

"They have caused the death of your children. So long as the whites" --

THE COURT: I think that's "women," isn't it?
THE WITNESS: "...many of your women, some daughters of chiefs."
MR. MACAULAY: No, no, I'm reading the following sentence, my lord.

"They have caused the death of your children."

THE COURT: Oh, yes, yes. You're quite right.
MR. MACAULAY:
Q "So long as the whites are here and you have anything to do with them you will never become as we are. It is all through the white race that you are bad."

You've seen that letter and those statements before, have you?
A I think so. If I have, at some time ago. And I would like, I think, to read through the extracts in full, the statements in full --
Q All right.

A -- if I may.
Q You mean before you make any answer?
A To any questions of substance, yes.
MR. MACAULAY: Well, perhaps you can do that at the adjournment. And I'll draw your attention to another letter. This is -- my lord, it's a letter from Fitzstubbs to the Attorney-General, who he addresses as "Dear Davie," which was the Attorney-General's last name. It's July 24th, 1889, a few months later.
THE COURT: This is Fitzstubbs to Davie?
MR. MACAULAY: Yes, my lord. So was the earlier one, but the earlier one was a more formal dispatch. And I'll draw your attention to page 2 of either the transcript or the original.
THE COURT: Just a moment, please, Mr. Macaulay.
MR. MACAULAY: And could that be marked tab 2, my lord?
THE COURT: Yes.

(EXHIBIT 1059-2 - TAB 2, LETTER FROM N. FITZSTUBBS TO DAVIE)

THE COURT: And you want to read page 2?
MR. MACAULAY: Yes, my lord, top of the page.
THE COURT: Yes. Thank you.
MR. MACAULAY:
Q Where he says:

"As an instance of the insidious manner in which it is their wont to excite the minds of the people and keep them in a ferment of suspicion and anxiety, two nights ago arrived a Methodist crew, and one of its members was at once despatched to Heguilget (4 miles) to report that two additional canneries are in course of construction above the mouth of the river and, in all probability not a salmon; next year would be permitted to ascend the Skeena. As this year there has been no spring run and the second one up to now only very light, the prospect of a salmon failure thus held up to them is neither cheering nor calculated to induce cordial feelings towards ourselves."

And then he goes on to recite that he had to deal with a deputation of very worried Indians. Have you seen that letter before?
A Do you know which file it is from?

Q Oh, you mean the -- which RG10 number?
A Or whereabouts, yeah. I mean, that's the easiest way for me to have some sense of documents and what there are. There are so many that it's difficult to be certain about particular documents. And the previous one is a file that I have examined, but this one doesn't have any such indication.
Q Well, I'm sure we can find out at the adjournment if that's makes any difference to you.
A Well, it would. I can't recall this particular document from the contents. I have examined a number of Fitzstubbs' letters from Hazelton, and I have examined files from the PABC collection, the GR429, but I'm not sure about this one.
Q Well, it would appear from those letters, wouldn't it, that the missionaries were stirring up a good deal of mischief in and around Hazelton in 1888, '89?
A Well, again, I would like to read through these to assure myself of the context, to have these events in full.
Q And you did tell his lordship again this morning, didn't you, that it was fashionable for whites to blame things on missionaries, to blame Indian protests on missionaries?
A That was certainly very common. It's there contained in a number -- in a variety of different documents, both official and otherwise. It's contained within the newspapers. And I should add equally too that there are responses by missionaries denying and refuting such accusations.
Q Well, I draw your attention to this about the statements -- this is the statements enclosed with the letter that you had seen -- that these statements were made -- were translated by Margaret Hankin, and you've heard of her?
A Yes.
Q And Margaret Hankin was the -- was a Tsimshian?
A No.
Q What was she then?
A She was the daughter of Donald McAuley, who was a Hudson's Bay employee, and I believe a Coast Tsimshian woman, so she was a half breed. I'm not sure where she was raised, which culture she was raised in.
Q Well, whatever culture she was raised in, she understood the Tsimshian or the Gitksan language?
A She was employed as a translator on a number of occasions from 1888 and after.

Q That doesn't answer my question though. Are you satisfied that she understood the Gitksan language?
A I'm really not in a position to evaluate that. I know that she was employed as an interpreter.
Q Do you -- well, you're not in a position to challenge her translations?
A I'm not in a position to judge. All I can say is that I know that she was employed as -- as an interpreter, both by Fitzstubbs and later by her second husband, Richard Loring, for the Department of Indian Affairs. I assume that she had the familiarity with the Gitksan language. She spent some time there amongst the Gitksan people. How accurate she was, I'm not in a position to judge.
Q She was a translator of the proceedings in August, 1888 --
A She was.
Q -- when all the chiefs met with Roycraft and Fitzstubbs?
A Yes, she was.
Q Now, if the missionaries were indeed saying that every storekeeper was here to cheat the Indians, that would stir up a certain amount of trouble, wouldn't it?
A Well, that might depend on what the Indians' perceptions of that statement was. If in fact that could be seen to be the truth, then they might justifiably be somewhat angry. I mean, if it was a totally outrageous statement and had no relevance to their lives, I suspect it would probably have been justifiably ignored.
Q Do you think it's likely the Indians would have ignored it?
A Well, that, as I said, depended upon the -- could depend very much upon how reasonable the statement -- they viewed the statement to be and how far it related to their own experiences. And one must remember that these incidents are taking place very shortly after a fairly dramatic incident, and that is very much part of the context here.
Q What leads you to believe that these statements only started after the dramatic incident you're talking about? This is the first time they're recorded, isn't it?
A Well, do you have any evidence to suggest that they precede this?
Q We'll look after that. And if they were told that the white men were bearded devils in their church

gatherings, what effect is that likely to have?
A It's difficult to say.
Q And if they're told not to trust any white man unless he's a teacher, isn't that likely to cause mischief?
A Well, again, I mean, one has to sort of go back to what their experiences were. I mean, the Indians were perfectly capable, it would seem to me, of judging statements.
Q And if they're told that the judge was here to deceive them, what effect would that have?
A Well, I'm not sure what effect it would have. It's part of, well, a situation where there was a good deal of uncertainty and I suspect a good deal of unpleasant memories.
Q Of deceit by a judge?
A Well, I don't know deceit by a judge. I'm not sure what the Gitksan perception of the concept of a judge at this point in time would be.
Q Well, at the very least the missionaries were playing on the Indians' susceptibilities and distrust, weren't they?
A Well, if there was a distrust that existed beforehand, one could perhaps agree with that.
Q Well, what had happened immediately beforehand was that the Indians had been told that their old law of reciprocal killing was at an end?
A That was the statement I believe that Fitzstubbs made, yes.
Q Well, it wasn't just a statement. Indians were being taken down the river and tried for reciprocal killings?
A One Indian was, I believe.
Q You're talking -- there was Haatq?
A Haatq was, yes.
Q And how about the Kisgegas reciprocal killings that happened at the same time?
A I think he died shortly after he was arrested, brought in by -- well, he was coming in on his own. He was nearly dead at the time. Louie accompanied him I believe as far as Hazelton, but I don't think he went any further. I'm not sure about that.
Q You mean he died before trial?
A Well, I'm not quite sure what the sequence of events was after him. I believe another document by Loring from 1889, when he arrived, say that he was coming -- he was coming in of his own accord, but I'm not sure about the details on that now.

Q To be taken down the Skeena River to be tried?
A I don't know. I couldn't say.
Q And it appears also from Big Louie's statement that Mr. Pearce was doing what he could to prevent chiefs of Kispiox from taking the Crown?
A Mr. Pearce was. Yes. One must remember that Big Louie was not a disinterested party in this situation at the time.
Q Well --
A That seems to be his testimony. And there's no doubt that in the later incident the -- most of the chiefs at Kispiox refused to accept the badge or the Crown and that in fact Big Louie did and then subsequently went around opposing the application of the -- the potlatch prohibition.
Q And is it your opinion, having read these statements --
A I haven't read these statements.
Q So you can't give your opinion until you've read them?
A Well, as I said before, I think I would like to have read through those again to refresh myself. It's some time since I looked at one document, and I'm not sure that I've seen the other one.
Q Well, I'll refer you to a document that you will have seen many times. My lord, I'm showing the witness an excerpt from the Metlakatlah Inquiry of 1884, that is, the report of the commissioners. The report includes the evidence that was heard by the commissioners as well as the report itself. And I'm drawing the witness' attention first to page iv, Roman numerals. It's the evidence of a Mr. White. It's pages iv and v.
A Could you tell me who Mr. White was?

