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/ prepared by Joan Holmes & Associates, Inc. ;
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CHAPTER 81.

An Act respecting Indians.

SHORT TITLE.

1. This Act may be cited as the Indian Act. R.S., c. 43, s. 1. Short title.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,— Definitions.

(a) 'Superintendent General' means the Superintendent General of Indian Affairs, and 'Deputy Superintendent General' means the Deputy Superintendent General of Indian Affairs; 'Superintendent General.'

(b) 'agent' or 'Indian agent' means and includes a commissioner, assistant commissioner, superintendent, agent or other officer acting under the instructions of the Superintendent General; 'Agent.' 'Indian agent.'

(c) 'person' means an individual other than an Indian; 'Person.'

(d) 'band' means any tribe, band or body of Indians who own or are interested in a reserve or in Indian lands in common, of which the legal title is vested in the Crown, or who share alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible; and, when action is being taken by the band as such, means the band in council; 'Band.'

(e) 'irregular band' means any tribe, band or body of persons of Indian blood who own no interest in any reserve or lands of which the legal title is vested in the Crown, who possess no common fund managed by the Government of Canada, and who have not had any treaty relations with the Crown; 'Irregular band.'

(f) 'Indian' means 'Indian.'

(i) any male person of Indian blood reputed to belong to a particular band,

(ii) any child of such person,

(iii) any woman who is or was lawfully married to such person;

(g) 'non-treaty Indian' means any person of Indian blood who is reputed to belong to an irregular band, or who follows the Indian mode of life, even if such person is only a temporary resident in Canada; 'Non-treaty Indian.'

Repealed by S.C. 1919-20, c.50, s.3. (See also s.107 of this Consolidation.)

'Enfranchised Indian.' *(h)* 'enfranchised Indian' means any Indian, his wife or minor unmarried child, who has received letters patent granting to him in fee simple any portion of the reserve which has, upon his application for enfranchisement, been allotted to him, or to his wife and minor children, or any unmarried Indian who has received letters patent for an allotment of the reserve;

'Reserve.' *(i)* 'reserve' means any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, and which remains so set apart and has not been surrendered to the Crown, and includes all the trees, wood, timber, soil, stone, minerals, metals and other valuables thereon or therein;

'Special reserve.' *(j)* 'special reserve' means any tract or tracts of land, and everything belonging thereto, set apart for the use or benefit of and held in trust for any band or irregular band of Indians, the title of which is vested in a society, corporation or community legally established, and capable of suing and being sued, or in a person or persons of European descent;

'Indian lands.' *(k)* 'Indian lands' means any reserve or portion of a reserve which has been surrendered to the Crown;

'Intoxicants.' *(l)* 'intoxicants' means and includes all spirits, strong waters, spirituous liquors, wines, or fermented or compounded liquors, or intoxicating drink of any kind whatsoever, and any intoxicating liquor or fluid, and opium, and any preparation thereof, whether liquid or solid, and any other intoxicating drug or substance, and tobacco or tea mixed or compounded or impregnated with opium or with other intoxicating drugs, spirits or substances, and whether the same or any of them are liquid or solid;

'Territories.' *(m)* 'Territories' means the Northwest Territories and the Yukon Territory. R.S., c. 43, s. 2.

PART I.

INDIANS.

Application.

Governor in Council may exempt from operation of this Part, and remove such exemption.

3. The Governor in Council may, by proclamation, from time to time, exempt from the operation of this Part, or from the operation of any one or more of the sections of this Part, Indians or non-treaty Indians, or any of them, or any band or irregular band of them, or the reserves or special reserves, or Indian lands, or any portions of them, in any province or in the Territories, or in any of them; and may again, by proclamation, from time to time, remove such exemption. R.S., c. 43, s. 3.

Department of Indian Affairs.

Any Minister may be appointed Superintendent of Indian Affairs.

4. The Minister of the Interior, or the head of any other department appointed for that purpose by the Governor in Council, shall be the Superintendent General of Indian Affairs, and shall, as such, have the control and management of the lands and property of the Indians in Canada. R.S., c. 43, s. 4.

S.C. 1924, c.47, s.1.

1. Section four of the *Indian Act*, chapter eighty-one of the Revised Statutes of Canada, 1906, is amended by adding thereto the following subsection:—

Superintendent General to have charge of Eskimo affairs.

"(2) The Superintendent General of Indian Affairs shall have charge of Eskimo affairs."

Department of Indian Affairs.

5. There shall be a department of the Civil Service of Canada which shall be called the Department of Indian Affairs, over which the Superintendent General shall preside. R.S., c. 43, s. 5.

Duties.

6. The Department of Indian Affairs shall have the management, charge and direction of Indian affairs. R.S., c. 43, s. 6.

Appointments by Governor in Council.

7. The Governor in Council may appoint,—

(a) an officer who shall be called the Deputy of the Superintendent General of Indian Affairs, and such other officers, clerks and servants as are requisite for the proper conduct of the business of the Department;

(b) an Indian commissioner and an assistant Indian commissioner for the provinces of Manitoba, Saskatchewan and Alberta, and the Territories, or an Indian commissioner and an asssistant Indian commissioner for Manitoba and that portion of Canada formerly known as the district of Keewatin, and an Indian commissioner and an assistant Indian commissioner for the provinces of Saskatchewan and Alberta and the Territories, except that portion formerly known as the district of Keewatin, and for the Yukon Territory;

(c) an Indian superintendent for British Columbia;

(d) a deputy governor. R.S., c. 43, ss. 7 and 8.

Deputy Governor.

8. The Deputy Governor shall have the power, in the absence of or under instructions of the Governor General, to sign letters patent for Indian lands.

May sign letters patent.

2. The signature of the Deputy Governor to such patents shall have the same force and virtue as if such patents were signed by the Governor General. R.S., c. 43, s. 8.

Schools.

Regulations.

9. The Governor in Council may make regulations, either general or affecting the Indians of any province or of any named band, to secure the compulsory attendance of children at school.

Compulsory attendance.

2. Such regulations, in addition to any other provisions deemed expedient, may provide for the arrest and conveyance to school, and detention there, of truant children and of children who are prevented by their parents or guardians from attending; and such regulations may provide for the punishment, upon summary conviction, by fine or imprisonment, or both, of parents and guardians, or persons having the charge of children, who fail, refuse, or neglect to cause such children to attend school. 57-58 V., c. 32, s. 11.

Power to establish industrial schools.

10. The Governor in Council may establish an industrial school or a boarding school for Indians, or may declare any existing Indian school to be such industrial school or boarding school for the purposes of this and the next following section. 57-58 V., c. 32, s. 11.

R.S., 1906, c. 81 amended.

S.C. 1914, c.35, s.1.

1. Section 10 of the *Indian Act*, chapter 81 of the Revised Statutes of Canada, 1906, is repealed and the following is substituted therefor:—

Power to establish industrial, etc., schools.

"**10.** The Governor in Council may establish an industrial school or a boarding school for Indians, or may declare any school or institution where children are provided with board and lodging as well as instruction, and with the managing authorities of which the Superintendent General has made an agreement for the admission of an Indian child or children, and for the inspection of the school or institution, to be an industrial school or boarding school for the purposes of this and the next following section."

Regulations.

11. The Governor in Council may make regulations, which shall have the force of law, for the committal by justices or Indian agents of children of Indian blood under the age of sixteen years, to such industrial school or boarding school, there to be kept, cared for and educated for a period not extending beyond the time at which such children shall reach the age of eighteen years.

As to application of annuities.

2. Such regulations may provide, in such manner as to the Governor in Council seems best, for the application of the annuities and interest moneys of children committed to such industrial school or boarding school, to the maintenance of such schools respectively, or to the maintenance of the children themselves. 57-58 V., c. 32, s. 11.

Section added.

S.C. 1914, c.35, s.2.

2. The following section is inserted in the said Act immediately after section 11:—

Taking land for schools.

"**11A.** The Governor in Council may take the land of an Indian held under location ticket or otherwise, for school purposes, upon payment to such Indian of the compensation agreed upon, or in case of disagreement such compensation as may be determined in such manner as the Superintendent General may direct."

S.C. 1919-20, c.50, s.1.

1. Sections nine and eleven of the *Indian Act*, Revised Statutes of Canada, 1906, chapter eighty-one, and section ten of the said Act as enacted by chapter thirty-five of the statutes of 1914, are repealed and the following are substituted therefor:—

Power to establish day schools and industrial or boarding schools.

"**9.** (1) The Governor in Council may establish,—

"*(a)* day schools in any Indian reserve for the children of such reserve;

"*(b)* industrial or boarding schools for the Indian children of any reserve or reserves or any district or territory designated by the Superintendent General.

Or to declare any school to be industrial or boarding school.

"(2) Any school or institution the managing authorities of which have entered into a written agreement with the Superintendent General to admit Indian children and provide them with board, lodging and instruction may be declared by the Governor in Council to be an industrial school or a boarding school for the purposes of this Act.

Transport of children to schools.

"(3) The Superintendent General may provide for the transport of Indian children to and from the boarding or industrial schools to which they are assigned, including transportation to and from such schools for the annual vacations.

Regulations to prescribe standards.

"(4) The Superintendent General shall have power to make regulations prescribing a standard for the buildings, equipment, teaching and discipline of and in all schools, and for the inspection of such schools.

Inspection of schools by chief and council.

"(5) The chief and council of any band that has children in a school shall have the right to inspect such school at such reasonable times as may be agreed upon by the Indian agent and the principal of the school.

Annuities and interest applied to maintenance.

"(6) The Superintendent General may apply the whole or any part of the annuities and interest moneys of Indian children attending an industrial or boarding school to the maintenance of such school or to the maintenance of the children themselves.

Children from 7 to 15 to attend school.

"**10.** (1) Every Indian child between the ages of seven and fifteen years who is physically able shall attend such day, industrial or boarding school as may be designated by the Superintendent General for the full periods during which such school is open each year.

Proviso as to religions.

Provided, however, that such school shall be the nearest available school of the kind required, and that no Protestant child shall be assigned to a Roman Catholic school or a school conducted under Roman Catholic auspices, and no Roman Catholic child shall be assigned to a Protestant school or a school conducted under Protestant auspices.

Truant officers and compulsory attendance.

Power to investigate cases of truancy.

"(2) The Superintendent General may appoint any officer or person to be a truant officer to enforce the attendance of Indian children at school, and for such purpose a truant officer shall be vested with the powers of a peace officer, and shall have authority to enter any place where he has reason to believe there are Indian children between the ages of seven and fifteen years, and when requested by the Indian agent, a school teacher or the chief of a band shall examine into any case of truancy, shall warn the truants, their parents or guardians or the person with whom any Indian child resides, of the consequences of truancy, and notify the parent, guardian or such person in writing to cause the child to attend school.

Notice to parents, guardians, etc.

Penalty for guardian, parent or others failing to cause child to attend school, after notice.

"(3) Any parent, guardian or person with whom an Indian child is residing who fails to cause such child, being between the ages aforesaid, to attend school as required by this section after having received three days' notice so to do by a truant officer shall, on the complaint of the truant officer, be liable on summary conviction before a justice of the peace or Indian agent to a fine of not more than two dollars and costs, or imprisonment for a period not exceeding ten days or both, and such child may be arrested without a warrant and conveyed to school by the truant officer: Provided that no parent or other person shall be liable to such penalties if such child, *(a)* is unable to attend school by reason of sickness or other unavoidable cause; *(b)* has passed the entrance examination for high schools; or, *(c)* has been excused in writing by the Indian agent or teacher for temporary absence to assist in husbandry or urgent and necessary household duties."

Exemptions from penalties.

Membership of Band.

Exclusion of natural children from band.

12. Any illegitimate child may, unless he has, with the consent of the band whereof the father or mother of such child is a member, shared in the distribution moneys of such band for a period exceeding two years, be, at any time, excluded from the membership thereof by the Superintendent General. R.S., c. 43, s. 9.

Loss of membership, through residence in a foreign country without leave.

13. Any Indian who has for five years continuously resided in a foreign country without the consent, in writing, of the Superintendent General or his agent, shall cease to be a member of the band of which he was formerly a member; and he shall not again become a member of that band, or of any other band, unless the consent of such band, with the approval of the Superintendent General or his agent, is first obtained. R.S., c. 43, s. 10.

Effect of marriage of Indian woman with any other than an Indian or a non-treaty Indian.

14. Any Indian woman who marries any person other than an Indian, or a non-treaty Indian, shall cease to be an Indian in every respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents: Provided that such income may be commuted to her at any time at ten years' purchase, with the consent of the band.

2. Where a band has become enfranchised, or has otherwise ceased to exist, such commutation may take place upon the approval of the Superintendent General. R.S., c. 43, s. 11; 53 V., c. 29, s. 1.

If band enfranchised.

S.C. 1919-20, c.50, s.2.

2. Section fourteen of the said Act is repealed and the following is substituted therefor:—

Effect of marriage of Indian woman.

"**14.** Any Indian woman who marries any person other than an Indian, or a non-treaty Indian, shall cease to be an Indian in every respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents: Provided that such income may be commuted to her at any time at ten years' purchase, with the approval of the Superintendent General."

Superintendent may commute income.

Marriage of Indian woman with Indian of another band or non-treaty Indian.

15. Any Indian woman who marries an Indian of any other band, or a non-treaty Indian, shall cease to be a member of the band to which she formerly belonged, and shall become a member of the band or irregular band of which her husband is a member.

If she marries non-treaty Indian.

2. If she marries a non-treaty Indian, while becoming a member of the irregular band of which her husband is a member, she shall be entitled to share equally with the members of the band of which she was formerly a member, in the distribution of their moneys; but such income may be commuted to her at any time at ten years' purchase, with the consent of the band. R.S., c. 43, s. 12.

As to half-breeds in Manitoba.

16. No half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian.

Half-breed heads of families.

2. No half-breed head of a family, except the widow of an Indian or a half-breed who has already been admitted into a treaty, shall, unless under very special circumstances, which shall be determined by the Superintendent General or his agent, be accounted an Indian or entitled to be admitted into any Indian treaty.

Withdrawal from treaty.

3. Any half-breed who has been admitted into a treaty shall, on obtaining the consent in writing of the Indian commissioner, or in his absence the assistant Indian commissioner, be allowed to withdraw therefrom on signifying his desire so to do in writing, signed by him in the presence of two witnesses, who shall attest his signature on oath before some person authorized by law to administer such oath.

S.C. 1914, c.35, s.3.

S. 16, ss. 3 amended

3. Subsection 3 of section 16 of the said Act is amended by striking out the words "Indian Commissioner or in his absence the Assistant Indian Commissioner" in the second and third lines thereof and substituting therefor the words "Superintendent General."

R.S.C. 1906, c.81, s.16, cont'd.

Minor children.

4. Such withdrawal shall include the minor unmarried children of such half-breed. 51 V., c. 22, s. 1.

S.C. 1914, c.35, s.4.

S. 16, ss. 4 amended.

4. Subsection 4 of section 16 of the said Act is amended by inserting the words "wife and" after the word "the" in the first line thereof.

Transfer of Indian from one band to another.

17. When, by a majority vote of a band, or the council of a band, an Indian of one band is admitted into membership in another band, and his admission thereinto is assented to by the Superintendent General, such Indian shall cease to have any interest in the lands or moneys of the band of which he was formerly a member, and shall be entitled to share in the lands and moneys of the band to which he is so admitted.

Share of capital.

2. The Superintendent General may cause to be deducted from the capital of the band of which such Indian was formerly a member his *per capita* share of such capital and place the same to the credit of the capital of the band into membership in which he has been admitted in the manner aforesaid. 58-59 V., c. 35, s. 8.

Determination of membership of band.

18. The Superintendent General may, from time to time, upon the report of an officer, or other person specially appointed by him to make an inquiry, determine who is or who is not a member of any band of Indians entitled to share in the property and annuities of the band.

Decision of Supt. Gen.

2. The decision of the Superintendent General in any such matter shall be final and conclusive, subject to an appeal to the Governor in Council. 50-51 V., c. 33, s. 1.

Reserves.

Reserves to be subject to this Part.

19. All reserves for Indians, or for any band of Indians, or held in trust for their benefit, shall be deemed to be reserved and held for the same purposes as they were held heretofore, but shall be subject to the provisions of this Part. R.S., c. 43, s. 14.

Surveys, plans, reports and subdivision into lots of reserves may be authorized.

20. The Superintendent General may authorize surveys, plans and reports to be made of any reserve for Indians, showing and distinguishing the improved lands, the forests and lands fit for settlement, and such other information as is required; and may authorize the whole or any portion of a reserve to be subdivided into lots. R.S., c. 43, s. 15.

Possession of land in reserve.

21. No Indian shall be deemed to be lawfully in possession of any land in a reserve, unless he has been or is located for the same by the band, or council of the band, with the approval of the Superintendent General; but no Indian shall be dispossessed of any land on which he has improvements, without receiving compensation for such improvements, at a valuation approved by the Superintendent General, from the Indian who obtains the land, or from the funds of the band, as is determined by the Superintendent General: Provided that prior to the location of an Indian under this section, in the province of Manitoba, Saskatchewan or Alberta, or the Territories, the Indian commissioner may issue a certificate of occupancy to any Indian belonging to a band residing upon a reserve in the aforesaid provinces or territories, of so much land, not exceeding in any case one hundred and sixty acres, as the Indian, with the approval of the commissioner, selects.

Improvements.

Certificate of Indian Commissioner.

Cancellation of certificate by the Indian Commissioner.

2. Such certificate may be cancelled at any time by the Indian commissioner, but shall, while it remains in force, entitle the holder thereof, as against all others, to lawful possession of the lands described therein. R.S., c. 43, s. 16; 53 V., c. 29, s. 2.

Location ticket in triplicate.

22. When the Superintendent General approves of any location as aforesaid, he shall issue, in triplicate, a ticket granting a location title to such Indian, one triplicate of which he shall retain in a book to be kept for the purpose; and the other two of which he shall forward to the local agent.

Delivery of ticket to Indian.

2. The local agent shall deliver to the Indian in whose favour it is issued one of such duplicates so forwarded, and shall cause the other to be copied into a register of the band, provided for the purpose, and shall file the same. R.S., c. 43, s. 17.

Effect of such ticket limited.

23. The conferring of any such location title shall not have the effect of rendering the land covered thereby subject to seizure under legal process, and such title shall be transferable only to an Indian of the same band, and then only with the consent and approval of the Superintendent General, whose consent and approval shall be given only by the issue of a ticket, in the manner prescribed in the last preceding section. R.S., c. 43, s. 18.

Privileges of Indians having improved lands included in reserves in certain provinces.

24. Every Indian and every non-treaty Indian, in the province of Manitoba, British Columbia, Saskatchewan or Alberta, or the Territories, who had, previously to the selection of a reserve, possession of and who has made permanent improvements on a plot of land which upon such selection becomes included in, or surrounded by, a reserve, shall have the same privileges, in respect of such plot, as an Indian enjoys who holds under a location title. R.S., c. 43, s. 19.

Descent of Property.

Indians may devise property by will.

25. Indians may devise or bequeath property of any kind in the same manner as other persons: Provided that no devise or bequest of land in a reserve or of any interest therein unless to the daughter, sister or grand-children of the testator, shall be made to any one not entitled to reside on such reserve, and that no will purporting to dispose of land in a reserve or any interest therein shall be of any force or effect unless or until the will has been approved by the Superintendent General, and that if a will be disapproved by the Superintendent General the Indian making the will shall be deemed to have died intestate; and the Superintendent General may approve of a will generally and disallow any disposition thereby made of land in a reserve or of any interest in such land, in which case the will so approved shall have force and effect except so far as such disallowed disposition is concerned, and the Indian making the will shall be deemed to have died intestate as to the land or interest the disposition of which is so disallowed. 57-58 V., c. 32, s. 1.

R.S.C. 1906, c.81, cont'd.

S.C. 1918, c.26, s.1.

Will of Indian devising property to be approved.

1. (1) Section twenty-five of the *Indian Act*, chapter eighty-one of the Revised Statutes of Canada, 1906, is amended by striking out the words " no devise or bequest of land in a reserve or of any interest therein unless to the daughter, sister or grandchildren of the testator, shall be made to any one not entitled to reside on such reserve, and that."

(2) Section twenty-five of the said Act is further amended by adding thereto the following subsection:—

Land devised or bequeathed to non-resident, to be sold.

"(2) No one who is not entitled to reside on the reserve shall by reason of any devise or bequest or by reason of any intestacy be entitled to hold land in a reserve, but any land in a reserve devised by will or devolving on an intestacy, to some one not entitled to reside on the reserve, shall be sold by the Superintendent General to some member of the band and the proceeds thereof shall be paid to such devisee or heir."

Distribution of estate in case of intestacy.

26. Upon the death of an Indian intestate his property of all kinds, real and personal, movable and immovable, including any recognized interest he may have in land in a reserve, shall descend as follows:—

One-third to widow.

(a) one-third of the inheritance shall devolve upon his widow, if she is a woman of good moral character, and the remainder upon his children, if all are living, or, if any who are dead have died without issue; or,

Otherwise children inherit the whole.

(b) If there is no widow, or if the widow is not of good moral character, the whole inheritance shall devolve upon his children in equal shares, if all are living, or, if any who are dead have died without issue;

Representation of defunct heir.

(c) If one or more of the children are living, and one or more are dead, having had lawful issue, the inheritance so far as the same does not descend to the widow, shall devolve upon the children who are living, and the descendants of such children as have died, so that each child who is living shall receive such share as would have descended to him if all the children of the intestate who have died leaving issue had been living, and so that the descendants of each child who is dead shall inherit in equal shares the share which their parent would have received if living;

Inheritance *per stirpes*.

(d) If the descendants of the intestate entitled to share in the inheritance are of unequal degrees of consanguinity to the intestate, the inheritance shall devolve so that those who are in the nearest degree of consanguinity shall take the shares which would have descended to them, had all the descendants in the same degree of consanguinity who have died leaving issue, been living, and so that the issue of the descendants who have died shall respectively take the shares which their parents, if living, would have received: Provided that the Superintendent General may, in his discretion direct that the widow, if she is of good moral character, shall have the right, during her widowhood, to occupy any land in the reserve of the band to which the deceased belonged of which he was the recognized owner, and to have the use of any property of the deceased for which, under the provisions of this Part, he was not liable to taxation.

Superintendent General, sole judge of character of widow.

2. The Superintendent General shall be the sole and final judge as to the moral character of the widow of any intestate Indian. 57-58 V., c. 32, s. 1.

Administration of property of minors.

27. During the minority of the children of an Indian who dies intestate, the administration and charge of the property to which they are entitled as aforesaid shall devolve upon the widow, if any, of the intestate, if she is of good moral character; and, in such case, as each male child attains the age of twenty-one years, and as each female child attains that age, or with the consent of the widow, marries before that age, the share of such child shall, subject to the approval of the Superintendent General, be conveyed or delivered to him or her.

Removal of widow from administration.

2. The Superintendent General may, at any time, remove the widow from such administration and charge and confer the same upon some other person, and, in like manner, may remove such other person and appoint another, and so, from time to time, as occasion requires.

Appointment of guardians to minors.

3. The Superintendent General may, whenever there are minor children, appoint a fit and proper person to take charge of such children and their property, and may remove such person and appoint another, and so, from time to time, as occasion requires. 57-58 V., c. 32, s. 1.

S.C. 1914, c.35, s.5.

Section added.

Administering Indian estates.

5. The following section is inserted in the said Act immediately after section 27:—

"**27A.** The Superintendent General may appoint a person or persons to administer the estate of any deceased Indian and may make such general regulations and such orders in particular cases as he deems necessary to secure the satisfactory administration of such estates."

S.C. 1924, c.47, s.2.

2. Section twenty-seven of the said Act, as enacted by section five of chapter thirty-five of the statutes of 1914, is repealed, and the following is substituted therefor:—

Administration of Indian estates.

"**27A.** The Superintendent General may appoint a person or persons to administer the estate of any deceased or insane Indian, and may make such general regulations and such orders in particular cases as he deems necessary to secure the satisfactory administration of such estates."

Death of Indian without issue, widow to inherit, otherwise nearest of kin to inherit.

28. In case any Indian dies intestate without issue, leaving a widow of good moral character, all his property of whatever kind shall devolve upon her, and if he leaves no widow the same shall devolve upon the Indian nearest of kin to the deceased: Provided that any interest which he may have had in land in a reserve shall be vested in His Majesty for the benefit of the band owning such reserve if his nearest of kin is more remote than a brother or sister. 57-58 V., c. 32, s. 1.

S.C. 1924, c.47, s.3.

3. Section twenty-eight of the said Act is repealed, and the following is substituted therefor:—

Inheritance of Indian dying without issue.

"**28.** In case any Indian dies intestate without issue, leaving a widow, all his property of whatever kind shall devolve upon her, and if he leaves no widow the same shall devolve upon the nearest of kin to the deceased: Provided that any interest which he may have had in land in a reserve shall be vested in His Majesty for the benefit of the band owning such reserve if his nearest of kin is more remote than a brother or sister."

Property of a married Indian woman.

29. The property of a married Indian woman who dies intestate shall descend in the same manner and be distributed in the same proportions as that of a male Indian who dies intestate, her widower, if any, taking the share which the widow of such male Indian would take.

Idem.

2. The other provisions of this Part respecting the descent of property shall in like manner apply to the case of an intestate married woman, the word widower being substituted for the word widow in each case.

Idem.

3. The property of an unmarried Indian woman who dies intestate shall descend in the same manner as if she had been a male. 57-58 V., c. 32, s. 1.

In any case location ticket requisite for possession by heir.

30. A claimant of land in a reserve or of any interest therein as devisee or legatee or heir of a deceased Indian shall not be held to be lawfully in possession thereof or to be the recognized owner thereof until he shall have obtained a location ticket therefor from the Superintendent General. 57-58 V., c. 32, s. 1.

Superintendent general to decide disputes.

31. The Superintendent General may decide all questions which arise under this Part, respecting the distribution among those entitled thereto of the property of a deceased Indian, and he shall be the sole and final judge as to who the persons so entitled are.

His powers.

2. The Superintendent General may do whatsoever in his judgment will best give to each claimant his share according to the true intent and meaning of this Part, and to that end, if he thinks fit, may direct the sale, lease or other disposition of such property or any part thereof, and the distribution or application of the proceeds or income thereof, regard being always had in any such disposition to the restriction upon the disposition of property in a reserve. 57-58 V., c. 32, s. 1.

Probate and letters of administration.

32. Notwithstanding anything in this Part it shall be lawful for the courts having jurisdiction in that regard in the case of persons other than Indians, with but not without the consent of the Superintendent General, to grant probate of the wills of Indians and letters of administration of the estate and effects of intestate Indians, in which case such courts and the executors and administrators obtaining such probate, or thereby appointed, shall have the like jurisdiction and powers as in other cases, except that no disposition shall, without the consent of the Superintendent General, be made of or dealing had with regard to any right or interest in land in a reserve or any property for which, under the provisions of this Part, an Indian is not liable to taxation. 57-58 V., c. 32, s. 1.

Trespassing on Reserves.

Only Indians of the band to reside on or use the reserve.

33. No person, or Indian other than an Indian of the band, shall without the authority of the Superintendent General, reside or hunt upon, occupy or use any land or marsh, or reside upon or occupy any road, or allowance for road, running through any reserve belonging to or occupied by such band.

Certain contracts, etc., to be void.

2. All deeds, leases, contracts, agreements or instruments of whatsoever kind made, entered into, or consented to by any Indian, purporting to permit persons or Indians other than Indians of the band to reside or hunt upon such reserve, or to occupy or use any portion thereof, shall be void. 57-58 V., c. 32, s. 2.

Removal of trespassers and their cattle, etc.

34. If any Indian is illegally in possession of any land on a reserve, or if any person, or Indian other than an Indian of the band, without the license of the Superintendent General,—

(a) settles, resides or hunts upon, occupies, uses, or causes or permits any cattle or other animals owned by him, or in his charge, to trespass on any such land or marsh; or,

(b) fishes in any marsh, river, stream or creek on or running through a reserve; or,

(c) settles, resides upon or occupies any road, or allowance for road, on such reserve;

the Superintendent General or such other officer or person as he thereunto deputes and authorizes, shall, on complaint made to him, and on proof of the fact to his satisfaction, issue his warrant, signed and sealed, directed to any literate person willing to act in the premises, commanding him forthwith as the case may be,—

Warrant.

(a) to remove from the said land, marsh or road, or allowance for road, every such person or Indian and his family, so settled, or who is residing or hunting upon, or occupying, or is illegally in possession of the same; or,

(b) to remove such cattle or other animals from such land or marsh; or,

(c) to cause such person or Indian to cease fishing in any marsh, river, stream or creek, as aforesaid; or,

(d) to notify such person or Indian to cease using, as aforesaid, the said lands, river, streams, creeks or marshes, roads or allowance for roads.

Execution.

2. The person to whom such warrant is directed, shall execute the same, and, for that purpose, shall have the same powers as in the execution of criminal process.

Costs.

3. The expenses incurred in any such removal or notification, or causing to cease fishing, shall be borne, as the case may be, by the person removed or notified, or caused to cease fishing, or who owns the cattle or other animals removed, or who has them in charge, and may be recovered from him as the costs in any ordinary action or suit, or if the trespasser is an Indian, such expenses may be deducted from his share of annuity and interest money, if any such are due to him.

Removal.

4. Any such person or Indian other than an Indian of the band may be required orally or in writing by an Indian agent, a chief of the band occupying the reserve, or a constable, as the case may be,—

(a) to remove with his family, if any, from the land, marsh or road, or allowance for road, upon which he is or has so settled, or is residing or hunting, or which he so occupies; or,

(b) to remove his cattle from such land or marsh; or,

(c) to cease fishing in any such marsh, river, stream or creek as aforesaid; or,

(d) to cease using as aforesaid any such land, river, stream, creek, marsh, road or allowance for road. R.S., c. 43, s. 22; 54-55 V., c. 30, s. 1.

Removal and punishment of persons returning after having been removed.

35. If any person or Indian, after he has been removed or notified as aforesaid, or after any cattle or other animals owned by him or in his charge have been removed as aforesaid,—

(a) returns to, settles, resides or hunts upon or occupies or uses as aforesaid any of the said land or marsh; or,

(b) causes or permits any cattle or other animals owned by him or in his charge to return to any of the said land or marsh; or,

(c) returns to any marsh, river, stream or creek on or running through a reservo, for the purpose of fishing therein; or,

(d) returns to, settles or resides upon or occupies any of the said roads or allowances for roads;

the Superintendent General, or any officer or person deputed or authorized, as aforesaid, upon view, or upon proof on oath before him, to his satisfaction, that the person or Indian has,—

(a) returned to, settled, resided or hunted upon or occupied or used as aforesaid any of the said lands or marshes; or,

(b) caused or permitted any cattle or other animals owned by him, or in his charge, to return to any of the said land or marsh; or,

(c) returned to any marsh, river, stream or creek on or running through a reserve for the purpose of fishing therein; or,

(d) returned to, settled or resided upon or occupied any of the said roads or allowances for roads;

Warrant to sheriff to arrest and commit to gaol.

shall direct and send his warrant, signed and sealed, to the sheriff of the proper county or district, or to any literate person therein, commanding him forthwith to arrest such person or Indian, and bring him before any stipendiary magistrate, police magistrate, justice of the peace or Indian agent, who may, on summary conviction, commit him to the common gaol of the said county or district, or if there is no gaol in the said county or district, or if the reserve is not situated within any county or district, then the gaol nearest to the said reserve in the province, there to remain for the time ordered in the warrant of commitment.

Limit of imprisonment.

2. The length of imprisonment aforesaid shall not exceed thirty days for the first offence, and thirty days additional for each subsequent offence.

Direction of warrant.

3. If the said reserve is not situated within any county or district, such warrant shall be directed and sent to some literate person within such reserve. R.S., c. 43, s. 23.

R.S.C. 1906, c.81, cont'd.

Arrest and imprisonment.

36. Such sheriff or other person shall accordingly arrest the said person or Indian, and deliver him to the keeper of the proper gaol, who shall receive such person or Indian, and imprison him in the said gaol for the term aforesaid. R.S., c. 43, s. 24.

Judgment to be drawn up and filed.

37. The Superintendent General, or such officer or person aforesaid, shall cause the judgment or order against the offender to be drawn up and filed in his office.

Final.

2. Such judgment shall not be appealed from, or removed by *certiorari* or otherwise, but shall be final. R.S., c. 43, s. 25.

S.C. 1910, c.28, s.1.

1. *The Indian Act*, chapter 81 of the Revised Statutes, 1906, is amended by inserting the following heading and section immediately after section 37 thereof:— R.S., c. 81 amended. Section added.

"*Recovery of Possession of Reserves.*

Recovery of possession of reserves withheld or adversely occupied.

"**37A.** If the possession of any lands reserved or claimed to be reserved for the Indians is withheld, or if any such lands are adversely occupied or claimed by any person, or if any trespass is committed thereon, the possession may be recovered for the Indians, or the conflicting claims may be adjudged and determined, or damages may be recovered, in an action at the suit of His Majesty on behalf of the Indians, or of the band or tribe of Indians claiming possession or entitled to the declaration, relief or damages claimed. Damages.

Exchequer Court jurisdiction.

"2. The Exchequer Court of Canada shall have jurisdiction to hear and determine any such action.

Attorney General may institute action.

"3. Any such action may be instituted by information of the Attorney General of Canada upon the instructions of the Superintendent General of Indian Affairs.

Existing remedies preserved.

"4. Nothing in this section shall impair, abridge or in anywise affect any existing remedy or mode of procedure provided for cases, or any of them, to which this section applies."

S.C. 1911, c.14, s.4.

4. Subsection 1 of section 37A of the said Act, as enacted by section 1 of chapter 28 of the statutes of 1910, is hereby repealed and the following is substituted therefor:— Section 37A amended

Recovery of possession of reserves withheld or adversely occupied.

"**37A.** If the possession of any lands reserved or claimed to be reserved for the Indians, or of any lands of which the Indians or any Indian or any band or tribe of Indians claim the possession or any right of possession, is withheld, or if any such lands are adversely occupied or claimed by any person, or if any trespass is committed thereon, the possession may be recovered for the Indians or Indian or band or tribe of Indians, or the conflicting claims may be adjudged and determined or damages may be recovered in an action at the suit of His Majesty on behalf of the Indians or Indian or of the band or tribe of Indians entitled to or claiming the possession or right of possession or entitled to or claiming the declaration, relief or damages." Damages

Sale or Barter.

Governor in Council may make regulations as to sale or barter of produce by Indians.

38. The Governor in Council may make regulations for prohibiting or regulating the sale, barter, exchange or gift by any band or irregular band of Indians, or by any Indian of any band or irregular band, in the province of Manitoba, Saskatchewan or Alberta, or the Territories, of any grain or root crops, or other produce grown upon any reserve, and may further provide that such sale, barter, exchange or gift shall be null and void, unless the same are made in accordance with such regulations. R.S., c. 43, s. 30.

Buying of produce prohibited.

39. No person shall buy or otherwise acquire from any band or irregular band of Indians, or from any Indian, any grain, root crops, or other produce from upon any reserve in the province of Manitoba, Saskatchewan or Alberta, or the Territories. R.S., c. 43, s. 30.

Superintendent general may order seizure of produce unlawfully possessed by any person.

40. If any such grain or root crops, or other produce as aforesaid, are unlawfully in the possession of any person within the intent and meaning of this Part, or of any regulations made by the Governor in Council under this Part, any person acting under the authority, either general or special, of the Superintendent General, may, with such assistance in that behalf as he thinks necessary, seize and take possession of the same; and he shall deal therewith as the Superintendent General, or any officer or person thereunto by him authorized, directs. R.S., c. 43, s. 31.

Governor in Council may prohibit cutting of trees on reserve.

41. The Governor in Council may make regulations for prohibiting the cutting, carrying away or removing from any reserve or special reserve, of any hard or sugar-maple tree or sapling. R.S., c. 43, s. 32.

Trading with Indians prohibited without license of Superintendent General.

42. No official or employee connected with the inside or outside service of the Department of Indian Affairs, and no missionary in the employ of any religious denomination, or otherwise employed in mission work among Indians, and no school teacher on an Indian reserve, shall, without the special license in writing of the Superintendent General, trade with any Indian, or sell to him directly or indirectly, any goods or supplies, cattle or other animals.

Revocation of license.

2. The Superintendent General may at any time revoke the license so given by him. 53 V., c. 29, s. 10; 57-58 V., c. 32, s. 10.

Bartering with Indians without a license prohibited.

43. No person shall barter directly or indirectly with any Indian on a reserve in the province of Manitoba, Saskatchewan or Alberta, or the Territories, or sell to any such Indian any goods or supplies, cattle or other animals without the special license in writing of the Superintendent General.

Revocation of license.

2. The Superintendent General may, at any time, revoke the license by him given.

Evidence.

3. Upon prosecution of any offender against the provisions of this and the last preceding section, the evidence of the Indian to whom the sale was made, and the production to, or view by, the magistrate or Indian agent of the article or animal sold, shall be sufficient evidence on which to convict. 53 V., c. 29, s. 10.

Roads and Bridges.

Indians liable to work on public roads on reserves, and to what extent.

44. Indians residing upon any reserve shall be liable, if so directed by the Superintendent General, or any officer or person by him thereunto authorized, to perform labour upon the public roads laid out or used in or through, or abutting upon such reserve, which labour shall be performed under the sole control of the Superintendent General, or officer or person aforesaid, who may direct when, where and how and in what manner such labour shall be applied, and to what extent the same shall be imposed upon any Indian who is a resident upon the reserve.

Powers of Superintendent General.

2. The Superintendent General, or person or officer aforesaid shall have the like power to enforce the performance of such labour by imprisonment or otherwise, as may be done by any power or authority under any law, rule or regulation in force in the province or territory in which such reserve is situate, for the non-performance of statute labour; but the labour to be so required of any such Indian shall not exceed in amount or extent what may be required of other inhabitants of the same province, territory, county or other local division, under the laws requiring and regulating such labour and the performance thereof. 61 V., c. 34, s. 1.

Band to cause roads to be kept in order.

45. Every band of Indians shall cause the roads, bridges, ditches and fences within its reserve to be put and maintained in proper order, in accordance with the instructions received, from time to time, from the Superintendent General, or from the agent of the Superintendent General.

Work may be done at cost of band.

2. Whenever in the opinion of the Superintendent General, such roads, bridges, ditches and fences are not so put or maintained in order, he may cause the work to be performed at the cost of the band, or of the particular Indian in default, as the case may be, either out of its or his annual allowances or otherwise. R.S., c. 43, s. 34.

Lands taken for Public Purposes.

Consent of Governor in Council.

46. No portion of any reserve shall be taken for the purposes of any railway, road or public work without the consent of the Governor in Council, and, if any railway, road, or public work passes through or causes injury to any reserve, or, if any act occasioning damage to any reserve is done under the authority of an Act of Parliament or of the legislature of any province, compensation shall be made therefor to the Indians of the band in the same manner as is provided with respect to the lands or rights of other persons.

Compensation.

Arbitration.

2. The Superintendent General shall, in any case in which an arbitration is had, name the arbitrator on behalf of the Indians, and shall act for them in any matter relating to the settlement of such compensation.

Payment.

3. The amount awarded in any case shall be paid to the Minister of Finance for the use of the band of Indians for whose benefit the reserve is held, and for the benefit of any Indian who has improvements taken or injured. R.S., c. 43, s. 35; 50-51 V., c. 33, s. 5.

S.C. 1911, c.14, s.1.

1. Subsection 1 of section 46 of *The Indian Act*, chapter 81 of the Revised Statutes, 1906, is repealed, and the following is substituted therefor:— R.S., c. 81, s. 46 amended.

Compensation for lands taken for public purposes.

"**46.** No portion of any reserve shall be taken for the purpose of any railway, road, public work, or work designed for any public utility without the consent of the Governor in Council, but any company or municipal or local authority having statutory power, either Dominion or provincial, for taking or using lands or any interest in lands without the consent of the owner may, with the consent of the Governor in Council as aforesaid, and subject to the terms and conditions imposed by such consent, exercise such statutory power with respect to any reserve or portion of a reserve; and in any such case compensation shall be made therefor to the Indians of the band, and the exercise of such power, and the taking of the lands or interest therein and the determination and payment of the compensation shall, unless otherwise provided by the order in council evidencing the consent of the Governor in Council, be governed by the requirements applicable to the like proceedings by such company, municipal or local authority in ordinary cases."

Surrender and Forfeiture of Lands in Reserve.

Title to vest in His Majesty, if title of reserves held in trust lapses.

47. If, by the violation of the conditions of any trust respecting any special reserve, or by the breaking up of any society, corporation or community, or, if by the death of any person or persons without a legal succession or trusteeship, in whom the title to a special reserve is held in trust, the said title lapses or becomes void in law, the legal title shall become vested in His Majesty in trust, and the property shall be managed for the band or irregular band previously interested therein as an ordinary reserve.

Surrender of certain reserves to His Majesty in trust.

2. The trustees of any special reserve may, at any time, surrender the same to His Majesty in trust, whereupon the property shall be managed for the band or irregular band previously interested therein as an ordinary reserve. R.S., c. 43, s. 37.

Sale or release of reserves.

48. Except as in this Part otherwise provided, no reserve or portion of a reserve shall be sold, alienated or leased until it has been released or surrendered to the Crown for the purposes of this Part: Provided that the Superintendent General may lease, for the benefit of any Indian, upon his application for that purpose, the land to which he is entitled without such land being released or surrendered, and may, without surrender, dispose to the best advantage, in the interests of the Indians, of wild grass and dead or fallen timber. 61 V., c. 34, s. 2.

Proviso.

S.C. 1919, c.56, s.1.

1. Section forty-eight of the *Indian Act*, chapter eighty-one of the Revised Statutes of Canada, 1906, is amended by adding thereto the following clause immediately after the last word thereof:—

Leases of surface rights may be granted in connection with mining for precious metals.

"Provided also that the Governor in Council may make regulations enabling the Superintendent General without surrender to issue leases for surface rights on Indian reserve, upon such terms and conditions as may be considered proper in the interest of the Indians covering such area only as may be necessary for the mining of the precious metals by any one otherwise authorized to mine such metals, said terms to include provision of compensating any occupant of land for any damage that may be caused thereon as determined by the Superintendent General."

Release or surrender of a reserve, when valid.

49. Except as in this Part otherwise provided, no release or surrender of a reserve, or a portion of a reserve, held for the use of the Indians of any band, or of any individual Indian, shall be valid or binding, unless the release or surrender shall be assented to by a majority of the male members of the band of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose, according to the rules of the band, and held in the presence of the Superintendent General, or of an officer duly authorized to attend such council, by the Governor in Council or by the Superintendent General.

Assent of band.

Who may vote.

2. No Indian shall be entitled to vote or be present at such council, unless he habitually resides on or near, and is interested in the reserve in question.

Proof of assent.

3. The fact that such release or surrender has been assented to by the band at such council or meeting shall be certified on oath by the Superintendent General, or by the officer authorized by him to attend such council or meeting, and by some of the chiefs or principal men present thereat and entitled to vote, before some judge of a superior, county or district court, stipendiary magistrate or justice of the peace, or, in the case of reserves in the province of Manitoba, Saskatchewan or Alberta, or the Territories, before the Indian commissioner, and in the case of reserves in British Columbia, before the visiting Indian Superintendent for British Columbia, or, in either case, before some other person or officer specially thereunto authorized by the Governor in Council.

S.C. 1918, c.26, s.2.

Proof of assent to release or surrender.

2. Subsection three of section forty-nine of the said Act is amended by striking out all of the subsection after the word "before" in the sixth line thereof and substituting therefor the words "any person having authority to take affidavits and having jurisdiction within the place where the oath is administered."

Approval of Governor in Council.

4. When such assent has been so certified, as aforesaid, such release or surrender shall be submitted to the Governor in Council for acceptance or refusal. R.S., c. 43, s. 39; 61 V., c. 34, s. 3.

R.S.C. 1906, c.81, s.49, cont'd.

Section added.

2. The said Act is amended by inserting the following section immediately after section 49 thereof:—

S.C. 1911 c.14, s.2.

Inquiry and report by Exchequer Court as to removal of Indians.

"49A. In the case of an Indian reserve which adjoins or is situated wholly or partly within an incorporated town or city having a population of not less than eight thousand, and which reserve has not been released or surrendered by the Indians, the Governor in Council may, upon the recommendation of the Superintendent General, refer to the judge of the Exchequer Court of Canada for inquiry and report the question as to whether it is expedient, having regard to the interest of the public and of the Indians of the band for whose use the reserve is held, that the Indians should be removed from the reserve or any part of it.

Order in Council

"2. The order in council made in the case shall be certified by the Clerk of the Privy Council to the Registrar of the Exchequer Court of Canada, and the judge of the court shall thereupon

Notice of inquiry.

proceed as soon as convenient to fix a time and place, of which due notice shall be given by publication in *The Canada Gazette*, and otherwise as may be directed by the judge, for taking the evidence and hearing and investigating the matter.

Powers of Court.

"3. The judge shall have the like powers to issue subpœnas, compel the attendance and examination of witnesses, take evidence, give directions, and generally to hear and determine the matter and regulate the procedure as in proceedings upon information by the Attorney General within the ordinary jurisdiction of the court, and shall assign counsel to represent

Counsel.

and act for the Indians who may be opposed to the proposed removal.

Compensation for special loss and damages to be ascertained.

"4. If the judge finds that it is expedient that the band of Indians should be removed from the reserve or any part of it, he shall proceed, before making his report, to ascertain the amounts of compensation, if any, which should be paid respectively to individual Indians of the band for the special loss or damages which they will sustain in respect of the buildings or improvements to which they are entitled upon the lands of the reserve for which they are located; and the judge shall, moreover, consider and report upon any of the other facts or circumstances of the case which he may deem proper or material to be considered by the Governor in Council.

Transmission of proceedings.

"5. The judge shall transmit his findings, with the evidence and a report of the proceedings, to the Governor in Council, who shall lay a full report of the proceedings, the evidence and the findings before Parliament at the then current or next ensuing session thereof, and upon such findings being approved by resolution of Parliament the Governor in Council may thereupon give effect to the said findings and cause the reserve, or any part thereof from which it is found expedient to remove the Indians,

Sale or lease of lands.

to be sold or leased by public auction after three months advertisement in the public press, upon the best terms which, in the opinion of the Governor in Council, may be obtained therefor.

Disposition of proceeds.

"6. The proceeds of the sale or lease, after deducting the usual percentage for management fund, shall be applied in compensating individual Indians for their buildings or improvements as found by the judge, in purchasing a new reserve for the Indians removed, in transferring the said Indians with their effects thereto, in erecting buildings upon the new reserve, and in

S.C. 1911, c.14, s.2, cont'd.

providing the Indians with such other assistance as the Superintendent General may consider advisable; and the balance of the proceeds, if any, shall be placed to the credit of the Indians: Provided that the Government shall not cause the Indians to be removed, or disturb their possession, until a suitable reserve has been obtained and set apart for them in lieu of the reserve from which the expediency of removing the Indians is so established as aforesaid. Proviso. New reserve.

"7. For the purpose of selecting, appropriating and acquiring the lands necessary to be taken, or which it may be deemed expedient to take, for any new reserve to be acquired for the Indians as authorized by the last preceding sub-section, whether they are Crown lands or not, the Superintendent General shall have all the powers conferred upon the Minister by *The Expropriation Act*, and such new reserve shall, for the purposes aforesaid, be deemed to be a public work within the definition of that expression in *The Expropriation Act*; and all the provisions of *The Expropriation Act*, in so far as applicable and not inconsistent with this Act, shall apply in respect of the proceedings for the selection, survey, ascertainment and acquisition of the lands required and the determination and payment of the compensation therefor: Provided, however, that the Superintendent General shall not exercise the power of expropriation unless authorized by the Governor in Council." Expropriation of lands for new reserve. R.S., c. 143.

Act not to confirm invalid releases or surrenders.

50. Nothing in this Part shall confirm any release or surrender which, but for this Part, would have been invalid; and no release or surrender of any reserve, or portion of a reserve, to any person other than His Majesty, shall be valid. R.S., c. 43, s. 40.

Indian lands to be held for the same purpose as heretofore.

51. All Indian lands which are reserves or portions of reserves surrendered, or to be surrendered, to His Majesty, shall be deemed to be held for the same purpose as heretofore; and shall be managed, leased and sold as the Governor in Council directs, subject to the conditions of surrender and the provisions of this Part. R.S., c. 43, s. 41.

Sale and Transfer of Indian Lands.

Effect of former certificate of sale or receipts.

52. Every certificate of sale or receipt for money received on the sale of Indian lands granted or made by the Superintendent General or any agent of his, so long as the sale to which such certificate or receipt relates is in force and not rescinded, shall entitle the person to whom the same is granted, or his assignee, by instrument registered under this or any former Act providing for registration in such cases, to take possession of and occupy the land therein comprised, subject to the conditions of such sale, and unless the same has been revoked or cancelled, to maintain thereunder actions and suits against any wrongdoer or trespasser, as effectually as he could do under a patent from the Crown; but the same shall have no force against a license to cut timber existing at the time of the granting or making thereof.

Evidence of possession.

2. Such certificate or receipt shall be *prima facie* evidence of possession by such person, or the assignee, under an instrument registered as aforesaid in any such action or suit. R.S., c. 43, s. 42.

Register of assignments to be kept.

53. The Superintendent General shall keep a book for registering, at the option of the persons interested, the particulars of any assignment made, as well by the original purchaser or lessee of Indian lands, or his heirs or legal representatives, as by any subsequent assignee of any such lands, or the heirs or legal representatives of such assignee. R.S., c. 43, s. 43.

Registration of assignments.

54. Upon any such assignment being produced to the Superintendent General, and, except in cases where such assignment is made under a corporate seal, with an affidavit of due execution thereof, and of the place of such execution, and the names, residences and occupations of the witnesses, or, as to lands in the province of Quebec, upon the production of any such assignment executed in notarial form, or of a notarial copy thereof, the Superintendent General shall cause the material parts of the assignment to be registered in the said book, and shall cause to be endorsed on the assignment a certificate of such registration signed by himself or by the Deputy Superintendent General, or any other officer of the Department by him authorized to sign such certificates. 53 V., c. 29, s. 4.

Effect of assignment and registration.

55. Every such assignment so registered shall be valid against any assignment previously executed, which is subsequently registered or is unregistered.

Requirements.

2. No such registration shall be made until all the conditions of the sale, grant or location are complied with or dispensed with by the Superintendent General.

Unconditional.

3. Every assignment registered as aforesaid shall be unconditional in its terms. R.S., c. 43, s. 43.

Proof for registration.

56. If any subscribing witness to any such assignment is dead, or is absent from Canada, the Superintendent General may register such assignment upon the production of an affidavit proving the death or absence of such witness, and his handwriting, or the handwriting of the person making such assignment. R.S., c. 43, s. 44.

Agents not to be interested in or owners of Indian lands.

57. No agent for the sale of Indian lands shall, within his division, directly or indirectly, except under an order of the Governor in Council, purchase any land which he is appointed to sell, or become proprietor of or interested in any such land, during the time of his agency; and every such purchase or interest shall be void. R.S., c. 43, s. 110.

Tax Sales.

Conveyance of lands sold for taxes.

58. Whenever the proper municipal officer having, by the law of the province in which the land affected is situate, authority to make or execute deeds or conveyances of lands sold for taxes, makes or executes any deed or conveyance purporting to grant or convey Indian lands which have been sold or located, but not patented, or the interest therein of the locatee or purchaser from the Crown, and such deed or conveyance recites or purports to be based upon a sale of such lands or such interest for taxes, the Superintendent General may approve of such deed or conveyance, and act upon and treat it as a valid transfer of all the right and interest of the original locatee or purchaser from the Crown, and of every person claiming under

Superintendent General may approve.

him in or to such land to the grantee named in such deed or conveyance.

Effect of such approval.

2. When the Superintendent General has signified his approval of such deed or conveyance by endorsement thereon, the grantee shall be substituted in all respects, in relation to the land so conveyed, for the original locatee or purchaser from the Crown, but no such deed or conveyance shall be deemed to confer upon the grantee any greater right or interest in the land than that possessed by the original locatee or purchaser from the Crown. 51 V., c. 22, s. 2.

Issue of patent.

59. The Superintendent General may cause a patent to be issued to the grantee named in such deed or conveyance on the completion of the original conditions of the location or sale, unless such deed or conveyance is declared invalid by a court of competent jurisdiction in a suit or action instituted by some person interested in such land within two years after the date of the sale for taxes, and unless within such delay notice of such contestation has been given to the Superintendent General. 51 V., c. 22, s. 2.

Time for registration.

60. Every such deed or conveyance shall be registered in the office of the Superintendent General within two years from the date of the sale for taxes; and unless the same is so registered, it shall not be deemed to have preserved its priority, as against a purchaser in good faith from the original locatee or purchaser from the Crown, in virtue of an assignment registered prior to the date of the registration of the deed or conveyance based upon a sale for taxes as aforesaid. 51 V., c. 22, s. 2.

Cancellation.

In cases of fraud, mistake, or non-observance of conditions.

61. If the Superintendent General is satisfied that any purchaser or lessee of any Indian lands, or any person claiming under or through him, has been guilty of any fraud or imposition, or has violated any of the conditions of the sale or lease, or if any such sale or lease has been made or issued in error or mistake, he may cancel such sale or lease and resume the land therein mentioned, or dispose of it as if no sale or lease thereof had ever been made. R.S., c. 43, s. 46.

S.C. 1924, c.47, s.4.

4. Section sixty-one of the said Act is amended by adding thereto the following subsections:—

Cancellation effective from date of entry.

"(2) *(a)* In any case where the Superintendent or the Deputy Superintendent General gives or has given notice to a purchaser or lessee of Indian lands or to his assignee, agent, executor, administrator or representative, of his intention to cancel a sale or lease under the provisions of this section, and in pursuance of such notice enters or has entered in the records of the Department the formal cancellation of such sale or lease, such entry of cancellation shall be and be deemed to have been effective from the date thereof to cancel and annul the said sale or lease, and any payments made on account of such sale or lease shall be and be deemed to have been forfeited.

Signatures to notices.

(b) In any such case as described in the preceding subsection the notice of cancellation shall be deemed to be and to have been sufficient if signed by the Superintendent General, the Deputy Superintendent General, or by any officer of the Department of Indian Affairs by the direction and with the authority of the Superintendent General or the Deputy Superintendent General; and moreover the notice shall be deemed to be and to have been duly given and served upon or delivered to the purchaser or lessee, or to his assignee, agent, executor, administrator or representative as aforesaid if posted prepaid or franked to his last known address.

Service.

Proceedings to be instituted within one year.

(3) No action, suit or other proceeding, either at law or in equity, shall lie or be instituted, prosecuted or maintained against His Majesty or against the Superintendent General, or the Attorney General, or any officer of the Government of Canada, claiming any relief or declaration against or in respect of the cancellation or forfeiture of any such sale or lease, or payments on account thereof by means of any such notice as aforesaid, unless the same was or shall have been instituted within one year from the date of the giving of the said notice.

List of cancellations laid before Parliament.

(4) Within the first fifteen days of each session of Parliament, the Superintendent General shall cause to be laid before both Houses of Parliament a list of all such sales or leases, cancelled during the twelve months next preceding that session, or since the date of the beginning of the then last session.

Rights preserved.

(5) This Act shall not affect any rights under any judgment rendered before the date of the passing of this Act, or under any action, suit or other proceeding instituted before the first day of May, nineteen hundred and twenty-four."

Ejectment.

Obtaining possession after such cancellation, in case of resistance.

62. Whenever any purchaser, lessee or other person refuses or neglects to deliver up possession of any land after revocation or cancellation of the sale or lease thereof, as aforesaid, or whenever any person is wrongfully in possession of any Indian lands and refuses to vacate or abandon possession of the same, the Superintendent General may apply to the judge of the county court of the county or district in which the land lies, or to any judge of a superior court, or in the Northwest Territories to any stipendiary magistrate, for an order in the nature of a writ of *habere facias possessionem*, or writ of possession.

Order as to writ of possession.

2. The said judge or magistrate, upon proof to his satisfaction that the right or title of the person to hold such land has been revoked or cancelled, as aforesaid, or that such person is wrongfully in possesssion of Indian lands, shall grant an order requiring the purchaser, lessee or person in possession to deliver up the same to the Superintendent General, or person by him authorized to receive such possession.

Effect.

3. The order shall have the same force as a writ of *habere facias possessionem*, or writ of possession.

Execution of order.

4. The sheriff, or any bailiff or person to whom it has been entrusted for execution by the Superintendent General, shall execute the same in like manner as he would execute such writ in an action of ejectment or a possessory action.

Costs.

5. The costs of and incident to any proceedings under this section or any part thereof shall be paid by any party to such proceedings or by the Superintendent General, as the judge or magistrate orders. R.S., c. 43, s. 47; 54-55 V., c. 30, s. 3.

Rent.

Enforcing payment of rent due to the Crown.

63. Whenever any rent payable to the Crown on any lease of Indian lands is in arrear, the same may be recovered,—

(a) by warrant of distress issued by the Superintendent General or any agent or officer appointed under this Part and authorized by the Superintendent General to act in such cases, and with like proceedings thereon as in ordinary cases of landlord and tenant directed to any person or persons by him named therein; or

(b) by warrant of distress, and with like proceedings thereon as in case of a distress warrant by a justice of the peace for non-payment of a pecuniary penalty issued by him and directed as aforesaid; or

(c) by action of debt, as in ordinary cases of rent in arrear, brought therefor in the name of the Superintendent General.

No demand required.

2. Demand of rent shall not be necessary in any case. R.S., c. 43, s. 48.

Powers of Superintendent General.

To act and give notice for the Crown.

64. When by law or by any deed, lease or agreement relating to Indian lands, any notice is required to be given, or any act to be done by or on behalf of the Crown, such notice may be given and act done by or by the authority of the Superintendent General. R.S., c. 43, s. 49.

Cases of deficiency of land.

65. Whenever it is found that, by reason of false survey or error in the books or plans in the Department of Indian Affairs, or in the late Indian branch of the Department of the Interior, any grant, sale or appropriation of land is deficient, or whenever any parcel of land contains less than the quantity of land mentioned in the patent therefor, the Superintendent General may order the purchase money of so much land as is deficient with the interest thereon from the time of the application therefor to be paid to the original purchaser in land or money as the Superintendent General directs.

Compensation.

2. If the land has passed from the original purchaser, and the claimant was ignorant of a deficiency at the time of his purchase, the Superintendent General may order payment as aforesaid of the purchase money for so much of the land as is deficient which the claimant has paid.

Limitation of time for claim.

3. No such claim shall be entertained unless application is made within five years from the date of the patent, and unless the deficiency is equal to one-tenth of the whole quantity described as contained in the particular lot or parcel of land granted. R.S., c. 43, s. 52.

Game laws.

66. The Superintendent General may, from time to time, by public notice, declare that, on and after a day therein named, the laws respecting game in force in the province of Manitoba, Saskatchewan or Alberta, or the Territories, or respecting such game as is specified in such notice, shall apply to Indians within the said province or Territories, as the case may be, or to Indians in such parts thereof as to him seems expedient. 53 V., c. 29, s. 10.

Witnesses may be summoned and examined under oath.

67. The Superintendent General, his deputy, or other person specially authorized by the Governor in Council, shall have power, by subpœna issued by him, to require any person to appear before him, and to bring with him any papers or writings relating to any matter affecting Indians, and to examine such person under oath in respect to any such matter.

Failure of witness to appear.

2. If any person duly summoned by subpœna as aforesaid neglects or refuses to appear at the time and place specified in the subpœna, or refuses to give evidence or to produce the papers or writings demanded of him, the Superintendent General, his deputy or such other person may, by warrant under his hand and seal, cause such person so refusing or neglecting to be taken into custody and to be imprisoned in the nearest common gaol as for contempt of court, for a period not exceeding fourteen days. 50-51 V., c. 33, s. 2.

S.C. 1918, c.26, s.3.

3. (1) Section sixty-seven of the said Act is amended by inserting the words "or Indian" immediately after the word "person" in the third line thereof. Indian may be summoned as witness.

(2) Subsection two of section sixty-seven is amended by adding the words "or Indian" immediately after the word "person" in the first and sixth lines thereof.

Patents.

Patents, how to be prepared, signed and registered.

68. Every patent for Indian lands shall be prepared in the Department of Indian Affairs, and shall be signed by the Superintendent General or his deputy or by some other person thereunto specially authorized by order of the Governor in Council, and, when so signed, shall be registered by an officer specially appointed for that purpose by the Registrar General, and then transmitted to the Secretary of State of Canada, by whom, or by the Under Secretary of State, the same shall be countersigned and the Great Seal thereto caused to be affixed: Proviso. Provided that every such patent for land shall be signed by the Governor or by the Deputy Governor appointed under this Part for that purpose. R.S., c. 43, s. 45.

Patent to issue to heir, assignee or devisee after proof of right thereto.

69. On any application for a patent by the heir, assignee or devisee of the original purchaser from the Crown, the Superintendent General may receive proof, in such manner as he directs and requires, in support of any claim for a patent, when the original purchaser is dead; and upon being satisfied that the claim has been equitably and justly established, may allow the same, and cause a patent to issue accordingly: Provided that nothing in this section shall limit the right of a person claiming a patent to land in the province of Ontario to make application at any time to the Commissioner, under the Act respecting claims to lands in Upper Canada for which no patents have been issued, being chapter eighty of the Consolidated Statutes of Upper Canada. R.S., c. 43, s. 45.

Proviso.

Cancellation of erroneous letters patent.

70. Whenever letters patent have been issued to or in the name of the wrong person, through mistake, or contain any clerical error or misnomer, or wrong description of any material fact therein, or of the land thereby intended to be granted, the Superintendent General, if there is no adverse claim, may direct the defective letters patent to be cancelled, and a minute of such cancellation to be entered in the margin of the registry of the original letters patent, and correct letters patent to be issued in their stead.

Issue of correct ones in their stead.

2. Such correct letters patent shall relate back to the date of those so cancelled, and have the same effect as if issued at the date of such cancelled letters patent. R.S., c. 43, s. 50.

Inconsistent patents of the same land.

71. In all cases in which grants or letters patent have issued for the same land, inconsistent with each other, through error, and in all cases of sales or appropriations of the same land, inconsistent with each other, the Superintendent General may, in cases of sale, cause a repayment of the purchase money, with interest.

Compensation in certain cases.

2. When the land has passed from the original purchaser, or has been improved before a discovery of the error, the Superintendent General may, in substitution, assign land or grant a certificate entitling the person to purchase Indian lands of such value, and to such extent as he deems just and equitable under the circumstances: Provided that no such claim shall be entertained unless it is preferred within five years from the discovery of the error. R.S., c. 43, s. 51.

Proviso.

Certain courts may void patents issued in error, etc.

72. Whenever patents for Indian lands have issued through fraud or in error or improvidence, the Exchequer Court of Canada or a superior court in any province may, in respect of lands situate within its jurisdiction, upon information, action, bill or plaint, respecting such lands, and upon hearing the parties interested, or upon default of the said parties after such notice of proceeding as the said courts shall respectively order, decree such patents to be void; and, upon a registry of such decree in the Department of Indian Affairs, such patents shall be void to all intents.

Effect of registry of decree.

Practice in such cases.

2. The practice in such cases shall be regulated by orders, from time to time, made by the said courts respectively. R.S., c. 43, s. 53; 53 V., c. 29, s. 5.

Timber Lands.

Licenses to cut trees, by whom and how to be granted.

73. The Superintendent General, or any officer or agent authorized by him to that effect, may grant licenses to cut trees on ungranted Indian lands, or on reserves at such rates and subject to such conditions, regulations and restrictions, as are from time to time, established by the Governor in Council, and such conditions, regulations and restrictions shall be adapted to the locality in which such reserves or lands are situated. R.S., c. 43, s. 54.

For what time.

As to error in description, etc.

74. No license shall be so granted for a longer period than twelve months from the date thereof; and if, in consequence of any incorrectness of survey or other error or cause whatsoever, a license is found to comprise land included in a license of a prior date, or land not being reserve, or ungranted Indian lands, the license granted shall be void in so far as it comprises such land, and the holder or proprietor of the license so rendered void shall have no claim upon the Crown for indemnity or compensation by reason of such avoidance. R.S., c. 43, s. 55.

License must describe lands and kind of trees to be cut.

75. Every license shall describe the lands upon which the trees may be cut, and the kind of trees which may be cut, and shall confer, for the time being, on the licensee the right to take and keep possession of the land so described, subject to such regulations as are made.

To vest property in trees cut.

2. Every license shall vest in the holder thereof all rights of property in all trees of the kind specified, cut within the limits of the license during the term thereof, whether such trees are cut by the authority of the holder of such license or by any other person, with or without his consent.

Rights of licensee as to trespassers.

3. Every license shall entitle the holder thereof to seize, in revendication or otherwise, such trees and the logs, timber or other product thereof, if found in the possession of any unauthorized person, and also to institute any action or suit against any wrongful possessor or trespasser, and to prosecute all trespassers and other offenders to punishment, and to recover damages, if any.

Continuing proceedings.

4. All proceedings pending at the expiration of any license may be continued to final termination, as if the license had not expired. 61 V., c. 34, s. 4.

Return to be made by licensee.

76. Every person who obtains a license shall, at the expiration thereof, make to the officer or agent granting the same, or to the Superintendent General, a return of the number and kinds of trees cut, and of the quantity and description of saw-logs, or of the number and description of sticks of square or other timber, manufactured and carried away under such license, which return shall be sworn to by the holder of the license or his agent, or by his foreman.

Effect of neglect to make such return.

2. Every person who refuses or neglects to make such return, or who evades, or attempts to evade, any regulation made by the Governor in Council in that behalf, shall be held to have cut without authority, and the timber or other product made shall be dealt with accordingly. R.S., c. 43, s. 57.

Trees cut and their product liable for payment of dues.

77. All trees cut, and the logs, timber or other product thereof, shall be liable for the payment of the dues thereon, so long as and wheresoever the same, or any part thereof, are found, whether in the original logs or manufactured into deals, boards or other stuff.

May be seized and detained.

2. All officers or agents entrusted with the collection of such dues may follow and seize and detain the same wherever they are found until the dues are paid or secured. R.S., c. 43, s. 58.

Security taken for dues not to affect lien.

78. No instrument or security taken for dues, either before or after the cutting of the trees, as collateral security, or to facilitate collection, shall in any way affect the lien for such dues, but the lien shall subsist until the said dues are actually discharged. R.S., c. 43, s. 59.

Sale of seized timber after certain delay.

79. If any timber so seized and detained for non-payment of dues remains more than twelve months in the custody of the agent or person appointed to guard the same, without the dues and expenses being paid, the Superintendent General may order a sale of the said timber to be made after sufficient notice.

Proceeds.

2. The net proceeds of such sale, after deducting the amount of dues, expenses, and costs incurred, shall be handed over to the owner or claimant of such timber, upon his applying therefor and proving his right thereto. R.S., c. 43, s. 60.

Seizure of trees cut without authority.

80. Any officer or agent acting under the Superintendent General may seize or cause to be seized in His Majesty's name any logs, timber, wood or other products of trees, or any trees themselves, cut without authority on Indian lands or on a reserve, wherever they are found, and place the same under proper custody until a decision can be had in the matter from competent authority. 50-51 V., c. 33, s. 6.

Presumption of law in case of mixture of timber cut on Indian lands or reserves, with timber cut elsewhere.

81. When the logs, timber, wood, or other products of trees, or the trees themselves cut without authority on Indian lands or on a reserve, have been made up or intermingled with other trees, wood, timber, logs, or other products of trees into a crib, dram or raft, or in any other manner, so that it is difficult to distinguish the timber cut on Indian lands or on a reserve without license, from the other timber with which it is made up or intermingled, the whole of the timber so made up or intermingled shall be held to have been cut without authority on Indian lands or on a reserve, and shall be seized and forfeited and sold by the Superintendent General or any officer or agent acting under him, unless evidence satisfactory to him is adduced showing the probable quantity not cut on Indian lands or on a reserve. 50-51 V., c. 33, s. 7.

Seizing officer may command assistance in name of Crown.

82. Every officer or person seizing trees, logs, timber or other products of trees in the discharge of his duty under this Part may, in the name of the Crown, call in any assistance necessary for securing and protecting the same. R.S., c. 43, s. 64.

Burden of proof, in certain cases, to be on claimant.

83. Whenever any trees, logs, timber or other product of trees are seized for non-payment of Crown dues, or for any other cause of forfeiture, or whenever any prosecution is brought in respect of any penalty or forfeiture under this Part, and any question arises whether said dues have been paid or whether the trees, logs, timber or other product were cut on lands other than any of the lands aforesaid, the burden of proving payment, or on what land the same were cut, as the case may be, shall lie on the owner or claimant and not on the officer who seizes the same, or the person who brings such prosecution. R.S., c. 43, s. 65.

Condemnation in default of notice of claim.

84. All trees, logs, timber or other product of trees seized under this Part shall be deemed to be condemned unless the person from whom they are seized, or the owner thereof within one month from the day of the seizure, gives notice to the seizing officer, or nearest officer or agent of the Superintendent General that he claims, or intends to claim them, and unless within one month from the day of giving such notice he initiates, in some court of competent jurisdiction, proceedings for the purpose of establishing his claim.

Sale.

2. In default of such notice and initiation of proceedings, the officer or agent seizing shall report the circumstances to the Superintendent General, who may order the sale by the said officer or agent of such trees, logs, timber or other products. 61 V., c. 34, s. 5.

Proceedings for trial of validity of seizure.

85. Any judge of any superior, county or district court, or any stipendiary magistrate, police magistrate or Indian agent, may, in a summary way, under the provisions of Part XV. of the Criminal Code, try and determine such seizures; and may, pending the trial, order the delivery of the trees, or the logs, timber or other product to the alleged owner, on receiving security by bond, with two good and sufficient sureties, first approved by the said agent, to pay double the value of such trees, logs, timber or other product, in case of their condemnation.

Delivery on security given.

2. Such bond shall be taken in the name of the Superintendent General, for His Majesty, and shall be delivered up to and kept by the Superintendent General.

Bond to be given.

3. If such seized trees, logs, timber or other product are condemned, the value thereof shall be paid forthwith to the Superintendent General or agent, and the bond cancelled, otherwise the penalty of such bond shall be enforced and recovered. R.S., c. 43, s. 67.

Value of condemned trees to be paid to the Superintendent General.

86. Every one who avails himself of any false statement or false oath to evade the payment of dues under this Part, shall forfeit the timber in respect of which the dues are attempted to be evaded. R.S., c. 43, s. 68.

Forfeiture of timber for attempt to evade payment.

Management of Indian Moneys.

87. All moneys or securities of any kind applicable to the support or benefit of Indians, or any band of Indians, and all moneys accrued or hereafter to accrue from the sale of any Indian lands or the proceeds of any timber on any Indian lands or a reserve shall, subject to the provisions of this Part, be applicable to the same purposes, and be dealt with in the same manner as they might have been applied to or dealt with but for the passing of this Part. R.S., c. 43, s. 69.

Indian moneys to be dealt with as heretofore.

S.C. 1910, c.28, s.2.

2. Section 87 of the said Act is amended by adding thereto the following subsection:— S. 87 amended.

"2. No contract or agreement binding or purporting to bind, or in any way dealing with the moneys or securities referred to in this section, or with any moneys appropriated by Parliament for the benefit of Indians, made either by the chiefs or councillors of any band of Indians or by the members of the said band, other than and except as authorized by and for the purposes of this Part of the Act, shall be valid or of any force or effect unless and until it has been approved in writing by the Superintendent General." Contracts affecting Indian moneys and securities to be approved by Superintendent General.

88. The Governor in Council may reduce the purchase money due or to become due on sales of Indian lands, or reduce or remit the interest on such purchase money, or reduce the rent at which Indian lands have been leased, when he considers the same excessive. Reduction of purchase money due on sales of Indian lands.

2. A return setting forth all the reductions and remissions made under this section during the fiscal year shall be submitted to both Houses of Parliament within twenty days after the expiration of such year, if Parliament is then sitting, and, if Parliament is not then sitting, within twenty days after the opening of the next ensuing session of Parliament. 58-59 V., c. 35, s. 8. Returns of reductions to Parliament.

89. With the exception of such sum not exceeding fifty per centum of the proceeds of any land, and not exceeding ten per centum of the proceeds of any timber or other property, as is agreed at the time of the surrender to be paid to the members of the band interested therein, the Governor in Council may, subject to the provisions of this Part, direct how and in what manner, and by whom, the moneys arising from the disposal of Indian lands, or of property held or to be held in trust for Indians, or timber on Indian lands or reserves, or from any other source for the benefit of Indians, shall be invested from time to time, and how the payments or assistance to which the Indians are entitled shall be made or given. Investment and management of Indian funds may be regulated by Governor in Council.

S.C. 1919, c.56, s.2.

2. Subsection one of section eighty-nine is amended by striking out the words "and not exceeding ten per centum of the proceeds of any" in the second and third lines thereof. Minimum with respect to amount to be paid to members of band struck out.

R.S.C. 1906, c.81, s.89, cont'd.

In what particulars.

2. The Governor in Council may provide for the general management of such moneys, and direct what percentage or proportion thereof shall be set apart, from time to time, to cover the cost of and incidental to the management of reserves, lands, property and moneys under the provisions of this Part, and may authorize and direct the expenditure of such moneys for surveys, for compensation to Indians for improvements or any interest they had in lands taken from them, for the construction or repair of roads, bridges, ditches and watercourses on such reserves or lands, for the construction and repair of school buildings and charitable institutions, and by way of contribution to schools attended by such Indians. 6 E. VII., c. 20, s. 1.

S.C. 1926-27, c.32, s.1.

1. Subsection two of section eighty-nine of the *Indian Act*, chapter eighty-one of *The Revised Statutes of Canada, 1906*, is amended by adding thereto the following proviso:—

"Provided, however, that where the capital standing to the credit of a band does not exceed the sum of two thousand dollars the Governor in Council may direct and authorize the expenditure of such capital for any purpose which may be deemed to be for the general welfare of the band."

If capital does not exceed $2,000.

Power of Governor in Council as to direction of expenditure of capital of band.

90. The Governor in Council may, with the consent of a band, authorize and direct the expenditure of any capital moneys standing at the credit of such band, in the purchase of land as a reserve for the band or as an addition to its reserve, or in the purchase of cattle for the band, or in the construction of permanent improvements upon the reserve of the band, or such works thereon or in connection therewith as, in his opinion, will be of permanent value to the band, or will, when completed, properly represent capital. 57-58 V., c. 32, s. 11.

S.C. 1924, c.47, s.5.

5. Subsection one of section ninety of the said Act is repealed and the following is substituted therefor:—

Power of Governor in Council over expenditure of capital.

"**90.** (1) The Governor in Council may, with the consent of a band, authorize and direct the expenditure of any capital moneys standing at the credit of such band, in the purchase of land as a reserve for the band or as an addition to its reserve, or in the purchase of cattle, implements or machinery for the band, or in the construction of permanent improvements upon the reserve of the band, or such works thereon or in connection therewith as, in his opinion, will be of permanent value to the band, or will, when completed, properly represent capital or in the making of loans to members of the band to promote progress, no such loan, however, to exceed in amount one-half of the appraised value of the interest of the borrower in the lands held by him."

S.C. 1918, c.26, s.4.

Direction of expenditure of capital of band, without consent.

4. Section ninety of the said Act is amended by adding thereto the following subsections:—

"(2) In the event of a band refusing to consent to the expenditure of such capital moneys as the Superintendent General may consider advisable for any of the purposes mentioned in subsection one of this section, and it appearing to the Superintendent General that such refusal is detrimental to the progress or welfare of the band, the Governor in Council may, without the consent of the band, authorize and direct the expenditure of such capital for such of the said purposes as may be considered reasonable and proper.

Lease of lands in a reserve if band or individual neglects cultivation.

"(3) Whenever any land in a reserve whether held in common or by an individual Indian is uncultivated and the band or individual is unable or neglects to cultivate the same, the Superintendent General, notwithstanding anything in this Act to the contrary, may, without a surrender, grant a lease of such lands for agricultural or grazing purposes for the benefit of the band or individual, or may employ such persons as may be considered necessary to improve or cultivate such lands during the pleasure of the Superintendent General, and may authorize and direct the expenditure of so much of the capital funds of the band as may be considered necessary for the improvements of such land, or for the purchase of such stock, machinery, material or labour as may be considered necessary for the cultivation or grazing of the same, and in such case all the proceeds derived from such lands, except a reasonable rent to be paid for any individual holding, shall be placed to the credit of the band: Provided that in the event of improvements being made on the lands of an individual the Superintendent General may deduct the value of such improvements from the rental payable for such lands."

Proceeds of sales to be paid to Minister of Finance.

91. The proceeds arising from the sale or lease of any Indian lands, or from the timber, hay, stone, minerals or other valuables thereon, or on a reserve, shall be paid to the Minister of Finance to the credit of the Indian fund. R.S., c. 43, s. 71.

Powers of Sup't. Gen'l.

92. The Superintendent General may,—

(a) stop the payment of the annuity and interest money of as well as deprive of any participation in the real property of the band, any Indian who is proved, to the satisfaction of the Superintendent General, guilty of deserting his family, or of conduct justifying his wife or family in separating from him, or who is separated from his family by imprisonment, and apply the same towards the support of the wife or family of such Indian; or,

(b) stop the payment of the annuity and interest money of any Indian parent of an illegitimate child, and apply the same to the support of such child; or,

(c) stop the payment of the annuity and interest money of, as well as deprive of any participation in the real property of the band, any woman who deserts her husband or family and lives immorally with another man, and apply the same to the support of the family so deserted; or,

(d) whenever sick or disabled, or aged or destitute Indians are not provided for by the band of which they are members, furnish sufficient aid from the funds of the band for the relief of such sick, disabled, aged or destitute Indians. R.S., c. 43, s. 74; 61 V., c. 34, ss. 7 and 8.

S. 92 amended.

6. Section 92 of the said Act is amended by adding thereto the following:— S.C. 1914, c.35, s.6.

Sanitary regulations.

"(*e*) Make such regulations as he deems necessary for the prevention or mitigation of disease; the frequent and effectual cleansing of streets, yards and premises; the removal of nuisances and unsanitary conditions; the cleansing, purifying, ventilating and disinfecting of premises by the owners and occupiers or other persons having the care or ordering thereof; the supplying of such medical aid, medicine and other articles and accommodation as the Superintendent General may deem necessary for preventing or mitigating an outbreak of any communicable disease; entering and inspecting any premises used for human habitation in any locality in which conditions exist which in the opinion of the Superintendent General are unsanitary, or such as to render the inhabitants specially liable to disease, and for directing the alteration or destruction of any such building which is, in the opinion of the Superintendent General, unfit for human habitation; preventing the overcrowding of premises used for human habitation by limiting the number of dwellers in such premises; preventing and regulating the departure of persons from, and the access of persons to, infected localities; preventing persons or conveyances from passing from one locality to another; detaining persons or conveyances who or which have been exposed to infection for inspection or disinfection until the danger of infection is past; the removal or keeping under surveillance of persons living in infected localities; and any other matter which, in the opinion of the Superintendent General, the general health of the Indians of any locality may require.

In conflict of authority, rule to prevail.

"2. In the event of any conflict between any regulation made by the Superintendent General and any rule or regulation made by any band, the regulations made by the Superintendent General shall prevail."

Regulations.

5. (1) Section ninety-two of the said Act, as amended by section six of chapter thirty-five of the statutes of 1914, is amended by adding thereto the following paragraph:— S.C. 1918, c.26, s.5.

Taxation of dogs, and protection of sheep.

"(*f*) May make by-laws for the taxation, control and destruction of dogs and for the protection of sheep, and such by-laws may be applied to such reserves or parts thereof from time to time as the Superintendent General may direct."

(2) The said section is further amended by adding thereto the following subsection:—

Penalties.

"(3) In any regulations or by-laws made under the provisions of this section, the Superintendent General may provide for the imposition of a fine not exceeding thirty dollars or imprisonment not exceeding thirty days, for the violation of any of the provisions thereof."

S.C. 1926-27, c.32, s.2.

2. Subsection one of section ninety-two of the said Act, as amended by section six of chapter thirty-five of the statutes of 1914, and by section five of chapter twenty-six of the statutes of 1918, is further amended by adding thereto the following paragraph:— Regulations.

"*(g)* Make regulations governing the operation of pool rooms, dance halls and other places of amusement on Indian Reserves." Operation of pool rooms, etc.

Election of Chiefs.

93. Whenever the Governor in Council deems it advisable for the good government of a band, to introduce the elective system of chiefs and councillors or headmen, he may provide that the chief and councillors or headmen of any band shall be elected, as hereinafter provided, at such time and place as the Superintendent General directs; and they shall in such case be elected for a term of three years. Governor in Council may provide for election of chiefs.

2. The councillors or headmen may be in the proportion of two for every two hundred Indians. Councillors or headmen.

3. No band shall have more than one chief and fifteen councillors or headmen. Numbers.

4. Any band composed of at least thirty members may have a chief. 61 V., c. 34, s. 9. Band of 30.

94. Life chiefs and councillors or headmen now living may continue to hold rank until death or resignation, or until their removal by the Governor in Council for dishonesty, intemperance, immorality or incompetency. As to present life chiefs.

2. In the event of the Governor in Council providing that the chief and councillors or headmen of a band shall be elected, the life chiefs and councillors or headmen shall not exercise powers as such unless elected under the provision aforesaid. 61 V., c. 34, s. 9. Election required for exercise of powers.

95. An election may be set aside by the Governor in Council, on a report of the Superintendent General, if it is proved by two witnesses before the Indian agent for the locality, or such other person as is deputed by the Superintendent General to take evidence in the matter, that fraud or gross irregularity was practised at the said election. Reason for which an election may be set aside.

2. Every Indian who is proved guilty of such fraud or irregularity, or connivance thereat, may be declared ineligible for re-election for a period not exceeding six years, if the Governor in Council, on the report of the Superintendent General, so directs. 61 V., c. 34, s. 9. Punishment of fraud at election.

96. Any elected or life chief and any councillor or headman, or any chief or councillor or headman chosen according to the custom of any band, may, on the ground of dishonesty, intemperance, immorality or incompetency, be deposed by the Governor in Council and declared ineligible to hold the office of chief or councillor or headman for a period not exceeding three years. 61 V., c. 34, s. 9. Grounds on which chief, etc., may be deposed.

Regulations to be made by Chiefs.

Chiefs to make regulations as to schools.

97. The chief or chiefs of any band in council may, subject to confirmation by the Governor in Council, make rules and regulations as to the religious denomination to which the teacher of the school established on the reserve shall belong.

Denominations.

2. If the majority of the band belongs to any one religious denomination, the teacher of the school established on the reserve shall belong to the same denomination.

Minority.

3. The Protestant or Catholic minority of any band may, with the approval of and under regulations made by the Governor in Council, have a separate school established on the reserve. R.S., c. 43, s. 76.

Other cases.

98. The chief or chiefs of any band in council may likewise and subject to such confirmation, make rules and regulations as to,—

Health.

(a) the care of the public health;

Order.

(b) the observance of order and decorum at assemblies of the Indians in general council, or on other occasions;

Intemperance.

(c) the repression of intemperance and profligacy;

S.C. 1926-27, c.32, s.3.

3. Paragraph *(c)* of subsection one of section ninety-eight of the said Act is repealed and the following is substituted therefor:—

"*(c)* The prevention of disorderly conduct and nuisances." Disorderly conduct.

R.S.C. 1906, c.81, s.98, cont'd.

Trespass.

(d) the prevention of trespass by cattle, and the protection of sheep, horses, mules and cattle;

Roads, etc.

(e) the construction and maintenance of watercourses, roads, bridges, ditches and fences;

School houses.

(f) the construction and repair of school houses, council houses and other Indian public buildings, and the attendance at school of children between the ages of six and fifteen years;

Pounds.

(g) the establishment of pounds and the appointment of pound-keepers;

Locating of land.

(h) the locating of the band in their reserves, and the establishment of a register of such locations;

Weeds.

(i) the repression of noxious weeds.

Governor in Council may provide for punishment for violation.

2. The Governor in Council may by the rules and regulations aforesaid provide for the imposition of punishment by fine, penalty or imprisonment, or both for violation of any of such rules or regulations.

Limit of penalty.

3. The fine or penalty shall in no case exceed thirty dollars, and the imprisonment shall in no case exceed thirty days.

Criminal Code to apply.

4. The proceedings for the imposition of such punishment shall be taken under Part XV. of the Criminal Code. R.S., c. 43, s. 76.

Taxation.

Liability of Indians to taxation.

99. No Indian or non-treaty Indian shall be liable to be taxed for any real or personal property, unless he holds, in his individual right, real estate under a lease or in fee simple, or personal property outside of the reserve or special reserve, in which case he shall be liable to be taxed for such real or personal property at the same rate as other persons in the locality in which it is situate. R.S., c. 43, s. 77.

As to taxes on property of an enfranchised Indian.

100. No taxes shall be levied on the real property of any Indian, acquired under the enfranchisement clauses of this Part, until the same has been declared liable to taxation by proclamation of the Governor in Council, published in the *Canada Gazette*. R.S., c. 43, s. 77.

Exemption from taxation.

101. All land vested in the Crown or in any person in trust or for the use of any Indian or non-treaty Indian or any band or irregular band of Indians or non-treaty Indians shall be exempt from taxation, except those lands which, having been surrendered by the bands owning them, though unpatented, have been located by or sold or agreed to be sold to any person; and, except as against the Crown and any Indian located on the land, the same shall be liable to taxation in like manner as other lands in the same locality: Provided that nothing herein contained shall interfere with the right of the Superintendent General to cancel the original sale or location of any land, or shall render such land liable to taxation until it is again sold or located. 51 V., c. 22, s. 3.

Legal Rights of Indians.

No lien or charge to be taken on property of Indians.

102. No person shall take any security or otherwise obtain any lien or charge, whether by mortgage, judgment or otherwise, upon real or personal property of any Indian or non-treaty Indian, except on real or personal property subject to taxation under the last three preceding sections: Provided that any person selling any article to an Indian or non-treaty Indian may take security on such article for any part of the price thereof which is unpaid. R.S., c. 43, s. 78.