MR. MACAULAY: Mr. White was then a miner at Lorne Creek or had been.
My lord, could that be tab 3?

(EXHIBIT 1059-3 - TAB 3, EXCERPT FROM METLAKATLAH COMMISSION)

MR. MACAULAY:
Q Now, page iv shows who's giving the evidence. He was sworn. And by this time he identifies himself as manager of a cannery at Inverness.
A Okay.
Q And he's giving evidence about the troubles at Metlakatlah. Now, my lord, if I said that Mr. White

was a miner at Lorne Creek, I'm not certain of that. His then occupation appears from the transcript. And at page v, after describing some of the incidents involving the quarrel at Metlakatlah, he says of Duncan, Mr. Duncan -- this would be about a third of the way down the page towards the end of the first paragraph of evidence.

> "He further went on to say that there were only three ways of acquiring property - by purchase, by finding it" --

A Sorry, I'm not with you.

THE COURT: On page 5.

MR. MACAULAY: 5, yes.

THE WITNESS: Oh, sorry.

THE COURT: Two thirds of the way down that first long paragraph, "He further went on to say," a new sentence.

MR. MACAULAY:

Q

> "He further went on to say..."

A I've got it.

Q And you can take it from the context that it's Duncan.

> "...that there were only three ways of acquiring property - by purchase, by finding it, or by stealing it; that the Government certainly had not purchased this land from the Indians,"

and there he's referring to the Metlakatlah,

> "that they did not find it uninhabited; they did not acquire it by right of conquest, so they must have stolen it."

This is Mr. White's evidence of what he was told by Duncan.

And then towards the bottom of the page he gives what, in effect, was his opinion at the time in response to a question by the Attorney-General. He says right about ten lines from the bottom:

> "It is my belief that this land trouble being agitated by the Indians of the Skeena River is the outcome of the trouble at Metlakatlah.

> They threatened to drive the miners from the gold diggings. They talk of not being afraid of soldiers, and give as their reason that, referring to the disturbances in the United States in which the Government had met reverses, they say, why can't we do the same thing? One of the missionaries at Kitmangar, Mr. Woods, has been posting notices for the Indians on several creeks, telling the white men that the creeks belonged to the Indians, and warning them not to stay. It is bringing the white people and the Indians into antagonism, by writing up these notices."

Now, you've read that, haven't you?

A Yes.

Q And have you seen documents, other documents relating to Mr. Woods' notices?

A Yes, I think there's a reference in the return to an order of 1885, as I recall.

Q Have you any reason to doubt the statement attributed to Duncan?

A Which statement?

Q That the government didn't find the land uninhabited, they didn't acquire it, they must have stolen it.

A Well, that's somebody's interpretation of it.

Q Do you not think --

A Mr. White's interpretation of it.

Q Yes. Wasn't that Duncan's position after his quarrel with the Church Missionary Society?

A Well, I haven't made a close study of William Duncan and what his position was.

Q Well, we'll go to the next -- another portion of this transcript, and for convenience I've -- before we go to that, perhaps we can turn to a document, my lord. This is a document in the Attorney-General's files. Its PABC -- it's -- the cover page says "Lorne Creek Indian Affairs Statements by...White and Haptonstall." Have you seen -- have you looked -- in your researches have you turned up that document dated October 16th, 1884?

A I don't think I've seen this one, no.

Q Well, I can tell you it was in the --

A I know.

Q -- archives.

A Right.

Q It comes from the Attorney-General's department.

A It's the document list. It's the document collection as opposed to the correspondence.

MR. MACAULAY: Yes. Now, this -- the first component -- the first of these two men, Mr. Haptonstall, says -- he identifies himself as being in the country about three years. My lord, I have a -- I've done a transcript of these pages. These pages are identified on the transcript for your lordship's assistance and that of the witness.

THE COURT: Is the typewritten transcript intended to be verbatim?

MR. MACAULAY: Yes, my lord.

THE COURT: Yes. All right. And this is a transcription of a document, is this?

MR. MACAULAY: Of this document.

THE COURT: What is the document; do we know?

MR. MACAULAY: Well, it's a statement of two men --

THE COURT: I see.

MR. MACAULAY: -- in the files of the Attorney-General. At one time in the files of the Attorney-General, now in the archives.

THE COURT: Something that somebody comments or evidence or something like that?

MR. MACAULAY: That's right, my lord. White eventually gave evidence. We've just seen some of his evidence.

THE COURT: Yes.

MR. MACAULAY:

Q I don't believe Haptonstall did.
And you haven't seen this before?

A No, I haven't.

Q Well, I am -- I draw -- first of all, he says he was in the country about three years and that he was one of the discoverers of Lorne Creek on the Skeena when he identifies where it is, and then he goes on to identify the various Indian villages around Lorne Creek, including the Forks and Kitwanga. And at the bottom of the page he says, starting right at the bottom:

> "...the miners have got along well enough with them,"

referring to the Indians, and then over the page to the second page,

> "but they have made threats to drive us off - the Chief of Kitwongars told me they proposed

to come and hold a council and they would know what to do. They claimed we were taking gold out of their country that they had received letters expressing surprise such a state of things was allowed - Johnny Bryant (Lorne Creek) has a woman who said these letters had come from Metlakatla."

Now, the letters from Metlakatla, any letters that the Indians had from Metlakatla would have come from Tomlinson, wouldn't they, likely come from Tomlinson?

A Well, he would be one -- one potential source, yes. I -- but I -- I would think that there would be Indians who could write at Metlakatla at this time.

Q But the people who were writing at Metlakatla about Lorne Creek, there was only one person writing about Lorne Creek at Metlakatla at that time, wasn't there?

A No, there were at least two Indians from Kitwanga who spent the preceding year at Metlakatla, and I think they -- I don't know what, if any, communication they may have had, but they included -- there's a letter from Denahap and Edward Stuart included in the return to an order of 1885.

Q About Lorne Creek?

A I can't remember the exact contents of that letter. It's in one of the things. One could look and see exactly what it says.

Q Were they written by them or for them?

A This was one -- one letter. It was written -- I can't remember who it was written to any more. My point being that they could have also have communicated from Metlakatla with Indians at Kitwanga.

Q What were they doing at Metlakatla?

A I'm not sure exactly. They were associating in some form or another with Duncan. Whether they were going to school there or -- or what exactly they were doing, I'm not sure.

Q They were on the Duncan side?

A Well, they were at Metlakatla, and I -- well, what do you mean exactly by the Duncan side?

Q Well, there were two distinct parties daggers drawn in Metlakatla, weren't there?

A If you're talking about the opposition between Bishop Ridley and William Duncan, yes.

Q Or the magistrate and William Duncan?

A I can't recall who the magistrate was at that time.

Q Clifford.

A I don't --
Q Or Elliott.
A -- think he was the magistrate there. Who was the magistrate?
Q Elliott.
A Was he at Metlakatla at that time? I can't recall. I haven't studied in detail who was at Metlakatla when.

MR. MACAULAY: My lord, it's 12:30.
THE COURT: All right. Two o'clock then.
THE REGISTRAR: Order in court. Court stands adjourned until two o'clock.

(EXHIBIT 1059-4 - TAB 4, STATEMENTS OF WHITE AND HAPTONSTALL DATED OCTOBER 16, 1884

(PROCEEDINGS ADJOURNED AT 12:30 P.M.)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein to the best of my skill and ability.

Leanna Smith
Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RECONVENED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: Order in court.
THE COURT: Macaulay.
MR. MACAULAY:

Q Yes. My lord, the witness asked about the source of Fitzstubbs' letter of July 24th, 1889. I believe that was marked as tab 2, and we found it in the PABC GR 419 Box 48 file 18921.
A Thank you.
Q Oblique stroke 140. That must be page 140?
A Yes.