As to rights of action by Indians.

103. Indians and non-treaty Indians shall have the right to sue for debts due to them, or in respect of any tort or wrong inflicted upon them, or to compel the performance of obligations contracted with them: Provided that, in any suit or action between Indians, or in any case of assault in which the offender is an Indian, no appeal shall lie from any judgment, order or conviction by any police magistrate, stipendiary magistrate, or two justices of the peace or an Indian agent, when the sum adjudged or the penalty imposed does not exceed ten dollars. R.S., c. 43, s. 79.

Things pawned by Indians for intoxicants not to be retained.

104. No pawn taken from any Indian or non-treaty Indian for any intoxicant shall be retained by the person to whom such pawn is delivered; but the thing so pawned may be sued for and shall be recoverable, with costs of suit, in any court of competent jurisdiction by the Indian or non-treaty Indian who pawned the same. R.S., c. 43, s. 80.

Exemption from seizure.

105. No presents given to Indians or non-treaty Indians, and no property purchased or acquired with or by means of any annuities granted to Indians, or any part thereof, and in the possession of any band of such Indians, or of any Indian of any band or irregular band, shall be liable to be taken, seized or distrained for any debt, matter or cause whatsoever.

S. 105 amended.

S.C. 1910, c.28, s.3.

3. Subsection 1 of section 105 of the said Act is repealed and the following is substituted therefor:—

Presents, annuities, money and property exempt from seizure.

'**105.** No presents given to Indians or non-treaty Indians, and no annuities or interest on funds, and no moneys appropriated by Parliament, held for any band of Indians, and no property purchased or acquired with or by means of any such annuities or income or moneys, and whether in the possession of any band of such Indians or of any Indian of any band or irregular band or not, shall be liable to be taken, seized, distrained, attached or in any way made the subject of judicial process for any debt, matter or cause whatsoever."

Traffic in presents and property restricted.

2. No such presents or property shall, in the province of Manitoba, British Columbia, Saskatchewan or Alberta, or in the Territories be sold, bartered, exchanged, or given by any band or irregular band of Indians, or any Indian of any such band to any person or Indian other than an Indian of such band.

Animals, farming implements, etc., deemed presents.

3. Animals given to Indians under treaty stipulations, and the progeny thereof, and farming implements, tools and any other articles given to Indians under treaty stipulations shall be held to be presents within the meaning of this section.

Sale, etc., null and void.

4. Every such sale, barter, exchange or gift shall be null and void unless such sale, barter, exchange or gift is made with the written assent of the Superintendent General or his agent. R.S., c. 43, s. 81; 53 V., c. 29, s. 7.

S. 105 amended.

S.C. 1914, c.35, s.7.

7. Section 105 of the said Act is amended by adding the following subsection thereto:—

Selling, &c., live stock.

"5. No Indian or non-treaty Indian in the provinces of Manitoba, British Columbia, Saskatchewan or Alberta, or in the Territories, shall without the written consent of the Indian Agent sell, barter, exchange or give to any person or Indian other than an Indian of such band, or kill or destroy any animal or the progeny thereof given to him or to the band under treaty stipulations, or loaned or conditionally given to him or to the band by the Government. Any Indian who violates any of the provisions of this subsection shall be liable on summary conviction to a penalty, not exceeding twenty-five dollars with costs of prosecution or to imprisonment not exceeding two months, or to both fine and imprisonment."

Presents, unlawfully in possession of any person, may be seized.

106. If any presents given to Indians or non-treaty Indians, or any property purchased or acquired with or by means of any annuities granted to Indians, are or is unlawfully in the possession of any person, within the true intent and meaning of the last preceding section, any person acting under the authority of the Superintendent General may, with such assistance in that behalf as he thinks necessary, seize and take possession of the same, and shall deal therewith as the Superintendent General directs. R.S., c. 43, s. 81.

S.C. 1926-27, c.32, s.4.

4. The said Act is amended by inserting the following section immediately after section one hundred and six thereof:—

Acquisition of totem poles, etc., forbidden.

"**106A.** No title to any Indian grave-house, carved grave-pole, totem-pole, carved house-post or large rock embellished with paintings or carvings on an Indian reserve, shall be acquired by any means whatsoever by any person without the written consent of the Superintendent General of Indian Affairs, and no Indian grave-house, carved grave-pole, totem-pole, carved house-post or large rock embellished with paintings or carvings, on an Indian reserve shall be removed, taken away, mutilated, disfigured, defaced or destroyed without such written consent.

Penalty.

Any person violating any of the provisions of this section shall be liable on summary conviction to a penalty not exceeding two hundred dollars, with costs of prosecution, and in default of payment to imprisonment for a term not exceeding three months, and any article removed or taken away contrary to the provisions of this section may be seized on the instructions of the Superintendent General and dealt with as he may direct."

Enfranchisement.

Special application of this Part.

107. The provisions of this Part respecting enfranchisement of Indians shall not apply to any band of Indians in the province of Manitoba, British Columbia, Saskatchewan or Alberta, or the Territories, except in so far as such provisions are, by proclamation of the Governor in Council, from time to time, extended to any band of Indians in any of the said provinces or territories. R.S., c. 43, s. 82.

S.C. 1919-20, c.50, s.3.

3. Paragraph *(h)* of section two, and sections one hundred and seven to one hundred and twenty-three, both inclusive, of the said Act are repealed and the following are substituted therefor:—

Enfranchisement of Indians.

Enquiry and report as to fitness of Indians to be enfranchised.

"**107.** (1) The Superintendent General may appoint a Board to consist of two officers of the Department of Indian Affairs and a member of the Band to which the Indian or Indians under investigation belongs, to make enquiry and report as to the fitness of any Indian or Indians to be enfranchised. The Indian member of the Board shall be nominated by the council of the Band, within thirty days after the date of notice having been given to the council, and in default of such nomination, the appointment shall be made by the Superintendent General. In the course of such enquiry it shall be the duty of the Board to take into consideration and report upon the attitude of any such Indian towards his enfranchisement, which attitude shall be a factor in determining the question of fitness. Such report shall contain a description of the land occupied by each Indian, the amount thereof and the improvements thereon, the names, ages and sex of every Indian whose interests it is anticipated will be affected, and such other information as the Superintendent General may direct such Board to obtain.

S.C. 1922, c.26, s.1.

1. Subsection one of section one hundred and seven of the *Indian Act*, Revised Statutes of Canada, 1906, chapter eighty-one, as enacted by chapter fifty of the statutes of 1920, is repealed, and the following is substituted therefor:—

Enquiry as to fitness of Indian for enfranchisement in future to be at request of Indian or of band.

"**107.** (1) Upon the application of an Indian of any band, or upon the application of a band on a vote of a majority of the male members of such band of the full age of twenty-one years at a meeting or council thereof summoned for that purpose, according to the rules of the band and held in the presence of the Superintendent General or of an officer duly authorized to attend such council, by the Governor in Council or by the Superintendent General, a Board may be appointed by the Superintendent General to consist of two officers of the Department of Indian Affairs and a member of the band to which the Indian or Indians under investigation belongs, to make enquiry and report as to the fitness of any Indian or Indians to be enfranchised. The Indian member of the Board shall be nominated by the council of the band, within thirty days after the date of notice having been given to the council, and in default of such nomination, the appointment shall be made by the Superintendent General. In the course of such enquiry it shall be the duty of the Board to take into consideration and report upon the attitude of any such Indian towards his enfranchisement, which attitude shall be a factor in determining the question of fitness. Such report shall contain a description of the land occupied by each Indian, the amount thereof and the improvements thereon, the names, ages and sex of every Indian whose interests it is anticipated will be affected, and such other information as the Superintendent General may direct such Board to obtain".

S.C. 1919-20 c.50, s.3.

Governor in Council may enfranchise Indians, on approval of report of Superintendent.

"(2) On the report of the Superintendent General that any Indian, male or female, over the age of twenty-one years is fit for enfranchisement, the Governor in Council may by order direct that such Indians shall be and become enfranchised at the expiration of two years from the date of such order or earlier if requested by such Indian, and from the date of such enfranchisement the provisions of the *Indian Act* and of any other Act or law making any distinction between the legal rights, privileges, disabilities and liabilities of Indians and those of His Majesty's other subjects, shall cease to apply to such Indian or to his or her minor unmarried children, or, in the case of a married male Indian, to the wife of such Indian, and every such Indian and child and wife shall thereafter have, possess and enjoy all the legal powers, rights and privileges of His Majesty's other subjects, and shall no longer be deemed to be Indians within the meaning of any laws relating to Indians.

Effect of enfranchisement.

S.C. 1924, c.47, s.6.

6. Subsection two of section one hundred and seven of the said Act as enacted by section three of chapter fifty of the statutes of 1920 is amended by adding at the end thereof the following:—

"Provided that where a wife is living apart from her husband, the enfranchisement of the husband shall not carry with it the enfranchisement of his wife except on her own written request to be so enfranchised." Procedure where wife living apart.

S.C. 1919-20, c.50, s.3.

Right of Indian to choose name, and to be known by same.

"(3) An Indian over the age of twenty-one years shall have the right to choose the christian name and surname by which he or she wishes to be enfranchised and thereafter known, and from the date of the order of enfranchisement such Indian shall thereafter be known by such names, and if no such choice is made such Indian shall be enfranchised by and bear the name or names by which he or she has been theretofore commonly known.

Letters patent for his land to be issued to Indian upon enfranchisement.

"(4) Upon the issue of an order of enfranchisement the Superintendent General shall, if any Indian enfranchised holds any land on a reserve, cause letters patent to be issued to such Indian for such land: Provided that such Indian shall pay to the funds of the band such amount per acre for the land he holds as the Superintendent General considers to be the value of the common interest of the band in such land, and such payment shall be a charge against the share of such Indian in the funds of the band.

Receives his share of funds.

The Superintendent General shall also pay to each Indian upon enfranchisement his or her share of the funds to the credit of the band, including such amount as the Superintendent General determines to be his or her share of the value of the common interest of the band in the lands of the reserve or reserves, or share of the principal of the annuities of the band capitalized at five per centum, out of such moneys as are provided by Parliament for the purpose or which may be otherwise available for such purpose.

Land and money of children and wife.

The land and money of any minor, unmarried children may be held for the benefit of such minor or may be granted or paid in whole or in part to the father, or, if the father is dead, to the mother, or in either case to such person as the Superintendent General may select for such purpose for the maintenance of such minor, and the land and money of the wife shall be granted and paid to the husband, unless in any case the Superintendent General shall direct that the whole or any part thereof be granted or paid to the wife herself, in which case the same shall be granted or paid to the wife.

Payments from funds of band, if no land.

"(5) If such Indian holds no land in a reserve he or she shall be paid from the funds of the band such amount as the Superintendent General determines to be his or her share of the value of the common interest of the band in the lands of the reserve or reserves, and shall also be paid his or her share of the funds or annuities of the band capitalized as aforesaid.

S.C. 1919-20 c.50, s.3, cont'd.

Indians not members of band, and non-treaty Indians, enfranchised, and granted letters patent.

"(6) Every Indian who is not a member of the band and every non-treaty Indian who, with the acquiescence of the band and approval of the Superintendent General, has been permitted to reside on the reserve or to obtain a holding or location thereon, may be enfranchised and given letters patent for such land as a member of the band, provided that such Indian or non-treaty Indian shall pay to the credit of the band the value of the common interest of the band in the land for which he receives a patent.

Claims on funds of band cease on issue of letters patent.

"(7) On the issue of the letters patent to any enfranchised Indian for any land he may be entitled to, or the payment from the capital funds or annuities of the band, as above provided, such Indian and his or her minor unmarried children and, in the case of a male married Indian, the wife of such Indian shall cease to have any further claims whatsoever against any common property or funds of the band.

S.C. 1924, c.47, s.7.

7. Section one hundred and seven of the said Act as enacted by section three of chapter fifty of the statutes of 1920, and as amended by section one of chapter twenty-six of the statutes of 1922, is further amended by adding thereto the following subsection:—

Enfranchisement of Indians, section 122A revived.

"(S) Section one hundred and twenty-two A as enacted by section six, chapter twenty-six of the statutes of 1918, was not intended to and shall be deemed not to have been repealed by section three of chapter fifty of the statutes of 1920, and any act or thing done under the provisions of said section one hundred and twenty-two A shall be and is hereby declared to be valid and effective."

Proceedings for enfranchisement.

108. Whenever any male Indian or unmarried Indian woman, of the full age of twenty-one years, makes application to the Superintendent General to be enfranchised, the Superintendent General shall instruct the agent of the band of which the applicant is a member, to call upon the latter to furnish a certificate, under oath, before a judge of any court of justice, by the priest, clergyman or minister of the religious denomination to which the applicant belongs, or by a stipendiary magistrate or two justices of the peace, to the effect that to the best of the knowledge and belief of the deponent or deponents, the applicant for enfranchisement is, and has been for at least five years previously, a person of good moral character, temperate in his or her habits, and of sufficient intelligence to be qualified to hold land in fee simple, and otherwise to exercise all the rights and privileges of an enfranchised person. R.S., c. 43, s. 83.

S,C, 1919-20, c.50, s.3. Repeals R.S.C. 1906, c.81, s.108.

"**108.** Where an Indian is undergoing a period of probation in accordance with the provisions of sections one hundred and seven to one hundred and twenty-two, inclusive, heretofore in force, such Indian may on the recommendation of the Superintendent General be enfranchised by order of the Governor in Council, and given letters patent for the lands held by such Indian under location ticket issued to him or her in respect of such enfranchisement, and paid his or her share of the capital funds at the credit of the band or share of the principal of the annuities of the band capitalized at five per centum as aforesaid, out of such moneys as are provided for the purpose by Parliament or which may be otherwise available for such purpose.

Enfranchisement of Indian on probation.

Receives letters patent and payment of share of fund.

109. Upon receipt of such a certificate, the agent shall, with the least possible delay, submit the same to a council of the band of which the applicant is a member; and he shall then inform the Indians assembled at such council, that thirty days will be given within which affidavits made before a judge or a stipendiary magistrate will be received, containing reasons, if any there are, of a personal character affecting the applicant, why such enfranchisement should not be granted to the applicant. R.S., c. 43, s. 84.

To be submitted to council of band.

S.C. 1919-20, c.50, s.3. Repeals R.S.C. 1906, c.81, s.109.

"**109.** When a majority of the members of a band is enfranchised, the common land or other public property of the band shall be equitably allotted to members of the band, and thereafter the residue, if any, of such land or public property may be sold by the Superintendent General and the proceeds of such sale placed to the credit of the funds of the band to be divided as provided in section one hundred and seven: Provided, however, that the Governor in Council may reserve and set apart from the funds of the band such sum as the Superintendent General may consider necessary for the perpetual care and protection of any Indian cemetery or burial plot belonging to such Indians, and any other common property which in the opinion of the Superintendent General should be preserved as such. And provided also that no part of such land or other property shall be sold to any person other than a member of the band except by public auction after three months' advertisement in the public press.

Disposal of common lands or public property.

Care of Indian cemeteries, and common property which should be preserved.

Sales at public auction.

110. At the expiration of the thirty days aforesaid, the agent shall forward to the Superintendent General all affidavits which have been filed with him in the case, as well as one made by himself before a judge or a stipendiary magistrate, containing his reasons for or against the enfranchisement of the applicant.

Affidavits to be sent to Superintendent General.

2. If the Superintendent General, after examining the evidence, decides in favour of the applicant, he may grant to the applicant a location ticket for the land occupied by him or her as a probationary Indian, or for such proportion thereof as appears to the Superintendent General fair and proper. R.S., c. 43, s. 85.

Location ticket to be granted.

S.C. 1919-20, c.50, s.3. Repeals R.S.C. 1906, c.81, s.110.

Regulations to enforce these provisions.

"**110.** The Governor in Council shall have power to make regulations for the carrying out of the provisions of the three sections immediately preceding this section, and subject to the provisions of this Act for determining how the land, capital moneys and other property of a band, or any part thereof, shall be divided, granted and paid, upon the enfranchisement of any Indian or Indians belonging to such band or having any interest in any of the property of such band, and to decide any questions arising under the said sections, and the decision of the Governor in Council thereon shall be final and conclusive.

Final decision of Governor in Council.

Certain educational acquirements to confer enfranchisement.

111. Every Indian who is admitted to the degree of doctor of medicine, or to any other degree, by any university of learning, or who is admitted, in any province of Canada, to practise law, either as an advocate, a barrister, solicitor or attorney, or a notary public, or who enters holy orders, or who is licensed by any denomination of christians as a minister of the gospel, may, upon petition to the Superintendent General, *ipso facto* become and be enfranchised under this Part, and he shall then be entitled to all the rights and privileges to which any other member of the band to which he belongs would be entitled if he was enfranchised under the provisions of this Part.

Allotment in such case.

2. The Superintendent General may give him a suitable allotment of land from the lands belonging to the band of which he is a member: Provided that, if he is not the recognized holder of a location on the reserve by ticket or otherwise, he shall first obtain the consent of the band and the approval of the Superintendent General to such allotment. R.S., c. 43, s. 86.

S.C. 1919-20, c.50, s.3. Repeals R.S.C. 1906, c.81, s.111.

Report to Parliament.

"**111.** The Minister shall, within fifteen days after the opening of each session of Parliament, submit to both Houses of Parliament a list of the Indians enfranchised under this Act during the previous fiscal year, and the amount of land and money granted and paid to each Indian so enfranchised."

Patent may issue after probation.

112. After the expiration of three years, or, if the conduct of such Indian has not been satisfactory, after such longer period as the Superintendent General deems necessary, the Governor in Council may, on the report of the Superintendent General, order the issue of letters patent, granting to such Indian the land in fee simple, which has been allotted to him by location ticket.

Conditions.

2. Such letters patent shall contain a provision that such Indian shall not have power to sell, lease or otherwise alienate the land except with the sanction of the Governor in Council.

Compliance not necessary.

3. In such cases compliance with the provisions of this Part respecting leases or surrender of lands in a reserve shall not be necessary. R.S., c. 43, s. 87.

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Indians not members of the band permitted to reside on reserve.

122. Every Indian who is not a member of the band, and every non-treaty Indian, who, with the consent of the band and the approval of the Superintendent General, has been permitted to reside upon the reserve, or to obtain a location thereon, may, on being assigned a suitable allotment of land by the Superintendent General for enfranchisement, become enfranchised on the same terms and conditions as a member of the band: Provided that such enfranchisement shall not confer upon such Indian any right to participate in the annuities, interest moneys, rents or councils of the band.

Effect of enfranchising.

2. Such enfranchisement shall confer upon such Indian the same legal rights and privileges, and make such Indian subject to such disabilities and liabilities as affect His Majesty's other subjects. R.S., c. 43, s. 92.

S.C. 1918, c.26, s.6.

6. The following section is inserted immediately after section one hundred and twenty-two:—

Enfranchisement of Indians.

"**122A.** (1) If an Indian who holds no land in a reserve, does not reside on a reserve and does not follow the Indian mode of life, makes application to be enfranchised, and satisfies the Superintendent General that he is self-supporting and fit to be enfranchised, and surrenders all claims whatsoever to any interest in the lands of the band to which he belongs, and accepts his share of the funds at the credit of the band including the principal of the annuities of the band, to which share he would have been entitled had he been enfranchised under the foregoing sections of the Act, in full of all claims to the property of the band, or in case the band to which he belongs has no funds or principal of annuities, surrenders all claim whatsoever to any property of the band, the Governor in Council may order that such Indian be enfranchised and paid his said share if any, and from the date of such order such Indian, together with his wife and unmarried minor children, shall be held to be enfranchised.

Indian women.

"(2) Any unmarried Indian woman of the age of twenty-one years, and any Indian widow and her minor unmarried children, may be enfranchised in the like manner in every respect as a male Indian and his said children.

Application.

"(3) This section shall apply to the Indians in any part of Canada."

Provision when band decides that all its members may become enfranchised.

123. If any band, at a council summoned for the purpose according to their rules, and held in the presence of the Superintendent General, or an agent duly authorized by him to attend such council, decides to allow every member of the band who chooses, and who is found qualified, to become enfranchised, and to receive his or her share of the principal moneys of the band, and sets apart for each such member a suitable allotment of land for the purpose, any applicant belonging to such band, or the wife and children of any such applicant, may, after such decision, be dealt with as provided in the foregoing provisions respecting enfranchisement and the payment to enfranchised Indians of their shares of the capital funds at the credit of the band or of the estimated principal of the annuities of the band to which they are entitled. 58-59 V., c. 35, s. 5.

Offences and Penalties.

Residing, etc., upon any reserve without authority.

124. Every person, or Indian other than an Indian of the band, who, without the authority of the Superintendent General, resides or hunts upon, occupies or uses any land or marsh, or who resides upon or occupies any road, or allowance for road, running through any reserve belonging to or occupied by such band shall be liable, upon summary conviction, to imprisonment for a term not exceeding one month or to a penalty not exceeding ten dollars and not less than five dollars, with costs of prosecution, half of which penalty shall belong to the informer. 57-58 V., c. 32, s. 2. Penalty.

Refusing to remove from reserve on demand of chief.

125. Any person or Indian who, being lawfully required by an Indian agent, a chief of the band occupying a reserve, or a constable,—

(a) to remove with his family, if any, from the land, marsh, road, or allowance for road upon which he is or has settled or is residing or hunting, or which he occupies; or,

(b) to remove his cattle from such land or marsh; or,

(c) to cease fishing in any marsh, river, stream or creek on or running through a reserve; or,

(d) to cease using, occupying, settling or residing upon any land, river, stream, creek, marsh, road or allowance for a road in a reserve;

fails to comply with such requirement, shall, upon summary conviction, be liable to a penalty of not less than five dollars and not more than ten dollars for every day during which such failure continues, and, in default of payment, to be imprisoned for a term not exceeding three months. 54-55 V., c. 30, s. 1. Penalty.

Shooting or fishing on reserved territory.

126. Every Indian, not being an Indian of the band, who, in the case where shooting privileges over a reserve or part of a reserve, or fishing privileges in any marsh, pond, river, stream or creek upon or running through a reserve, have, with the consent of the Indians of the band, been leased or granted to any person, and, in such case, every person not, under such lease or grant, entitled so to do, who hunts, shoots, kills or destroys any game animals or birds, or who fishes for, takes, catches or kills any fish to which such exclusive privilege extends, upon the reserve or part of a reserve, or in any marsh, pond, river, stream or creek covered by such lease or grant, shall, in addition to any other penalty or liability thereby incurred, be liable, on summary conviction, for every such offence to a penalty not exceeding ten dollars and not less than five dollars, and, in default of payment, to imprisonment for any term not exceeding one month. 54-55 V., c. 30, s. 4. Penalty.

Trespassing on reserves and cutting or removing

127. Every person, or Indian, other than an Indian of the band to which the reserve belongs, who, without the license in writing of the Superintendent General, or of some officer or person deputed by him for that purpose, cuts, carries away or removes from any of the lands, roads or allowances for roads in a reserve, any of the trees, saplings, shrubs, underwood, timber, cordwood or part of a tree, or hay, or removes any

of the stone, soil, minerals, metals or other valuables from the said lands, roads or allowances for roads, shall, on summary conviction thereof before any stipendiary magistrate, police magistrate or any two justices of the peace or an Indian agent, incur in each case the costs of prosecution and,—

Trees. *(a)* for every tree he cuts, carries away or removes, a penalty of twenty dollars;

Timber. *(b)* for cutting, carrying away or removing any of the saplings, shrubs, underwood, timber, cordwood or part of a tree or hay, if under the value of one dollar, a penalty of four dollars; and, if over the value of one dollar, a penalty of twenty dollars;

Stone, soil, minerals. *(c)* for removing any of the stone, soil, minerals, metals, or other valuables aforesaid, a penalty of twenty dollars.

Punishment in case of default of payment. 2. In default of immediate payment of the said penalties and costs, such magistrate, justices of the peace, or Indian agent may issue a warrant directed to any person or persons by him or them named therein, to levy the amount of the said penalties and costs by distress and sale of the goods and chattels of the person or Indian liable to pay the same, or may, without proceeding by distress and sale, upon non-payment of such penalties and costs, order the person or Indian liable therefor to be imprisoned in the common gaol of the county or district in which the said reserve or any part thereof lies for a term not exceeding thirty days, if the penalty does not exceed twenty dollars, or for a term not exceeding three months, if the penalty exceeds twenty dollars.

Issue of warrant, etc. 3. The Superintendent General, or such other officer or person as he shall authorize in that behalf may issue the warrant on any such conviction; or may, without proceeding by distress and sale, make such order upon such conviction as such magistrate, justices of the peace or Indian agent could make; and similar proceedings may be had upon the warrant so issued as if it had been issued by the magistrate, justices of the peace or Indian agent before whom the person was convicted.

Committal in default of distress 4. If upon the return of any warrant for distress and sale, the amount thereof has not been made, or if any part of it remains unpaid, such magistrate, or justices of the peace, or Indian agent, or the Superintendent General, or such other officer or person as aforesaid, may commit the person in default to the common gaol, as aforesaid, for a term not exceeding thirty days, if the sum claimed upon the said warrant does not exceed twenty dollars, or for a term not exceeding three months if the sum exceeds twenty dollars.

Application of penalties. 5. All such penalties shall be paid to the Minister of Finance, and shall be disposed of for the use and benefit of the band of Indians for whose benefit the reserve is held, in such manner as the Governor in Council directs. R.S., c. 43, s. 26; 53 V., c. 29, s. 3.

Indians without a license, trespassing on reserves.

128. Every Indian of the band who, without the license in writing of the Superintendent General, or of some officer or person deputed by him for that purpose,—

(a) cuts, carries away or removes from land in a reserve held by another Indian under a location title or by an Indian otherwise recognized by the Department as the occupant thereof any of the trees, cordwood, or part of a tree, saplings, shrubs, underwood, timber or hay thereon, or removes from such land any of the stone, soil, minerals, metals or other valuables; or,

(b) cuts, carries away or removes from any portion of the reserve of his band, for sale and not for the immediate use of himself and his family any trees, timber, cordwood or part of a tree, saplings, shrubs, underwood or hay thereon, or removes any of the stone, soil, minerals, metals or other valuables therefrom, for sale, as aforesaid; or,

(c) unless with the consent of the band and the approval of the Superintendent General, cuts or uses any pine or large timber for any purpose other than for building on his own location or farm;

Penalty.

shall incur the penalties provided in the last preceding section in respect to Indians of other bands and other persons.

Proceedings for recovery.

2. The same proceedings may be had for the recovery thereof as are provided for in the said section. 50-51 V., c. 33, s. 4.

Buying from Indians contrary to regulations of Governor in Council.

129. Every person who buys or otherwise acquires from any Indian or band or irregular band of Indians in the province of Manitoba, Saskatchewan or Alberta, or the Territories, any grain, root crops or other produce contrary to regulations made by the Governor in Council in that behalf, shall, on summary conviction before a stipendiary magistrate, police magistrate or two justices of the peace or an Indian agent, be liable to a penalty not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months, or to both. R.S., c. 43, s. 30.

Penalty.

Cutting and removing trees from reserve contrary to regulations of Governor in Council.

130. Every person who cuts, carries away or removes from any reserve or special reserve, any hard or sugar-maple tree or sapling, or buys or otherwise acquires from any Indian or non-treaty Indian, or other person, any hard or sugar-maple tree or sapling so cut, carried away or removed from any reserve or special reserve in the province of Manitoba, Saskatchewan or Alberta, or the Territories, contrary to regulation made in that behalf by the Governor in Council, shall, on summary conviction before a stipendiary magistrate, police magistrate, or two justices of the peace or an Indian agent, be liable to a penalty not exceeding one hundred dollars or to imprisonment for a term not exceeding three months, or to both. R.S., c. 43, s. 32.

Penalty.

Trading without license.

131. Every person being,—

(a) an official or employee connected with the inside or outside service of the Department of Indian Affairs; or,

(b) a missionary in the employ of any religious denomination, or otherwise employed in mission work among Indians; or,

(c) a school teacher on an Indian reserve; and,

(d) in the province of Manitoba, Saskatchewan or Alberta, or the Territories;

who, on a reserve, without the special license in writing of the Superintendent General, trades with any Indian or directly or indirectly sells to him any goods or supplies, cattle or other animals, shall be liable to a fine equal in amount to double the sum received for the goods, supplies, cattle or other animals sold, and, in addition, to the costs of prosecution before a police magistrate, a stipendiary magistrate, a justice of the peace or the Indian agent for the locality where the offence occurs. 53 V., c. 29, s. 10; 57-58 V., c. 32, s. 10.

Penalty.

Cutting trees or assisting in cutting trees on Indian lands.

132. If any person without authority, cuts or employs, or induces any other person to cut, or assists in cutting any trees of any kind on Indian lands or on any reserve, or removes or carries away, or employs, or induces or assists any other person to remove or carry away any trees of any kind so cut from any Indian lands or reserve, he shall not acquire any right to the trees so cut, or any claim to any remuneration for cutting or preparing the same for market, or conveying the same to or towards market.

Confers no property or right to remuneration.

If trees cannot be seized.

2. When the trees or logs or timber or any products thereof have been removed, so that the same cannot, in the opinion of the Superintendent General, conveniently be seized, he shall, in addition to the loss of his labour and disbursements, incur a penalty of three dollars for each tree, rafting stuff excepted, which he is proved to have cut or caused to be cut or carried away.

Penalty.

Recovery of penalty.

3. Such penalty shall be recoverable with costs at the suit and in the name of the Superintendent General or resident agent in any court having jurisdiction in civil matters to the amount of the penalty.

Proof of authority.

4. In all such cases, it shall be incumbent on the person charged to prove his authority to cut.

What shall be sufficient evidence.

5. The averment of the person seizing or prosecuting that he is duly employed under the authority of this Part shall be sufficient proof thereof, unless the defendant proves the contrary. R.S., c. 43, s. 61.

Buying or acquiring presents given to Indians.

133. Every person or Indian other than an Indian of the band who, without the written consent of the Superintendent General or his agent, the burden of proof concerning which shall be on the accused, buys or otherwise acquires any presents given to Indians or non-treaty Indians, or any property purchased or acquired with or by means of any annuities granted to Indians or any part thereof, is guilty of an offence, and liable on summary conviction, to a fine not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months. R.S., c. 43, s. 81; 53 V., c. 29, s. 6.

Penalty.

Land sale agent purchasing Indian land.

134. Every agent for the sale of Indian lands who, within his division, directly or indirectly, except under an order of the Governor in Council, purchases any land which he is appointed to sell, or becomes proprietor of or interested in any such land, during the time of his agency shall forfeit his office and incur a penalty of four hundred dollars for every such offence, recoverable in an action of debt by any person who sues for the same. R.S., c. 43, s. 110.

Penalty.

Every person

135. Every one who by himself, his clerk, servant or agent, and every one who in the employment or on the premises of another directly or indirectly on any pretense or by any device,—

Selling intoxicants to Indians.

(a) sells, barters, supplies or gives to any Indian or non-treaty Indian, or to any person male or female who is reputed to belong to a particular band, or who follows the Indian mode of life, or any child of such person any intoxicant, or causes or procures the same to be done or attempts the same or connives thereat; or,

Opening and keeping a tavern on a reserve.

(b) opens or keeps or causes to be opened or kept on any reserve or special reserve a tavern, house or building in which any intoxicant is sold, supplied or given; or,

Having intoxicants in his possession in house of Indian.

(c) is found in possession of any intoxicant in the house, tent, wigwam, or place of abode of any Indian or non-treaty Indian or of any person on any reserve or special reserve, or on any other part of any reserve or special reserve; or,

Selling intoxicants on reserve.

(d) sells, barters, supplies or gives to any person on any reserve or special reserve any intoxicant;

shall, on summary conviction before any judge, police magistrate, stipendiary magistrate, or two justices of the peace or Indian agent, be liable to imprisonment for a term not exceeding six months and not less than one month, with or without hard labour, or to a penalty not exceeding three hundred dollars and not less than fifty dollars with costs of prosecution, or to both penalty and imprisonment in the discretion of the convicting judge, magistrate, justices of the peace or Indian agent.

Penalty.

Application of penalty.

2. A moiety of every such penalty shall belong to the informer or prosecutor, and the other moiety thereof to His Majesty to form part of the fund for the benefit of that body of Indians or non-treaty Indians with respect to one or more members of which the offence was committed. 51 V., c. 22, s. 4; 57-58 V., c. 32, s. 6.

Commander of vessel whereon intoxicants are sold guilty of offence.

136. The commander or person in charge of any steamer or other vessel, or boat, from or on board of which any intoxicant has been sold, bartered, exchanged, supplied or given to any Indian or non-treaty Indian, shall, on summary conviction before any judge, police magistrate, stipendiary magistrate or two justices of the peace, or Indian agent, be liable to a

Penalty.

penalty not exceeding three hundred dollars and not less than fifty dollars for each such offence, with costs of prosecution, and in default of immediate payment of such penalty and costs, any person so convicted shall be committed to any common gaol, house of correction, lock-up or other place of confinement by the judge, magistrate or two justices of the peace, or Indian agent, before whom the conviction has taken place, for a term not exceeding six months and not less than one month, with or without hard labour, or until such penalty and costs are paid.

Application of penalties.

2. The penalty shall be applied as provided in the last preceding section. R.S., c. 43, s. 95.

Indians having intoxicants and selling the same to Indians.

137. Every Indian or non-treaty Indian who makes or manufactures any intoxicant, or who has in his possession, or concealed, or who sells, exchanges with, barters, supplies or gives to any other Indian or non-treaty Indian, any intoxicant, shall, on summary conviction before any judge, police magistrate, stipendiary magistrate or two justices of the peace, or Indian agent, be liable to imprisonment for a term not exceeding six months and not less than one month, with or without

Penalty.

hard labour, or to a penalty not exceeding one hundred dollars and not less than twenty-five dollars, or to both penalty and imprisonment, in the discretion of the convicting judge, magistrate, or justices of the peace or Indian agent. R.S., c. 43, s. 96.

Exception in case of illness.

138. No penalty shall be incurred when the intoxicant is made use of in case of sickness under the sanction of a medical man or under the directions of a minister of religion.

Proof.

2. The burden of proof that the intoxicant has been so made use of shall be on the accused. R.S., c. 43, s. 98; 53 V., c. 29, s. 8.

Arrest without warrant of any person or Indian with intoxicants.

139. Any constable or peace officer may arrest without warrant any person or Indian found gambling, or drunk, or with intoxicants in his possession, on any part of a reserve, and may detain him until he can be brought before a justice of the peace, and such person or Indian shall be liable upon

Penalty.

summary conviction to imprisonment for a term not exceeding three months or to a penalty not exceeding fifty dollars and not less than ten dollars, with costs of prosecution, half of which pecuniary penalty shall belong to the informer. 57-58 V., c. 32, s. 7.

S.C. 1919-20, c.50, s.4.

Offences.

Gambling, drinking or possession of liquor on Indian reserve. Penalty.

4. Section one hundred and thirty-nine of the said Act is amended by adding thereto the following subsection:—

"(2) Any person or Indian who has been gambling or has been drunk on an Indian reserve, or has had liquor in his possession on an Indian reserve, shall be liable on summary conviction to imprisonment for any term not exceeding three months, or to a penalty not exceeding fifty dollars and not less than ten dollars, with costs of prosecution, half of which pecuniary penalty shall belong to the informer."

Kegs, etc., in which intoxicants are carried to be forfeited.

140. The keg, barrel, case, box, package or receptacle from which any intoxicant has been sold, exchanged, bartered, supplied or given, as well that in which the original supply was contained as the vessel wherein any portion of such original supply was supplied as aforesaid, and the remainder of the contents thereof, if such barrel, keg, case, box, package, receptacle or vessel aforesaid, respectively, can be identified; and any intoxicant imported, manufactured or brought into and upon any reserve or special reserve, or into the house, tent, wigwam or place of abode, or on the person of any Indian or non-treaty Indian, or suspected to be upon any reserve or special reserve, may be searched for under a search warrant in that behalf granted by any judge, police magistrate, stipendiary magistrate or justice of the peace, and, if found, seized by any Indian superintendent, agent or bailiff, or other officer connected with the Department of Indian Affairs, or by any constable, wheresoever found on such land or in such place or on the person of such Indian or non-treaty Indian.

Search.

Seizure.

Destruction of kegs, etc.

2. On complaint before any judge, police magistrate, stipendiary magistrate, justice of the peace or Indian agent, he may, on evidence that this Act has been violated in respect of any such intoxicant or of any such keg, barrel, case, box, package, receptacle or vessel, or contents thereof, declare the same forfeited, and cause the same to be forthwith destroyed.

Indian or person found in possession to be punished. Penalty.

3. Such judge, magistrate, justice of the peace or Indian agent may condemn the Indian or person in whose possession the same is found to pay a penalty not exceeding one hundred dollars and not less than fifty dollars, and the costs of prosecution: and, in default of immediate payment, the offender may be committed to any common gaol, house of correction, lock-up or other place of confinement, with or without hard labour, for any term not exceeding six months, and not less than two months, unless such penalty and costs are sooner paid.

Application of penalty.

4. A moiety of such penalty shall belong to the prosecutor, and the other moiety to His Majesty for the purpose hereinbefore mentioned. R.S., c. 43, s. 100.

Vessels used in carrying intoxicants for Indians, to be forfeited and sold.

141. If it is proved before any judge, police magistrate, stipendiary magistrate or two justices of the peace, or Indian agent, that any vessel, boat, canoe or conveyance of any description, upon the sea or sea-coast, or upon any river, lake or stream, is employed in carrying any intoxicant, to be supplied to Indians or non-treaty Indians, such vessel, boat, canoe or conveyance so employed may be seized and declared forfeited, as in the last preceding section mentioned, and sold, and the proceeds thereof paid to His Majesty for the purpose hereinbefore mentioned. R.S., c. 43, s. 101.

Proceeds.

Articles exchanged for intoxicants to be forfeited and sold.

142. Every article, chattel, commodity or thing in the purchase, acquisition, exchauge, trade or barter of which, in violation of this Act, the consideration, either wholly or in part, is an intoxicant, shall be forfeited to His Majesty and may be seized, as is hereinbefore provided in respect to any receptacle of any intoxicant, and may be sold, and the proceeds thereof paid to His Majesty, for the purpose hereinbefore mentioned. R.S., c. 43, s. 102.

Introducing intoxicants at Indian council or meeting.

143. Every person who introduces any intoxicant at any council or meeting of Indians held for the purpose of discussing or assenting to a release or surrender of a reserve or portion thereof or for the purpose of assenting to the issuing of a license, and every agent or officer employed by the Superintendent General, or by the Governor in Council, who introduces, allows or countenances by his presence the use of such intoxicant among such Indians during the week before or at or the week after such council or meeting, shall incur a penalty of two hundred dollars recoverable by action in any court of competent jurisdiction.

Penalty.

Application of penalty.

2. A moiety of such penalty shall belong to the informer. R.S., c. 43, s. 103.

Indian intoxicated.

144. Every Indian who is found in a state of intoxication shall be liable on summary conviction thereof to imprisonment for any term not exceeding one month, or to a penalty not exceeding thirty dollars and not less than five dollars, or to both penalty and imprisonment, in the discretion of the convicting judge, magistrate, justice of the peace or Indian agent. 50-51 V., c. 33, s. 10.

Penalty.

Arrest without warrant of intoxicated Indian.

145. Any constable or other peace officer may, without warrant, arrest any Indian or non-treaty Indian found in a state of intoxication, and convey him to any common gaol, house of correction, lock-up, or other place of confinement, there to be kept until he is sober; and such Indian or non-treaty Indian shall, when sober, be brought for trial before any judge, police magistrate, stipendiary magistrate, or justice of the peace or Indian agent. 50-51 V., c. 33, s. 10.

Refusal to state where intoxicant was procured.

146. If any Indian or non-treaty Indian who has been so convicted, refuses, upon examination, to state or give information of the person from whom, the place where, and the time when, he procured such intoxicant, and if from any other Indian or non-treaty Indian, then, if within his knowledge, from whom, where and when such intoxicant was originally procured or received, he shall be liable to imprisonment as aforesaid for a further period not exceeding fourteen days, or to an additional penalty not exceeding fifteen dollars and not less than three dollars, or to both penalty and imprisonment, in the discretion of the convicting judge, magistrate, justice of the peace or Indian agent. R.S., c. 43, s. 105.

Penalty.

S.C. 1926-27, c.32, s.5.

5. The said Act is amended by inserting the following section immediately after section one hundred and forty-six thereof:—

Certificate of analyst to be accepted as *prima facie* evidence.

"**146A.** In any prosecution under this Act the certificate of analysis of a provincial or dominion analyst shall be accepted as *primâ facie* evidence of the fact stated therein as to the alcoholic or narcotic content of the sample analyzed."

Agent giving false information as to lands.

147. Every agent who knowingly and falsely informs, or causes to be informed, any person applying to him to purchase any land within his division and agency, that the same has already been purchased, or who refuses to permit the person so applying to purchase the same according to existing regulations, shall be liable therefor to the person so applying, in the sum of five dollars for each acre of land which the person so applying offered to purchase, recoverable by action of debt in any court of competent jurisdiction. R.S., c. 43, s. 109.

Penalty.

Sale, etc., of ammunition when prohibited.

148. Every person who, after public notice by the Superintendent General prohibiting the sale, gift, or other disposal to Indians in any part of the province of Manitoba, Saskatchewan or Alberta, or the Territories, of any fixed ammunition or ball cartridge, without the permission in writing of the Superintendent General, sells or gives, or in any other manner conveys to any Indian, in the portion of the said provinces or Territories to which such notice applies, any fixed ammunition or ball cartridge, shall, on summary conviction before any stipendiary or police magistrate or by any two justices of the peace, or by an Indian agent, be liable to a penalty not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months, or to both penalty and imprisonment, within the limits aforesaid, at the discretion of the court before which the conviction is had. R.S., c. 43, s. 113.

Penalty.

Celebrating festivities, dances or ceremonies at which presents are made, or bodies mutilated.

149. Every Indian or other person who engages in, or assists in celebrating or encourages either directly or indirectly another to celebrate any Indian festival, dance or other ceremony of which the giving away or paying or giving back of money, goods or articles of any sort forms a part, or is a feature, whether such gift of money, goods or articles takes place before, at, or after the celebration of the same, or who engages or assists in any celebration or dance of which the wounding or mutilation of the dead or living body of any human being or animal forms a part or is a feature, is guilty of an indictable offence and is liable to imprisonment for a term not exceeding six months and not less than two months: Provided that nothing in this section shall be construed to prevent the holding of any agricultural show or exhibition or the giving of prizes for exhibits thereat. 58-59 V., c. 35, s. 6.

Penalty.

Illegal celebrations.

S.C. 1918, c.26, s.7.

7. Section one hundred and forty-nine of the said Act is amended by striking out the word "indictable" in the tenth line thereof, and by inserting after the word "liable" in the eleventh line the words "on summary conviction."

S.C. 1914, c.35, s.8.