MR. MACAULAY: I don't know if that last one, the last document, Mr. Haptonstall's statement, has been marked yet. Could that be marked tab 4?
THE COURT: I think it was.
MR. MACAULAY:

Q It was, yes. And well, it appears, witness, it appears from Mr. Haptonstall's account that the chief of the -- the head chief of one of the chiefs of Kitwanga told the miners that they would have to get out of Lorne Creek; is that right?
A I don't have that document in front of me at the moment.
Q Oh --
A If I could do that.
Q It's page -- the top of page 2 in the document?
A Yes. That conforms with some other documents which indicate a similar set of events.
Q And a complaint the residents of Kitwanga made was that the miners were taking gold out of their territory?
A That's this person's interpretation of it. The other interpretation that was put forward was that they were also damaging the hunting.
Q And, yes, and it appears that the -- there were letters from Metlakatla addressed to people in Kitwanga on this subject according to this statement?
A Yes, I see the statement now.
Q Yes. Now, if you turn to page 5 --
A The fifth page?
Q -- of the handwritten version?
A With the transcript?
Q Oh, well, the transcript, page 3. It starts "J.E. White".
A Right.
Q And according to J.E. White, and this is apparently

the same J.E. -- Mr. White that we saw whose evidence that we were looking at just a minute ago before the inquiry, White said that Duncan told him and told Mr. C. H. Clough, that's C-l-o-u-g-h, at Metlakatla about ten days earlier there are only three ways of acquiring property, by finding it, by purchase, finding it or stealing it. So he had given this statement to the Attorney-General before he gave the evidence at the inquiry?

A Mr. Haptonstall?

Q Beg your pardon, Mr. White had already --

A Right, sorry, yes.

Q And Mr. White goes on to say that these statements were made in the presence of some Indians including one named Edward Mather who understood English?

A Yes.

Q Now, if you will turn to the bottom of the sixth page of the handwritten version or the -- towards the bottom of page 3 of the transcript, you will see that Haptonstall had a comment to add to White's -- well, perhaps we should start with White's comment to this effect:

> "When the Metlakatla Indians come to work at the canneries they are friendly and peaceable, but when they get back to Metlakatla strife arises as between Duncans & the Bishops adherents."

You see that?

A Yes.

Q And that's the quarrel between Ridley and Duncan, isn't it, that he's referring to and their adherents?

A And it refers to the loss of church missionary land. What I mean by that is the buildings and facilities that Duncan's Metlakatla Indians had spent some considerable time in building, invested time and money in, and they lost control of that to a relatively small group of Indians who were on the bishop's side, as you said. I should point out too that I think at this point in time the bishop was also the magistrate.

Q Well, wasn't Mr. Elliott the magistrate?

A I was looking at the extract from the Metlakatla commission that you put in.

Q Yes.

A And there's an indication there that the bishop was the magistrate. Okay. "Mr. Duncan told me that he

tried to stop them but he could not do it. I went back to the mission house and the bishop who was then a magistrate read the Riot Act."

Q Yes, I see that. That's -- he read the Riot Act at Metlakatla?

A That's what I take it to mean. Yes.

Q Well, that followed a incident in which Duncan's supporters, Indian supporters, had taken the window frames and other fittings from the church and were about to remove them?

A It's part of the whole set of events that surrounded their loss of that, what is it, two acres I think in total, but also the facilities that they had spent I guess in toll some what, I don't know, 18, 20 years erecting at that point. My point is, of course, that the Indians had fairly direct experience of the loss of land and facilities at this point in time.

Q It also appears that according to White that Duncan said that these Indians, referring to the -- presumably to the Metlakatla Indians, will not allow one inch of their ground to be taken from them, they will all be hanged first?

A Well, it was a very tense and tumultuous situation. I mean, sometimes in those situations the rhetoric runs ahead of wisdom.

Q Perhaps we can turn to the next -- to another portion of the Metlakatla inquiry report. This, my lord, is Mr. Tomlinson who's called to give evidence, the Reverend Mr. Tomlinson. That's at tab 8 at Roman numeral 71, LXXI, and 72.

At page 71, witness, you will see this is the proceedings of Saturday, November 22nd, 1884, and Mr. Tomlinson, who must have been giving evidence earlier, was recalled. That's what appears at page 71, and then over at the following page is some of his evidence, and I draw your attention particularly to the following. Near the top of the page Mr. Davie asks: "What is the reason that the Indians would not accept Mr. McKay?" Now, let's stop there. Do you know who Mr. McKay was?

A He was the first Indian Agent appointed to serve the North-west Coast Agency I believe in 1883 or 1884. I'm not sure as to the exact date.

Q And the Metlakatla Indians refused to acknowledge his authority; is that right?

A I forget the exact words that -- that's what it amounted to. I mean, he stayed there a relatively

short time. They refused to accept him certainly.
Q And that was Mr. Duncan's followers who were -- who refused to accept McKay?
A As best as I can recall. As I say, I've read this through at some time some years ago. I haven't made a detailed study or analysis of these events. I'm aware of them in sort of general outline.
Q And --
A But I think that is accurate.
Q And the position that the Metlakatla Indians took was that the Indian Act did not apply to them?
A I'm not sure at that point. I mean, if it --
Q Anyhow, the question here was, as you can see, what is the reason that the Indians would not accept Mr. McKay, and the answer:

"They said to Mr. McKay himself that they did not feel that the Indian Act, while, good in itself, was intended for or suitable for Indians in their position, and that as he came as an agent appointed to carry out that Act his presence amongst them would be useless, as the Act was not in force. At the same time they disclaimed all personal animosity to him."

That appears to have been Mr. Tomlinson's answer?
A Yes.
Q And now further down the page a little more than half-way down there is a question. The question was:

"Q What do you think about it yourself? Why do you consider it not in force?
A I consider it a special Act and not one of the laws of the land."

You see that?
A Yes.
Q Now, I'm not going to ask you what he meant by that, but that appears to be a further Tomlinson answer?
A Yes.
Q And then Mr. Davie, the Attorney-General, said this:

"Q It is recognized by all authority to be the law, and it is not a question for you or for the Indians to discuss whether the law be right or whether it be wrong. There is not

the slightest doubt that this Act is in force. Do you know it is in force?
A I give it as my opinion that it is not in force.
Q On your oath, you do not believe that Act is in force?
A On my oath, I do not believe that that Act is in force."

And Mr. Elliott says:

"Q And you told the Indians that?
A I could not say whether I did or not."

So that appears to be part of Mr. Tomlinson's evidence?

A Well, yes. He doesn't say which Indians that are being referred to here.
Q Well, it appears that the Metlakatla inquiry -- that they were dealing with Metlakatla Indians?
A Well, yes. Okay.
Q I don't think much there's much doubt of that.
Now, it seems then, doesn't it, from that evidence of Tomlinson's, that he, Tomlinson, did not consider the Indian Act to apply to the Metlakatla Indians?
A Yes.
Q And the Metlakatla Indians were of the same opinion? I'm going back to the top of the page where he's describing the -- what the Indian position was.
A Could you just repeat that question for me, please?
Q Well, it appears that the Metlakatla Indians were of the same opinion as Tomlinson, that is, that the Act did not apply to them?
A Whereabouts is that stated?
Q Well, the question was:

"Q What is the reason that the Indians would not accept Mr. McKay?
A They said to Mr. McKay himself that they did not feel that the Indian Act, while good in itself, was intended for or suitable for Indians in their position, and that as he came as an agent appointed to carry out that Act, his presence amongst them would be useless, as the Act was not in force."

He's reporting what the Indians were saying to

McKay?
A Right. Yes. Yes.
Q So we gather from that that the Indians considered the Act did not apply to them?
A Yeah, I think wasn't there some sort of special, I don't know, improvement act or something that was involved in this business here? I can't remember. As I say, I haven't looked at these events in detail.
Q Well, I'm not going to ask you to give your opinion on what the law was, what the Indian Act provided at that time, and I wouldn't expect that unless what a witness who were an expert in that narrow field would know, but that's right, there was some special provision that might have been invoked?
A I was just thinking that that is part of the context --
Q Yes.
A -- for these events.
Q Yes.
A As I say, I don't know that in any detail whatsoever.

MR. MACAULAY: Now, can I draw your attention to another -- some other evidence. My lord, this is the evidence of Clifford, C.W.D. Clifford, at page Roman numeral 6 of the Metlakatla commission. According to the transcript his occupation was then that of miner.

THE COURT: Mr. Macaulay, I was given three copies of this. I assumed there was something coming to me later.

MR. MACAULAY: No, we were asked for some extra copies by the registrar.

THE COURT: I've got one. Do you want it marked?

MR. MACAULAY: Yes. Could that be marked, my lord?

THE COURT: Yes.

MR. MACAULAY: Next tab.

THE COURT: That will be 1059-5.

THE REGISTRAR: Yes, my lord.

(EXHIBIT 1059-5: Excerpt from Metlakatla commission evidence of C. CLifford, page Roman numeral 6)

MR. MACAULAY:
Q Five.
Now, you'll see that Clifford was giving evidence about things he observed at Lorne Creek where he was a miner, and half-way down the page he was asked:

"Q Do you know anything of the posting of notices?

A I saw one of them myself, signed by Woods and five Indians. They posted three notices on Lorne Creek, saying that the land belonged to the Indians, and requested them not to burn the timber, and Harry McDames received a letter from Mr. Woods stating that he had better look out; that he had been indulging in immoral practices, and not only him but other miners had better look out. McDames told them the miners were quite prepared for trouble. All the Indians that I have spoken to told me that they had been taught by the missionaries that the white men were coming into the country to rob them of the land; that all the land belonged to the Indians. They also told them that in Canada the Government always bought the land and paid for it, but in this country the Government were not giving the Indians anything; the government were thieves and robbers. The missionaries - Green on the Naas, Crosby at Fort Simpson, Duncan at Metlakatla, and Tomlinson at Metlakatla - are the only ones I know of who have taught these things. Tomlinson went up to the Forks of the Skeena last summer, and the Indians say he told them that they had the sympathy of the Metlakatla Indians in trying to drive the white men out of the country. They further told me he condoned the offence of Yeomans, and said, 'You have your Indian laws and you take a life for a life, and the white man has as much right to respect your laws as you have to respect his, and you have the sympathy of the Indians at Metlakatla' Tomlinson also told me that he thought the Indians had a perfect right to arrest any white man who came on a reservation and did anything contrary to the wishes of the Indians and their rules."

That's some evidence that Clifford gave?

A Yes. He was -- he had been a miner in the area for -- of the north-west for sometime. He was later the Hudson's Bay Company clerk at Hazelton and the person about whom the Indians entered a number of complaints about the way that he had treated them in a meeting of

1888.

Q You mean the speech of the last of the chiefs who spoke at that 1888 meeting?
A Yes.
Q Where they referred to the Hudson's Bay Company?
A Clifford was the clerk at Hazelton, the store at Hazelton at that time, yes.
Q Well, it seems from that that Mr. Woods was -- Mr. Woods was the -- a missionary at Kitwanga, was it?
A He's a church missionary, society missionary, as I understand it.
Q Yes. And he was posting notices for and with the Indians about land ownership?
A Yes.
Q And Tomlinson was telling Clifford that he thought that the Haatqs had been justified in killing Yeomans?
A That seems to be Clifford's version of it anyway.
Q And that Tomlinson said that the Metlakatla Indians sympathized with the Gitksan in the Gitksan's attempt to drive the whites out?
A Again, that's Clifford's version of what Tomlinson said.

MR. MACAULAY: Yes. Could that be marked the next --
THE COURT: Yes, 1059-6.

(EXHIBIT 1059-6: Excerpt from Metlakatla commission numbered 11421, re - Clifford)

MR. MACAULAY:

Q The next one is, my lord, at page 12, Roman numeral 12 of the Metlakatla commission. It's the evidence of Mr. Walter Anderson, Walter B. Anderson, a constable. Mr. Anderson's name appears at the bottom of page 12, and the evidence is actually at the top of page 13 or on page 13. And Mr. Elliott asked this question of the constable:

"Q Did you happen to be present when Mr. Tomlinson and Mr. Duncan came in?
A I was there.
Q Do you remember any statement made by Mr. Tomlinson in regard to the feeling of the Indians about the Lorne Creek mines?
A Yes. He said in speaking of the Metlakatla troubles that the Indians up about the Forks of the Skeena, or up the Skeena, were in a very discontented state of mind concerning

> the coming of the miners to Lorne Creek, and they wished, or intended, claiming compensation for the loss of game which they thought was being driven away by the miners. He upheld them, and said he thought it was quite true that the game would be driven away, and that the Indians in consequence would lose money by it. He warmly backed them in that; and then when I asked him if he would kindly specify what game he meant, he said fur-bearing animals, such as beaver, mink, marten and bear. Compensation was to be paid from the government"

A "Claimed from the government".
Q "Claimed". Sorry, "claimed from the government." You're right. And that was the constable's evidence about -- concerning what Tomlinson was saying about Lorne Creek?
A That's Anderson's interpretation, yes.
Q Yes. Is it your understanding that the Indians had two complaints, one about the animals and the other about gold being taken away from Lorne Creek?
A And there seems to be also some concern about damage by fire in terms of the forest which obviously affect the game. I mean, it's -- generally speaking it's a concern about access to land and resources of the part of the Kitwanga territory.
Q Do you know when Duncan and the Church Missionary Society parted ways, what year?
A I'm not sure exactly when he quit, if that's what you're referring to specifically.
Q Well, he was fired wasn't he?
A Maybe that's the way that it did come out in the end. I'm not -- I can't keep the details of that very complicated sequence of events in my head I'm afraid. I know that 1887 was the year that Duncan departed from Metlakatla for Alaska and established a new mission village at the site of New Metlakatla on Annette Island I believe it was.
Q But the -- well, my instructions are that the bishop gave him a letter, handed him a letter of dismissal in 1881?
A I'm not in a position to disagree with you. I'm just not -- I don't have that -- those facts in my head I'm afraid.
Q And my instructions are that the -- the troubles

between the two groups of Indians, the followers of Duncan and the followers of the bishop, became so severe that there was a -- the Metlakatla inquiry or commission?

A Yes.

Q That was the purpose of it?

A It was -- yes. I mean there had been a considerable degree of discontent at Metlakatla as a result of a very complex and complicated dispute which involved ecclesiastical matters and theological matters and also control over land and facilities at Metlakatla.

MR. MACAULAY: Could that last Anderson's evidence be marked as the next exhibit, my lord?

THE COURT: Yes.

THE REGISTRAR: Dash 7.

THE COURT: Dash 7.

THE REGISTRAR: Yes.

(EXHIBIT 1059-7: Excerpt from Metlakatla commission re Anderson's evidence)

MR. MACAULAY:

Q And do you know that one of the issues -- I think you do know one of the issues that caused a lot of heat at Metlakatla was who had the right to occupy the two acres of land that had been set aside as a reserve by Governor Douglas many years earlier?

A Well, I take that to be the church missionary site that Duncan had settled on and had built a number of -- there were a number of buildings situated on there and that's the -- what the Indians who lived there had spent some time sort of, and energy, in building, and as a result of what started out as an ecclesiastical dispute spilled over into who should have control of that particular site and facilities as I understand it.

Q And the Metlakatla Indians set up their own council, a sort of parliament?

A Again, I'm not sure about that point.

Q Could the witness be shown a letter to Sir John A. Macdonald from Tomlinson dated April 9th, 1885? It's -- we've made a transcription of that, my lord. It's a typed letter. Oh, no we haven't got -- I'm sorry, it's a typed letter, and I hope that will -- the transcription won't be necessary. Have you seen that letter before?

A Could you tell me where it's from?

Q You mean what archive?
A The file and archive, yes, if possible.
Q Well, we can get that for you. I haven't got it.
A As I say, it is a considerable help in allowing me to figure out -- I mean, I have a much better idea of which groups of documents that I looked at than any specific document.
Q Oh, well, I can tell you it's a conventional source, but I can't tell you which of the conventional sources?
A Do you know if it's an IG10?
Q I'll find that out.
A Thank you. Well, sorry --
Q You were going to say something about it?
A No, I was going to ask you to characterize it or let me read it, one of the two.

MR. MACAULAY: Oh, well, perhaps the witness can take a couple of -- two or three minutes to read it, my lord.

THE COURT: Certainly.

THE WITNESS: No, I haven't seen that document previously.