8. Section 149 of the said Act is amended by adding the following subsection thereto:— S. 149 amended.

"2. Any Indian in the province of Manitoba, Saskatchewan, Alberta, British Columbia, or the Territories who participates in any Indian dance outside the bounds of his own reserve, or who participates in any show, exhibition, performance, stampede or pageant in aboriginal costume without the consent of the Superintendent General of Indian Affairs or his authorized Agent, and any person who induces or employs any Indian to take part in such dance, show, exhibition, performance, stampede or pageant, or induces any Indian to leave his reserve or employs any Indian for such a purpose, whether the dance, show, exhibition, stampede or pageant has taken place or not, shall on summary conviction be liable to a penalty not exceeding twenty-five dollars, or to imprisonment for one month, or to both penalty and imprisonment." Restriction. Indian dances, &c.

S.C. 1926-27, c.32, s.6.

6. The said Act is amended by inserting the following section immediately after section one hundred and forty-nine thereof:—

Receiving money for the prosecution of a claim.

"**149A.** Every person who, without the consent of the Superintendent General expressed in writing, receives, obtains, solicits or requests from any Indian any payment or contribution or promise of any payment or contribution for the purpose of raising a fund or providing money for the prosecution of any claim which the tribe or band of Indians to which such Indian belongs, or of which he is a member, has or is represented to have for the recovery of any claim or money for the benefit of the said tribe or band, shall be guilty of an offence and liable upon summary conviction for each such offence to a penalty not exceeding two hundred dollars and not less than fifty dollars or to imprisonment for any term not exceeding two months."

150. Every fine, penalty or forfeiture under this Act, except so much thereof as is payable to an informer or person suing therefor, shall belong to His Majesty for the benefit of the band of Indians with respect to which or to one or more members of which the offence was committed, or to which the offender, if an Indian, belongs: Provided that the Governor in Council may from time to time direct that the same be paid to any provincial, municipal or local authority which wholly or in part bears the expense of administering the law under which such fine, penalty or forfeiture is imposed, or that the same be applied in any other manner deemed best adapted to attain the objects of such law or to secure its due administration, and may in case of doubt decide what band is entitled to the benefit of any such fine, penalty or forfeiture. 57-58 V., c. 32, s. 9. Application of penalties.

Governor in Council may apply the same otherwise.

Evidence and Procedure.

Evidence of unbelieving Indian may be received on his solemn affirmation.

151. Upon any inquest, or upon any inquiry into any matter involving a criminal charge, or upon the trial of any crime or offence whatsoever or by whomsoever committed, any court, judge, police or stipendiary magistrate, recorder, coroner, justice of the peace or Indian agent, may receive the evidence of any Indian or non-treaty Indian, who is destitute of the knowledge of God or of any fixed and clear belief in religion, or in a future state of rewards and punishments, without administering the usual form of oath to any such Indian or non-treaty Indian, as aforesaid, upon his solemn affirmation or declaration to tell the truth, the whole truth and nothing but the truth, or in such form as is approved by such court, judge, magistrate, recorder, coroner, justice of the peace or Indian agent, as most binding on the conscience of such Indian or non-treaty Indian. R.S., c. 43, s. 120.

Substance of evidence of Indian to be reduced to writing and signed.

152. In the case of any inquest, or upon any inquiry into any matter involving a criminal charge, or upon the trial of any crime or offence whatsoever, the substance of the evidence or information of any such Indian or non-treaty Indian, as aforesaid, shall be reduced to writing and signed by the Indian, by mark if necessary, giving the same, and verified by the signature or mark of the person acting as interpreter, if any, and by the signature of the judge, magistrate, recorder, coroner, justice of the peace, Indian agent or person before whom such evidence or information is given. R.S., c. 43, s. 121.

Indian to be cautioned to tell the truth.

153. The court, judge, magistrate, recorder, coroner, justice of the peace or Indian agent shall, before taking any such evidence, information or examination, caution every such Indian or non-treaty Indian, as aforesaid, that he will be liable to incur punishment if he does not tell the truth, the whole truth and nothing but the truth. R.S., c. 43, s. 122.

Effect of solemn affirmation of Indian.

154. Every solemn affirmation or declaration, in whatsoever form made or taken, by any Indian or non-treaty Indian, as aforesaid, shall be of the same force and effect as if such Indian or non-treaty Indian had taken an oath in the usual form. R.S., c. 43, s. 124.

Written declaration, etc., of Indian may be used in evidence.

155. The written declaration or examination so made, taken and verified, of any such Indian or non-treaty Indian, as aforesaid, may be lawfully read and received as evidence upon the trial of any criminal proceeding when under the like circumstances the written affidavit, examination, deposition or confession of any person might be lawfully read and received as evidence.

Certified copies of records, official papers, etc., to be evidence.

2. Copies of any records, documents, books or papers belonging to or deposited in the Department, attested under the signature of the Superintendent General or of the Deputy of the Superintendent General, shall be evidence in all cases in which the original records, documents, books or papers would be evidence. R.S., c. 43, ss. 123 and 130.

Name of offender need not be entered in the warrant in certain cases.

156. In any order, writ, warrant, summons and proceeding whatsoever made, issued or taken by the Superintendent General, or any officer or person by him deputed as aforesaid, or by any stipendiary magistrate, police magistrate, justice of the peace or Indian agent, it shall not be necessary to insert or express the name of the person or Indian summoned, arrested, distrained upon, imprisoned or otherwise proceeded against therein, except when the name of such person or Indian is truly given to or known by the Superintendent General, or such officer or person, or such stipendiary magistrate, police magistrate, justice of the peace or Indian agent.

What description shall suffice.

2. If the name is not truly given to or known by him, he may name or describe the person or Indian by any part of the name of such person or Indian given to or known by him.

Where name unknown.

3. If no part of the name is given to or known by him, he may describe the person or Indian proceeded against in any manner by which he may be identified.

Prima facie sufficient.

4. All such proceedings containing or purporting to give the name or description of any such person or Indian, as aforesaid, shall *prima facie* be sufficient. R.S., c. 43, s. 28.

Execution of order of Superintendent General by sheriffs, gaolers, etc.

157. All sheriffs, gaolers or peace officers, to whom any such process is directed by the Superintendent General, or by any officer or person by him deputed as aforesaid, or by any stipendiary magistrate, police magistrate, justice of the peace or Indian agent, and all other persons to whom such process is directed with their consent, shall obey the same; and all other officers shall, upon reasonable requisition so to do, assist in the execution thereof. R.S., c. 43, s. 29.

His Majesty's name to be used in certain cases.

158. In all cases of encroachment upon, or of violation of trust respecting any special reserve, proceedings may be taken in the name of His Majesty, in any superior court, notwithstanding the legal title is not vested in His Majesty. R.S., c. 43, s. 36.

Who may act as justice or two justices of the peace.

159. Any judge of a court, judge of sessions of the peace, recorder, police magistrate or stipendiary magistrate, shall have full power to do alone whatever is authorized by this Part to be done by a justice of the peace or by two justices of the peace. R.S., c. 43, s. 115.

Jurisdiction in city or town to give jurisdiction in surrounding county or district.

160. Any recorder, police magistrate or stipendiary magistrate, appointed for or having jurisdiction to act in any city or town shall, with respect to offences and matters under this Part, have and exercise jurisdiction over the whole county or union of counties or judicial district in which the city or town for which he has been appointed or in which he has jurisdiction is situate. R.S., c. 43, s. 116.

Indian agent *ex officio* justice of the peace.

161. Every Indian agent shall for all the purposes of this Act or of any other Act respecting Indians, and with respect to,—

(a) any offence against the provisions of this Act or any other Act respecting Indians; or,

(b) any offence against the provisions of the Criminal Code respecting the inciting of Indians to commit riotous acts; or,

(c) any offence by any Indian or non-treaty Indian against any of the provisions of those parts of the Criminal Code relating to vagrancy and offences against morality;

Jurisdiction.

be *ex officio* a justice of the peace and have the power and authority of two justices of the peace, anywhere within the territorial limits of his jurisdiction as a justice, as defined in his appointment or otherwise defined by the Governor in Council, whether the Indian or non-treaty Indian charged with or in any way concerned in or affected by the offence, matter or thing to be tried, investigated or dealt with, is or is not within his ordinary jurisdiction, charge or supervision as an Indian agent. 58-59 V., c. 35, s. 7.

Special jurisdiction.

162. In the provinces of Manitoba, British Columbia, Saskatchewan and Alberta, and in the Territories, every Indian agent shall, for all such purposes and with respect to any such offence, be *ex officio* a justice of the peace and have the power and authority of two justices of the peace, whether or not the territorial limits of his jurisdiction as a justice, as defined in his appointment or otherwise defined as aforesaid, extend to the place where he may have occasion to act as such justice or to exercise such power or authority, and whether the Indians charged with or in any way concerned in or affected by the offence, matter or thing, to be tried, investigated or otherwise dealt with, are or are not within his ordinary jurisdiction, charge or supervision as Indian agent. 58-59 V., c. 35, s. 7.

Indian imprisoned not to receive annuity while imprisoned.

163. If any Indian is convicted of any crime punishable by imprisonment in a penitentiary or other place of confinement, the costs incurred in procuring such conviction, and in carrying out the various sentences recorded, may be defrayed by the Superintendent General, and paid out of any annuity or interest coming to such Indian, or to the band, as the case may be. R.S., c. 43, s. 118.

General.

Indians not capable of acquiring homestead.

164. No Indian or non-treaty Indian resident in the province of Manitoba, Saskatchewan or Alberta, or the Territories, shall be held capable of having acquired or of acquiring a homestead or pre-emption right under any Act respecting Dominion lands, to a quarter-section, or any parcel of land in any surveyed or unsurveyed lands in the said provinces or territories, or the right to share in the distribution of any lands allotted to half-breeds: Provided that,— Proviso.

Occupation not to be disturbed.

(a) he shall not be disturbed in the occupation of any plot on which he had permanent improvements prior to his becoming a party to any treaty with the Crown;

May be compensated for improvements.

(b) nothing in this section shall prevent the Superintendent General, if found desirable, from compensating any Indian for his improvements on such a plot of land, without obtaining a formal surrender thereof from the band; and,

Section not to apply to certain Indians.

(c) nothing in this section shall apply to any person who withdrew from any Indian treaty prior to the first day of October, in the year one thousand eight hundred and seventy-four. R.S., c. 43, s. 126.

Shooting and fishing privileges.

165. Where shooting privileges over a reserve or part of a reserve, or fishing privileges thereon have, with the consent of the Indians of the band, been leased or granted to any person, it shall not be lawful for any person, not under such lease or grant entitled so to do, or for any Indian other than an Indian of the band, to hunt, shoot, kill or destroy any game animals or birds, or to fish for, take, catch or kill any fish to which such exclusive privilege extends, upon the reserve or part of a reserve. 54-55 V., c. 30, s. 4.

How and by whom chiefs are to be elected.

166. At the election of a chief or chiefs, or at the granting of any ordinary consent required of a band under this Part, those entitled to vote at the council or meeting thereof shall be the male members of the band, of the full age of twenty-one years; and the vote of a majority of such members, at a council or meeting of the band summoned according to its rules, and held in the presence of the Superintendent General, or of an agent acting under his instructions, shall be sufficient to determine such election or grant such consent. R.S., c. 43, s. 127.

How consent may be granted, if band has council.

167. If any band has a council of chiefs or councillors, any ordinary consent required of the band may be granted by a vote of a majority of such chiefs or councillors, at a council summoned according to its rules, and held in the presence of the Superintendent General or his agent. R.S., c. 43, s. 128.

No intoxicants to be introduced at any Indian council meeting.

168. No one shall introduce any intoxicant at any council or meeting of Indians held for the purpose of discussing or of assenting to a release or surrender of a reserve or portion thereof, or for the purpose of assenting to the issuing of a timber or other license. R.S., c. 43, s. 103.

Before whom affidavits are to be made under this Act.

169. All affidavits required under this Act or intended to be used in reference to any claim, business or transaction in connection with Indian affairs, may be taken before the judge or clerk of any county or circuit court, or any justice of the peace, or any commissioner for taking affidavits in any court, or the Superintendent General, or the deputy of the Superintendent General, or any inspector of Indian agencies, or any Indian agent, or any surveyor duly licensed and sworn, appointed by the Superintendent General to inquire into, or to take evidence, or report in any matter submitted to or pending before the Superintendent General, or if made out of Canada, before the mayor or chief magistrate of, or the British consul in, any city, town or municipality, or before any notary public. R.S., c. 43, s. 129.

Publication of regulations and laying before Parliament.

170. All regulations made by the Governor in Council under this Part shall be published in the *Canada Gazette*, and shall be laid before both Houses of Parliament within the first fifteen days of the session next after the date thereof. R.S., c. 43, s. 131; 57-58 V., c. 32, s. 12.

Payments for Indian annuities for Ontario and Quebec.

171. There shall be payable, out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada, for Indian annuities for Ontario and Quebec, twenty-six thousand six hundred and sixty-four dollars per annum. R.S., c. 4, s. 5.

3. Section 171 of the said Act is repealed and the following is substituted therefor:— New s. 171. S.C. 1911, c.14, s.3.

"**171.** The annuities payable to Indians in pursuance of the conditions of any treaty expressed to have been entered into on behalf of His Majesty or His predecessors, and for the payment of which the Government of Canada is responsible, shall be a charge upon the Consolidated Revenue Fund of Canada, and be payable out of any unappropriated moneys forming part thereof." Payment of Indian annuities

PART II.

INDIAN ADVANCEMENT.

Interpretation.

Definitions. 'Reserve.'

172. In this Part, unless the context otherwise requires,—

(a) 'reserve' includes two or more reserves, and 'band' includes two or more bands united for the purposes of this Part by the order in council applying it;

(b) 'electors' means the male Indians of the full age of twenty-one years resident on any reserve to which this Part applies. R.S., c. 44, ss. 1 and 5. 'Electors.'

Application of this Part.

Application of Part.

173. This Part may be made applicable, as hereinafter provided, to any band of Indians in any of the provinces, or in the Territories, except in so far as it is herein otherwise provided. R.S., c. 44, s. 2.

When this Part shall apply.

174. Whenever any band of Indians is declared by the Governor in Council to be considered fit to have this Part applied to it, this Part shall so apply from the time appointed in such order in council. R.S., c. 44, s. 3.

Application of Part I.

Application of Part I.

175. The provisions of Part I. of this Act shall continue to apply to every band to which this Part is, from time to time, declared to apply, in so far only as they are not inconsistent with this Part: Provided that, if it thereafter appears to the Governor in Council that this Part cannot be worked satisfactorily by any band to which it has been declared to apply, the Governor in Council may by order in council, declare that after a day named in the order in council, this Part shall no longer apply to such band, and such band shall thereafter be subject only to Part I., except that by-laws, rules and regulations theretofore made under this Part, and not *ultra vires* of the chiefs in council under Part I., shall continue in force until they are repealed by the Governor in Council. R.S., c. 44, s. 2.

As to by-laws.

Division of Reserves.

Division of reserves into sections.

176. Every reserve to which this Part is to apply may, by the order in council applying it, be divided into sections, the number of which shall not exceed six, and each section shall have therein, as nearly as is found convenient, an equal number of male Indians of the full age of twenty-one years, or, should the majority of the Indians of the reserve so desire, the whole reserve may form one section, the wishes of the Indians in respect thereto being first ascertained in the manner prescribed in Part I. in like matters, and certified to the Superintendent General by the Indian agent.

Designation of each.

2. The sections shall be distinguished by numbers from one upwards, and the reserve shall be designated in the order in council as *The Indian Reserve*, inserting such name as is thought proper, and the sections shall be designated by the numbers assigned to them respectively. R.S., c. 44, s. 4; 53 V., c. 30, s. 1.

Nominations for Election of Councillors.

Meeting for election of councillors.

177. A meeting of the electors for the purpose of nominating candidates for election as councillors shall be held between the hours of ten o'clock in the forenoon and twelve o'clock at noon, at a place to be appointed by the Indian agent, on a day being one week previous to the day on which the election of councillors is to be held on any reserve as hereinafter provided.

Notice of meeting.

2. Due notice of such meeting shall be given in the manner customary in the band for calling meetings for public purposes. 53 V., c. 30, s. 3.

Chairman to preside.

178. The Indian agent, or in his absence such person as is appointed by the Superintendent General, or failing such appointment, a chairman to be chosen by the meeting, shall preside over such meeting and shall take and keep the minutes thereof. 53 V., c. 30, s. 3.

Candidates and their nomination.

179. Only Indians nominated at such meeting shall be recognized as, or permitted to become candidates for election as aforesaid; and each nomination to be valid must be made on the motion of an elector of the section of the reserve for the representation whereof the nominee is proposed as a candidate, and the motion must be seconded by another elector of that section. 53 V., c. 30, s. 3.

Time of nomination.

180. The nominations of the candidates shall, so far as practicable, be made consecutively and previously to any speeches being made by the movers and seconders or by any other persons, but nominations may be made up to the hour of twelve o'clock noon. 53 V., c. 30, s. 3.

Proceedings after nomination.

181. If only one candidate for any councillorship is proposed, the Indian agent or chairman shall, at twelve o'clock noon, declare such candidate duly elected; and if two or more candidates are proposed for any councillorship, an election shall be held under the provisions of this Part. 53 V., c. 30, s. 3.

Elections.

First election of members of the council.

182. On a day and at a place, and between the hours prescribed in the order in council, the electors shall meet for the purpose of electing the members of the council of the reserve. R.S., c. 44, s. 5.

Who shall be deemed elected.

183. One or more members to represent each section of the reserve, as provided in such order in council, shall be elected by the electors resident in each section, and the Indian or Indians, as the case may be, having the votes of the greatest number of electors for each section, shall be the councillor or councillors, as the case may be therefor, provided he or they are respectively possessed of, and living in, a house in the reserve. R.S., c. 44, s. 5.

Who shall preside at the election and his powers.

184. The agent for the reserve shall preside at the election, or in his absence some person appointed by him as his deputy, with the consent of the Superintendent General, or some person appointed by the Superintendent General may preside at the said election, and shall take and record the votes of the electors, and may, subject to appeal to the Superintendent General by or on behalf of any Indian or Indians who deems himself or themselves aggrieved by the action of such agent or deputy, or of such agent or person appointed as aforesaid, admit or reject the claim of any Indian to be an elector, and may determine who are the councillors for the several sections, and shall report the same to the Superintendent General.

Chairman to have casting vote.

2. In any case of an equality of votes at any such election the agent or person presiding thereat shall have the casting vote. R.S., c. 44, s. 5.

Meetings of Council.

First meeting of councillors.

185. On a day and at a place, and between the hours prescribed by the Superintendent General, if the day fixed for the same is within eight days from the date at which the councillors were elected, the said councillors shall meet and elect one of their number to act as chief councillor, and the councillor so elected shall be the chief councillor. R.S., c. 44, s. 6.

Meetings of the council.

186. The council shall meet for the despatch of business, at such place on the reserve and at such times as the agent for the reserve appoints, but which shall not exceed twelve times or be less than four times in the year for which it is elected, and due notice of the time and place of each meeting shall be given to each councillor by the agent. R.S., c. 44, s. 9.

Agent at such meeting, his duties.

187. At such meeting of the council the agent for the reserve, or his deputy appointed for the purpose with the consent of the Superintendent General, shall,—

(a) preside, and record the proceedings;

(b) control and regulate all matters of procedure and form and adjourn the meeting to a time named or *sine die;*

(c) report and certify all by-laws and other acts and proceedings of the council to the Superintendent General;

(d) address the council and explain and advise the members thereof upon their powers and duties.

Not to vote.

2. No such agent or deputy shall vote on any question to be decided by the council. R.S., c. 44, s. 9.

Faith and credence given to his certificate.

188. Full faith and credence shall be given in all courts and places whatsoever to any certificate given by such agent or deputy under the provisions of paragraph *(c)* of the last preceding section. R.S., c. 44, s. 9.

Votes.

189. Each councillor present shall have a vote on every question to be decided by the council, and such question shall be decided by the majority of votes, the chief councillor voting as a councillor and having also a casting vote, in case the votes would otherwise be equal.

Quorum.

2. Four councillors shall be a quorum for the despatch of any business. R.S., c. 44, s. 9.

Term of Office, Vacancies, Etc.

Term of office.

190. The councillors shall remain in office until others are elected in their stead, and an election for that purpose shall be held in like manner, at the same place and between the like hours on the like day, in each succeeding year, if it is not a Sunday or holiday, in which case it shall be held on the next day thereafter which is not a Sunday or a holiday.

2. If there is a failure to elect on the day appointed for the election, the Superintendent General shall appoint another day on which it shall be held. R.S., c. 44, s. 7.

Vacancies; how filled.

191. In the event of a vacancy in the council, by the death or inability to act of any councillor, more than three months before the time for the next election, an election to fill such vacancy shall be held by the agent or his deputy, after such notice to the electors concerned as the Superintendent General directs, at which only the electors of the section represented by the councillor to be replaced shall vote, and to such election the provisions respecting other elections shall apply, so far as they are applicable.

In office of chief councillor.

2. If the councillor to be replaced is the chief councillor, then an election of a chief councillor shall be held in the manner already provided, but the day fixed for such election shall be at least one week after the date when the new councillor is elected. R.S., c. 44, s. 8.

Remaining councillors to constitute council.

192. During the time of any vacancy in the council the remaining councillors shall constitute the council, and they may, in the event of a vacancy in the office, appoint a chief from among themselves for the time being. R.S., c. 44, s. 8.

Disqualifications in certain cases.

193. Every member of a council elected under the provisions of this Part, who is proved to be a habitual drunkard or to be living in immorality, or to have accepted a bribe, or to have been guilty of dishonesty or of malfeasance of office of any kind, shall, on proof of the fact to the satisfaction of the Superintendent General, be disqualified from acting as a member of the council, and shall, on being notified, cease forthwith so to act; and the vacancy occasioned thereby shall be filled in the manner hereinbefore provided. R.S., c. 44, s. 11.

Powers of Council.

Council may make by-laws as to religious denomination of school teacher.

194. The council may, by by-law, rule or regulation, approved and confirmed by the Superintendent General, provide that the religious denomination to which the teacher or teachers of the school or schools established on the reserve shall belong, shall be that of the majority of the Indians resident on the reserve: Provided that the Protestant or Roman Catholic minority on the reserve may also have a separate school or schools, with the approval of and under regulations made by the Governor in Council.

Also by-laws as to.

2. The council may also make by-laws, rules and regulations, approved and confirmed by the Superintendent General, regulating all or any of the following subjects and purposes, that is to say:—

Health.

(a) The care of the public health;

Order.

(b) The observance of order and decorum at elections of councillors, meetings of the council, and assemblies of Indians on other occasions, or generally, on the reserve, by the appointment of constables and erection of lock-up houses, or by the adoption of other legitimate means;

Intemperance.

(c) The repression of intemperance and profligacy;

S.C. 1926-2 c.32, s.7.

7. Paragraph *(c)* of subsection two of section one hundred and ninety-four of the said Act is hereby repealed and the following is substituted therefor:—

"*(c)* The prevention of disorderly conduct and nuisances."

R.S.C. 1906, c.81, s.194, cont'd.

(d) The subdivision of the land in the reserve, and the distribution of the same amongst the members of the band; also, the setting apart, for common use, of woodland and land for other purposes; Subdivision of reserve.

(e) The protection of and the prevention of trespass by cattle, sheep, horses, mules and other domesticated animals; and the establishment of pounds, the appointment of poundkeepers and the regulation of their duties, fees and charges; Trespass.

(f) The construction and repairs of school houses, council houses and other buildings for the use of the Indians on the reserve, and the attendance at school of children between the ages of six and fifteen years; School houses, etc.

(g) the construction, maintenance and improvement of roads and bridges, and the contributions, in money or labour, and other duties of residents on the reserve, in respect thereof; the size and kind of sleighs to be used on the roads in the winter season, and the manner in which the horse or horses or other beasts of burden shall be harnessed to such sleighs; and the appointment of road-masters and fence-viewers, and their powers and duties; Roads, etc.

S.C. 1919-20, c.50, s.5. Powers of Council to make by-laws.

5. Subsection two of section one hundred and ninety-four of the said Act is amended by inserting the following paragraph immediately after paragraph *(g)* thereof:—

"*(gg)* the construction, maintenance and improvement of water, sewerage and lighting works and systems."

R.S.C. 1906, c.81, s.194, cont'd.

(h) The construction and maintenance of watercourses, ditches and fences, and the obligations of vicinage, the destruction and repression of noxious weeds and the preservation of the wood on the various holdings, or elsewhere, in the reserve; Watercourses, etc.

Removal of trespassers.

(i) The removal and punishment of persons trespassing upon the reserve, or frequenting it for improper purposes;

Revenue.

(j) The raising of money for any or all of the purposes for which the council may make by-laws as aforesaid, by assessment and taxation of the lands of Indians enfranchised, or in possession of lands by location ticket in the reserve: Provided that the valuation for assessment shall be made yearly, in such manner and at such times as are appointed by the by-law in that behalf, and be subject to revision and correction by the agent for the reserve, and shall come into force only after it has been submitted to him and corrected, if and as he thinks justice requires, and approved by him, and that the tax shall be imposed for the year in which the by-law is made, and shall not exceed one-half of one per centum on the assessed value of the land on which it is to be paid; and provided also that any Indian deeming himself aggrieved by the decision of the agent, made as hereinbefore provided, may appeal to the Superintendent General, whose decision in the matter shall be final;

Assessments.

Rates.

Payment of Indian's share on his default.

Appeal.

Appropriation of certain funds.

(k) The appropriation and payment to the local agent, as treasurer, by the Superintendent General, of so much of the moneys of the band as are required for defraying expenses necessary for carrying out the by-laws made by the council, including those incurred for assistance absolutely necessary for enabling the council or the agent to perform the duties assigned to them;

Penalties and enforcement thereof.

(l) The imposition of punishment by penalty or by imprisonment, or by both, for any violation of or disobedience to any law, rule or regulation made under this Part, committed by any Indian of the reserve; but such penalty shall, in no case, except for non-payment of taxes, exceed thirty dollars, and the imprisonment shall not exceed thirty days.

Taxes, how recovered.

2. If any tax authorized by any by-law, or any part thereof, is not paid at the time prescribed by the by-law, the amount unpaid, with the addition of one-half of one per centum thereof, may be paid by the Superintendent General to the treasurer out of the share in any money of the band of the Indian in default; and, if such share is insufficient to pay the tax, or any portion thereof so remaining unpaid, the defaulter shall be deemed to have violated the by-law imposing the tax, and shall incur a penalty therefor equal to the amount of the tax or the balance thereof remaining unpaid, as the case may be.

Penalty.

Provisions for the imposition of punishment.

3. The proceedings for the imposition of any punishment authorized by this section, or the by-laws, rules or regulations approved and confirmed thereunder, may be taken before one justice of the peace, under Part XV. of the Criminal Code; and the amount of any such penalty shall be paid over to the treasurer of the band to which the Indian incurring it belongs for the use of such band.

Approval.

4. The by-laws, rules and regulations by this section authorized to be made shall, when approved and confirmed by the Superintendent General, have the force of law within and with respect to the reserve, and the Indians residing thereon. R.S., c. 44, s. 10; 53 V., c. 30, s. 2.

Evidence.

Proof of by-laws, etc.

195. A copy of any by-law, rule or regulation under this Part, approved by the Superintendent General, and purporting to be certified by the agent for the band to which it relates to be a true copy thereof, shall be evidence of such by-law, rule or regulation, and of such approval, without proof of the signature of such agent; and no such by-law, rule or regulation shall be invalidated by any defect of form, if it is substantially consistent with the intent and meaning of this Part. R.S., c. 44, s. 12.

S.C. 1919, c.56, s.3.

3. The said Act is further amended by adding thereto as Part Three thereof the following provisions:—

"PART THREE.

"SOLDIER SETTLEMENT.

Application of Soldiers Settlement Act, 1919.

"**196.** (1) *The Soldier Settlement Act, 1919*, (excepting sections three, four, eight, nine, ten, eleven, fourteen, twenty-nine, subsection two of fifty-one, and sixty thereof, and excepting the whole of Part Three thereof) with such amendments as may from time to time be made to said

S.C. 1919, c.56, s.3, cont'd.

Act shall, with respect to any 'settler' as defined by said Act who is an 'Indian' as defined by this Act, be administered by the Superintendent General of Indian Affairs.

(2) For the purpose of such administration, the Deputy Superintendent General of Indian Affairs shall have the same powers as the Soldier Settlement Board has under *The Soldier Settlement Act, 1919*, the words 'Deputy Superintendent General of Indian Affairs' being, for such purpose, read in the said Act as substituted for the words 'The Soldier Settlement Board' and for the words 'The Board.'

(3) Said Act, with such exceptions as aforesaid, shall for such purpose, be read as one with this Part of this Act.

Location tickets for common lands of band may be granted.

"**197.** (1) The Deputy Superintendent General may acquire for a settler who is an Indian, land as well without as within an Indian reserve, and shall have authority to grant to such settler a location ticket for common lands of the band without the consent of the Council of the band, and, in the event of land being acquired or provided for such settler in an Indian reserve, the Deputy Superintendent General shall have power to take security as provided by *The Soldier Settlement Act, 1919*, and to exercise all otherwise lawful rights and powers with respect to such lands, notwithstanding any provisions of the *Indian Act* to the contrary.

(2) Every such grant shall be in accordance with the provisions of said *Soldier Settlement Act, 1919*, and of this Part.

S.C. 1922, c.26, s.2.

2. Section one hundred and ninety-seven of the said Act, as enacted by chapter fifty-six of the statutes of 1919 (first session), is repealed, and the following is substituted therefor:—

Title for common lands of band may be granted on land acquired for Indian settler. Such lands may be security for advances as under *Soldier Settlement Act 1919*, but only individual Indian interest is acquired.

"**197.** The Deputy Superintendent General may acquire for a settler who is an Indian, land as well without as within an Indian reserve, and shall have authority to set apart for such settler a portion of the common lands of the band without the consent of the council of the band. In the event of land being so acquired or set apart on an Indian reserve, the Deputy Superintendent General shall have power to take the said land as security for any advances made to such settler, and the provisions of *The Soldier Settlement Act, 1919*, shall, as far as applicable, apply to such transactions. It shall, however, be only the individual Indian interest in such lands that is being acquired or given as security, and the interest of the band in such lands shall not be in any way affected by such transactions."

S.C. 1919, c.56, s.3.

Soldier Settlement Board to assist Deputy Supt. General.

"198. The Soldier Settlement Board and its officers and employees shall, upon request of the Deputy Superintendent General of Indian Affairs, aid and assist him, to the extent requested, in the execution of the purposes of this Act, and the said Board may sell, convey and transfer to the said Deputy, for the execution of any such purposes, at such prices as may be agreed, any property held for disposition by such Board.

Power of Governor in Council to settle doubts and define powers.

"199. (1) In the event of any doubt or difficulty arising with respect to the administration by the Superintendent General of Indian Affairs of the provisions of *The Soldier Settlement Act, 1919*, or as to the powers of the Deputy Superintendent General of Indian Affairs, as by this Act authorized or granted, the Governor in Council may, by order, resolve such doubt or difficulty and may define powers and procedure.

(2) Such order shall not extend the powers which are by *The Soldier Settlement Act, 1919*, provided."

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F. D. MONK, Q. C. — MONK & BAKER — W. A. BAKER, L. L. B.

ADVOCATES

88 ST. FRANCOIS-XAVIER STREET

PHONE 1718 MAIN

29384

Montreal, 18 Jan. 1906

To Frank Pedley Esq:
Dep. Sup. of Indian Affairs
Lands
Ottawa

Dear Sir

There is a small island in the St. Lawrence river, opposite the Caughnawaga indian reserve known as "Ile St. Nicolas".

Would you kindly inform me if this island is attached to, & forms part of the Indian reserve, or, is it the property of the Government?

Yours very truly
F. D. Monk

101

114
113

617

P.C. 1419

AT THE GOVERNMENT HOUSE AT OTTAWA

12th day of JULY, 1906.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS at the time the Indian advancement Act was applied to the Iroquois Band of Indians of Caughnawaga by Order in Council of 5th March, 1889, their Reserve was designated the Caughnawaga Indian Reserve and was divided, under the provisions of Section 4 of the said Act, into six sections, equal as nearly as was found convenient to each other as regards population.

AND WHEREAS since the said Order in Council was passed, the numbers of Indians in the different sections have grown disproportionate and unfair as regards representation in the band council, and it is desirable on that account that the sectional system be done away with as regards this reserve.

AND WHEREAS a meeting of the band was called recently to deal with the matter; and the band have expressed their desire that the reserve be comprised in one section.

THEREFORE, The Governor General in Council is pleased in virtue of the said Section 4 of "The Indian Advancement Act", as amended by Section 1, of the Act, 53 Victoria, Chapter 30, to order and it is hereby ordered that the division of the Caughnawaga Indian Reserve into sections be done away with and that the said Reserve be comprised in one Section.

Certified to be a true copy.

R. B. Bayne

Clerk of the Privy Council

#2

P.C. 1419

VOID SEE PC 3196

PAGE #19

1906/07/12

618

Department of Indian Affairs.

307240

Ottawa. _____ _____ 190__

From Montreal Herald
Jany 19th 1907

CAUGHNAWAGA NOTES.

Since the first of the year the Provincial Government has sold to a former fisherman of Chateauguay the island of St. Nicholas, lying opposite the Caughnawaga Indian Reserve, and near the outlet of the Chateauguay river. The Caughnawagas are convinced that the Provincial Government is trespassing upon the lands reserved to them by the first grant to their ancestors, of Sault St. Louis, by King Louis the Fourteenth of France in 1680. This island has always been in possession of Indians, who have sown and harvested on it till to-day they have been in peaceable possession). They do not intend to be despoiled of their own without protesting. They will submit this question to the Federal authorities at Ottawa, who are bound by the constitution of Canada to look after the Indians and their families.

MXU

619

Ottawa, March 12th, 1907.

Sir,-

This Department has been informed that the Provincial Government has sold St. Nicholas Island and Isle Au Diable, in front of the Caughnawaga Indian Reserve, Quebec. I have to draw your attention to the fact that these Islands comprise a part of the Caughnawaga Indian Reserve, and have long been in the quiet possession of the Indians of the said band.

If the sales referred to have been actually made, they have evidently been made in error. I shall be obliged if you will be good enough to have them cancelled.

Your obedient servant

J. D. McLEAN

Secretary.

L.E.E.Taché, Esq.,
Deputy Minister,
Department of Lands & Forests,
Quebec, Que.

620

309/30

Department of Lands and Forests

Sales Branch

L.I4327/06

L.I4530/06

Quebec, March I9th, I907.

Address your reply in every case to "Hon. Minister of Lands and Forests, Quebec, P.Q."

In replying, always refer to date and number stated in official letter.

Write only on one subject in each letter; do not mention any personal matters in official correspondence.

Write legibly, especially as regards names of places, surnames, christian names and signatures.

L.D.McLean, Esq.,

Sec. Dep't of Indian Affairs,

Ottawa.

Sir:-

I have the honor to acknowledge the receipt of your letter of the I2th inst., (NO.I90,255) ~~stating~~ Noting that your Dep't has been informed that the provincial Governement has sold St-Nicholas Island and l'Ile au Diable, in front of the Caughnawaga Indian Reserve, and asking that said sales be cancelled.

In reply, I beg to call your attention to a letter which was addressed to Mr. S.Stuart, Asst.Sec. Dep't of Indian Affaires, Ottawa, on the IIth Oct.I90I, which reads as follows:

" In reply to yours of the 23rd August last, concerning the "Devil's Island", I beg to inform you that the Law Officers of the Crown are still of the opinion that this island is the property ~~of the Crown~~ in right of the Province

DEPT. OF INDIAN AFFAIRS, MAR 22 1907. SURVEYS.

1907/03/19

Indian Affairs. (RG 10, Volume 2925, File 190,255)

" and beg to refer you to the case of " Lowatt Plaintiff
" and Appelant & Casgrain interveining & Noel Pinsonneault
defendant, reported in R.J.Q.Q.B.pg. I2, and in which case,
the court of Appeals held that the indian lands belonged
to the Crown in right of the province, subject only to the
personal usufruotuary right in favor of the Indians; the
control and administration of which appertains to the
Governement of Ottawa".

The above also applies to St-Nicholas Island.

I have the honor to be,

Sir,

Your obedient servant,

Deputy-Minister.

190255 March 23rd, 1907. 621

Memorandum for

Deputy Minister,-

I beg to submit for your consideration a letter hereunder from the Deputy Minister of Lands & Forests, Quebec.

It appears to me that even in the event of the Department submitting to the ruling of the court as quoted in the case mentioned the said ruling admits that the control and administration of Indian lands appertain to the Dominion Government, this being the case it is very difficult to understand why the Deputy Minister of Lands & Forests can assume authority of any kind over the said lands, much less to the extent of selling or leasing the same, as is reported that the Provincial Government has done in the case of St.Nicholas and I'lle au Diable, I think a reply embodying the above might be sent to Mr.Tache.

S. Bray

Chief Surveyor.

1907/03/23

Indian Affairs. (RG 10, Volume 2925, File 190,255)

622

DXH

Ottawa, April 3rd, 1907.

Sir,-

I beg to acknowledge the receipt of your letter of the 19th instant No.L 14530-06 relating to St.Nicholas and Ile au Diable lying in front of the Caughnawaga Reserve, and to state that even if this Department were to decide to submit to the ruling of the Court as quoted in your said letter it is to be noted that the said ruling states explicitly that the control and administration of Indian lands appertain to the Dominion Government.

In view of the above ruling it is quite clear that the authority over the said lands either for selling or leasing, rests entirely with the Dominion Government at least during the continuance of the Indian interest whatever may be decided as to ownership after the Indian interest becomes extinct.

If, therefore, it be true that the Islands above referred to have been disposed of by your Government, I trust you will take necessary prompt measures to have such action cancelled.

Your obedient servant

Duncan Scott

Deputy Superintendent General of
Indian Affairs.

E.E.Taché, Esq.,
Deputy Minister,
Department of Lands & Forests,
Quebec, Que.

1907/104/03

Indian Affairs. (RG 10, Volume 2925, File 190,255)

623

190255

Department of Lands and Forests

317363

Survey Branch

L.I4327/06 Quebec, April 15th, 1907.

Address your reply in every case to: *Hon. Minister of Lands and Forests, Quebec, P.Q.*

In replying, always refer to date and number stated in official letter.

Write only on one subject in each letter; do not mention any personal matters in official correspondence.

Write legibly, especially as regards names of places, surnames, christian names and signatures.

Re

Frank Dudley, Esq.,

Department of Indian Affairs,

Ottawa.

Sir:-

I have the honor to acknowledge the receipt of your letter of the 3rd inst., and beg to ask you if your contention is that the 2 islands referred to, Devil's island and St-Nicholas Island, are still occupied or used by the indians. According to reports from our agents, they never occupied said islands.

I have the honor to be,

Sir,

Your obedient servant,

Deputy-Minister.

DEPT. OF INDIAN AFFAIRS, APR 17 1907 SURVEYS.

1907/04/15

Indian Affairs. (RG 10, Volume 2925, File 190,255)

190,255

624

Ottawa, April 18th, 1907.

Sir,-

In reply to your letter of the 15th instant, I beg to state that the St. Nicholas Island appears to have been practically in continuous occupation by the Indians; Devil's Island does not appear to have been in continuous occupation. I have, however, to say that whether these Islands are, or are not in occupation by the Indians, should have no bearing on the subject of their ownership.

The contention of the Department is that the two Islands referred to, Devil's Island and St. Nicholas Island, comprise a part of the Caughnawaga Indian Reserve, and have long been in the quiet possession of the Indians.

There appears to be no doubt that these Islands legitimately belong to the Caughnawaga band of Indians, as they are included in the grant, dated 24th October, 1680 under which the Caughnawaga Reserve is now held.

Your obedient servant

Sgd Frank Pedley

Deputy Superintendent General of Indian Affairs.

E.E.Taché, Esq.,
Deputy Minister,
Department of,
Lands & Forests,
Quebec, Que.

1907/04/18

Indian Affairs. (RG 10, Volume 2925, File 190,255)

EXTRACT.
ORIGINAL ON
[illegible]

625

3,284/3

Caughnawaga Council

Extract of 14th May 1907

× × ×

The Council, having been informed that a certain Mr. Bonhomme, residing in the city of Montreal, is to put up some buildings and occupy St. Nicholas island situated in the St. Lawrence river at a distance of about 2 arpents from the Caughnawaga shore, claiming that he is the owner having acquired the same from the Quebec government--, appeals to the Dept. to intervene, and to take steps to expell this would-be owner, inasmuch as this island has always been known as the property of the Caughnawaga band, it at present belonging by the will of their parents, who had posession of it, to Michel Jocks and his sister Marie Jose, two Indians of Caughnawaga

× × ×

Agents covering letter dated 16th May

1907/05/14

translation

626

317597

We, the undersigned, Michel Jocks and Marie Jose, brother a d sister, Indians of the Caughnawaga reserve, of the one part, and T. Avila Giroux, an employee in the Montreal post office, residing in the city of Montreal, of the other part, have agreed as follows:—

We, the parties of the first part, agree to lease for 6 years from May 1, inst., to the party of the second part, accepting, an island surrounded by the waters of the St. Lawrence river, situated about two arpents from the bank of the Caughnawaga reserve, containing an area of about 4 arpents, known as St. Nicholas island. This island belongs to the lessors as legatees of their father. For the rent of $4.00 per annum payable the first year as soon as the lease shall be issued by the Dept. of I.A., and on May 1 in each consecutive year.

The lessee binds and obliges himself to take care of the island and to maintain it properly. Whatever buildings the lessee may erect on the island, he shall have the right to remove on the expiration of the lease.

Done at Caughnawaga, May 14, 1907, and we have signed in the presence of J. Blain, agent.

J. Blain, witness.

their
Michel x Jocks

Marie x Jose
marks

T.A. Giroux.

1907/05/14

Indian Affairs. (RG 10, Volume 2925, File 190,255)

Indian Affairs. (RG 10, Volume 2925, File 190,255)

de preneur s'engage et s'oblige de prendre soin de l'Ile et de veiller à son bon entretien. Les constructions que pourra faire le locataire sur l'Ile, il aura droit de les enlever à l'expiration du bail.

Fait à Caughnawaga le 14 Mars 1907. Et nous avons signé en presence de l'agent.

Blain Agent.

Blain témoin   Michel leurs X Jocks
Marie X Jocks
marque

H. Giroux

Translation

163053

312597

Land

Montreal, May 16, 1907.

Sir,-

You will receive herewith ~~an~~ agreement by which Michel Jocks and Marie Jose, his sister, two Indians of Caughnawaga, agree to lease for 8 years from the 1st inst. to Theophile Avila Giroux, an employee in the Montreal post office, residing in the city of Montreal, an island known as St. Nicholas island, in accordance with the sale and conditions mentioned therein, requesting the Dept. to grant the lease as soon as possible.

This agreement is accepted by the Caughnawaga Council.

Your, &c.,

J. Blain,

I. A.

PRINTING AND TRANSLATION

INDIAN AGENT'S OFFICE,
Montréal
15 mai 1907

IN YOUR REPLY REFER TO
No.
ALSO
TO DATE OF THIS LETTER

Ref.: Your Letter 312597 No.

Sir,

Vous recevez ci-incluse une convention par laquelle Michel Jacks & Marie avec sa soeur deux Indiens de Caughnawaga conviennent de louer pour dix ans à compter du premier de mai courant, à Théophile Avila Giroux, employé du Bureau de Poste de Montréal, résidant dans la cité de Montréal, une Île connue comme Île St Nicholas, suivant la rente & conditions y mentionnées, et requérant le département d'octroyer le bail le plus tôt possible.

Cette convention est agréée par le conseil de la Réserve de Caughnawaga.

Votre obéissant serviteur
C. Alain
Agent

190 255.

627

M E M O R A N D U M.

Ottawa, June 8, 1907.

To the Deputy Minister-

In regard to communication of the 5th instant, from Mr. Agent Blain, submitting that the Department should take the initiative in asserting title to St. Nicholas Island, part of the Caughnawaga Reserve, I beg to report that on the 13th of March last the Deputy Minister of Lands & Forests, Quebec, was advised that the Department had been informed that the Provincial Government had sold St. Nicholas and Isle au Diable in front of the Caughnawaga Indian Reserve, and his attention was drawn to the fact that these islands comprised a part of the Reserve and had long been in the quiet possession of the Indians and that if sales had been actually made, they were evidently made in error and should be cancelled. Mr. Tache replied, on the 19th of March, calling attention to letter addressed to the Assistant Secretary on the 11th of October, 1901, which reads as follows:-

"In reply to yours of the 23rd August last, con-
"cerning the 'Devil's Island,' I beg to inform you that
"the Law Officers of the Crown are still of the opinion
"that this island is the property of the Crown in right
"of the Province and beg to refer you to the case of
"'Mowatt Plaintiff and Appellant Casgrain intervening
"& Noel Pineonneault defendant, reported in R. J. Q. O. B.
"pg. 12, and in which case, the Court of Appeals held
"that the Indian lands belonged to the Crown in right
"of the province, subject only to the personal usu-
"fructuary right in favor of the Indians; the control
"and administration of which appertains to the Govern-
"ment of Ottawa,"

and which he stated applied to St. Nicholas Island.

On

On the 3rd of April last, Mr. Taohe was informed that, even if this Department were to decide to submit to the ruling of the Court as quoted in his letter, it was to be noted that the said ruling stated explicitly that the control and administration of Indian lands appertained to the Dominion Government, and that, in view of the above ruling, it was quite clear that the authority over the said lands either for selling or leasing, rested entirely with the Dominion Government, at least during the continuance of the Indian interest, whatever might be decided as to ownership after the Indian interest became extinct; and trust was expressed that prompt measures would be taken to have the action cancelled.

In reply to above communication, Mr. Taohe asked if the contention was that the two islands referred to were still occupied or used by the Indians, as, according to reports from their agents, they had never occupied said islands, and in answer to this Mr. Taohe was informed that St. Nicholas Island appeared to have been practically in continuous occupation by the Indians, but that whether the islands were or were not in occupation should have no bearing on the subject of their ownership; that the contention of the Department was that the two islands, Devil's and St. Nicholas, comprised a portion of the Caughnawaga Reserve, and had long been in the quiet possession of the Indians; that there appeared to be no doubt that these islands legitimately belonged to the Caughnawaga Band, as they were included in the grant, dated 24th of October, 1680, under which the Caughnawaga Reserve was now held.

On

On the 16th ultimo, Mr. Agent Blain submitted copy of a resolution of the Caughnawaga Council, of the 14th ultimo, to the effect that a certain Mr. Bonhomme residing in the City of Montreal, was putting up some buildings and occupying St. Nicholas Island in the River St. Lawrence, claiming that he was the owner, having acquired the same from the Quebec Government, and asking the Department to take steps to expel this would-be owner, inasmuch as the island had always been known as the property of the Caughnawaga Band. On the 29th ultimo, Mr. Agent Blain was instructed to at once notify Mr. Bonhomme that St. Nicholas Island was a portion of the Caughnawaga Reserve, and that he could not be allowed to enter into occupation or make any improvements thereon; that if Mr. Bonhomme attempted to take possession of the island or to make improvements thereon, he should advise the Department for instructions. Mr. Blain, in communication of the 3rd instant, reported that, in accordance with instructions, he informed Mr. Bonhomme of St. Nicholas Island being part of the Caughnawaga Reserve, and that he could not take possession of it or erect buildings thereon without receiving competent authority. He replied that he purchased the island from the Government of the Province of Quebec; that he had begun to build a house and several dependencies, and that he intended to continue. The Agent asked to be shown the deed, but he was told that he could not lay his hand on it.

In view of the above it is respectfully submitted as to whether instructions should be given the Agent to take the necessary action under the 34th sec. of the Indian Act, for the removal of Mr. Bonhomme from this island.

(sgd) W. A. Orr.
In Charge Lands & Timber Branch.

190 255

628

Ottawa, June 10, 1907.

Sir,-

I beg to acknowledge the receipt of your communication of the 29th ultimo, in regard to the case of P. Bonhomme, a trespasser on St. Nicholas Island, part of the Caughnawaga Reserve, and in reply to say that you are hereby authorized to take the necessary action under the provisions of Sec. 34 of the Indian Act, Chapter 81, Revised Statutes of Canada, 1906, and you may issue your warrant to any literate person willing to act in the premises, to take action as provided in said section for the removal of Mr. Bonhomme from this island.

Your obedient Servant,

FRANK PEDLEY

Deputy Superintendent General
of Indian Affairs.

John Klein, Esq.,
Indian Agent,
996A St. Denis St.,
Montreal, Que.

1907/06/10

Translation

313896

Mr, P. Bonhomme,
Montreal.

Sir,-

You are occupying without permission from the Supt. of I.A., and illegally and without right, a portion of the Caughnawaga reserve, namely, St. Nicholas island in the St. Lawrence river; and without right you have begun to erect buildings thereon.

Under the Indian Act, chap.81, sec. 34, R.S.C., you are guilty of trespass in continuing to occupy the said island.

I therefore notify you to abandon the said island and to remove therefrom all the material that you may have placed there for building, and this within a period of 6 days from the present notice; if not, legal proceedings will be taken against you to remove you in accordance with the Act above quoted; in this I am authorized by order of the Supt. of I.A., dated June 10, inst., in my capacity as Indian Agent for the said reserve.

Montreal, June 13, 1907.

J. Blain,
Indian Agent for the Caughnawaga reserve.

This notice was served by the undersigned at the office of Mr. P. Bonhomme on June 13, 1907, by speaking to one of his employees, Mr. B. Guerin Jeullt.

629

P.C. 1569M File SM95452

Extract from a Report of the Committee of the Privy Council, approved by the Governor General on the first day of August, 1907.

The Committee of the Privy Council have had under consideration a Despatele dated 6th June, 1907 from the Right-Honourable the Secretary of State for the Colonias, desiring in connection with a letter from William Smith - Chief of the Mohawk Indians, to be furnished with a report as to whether the Indians ever surrendered their claims to any land in the Province of Lower Canada.

The Minister of the Interior to the whom the said Despatele was referred, states that no Treaty has ever been made with the Indians of the Province of Quebec (formerly Lower Canada) for the surrender to the Crown of the land comprised in that Province' but small portions of Indian Reserves have, within recent years, been surrendered to the Crown by different Bands in that Province for the purposes of disposition for their benefit.

The Committee advise that his Excellency be moved to forward a copy here of to the Right-Honourable the Secretary of State for the Colonias. All which is respectfully submitted for approval.

Rodolphe Bonomau
Clerk to the Privy Council

The Minister of the Interior

#3

PC. 1569

WRITEN COPY FROM INDIAN AFFAIRS ATTACHED.

1907/08/01

P.C. 1569 M. File SM95452

In Council

Extract from a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 12th day of August 1907.

The Committee of the Privy Council have had under consideration a despatch dated 6th June 1907 from the Right Honorable the Secretary of State for the Colonies, desiring in connection with a letter from William Smith, Chief of the Mohawk Indians, to be furnished with a report as to whether the Indians ever surrendered their claim to any land in the Province of Lower Canada.

The Minister of the Interior to whom the said despatch was referred, states that no treaty has ever been made with the Indians of the Province of Quebec, (formerly Lower Canada) for the surrender to the Crown of the land comprised in that Province; but certain portions of Indian Reserve Land, within recent years, were surrendered to the Crown by different bands in that Province for the purpose of disposition for their benefit.

The Committee advise that His Excellency be moved to forward a copy hereof to the Right Honorable the Secretary of State for the Colonies.

All which is respectfully submitted for approval.

Sgd. Rodolphe Boudreau
Clerk of the Privy Council

To
The Minister of the Interior.

PC 1569 M, File SM95452

[illegible]

2545/07

3-4182

630

Quebec, March 11th 1908.

The Secretary of the Department of Indian Affairs
Ottawa

Sir,

I am directed by the Prime Minister to acknowledge the receipt of your letter dated 29th ulto., (I.A. 190 255) concerning the proceedings which you propose to take against Mr Bonhomme for his occupancy of St Nicholas Island, and in which you state that your Department would be pleased to receive a communication in this matter from the Assistant Attorney General.

In answer, I beg to state that I will be in a position to take up this question at the end of the present session of the Legislature.

Trusting that this will be satisfactory, I remain,

Yours very truly,

[illegible]
Assistant Attorney General.

1908/03/11

631

190,255

Draft

Ottawa, 11th April, 1908.

Dear Mr. Dandurand,-

With reference to your enquiry as to Nicholas Island and Isle au Bisble, in the River St. Lawrence, I beg to say that the contention of this Department is that these two islands comprise a portion of the Caughnawaga Indian Reserve and have long been in the quiet possession of the Indians. There appears to be no doubt that these islands legitimately belong to the Caughnawaga Band, as they were included in the grant, dated 24th October, 1680, under which the Caughnawaga Reserve is now held in trust for the Caughnawaga Indians.

Sincerely yours,

Deputy Supt. General.

Hon. R. Dandurand,
Speaker,
The Senate.

190,255

Ottawa, 8th May, 1906.

Sir,

I beg to refer to your letter of 11th March last, in which you stated that you would be in a position to take up the question of the lease of St. Nicholas Island at the end of the session of the Legislature.

As it is important that this matter should now be dealt with, I should be glad to be advised that you can take it up at once.

Your obedient servant,

Secretary.

Charles Lanctot, Esq.,
Asst. Attorney General,
Quebec, P. Q.

633

2048/07

327955

Quebec, May 13th 1908.

The Secretary
Department of Indian Affairs
Ottawa

Sir,

Referring to your letter of 8th instant, concerning the lease of St Nicholas Island, I beg to state that we are now looking into this matter and will shortly be in a position to advise you as to what position we intend taking.

Thanking you for the opportunity you have given us, so far, of studying this case, I have the honour to be, sir,

Your obedient servant,

Charles Lanctôt

Assistant Attorney General.

634

331525

Sir,

re St Nicholas Island:-

I beg to acknowledge the receipt of your letter dated 22nd instant, concerning this matter.

We have looked carefully into it and we have come to the conclusion that St Nicholas Island is not a portion of the Caughnawaga Indian Reserve, and that this Province had the exclusive proprietary rights in it when it issued the lease complained of by your previous correspondence.

Believe me,

Yours very truly,

Assistant Attorney General.

1908/07/27

635

P.O.

August 6th, 8

Re St. Nicholas and Ile au Diable.

S i r :

I am advised by the Department of Indian Affairs that the Quebec Government has either sold or loaned two islands forming part of the Caughnawaga Reserve. As soon as the parties to whom these islands had been disposed by the Quebec Government began to trespass upon the islands complaint was made to the Quebec Government by the Indian Department and the Deputy Minister of Lands and Forests justified the sale under the decision in the Pinsonneault case under which case it was held that the Indian lands involved in that case belonged to the province subject to the usufructuary interest of the Indians, that interest being controlled by the Canadian Government. As these islands had ever since the grant by the French King been enjoyed by the Indians who for some years past have been in the habit of renting them and of course enjoying the rental it was obvious that the Pinson ault case could not justify the Quebec Government in any way disturbing the Indians. Upon further representations being made to the Quebec Government a letter was received from you giving quite

Charles Langelier, Esq.,
Assistant Attorney General for Quebec,
Quebec.

1908/08/Vol. 8

quite a different reason for the action of the Quebec Government, namely, that the islands in question form no part of the Caughnawaga Reserve. I think however upon reconsideration you will admit that there is no ground for maintaining that the islands are not part of the Caughnawaga Reserve. The original grant from the French Crown is of the said piece of land called the Sault, containing two leagues of frontage, commencing at a point opposite the St. Louis Rapids, ascending along the lake in similar depth, with two Islands and Islets and the beach lying opposite and adjoining the lands of the said Prairie de la Magdelaine, on the condition that the said tract of land called the Sault will revert to us all cleared, when the said Iroquois will leave it.

There can be no doubt of the Indians not having left the islands. I trust therefore that steps will be at once taken to cancel the sale or lease of those islands [illegible] it may be so that the [illegible] may not [illegible] disturbed. [illegible]

[illegible]

I have the honour to be,

Sir,

Your obedient servant,

Acting Deputy Minister.

636

150855 531861

113

DEPARTMENT OF INDIAN AFFAIRS AUG 8 1908

Enc.

Ottawa, August 8th, 1908

LANDS BRANCH AUG 11 1908

Re St. Nicholas Island and Ile au Diable.

Sir:

I have the honour to enclose herewith a copy of a letter that I am addressing to the Assistant Attorney General of Quebec with respect to the above islands. If the Quebec Government still insist that the islands belong to the province, the only course I think will be to take legal proceedings to evict the purchasers of the islands, and as it is a matter of great imporatnce involving as it does the respective rights of the Dominion and the province in Indian lands it appears to me most important that steps should be taken to protect the Indians rights. As soon as I get a reply to my letter to the Assistant Attorney General of Quebec I will further advise you. I may add that I have examined the copy of the grant of the seigniory appearing in the volumes containing Indian treaties and surrenders published in 1891 and it would seem that there can be no doubt that the islands are part of the Caughnawaga Indian Reserve. It will however be necessary for your Department to make quite sure of this before any litigation is commenced.

I have the honour to be,

Sir,

Your obedient servant,

The Secretary,

Department of Indian Affairs,

Ottawa.

Acting Deputy Minister.

331985 637

Copy.

File 2545/07

Quebec, August 8th, 1908.

A. Pewet, Esq., K.C.,
Acting Deputy Minister of Justice,
Ottawa.

Dear Sir,

Re St.Nicholas and Ile Au Diable.

I beg to acknowledge the receipt of your letter dated 6th instant concerning this matter.

In your communication you express the opinion that the original grant from the King of France, Comprising St. Nicholas Island, about which there is a difference of opinion between the Department of Lands and Forests of Quebec and your Department of Indian Affairs.

I must state that the officers of the Department of Lands and Forests here have examined this question very carefully, and have come to the conclusion, by the examination of the plans, that St.Nicholas Island is not covered by the original grant.

It seems to me that this is a difficulty which could be easily adjusted. We would willingly go into the matter with any person whom your Government might indicate, in order to give it a definite solution.

Believe me,

Yours very truly,

(Signed) Charles Lanctot.

Assistant Attorney General.

Translation

150255

332598

Aug. 20.

638

Montreal, Aug.19, 1908.

Sir,-

Permit me to call your attention to the fact that I have not yet received any definite reply in regard to the matter of St. Nicholas island. Every day I am assailed with questions by the owner and the lessee, who are very eager to know your decision in respect to this question. Is the sale made by the Provincial Government to M. Monkman to be maintained; and by this fact is the Indian owner, of Caughnawaga, to be driven out?

Your, &c.,

J. Blain,

I. A.

639

332618 P.O.

August 22 8

St.Nicholas and Ile Au Diable Islands,

Caughnawaga Reserve.

Sir,

I have the honour to inform you that Mr. S. Bray, the Chief Surveyor of the Indian Department, will be pleased to discuss the question of the boundary of the reserve in connection with the above Islands on the 8th of September, or any subsequent date that may be suitable to you.

I have asked that Mr. Bray place himself in communication with you in connection with this matter.

I have the honour to be,

Sir,

Your obedient servant,

D.M.J.

Chas. Lanotot, Esq.,
Assistant Attorney General,
Quebec, P.Q.

M-08/08/25

640

Sept 19,1908.

Memorandum for

Deputy Minister:-

Mr.C.Lanctot,Assistant Attorney General, had noted in error that the interview relating to St.Nicholas Island was to be on the 30th of October. On my arrival at Quebec I found that he had left for Montreal,I therefore proceeded to Montreal and called on him there.

Mr.Lanctot apologized for his error and regretted that Mr. Taché would not be present in discussing the question. However he entered into the matter and drew my attention to the principal point in their contention; which is to the effect that the words in the original grant of the Seigniory of Sault St. Louis " that two Islands and shoals which are in front and adjoining the lands of the Prairie of LaMagdalane"can only be taken to mean those Islands etc near to the said Prairie,and that the two Islands limited,although indefinitely the number of Islands belonging to the Indians.

I drew Mr.Lanctot's attention to the effect that if his contention held good that only Isle au Diable as being the only Island near the said Prairie La Magdalane would be the property of the Indians and evidently this was not the intention as they had all the Islands and foreshores,at least all those about the middle of the reserve. Also that the expression"two Islands"etc., was simply to emphasize the fact that all the plots of land in front of the said Seigniory and the expression "in front and adjoining" the lands of the Prairie of La Madgalane"

referred to the whole tract of land as being "in front of and adjoining the lands of the Prairie of La Madgalane" and not to the Islands only.

Mr.Lanctot said that he was prepared to admit that if the question had been sumbitted to him prior to the patent of St.Nicholas Island he would certainly have advised that no patent should be issued before consulting this Department as there would appear to be some right of claim which might be held under the said grant, and as the matter now stood he would be glad to come to some agreement.".

I asked him that in view of the fact that the amount of money at issue was small, would it not be a simple matter for his Government to simply cancel the patent of St.Nicholas Island and Isle au Diable. He replied that he would have no hesitation in recommending that procedure if it were not for the fact that the purchaser of St.Nicholas has expended $2000.00 and upwards on improvements on the Island. He would therefore certainly bring an action against the Province.

I then suggested to him that he should communicate with our Department offering to pay a fair indemnity for the said St.Nicholas Island, and the Department on its part would then endeavour to obtain a surrender from the Indians in order that the Island might be transferred. Mr.Lanctot replied that he would not come to an absolute conclusion in the matter before consulting Mr.Tache, but that he would certainly advise in this direction.

Mr.Lanc$ot was not prepared to discuss the question of Isle au Diable as he had not the record with him and we have no positive information that the said Island has been disposed of.

I requested Agent Blain to ascertain informally whether the Indians would be willing to surrender Isle au Diable.

S Bray
Chief Surveyor.

641

Ottawa Nov 17,1908.

Dear Sir,-

You will remember that in the interview I had with you in September last you concluded to advise the proper Department to make an offer to the Indian Department to pay a fair indemnity for St.Nicholas Island. On the receipt of the said offer we would endeavour to obtain a surrender from the Indians in order that the Island might be transferred to the Provincial Government or to such persons as you might desire.

We have not yet received the said offer. I will be glad if you will kindly expedite this matter as I think it would be well to have it closed at an early date.

Yours truly

L. Bray

Chief Surveyor.

C.Lanctot,Esq., K.C.
Asst Attorney General,
Quebec,Que.

19025-5

EXTRACT
ORIGINAL ON
326307 11

DEPARTMENT OF INDIAN AFFAIRS
MAR 18 1909

642

Montreal
16th March 1909

It was also resolved, on motion of Cr.J.B.Daillebout, seconded by Cr.J.B.Treffle, to ask the Department to take measures to re-instate the Caughnawaga band in possession of St.Nicholas island, which is at present occupied by Mr.J.B.Benhomme. 34947

(Sgd) J.Blais
Indian Agent

1909/03/16

190855

643

Ottawa March 22nd, 1900

Sir,-

Referring to your letter of the 31st Dec. [illegible] and addressed to the Chief Surveyor of this Department, I beg to inform you that the Indian Council of Caughnawaga has again brought up the question of the occupation of the said Island, by Mr. J.D. Bonhomme with the request that they be reinstated in possession. I shall be obliged if you will be good enough to take action in this matter as soon as possible and on the lines discussed by you with the said Chief Surveyor.

Your obedient servant

Secretary.

Chas. Lanctot, Esq.,
Asst. Attorney General,
Quebec, Que.

UXH

644

Ottawa March 27,1908

Sir,-

Referring to the resolution of the Indian Council relating to the occupation of St.Nicholas Island by Mr.J.D.Bonhamme and dated 16th instant,I have to request you to inform the Indian Council that this Department is still in negotiation with the Provincial Government regarding this matter.

Your obedient servant

Secretary.

J.Blain,Esq.,
Indian Agent,
996A St.Dennis St.,
Montreal,Que.

[illegible] 7

[illegible]

Quebec, March [illegible], 190[illegible]

To the Secretary
of Indian Affairs,
Ottawa.

Sir,-

I am directed by the Attorney General to acknowledge the receipt of your letter dated the 27th inst., relating to St. Nicholas Island.

You state that you will be obliged if we would take action in this matter, as soon as possible, on the lines discussed by the undersigned and your Chief Surveyor.

In answer, I beg to state that when I met Mr. Bray, on the [illegible] of September [illegible], I understood that he was to [illegible] Caughnawaga, for the purposes [illegible] consideration of any rights which they [illegible] to this Island, if any. This, I agreed to, without prejudice to the rights of the Province of Quebec, which contends that the Island does not form part of the reserve. So far, we have not heard anything about the result of Mr. Bray's action.

Will you kindly give us any information that you have on this point.

I have the honor to be, Sir,
Your obedient servant,

Assistant Attorney General.

645

P.C.66I File.26I942 Tp 41

PRIVY COUNCIL
CANADA

Certified copy of a Report of the Committee of the Privy Council, approved by His Excellency the ADMINISTRATOR on the Ist.April.I909.

646

On a Memorandum dated 26th March,I909.from the Superin--tendent General of Indian Affairs,submitting herewith a Sur--render, in duplicate,made on the 23rd day of March,I909.by the Caughnawaga Band of Indians,of the stone on the parcel of land,referred to in the Surrender.on their reserve in the County of Laprairie,in the Province of Quebec,which is pro--posed to lease to the Rexford-Bishop,Ltd.,of Montreal:and also of the stone.on a portion of the said reserve to be hereafter determined,under permit to be issued to James Cu--rotte:the said Surrender having been made in order that the stone quarrying rights on the areas covered thereby may be disposed of for the benefit of the band.

The Minister recommends-as the surrender has been duly authorized,executed and attested in the manner required by the 49th Section of the Indian Act:-that the same be accepted by your Excellency in Council-the original surrender to be returned to the Department of Indian Affairs,and the dupli--cate thereof to be kept of record in the Privy Council Office.

The Committee submit the same for approval.

F .K .BENNETTS
Assistant Clerk of the Privy Council.

The Honourable
The Superintendent General
Of Indian Affairs.

4
P.C. 661

1909|04|01

190255

647

Ottawa April 1st.

I [illegible] receipt of your [illegible] 12545-0-7 relating to St. [illegible] Island, [illegible] to say that there appears to [illegible] misapprehension in this matter.

The following is an extract from Mr.Bray's report to the Department dated 18th September last on his interview with you.

"I then suggested to Mr.Lanctot that he "should communicate with our Department, offering to "pay a fair indemnity for the said St.Nicholas Island, "and the Department on its part would then endeavour "to obtain a surrender from the Indians in order that "the Island might be transferred. Mr.Lanctot replied "that he could not come to an absolute conclusion "in the matter before consulting Mr.Taché, but that "he would certainly advise in this direction."

I may say that it would be practically useless to approach the Indians for a surrender of the said Island unless we were in a position to make them an offer of a fair payment for the same. It would therefore appear that the first action in this matter has necessarily to be taken by the proper Department of the Provincial Government.

Your obedient servant

J. D. McLEAN

Secretary.

Chas.Lanctot,Esq.,
Assistant Attorney General,
Quebec,P.Q.

[illegible] 1909.

[illegible]

Ottawa.

Sir,

I [illegible] acknowledge the receipt of your letter dated [illegible] 1902[illegible], re St Nicholas Island, [illegible], in answer, to [illegible] the communication of the Province [illegible] that St Nicholas Island [illegible] office of was transferred to Mr Bonhomme, we do not [illegible] to [illegible] be necessary with [illegible].

As I [illegible], I understood that they were to be approved [illegible].

Believe me,

Yours very truly,

Charles Lanctôt

Assistant Attorney General.

1909/04/02

649

April 7th, 1908

Sir,- Ref: No. 2545-07,O.O.L.

I have to acknowledge the receipt of your letter of the 2nd instant and have to say in reply that this Department does not expect the Provincial Government to negotiate with the Caughnawaga Indians in the matter of St. [illegible] Island.

If your Department will state the sum that you are willing to pay as indemnity to the Indians for the Island, as suggested in your interview with Mr.Bray, we shall then be in a position to approach the Indians and endeavour to obtain a surrender from them,with a view of finally adjusting the matter. I may say that this Department has acted in good faith and in line with your suggestion to Mr.Power of the 8th August,1906, [illegible] in which you suggested that the difficulty might be easily adjusted by having an interview with some officer of this Department.

Your obedient servant

Secretary.

Chas.Lanctot,Esq.,
Asst.Attorney General,
Quebec,Que.

1909/04/07

650

344263

April 23rd 1909.

I have submitted to the Attorney General your letter [illegible] 19025, of 7th April instant, concerning this matter.

In answer, I must state that it is not the intention of the Department to pay any indemnity to the Indians for the Island, in view of the position which we have always taken and, on this point, there is a misunderstanding as to what was said during my interview with Mr Pray.

You state that your Department has always acted in good faith and in line with my suggestion to Mr Power of the 8th August 1908.

We have never doubted of this good faith and if anything in my previous correspondence can be constructed that way, I wish to recall it.

I would suggest, as I have always done, that your Department would ascertain, from the Indians, the amount they expect to obtain and, without prejudice to our rights, it might be possible, afterwards, to arrive at some arrangement.

Believe me,

Yours very truly,

Charles Lanctôt

Assistant Attorney General.

651

19 case

Ottawa April 28th, 1909

Sir,-

Referring to letter to you of the 27th ultimo I have to request you to be good enough to ascertain and report to the Department for what sum the Caughnawaga Indians would be willing to surrender St. Nicholas Island.

Please explain to the Indians that the Quebec Government sold the Island to Mr. Bonhomme who in good faith has spent a considerable sum of money on the Island. The surrender of the Island for a fair sum would appear to be the best way to arrange the matter. It is also to be noted that very little use has been made by the Band of the Island; in fact, the band has apparently derived no benefit from the Island, and the rental the Indian claimant would receive is very small and should be easily adjusted from the interest of the sum realized if the Island is surrendered and sold. It is hoped that the Indians will see this in the proper light and meet the case in a reasonable manner.

Your obedient servant

J. D. McLean

Secretary

J. Blain, Esq.,
Indian Agent,
996A St. Dennis St.,
Montreal, Que.

1909 104 128

652

190000

Ottawa April 29th,1909

Sir,-

Referring to letter to you of the 28th inst relating to St.Nicholas Island I have to request you with the aid of the Indian Council when the sum has been determined for which the Indians are willing to sell the Island,to state what portion of the said sum is to be paid to the Indian owner of the Island and what portion is to be credited to the band funds. I may again express the hope that in view of the fact of the claim and sale made by the Quebec Government that the Indians will understand how very difficult it will be and probably expensive to establish the Indian claim . They should therefore put a reasonable value on the Island; it may then be possible to come to some terms with the Quebec Government.

Your obedient servant

Secretary

J.Blain,Esq.,

996A St.Dennis St.,

Montreal,Que.

1909/04/29

EXTRACT.
ORIGINAL ON

1902 [illegible]

653

Minutes of Caughnawaga Council held 2nd Dec 1909,

356353 FILED

9.

9. It was unanimously resolved by the council to insist with the Department that the Caughnawaga band be again put in possession of the St.Nicholas island.

(Signed) J.Blain,
Agent.

Copy

J. Blain,
Agent.

1909/12/03

654

190 [illegible]

Ottawa, December 29, 1909.

Sir,

With reference to copy of Minutes of Caughnawaga Council, held on the 3rd instant, in which it was unanimously resolved to insist with the Department that the Caughnawaga Band be again put in possession of St. Nicholas Island, I have to say that, before taking action in this direction, the Department would like the matter to be again brought before the Indians. You should point out to the Band that the local Government made disposition of this island, believing that they had the right so to do, and it no doubt would be expensive, and possibly difficult to establish the Indian claim, in view of which it would certainly appear to be in the best interests of the Indians that they should surrender any claim they may have to the island, upon payment of a reasonable price therefor. You will on the first opportunity again bring the matter before the Indians and explain fully the position thereof and the advisability of securing fair compensation for the island instead of taking action which might possibly involve payment of more in expenses than the island might be worth.

Your obedient Servant,

Secretary.

John Blain, Esq.,
996A St., Denis St.,
Montreal, Que.

EXTRACT.
ORIGINAL ON

063679

Caughnawaga Council
12th April 1910

3. On motion of Cr.Michel Montour, seconded by Cr. J.B.Treffle, it was resolved (after having taken communi-

-2-

cation from the Department asking the council to say on what conditions it would cede the rights of the band to St.Nicholas island, and after having heard the remarks of Agent J.Blain that this island never having brought in any revenue, it was in the interest of the band to cede these rights for a reasonable and sufficient consideration) to persist in the determination not to cede its rights to St.Nicholas island for any consideration, and to beg the Department to be kind enough to use all its power to re-instate the Caughnawaga band in the possession of this island, which is its property.

Note Received under cover of letter from Agent Blain dated 27th April 1910.

1910/04/12

656

190895

Ottawa May 13th, 1910.

Sir,-

Referring to your report of the meeting of the Caughnawaga Council of the 12th ultimo in which resolution No.3 is to the effect that the Council persisted in the determination not to cede its rights to St.Nicholas Island for any consideration and requests that the Department use all its power to re-instate the Caughnawaga band in the possession of this Island, I have to request you to again bring this matter before the Indian Council and inform them that the Department cannot see its way to advise any differently than as expressed in the said letter to you of 29th December last.

Your obedient servant

Secretary.

J.Blain, Esq.,
Indian Agent,
996 A St.Dennis St.,
Montreal Que.

657

Extract- Original on file No-

At a meeting of the Caughnawaga Council held on May 21st, 1910.

Translation

At a meeting of the Caughnawaga council held on May 21, 1910, at 1 p.m. in the council hall, J.Blain, agent, presiding, assisted by J.W.Jocks, official interpreter, there were present Chief Councillor J.B.Daillebout, and Councillors Michel Montour, Thomas Lazar, John S. Canadien and J.B.Trefflea, members of the said council and forming a quorum thereof.

The council, after having taken communication of the letter from the Department of May 15, inst., No.190255, insists on its resolution of May 12, inst., relative to St.Nicholas island.

x x x

(Sdg) J.Blain.

Agent.

Agents covering letter dated 6th June

P.C.II93. File.I68225-IA

658

Certified copy of a Report of the Committee Of the Privy Council, Approved by His Excellency the Governor General on the 7th June.I9I0.

PRIVY COUNCIL
CANADA

On a Memorandum dated 4th June,I9I0.from the Superintendent General of Indian Affairs, stating that the Canadian Pacific Company Railway has applied to the Department of Indian Affairs for a piece of land comprising an area of .22 of an acre on the Caughnawaga Indian Reserve, in the County of Laprairie, in the Province of Quebec, the same being required in connection with an extension of their Adirondack Junction Station.

The Minister observes that the Company has furnished a Certificate of the Chief Engineer of the Department of Rail-ways and Canals, endorsed on a plan showing the location of the land applied for, that the said piece of land is actually required for railway purposes and is such as the company should be allowed to acquire under section 46 of the Indian Act.

The Minister recommends that, under the provisios of the said Section 46 of the Indian, the Canadian Pacific Railway Company be allowed to acquire the piece of land referred to, upon such terms as may be agreed upon,

The Committee submit the same for approval.

F. K. BENNETTS

Asst.Clerk of the Privy Council.

The Honourable

The Superintendent General

Of Indian Affairs.

#5

P.C. 1193

1910/06/07

659

No-190255

Ottawa June 14th, 1910.

Sir,-

Referring to the matter of St.Nicholas Island I have the honour to inform you that the question of surrendering the Island has been brought before the Indian Council on three separate occasions. They appear to be decided not to make any surrender. I shall be obliged if you will be good enough to inform me of the action you propose to take under the circumstances. I may say that if you desire it the matter may remain in abeyance for some time when the question will be again brought before the Indian Council.

Your obedient servant

Secretary

Chas.Lanctot,Esq.,
Asst. Attorney General,
Quebec,Que.

1910/06/14

660

1902-5

Attorney General's Department

Ex'd

365913

25-22/10

Quebec, June 16th 1910.

Sir,

re 1907-5.

I am directed by the Attorney General to acknowledge receipt of your letter, bearing date the 14th instant, re St Nicholas Island, and to state that the matter will receive our best attention.

I have the honour to be,

Your obedient servant.

CHARLES LANGLOIS,

Assistant Attorney General.

by

Indian Affairs. (RG 10, Volume 2925, File 190,255)

PUBLIC ARCHIVES 1910/06/16

190255-

661

Montreal June 16th, 1910.

Sir:-

(St.Nicholas Island)

x x x

With reference to the island in question, has the Department taken measures to reinstate the band in its rights ? The band is impatiently waiting.

Yours &c.

J. Blain

Agent.

1910/06/16

662

Ottawa Jun e 29th, 1910.

Sir,-

In reply to your letter with reference to St. Nicholas Island, dated 16th ultimo, I have to request you to inform the Caughnawaga Indian Council that the Department has not taken any measures to re-instate the band in the possession of St. Nicholas Island.

Your obedient servant

J. Wilson

Assistant Secretary

J. Blain, Esq.,
996A St Dennis St.,
Montreal, Que.

1910/06/29

P.C.117. File.168225.I A

PRIVY COUNCIL
CANADA

Certified copy of a Report of the Committe of the Privy Council Approved By His Excellency the Governor General on the 24th.January.1911.

663

The Superintendent General of Indian Affairs,under date 18th January,1911.reports that the Canadian Pacific Railway Company has applied to the Department of Indian Affairs for an extra strip of land comprising an area of 2,73 acres for the purpose of double-tracking their right of way through the Caughnawaga Indian Reserve,the said strip of land being shown on a plan filed in the Department of Indian Affairs by the Railway Company,which plan also bears a certificate of the Assistant Chief Engineer of the Board of Railway Commissioners that the strip shown on the plan is required for Railway purposes.

The Minister recommends that,under the 46th Section of the Indian Act,the Canadian Pacific Railway be allowed to acquire the said strip of land,upon such terms as may be agreed upon

The Committee submit the same for approval.

RODOLPHE BOUDREAU

Clerk of the Privy Council.

F 6

The Honourable

The Superintendent General PC. 117

Of Indian Affairs.

1911|01|24

EXTRACT.
ORIGINAL ON

664

5 The Council, at the instance of several members of the band, makes request of the Department to be kind enough to make a search in the archives in order to ascertain whether the Sisters' island, lying at the mouth of the Chateauguay river, St.Nicolas island, and other islands bordering upon the reserve were included in the cession made by the King of France to the Caughnawaga band; and it is within the knowledge of the councillors that correspondence in connection with St.Nicolas island has been read to the council.

sgd Lorenzo Letourneau
Asst Indian Agent

665

EXTRACT

[illegible]

8425

[illegible] Council

[illegible] 16 April 1911

[illegible]

4. On motion of Cr. J.P. Treffle, seconded by Cr. Miguel Montoya, it was resolved to ask the Department to [illegible] to give the Caughnawaga council information [illegible] of St. Nicholas Island. Carried unanimously.

[illegible]

[illegible]

[illegible]

666

190,255

Ottawa, 25th. April, 1911.

Sir;-

Referring to No. 8 of the Minutes of the meeting of the Caughnawaga Council of the 7th. instant, I have to request you to read to the Council the enclosed copy of a letter sent to Mr. Blaine on the 29th. December last which contains the information the Council desires.

Your obedient servant,

Assistant Deputy Superintendent General
and Secretary of Indian Affairs.

Lorenzo Letourneau, Esq.,
Assist. Indian Agent,
St. Constant,
Que.

101

667

P.C.I362, File.380535

Certified copy of a report of the Committee of the Privy Council.approved by His Excellency the Governor Gene--ral on the 8th,June,I9II.

PRIVY COUNCIL
CANADA

On a Memorandum dated Ist.June I9II.from the Superin--tendent General of Indian Affairs,stating that the Cana--dian Light and Power Company,of Montreal,has applied for right of way across the Caughnawaga Indian Reserve,in the County of Laprarie.in the Province of Quebec,and has fur--nished a plan of the land required,which is on file - (numbered I065) in the survey branch of the Department of Indian Affairs,

The Minister recommends that,under provisions of section I of "AnAct to Amend the Indian Act,"I George V., authority be given for the acquirement by the said Compan of the right of way referred to,upon such terms as may be agreed upon.

The Committee submit the same for approval.

Rodolphe Boudreau

Clerk of the Privy Council.

The Honourable

The Superintendent General

Of Indian Affairs.

#7
PC 1362

1911/06/08

190255

EXTRACT.
ORIGINAL ONLY
326300

668

385621

Stony's - Caughnawaga
16th June 1911.

Meeting of Council

6. It was moved by J.T.Canadien, seconded by John Sky, that, in reply to the letter from the Department of Dec.29, 1909, file No.190255, addressed to Mr.J.Blain, agent, this council is unanimously decided not to relinquish St.Nicholas island, and that the said island shall again become the property of the band. Carried.

x x x

Jos L Lorenzo Letourneau
Asst Indian Agent

147

2 P.C. 892. File.

Certified copy of a Report of the Committee of the Priv

PRIVY COUNCIL Council,approved by His Excellency the Governor 669

CANADA General on the 12th.August.1911,

-0-

On a Memorandum dated 9th August,1911.from the Super-
-intendent General of Indian Affairs,submitting here-
-with a surrender,in duplicate,made on the 1st.August.
1911.of 61-4/10 acres,being composed of an Island lying east of the village of Caughnawaga,in the province of Quebec,the said surrender having been made with a view to the land being disposed of for industrial purposes for the benefit of the Caughnawaga band of Indians.

The Minister recommends-the surrender having been executed and attested in the manner required by the 49th Section of the Indian Act,-that the same be accepted by Your Excellency in Council,under the same section,and that authority be given for the land covered thereby being disposed of by the Superintendent General of In-
-dian Affairs in the best interests of the Indians Concerned:the original surrender to be returned to the Department of Indian Affairs and the Duplicate thereof to be kept of record in the Privy Council Office.

The Committee submit the same for approval.

RODOLPHE BOUDREAU

Clerk of the Privy Council.

The Honourable

The Superintendent General

Of Indian Affairs,

8

P.C. 892

1911/08/12

190255

Minutes of Council [illegible]

335288

In the matter of St. Nicholas Island.

The Indian Caughnawaga Council on the 3rd of Dec. 1909 in which it was unanimously resolved to insist with the Department that the Caughnawaga Band be again put in possession of St. Nicholas Island.

The answer to this resolution can be found in the letter of Dec. 29th, 1909, file 190,255.

As the Department did not take action then nor since.

Proposed by John Daillebout seconded by Micheal Montour that the Deparment be again requested to move in the matter to get the St. Nicholas Island back to the original owners the Caughnawaga band.

Adopted unanimously.

671

Ottawa, Jan. 3, 191[illegible].

Sir,

Referring to your letter, April [illegible],
[illegible].G.L., I am to inform you that the Indians
[illegible] are willing to execute a surrender
of St. Nicholas Island and have repeatedly urged this depart-
[illegible] to take measures to replace the band in possession
of the island. I shall be obliged if you will be good
enough to inform me of your views in this matter.

Your obedient servant,

Sgd. J. D. McLean.

Assistant Deputy and Secretary.

Charles Lanctot, Esq.,
Assistant Attorney General,
Que.

190255

672

January 15th, 1912.

J. D. McLean, Esq.,
Secretary, Dept. of Indian Affairs,
Ottawa.

Sir,-

I am directed by the Attorney General to acknowledge the receipt of your letter of the 3rd inst., in which you ask what are the views of this Department concerning St. Nicholas Island and which the Indians of Caughwanaga ask to be replaced in possession.

In answer, I beg to state that the Department of the Attorney General is still of the opinion expressed in a letter of the Department of Justice at Ottawa, dated 8th August 1908, that St. Nicholas Island is not covered by the original grant and is, in consequence, the property of the province.

Since this letter was written we have had, you will recollect, some negociations with a view of arriving at some settlement and we will still be disposed, without prejudice to the contentions of the province, to carry on negociations to come to an understanding.

Believe me,

Yours very truly,

Deputy Attorney General.

673

190,255

Ottawa, Jan. 25, 1916.

Memorandum for the Deputy Minister.

With reference to the draft of letter hereunder I beg to state that the Caughnawaga Indian Council has persistently refused to take into consideration the advisability of surrendering St. Nicholas Island. The Island was sold by the Provincial Government. Their contention is that the said Island is not a part of the Caughnawaga Indian Reserve, that the sale was made in good faith and the purchaser has made considerable improvements on the island. They are therefore not disposed to take any action towards cancelling the patent but they are willing to take into consideration the payment of a reasonable sum in order to quiet the Indian claim.

The claim of the Department is based on the fact that the grant of May 29, 1680, conveys, "two Islands, Islets and Shoals" in front of the land then known as Le Sault now comprised within the Caughnawaga Indian Reserve. It is to be noted, however, that a second grant dated Oct. 2, 1719 covering a portion of the

190,255.

Ottawa, Jan. 23, 1912.

same land does not mention any islands but refers to the previous grant of 1680. The said two grants were consolidated into one and the same concession under the name of the " Concession of the Iroquois of the Sault", in General Gage's judgment of 1762.

It may be difficult to establish the claim of the Iroquois to St. Nicholas Island and there probably would be an expensive legal proceeding. It appears that the offer of the provincial Government should be accepted. I beg to recommend that Mr. Ramsden be instructed to proceed at any date that may be convenient, to Caughnawaga with instructions to call a meeting of the Indians to explain the matter to them and to submit a surrender of the Island.

S. Bray

Chief Surveyor.

674

Memorandum

For the Deputy Superintendent General

Ottawa, January 29, 1912.

With reference to the ownership of St Nicholas Island, opposite the Caughnawaga Indian Reserve, I may say that I have been unable to find any maps showing St Nicholas Island marked or designated as belonging to the Indian Reserve or the Province of Quebec. In General Gage's judgment of March 27, 1762, two portions of land are ceded to the Indians. The first grant, granted May 29, 1680, and described as Le Sault and containing two leagues in width from a point opposite St Louis rapids going up along the lake, by an equal depth, with two islands, islets and shoals which are in front, and adjoining the lands of the Prairie of La Magdalene. The second grant dated the 21st October 1680 is described as a piece of land of one league and a half or thereabouts to be taken from the said land called Le Sault, going up along the lake towards the Seigniory of Chateauguay by two leagues in depth.

These two portions combined are called "Con-"cession of the Iroquois of the Sault" bounded on one side by the line of the Prairie of La Magdalene and on the other by that of Chateauguay.