MR. MACAULAY:

Q It appears here that Tomlinson had become the spokesman of the Nishga. He doesn't use that term, but he's talking about the people on the Nass?
A In part. He may -- I also took it that he was referring to the Gitksan too. His geography is a little unclear at times. It's not --
Q Well, in fact he had become the spokesman for the Gitksan on Lorne Creek a year earlier hadn't he?
A Well, that's what I took the reference to the gold mining beginning in 1883 to be referring to and that is --
Q But the occasion of this letter is a gold strike on the Nass?
A It's not clear to me that there's a gold strike on the Nass. It talks about the headwaters of the -- talks about the Nass Valley, "a tract of country east of the Cascade range of mountains some 200 miles square about the head waters of the Skeena and Nass Rivers", which I take not to be Nishga territory. I take that to be Gitksan territory.
Q You think he's talking about the Gitksan, about Lorne Creek then?
A Well, I find it somewhat confusing as to what he is talking about. I mean, he's talking about the country inhabited by these tribes is commonly known as the Nass Valley, and which I would agree with you would

seem to imply that he's talking about the Nishga. Then he continues, the section that I read about the headwaters of the Skeena and the Nass Rivers, which I take not to be Nishga territory but to be Gitksan territory. Then there's a reference about the gold rush in 1883 which I thought, and I may be wrong in this, that it was a reference to Lorne Creek. I don't know if there was a gold rush on the Nass Valley in 1883. That is possible. I can't recollect that.

Q Well, under his item number 2, the cause and nature of the trouble as he characterizes it, he says:

> "Until the autumn of 1881 the intention of these Indians had not been called to the possibility of their lands being interfered with."

A Which Indians are we talking about here?

Q Well, I'm going to suggest to you it's not the Gitksan.

A It's not the Gitksan?

Q Because he says in that year --

A Which year?

Q 1881.

A 1881. All right.

Q In the autumn of 1881 Mr. O'Reilly --

A Oh --

Q -- started marking off reserves.

A Yes, that certainly refers to -- well, the mouths of the Nass and Skeena Rivers.

Q Uh-huh.

A And that is Nishga territory, and also Coast Tsimshian territory, so there's another level of confusion about exactly whom he is referring to here. So we have three potential -- we have all of the main Tsimshian speaking groups, it would seem to me, referred to in this. Now, I may be wrong in that.

Q That's how you take it?

A Well, they seem to -- they seem to be references.

Q Well, that's fair enough. And under his third item, item number three, he says:

> "Wishing if possible to prevent an outbreak or blood shed, I consented to act as the mouth piece of the Indians, whose language I thoroughly understand, in bringing the matter before the Provincial Authorities."

A Well, that may well be a reference to the letters and petitions. There was the letter that is from the chiefs of Kitwanga --
Q Yes.
A -- which talks about their lands and territories and their system of ownership.
Q And he goes on to say that the provincial government's position was, and he quotes:

> "We dare not make a precedent by acknowledging hunting or other rights. We have nothing to do with the Indians, only insofar as keeping the peace. Beyond that they are under the Dominion Government. Let them deal with them as they like. We won't let the Indian keep out the white man, and if by the advent of the white man the Indian suffer, let the Dominion Government see to that."

That's his description of the -- what the province sets is his characterization of the province's position?
A Yes.
Q And he goes on to say "What with", and I'm quoting from his letter again now,

> "What with Mr. O'Reilly's utterance on the one hand and the decision of the Provincial Government on the other, it can hardly be wondered at if these Indians come to the conclusion that the only chance they have is to look after their rights themselves; and this leads me to the fourth point."

You see that? This is Tomlinson's position?
A Yes, and I think something close to that was contained in one of the letters, wasn't it, to the provincial government from the Indians?
Q And under item number four he says, amongst other things: "The provincial government refused to consider the matter." You see where he starts his item number four?
A Yes, I'm just looking for the section that you were quoting.
Q Oh, it's about ten lines down from the top.

A Yes, I'm with you now.
Q He says:

"The Provincial Government refuse to consider the matter; and, as they have permitted a body of goldminers to go into the district fully armed, the Indians may consider this as a challenge and arm themselves too."

And makes comments about the kind of people miners are?
A Yes.
Q Yes. And then further down, further in the next page towards the bottom he says:

"Moreover, the very unsatisfactory state of affairs on the Coast, and more especially at Metlakatla, where the Provincial Government seems to be doing everything in a way most calculated to embitter the minds of the Indians and shake what little is left of their once strong faith in the Justice of the Government, will prevent the Government from obtaining the assistance and support of the Coast Indians."

That's what he says?
A Yes.
Q And in Metlakatla we know what side he is on and he's saying the provincial government has joined the forces of Duncan's in the Metlakatla affair?
A Well, he's saying that the events there would be likely to embitter the Indians and --
Q No, he's saying what the government is doing there is -- has embittered the Indians?
A What the provincial government is doing, yes.
Q Not the bishop, the government?
A Well, was the bishop still the magistrate at this point?
Q I don't know that, but he's saying what -- the provincial government seems to be doing everything in a way most calculated to embitter the minds of the Indians, that's the Metlakatla Indians.
A Well, I mean, if the bishop is still the magistrate, the two might well be equated.
Q In his mind at least the province is acting wrongly at Metlakatla?

A In Tomlinson's mind, yes, this is certainly a criticism of the provincial government, yes.
Q Now, you say you can't tell in the case of this letter which part of the country he's talking about because the description under the first category is too vague?
A Well, I mean, he seems to be talking about several different areas. I mean, the part that we just have been considering clearly refers to Metlakatla.
Q Yes.
A Whereas the initial description is referring to the Nass Valley, and then the later parts as we've indicated. It seems to me that there's some inconsistency in terms of what is being referred to in this letter.
Q And how about the ten tribes he describes --
A Well --
Q -- settled in that district?
A Well, there were seven Gitksan groups, at least four Nishga groups, I think there were nine Coast Tsimshian groups, that's the Fort Simpson and Metlakatla ones, there's Kitsumkalum, there's Kitselas. Then there's the Southern Tsimshian groups, which were Kitkaata and Kitkatsa. Then I think there were also Kitazoo and there may be one other Southern Tsimshian group that one -- are part of the Tsimshian language group. I mean, it's not quite clear to me which ten tribes he is referring to there. That's part of the problem and confusion of this letter.

THE COURT: You wouldn't think of including the Metlakatla?
THE WITNESS: Well, I don't know, your honour. At some points he is referring to the Metlakatla.
THE COURT: He's talking about the Skeena and Nass Rivers?
THE WITNESS: Sorry?
THE COURT: He's talking about the headwaters of the Skeena and Nass Rivers. That wouldn't be Metlakatla?
THE WITNESS: No, not at all. That I take to be Gitksan territory.
THE COURT: Or Gitksan and Nishga?
THE WITNESS: Depending where you draw the line on the headwaters of the Nass, yes. I mean the large -- the majority of the territory, as I understand it, above Kitladamax it was Gitksan territory. So there's a whole set of sort of things, quite confusing things, going on in this letter.

MR. MACAULAY:
Q Well, whoever he is speaking for, Tomlinson has espoused the cause of both coastal and interior

northern Indians?
A Well, certainly if one did -- he's espousing the cause of some part or whole of that list of peoples that I went through I think.
MR. MACAULAY: And now I want to show you -- perhaps that document could be marked, my lord?
THE COURT: I think it is number 7.
THE REGISTRAR: No, tab 8, my lord.
THE COURT: Eight?
THE REGISTRAR: Yes.
THE COURT: Thank you.