The Island of St Nicholas is opposite this con-cession and it would appear to me that Le Sault and the Islands, islets and shoals in front of and adjoining Prairie La Magdelene would include all Islands in front of Le Sault

which

which land adjoins the Prairie La Magdelene.

The two concessions described separately seem to overlap.

Strong proof of the right of the Indian band to St. Nicholas Island seems to be the continuous occupancy by one of the members of the band.

The Quebec Government seems to content strongly the Indian claim. It would appear therefore to me that before any litigation is entered into or before an officer is sent to advise the Indian band as to their right, some officer of the Department should be sent to Quebec City to examine the records there and try if possible, to see on what grounds the province bases its claim to St. Nicholas Island.

J. G. Ramsden

Chief Inspector of Indian Agencies.

EXTRACT
ORIGINAL ON
[illegible]

190258-

675

Caughnawaga Minutes of Council held Feb. 2nd 1912.

337821

x x x x

6th. Proposed by Michael Montour, Councillor, seconded by John Treff, Councillor that the affair of St, Nicholas Island should be looked after at once and this Council is desirous to be informed if the Department is doing any in the matter.

Adopted.

Chief and Councillors.

1912/02/02

676

Memorandum

For the Deputy Superintendent General.

Ottawa 2nd February, 1912.

With further reference to St Nicholas Island will say that I visited Quebec and searched the records and had interviews with Mr. Lanotot and Mr. Tache. Mr. Lafotot was unable to get the ear of the Government owing to Parliament being in session. He will lay the matter before the premier as soon as the session is over, probably in six weeks, and asks that I return and take the matter up as he believes that we can come to an amicable arrangement, and will advise to that effect.

Failing such agreement he thinks if Mr. Newcombe, Deputy Minister of Justice, and he had a short interview they both admitting the facts in the case, could agree on a test case being submitted for trial, which would appear to me to be a simpler matter than our Department taking proceedings to eject the occupant Bonhomme. I may say I found a map of the Reserve in the Surveys Branch of the Lands and Forests Department, made March 4, 1769, signed John Collline, Deputy Surveyor General. It is otherwise designated as Jesuits Estate Plan No.1, District of Montreal. I think it would be wise for the Department to ask for a copy of this map, including all the explanations and written matter noted thereon.

From all the information I could acquire it would appear to me that the origin of the Quebec Government's claim

to the Island of St Nicholas was the report to their Government of the legal agent at Montreal representing this Island as being unoccupied by the Indians.

J. G. Ramsden

Chief Inspector of Indian Affairs.

1K, 35.

677

Acct.

Ottawa, Feb. 12, 1912.

With Cheque.

Sir,

Referring to your letter of the 9th instant addressed to the Chief Surveyor of this Department, I beg to enclose herewith a cheque for $15.00 in payment for the copy of the Cadastral plan which has been duly received of the Seigniory of Sault St. Louis now known as the Caughnawaga Indian Reserve.

Encl.

Referring to the said plan I shall be obliged if you will be good enough to inform me in whose name the Isle St. Nicolas, numbered 5 on the plan, stands in the Cadastral list. This island is claimed by this Department as a part of the Caughnawaga Indian Reserve. I desire also to draw your attention to the fact that a number of islands in front of the mainland which form a part of the Seigniory are not shown on the Cadastral plan; will you kindly explain the cause of this omission.

Your obedient servant,

Sgd J. D. McLean

Assistant Deputy and Secretary.

G. A. Varin, Esq.,
Secretary of the Cadastre,
9 St-Jacques St.,
Montreal, P. Q.

678

Montreal, March 8th, 1912.

The Secretary
Department of Indian Affairs,
Ottawa.

359760

Sir :

Referring to that part of your letter No 190255 asking in whose name is entered on the Cadastre of the Domaine of the Seigniory of Laprairie, lot No 5 (being Ile St.Nicolas) I beg to state that Mr.Donat Raymond of Montreal, is assigned as the proprietor of that Island.

If it is the intention of your Department to have the islands situated in front of the Seigniory of Sault St.Louis,cadastered, a letter to that effect, addressed to the Registrar of the County of Laprairie, accompanied with a plan shewing the position of the islands and the areas of each must be furnished and a mention in the letter urging him to forward those documents to the Cadastre Office at Montreal so that action may be taken by the officers of that service. Or if you deem advisable to authorize me to act on behalf of your Department,if you will remit me the plan I will communicate with the Registrar and take the necessary measures to carry out the operation.

I have the honor to be,
Sir,
Your obedient servant.

J. Arthur Vaïs

190,[illegible]

1 Dep. Minister 2 [illegible]

679

Ottawa, March 11, 1912.

Sir,

I beg to acknowledge the receipt of your letter of the 7th instant and to thank you for the information to the effect that St. Nicholas Island referred to has been entered in the Cadastre of the Domain of the Seigniory of [illegible] as lot No. [illegible] to Mr. [illegible] Raymond, Montreal.

The island is situated in front of the Caughnawaga Indian Reserve and apparently is situated in the Seigniory of Sault St. Louis. It is claimed by the Indians and the question of ownership is now the subject of correspondence between this Department and the Department of Lands and Forests, Quebec.

As all the islands in front of the Caughnawaga Indian Reserve are the property of the Indian Band it is thought not necessary to have them entered in the Cadastre unless a careful survey were made of the whole in order that no island may be omitted. It was supposed that the regular cadastral survey had been already made by your Department. As above stated all the islands being the property of the Indians this Department does not see the necessity of going to the expense at present of making a detailed survey. The Islands however are shown probably with accuracy in the charts prepared by the Marine Department.

C. A. Varin, Esq.,
Secretary of the Cadastre,
9 St. James St.,
Montreal, Que.

Your obedient servant,

[signature]

Assistant Deputy and Secretary.

81

680

P.C.1530. File.I68225-2

PRIVY COUNCIL

CANADA

Certified copy of a Report ofthe Committee of the Privy Council.approved by His Royal Highness the Gover--nor General on the 6th June.I912.

----------O----------

On a Memorandum dated I8th May,I912.from the Super--intendent General of Indian Affairs,stating that the C Canadian Pacific Railway Company has applied th the Be--partment of Indian Affairs for additional land,to com--prise an area of I8.03 acres,,alongside of its right o way through the Caughnawaga Indian Reserve,in the Count of Laprairie,in the Province of Quebec,for use as a bor— --row pit.A plan is of record in the Department of India Affairs showing the land applied for and bearing a Cer--tificate of the Chief Engineer of the Board of Railway Commissioners for Canada that the land shown thereon is required for Railway purposes.

The Minister recommends,under the provisions of 46 of the Indian Act,as amended by Subsection I of Chapter I4,I-2 George V,that authority be given for the sale of the said I8.03 acres to the Canadian Pacific Railway Company on such terms as may be agreed upon.

The Committee submit the same for Approval.

RODOLPHE BOUDREAU

Clerk of the Privy Council.

The Honourable

The Superintendent General

Of Indian Affairs.

#9

P.C. 1530

1912/06/06

EXTRACT.
ORIGINAL ON
326 200-H

190255

681

Caughnawaga Minutes of Council, held June 18, 1912.

- - - - - - - - - - -

400578

x FXD x

DEPT OF INDIAN AFFAIRS
JUN 26 1912
SURVEYS.

In the matter of St. Nicholas Island, proposed by John Shy seconded by John Treff that the Department be requested to give the council information how near is the Island to be restored to the Caughnawaga band the original owners.

x x x x

J. Blain,
Agent.

1912/06/18

682

190,255

Ottawa, August 29, 1912.

Sir;-

With reference to the minute of the Caughnawaga Council relating to St.Nicholas Island,dated the 18th June last, I beg to inform you that an Inspector from this Department made a special trip to Quebec in connection with this matter. The Province contests strongly that it had a right to sell the Island,but is still willing to come to an amicable arrangement. Nothing further has been done in the matter.

Your obedient servant,

Assistant Deputy and Secretary

J. Blain,Esq.,
Indian Agent,
996A St. Denis St.,
Montreal,
Que.

683

190255

INDIAN AGENT'S OFFICE.

SEP 7 1912

Montreal 31 Août 1912

416088

Sir,-

Referring to your letter of 27 du courant No. 190 255

Je viens de recevoir votre lettre dans laquelle vous me dites que le Gouvernement Provincial est désireux de venir en arrangement à l'amiable à propos de l'Ile Nicholas.

Si vous étiez assez bon de me dire quelles [illegible] propositions d'arrangement que la Province a en vue, je les communiquerai au conseil, qui, je l'espère, si elles sont raisonables, s'empresseront de les accepter.

Votre obéissant serviteur

J. Blain
Agt.

Translation

Sir, - Referring to your letter of the 29th inst., No. 190255, I have just received your letter in which you tell me that the Provincial Govt. is desirous of coming to a friendly arrangement in regard to St. Nicholas island.

If you would be so good as to tell me what are the propositions of the arrangement that the Province has in view, I will communicate them to the Council, which I hope, if they are reasonable, will accept them promptly.

Yours, &c.

J. Blain
Agent.

LANDS BRANCH SEP 4 1912

1912/08/31

684

190,888

Ottawa, September 5, 1912.

Sir;-

In reply to your letter of the 31st ultimo, I beg to inform you that the Assistant Attorney General for the Province of Quebec ~~dated on the~~ stated 23rd April 1909, that it was not the intention of their Department to pay any indemnity to the Indians for St.Nicholas Island but he suggested that this Department should ascertain from the Indians the amount they expected to obtain for the Island and then without prejudice to the right of the province it might be possible afterwards to arrive at some arrangement. You were accordingly requested on the 28th of the same month to ascertain from the Indians for what sum they would be willing to surrender the said Island. As you are aware they have persistently refused to entertain any proposition as to the surrender.

Mr.Lanctot in a conference with Mr.Ramsden,an Inspector from this Department, did not specify in what direction an amicable arrangement could be arrived at,he simply stated to the effect that he believed this could be done.

There is no doubt that the simplest way out of the difficulty is for the Indians to state for what sum they will sell their claim to the Island. The Department would then be in a position to deal with the Provincial Government.

Your obedient servant,

(Sgd) J. D. McLean

Assistant Deputy and Secretary

J. Blain,Esq..
Indian Agent,
9964. St.Denis St.,
Montreal, Que.

148

P.C.2629 File 168225.10 685

Certified Copy of a Report of the Committee of the Privy Coun-
Y COUNCIL -cil, Approved by His Excellency the Deputy Governor Genera
ADA on the 30th September. 1912.

-0-

On a Memorandum dated 21st September, 1912. from the Acting Superintendent General of Indian Affairs, submitting, with refer--ence to Order in Council of 24th, January. 1911 (P.C. 117) autho--rizing the disposal to the Canadian Pacific Railway Company of an extra strip of land comprising an area of 2.73 acres (3.22 arpents) for the purpose of double tracking their right of way through the Caughnawaga Indian Reserve, in the County of Laprairie, P.Q. that the said Company has applied for the Pur--chase of an additional 4.79 arpents in connection with the double-tracking refeerred to, the area already obtained being insufficient for the purpose.

The Minister states that the Department of Indian Affairs is in receipt of a plan bearing a Certificate of the Assistant Chief Engineer of the Board of Railway Commissioners for Canada that the land applied for, as shown thereon, is required for railway purposes.

The Minister recommends that, under Section 46 of the In--dian Act as amended by Section 1 of Chap. 14. 1-2 George V., authority be given for the disposal to the said railway company of the additional 4.79 arpents above mentioned, on such terms as may be agreed upon,

The Committee submit the same for approval.

RODOLPHE BOUDREAU

Clerk of the Privy Council.

The Honourable

The Superintendent General

Of Indian Affairs.

10

P.C. 2629

1912|09|30

190255-

ORIGINAL On 326300

686

At the Indian Councillor Meeting of the Caughnawaga Band held on the 11th of April 1913.

424814

Surveys

Res. 13

Proposed by John Gaillebout Assisted seconded by John Patton that the Department be Humbly requested to inform the Council, and to the Tribe, what are they doing or what they calculate to do with St. Nicholas Island. The Council desires to be informed if the Island is lost to them, if not, inform the Council.

Adopted unanimously.

L.L. Asst. Ind. Agt.

DEPT. OF INDIAN AFFAIRS, APR 25 1913 SURVEYS.

Certified copy,
Lorenzo Letourneau
Asst. Indian Agent.

J. D. Jacobs,
Secretary of the Council

Enclosed under cover of a letter of the 15th April 1913 from Lorenzo Letourneau, Asst. Indian Agent, St. Constant, P.Q.

687

Ottawa, June 16, 1913

Sir,

The Department has under consideration the advisability of having the islands in front of the Caughnawaga Indian Reserve which belong to the Indian Band shown on a cadastral plan and regularly scheduled in the Cadastral office. Enclosed herewith is a plan showing coloured red, thereon the islands referred to which number seven including St. Nicholas Island. Please examine carefully and ascertain whether all the islands in front of the reserve are shown correctly on the said plan.

If certain of the islands are known by name please mark the names on the plan. It would be well to number them all consecutively 1, 2, 3, 4, 5, and 6, leaving St. Nicholas Island unnumbered.

There is another island or pair of islands to the East, known as Isle au Diable. It appears that the situation of these Islands is too far East from the reserve to give the Indians any claim to them. Kindly, attend to this matter at your earliest convenience and return the plan to the Department.

Your obedient servant,

J. Mecheau,
Assistant Deputy and Secretary

L. Letourneau, Esquire
Assistant Indian Agent
St. Constant, Québec

1913/06/16

1905

Caughnawaga Reserve,

St. Constant, 12th July, 1913

688

425054

The Secretary,
Department of Indian Affairs,
Ottawa,

Sir:-

Referring to your letter No 190,255 dated 18th. ultimo, with a plan showing coloured red the islands in front of the Caughnawaga Indian Reserve, I beg to inform you that all the islands in front of the reserve are correctly shown on said plan, but it is not certain as to their denomination the Indians contradict themselves each others as to the appellation, and for this reason I have not marked the names on the plan. I have been directed to refer this case to Revd. Father Jones at College Ste Marie, Montreal, who was supposed to be in possession of ancient documents relating to the land occupied by the Indians of the Caughnawaga Reserve, but the Revd Father stated that the names of these islands were never known to him.

The different names presently known to the islands as I have numbered on the re-enclosed plan are as follows:

No 1 - Small Island,
" 2 - Diome Island, or Delaronde Island
" 3 - Isle St. George, or Long Island,
" 4 - Delisle Island,
" 5 - Echo Island,
" 6 - Isle St.Joseph, or wild goose island,

I have ascertained from the Cadastral plan in the Registry Office for the County of Laprairie that the island to the

1913/07/12

East from the Caughnawaga reserve, known as Isle au Diable is situated outside of the limits of the Caughnawaga Reserve and appears to belong to the parish of Laprairie.

Your obedient servant,

Asst-Indian Agent.

190,255.

689

Ottawa, July 18, 1913.

Sir,

With further reference to your letter of Dec. 24, last, I beg to enclose herewith a copy of the plan prepared by the Department of Marine and Fisheries showing the river front of the Caughnawaga Indian Reserve and the Islands in front of the said reserve which are the property of the Caughnawaga Band of Indians. These Islands are six in number and are numbered on the plan 1,2,3,4,5 & 6 . The islands are also known as follows:-

No. 1..... Small Island.

No. 2..... Diome or Delaronde Island.

No. 3..... Isle St. George, or Long Island.

No. 4..... Delisle Island.

No. 5..... Echo Island.

No. 6..... Isle St. Joseph or Wild Goose Island.

As previously requested I shall be obliged if you will be good enough to take all the necessary steps to have these islands ~~protected~~ placed on the proper cadastral list and if necessary that a cadastral plan be prepared. Also that copies of all necessary documents be forwarded for record in this Department, together with your account for the service.

St. Nicholas Island is also claimed by the Indians and was held as theirs for a great number of years.

Encl.

O. Arthur Varin, Esq.,
Secretary of Cadastre,
9 St. James St.,
Montreal, Que.

The Provincial Government has issued a patent for that island to a private person. The question as to ownership of the island is still in abeyance.

Your obedient servant,

Assistant Deputy and Secretary.

690

Minister
1 Dept Secty

Ottawa, Sept. 16, 1913.

Sir,

Some members of the Indian Council and Band of the Caughnawaga Indian Reserve recently called at the Department and inquired as to what was the position in which St. Nicholas Island now stood and what action the Department proposed to take. I have to say, in fact simply to repeat, what has previously been communicated to the Indian Council that the island was claimed by the Quebec Government and has been patented by that Government.

In reply to representations made by this Department the Deputy Attorney General for the Province stated in a letter dated Jan. 16, 1912, that his Department was still of the opinion expressed in a letter to the Department of Justice at Ottawa, dated Aug. 8, 1908, that St. Nicholas Island is not covered by the original grant and is in consequence the property of the Province.

The Deputy Attorney General added that since the said letter had been written some negotiations had been commenced with the view of arriving at some settlement and that his Department was still disposed without prejudice to the contention of the Province to carry on

L. Letourneau, Esq.,
Indian Agent,
St. Constant, Que.

carry on negotiations to come to an understanding.

These negotiations, which were verbal, were to the effect that if this Department would state some reasonable sum to be paid to the Indians to quit their claim to the island his Department would take the matter into consideration. It therefore remains for the Indian Council to state what reasonable sum they are willing to take, as stated, as compensation for their claim. It may, however, be necessary after the council has come to a decision and after the matter is arranged with the Quebec Government to obtain a formal surrender from the band as a whole.

Kindly communicate the contents of this letter to the Indian Council.

Your obedient servant,

Assistant Deputy and Secretary.

691

EXTRACT
ORIGINAL

326300-49

442132

A Council Meeting of the Caughnawaga Indian Reserve held the 30th day of January 1914, presided by Mr. Lorenzo Letourneau, Ass. Indian Agent.

x x x

Minutes of the Meeting of December 19th,1913,has been read and approved.

x x x

6. With reference to Department's letter, dated Sept. 16th 1913, regarding St. Nicholas Island.

This matter has been looked into fully, and the decision reached by the Councillors, at the proposal of J. M. Jocks, seconded by Mitchel Morris, that the Island in question is not for sale, consequently we are not in a position to quote any price whatever to quit claim, Therefore it is useless for the Quebec Government to make any offer, as it will not be considered under any circumstances, and we must request to have this proposed negotiation dropped, and insist that the island revert to the original owners, that of the Iroquois of Caughnawaga.

Sept.title No. 0.255 L.L. Asst. Ind. Agt.

Adopted unanimously according to second grant titles respecting Sault St. Louis dated at Quebec 31st October 1680.

DEPT. OF INDIAN AFFAIRS. SURVEYS.

x x

Lorenzo Letourneau,
Asst. Indian Agent.

Indian Affairs. (RG 10, Volume 2925, File 190,255)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES 1914/01/30

19025-5

BUREAU DU CADASTRE
9, RUE ST-JACQUES
MONTREAL.

692

Montreal, February 11th, 1914.

Survey

441957

[illegible] McLean
Assistant Deputy and Secretary
Department of Indian Affairs
OTTAWA.

DEPT. OF INDIAN AFFAIRS
FEB 14 1914
SURVEYS.

Dear Sir;-

Agreeably to your letter of the 18th, of July 1912, number 190255, I have caused Mr.Walter D.Staveley L.S.to make a thorough survey of that part of the shore of the Caughnawaga Indian Reserve, where Islands lie, in order to establish the exact position of each, with the area so as to enable us to mark them officially, which operation is now effected.

Every island bearing its own number and being known as numbers 6,7,8,9,10 and 11 of the official cadastre of the "Domaine de la Seigneurie du Sault St.Louis" County of Laprairie.

I transmit by express the plan notes and copy of the book of reference giving a description of each of the islands.

I herewith enclose Mr.Staveley's detailed account of expenses defrayed by him in the accomplishment of his operations. Hoping that all and everything will be found satisfactory.

I remain Sir,

Yours very truly

J. Arthur [illegible]

Secretary of the Cadastre.

693

Ottawa, Feb. 18, 1914.

File 190,225.

Memorandum for the Deputy Superintendent General:-

With reference to the ownership of St. Nicholas Island opposite the Caughnawaga Indian Reserve, I beg to say the Indian Council refuses to give up their claim for any monetary consideration whatever. Mr. Pray took this matter up with the Provincial Government and his report dated Sept. 19, 1908, is found hereunder. I beg to recommend that this question be referred to the Law Clerk as to what action, if any, should be taken to evict the occupant of this island.

for Chief Surveyor.

190255

File Sec 1902-5-

694

Ottawa, 20th February, 1914.

Sir,

I beg to refer to the letter from your Department of the 6th August, 1908, on this file, as to St. Nicholas Island opposite the Caughnawaga Reserve, which was sold by the Quebec Government, and to subsequent correspondence which has taken place with the object of arriving at an amicable settlement as to this Island. You will observe from letter of the 16th September, 1913, addressed to Lorenzo Letourneau, Esq., Assistant Indian Agent, St. Constant, Quebec, that he was asked to ascertain from the Caughnawaga Indian Council what sum the Indians would be willing to accept as compensation for their claim to this Island; and from the Minutes of a Council Meeting held on the 30th January, 1914, it will be seen that the Indians refused to quote any compensation, and asked that negotiations with the Quebec Government be dropped and that the Island revert to the use of the Caughnawaga band.

In view therefore of the foregoing, I am directed to request that you will be good enough to take the necessary action to have this Island restored for the use and benefit of the Caughnawaga band.

Your obedient servant,

J. D. McLean

The Deputy Minister of Justice,

Ottawa.

Asst. Deputy and Secretary

Waterloo, Wellesley and Lake Huron Railway Company, and to change its name to The Grand River Railway Company.—Mr. Weichel.

Bill No. 155, for the relief of Bertha Hétu.—Mr. Oliver.

Bill No. 157, for the relief of Elizabeth Chanssé.—Mr. Schaffner.

Bill No. 158, for the relief of Beatrice Mae Stinson Fotheringham.—Mr. McCraney.

Bill No. 159, for the relief of Eva Jane Bateman.—Mr. Douglas.

Bill No. 160, for the relief of Florence Relf.—Mr. Douglas.

TORONTO TERMINALS RAILWAY COMPANY.

Mr. MACDONELL: With the permission of the House, and if it is not too late, I would like to mention the last order on the list of private Bills, Bill No. 172, respecting the Toronto Terminals Railway Company.

Mr. SPEAKER: The time for the consideration of private Bills has expired.

FALSE ADVERTISEMENTS.

The House resumed consideration in committee of Bill No. 179, to amend the Criminal Code.—Mr. Doherty. Mr. Blondin in the chair.

Mr. McKENZIE: I would suggest to the hon. minister that the offence referred to in section 404 is so closely allied to that provided for under this Bill that there should be no difference in the procedure and punishment.

Mr. CURRIE: Carried.

Mr. McKENZIE: The hon. gentleman may know something about making nails, but I should think he should leave the making of laws to those who know something about that profession. Section 405 of the Code provides for the procedure and punishment in the case of an offence defined in section 404. Under the new law there should be the same procedure and the same punishment.

Mr. DOHERTY: I pointed out before six o'clock the difference that I see between the two offences. Section 405 provides for the offence of obtaining goods by false pretenses. Section 404 merely defines what is a false pretense. The offence provided for in section 405 is committed when a person does by false pretense obtain money, goods or other valuable consideration. The offence that I am now dealing with goes no further than the attempt to do this. The offence which this Bill provides for is committed when a person falsely advertises with the view of promoting the sale or disposal of property. So, under this Bill a man may be guilty even though he does not succeed in gaining any advantage whatever. It seems to me that the difference between the offence provided for in this Bill and the offence under section 405 of the Code is clear. In one case a man must actually obtain something, he must get a benefit from his false representation. But in the case provided for in the Bill a man is guilty even though he may never succeed in gaining anything at all.

Mr. BURNHAM: Would the hon. minister mind my asking him if it is not the fact that the Criminal Code and the quasi criminal statutes deal with the details of the moral law? That is to say, would it not be practicable and advisable to lay down in a general way a statutory enactment endorsing the moral law which we all understand, or are supposed to understand, and enacting that one guilty of the infraction of the moral law shall be liable to a penalty, say of imprisonment for not less than ten days and not more than six months? This being provided for the magistrate or other judicial officer before whom the offender is brought may say: I can find nothing in the Code to apply to your case, but you have perpetrated a fraud or infringement of the moral law, and therefore I send you down for ten days. Carrying out that idea in detail, the crimes may be classed as of grade 1, 2, 3 or 4, and suitable penalties provided for each class just as in the Criminal Code, but, strange to say, though in this age we are getting down to first principles, even to defining primal matter, we have not yet got down to the necessity of enunciating first principles of law, at least so far as I am aware. The national law, the international law, the municipal law, and so on, all specify certain things. The criminal law in the same way specifies certain things, but I repeat that no penalty except what is laid down in the Scriptures is provided for an infraction of the moral law. I would ask the minister, therefore, whether he does not consider it possible and advisable to lay down a sort of open penalty which may be made use of when such a case arises for which there is no specified punishment. Many cases, we know, arise for which no punishment is prescribed. Men learned in the law will scratch their heads in vain, and turn up tomes and statutes galore looking for some remedy which they cannot find, all because the general principle itself has not been laid down, and a penalty provided in case of its infraction.

Mr. DOHERTY: The suggestion of the hon. member certainly opens up a very wide field for consideration. At the first glance, what strikes me as being the practical difficulty in applying the suggestion is that it involves the leaving to every magistrate the definition of what is the moral law, and what constitutes a violation. I am afraid we should find that different magistrates would take different views of what the moral law requires of the individual. I might be convicted of a violation of the moral law before one magistrate, and the hon. gentleman having the advantage of appearing before a different magistrate might be acquitted, although we had both done the same thing. It seems to me that is the danger that would attend on the adoption of the suggestion. However, as I said before, there is no doubt that the suggestion opens a very wide field for consideration and if the time should come when we shall deal in a general way with criminal law—and I may say that I think that time is perhaps very near at hand—the suggestion that the hon. member has made certainly will have the consideration that it deserves.

Bill reported, read the third time and passed.

INDIAN ACT AMENDMENT.

The House again in Committee on Bill No. 114, to amend the Indian Act—Mr. Roche. Mr. Blondin in the Chair.

On section 1—power to establish industrial, etc., schools:

Mr. CARVELL: There was to be an amendment, I think, to that clause. I received a letter from the Minister of the Interior a week ago or more making a suggested amendment, but I have not got it in my desk just now.

Mr. BORDEN: We will let the clause stand. The minister happens to be detained this evening, and I am not very familiar with the Bill. I do not propose to go on with any clauses that are controversial.

Section stands.

On section 2—taking land for schools:

Mr. OLIVER: I do not wish to delay the Bill at all, but I think this is really a trivial reason for interfering with what should be considered the sacredness of the right of the Indian to his reserve. There are reasons why there should be such an amendment, but I think the reasons against it are much stronger. This is a provision whereby land on a reserve can be expropriated for school purposes. It is very desirable that there should be a school in certain places, but on the other hand it is very desirable that there should be no interference with the right of the Indian to his land.

Mr. BORDEN: Has the hon. gentleman made known his objections to the minister?

Mr. OLIVER: No, we did not come to that clause before.

Mr. BORDEN: Perhaps the hon. member will state his reasons as fully as he desires, and we will then let the clause stand.

Mr. OLIVER: I am not insisting that it should stand, but I simply wish to put on record my views in regard to it.

Mr. BORDEN: As the hon. gentleman has some consideration which he regards as cogent, I would prefer that the clause stand in order that his observations may receive the consideration of the minister.

Mr. LEMIEUX: I may say for the information of the right hon. gentleman that when this Bill came up the first time I took upon myself to read a communication from the chief of the Caughnawaga band, protesting most vehemently against any expropriation of that reserve. The Caughnawaga Indians have owned their reserve almost from time immemorial. It was given to them, if I mistake not, by Governor Frontenac under the French regime. The Caughnawaga Indians consider that they should not be threatened with being removed from where they are. They are quite near Montreal and are practically white men. By referring to 'Hansard' when this Bill was first introduced my hon. friend will see the protest of their chief.

Mr. BORDEN: As I understand the object, it is to enable the department to provide facilities for establishing schools for the advantage of the Indians. I would not suppose that any very large area of land is required to be taken for the purpose.

Section stands.

On section 4—withdrawal from band:

Mr OLIVER: There is a feature in connection with section 4 that I am afraid the right hon. the Prime Minister does not

Canada. Official Report of the Debates of the House of Commons of the Dominion of Canada, 3rd Session, 12th Parliament, 4-5 George V., 1914. Vol. CXVI. Ottawa: King's Printer, 1914

realize. There has been a considerable traffic in half-breed scrip. I do not know whether that traffic still goes on. A half-breed has the right to the issue of 480 acres of scrip. At the price of land it is worth a considerable amount of money, and there have been a great many withdrawals from the Indian bands by members of the bands, who are really half-breeds, having white blood and getting this scrip as half-breeds. It should be understood that a very large proportion of the Indians of the West have an admixture of white blood, so that really they would be entitled to be dealt with as half-breeds but they had chosen to be regarded as Indians and as members of the Indian band, which they were in all particulars except in the mere matter of some admixture of white blood. But in case they had a small admixture of white blood they were entitled to scrip. Therefore, speculators would induce them to withdraw from the band with the result that the scrip would be given to them, then sold to the speculator and the profit would be made by the speculator rather than by the Indian. The effect of this amendment is that when that arrangement is made with the man it will also be effective with his wife, if I understand the meaning of it aright. When the man withdrews from the band the wife is automatically withdrawn. It seems to me that when the man withdraws from the band and is given scrip, the wife is thereby withdrawn under the authority of Parliament and she will almost automatically be entitled to the scrip as well thereby doubling up the advantage of the scrip speculators.

Mr. BORDEN: Are the wives of half-breeds, as well as half-breeds themselves, entitled to the scrip?

Mr. OLIVER: Yes, properly speaking, unless the wife had white blood she would not be entitled to scrip but it seems to me that when you provide that, when her husband withdraws she must withdraw also, you are establishing a situation in which you would almost have to give her the same recognition as her husband. I am not saying that this is not right, I am not seriously objecting to it, but I am putting before the committee the information as to how far-reaching this provision is in a direction that possibly is not contemplated. It may be that under present conditions no scrip is issued. If the issue of scrip has ceased then the objection I see does not exist, but if the scrip is actually issued that condition would continue and I think it would raise considerable objection. It would be well for the minister to look into that side of it before he puts the section through.

Mr. BORDEN: It is quite possible that that particular consideration may have been overlooked. Apparently, as far as I can appreciate the object of the section, it is designed to ensure that the wife of an Indian when withdrawn from the band would have the same status as her husband.

Mr. OLIVER: Yes, which is very proper.

Mr. BORDEN: Which is very proper—just as a wife acquires the domicile or national status of her husband. The considerations which the hon. gentlemen has brought to my attention may have been overlooked. I shall ask that the section may be allowed in order that it may have the consideration of the minister.

Section stands.

Section 6 stands.

On section 8—selling, etc., of live stock:

Mr. BORDEN: Has my hon. friend (Mr. Oliver) considered this section?

Mr. OLIVER: I think it is going very far, but I suppose the minister has considered it thoroughly. It prohibits the Indian from selling his live stock. My objection to it would be that it establishes too great a condition of paternalism. It does not give scope to the Indian to grow in his sense of proprietorship, of personal ownership, which is really essential to his progress and civilization. The sense of ownership, after all, is the very foundation of civilization. Ownership, selfishness, which is foreign to the mind of the Indian in his normal condition, is really the foundation of civilization.

Mr. BORDEN: The hon. gentleman considers that it tends to keep the Indians in a condition of tutelage?

Mr. OLIVER: Yes.

Mr. BORDEN: Well, I think we had better let it stand.

Mr. CARVELL: Would not this go so far as to extend to the Indian, say, in the Maritime provinces so that he would not be able to sell his live stock without the consent of the agent?

Mr. BORDEN: It is restricted to the four provinces of Manitoba, Saskatchewan, Alberta and British Columbia.

Mr. CARVELL: It says:

> No Indian or non-treaty Indian in the provinces of Manitoba, British Columbia, Saskatchewan or Alberta.

It might be construed to mean a non-treaty Indian in the four provinces and any Indian all over Canada.

Mr. BORDEN: I do not think it would be held to have that meaning.

Mr. CARVELL: It is a subject for consideration. I know that in the Maritime provinces there are some Indians who are trying to lead civilized lives and own property, and it would be a great hardship if these people were not allowed to dispose of their property.

Mr. BORDEN: I do not think it does mean what my hon. friend suggests, but in order to avoid any doubt it might be proper to transpose the words of the section so that it would read:

> In the provinces of Manitoba, British Columbia, Saskatchewan or Alberta, no Indian—

Mr. CARVELL: That will make it all right.

Mr. OLIVER: This only applies to live stock that had been given them under treaty, and not to their private property?

Mr. BORDEN: Yes.

Mr. OLIVER: That is better, but it still carries the objection I have raised.

On section 9—restriction Indian dances, etc.:

Mr. OLIVER: As this section reads, it ostensibly is to prevent the engagement of Indians in public shows, except with consent, and I think that is proper, but if it is the intention of the department to prevent their assembling on different reserves for the purpose of participating in their festivals, religious or otherwise, that ought to be specifically stated, and this section ought not to be interpreted to prohibit that. The various bands visit each other on their reservations, to take part in ceremonies, religious or otherwise but that is in a different class altogether from their participation in a public show for pay. I know there are many people who object to allowing the Indians to participate in their tribal festivals and ceremonies, but, personally, I think it would be an injustice and a wrong to make a statutory provision preventing them from engaging in these traditional customs, to which they are much attached.

Mr. CARVELL: An eastern man naturally wonders why an Indian should not be allowed to join a show and make a few dollars as well as a white man can. There must be some reason for this prohibition, and I would like my hon. friend from Edmonton (Mr. Oliver) to explain.

Mr. OLIVER: The merit of the Indian is in the maintenance of his dignity, and when the Indian consents to join in a public show for money he degrades and demoralizes himself to an extent that would not be present in the case of a white man doing a similar thing. The Indian is either a gentleman or very much the reverse. As long as his dignity is maintained he is a gentleman and he is amenable to reason and argument and good influence, but when he loses his self-respect, and he certainly does lose his self-respect when he makes himself a public show, then he gets to a point where neither the Government nor anybody else can do very much with him or for him. There are exceptions of course, but I think those who are acquainted with the western Indians will agree that their participation in these public exhibitions has a degrading and demoralizing influence on them, which is very much to their detriment and to the detriment of the Government that is doing the best it can for them. I am aware that very much of what I have said may be argued against permitting them to assemble in their tribal or national festivals, but in the celebration of these ceremonies, while they may look grotesque to us because we do not understand them, they have to the Indians a meaning, and they do not detract from their self-respect or from their dignity, and therefore do not demoralize them to the same degree.

Mr. CARVELL: What is the difference between their dances and tangoing?

Mr. OLIVER: The difference between the white man and the Indian is that the Indian is naturally a gentleman.

Mr. BRADBURY: I endorse what has been so well said by the hon. member for Edmonton. I suppose the intention of the clause must be not to prevent the Indian holding a festival on his own reserve.

Mr. OLIVER: Or going from one reserve to another.

Mr. BRADBURY: Yes. The clause, I suppose, is intended to prevent the Indians from taking part in these public exhibitions, and with that I agree, but if it should be interpreted to prohibit his national and

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selon une habitude assez inconvenante, mais très commode quand ne connaît rien d'une ville, je me renseignai auprès de plusieurs ants. » APOLLINAIRE, L'hérésiarque..., p. 12.

RENSEIGNÉ, ÉE. *p. p. adj.* Eclairé, instruit par un, par des seignements. *Être bien, mal renseigné sur...* (Cf. Homme, 47). Absolt. *La police est renseignée* (Cf. Dossier, 3) ; est au courant, est au fait[e] (*infra* cit. 39). — Substant. *renseigné* (Cf. Détenir, cit. 2). *Les bien renseignés.*

Le seul point qui lui soit donné est celui-ci : nous n'avons aucune 5
le de reprendre notre vie passée, mais nous commençons volontiers re vie à venir. Or il ne peut en tirer sa conclusion pessimiste qu'à condition d'admettre que nous sommes parfaitement bien rensei- s sur le passé, parfaitement mal sur le présent et l'avenir. »
PAULHAN, Entretien s. faits divers, p. 47.

RENTABLE. *adj.* (fin XIX[e] s., selon DAUZAT, dér. de *rente* ; déjà au XIII[e] s. en picard *terre rentable*, « chargée une redevance »). Qui produit une rente (3°), un revenu pplémentaire, un bénéfice. *Entreprise, exploitation plus moins rentable.* — (Dans le lang. courant) Qui rapporte, est fructueux. V. **Payant** (*fig.* et *fam.*).

« Il ... dit volontiers qu'il est sûr de ce qu'il fait, au point de vue ancier, que l'idée de papa lui paraît excellente, que c'est un place- nt rentable — son propre mot. » DUHAM., Pasq., VIII, IV.

DER. — Rentabilité, *n. f.* (1926 Ch. GIDE). *Écon. polit.* Caractère e présente le capital de procurer à son propriétaire le droit de élever une part des richesses déjà créées (*par oppos.* à Productivité '. Ch. GIDE, Écon. polit., t. I, pp. 189-190). — Caractère d'une entre- se rentable.

RENTAMER. *v. tr.* (1320 ; de *re-*, et *entamer*). Entamer, mmencer de nouveau (après une interruption...) *Rentamer du pain.* — Recommencer. *Rentamer son discours.*

RENTE. *n. f.* (XII[e] s., fém. d'un ancien p. p. de *rendre*, . vulg. *rendita*, lat. class. *reddita*, « somme rendue » (par placement).

1° Revenu périodique, à l'exclusion de celui du travail. **Produit, revenu.** *Avoir des rentes ; vivre de ses rentes* (cf. Diable, cit. 18). — *Par ext.* Source de revenu (Cf. reur, cit. 15). Fig. *Des personnes à qui le ciel n'a donné autres rentes que l'intrigue et l'industrie* (cit. 7).

2° (XVI[e] s.). Produit périodique (en général redevance nuelle) qu'une personne (V. **Débirentier**) est tenue de rvir à une autre personne (V. **Crédirentier**), en raison un contrat, d'un jugement, d'une disposition testamen- re ; ensemble des redevances ainsi versées. V. **Arrérages** t. 2 et 3), **intérêt** (2°), **produit** (3°). — *Constitution de nte ;* contrat par lequel une des parties s'engage, gratuiement ou en échange d'un capital, à payer une rede- nce (CODE CIV., Art. 1910 à 1914). *Dans la rente, à la différence du prêt[e] à intérêt, la restitution du capital ou du en n'est pas exigible. Rente foncière,* constituée moyennt une aliénation immobilière. *Rente perpétuelle, constiée en perpétuel. Rente viagère,* payable pendant la vie du débirentier ou d'un tiers. V. **Viager** (CODE CIV., Art. 1968 à 83). *Mettre une rente viagère sur la tête d'une personne, yer des rentes viagères à quelqu'un* (Cf. Enrager, cit. 8). *ente viagère perçue sur une tontine[e]. — Rente quérable[e], portable. — Rapport de la rente* (annuelle) *et du capital. ente à cinq pour cent ; au denier[e] dix* (vx). — *Servir une nte à quelqu'un. Jouissance d'une rente. Rachat, remoursement d'une rente. Transfert d'une rente. Une rente quée* (cit. 2) *par... Avoir une petite rente* (Cf. Marcher, t. 39). *Mille livres[e]* (cit. 5) *de rente.* — *Donner, prendre ne terre à rente,* en convenant de recevoir ou de servir ne rente. V. **Arrentement, arrenter** (cit.). *Bail à rente.*

« ... elle a fait ses partages de son vivant et s'était réservé une 1
nsion que lui paye sa nièce, madame de Soulanges, à laquelle elle a nné sa terre de Guébriant à rente viagère. »
BALZ., Duch. de Langeais, Œuvr., t. V, p. 231.

« — Maintenant que le partage est résolu, reprit le notaire, il 2
agit de régler les conditions. Êtes-vous d'accord sur la rente à rvir ? »
ZOLA, La terre, I, II.

— Par anal. (*fam.*). Dépense à renouveler régulièrement omme on sert une *rente*). *Par antiphr.* Chose désagréae que l'on subit périodiquement (comme on touche une *nte*).

« Maman Coupeau, qui avait toussé et étouffé tout décembre, dut 3
coller dans le lit après les Rois. C'était sa rente ; chaque hiver, le attendait ça. »
ZOLA, L'Assommoir, IX, t. II, p. 78.

— Spécialt. *Rentes sur l'État ;* rentes émises par l'État, à suite de souscriptions publiques, et qui sont représentées ar des titres[e] (au porteur ou nominatifs). V. **Dette** (2°). *entes et bons du Trésor. Les rentes s'amortissent par le achat des titres. Rentes à 5 pour cent,* et *elipt.* du cinq our cent[e]. *Capitaliser[e] une rente. Coupons[e] de rente. onversion[e] de rentes.* — *Rentes consolidées* (V. **Consolidation**) ; *rentes perpétuelles.* — Vieilli. *Acheter, vendre de rente. Le cours* (cit. 22) *de la rente. Rente au pair,* dont valeur d'échange est égale à la valeur nominale.

‖ 3° (Vers 1750 ; empr. angl. *rent*, « loyer qu'un fermier aye à son propriétaire »). *Écon. polit.* Le revenu de la roductivité naturelle d'une terre, distincte de celle du

travail et du capital investis sur cette terre (dans le cas d'une location nue de la terre à un fermier, le prix du fermage[e] tend à coïncider avec la *rente ; Cf. aussi* Métayage, cit. 1). *Théorie de la rente* (RICARDO, MALTHUS). *Rente différentielle ; absolue. Rente marginale.*

ANT. — Capital.

DER. — Rentable. — Renter, *v. tr.* (XIII[e] s.). *Vieilli.* Doter d'une rente (1° ou 2°). — Renté, ée. p. p. *adj.* Qui a des rentes. *Un de ces hommes rentés, qui ont de grosses prébendes* (cit.). *Né bien renté ;* riche (Cf. Quelqu'un, cit. 15). — Rentier, ière. *n.* (1200, « celui qui doit une rente » ; sens mod. en 1356). ‖ 1° Celui, celle qui a des rentes (*spécialt.* des rentes sur l'État). V. Débirentier (Cf. Arriéré, cit. 6 ; assaut, cit. 13 ; coupon, cit. 2 ; expatrier cit. 2). — REM. *Rentier* se dit surtout des personnes qui vivent de leurs rentes. *Les petits rentiers* (Cf. Médiocrité, cit. 9). ‖ 2° Personne qui a des revenus suffisants pour vivre sans travailler. *Mener une vie, une existence de rentier. Tenir table comme une rentière* (Cf. Etaler, cit. 30).

1 « Je suis pauvre, tu sais, tu sais aussi comment,
De quelle ardeur je trime et fais, veille que veille,
Puisqu'on n'est pas rentier et qu'il sied qu'on travaille,
Des besognes pour tel journal... »
VERLAINE, Élégies, VIII.

2 « Ils (les rentiers) répondent :... Nous vivons *sur le produit* d'un *travail passé*... quand le rentier est un fonctionnaire qui touche sa pension de retraite,... personne n'a rien à objecter... Mais quand ce travail passé est celui d'autrui... la question devient plus embarrassante. »
Ch. GIDE, Écon. polit., t. II, p. 277.

RENTOILER. *v. tr.* (1690 ; de *re-*, et *entoiler*). Entoiler de nouveau. *Spécialt.* Fixer sur une toile neuve (une peinture). *Rentoiler un tableau* (V. **Réparer, restaurer**).

DER. — Rentoilage. *n. m.* (1752). Opération par laquelle on substitue une toile neuve à la toile usée d'un tableau. — Rentoileur. *n. m.* (1650 in LITTRÉ, Suppl.). Spécialiste qui rentoile.

RENTRAIRE (se conjugue comme *Traire*) ou **RENTRAYER** (*-trè-yé*). *v. tr.* (1404 ; comp. de *re-*, et de l'anc. fr. *entraire*, « tirer », du lat. *intrahere*. V. **Traire**). VX. *T. de Cout.* Coudre, joindre les bords d'une déchirure, de façon que la couture ne soit pas visible. V. **Stopper.** *Spécialt.* Réparer les défauts du drap, du tissu, après foulage, tonte et apprêt. V. **Rentrayage.** — Masquer les défauts du cuir (éraillures...). — Réparer (une tapisserie) en refaisant la trame, la chaîne endommagée. V. **Rentraiture.**

DER. — Rentraiture. *n. f.* (1530). VX. **Stoppage**, couture invisible. *T. de Tapiss.* Réparation d'une partie usée, détruite, par réfection de la tapisserie. — (de la forme *Rentrayer*) : Rentrayage (*-trè-yaj'*). *n. m.* (1802). Le fait de rentraire[e]. VX. **Stoppage.** *Spécialt.* Opération de réparation (à l'aiguille) des défauts du drap, d'un tissu. — Rentrayeur, euse. *n.* (1564 ; an tém. en 1834). Ouvrier, ouvrière qui répare par rentraiture ou rentrayage. *Rentrayeur de drap, de tapis* (stoppeur), *de tapisserie* (tapissier à l'aiguille). *Spécialt.* Dans une fabrique de drap, Celui, celle qui répare les défauts, les déchirures causés par l'apprêt. *Rentrayeuses et épinceteuses* (Cf. Fileur, cit. 2).

1 « ... cette spirituelle eau-forte de Liotard, avec seulement quelques rentraitures de burin... »
GONCOURT, Journal, 14 déc. 1894, t. IX, p. 207.

2 « ... j'aimais l'odeur de la laine grasse dans les triages, les longues pièces tordues qui, à la teinture, plongeaient dans des bains de couleur, le silence surprenant des ateliers de rentrayage... »
MAUROIS, Mém. I, II.

RENTRAGE, RENTRANT. V. RENTRER (*dér.*).

RENTRÉE. *n. f.* (1510, « retraite » ; 1538, *rentrée en grâce* ; dér. de *rentrer*).

I. (*En parlant des êtres vivants*).

‖ 1° (*Rare au sens général*). Le fait de rentrer. *L'une rentrée au bercail* (Cf. Fugue, cit. 5).

— *Spécialt.* Moment où des personnes doivent rentrer à leur travail, etc.). *Heure de rentrée* (Cf. Pointage, cit. 2).

‖ 2° (1718). Reprise des fonctions, des activités de certaines institutions (justice, enseignement...) après une interruption. *La rentrée des tribunaux. La rentrée des classes[e]* (Cf. Pion, cit. 1) ; *spécialt.*, la rentrée qui a lieu après les grandes vacances. — Absolt. *Le matin de la rentrée* (Cf. Mammifère, cit. 2). — *La rentrée parlementaire.* — VX. La réouverture des théâtres.

1 « ... le cœur plein de la rentrée prochaine, des préaux funèbres où l'accueilleraient bientôt le noir hiver, des classes puantes, des réfectoires à la grasse haleine, des interminables grand'messes à fanfare où une petite âme harassée ne saurait rien partager avec Dieu que l'ennui... »
BERNANOS, Gr. cimet. sous la lune, p. 79.

— *Par ext.* et *absolt.* L'époque de la *rentrée* des classes (qui est aussi celle du retour des vacances annuelles pour la plupart des Français), la reprise des activités normales après les vacances.

‖ 3° (1835). Retour d'un acteur à la scène, après une interruption. *Cet acteur a fait sa rentrée par tel rôle* (LITTRÉ). — Par anal. *La rentrée d'un écrivain, d'un homme politique.*

2 « Aux Italiens, l'entrée dans sa loge de M[me] Handancourt amenait dans la salle ce mouvement de curiosité qu'accueille la rentrée en scène des personnalités parisiennes un moment disparues, et qui se rencontrent tout à coup, inopinément. »
GONCOURT, Chérie, p. 324.

3 « M. Marin, lui, profitait de ce raout pour préparer sa rentrée politique. »
RADIGUET, Diable au corps, p. 109.

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OF THE

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THIRD SESSION—TWELFTH PARLIAMENT

4-5 GEORGE V., 1914

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occurred, and it is proposed to cure the difficulty by legislation. But I think it would be better to allow the individual difficulty to remain rather than to interfere by legislation with the ownership of land by the Indian. There is nothing upon which the Indians are quite so touchy as the ownership of land, and it is not well to interfere with them in any way unless the circumstances make it unavoidable.

Mr. ROCHE: This is because of a certain difficulty having arisen where land was needed and was refused by the Indian. Of course, it is not intended that the land should be taken without compensation. We are not very particular about securing this power, but we think that in case of similar difficulty arising it is better that this should be passed rather than see a school blocked.

Section agreed to.

On section 4—withdrawal of half-breed from treaty; status of wife:

Mr. OLIVER: When this section was under consideration the other night, I mentioned the fact that under recent conditions—I am not sure whether under present conditions or not—half-breed scrip is issued to members of bands who withdraw from those bands. If there is no issue of scrip, if that absolutely does not exist, the objection I make does not hold. But if half-breed scrip is issued to members of bands who withdraw from those bands, then the effect of this section would be to double the object of the scrip speculator in securing the withdrawal of the members from the band by automatically withdrawing the wife with the husband. Either the woman would be entitled to the scrip or she would lose the benefit of being in the band. Either one or other would be detrimental to the interest of the half-breeds.

Mr. ROCHE: I have read the hon. member's criticism on this point. It is not the intention to issue any further scrip. The issue of scrip has ceased, and will not be made in the future.

Mr. OLIVER: How long is it since any scrip has been issued?

Mr. ROCHE: None has been issued within the last two or three years.

Section agreed to.

On section 6—compulsory, etc., sale of reserve:

Mr. LEMIEUX: Has the hon. minister considered the protest of the Caughnawaga Indians on this subject?

Mr. ROCHE: I think the Caughnawaga Indians are unnecessarily alarmed.

Mr. LEMIEUX: What is the effect of the clause?

Mr. ROCHE: We have already an amendment, by which there is a portion of a reserve that is required for some public purpose, adjacent to a city or town of 8,000 population, and where the Indians refuse to surrender and are absolutely preventing the development of that portion of the country, provision was taken by my predecessor to have a reference to a judge of the Exchequer Court for inquiry and report to the Governor in Council, which report is placed before Parliament and must be passed upon by Parliament before the Governor in Council can act. The Act is being further amended by doing away with the limitation to cities and towns of a population of 8,000 or more, so that wherever lands are required for similar purposes, they shall, where the indians refuse to surrender, be dealt with in a similar way. There is no design upon the Caughnawaga reserve; the amendment introduced in 1911 has never been called into requisition and this one may never be called into requisition. There is no danger of the Caughnawagans losing their reserve.

Mr. LEMIEUX: I am glad to accept the word of my hon. friend in that regard. The Chief of the Caughnawaga band wrote the letter which I read the other day in the House, but after my hon. friend's assurance that they need not be nervous about any sinister design on his part, I suppose they will now be satisfied.

Mr. A. K. MACLEAN: What is the procedure in the obtaining of portions of Indian reserves not in or near a town, for industrial purposes? Is it complicated?

Mr. ROCHE: In such cases we secure a surrender from the Indians.

Mr. MACLEAN: What is the procedure?

Mr. ROCHE: We send one of our officials to the reserve, and he calls a meeting of the band and places the proposition before them. A vote is secured, and all that is necessary is the assent of the majority of the band. No protracted time is required and there is no complication.

brought before the Exchequer Court, and if it is proven that there is more land in the Indian reserve than the Indians are beneficially using, the judge will have no discretion but to declare that a portion of the reserve shall be taken from the Indians. That is the whole purpose of the Bill, that is what it says, that is what will be the necessary result. I maintain that this is most objectionable.

Mr. BRADBURY: Will that apply to any reserve?

Mr. OLIVER: Yes. I think that the minister will realize that in pressing this legislation on Parliament he is proposing to destroy the treaty rights of the Indians by authority of Parliament. I am quite aware that Parliament can destroy these treaty rights but I am not prepared to admit that Parliament ought to. The minister may say that under the late Government provision was made for the taking of the land from the Indians by the order of the Exchequer Court. It is quite true. A Bill was brought before Parliament by myself, as an emergency measure, after a complete declaration of the fact that it was trespassing upon the treaty rights of the Indians, and that it was a question as to which was the greater right and which was the greater wrong. It was particularly provided in the Bill that it should only have effect where, by reason of the proximity of a large population, the land occupied by the Indians had reached an abnormal cash value and the Indians in occupation were not receiving adequate benefit, and where the duty of the Government, as guardians of the Indians, required them to take such action as would ensure to them all of the increased value by reason of the proximity to a large population. That was the limitation under which that extraordinary power could be exercised through the courts. But my hon. friend departs from that extraordinary condition altogether and in any circumstances where any Indian reserve occupies a greater area than the Indians are using he can put this Act into operation and the judge of the Exchequer Court must act as he is directed by the terms of this section. In so far as the Minister desires to excuse this Bill by suggesting that its terms are parallel with the terms of the Act now on the statute book, I desire to repudiate the parallel absolutely and to say that the Act now on the statute book is within limitations which absolutely safeguard the rights of the Indians and that it was put there for the direct benefit of the Indians. This Bill is certainly a trespass upon the rights of the Indians wherever they may be located throughout Canada.

There is another feature of this Indian question that I am going to take an opportunity of directing to the attention of the minister. This Bill is a trespass upon the ordinary treaty rights of the Indians. But there are the bands of the Six Nation Indians located on the Grand river in Ontario who, I maintain, are in a different legal position from any Indian bands who are native to the country. These Indian bands on the Grand river had their original home in the United States. At the close of the war of the revolution they emigrated to Canada and were given lands under a special treaty, not as subjects of Great Britain, but as allies of Great Britain, and I maintain that the holding of these Six Nation Indians on the Grand river is of such a kind that this Parliament has no right to interfere with it. I admit that Parliament has the power to interfere with the rights of Indians under treaty made with this Government, but I say that this Parliament has no right to interfere with a treaty made between the Imperial Government and the Six Nation Indians.

I protest most strongly against this legislation as being a breaking of faith with the Indians in a matter in which faith should be most sacredly kept. The other night, speaking in the House, I referred to the nature of the Indian and to the necessity of maintaining his self-respect. The knowledge of the ownership of his land is the greatest factor in maintaining his self-respect, and if we are to let him understand that the land which he is located upon and which is sacred to himself and his tribe is not his excepting as the Parliament or Government of the day may see fit to declare, you simply take away the last vestige of his self-respect, the last opportunity to save in him all that makes him a man.

Mr. LEMIEUX: I wish to emphasize the attitude taken by my hon. friend from Edmonton (Mr. Oliver) as regards the sacredness of the title which the Indians have to their reserves. I was speaking a moment ago of the Caughnawaga Indians, and my hon. friend said that there was no sinister motive behind this clause 6 as regards their reserve. Looking over the documents which were published by this Government many years ago, I find the titles to the reserves, and I submit that even with

Canada. Official Report of the Debates of the House of Commons of the Dominion of Canada. 3rd Session, 12th Parliament, 4-5 George V., 1914. Vol. CXVI. Ottawa: King's Printer, 1914

the legislation which is before the House to-day, the department could not dispossess the Caughnawaga band of that reserve or any part of it. I would refer my hon. friend the minister to the titles to the Sault St. Louis reserve in the 'Indian Treaties and Surrenders,' vols 1 and 2, officially published in the year 1891, and which contains the Indian treaties and surrenders from 1680 to 1890.

Respecting the Caughnawaga reserve, the following document is, I believe the most ancient concession made by France to the Indians of Canada. It will be seen from it that the Caughnawaga reserve was originally granted to the Jesuit Fathers by Louis XIV, on the 29th of May, 1680. Here are the terms of the grant:

Fontainebleau, France, 29th May, 1680.

Louis, by the Grace of God, King of France and of Navarre. To all to whom these presents may come, greeting:

Our dearest and well beloved, the Religious Order of the Society of Jesus, residing in our Dominion of New France, have caused it to be most humbly represented to us that the lands of the Prairie de la Magdalene, which were heretofore granted to them, being too damp for the purpose of sowing and of providing for the sustenance of the Iroquois who have thereon settled, and that it is feared they might leave if we were not pleased to give them the land called 'Le Sault' containing two leagues in width from a point opposite the St. Louis rapids, going up along the lake by an equal depth, with two islands, islets and shoals, which are in front and adjoining the lands of the said Prairie de la Magdalene, which would allow them not only to receive the said Iroquois but even to increase their number, and to spread by that means the knowledge of faith and of the Gospel; for these reasons, desiring to contribute to the conversion and instruction of the said Iroquois and to deal favourably with the said petitioners, we have made and do make them a donation by these presents signed with our hand, of the said land called 'Le Sault' containing two leagues, in width from a point opposite the St. Louis rapids, going up along the lake, by an equal depth, with two islands, islets and shoals, which are in front and adjoining the lands of the Prairie de la Msgdalene on condition that the said land called 'Le Sault' shall belong to us, when the said Iroquois will give it up, toute défrichée (free and clear as it then may be without any claims on us).

We permit and allow all those who wish to bring to the said Iroquois rings, knives and other small mercery and such things, to do so; we do most expressly prohibit and forbid the French who may live with or go among the said Iroquois and other Indian nations who may settle on the said land called 'Le Sault' from having and keeping any cattle, and all persons from keeping any public-house among the dwellings (dans le bourg) of the said Iroquois which may be built on the said land.

Therefore we order our beloved and faithful men holding our Sovereign Court at Quebec, and all our other judicial officers whom it may concern, to have these presents our letters of donation and of grant read and registered and to permit the said petitioners to use and enjoy the same, ceasing and putting a stop to all troubles and hindrances which might be caused to them to the contrary, for such is our pleasure.

In faith whereof we have signed these presents and affixed our Seals.

Given at Fontainebleau the twenty-ninth day of May in the year of Grace one thousand six hundred and eighty and of our reign the thirty-eighth.

(Signed) Louis.

By the King.

(Signed) Colbert.

Later on Frontenac, one of the most illustrious governors under the French regime, issued the following letters patent, dated Quebec, 31st of October, 1680:

Quebec, 31st October, 1680.

With regard to what was represented to us by the Reverend Fathers of the Society of Jesus, that His Majesty by his letters patent of the twenty-ninth of May one thousand six hundred and eighty, registered at the Sovereign Council at Quebec on the twenty-ninth of October ensuing, having made to them a gift of the land called 'Le Sault' containing two leagues in width from a point opposite the St. Louis rapids going up along the lake, by an equal depth, with two islands, islets and shoals which are in front, and adjoining the lands of the Prairie de la Magdalene, for the reasons mentioned in said letters and in the clauses and conditions therein laid; and whereas they have asked that we might be pleased to grant them a piece of land of one league and a half or thereabouts in length to be taken from the said land called 'Le Sault' going up along the lake, towards the seigniority of Chateauguay, by two leagues in depth, which would afford them a still better opportunity of drawing thereto the Iroquois and other Indians, to increase their number and to spread by that means the knowledge of faith and of the Gospel;

We, by virtue of the power given to us conjointly by His Majesty, and in order to facilitate still more the said Reverend Fathers of the Society of Jesus with the means of continuing the care and pains which they have been doing for a long time and with such zeal, for the conversion and instruction of the said Iroquois and other Indians, we have given, granted and conceded, do give, grant and concede to them by these presents, the said piece of land of about one league and a half in length, to be taken from the said land called 'Le Sault' extending toward the seigniority of Chateauguay, by two leagues in depth, to be used and enjoyed by the said Reverend Fathers on the same conditions, clauses and terms as are set forth in the aforesaid letters patent of His Majesty, and that they shall obtain from him a ratification of the presents in a year from to-day.

In faith whereof we have signed these presents and affixed the seal of our arms.

Given at Quebec, on the thirty-first of October, one thousand six hundred and eighty.

(Signed) Frontenac.

(Signed) Duchesneau.

This is signed by Frontenac, and Duchesneau who was Intendant of New France.

Looking over these historic documents, I find that later on the Iroquois had a litigation with the Jesuit Fathers, just at the beginning of British domination. The case was brought up before the administrators of the colony at that time. After the conquest the country was divided into three governments: the Government of Montreal, the Government of Three Rivers, and the Government of Quebec, and the question came up in 1762 before His Excellency Thomas Gage, Governor of Montreal, assisted by his Council.

22nd March, 1762.

Before His Excellency Thomas Gage, Governor of Montreal, assisted by His Council, to wit, Messrs. Frederick Haldimand, Colonel of the 4th Battalion of the Royal American, and William Browning, Major of the 46th Regiment, Herbert Munster, Major of the 4th Battalion of the Royal American, and Gabriel Christie, Major and Quarter-Master of His Majesty's Armies.

Between the Iroquois Indians and other Indians of Sault St. Louis, appearing by Mr. Clauss their Attorney, Plaintiff, on the one part:

And the Very Reverend Fathers of the Society of Jesus, appearing by the Reverend Father Wett, their Attorney, Defendant, on the other part.

One of the chief allegations of the Iroquois in that famous litigation was:

That at the surrender of this country all things had been well arranged to maintain the said Indians in possession of their lands at Sault St. Louis, but that now the Jesuit Fathers, their missionaries, were granting continually to the French the lands forming part of the territory of Sault St. Louis which, however, they believed belonged to them by a title of grant given them by His Most Christian Majesty. And that if matters are not promptly set right, they would soon see themselves obliged to give up their own fields, to withdraw with their families to the woods, considering they do not any longer find there enough land to afford a means of living.

The Indians were also claiming some of the church property. They claimed that they had paid their share to the maintenance of the church, and that they were entitled to its ornaments and perquisites. Judgment was rendered by that special tribunal presided over by His Excellency Thomas Gage, and perhaps it would be well to read what the decision was:

We are of opinion that the grant of the lands of Sault St. Louis was made to the Right Reverend Jesuit Fathers with the sole intention of settling these Iroquois and other Indians and that all the soil could produce was wholly intended for their profit and advantage. The reasons which the Right Reverand Jesuit Fathers use in their petition, and which seemed to have determined His Most Christian Majesty to make his grant, were founded on the fear that the Iroquois that had settled at that time on the Seigniory of Laprairie and occupied lands which were too damp for the purpose of sowing, should happen to leave, alleging that by means of that new grant, they would be not only kept back but that their number would be increased and by that means the knowledge of faith and of the Gospel would be spread.

And another paragraph as follows:

Therefore we deprive and nonsuit the Right Reverend Jesuit Fathers of all temporal rights which they might have assumed on the said lands either by the condescension of the Governors or the Intendants, the only title by which they have got the decrees of Union to the estate which they obtained at different times, or by right of possession or other reasons which they might allege, and we order that the said Indians of the Sault—

Our English-speaking friends would do well to keep the pronunciation of the word 'Sault' not 'Soo.'

—be put in possession of and do enjoy peaceably for themselves their heirs and other Indians who would like to join them, the whole land and revenue which the said concession can produce.

And being of opinion that nothing contributes more efficaciously to civilize and enlighten the Indian nation than by scrupulously keeping the pledges which are made with them, and by preventing all cause of disagreement between them, and the inhabitants settled in their neighbourhood.

We order that the boundaries of the concession of the Iroquois of the Sault be drawn as soon as possible by a sworn surveyor, and that the limit of said concession be marked with stones fastened into the earth and stamped with His Britannic Majesty's Arms, and that the figurative plan thereof be delivered at a record office.

And then the litigation is settled by the representatives of His Majesty, the new King of British North America, deeding this reserve to the Iroquois, their heirs and successors, because it had been deeded to them for their purposes by the Crown of France in 1680. This constitutes an Imperial title. The Caughnawaga Indians received first a royal title from the Crown of France, and after the conquest, it was implemented by another royal title. By the treaties and by the capitulations of Montreal and Quebec, reference is made to the title of the Indians in their reserves as established by the Crown of France. Therefore in a case of this kind such as Caughnawaga reserve, I do not believe that this Parliament or the Department of Indian Affairs could interfere in any way, manner or form. My hon. friend has declared that the Iroquois should have no fear, but it is well that the country should know that this reserve was given under Louis XIV and confirmed by George III after the conquest, and that the Government takes authority to alter the conditions

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Canada. Official Report of the Debates of the House of Commons of the Dominion of Canada. 3rd Session, 12th Parliament, 4-5 George V., 1914. Vol. CXVI. Ottawa: King's Printer, 1914

under which the reserve was granted. This is an old title which dates back to the time and days of Louis XIV. If there is a case where there should be sacredness in a title, this is the case.

I would call the attention of my hon. friend to this paragraph of the judgment rendered by Governor Gage, in which he uses the following language:

And being of opinion that nothing contributes more efficaciously to civilize and enlighten the Indian nations than by scrupulously keeping the pledges which are made with them, and by preventing all cause of disagreement between them, and the inhabitants settled in their neighbourhood.

These words apply to-day as they applied in those days; and no doubt my hon. friend before expropriating any reserve or part of any reserve, will bear that paragraph in mind. It embodies a principle which every Government should respect, especially in their dealings with the Indians who are the wards of the Government and of the people.

Mr. BORDEN: It is perfectly obvious that great care must be taken in dealing with the titles of the Indians, and it is the desire of the Government to carry out that principle. As far as the legal point which my hon. friend has made is concerned, I am not at the moment quite able to appreciate it, because the result of it would be that any title acquired in this country to land, which is based upon the Acts of the British Crown or of the French Crown before responsible government was introduced into this country, could not be the subject of expropriation at all, whether it belonged to the Indians or to any one else. I do not conceive that to be the law of this country, nor do I think that the powers of Parliament are limited in that way. Under the British system, the title of all lands is traced to the Crown; and it does not make any difference, so far as the legal aspect is concerned, whether the title is traced, to the Crown before we have responsible government in this country or whether it is traced to the Crown afterwards, through the medium of responsible government. The position is precisely the same. Parliament has the right to declare in respect of the ordinary citizen of the country that his lands may be taken, with suitable compensation, for purposes of a public character. It goes further than that: It empowers corporations carrying on public utilities to expropriate lands of ordinary citizens, without their consent but with due compensation, for such public purposes. As far as the Indians are concerned, the object of this legislation is simply to extend in a certain measure a principle which has already been acted upon by this Parliament in a measure introduced, I think, by my hon. friend the member for Edmonton (Mr. Oliver) a few years ago. It is simply extending the conditions under which that power may be exercised in the public interest.

Mr. CARVELL: It is extending it much beyond the purview of public interest and public utility; it is getting down to where private individuals are interested.

Mr. BORDEN: I do not understand the legislation just in the way that the hon. member for Carleton understands it. Section 49a, which is the amending section, begins in this way:

In the case of an Indian reserve which adjoins or is situated wholly or partly within an incorporated town or city or in the immediate neighbourhood thereof or which contains more land than is necessary for the use of the band or which is so situated as to materially retard the natural development of the surrounding country.

Then certain procedure can be followed for the purpose of expropriating the land without a surrender by the Indians. It is all concerned with questions of the public interest, and the Minister of the Crown who undertakes the initiating of proceedings must, of course, have due regard to what those are. In any case, the land of the Indians can only be taken after proper proceedings have been had in the Exchequer Court of Canada and under conditions which safeguard the interests of the Indians in every respect. They must be paid for their improvements; they must be fully compensated in every way; and further than that, if I remember the section correctly, they must be provided with certain suitable land elsewhere as a reserve. If there is any further provision that ought to be inserted in order to safeguard thoroughly the rights of the Indians, we will be very happy indeed to have suggestions in that regard. The object of the section is to extend along a certain line provisions which have already been sanctioned by Parliament and which in some cases have been found not to be fully adequate to meet considerations of the public interest.

Mr. OLIVER: The Prime Minister was not in his place when I made my explanation. The difference between the Act as it is and the Bill as it is before the House

P.C. 1405

Certified copy of a Report of the Committee of the Privy Council, approved by His Royal Highness the Governor General on the 5th June, 1914. 697

PRIVY COUNCIL

CANADA.

The Committee of the Privy Council have had before them a memorandum, dated 27th May, 1914, from the Superintendent General of Indian Affairs, reporting that an exchange is required to be made of 2200 square feet more or less, of land adjoining the east limit of the parcel of land acquired by the Canadian Pacific Railway Company in 1912, and used by the Company as a double section-house site in Lot No 215 of the Caughnawaga Indian Reserve, in the County of La Prairie, in the Province of Quebec, for a parcel of land containing the same area, namely, 2200 square feet, more or less, which was a portion of a road allowance and included in error in land sold to the Canadian Pacific Railway Company for railway purposes.

The Committee recommend that the said exchange be approved accordingly.

Rodolphe Boudreau,
Clerk of the Privy Council.

The Honourable
The Superintendent General
of Indian Affairs.

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Extract

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A Council Meeting of the Caughnawaga Indian reserve, held this 18th day of July 1914, presided by Mr.J.M.Brosseau Asst.Indian Agent.

x x x

Res. #10

File 190255

With reference to Resolution # 6 of January 30/14 regarding St.Nicholas Island.

The Council are desirous to be informed what action, if any, has been taken by the Dep't towards getting the Island back to the original owners, that of Iroquois of Caughnawaga. Thereby it is proposed by Mitchel Morris, seconded by Louis Delisle that the Council be given an answer about this Island.

Adopted Unanimously

x x x

C A N A D A

IN THE EXCHEQUER COURT OF CANADA. 699

BETWEEN:

His Majesty the King, on the information of Attorney General of Canada,

Plaintiff,

- A N D -

Philorum Bonhomme and Dame Rachael Daoust, wife of the said Philorum Bonhomme,

Defendants.

- A N D -

His Majesty's Attorney General for the Province of Quebec,

Intervenant,

The Honourable Attorney General of the Province of Quebec for and in the name of His Majesty the King, represented by the Government of the Province of Quebec,

Avers:

Fyled on February, 1915.

1. By an action dated October 19th, 1914, against Philorum Bonhomme the plaintiff sued the defendant, Philorum Bonhomme and prayed in the conclusions of his action that St. Nicholas Island, situated in the St. Lawrence River, be declared a part of the Caughnawaga Indian Reserve; that possession of the said Island be given to these Indians; that defendant be condemned to pay to His Majesty the King a sum of $1000 by reason of his occupation of said from June 1st, 1907, until His Majesty be given possession of said Island, the whole with costs.

2. Defendant Philorum Bonhomme pleaded inter alia that he did not have quality to answer to this action because St. Nicholas Island had been sold by the Government of the Province of Quebec not to himself but to his wife, Rachael Daoust.

3. By an order granted on January 13th, 1915, by Mr. Justice Audette, said Rachael Daoust was added as a party defendant to the present action.

4. The Attorney General of the Province of Quebec in his capacity as such is interested and has the right to intervene in the present action and to take up Rachael Daoust's defence.

5.

5. By Letters Patent under the Great Seal of the Province of Quebec dated December 19th, 1906, copy of which is fyled with these presents, His Majesty has granted to the said Rachael Daouet the Island St. Nicholae in full ownerehip with warranty against all troubles in consideration of the eum of $400.

6. St. Nicholae Island hae always belonged and did belong to Hie Majesty in the rights of the Province of Quebec on the date that the said Lettere Patent were ieeued, being part of ths domain of the Crown as represented by the said Government.

7. Said St. Nicholas Island is not and has never been a part of the Sault St. Louis seigniory which was grantsd to the Revsrend Jesuit Fathers for the use of the Indians on May 29th, 1680, nor is it includsd in ths extsnsion of the said seigniory as describsd in ths concession deed dated Octobsr 31st, 1680, the whole as appears in ths title deeds fyled with these presents.

8. St. Nicholas Island does not form and has nevsr formed part of the Caughnawaga Indian Reserve.

9. His Majesty represented by the Covsrnment of ths Provinos of Quebso as aforesaid, had ths right to issue the said Letters Patsnt in favour of the said defsndant and these Letters Patent ars valid and legal.

10. Ths occupation of ths said St. Nicholas Island by the said Rachael Daoust has never caused any damage.

WHEREFORE the said Attorney General of His Majesty for the Provincs of Quebec prays that he be allowed to intsrvene in the prssent action to take up the defence of Rachael Daoust, wife of ths said Philorum Bonhomme, and that his intervention be maintained and ths plaintiff's action be dismissed, the whole with costs.

Quebsc, 1915.

CANADA

IN THE EXCHEQUER COURT OF CANADA.

BETWEEN:

His Majesty the King, on the Information of the Attorney General of Canada,

Plaintiff,

Vs.

Philorum Bonhomme and Dame Rachael Daoust, wife of the said Philorum Bonhomme,

Defendants

- A N D -

His Majesty's Attorney General for the Province of Quebec,

Intervenant,

Fyled on February,

INTERVENTION OF

THE HONOURABLE ATTORNEY GENERAL

OF THE PROVINCE OF QUEBEC.

CANADA

DANS LA COUR D'ECHIQUIER DU CANADA

ENTRE

SA MAJESTÉ LE ROI, sur l'information du Procureur général du Canada,

Demandeur,

Vs

PHILORUM BONHOMME et DAME RACHEL DAOUST, épouse du dit Philorum Bonhomme,

Défenderesse,

ET

Le PROCUREUR GÉNÉRAL de Sa Majesté pour la province de Québec,

Intervenant.

L'honorable Procureur général de la province de Québec pour et au nom de Sa Majesté le Roi, représenté par le gouvernement de la province de Québec, déclare :

Produite le février 1915

1. Par action datée le 19 octobre 1911, contre Philorum Bonhomme, le demandeur a poursuivi le défendeur, Philorum Bonhomme et a demandé, par les conclusions de son action que l'île St-Nicolas, située sur le fleuve St-Laurent, soit déclarée faire partie de la réserve des sauvages de Caughnawaga ; que la possession de cette île soit remise à ces sauvages ; que le défendeur soit condamné à payer à Sa Majesté le Roi une somme $1,000.00 à raison de son occupation de la dite île à partir du 1er juin 1907 jusqu'à ce que la possession de l'île soit remise, le tout avec dépens.

2. Le défendeur Philorum Bonhomme plaida, entre autres choses, qu'il n'avait pas qualité pour répondre à cette action vu que l'île St-Nicolas avait été vendue par le gouvernement de la province de Québec non pas à lui-même mais à son épouse, Dame Rachel Daoust.

3. Par une ordonnance, rendue le 13 janvier 1915, par l'honorable juge Audette, la dite Dame Rachel Daoust fut ajoutée comme partie défenderesse dans la présente action.

4. Le Procureur général de la province de Québec, en sa qualité susdite, a intérêt et a le droit d'intervenir dans cette instance et à prendre le fait et cause de la défenderesse, Dame Rachel Daoust.

5. Par lettres patentes sous le Grand Sceau de la province de Québec, en date du 19 décembre 1906, dont copie est produite à l'appui des présentes, Sa Majesté concéda à la dite Dame Rachel Daoust l'île St-Nicolas en pleine propriété, avec garantie contre tous troubles, en considération de la somme de $400.00.

6. L'île St-Nicolas a toujours appartenu et appartenait à Sa Majesté, représentée par le gouvernement de la province de Québec, à la date de l'émission des dites lettres patentes, comme formant partie du domaine de la Couronne, représentée par le dit gouvernement.

7. La dite île St-Nicolas ne fait pas et n'a jamais fait partie de la seigneurie du Sault Saint-Louis, telle que concédée aux Révérends Pères Jésuites pour les sauvages le 29 mai 1680, ni de l'augmentation de cette seigneurie décrite dans le titre de concession du 31 octobre 1680, ainsi que le tout appert des dits titres produits à l'appui des présentes.

8. L'île St Nicolas ne fait pas et n'a jamais fait partie de la réserve des sauvages de Caughnawaga.

9. Sa Majesté, représentée par le gouvernement de la province de Québec, comme susdit, avait le droit d'émettre les dites lettres patentes en faveur de la dite défenderesse et ces lettres patentes sont valides et légales.

10. L'occupation de l'île St-Nicolas par la dite Dame Rachel Daoust n'a causé aucun dommage.

POURQUOI le dit Procureur général de Sa Majesté pour la province de Québec conclut à ce qu'il lui soit permis d'intervenir dans la présente instance pour prendre le fait et cause de la défenderesse, Dame Rachel Daoust, épouse du dit Philorme Bonhomme, à ce que son intervention soit maintenue et à ce que l'action du demandeur soit renvoyée, le tout avec dépens.

Québec, ce 1915.

CANADA

DANS LA COUR D'ECHIQUIER DU CANADA

ENTRE

SA MAJESTÉ LE ROI, sur l'information du Procureur général du Canada,

Demandeur.

VS

PHILORUM BONHOMME et DAME RACHEL DAOUST, épouse du dit Philorum Bonhomme.

Défendeurs.

ET

Le PROCUREUR GÉNÉRAL de Sa Majesté pour la Province de Québec,

Intervenant.

Produite le février 1915.

Intervention de l'Honorable Procureur Général de la Province de Québec.

BELCOURT, RITCHIE et CHEVRIER,

Représentants à Ottawa de l'Honorable Procureur Général de la Province de Québec.

190255

700

Ottawa, 7th December 1915.

Sir,-

In reply to your letter of the 26th ultimo, I beg to inform you that the title of the Caughnawaga Indians of St, Nicholas Island is based on the description of the land called "Le Sault" now owned by them, contained in a grant dated at Fontainbleu, France, 29th May 1680, which is as follows,-"Le Sault containing two ~~miles~~ leagues in width from a point opposite St. Louis Rapids, going up the Long Lake by an equal depth with two Islands, Islets and Shoals, which are in front and adjoining the lands of the Prairie de La Magdalene" It is contended that St. Nicholas Island is one of the Islands referred to in the said description.

A plan is herewith enclosed on which the westerly limit of the Caughnawaga Indian Reserve has been drawn. It shows that the island in question is in front of the Indian Reserve. I may say that the foregoing is the only evidence that the Department can put forth in this matter.

Evidence regarding the long possession by the Indians of St. Nicholas Island will require to be obtained from the Indians themselves. Will you request Mr. Paul St. Germain K.C. to communicate direct with our Indian Agent, Mr. J.M. Brosseau, St. Constant, Que., and request him to ascertain what Indians of the Band can furnish satisfactory evidence on this subject. Mr. Brosseau will be requested to furnish ~~me with~~ any information that ~~may be required~~ may be required by Mr. St. Germain.

Your obedient servant,

W. Stuart Edwards Esq.,
Secretary,
Department of Justice,
Ottawa, Ont.

(sgd) J.D. McLean
Asst. Deputy and Secretary

190255

701

Ottawa, 7th December 1915.

Sir,-

In connection with the action taken by the Department to retain possession of St.Nicholas Island, the Agent of the Department of Justice, Mr.Paul St.Germain, K.C., requires evidence to prove that the Indians have been long in possession of the Island. Mr.St.Germain will probably communicate with you direct in the matter. On the receipt of a letter from him you should consult the Indian Council with a view of getting the names of two or more Indians who can give positive evidence regarding the long occupation of the Island and then communicate on the subject with Mr.St.Germain.

Your obedient servant,

Sgd. J.D.McLean

Asst. Deputy and Secretary.

J.M.Brosseau Esq.,
Indian Agent,
St.Constant, Que.

Department of Justice Canada | Ministère de la Justice Canada

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OPINION

START/DÉBUT

Department of Justice
File B3661

Canada

8

I agree with the general principle of the memo. but the facts with regard to the alleged entail ... appear ... [illegible]

Ottawa, June 8th, 1916.

MEMORANDUM FOR THE

DEPUTY MINISTER OF JUSTICE.

Claim of Fraser Estate to site of Dam across Riviere du Loup at Fraserville, P.Q.

I have carefully read the statement of facts contained in the memorandum prepared and signed by Mr. H. Atkinson of the Department of Railways and Canals; also the memorandum prepared by A.W. Campbell, Deputy Minister of said Department.

I may say here that the points raised in these two memorandums in favour of the Fraser Estate appear to me of quite a different nature. I will reproduce here partially the following paragraph which I find at page 2 (Mr. Campbell's memorandum:)

> "In a memorandum made by the Solicitor and attached to the file, he points out that the site of the dam is the property of the Government acquired by prescription, but the Representative of the Fraser Estate points out that this property is entailed and consequently the Quebec Laws of prescription do not apply and that the Government has no title to the site of the easterly half of the dam."

If my comprehension is right of the expression used by Mr. Campbell when he says that this property is entailed, I would be prepared to say that the Fraser Estate can legally claim that there has not been acquisition of the land by the Crown because prescription does not run in cases of substitution. Article 2207, Civil Code of Quebec, reads as follows:-

> "2207. In cases of substitution prescription does not run against the substitute, before the opening of the right, in favor of the institute, nor of his heirs or successors by universal title.
> (Prescription runs against the substitute before the opening of the right, in favor of third parties, unless

he

he is protected as a minor, or otherwise.

Any substitute, against whom presoription thus runs, may bring an action to interrupt it.)

The possession of the institute avails the substitute, for the purpose of prescription.

Prescription runs against the institute during the time of his possession and in his favor against third parties.

After the opening, prescription may begin to run in favor of the institute and of his heirs and successors by universal title."

I find, however, that Mr. Atkinson takes another view of the question and seems to be inclined that the Crown has not acquired the piece of land in question by prescription because this prescription does not apply in the case of a Seigniory, and he expresses himself as follows at p. 2 of his memorandum:-

"If the title of the Estate is barred by prescription and the Crown owns the dam and the site thereof, the Estate has nothing to sell.

Undisturbed possession of lands for thirty years in the Province of Quebec gives right by prescription, but I understand in the case of a Seigniory that this does not apply, provided that the Seignior can establish that he has a clear, undisputed right and succession to the Seigniory."

This opinion has always been admitted in the Province of Quebec, and I may add furthermore that Mr. Atkinson's view on this point may to a certain extent have been confirmed in a conversation I had with him some time ago, but my view of the question is that since 1854 the laws of prescription must apply in the case of Seigniory as well as for any land holden in free and common soccage, as lands held in England, because I consider that the Statute 18 Viot. Pt. 1, 1854-55, chap. 3, has fully abolished all these privileges and all the feudal rights pertaining to the Seigneurs.

The new doctrine has been upheld by the Privy Council in a case of McDonald, appellant, v. Lambe and Nickle, respondents. (This was an action by Seigneurs to recover possession of a piece of ungranted land forming part of his Seigneurie, against a party claiming under an informal deed from one who had no title deed, but who, with the Defendant, had been in undisturbed possession for thirty years:-

Held,

"Held (affirming the judgment of the Court of Queen's Bench for Lower Canada), that a plea of prescription of thirty years' possession was a bar to the action, as :-first, that it made no difference that during the time of such adverse possession the Seigneur had, under the Statute, 6 Geo.4.c.59, for the extinction of Feudal and Seigniorial rights in the Province of Lower Canada, surrendered the Seigneurie to the Crown for the purpose of commuting the tenure into free and common socage, the issuing of the Letters Patent re-granting the same being uno flatu with the surrender to the Crown, and that, both by the ancient French law in force in Lower Canada as by the English law, prescription ran in favour of a party in actual possession for thirty years; and, secondly, that such adverse possession enured in favour of a party deriving title to the land through his predecessor in possession:-

Held, further, that such junction of possession did not require a title, in itself translatif de propriete, from one possessor to the other; but that any kind of informal writing, sous seing prive, supported by verbal evidence, was sufficient to establish the transfer."

So this question of prescription as far as the Seigniory is concerned does not seem disputed any longer in the Province of Quebec, and therefore, I would submit that if there has been no bar to prescription by the fact that the property belonging to the Fraser Estate was entailed or substituted I am inclined to believe that the Crown has duly acquired a legal title to the aforesaid property by having possessed same for a period of over thirty years, that is, since 1875.

J. Ad. R.

Department of Justice Canada
Ministère de la Justice Canada

OPINION

END/FIN

Department of Justice
File B3661

Canada

190255

703

Ottawa, 17th February, 1917.

Sir,

The Council of the Caughnawega Indians are complaining of the delay in the St. Nicholas Island case which is in the hands of Mr. Paul St. Germain, K.C., of Montreal, the Agent of your Department. You will find this matter referred to on your file B.5031. We do not appear to have received any communication in the matter since our letter to you of the 7th December, 1915. It is earnestly desired that this case be proceeded with and I would be obliged if you could facilitate this matter.

Your obedient servant,

J. D. McLean

Asst. Deputy and Secretary.

The Deputy Minister of Justice,

Ottawa.

190255

W.3.E.

Mr Scott to note

491942

Please address
The Deputy Minister of Justice
Ottawa

Ottawa, February 23rd, 1917.

B-3231.

Re St. Nicholas Island.
Caughnawaga Reserve.

704

Sir,-

In reply to your letter of the 17th instant, (190255), I have the honour to state that this action is now ready for trial and I am communicating with our agent, Mr. Paul St. Germain, K.C., with a view to having as early a date as possible fixed for the trial.

I have the honour to be,
Sir,
Your obedient servant,

[signature]

Asst. D. M. J.

The Secretary,
Department of Indian Affairs,
Ottawa.

705

E. C. Chief & Council
[redacted]
9 Li...

1917/05/..

EPORTS. [38 D.L.R.

urity, although not paid for, and
hough the vendor had no know-
eynolds v. Ashby & Son, [1904]

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1 v. *Waterous Engine Works*
have been decided on the
Code, and does not appear
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s of this case become part
gagee. It was contended,
under the law in England
the law here is different,
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ts in the cases to which I
at the mortgagee became
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ny purchaser or mortgagee
oods in good faith for val-
is neither a purchaser nor
hat it is both a mortgagee
it was not, in my opinion,
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e was correct in holding
smissed with costs.

Appeal dismissed.

THE KING v. BONHOMME. CAN.

Exchequer Court of Canada, Audette, J. May 3, 1917. Ex. C.

PUBLIC LANDS (§ I C—15)—CONSTRUCTION OF CROWN GRANT.

A Crown grant must be construed most strictly against the grantee and most beneficially for the Crown so that nothing will pass to the grantee but by clear and express words.

Statement.

Information of intrusion to have St. Nicholas Island declared part of Indian Reserve.

Paul St. Germain, K.C., for plaintiff; *F. L. Beique*, K.C., for defendant Daoust; *Chas. Lanctot*, K.C., and *N. A. Belcourt*, K.C., for Attorney-General of Quebec.

Audette, J.