(EXHIBIT 1059-8: Letter dated April 8, 1885 to Sir John A. Macdonald)

MR. MACAULAY:
Q The next document I want to show the witness, my lord, this is -- it's a letter to the Kispiox chiefs. It's addressed to the Kispiox chiefs and it's dated 10th of September '85. It's from Tomlinson, but the copy we have, as your lordship and the witness will see from the next document I'll put in, it was copied down by a man named Graham who was a magistrate. He saw the original, he made a copy and sent it on to Victoria, to the Provincial Secretary, so that that's not in -- this is not in Tomlinson's handwriting. Those are the circumstances which we'll develop as we go to another document.
A Graham was the gold commissioner at Lorne Creek.
Q Right. And have you seen this letter before, this is a letter to the Kispiox chiefs from Robert Tomlinson?
A I'm not sure. Can I just read it through quickly?
Q Yes. Yes.
A I think I have seen that. I'm not absolutely sure of that, but --
Q Now, this is the -- it's dated 10th of September, 1885?
A Yes.
Q And he tells the Indian chiefs here, the Kispiox chiefs, that he's working for them with the government not to let the white men take your hunting and berry grounds, that's what he says?
A Yes. I take this as a sort of follow on in a way from his experience at Ankatlas where the Indians who participated in that missionary settlement were from Kispiox.
Q Uh-huh. And we know what he thought about the

government in Victoria by that time, by September 1885?
A It's not clear which government he's referring to in this letter.
Q No, no, but we know from the previous letter which is dated to Sir John A. Macdonald, which is dated April 9th of the same year?
A Well, that could refer to taking the matter up with Sir John A. Macdonald quite as well. I'm not sure if that's what he means here.

MR. MACAULAY: Could that be marked as the next exhibit, my lord?

THE COURT: That's 9?

THE REGISTRAR: Yes.

(EXHIBIT 1059-9: Letter dated September 10, 1885 from R. Tomlinson to Kispiox chiefs)

MR. MACAULAY:
Q By the way, the witness had asked where the previous exhibit had come from, the letters of Sir John A. Macdonald. It's the National Archives, RG2, Volume 467.
A That's Department of Justice.
Q Capital A-1, and small A.
A That's the justice --
Q Is it? Well, I didn't --
A I believe it is.

MR. MACAULAY: Yes. Okay. And the next one I would like to show the witness, my lord, is the letter that brought this along. That's Graham's letter. It's a letter of February 11th of 1886. It's pretty legible. The copy we have from the -- from the archives, but I still provided your lordship and the witness and my friends with a transcription.

THE COURT: It's a substantial item. Should we take the adjournment before we dive into it or would you rather deal with it first?

MR. MACAULAY: I can tell your lordship that the second word of the transcription is not -- doesn't -- I don't intend to put on the Scot's accent. It's a typo.

THE COURT: Well, I have the honour to amend it. You want to take the adjournment now, Mr. Macaulay?

MR. MACAULAY: Thank you, my lord.

THE COURT: All right. Thank you.

THE REGISTRAR: Order in court. Court stands adjourned for a short recess.

(PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein to the best of my skill and ability.

_____
Tanita S. French
Official Reporter

(PROCEEDINGS RECONVENED PURSUANT TO THE AFTERNOON BREAK)

THE REGISTRAR: Order in court.
THE COURT: Mr. Macaulay.
MR. MACAULAY: My lord, we were looking at Mr. Graham's letter. That's -- I believe that's tab 195 of Mr. Galois' collection of documents.
THE COURT: This is?
MR. MACAULAY: Yes.
THE COURT: Oh, I see. All right.
MR. MACAULAY: It's not been marked as such, but it is.
THE COURT: I'm sorry, you're saying Mr. Graham's letter is what again?
MR. MACAULAY: Tab 195 of the Galois collection.
THE COURT: Oh, I see.
MR. MACAULAY: The witness has told us, my lord, that Mr. Graham was the magistrate at Lorne Creek, the gold commissioner and magistrate.
THE COURT: Gold commissioner and magistrate too?
THE WITNESS: Pardon?
THE COURT: And a magistrate?
THE WITNESS: I think that was -- it was usually a gold commissioner and stipendiary magistrate. It was usually a joint appointment.
MR. MACAULAY:

Q It appears from that letter that Mr. Woods ran afoul what's described as the Duncanites at Kitwanga?
A Yes, some of the same disputes that developed at Metlakatla seemed to have developed at Kitwanga also.
Q And it appears also, as you had mentioned, that some of the Kitwanga Indians had been schooled at Metlakatla?
A At least two that I'm aware of. There may have been more.
Q And then it seems that Mr. Woods then left, he left the area?
A Yes. I'm not -- well, he left Kitwanga. I'm not quite sure when exactly that was, but it was sometime shortly prior to this letter I would assume.
Q And then one of the Kitwanga chiefs told Graham that Tomlinson and Duncan were making trouble among them and that a letter had been sent saying the government wanted to take their lands and that the bishop was the same as the government.
A Is that a question?
Q Well, this is what Chief Caulk told Graham?
A That's what's written there, yes.

Q And then there's a recital of the circumstances under which he found the letter that we've just looked at, the previous exhibit?
A Yes.
Q So we have an instance here of Tomlinson sending letters round to the various villages apparently?
A Yes.
Q So it's likely that the letter that was sent to -- the letters sent to Kitwanga from Metlakatla in 1884 were from Tomlinson as well?
A Well, that's one possibility. It's not the only possibility.
Q Well, we have no record of any other person writing about land to the various villages, to Kitwanga or anywhere else, from Metlakatla?
A I can't recall what Stuart and Denahap wrote. I don't think it was from Metlakatla.

MR. MACAULAY: Now, could that be marked as the next exhibit, my lord?
THE COURT: 10.
THE REGISTRAR: Tab 10, my lord.

(EXHIBIT 1059-10 - TAB 10, LETTER DATED FEBRUARY 11, 1886, FROM ALLAN GRAHAM TO THE PROVINCIAL SECRETARY)

MR. MACAULAY:
Q Next I want to show the witness a letter addressed by Mr. Stephenson to Dr. Powell. Dr. Powell was a federal government officer, my lord.
A He was the Superintendent of Indian Affairs for the -- for British Columbia.

MR. MACAULAY: This, my lord, is dated December 9th, 1886.
THE COURT: Which one was the superintendent?
MR. MACAULAY: Powell was.
THE COURT: Powell. All right.
MR. MACAULAY:
Q Stephenson, as your lordship will see, was a -- either a minister or a lay preacher with the Anglican Church.
A I believe he was the successor to Reverend Woods, was he not?
Q It would appear that way. And, my lord, the only transcription -- the letter can be read without great difficulty, but I have transcribed a portion of it, which reads:

> "...he [Edward Stuart]...said things which he affirmed Messrs Duncan and Tomlinson had told

him which had he known I understood all he said I am sure would not have been uttered in my hearing.

There is one, confirming what I showed you in a letter in Victoria.

'Mr. Tomlinson had told him on no account to allow a C.M.S. man to land let alone stay at Kitwangahk; & if white men came, to prevent their landing.'

And that if all the indians rose and opposed the government, sticking up for their rights & preventing the surveys the government would finally yield to them."

Now, the Mr. Stuart, Mr. E. Stuart who's identified in this letter, is that the same Stuart you were talking about?

A Yes, I think it is.

Q Well, it appears they gave Mr. Stephenson a rather rough time, doesn't it, from Stephenson's account?

A I'm not sure that it -- the section that we read talks about not what actually happened to him, but a discussion of some communication with Tomlinson.

Q Well, look at page 3 of the letter itself.

A All right.

Q About seven lines or eight lines down it starts:

"I went to the Forks in about a fortnight. But before that E. Stuart, Denahap & Matthew Harris, broke into the Church, pulled down the bell & stove so as to prevent me holding services or school.

Whilst at the Forks some of them broke open my house and though nothing of importance is missing yet my clothes were strewn over the floor & literally gnawed to pieces by rats. On my return another letter was sent me warning me to go. I took no notice of it but tossed it into the fire. After a while they held a Council headed by this puppet of Mr. Duncan & sent another letter."

So Mr. Stuart and Mr. Denahap and others were making life difficult for Stephenson, weren't they?

A Yes.

Q And then on the last page it appears the following morning he gave accounts of what was going on.

"...E. Stuart, Denahap & two others broke open & took possession of the school."

And at the bottom of that last page he adds a sort of P.S.

"By the way (sic) they told me if I'd join Messrs Duncan & Tomlinson in opposing the Government & oppose the survey here I might stay & they would come to Church," etcetera.

This is what Stephenson's reporting?

A Yes.

Q It appears that the Duncanites at Metlakatla considered the government and the C.M.S. to be their enemies?

A Well, there was quite clearly a conflict at Metlakatla which involved Duncan and the Indians who sided with him and the Church Missionary Society, particularly Bishop Ridley, and the remainder of the Metlakatla Indians, and the government, the provincial government was seen as siding with those group, partly perhaps because the bishop was acting as a magistrate.

Q But the land issue and the church or religious factualism were intertwined?

A Well, yes, yes, as a result, as I understand it, of initially -- well, they became intertwined through the -- through the dispute at Metlakatla.

Q Now, in 1886, when this letter was written, there was no question of a survey anywhere in Gitksan territory, was there, of any survey?

A Well, I took this to be referring to an attempt to survey some land for the Church Missionary Society at Kitwanga, but I'm not sure about that.

Q Does it say that?

A Well, it seems to be referring to Kitwanga and a survey there.

Q Yes. Well, they -- Tomlinson gave instructions, two instructions apparently, not to let a C.M.S. man to land, and if white men came, to prevent their landing; and then he went on to say if the Indians all opposed the government together and prevented surveys, the government would yield to them?

A I'm just looking for the reference to the survey.

Q Well, it's on the first page -- sorry -- page 2 of the letter itself, two thirds of the way down. Tomlinson's instructions on no account to allow a

C.M.S. man to land --
A And then --
Q -- let alone stay.
A

"By the way (sic) they told me if I'd join Messrs Duncan & Tomlinson in opposing the Government & oppose the survey here..."

The letter is written from Kitwanga, so I presume that "here" refers to Kitwanga.
Q Well now, isn't what's happening is that Duncan -- or rather Tomlinson is starting a campaign everywhere against government surveys, in Nishga country, in Tsimshian country, in Gitksan country, against the government and government surveys?
A Well, it seems to me that this letter here -- in this particular instance there is reference to -- to a surveyor at Kitwanga. There was, of course, a Church Missionary Society mission there.
Q Well, there was a Church Missionary Society mission at Hazelton, but they didn't bring a surveyor in?
A Not at that point, no, as far as I'm aware.
Q Or ever?
A The lots were surveyed I think in the 1890s.
Q But not by -- not at the behest of the Church Missionary Society?
A Not as far as I'm aware.
Q No. This is part of a campaign, whose headquarters was at Metlakatla, designed to oppose the government in its -- with particular reference to its surveying of reserves?
A Well, as far as I know, there was no attempt to survey a reserve at Kitwanga at this time, so I can only assume that it was referring to the mission.
Q But there was no attempt to have any survey of any kind at Kitwanga at that time, was there, or for years after that?
A Well, I mean, this -- what it says is -- you've got it here -- if I'd join them and oppose the survey here, in the letter from Kitwanga.
Q Yes. So you don't agree with me that it's just part of a general campaign by Tomlinson against the government?
A There was quite clearly regional discontent through the upper Skeena, the lower Skeena, and the Nishga area at this time, which involved land issues and which involved ecclesiastical issues. It seems to me

that that involved Tomlinson certainly, but it also reflected on the realities that the Indians perceived to a certain extent, and it varied a lot from one area to another.

Q But there was no survey reality for the Indians on the Skeena to perceive in those years? No surveyor had come up the river that you know of for the purpose of -- any purpose other than looking for a railway route perhaps?

A Well, there had -- I mean, there had been those survey parties through. No, this is the only thing that I'm aware of which could be interpreted as referring to a surveyor. There certainly had been surveyors on the Nass River.

Q Yes.

A And there had been a number of incidents there.

Q And there were surveyors down at the mouth of the Skeena?

A There had been in the early 1880s, yes.

MR. MACAULAY: Yes. My lord, could this letter of Mr. Stephenson's to Dr. Powell be marked as the next exhibit?

THE COURT: Yes, that will be 11.

(EXHIBIT 1059-11 - TAB 11, LETTER DATED DECEMBER 9, 1886, FROM F. STEPHENSON TO DR. POWELL)

THE COURT: I'm sure the C.M.S. that's mentioned there refers to the Church Missionary Society --

MR. MACAULAY: Church Missionary Society.

THE COURT: -- not the Columbia Mining & Smelter.

MR. MACAULAY: No, my lord. The C.M.S., as I understand it, was one of the antagonists --

THE COURT: Yes.

MR. MACAULAY:

Q -- in a fierce contest farther down the river. The next one I want to show to Dr. Galois is a letter from Mr. Powell, the same Mr. Powell, to the Indian Superintendent -- to the Superintendent General. And this is a letter -- have you seen this letter before? It's dated March 23rd, 1887.

A I think so, yes.

Q Yes. And the only passage of that letter I want to draw to your attention is the beginning of the second paragraph on page 1 and the top of page -- it ends at the top of page 2, which says:

"I am of (the) opinion that the long license which both Mr. Tomlinson and Mr. Duncan have had to create a feeling of hostility in the minds of the Indians not only against the Church Missionary Society but against the Government in the immediate vicinity of Metlakatla, has had a very prejudicial effect upon these more distant and isolated bands."

And this is in the context of Mr. Stephenson and his troubles?

A Yes.

Q That is, do you agree with that opinion of Mr. Powell's to the extent that the -- the -- the hostility against the government and church had its roots in Metlakatla and its quarrels?

A Well, I think it partially had it there. I think the question of access to land and resources was -- was a more widespread problem and had its creation, shall we say, in more places than simply at Metlakatla. In other words, I think that the mining activity on Lorne Creek was a very significant factor into contributing to the issue having a reality in that particular area.

MR. MACAULAY: Could this be marked as the next exhibit, my lord, this letter of Dr. Powell to the Superintendent General of Indian Affairs?

THE COURT: Yes, 11. I'm sorry, 12.

(EXHIBIT 1059-12 - TAB 12, LETTER DATED MARCH 23, 1887, FROM DR. POWELL TO THE SUPERINTENDENT GENERAL OF INDIAN AFFAIRS)

MR. MACAULAY:

Q Now, there was another commission of inquiry in 1887 into the state and condition of Indians in the northwest coast of British Columbia?

A Yes.

Q And that was in part because of the continuing quarrel and animosity that was going on between the Duncanites and the C.M.S.?

A I think by that time Duncan had left. I'm not sure. He left in 1887. I'm not quite sure when in terms of when that commission was held.

Q Well --

A But it's referring to the issues and the circumstances around that departure in part.

Q Yes. Well, the commission was appointed in September,

'87, and perhaps that's so.
You've read the report of the commission?
A Yes, I have.
Q I'm going to refresh your memory. I'm going to show you the report. My lord, I'm handing in the report itself. I'm only drawing the witness' attention to some part of it. We have the commission itself, then correspondence between the Attorney-General and the commissioners, and then the report addressed to the Lieutenant-Governor.
Now, at page 418 and 419, Dr. Galois, bottom of 418, the very last paragraph 418, top of 419, it appears that the -- those Indians who were associated with the C.M.S. at Metlakatla and Kincolith took a very different position regarding the land question than did the Indians at -- who were led by the Methodists at Metlakatla and at Greenville. Do you agree with that?
A I was just trying to read this.
Q 418, 419 --
A Yes.
Q -- tends to summarize it.
A Yes, he's referring to difference of opinion between those two villages.
Q And at page 420 the commissioners have this to say, and I'm reading now from the bottom third of the page:

"Your Commissioners, while very unwilling to say anything which might engender friction between Indians or their missionary teachers, who belong to different Christian churches or denominations, feel that they would not be fulfilling their public duty were they to fail to point out the curious coincidence of the correspondence between the views held by the Indians and the missionary influence under which they (the natives) are held.
The Indian adherents of the Church Missionary Society, and resident at Kincolith and Metlakatlah, put forward no claim of 'Indian Title' to the lands of the Province. In all matters they express themselves as loyal to the Federal and Provincial Governments, as desiring to come under the 'Indian Act,' and to have among them Indian Agents. On the other hand, the natives of Greenville, on the Naas river, and the Tsimpseans of Port Simpson,

> stations of the Methodist Church of Canada, strongly urge their claim to ownership in all the country, and speak most determinedly as to what shall be their course of action if their claim be not allowed. They repudiate the idea of the provisions of the 'Indian Act' being exercised with regard to them, and decline to receive an Indian Agent. They hardly, especially the Indians of Port Simpson, attempt to veil the expression of their feelings of opposition to the views of the Government. All this seems to have its inception in, and to be a continuance of, the policy inaugurated at Metlakatlah, say in 1881, the date of the severance between Mr. Duncan and the Church Missionary Society. These facts, and the circumstances attending them, demand attention."

You have read that before?

A I've read this report. It's some time since I have, but yes, I have.

THE COURT: What page is that at, Mr. Macaulay?

MR. MACAULAY: That's at page 420, my lord.

THE COURT: 420. Yes. Thank you.

MR. MACAULAY:

Q And didn't the commission find what appears from this correspondence we've been reviewing that the origin and headquarters and motive force behind the Indian title question, whatever its merits, originated in Metlakatla with Duncan and Tomlinson?

A That's the assertion that is contained there, yes.

Q Do you -- well, the letters and documents we've reviewed tend to support that, don't they?

A Yes, but there are other documents, letters which can paint a more complex picture, I think.

MR. MACAULAY: Can you tell his lordship of any land claim in the terms as is expressed by Mr. Duncan or Mr. Tomlinson before 19 -- before 1881?

MR. ADAMS: Well, my lord, perhaps my friend can say what terms are being attributed to Mr. Duncan.

MR. MACAULAY:

Q We'll confine it to Mr. Tomlinson then.

A Could you repeat the question?

Q Can you think of a claim to the ownership of land in terms -- in the kind of terms used by Mr. Tomlinson, a claim to land before 1881?

A Well, there's a section in a document by William Downie when he arrives at Kitsegukla and some Indians come down, and according to the statement as recorded by him, they say that this was their land, and he then gives them some presents and he passes through.
Q All right. Okay.
A That's off the top of my head. There may be other documents that I don't recall at the moment.

MR. MACAULAY: We'll look at those. We'll look at those. But could -- I now show the witness a letter to the -- addressed by -- sorry, my lord, I think what I ought to do now is go back to the tab -- it must have been tab 1, the letter that included the stirring accounts of what had happened at the revival meeting, the Methodist revival meeting in Hazelton in January, 1889.

THE COURT: Did you wish to mark this report?

MR. MACAULAY: Oh, yes, my lord, if I could.

THE COURT: 13.

MR. MACAULAY: Yes.

THE COURT: Yes. All right.

MR. ADAMS: My lord, just for convenience of cross-reference, that's also tab 196, the report, in Dr. Galois' documents.

THE COURT: Thank you. What number is that, 196?

MR. ADAMS: 196.

(EXHIBIT 1059-13 - TAB 13, EXCERPTS FROM REPORT OF COMMISSION - N.W. COAST INDIANS, PGS. 415 TO 425)

MR. MACAULAY:

Q Now, the reason I mentioned that, we haven't got many minutes left this afternoon, Doctor, and you said you wanted to read those statements attached to Captain Fitzstubbs' letter --
A Yes.
Q -- before you expressed any opinion about them, and I was putting to you, I think, that these things that were being said at the Methodist meeting at Kitta Moldoh's house were -- and the other statements, such as those of -- recorded by Peter John and Esther Beresford, were likely to stir up hatred.
A Well, it seems to me what's going on here is an attempt by Pearce as a Methodist to proselytize in Hazelton --
Q Oh, yes.
A -- where there was at that time a Church Missionary

Society mission I think run by the Reverend Field.
Q Yes.
A And there is -- there's some sort of competition going on there, it seems to me. The objective seems to be primarily in terms of conversion, it seems to me.
Q What would telling the congregation that the judge was there to deceive them do to convert them?
A Well, I mean, that's partly in terms of -- of dealing with white people and -- I mean, there's an association there in terms of -- what does he call it -- sins or something. I can't remember all of the documents there now. But there's an attempt to sort of -- well, I don't know quite how to put this, but there are warnings about sort of sin being associated, shall we say, with at least some of the whites and that the Methodist -- conversion to Methodism is the way, I guess, in the end to salvation, and then there are some additional remarks, such as the one that you cite, which go beyond that certainly.

MR. MACAULAY: This goes well beyond any legitimate religious motive, doesn't it?

MR. ADAMS: My lord, is that a theological question?

MR. MACAULAY:

Q Oh, I don't think it's a very deep theological question, my lord. If the witness says, well, that's not his field, well, that's fine, I accept that answer, but he hasn't said that.
A No, it is a statement that -- could you show me where it is exactly?
Q Well --
A I'd like to just see the context of it.
Q Right. I'll read you the whole statement again. It bears reading. Jack Cade --
A Do we know who Jack Cade was?
Q Well, he was obviously a speaker at the Methodist meeting. I don't know anything more than that about him or any of the others, except for Edward Sexsmith, who appears often in these.
A Do we know that he was an Indian?
Q We don't know that.

"Jack Cade said my heart feels good tonight. I wish to speak to you from my heart and tell you just how I feel. Every word that my brothers have said tonight here is true. It is the white man's fault that this village cannot be made Christian. I know it from experience."

And then there's a --

"Often," I think it is, "I used to work in the mines" --

A "When I used to work in the mines..."

Q "...they have often said to me there is no Jesus, no God, and they do everything that is bad and teach it to us. Young men and women have nothing to do with them. Do not go with them or work for them. Look at them," and in brackets, "(pointing to the circle of whites who formed part of the congregation) look at them, they will go home and laugh at us and make fun of our meeting. They always do it, they are nothing but bearded devils, do not trust any white man who comes here unless he is a teacher. Have nothing to do with the whites, they all mislead you. Even the judge is here to deceive you."

That's the context of that statement.

A Yes, it's primarily concerned with miners and the evils that they do and that they should be avoided. I mean, that seems to be the primary emphasis of this statement here. After all, the majority, certainly, of the whites that the Gitksan would encounter at this time would be miners.

Q Yes. There was no -- in 1889, January 1889, this is when this was spoken, there was -- there were practically no whites in the Skeena River, in the Gitksan area; is that right?

A In the Gitksan area?

Q Yes.

A I'm just trying to think.

Q The area now claimed by the Gitksan.

A Permanent residents?

Q Even transients by then.

A My guess -- well, I think -- I mean, we have a reasonable estimation of the population for the mid 1890s, and I wouldn't think it was lot different in 1891. It was probably somewhere between 50 and 100 residents.

Q There were practically no pre-emptions?

A As far as I'm aware.

Q There were -- there was no by this time Lorne Creek?

The Lorne Creek diggings had been worked out, they were gone?
A I think there was some mining still going on, but not a great deal.
Q A few people?
A A few people, yes.
Q There was no government survey in 1880 up to January 1889, or through 1889, except those people looking for a possible route for a railroad?
A Right. It's 1890 that the first -- when Val goes up to initiate the process of allocating reserves, yes.
Q So in 1889 there's none of that?
A No.
Q So there is no white settler pressure on the Indian communities?
A Very little certainly at this point in time. There had been the experience of that in the past.
Q Transient miners?
A Well, more than transient miners on Lorne Creek.
Q Most of the miners at Lorne Creek didn't winter there? Only a half a dozen did, as the records show?
A I think it said 17.
Q Seventeen. But it was in that context that this church group was stirring up hatred?
A Well, I mean, as I said before, I think the -- the significance of the Lorne Creek episode is that it represented the first significant competition in Gitksan territory over access to land and resources, and it seems to me that that was an important development and which gave the Gitksan similar experience to some of the developments that had occurred on the coast.
Q But that had come and gone well before January 1889?
A But the memory of that was certainly there.
Q At Hazelton?
A They would, I'm sure, have been aware of what had happened.
MR. MACAULAY: My lord, it's four o'clock. I understand your lordship --
THE COURT: All right. Are we on schedule, Mr. Macaulay?
MR. MACAULAY: Not -- well --
THE COURT: We'll finish tomorrow, will we?
MR. MACAULAY: Yes, we will.
THE COURT: Yes. All right. Can counsel remind me where I'll find Jack Cade?
MR. MACAULAY: The medieval Cambridge history of England has an entry for him.

THE COURT: I think it's Henry the IV, Part 2, but I'm not sure. I'd like counsel to help me. Thank you.

THE REGISTRAR: Order in court. Court stands adjourned until ten o'clock tomorrow.

(PROCEEDINGS ADJOURNED AT 4:00 P.M.)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein to the best of my skill and ability.

_____

Leanna Smith
Official Reporter
United Reporting Service Ltd.