AUDETTE, J.:—This is an information of intrusion exhibited by the Attorney-General, whereby it is claimed that the Island of St. Nicholas, situate in navigable waters on the River St. Lawrence, in Lake St. Louis, be declared a portion of the Caughnawaga Indian Reserve; that the possession of the island be given the Indians, and that the defendant be condemned to pay the plaintiff the sum of $1,000 for the issues and profits of the said island from June 1, 1907, till possession of the same shall have been given the said plaintiff.

The Province of Quebec, on the other hand, claiming and assuming the ownership of the said Island of St. Nicholas, sold the same for the sum of $400 on December 19, 1906, to the said Dame Rachel Daoust, wife of the said Philorum Bonhomme, as appears by the Crown grant filed herein as exhibit No. 3.

The action was originally taken only as against the defendant Philorum Bonhomme, who by his plea declared the island had not been sold to him but to his wife, and asked that the action as against him be dismissed with costs. His wife, Dame Rachel Daoust, was subsequently added a party defendant. The said Philorum Bonhomme has, since the institution of the action, departed this life, as appears by the certificate of burial filed as ex. No. 4.

The defendant Daoust's grantor, the Province of Quebec, who had sold this Island of St. Nicholas to her, with covenant, intervened in the present case and took (*faitet cause*) upon itself the defence of the said defendant Daoust as her warrantor.

The Crown, in the right of the Federal Government, as having the management, charge and direction of Indian Affairs in Canada, claims the ownership of St. Nicholas Island as forming part of the

CAN.

EX. C.

THE KING v. BONHOMME.

Audette, J.

Seigniory of Sault Saint Louis, as conceded by the King of France to the Jesuits for the Indians on May 29, 1680, and under the augmentation thereto by the further concession of October 31, 1680, by Louis de Buade, Comte de Frontenac, Governor and Lieutenant-General for His Majesty in Canada.

By the first concession, bearing date May 29, 1680, a copy of which is filed herein as ex. No. 1, a certain parcel of land is so granted, together with *deux isles, islets et battures*—two islands, islets and flats which are situate in front thereof.

It is proved and admitted that St. Nicholas Island is not opposite this first concession and among the islands therein mentioned.

Then by the second concession, bearing date October 31, 1680, a certain piece and parcel of land, immediately adjoining the first concession to the west, is further granted, but without any mention in this latter grant of any island, islet or flats. The Island St. Nicholas is opposite the second concession.

Therefore this St. Nicholas Island obviously did not pass to the Jesuits under the last mentioned concession, unless expressly included in the same in terms specific and unmistakable. No proprietary rights in the said island passed without a specific grant to that effect.

Truly, as I have said in *Leamy* v. *The King*, 15 Can. Ex. 189, 23 D.L.R. 249; 54 Can. S.C.R. 143, 33 D.L.R. 237, it would be a singular irony of law if the rights to this island could thus be taken away or disposed of by such a grant which is absolutely silent in respect thereto. This Island of St. Nicholas did not under either of these two grants pass out of the hands of the King to the Jesuits for the Indians, and there is no evidence that this island was vested in the plaintiff before Confederation, or taken in any other manner within the scope of s. 91, s.s. 24 of the B.N.A. Act, and the Crown as representing the Federal Government has no title thereto, and the land is vested in the Crown, as representing the Province of Quebec. *Wyatt* v. *Attorney-General*, [1911] A.C. 489, *Leamy* v. *The King*, *supra*; *Bouillon* v. *The King*, 31 D.L.R. 1.

The trite maxim and rule of law for guidance in the construction of a Crown grant is well and clearly defined and laid down in Chitty's Prerogatives of the Crown, p. 391-2, in the following words:—

CAN.

Ex. C.

THE KING v. BONHOMME.

Audette, J.

In ordinary cases between subject and subject, the principle is, that the grant shall be construed, if the meaning be doubtful, most strongly against the grantor, who is presumed to use the most cautious words for his own advantage and security, but in the case of the King, whose grants chiefly flow from his royal bounty and grace, the rule is otherwise; and Crown grants have at all times been *construed most favourably for the King*, where a fair doubt exists as to the real meaning of the instrument. . . . Because general words in the King's grant never extend to a grant of things which belong to the King by virtue of his prerogative, for such ought to be expressly mentioned. In other words, if under a general name a grant comprehends things of a royal and of a base nature, the base only shall pass.

Approaching the construction of the second grant with the help of the rule above laid down, it must be found that in the absence of a special grant especially expressed and clearly formulated, the Island of St. Nicholas obviously did not pass.

Had it been the intention by the second concession to grant the island opposite the lands mentioned in the same, the same unambiguous course followed in the first concession would have been resorted to, and the island would have been mentioned in the grant.

A Crown grant must be construed most strictly against the grantee and most beneficially for the Crown so that nothing will pass to the grantee but by clear and express words. The method of constuction above stated seeming, as judicially remarked, *per* Pollock, C.B., *East Archipelago Co.* v. *Reg.*, 2 E. & B. 856 at 906, 7; 1 E. & B. 310, to exclude the application of either of the legal maxims, *expressio facit cessare tacitum* or *expresio unius est exclusio alterius*. That which the Crown has not granted by express, clear and unambiguous terms, the subject has no right to claim under a grant, Broom's Legal Maxims (8th ed.) pp. 463-464.

The plaintiff endeavouring to shew title by possession called a number of Indians who were heard as witnesses to prove possession by them, shewing that the Indians of the Caughnawaga Reserve had always considered St. Nicholas Island as part of the reserve. The evidence discloses that some of the Indians residing on the reserve had at times a small shack and had sown patches of potatoes and corn on the island, and it is contended they thereby acquired title by possession (arts. 2211 et seq., C.C. Que.). This contention must be dismissed from consideration, because possession of ungranted land by roaming Indians could

CAN.

EX. C.

THE KING v. BONHOMME.

Audette, J.

not remove the fee from the hands of the Crown. There cannot be any ownership of any territory acquired by possession or prescription by Indians because *les uns possèdent pour les autres*. *Corinthe* v. *Séminaire de St. Sulpice*, 5 D.L.R. 263, 21 Que. K.B. 316; [1912] A.C. 872. And I further find that no help could be found in favour of the plaintiff, in respect of the title to the said island in the Royal Proclamation of 1763, as mentioned at p. 70, Houston Const. Doc. of Canada, because the lands therein referred to as reserved for the Indians are outside of Quebec, and the territory in question herein. In fact, they are lands outside the four distinct and separate governments, styled respectively Quebec, East Florida, West Florida, and Grenada (14 App. Cas. 46 at 53-4). Moreover, the Indians have not and never had any title to the public domain.

These contentions have also been considered in the *St. Catherine's Milling & Lumber Co.* v. *The Queen*, 13 Can. S.C.R. 577; 14 App. Cas. 46. The Crown had all along proprietary right on these lands upon which the Indian title might have been a burden, but which never amounted to a fee. And while not desirous of repeating here what was so clearly stated in the *St. Catherine's* case in respect of the Indian title, yet I wish to draw attention to the fact that it was decided beyond cavil in that case, that only lands *specifically* set "apart and reserved for the use of the Indians are lands reserved for Indians within the meaning of sec. 91, item 24, of the B.N.A. Act." See also *Attorney-General* v. *Giroux*, 53 Can. S.C.R. 172, 30 D.L.R. 123. The Island of St. Nicholas never fell within the term "Lands reserved for Indians," and therefore never came within the operation of the B.N.A. Act, sec. 91 (24).

The Island of St. Nicholas, as part of the lands belonging to the Province of Quebec, at the Union, passed to the Province of Quebec, at Confederation, under the provisions of s. 109 of the B.N.A. Act, 1867, the rights retained to the federal power under secs. 108 and 117 being always safeguarded. Therefore the plaintiff has no fee in the island, and the Province of Quebec had obviously the right to grant the same to the defendant Daoust, as it did.

It is not without some sentiment of regret that I feel bound to find against this alleged Indian title, and I trust that the

Indians, the wards of the State, will realize and understand there never existed any title giving them St. Nicholas Island. The fact that they were not prevented from frequenting it (and some of the white men as appears by the evidence did also from time to time visit the island) was indeed perhaps more referable to the grace, bounty and benevolence of the Crown, as represented by the Province of Quebec, and cannot now constitute an acknowledgment of an erroneous and unfounded right or title to the island.

There will be judgment dismissiing the action with costs against the plaintiff on all issues. *Action dismissed.*

CAN.
Ex. C.
THE KING v. BONHOMME.
Audette, J

BIGRAS v. TASSE.

ONT.
S. C.

Ontario Supreme Court, Appellate Division, Meredith, C.J.C.P., Riddell, Lennox and Rose, JJ. October 12, 1917.

FIRES (§ I—1)—HIGHWAY—LIABILITY OF FOREMAN FOR ACTS OF SUBORDINATES.

The foreman of a gang of workmen engaged in building a government road, who authorizes a subordinate to kindle a fire on the road for the purpose of making tea for the gang, is liable, even though the starting of the fire was not an unlawful act, for injury to adjoining property through the negligent failure of the workmen to extinguish the fire after the tea was made.

Statement.

AN appeal by the defendant from the judgment of the Judge of the District Court of the District of Sudbury, after trial of the action without a jury, in favour of the plaintiff, for the recovery of $217 damages with costs.

The action was brought to recover damages for the loss of a house, barn, and other property of the plaintiff, destroyed by fire. The plaintiff alleged that the fire which destroyed his property had spread to his land from a fire negligently set in a highway by order of the defendant.

The defendant was the foreman of a gang of workmen engaged in building a road for the Government of Ontario. He employed one Arthur Richer as a labourer, and Richer's son, Thomas, as "water-boy." The boy lighted a fire on the roadway in order to make tea for the workers. The fire spread, reached the buildings of the plaintiff, and destroyed them.

Harcourt Ferguson, for appellant; *T. M. Mulligan*, for plaintiff, respondent,

Meredith, C.J.C.P.

MEREDITH, C.J.C.P.:—I find it difficult to understand how it can be contended reasonably that the Crown was concerned in any of the matters out of which this action has arisen.

CAN.
S. C.

Court of Canada (1917), 38 D.L.R. 674, 16 Can. Ex. 241, dismissing the appellant's, suppliant's, action with costs. Affirmed.

E. A. D. Morgan, K.C., for appellant; *A. Bernier*, K.C., and *V. A. de Billy*, for respondent.

It is a petition of right to recover compensation, under an option, with respect to certain land taken by the Crown for the construction of a barrier or dam on the River St. Charles, P.Q.

The Exchequer Court held that, under the circumstances of the case, the suppliant was not entitled to any portion of the relief sought by his petition of right.

The suppliant appealed to the Supreme Court of Canada, which, after hearing counsel on its behalf, and without calling on counsel for the respondent, dismissed the appeal.

Appeal dismissed.

THE KING v. BONHOMME.

Supreme Court of Canada, Fitzpatrick, C.J., Davies, Idington, Anglin and Brodeur, JJ. 1918.

PUBLIC LANDS (§ I C—15)—*Crown grant—Indian lands—Adverse possession.*]—Appeal from the judgment of the Exchequer Court of Canada (1917), 38 D.L.R. 647, 16 Can. Ex. 437, dismissing the action of the plaintiff appellant.

F. J. Bisaillon, K.C., and *P. St. Germain*, K.C., for appellant; *F. L. Beique*, K.C., and *N. A. Belcourt*, K.C., for respondent.

It is an information of intrusion exhibited by the Attorney-General of Canada, whereby it is claimed that the Island of St. Nicholas, situate in navigable waters of the River St. Lawrence, in Lake St. Louis, be declared a portion of the Caughnawaga Indian Reserve and that the possession of the island be given the Indians. On the other hand, the Province of Quebec, claiming the ownership of the island, sold it in 1906 to the respondent.

The Supreme Court of Canada, after argument, reserved judgment and eventually affirmed the judgment of the Exchequer Court. *Appeal dismissed with costs.*

THE "WAKENA" v. UNION S.S. COMPANY OF BRITISH COLUMBIA.

Supreme Court of Canada, Fitzpatrick, C.J., Davies, Idington, Anglin and Brodeur, JJ. 1918.

COLLISION (§ I—3)—*Admiralty law—Narrow channel—Fog.*]—Appeal from the judgment of the Exchequer Court

Translation

A-C Ward

St.Germain, Guerin & Raymond,
Advocates.

706

Montreal, May 7, 1917.

The Deputy Minister of Justice,
Ottawa, Ont.

Dear Sir,-

Re B-3231--l'Ile St.Nicolas, Caughnawaga Reserve.

In reply to your letter dated the 5th instant wherewith you inclosed the notes of His.Honour Judge Audette, herewith is my opinion in the matter in regard to the prospect of appealing from this judgment to the Supreme Court.

His.Honour, Judge Audette, has declared that the island of St.Nicolas does not comprise a part of the second concession made in 1680 by the Count de Frontenac to the Rev.Fathers of the Society of Jesus, since in the first concession the two islands, islets, and sand-bars facing this first concession are specifically mentioned, while in the description of the second concession there is absolutely no question of islands, islets, and sand-bars, and that in consequence the island of St.Nicolas, as it faces the second concession and their being no question of islands in this second concession, the island of St.Nicolas cannot comprise a part of it.

As to this first ground for the judgment, we opine that it would be difficult to have it quashed by a court of appeal, and the moreso,as we have contended during the hearing of the case that the second concession being only a continuance of the first, care had not been taken in the second to also give a description in detail, but that,as appeared elsewhere, the uninterrupted possession by the Indians of this island of St.Nicolas,

could be more broadly interpreted as the extension of this second concession, we are compelled to admit that the decision of the Exchequer Court would be upheld.

But independent of the question of the ownership of this island of St.Nicolas as comprising a part of the concession granted to the Rev.Jesuit Fathers in 1680, we have maintained that this island of St. Nicolas, having been always occupied by the Indians, these latter could not be molested in the possession of this island by the terms of the Royal Proclamation of 1763, and that the province of Quebec can only have serviceable possession of this island after the Indians of Caughnawaga have abandoned the occupation of it.

We have based our argument on that section of the proclamation of 1763, which begins in these words: "And whereas it is just and reasonable and essential to our interest and the security of our colonies that the several nations or tribes, &c., &c.". Following the terms of this paragraph of the proclamation above mentioned, we have submitted that upon the occasion of the cession of the country to England every part of the territory then occupied by the Indians was held to be not ceded to the Crown, but rather reserved to the Indians, although in reality all Canada had been ceded to the Crown.

Now in this same paragraph we read that it is prohibited to any Governor of the colonies of Quebec and of East Florida or of North Florida to grant any letters patent for any lands held as having never been ceded but reserved to the Indians.

His Honour, Judge Audette, in his note holds that it has to do with territory situate outside of the colony of Quebec, and that consequently this clause of the proclamation does not apply in the present case.

I nevertheless remain convinced that if the proof be sufficiently demonstrated that the Indians of Caughna-

wags at the time of the cession of the country were in possession of the island of St.Nicolas by the terms of this Royal Proclamation of 1763 the Crown would not molest these Indians, but would hold this island of St. Nicolas to be unceded like every other portion of the territory of Quebec occupied by the Indians: and that in consequence the Crown can only obtain serviceable possession of this island as of every other portion of land occupied by the Indians after these latter have abandoned their possession to the Crown.

I have examined the case "St.Catherines Milling and Lumber Company" and I believe that this case is rather favourable to us, although His Honour, Judge Audette, quoted it in his notes.

As to proof in the matter of occupation, we have established the best proofs that we could have established in the circumstances: we have proved by the oldest of the tribe that this island has always been occupied by the Indians.

In any event, even on this second point, the question is very doubtful, and it is highly possible that the Supreme Court would confirm throughout the judgment of the Exchequer Court.

There is nevertheless perhaps another consideration which might induce the Government to carry this case to the Supreme Court, and this naturally is left entirely to your discretion: it is the discontent that will of a certainty be met with among the Indians when they learn that it has been decided that they cannot occupy this island; perhaps from this point of view it would be well to go to the Supreme Court in order to further satisfy them.

I shall therefore, await your instructions.

I have, &c.,
P.St.Germain

PLEASE ADDRESS
THE DEPUTY MINISTER OF JUSTICE
OTTAWA

Ottawa, May 21st. 1917.

707

B-3231.

Re St. Nicholas Island.
Caughnawaga Reserve.

Sir,-

I have the honour to advise you that judgment has been given in this case dismissing the action with costs. I have the honour by direction to submit herewith copy of the reasons for judgment and of the opinion of our agent upon the Judge's findings, and to request you to advise me whether or not you desire that an appeal should be taken from said judgment. The time for appeal will expire on the 2nd June proximo so that I shall be glad if you will give the matter your early consideration.

I have the honour to be,

Sir,

Your obedient servant,

Asst. D. M. J.

The Deputy Superintendent General
of Indian Affairs,
Ottawa.

190255

708

Ottawa, 25th May, 1917.

Sir,

B.2231 - Re St. Nicholas Island
Caughnawaga Reserve.

I beg to acknowledge the receipt of your letter of the 21st instant advising that judgment had been given in this case dismissing the action with costs and asking whether or not it is desired that an appeal should be taken from this judgment.

In reply I beg to say that the Department desires to take an appeal from this judgment and requests that you take the necessary steps for this purpose.

Your obedient servant,

Asst. Deputy and Secretary.

The Deputy Minister of Justice,
Ottawa.

1917/05/25

709

8-9 GEORGE V.

CHAP. 26.

An Act to amend the Indian Act.

[*Assented to 24th May, 1918.*]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:— R.S., c. 81; 1910, c. 28; 1911, c. 14; 1914, c. 35.

1. (1) Section twenty-five of the *Indian Act*, chapter eighty-one of the Revised Statutes of Canada, 1906, is amended by striking out the words " no devise or bequest of land in a reserve or of any interest therein unless to the daughter, sister or grandchildren of the testator, shall be made to any one not entitled to reside on such reserve, and that." Will of Indian devising property to be approved.

(2) Section twenty-five of the said Act is further amended by adding thereto the following subsection:—

"(2) No one who is not entitled to reside on the reserve shall by reason of any devise or bequest or by reason of any intestacy be entitled to hold land in a reserve, but any land in a reserve devised by will or devolving on an intestacy, to some one not entitled to reside on the reserve, shall be sold by the Superintendent General to some member of the band and the proceeds thereof shall be paid to such devisee or heir." Land devised or bequeathed to non-resident, to be sold.

2. Subsection three of section forty-nine of the said Act is amended by striking out all of the subsection after the word " before " in the sixth line thereof and substituting therefor the words " any person having authority to take affidavits and having jurisdiction within the place where the oath is administered." Proof of assent to release or surrender.

3. (1) Section sixty-seven of the said Act is amended by inserting the words " or Indian " immediately after the word " person " in the third line thereof. Indian may be summoned as witness.

(2) Subsection two of section sixty-seven is amended by adding the words "or Indian" immediately after the word "person" in the first and sixth lines thereof.

Direction of expenditure of capital of band, without consent.

4. Section ninety of the said Act is amended by adding thereto the following subsections:—

"(2) In the event of a band refusing to consent to the expenditure of such capital moneys as the Superintendent General may consider advisable for any of the purposes mentioned in subsection one of this section, and it appearing to the Superintendent General that such refusal is detrimental to the progress or welfare of the band, the Governor in Council may, without the consent of the band, authorize and direct the expenditure of such capital for such of the said purposes as may be considered reasonable and proper.

Lease of lands in a reserve if band or individual neglects cultivation.

"(3) Whenever any land in a reserve whether held in common or by an individual Indian is uncultivated and the band or individual is unable or neglects to cultivate the same, the Superintendent General, notwithstanding anything in this Act to the contrary, may, without a surrender, grant a lease of such lands for agricultural or grazing purposes for the benefit of the band or individual, or may employ such persons as may be considered necessary to improve or cultivate such lands during the pleasure of the Superintendent General, and may authorize and direct the expenditure of so much of the capital funds of the band as may be considered necessary for the improvements of such land, or for the purchase of such stock, machinery, material or labour as may be considered necessary for the cultivation or grazing of the same, and in such case all the proceeds derived from such lands, except a reasonable rent to be paid for any individual holding, shall be placed to the credit of the band: Provided that in the event of improvements being made on the lands of an individual the Superintendent General may deduct the value of such improvements from the rental payable for such lands."

Regulations.

5. (1) Section ninety-two of the said Act, as amended by section six of chapter thirty-five of the statutes of 1914, is amended by adding thereto the following paragraph:—

Taxation of dogs, and protection of sheep.

"(*f*) May make by-laws for the taxation, control and destruction of dogs and for the protection of sheep, and such by-laws may be applied to such reserves or parts thereof from time to time as the Superintendent General may direct."

(2) The said section is further amended by adding thereto the following subsection:—

Penalties.

"(3) In any regulations or by-laws made under the provisions of this section, the Superintendent General may provide for the imposition of a fine not exceeding thirty dollars or imprisonment not exceeding thirty days, for the violation of any of the provisions thereof."

6. The following section is inserted immediately after section one hundred and twenty-two:—

8-9 George V, Chapter 26, p. 84

The King

v.

Benhomme.

The Chief Justice.-

The sole question at issue between the parties on this appeal is one of fact and relates to the ownership of the Island of St.Nicholas situate in the River St.Lawrence opposite the Caughnawaga Indian Reserve. The Crown in the right of the Dominion claims the island as part of that reserve and the female respondent sets up a title from the Province of Quebec.

In support of the appellant's contention, it is stated that the island forms part of the "islands, "islets and shoals, mentioned in a grant made on the 29th May 1680 to the Jesuit Fathers by Crown grant and it is admitted that if it is not conveyed by that grant then the property is vested in His Majesty in right of the Province of Quebec.

During the examination of the appellant's witness, Jobin, it was admitted by all the parties that the island in question does not lie opposite the land granted by the concession of May 1680 and is therefore not included among the islands, islets and shoals which that grant purported to convey. The second grant of 31st October 1680 makes no reference to islands opposite the land described therein.

The use made of the island at different times /by the Indians for fishing, hunting and gardening seems to have been "de tolérance" only and not of a nature to form a title by prescription.

The appeal should be dismissed with costs to both the respondents.

Davies J.-

I am of the opinion that this appeal

must be dismissed on the ground that neither of the grants from the Crown which were invoked as including the Island in dispute, do include it and that the evidence does not show any right in the Indians obtained by occupancy or otherwise.

Idington J.-

I agree for the reasons assigned and fully stated by Mr.Justice Audette in the Court below that the grants by the French Crown in A.D. 1680 cannot be extended by virtue of the express language thereof to comprehend the island in question.

Nor can it be said that the language of the grant made by the Crown in May can be so extended as to apply to a grant made in October.

Counsel sought to make it appear that there were some expressions by the English Crown in its Proclamations in 1763 and instructions to General Murray which could be interpreted as a recognition of the effect of said grants being to extend the effect ~~the effect~~ thereof to include the island in question.

It seems to me a very much strained construction of the language referred to and indeed I am of the opinion it cannot be made to say what is contended for.

He,however, ingeniously sought to get over that difficulty by relying upon proof of possession by the Indians in accord therewith back at least as far as the year 1854 and since and suggesting that went back as far as human memory could carry the evidence and that therefore it should be presumed that the possession in fact extended back to the time of the alleged recognition by the Crown as to the effect

of said grants taken together.

Unfortunately for this contention I find that John Stacey, a resident on the Caughnawaga Reserve, aged eighty-two years says he was as a boy of nine years of age on that island before any use was made of it in way of occupation or otherwise than what he relates.

His evidence is as follows:

"Q.- Do you know St.Nicholas Island?
A.- I know it.
Q.- Have you ever been there?
A.- Before it was worked, that is the land - I have been there before that time.
Q.- Before it was worked?
A.- Yes.
Q.- What do you mean?
A.- Before the land was broken--and I have been there after too.
Q.- After it ceased to be cultivated?
A.- I have been there before it was worked and after it was worked.

* * * * * *

Q.- Do you remember when you went to the island for the first time, St.Nicholas Island?
A.- The first time I was there I was nine years old.
Q.- How many times did you go there?
A.- When I was ten years old I was there--before that land was worked-- before that Island was broken up-- when I was eight or nine years old I was there, because we had a property just opposite on the shore.
Q.- How many times did you go on the Island?
A.-I went there the same day twice. I went there twice on different occasions to cut some wood, trees, when I was eight or nine years old."

This seems to destroy the pretension founded upon a possession or occupation running back beyond the times to which memory runneth, not even if such sort of proof had a better foundation in law to make it effective could be worth anything in such event, which I much doubt.

It shows the state of wilderness in 1844 and later which existed there.

I think the appeal should be dismissed with costs to both the respondent and the intervenant.

Anglin J.-

The facts of this case are fully stated in the judgment of the learned judge of the Exchequer Court (1917, 18 Can.Exch.,437) with whose conclusions I agree. The appellant has entirely failed to establish that the descriptions of the lands in the two grants under which he claims included the island in question. His counsel very properly disavowed at bar any intention to assert title by prescription. There is no evidence which would justify a finding that the Island of St.Nicholas had been in the occupation of the Iroquois at the date of the cession of Canada by France to Great Britain. In the absence of proof of such occupation or of any reservation of the Island for the Indians it does not fall within the purview or the Proclamation and Royal instructions invoked by the appellant.

The appeal, in my opinion, fails and must be dismissed with costs.

Brodeur,J.-

La question qui se présente dans cette cause-ci est de savoir si l'île St-Nicolas,située dans le fleuve St-Laurent,fait partie de la réserve indienne de Caughnawaga. Le gouvernement fédéral demande que la possession de cette île soit donnée aux Sauvages; mais d'un autre côté le gouvernement provincial de Québec réclame que cette île est dans son domaine et qu'il avait le droit d'en disposer en faveur de l'intimée, Madame Bonhomme.

L'appelant prétend que cette île faisait partie de la Seigneurie du Sault st-Louis telle

que concédée par le roi de France aux Jésuites le 29 mai 1680 et le 31 octobre de la même année.

Il appert que par la première concession Louis XIV. a fait don "de la terre nommée " Le Sault, contenant deux lieues de pays de front à "commencer à une pointe qui est vis-à-vis le rapide "St-Louis en montant le long du lac sur pareille pro- "fondeur avec deux isles, islets et battures qui se "trouvent au-devant,et joignant aux terres de ladite " prairie de la Magdelaine."

Les Jésuites,à qui la concession avait été faite pour le bénéfice des Iroquois, ayant demandé une concession additionnelle, le Gouverneur du Canada, M.de Frontenac, le 31 octobre 1680, après avoir décrit la concession qui avait été faite antérieurement, a donné accordé et concédé le "restant "de terre d'environ une lieue et demye de longueur à "prendre depuis lad. terre nommé Lesaut en montant le "long du lac vers la seigneurie de Chateauguay, sur "deux lieues de profondeur."

L'Ile St-Nicolas en question dans la présente cause se trouve vis-à-vis la dernière concession. Comme on le voit, il n'est nullement question des îles dans cette concession de M.de Frontenac. On avait eu le soin cependant de les désigner d'une manière spéciale dans la première concession. Il faudrait, ce me semble, une expression bien formelle dans le dernier acte pour que l'on pût y inclure l'Île St-Nicolas, qui se trouve dans le St-Laurent, une rivière navigable.

L'appelant se base sur le fait que les deux concessions ont eu lieu à des époques rap-

prochées pour prétendre que la ~~mention~~ mention, dans un cas, des îles devait les inclure également dans la seconde concession.

Je suis incapable de me rendre à cette prétention: au contraire, il est à présumer que le fait que les îles ont été mentionnées dans un cas et exclues dans l'autre démontre d'une manière évidente que les autorités n'avaient pas voulu céder dans le second cas les îles qui se trouvaient vis-à-vis le terrain cédé.

L'appelant s'est basé également sur une preuve de possession qui a été faite dans la cause.

Cette preuve est bien imparfaite, car nous voyons qu'à différentes périodes des blancs aussi bien que des sauvages sont allés s'installer sur cette propriété pour y faire la pêche et la chasse; et je ne sais pas même, s'il s'agissait d'une question de possession entre citoyen et citoyen, si l'on pourrait prétendre que la preuve de possession faite par l'appelant serait suffisante; mais dans le cas actuel il s'agirait d'une possession à l'encontre de la Couronne. Or, en vertu de l'article 2213 du Code Civil, les terres faisant partie du domaine public de Sa Majesté sont imprescriptibles.

L'appelant a eu également recours à la proclamation du roi en 1763, ainsi qu'aux instructions données au Gouverneur Murray, pour établir le droit des Sauvages de posséder cette propriété.

Il est possible que si la preuve eût été faite du fait que les Sauvages eussent été en possession lors de la cession du Canada en 1763, et vu surtout les instructions données au Gouverneur

Murray, il pourrait y avoir une question très intéressante qui pourrait se soulever. Mais aucune preuve de possession à cette époque n'est faite. Nous ne savons pas si les Sauvages de Caughnawaga étaient en possession de cette île ou ne l'étaient pas en 1765. Aucun document n'a été produit à ce sujet et d'ailleurs cette question-là ne paraît pas même avoir été soulevée par les plaidoiries.

Dans ces circonstances, je suis d'opinion que le jugement de la Cour d'Echiquier, qui a renvoyé l'action de l'appelant était bien fondé et que l'appel doit être renvoyé avec dépens.

711

J.Ad.R.-K.

DEPARTMENT OF INDIAN AFFAIRS JUN 18 19..

510402

ADDRESS
MINISTER OF JUSTICE
OTTAWA.

Ottawa, June 21st 1918

B. 3251.

The King v. Bonhomme.

Sir,

I have the honour to advise you that judgment has been delivered on the 10th instant by the Supreme Court dismissing with costs the appeal in the above case. "Enc." I beg to send herewith copy of the Reasons for Judgment and to request you to advise me whether or not you desire that an appeal to Privy Council should be taken from said judgment. You will note that the findings of the latter Court were unanimous and I venture to say that the Crown, in my mind, stands a poor chance of having the judgment reversed by the Judicial Committee of the Privy Council.

I shall be glad if you will give the matter your early consideration and let me have your instructions.

I have the honour to be,

S i r,

Your obedient servant,

W. Stuart Edwards

Asst. D. M. J.

The Deputy Superintendent General
of Indian Affairs,
O t t a w a.

1918/06

IN YOUR REPLY, REFER TO
No. .....
ALSO TO THE DATE OF THIS LETTER.
PLEASE WRITE ON ONLY ONE SUBJECT IN EACH LETTER.

ADDRESS REPLY TO THE SECRETARY, DEPT. OF INDIAN AFFAIRS, OTTAWA.

DEPARTMENT OF INDIAN AFFAIRS CANADA

DEPARTMENT OF JUSTICE SEP 2 1918 CANADA

712

Ottawa, 30th August, 1918.

Sir,

I beg to hand you herewith Indian Treaties and Surrenders, Vols 1-2, and to refer you to "Gage's Judgment" beginning on page 298 of Vol 2 and particularly to pages 303 and 304. The Church at Sault St. Louis, now Caughnawaga, is greatly in need of repair, but the Indians object to any of their funds being applied in payment of such repairs without their consent. These Indians moreover claim that in pursuance of this judgment they should be constituted a parish and have the regular officers of a parish who would have the charge and control of the church property.

I would be glad to be advised, in view of Gage's Judgment, as to:-

1. Whether the Indians have a legal right to be constituted and organized as a regular parish of the Church.

2. Whether the officers of the constituted parish, or in case the Indians are not entitled to be constituted a parish whether the Council of the band would have the legal right to determine what particular improvements or repairs should be made to the Church, Seigniorial House and other buildings, and what amount should be taken from the band funds to defray the expenses of such improvements or repairs.

The Deputy Minister of Justice,
Ottawa.

1918/08/30

3. Whether the Indians could legally refuse to make any repairs and allow the said buildings to go to decay and ruin.

Your obedient servant,

D. W. Lea

Asst. Deputy and Secretary.

713

J.O.

September 11th, 1918.

1919/18.

Sir,

Referring to your letter of the 30th ultimo asking to be advised in regard to the proposed repairs to the church at Sault St. Louis, now Caughnawaga, and for an interpretation of Gage's Judgment set out in Indian treaties and surrenders, Vol. 1-2. You have inadvertently no doubt omitted to send me these volumes. Will you kindly therefore send them to this Department at your early convenience.

I have the honour to be,

Sir,

Your obedient servant,

Deputy Minister of Justice.

The Assistant Deputy and Secretary,

Department of Indian Affairs,

O t t a w a.

918/09/11

714

J.C.

December 13th, 8.

1919/18.

Sir,-

I have the honour to acknowledge the receipt of your letter of the 30th of August last upon the subject of the church at Sault St. Louis, now Caughnawaga, which is in need of repair and as to which the Indians object that any of their funds should be applied towards making such repairs without their consent, and they claim that in pursuance of the Judgment or Ordinance of His Excellency Thomas Cage, Governor of Montreal, assisted by his council, dated the 22nd of March, 1762, contained in Vol. 2 of the Indian Treaties and Surrenders beginning at page 298, they should be constituted a parish and have the regular officers of a parish who would have the charge and control of the parish property.

In this connection you submit the following questions for the opinion of this Department, namely:-

1. Whether the Indians have a legal right to be constituted and organized as a regular parish of the Church.

2. Whether the officers of the constituted parish, or in case the Indians are not entitled to be constituted a parish whether the Council of the band would have the legal right to determine what particular improvements or repairs should be made to the Church, Seigniorial House and other buildings, and what amount should be

The Asst. Deputy and Secretary, taken.....
Department of Indian Affairs,
O t t a w a.

148/12/13

taken from the band funds to defray the expenses of such improvements or repairs.

3. Whether the Indians could legally refuse to make any repairs and allow the said buildings to go to decay and ruin.

In reply I beg to state that the first question must be answered in the negative. The Indians have no legal right to be constituted and organized as a regular parish. The judgment in so far as it is effective provides that the parish, the parsonage and all the other buildings erected by the Jesuit Fathers on the concession in question, or which had been bequeathed to them, should be considered as belonging to the Indians as if such Indians had been constituted a parish, but does not in terms constitute them a parish.

As regards question No. 2, it is to be observed that the inhabitants who settled on the concession prior to the 8th day of September 1760, were to be allowed to continue in peaceable possession of the land which they occupied under the concession obtained from the Jesuit Fathers, and in order that the Indians might enjoy the rents from such lands the Governor was to appoint a person to be the receiver of the rents and other seigniorial rights which might proceed from such concessions, and that the receiver was bound to render a yearly account to the Indians; and the income was to be used for the keeping of the church and other buildings of the Sault; the remainder to be handed over to the Indians. From this it would seem that the control of the moneys or rents was to be vested in the receiver who was required in the first place to apply them towards the upkeep of the church and other buildings, and if any balance remained it was to be handed over to the Indians.

I am disposed to think that the Superintendent General of Indian Affairs is vested by the Indian Act with.....

with the powers and duties of the receiver in so far as they remain.

Inquiry 3 must, in view of the above, be answered in the negative.

"ENC" Volume of Indian Treaties and Surrenders is returned herewith.

I have the honour to be,
Sir,
Your obedient servant,

Deputy Minister of Justice.

P.C. 34/17. 449628-34. 715

Certified Extract from the Minutes of a Meeting of the Treasury Board, held on the 30th December, 1919, approved by His Excellency the Governor General in Council, on the 5th January, 1920.

PRIVY COUNCIL
CANADA.

INDIAN AFFAIRS:

The Board had under consideration a memorandum from the Superintendent General of Indian Affairs reporting that in the year 1914, for the purpose of the erection thereon of a residance for the teacher of an Indian school on the Caughnawaga Reserve, in the county of Laprairie, in the Province of Quebec, the following described portion of the said reserve was purchased by the Department of Indian Affairs from Joseph D'Aillebout, a member of the Caughnawaga band, the sum of $600. having been paid therefor from Parliamentary Appropriation,-

"All that portion of Lot three hundred and eighty-five in Block C, village of Caughnawaga, province of Quebec and Dominion of Canada, containing six-tenths of an acre, be the same more or less, and described as follows; commencing at the northerly angle of lot three hundred and eighty-six; thence following the limits of lot three hundred and eighty five approximately north sixty-two degrees east one hundred and fourteen feet; thence approximately north seventy-two degrees east one hundred and two feet to a point on the northerly limit of the said lot three hundred and eighty-five; thence approximately south five degrees east one hundred and forty feet to the southerly limit of the said lot three hundred and eighty-five; thence southwesterly following the said southerly limit eighty feet to the easterly angle of lot three hundred and eighty-six; thence westerly following the limit of the said lot three hundred and eighty-six one hundred and twelve feet to the point of commencement, together with the appurtenances thereto belonging or appertaining;"

That the land in question has not been put to the use for which it was purchased, and a resolution has been passed by the band in favour of its being purchased by the band for the general use of the band, at a cost of $601, which appears to the Department of Indian Affairs to be a fair price,- chargeable to their capital funds.

The Superintendent General therefore recommends that authority be given under Section 90 of the Indian Act for the expenditure of the said sum of $601 from Caughnawaga band capital, which amounts to $25,053.23, on the purchase of the above parcel of land, and that the said parcel be hereafter held by His Majesty for the benefit and general public use of the Caughnawaga band.

The Board concur in the above recommendation and submit the same for favourable consideration.

Rodolphe Boudreau,
Clerk of the Privy Council.

The Honourable
The Superintendent General of Indian Affairs.

34

1920/01/05

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In the Privy Council.

THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC AND OTHERS

v.

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA AND ANOTHER.

DELIVERED BY MR. JUSTICE DUFF.

Printed by
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1920.

1 de 8

Privy Council Appeal No. 79 of 1919.

The Attorney-General for the Province of Quebec and others - *Appellants*

v.

The Attorney-General for the Dominion of Canada and another - *Respondents*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD NOVEMBER, 1920.

Present at the Hearing:

VISCOUNT HALDANE.
VISCOUNT CAVE.
LORD DUNEDIN.
MR. JUSTICE DUFF.

[*Delivered by* MR. JUSTICE DUFF.]

By an order of the Governor of the late Province of Canada in Council, of the 9th August, 1853, pursuant to a statute of that province (14 and 15 Vict. c. 106), the provisions of which are hereinafter explained, certain lands, including those whose title is in question on this appeal, viz., Lots 6, 7 and 8, in the thirteenth range of the township of Coleraine in the county of Megantic, were appropriated for the benefit of the Indian tribes of Lower Canada, those particularly mentioned being set apart for the tribe called the Abenakis of Becancour. By an instrument of surrender of the 14th February, 1882, which was accepted by an order of the Governor-General of Canada in Council of the 3rd April, 1882, this tribe surrendered (*inter alia*) the lots above specified to Her Majesty the Queen; and on the 2nd July, 1887, the Dominion Government professed to grant them by letters patent to Cyrice Tetu, of Montreal, whose interest in them passed on his death to Dame Caroline Tetu.

On the 10th April, 1893, the lands in question, having been seized in execution by the sheriff of the district of Arthabaska, under a judgment against Dame Caroline Tetu, were sold by

the sheriff to one Joseph Lamarche, whose title was eventually acquired by the respondent Dame Rosalie Thompson. The appellants, the Star Chrome Mining Company, Limited, having purchased the property from the respondent Dame Rosalie Thompson, in February, 1907, the Company took proceedings against the vendor, claiming rescission of the sale and demanding repayment of the purchase money with damages, on the ground that the property was in the Crown in the right of the Province of Quebec, and that the vendor was consequently without title at the time of the sale.

The action of the appellants having come on for trial on the 4th June, 1909, the trial was adjourned, and on the 29th June, 1912, an order was made suggesting that the Dominion Government and the Government of Quebec should intervene for the purpose of determining the controversy touching the authority of the Dominion Government to dispose of the lands in question on behalf of the Crown. On the 2nd October, 1914, the appellant, the Attorney-General of Quebec, intervened, claiming by his intervention that the grant to Cyrice Tetu, of the 2nd July, 1887, was null and void, on the ground that the lands which the grant professed to dispose of were the property of the Crown in the right of Quebec; and on the 7th October, 1914, the respondent, the Attorney-General of Canada, met the intervention of the Attorney-General of Quebec by a contestation in which he maintained the validity of the grant to Cyrice Tetu. On the 7th May, 1917, the Superior Court pronounced judgment rejecting the intervention of the Attorney-General of Quebec, and the appeal from this judgment was dismissed by the Court of King's Bench on the 20th November, 1917, Mr. Justice Lavergne dissenting.

The first question which arises concerns the effect of the deed of surrender of the 3rd April, 1882—whether, that is to say, as a result of the surrender, the title to the lands affected by it became vested in the Crown in right of the Dominion, or, on the contrary, the title, freed from the burden of the Indian interest, passed to the Province under Section 109 of the British North America Act.

The claim of Quebec is based upon the contention that at the date of confederation the radical title in these lands was vested in the Crown, subject to an interest held in trust for the benefit of the Indians, which, in the words used by Lord Watson, in delivering judgment in *St. Catherine's Milling and Lumber Company* v. *The Queen* (14 A.C. 46), was only "a personal and usufructuary right dependent upon the goodwill of the Crown." On behalf of the Dominion it is contended that the title, both legal and beneficial, was held in trust for the Indians.

In virtue of the enactment of Section 91 (No. 24) of the British North America Act, by which exclusive authority to legislate in respect of lands reserved for Indians is vested in the Dominion Parliament, it is not disputed that that Parliament would have full authority to legislate in respect of the disposition of the

Indian title, which, according to the Dominion's contention, would be the full beneficial title. On the other hand, if the view advanced by the Province touching the nature of the Indian title be accepted, then it follows from the principle laid down by the decision of this Board in *St. Catherine's Milling and Lumber Company* v. *The Queen* (*supra*) that upon the surrender in 1882 of the Indian interest the title to the lands affected by the surrender became vested in the Crown in right of the Province, freed from the burden of that interest.

The answer to the question raised by this controversy primarily depends upon the true construction of two statutes, passed by the Legislature of the Province of Canada (13 and 14 Vict. 1850 c. 42, and 14 and 15 Vict. 1851 c. 106). The last-mentioned statute is entitled, "An Act to authorise the setting apart of lands for the use of certain Indian tribes in Lower Canada," and, after reciting that it is expedient to set apart certain lands for such 'use,'" it enacts that tracts not exceeding 230,000 acres may, under the authority of Orders in Council, be described, surveyed and set out by the Commissioner of Crown Lands, and that "such tracts of land shall be and are hereby respectively set apart and appropriated to and for the use of the several Indian tribes in Lower Canada, for which they shall be respectively directed to be set apart . . . . and the said tracts of land shall accordingly, by virtue of this Act . . . . be vested in and managed by the Commissioner of Indian Lands for Lower Canada, under" the statute first mentioned, 13 and 14 Vict. c. 42. This statute (13 and 14 Vict. c. 42) is entitled, "An Act for the better protection of the lands and property of the Indians in Lower Canada," and, following upon a recital that it is expedient to make better provision in respect of "lands appropriated to the use of Indians in Lower Canada," enacts (by Section 1) as follows :—

> "That it shall be lawful for the Governor to appoint from time to time a Commissioner of Indian Lands for Lower Canada, in whom and in whose successors by the name aforesaid, all lands or property in Lower Canada which are or shall be set apart or appropriated to or for the use of any Tribe or Body of Indians, shall be and are hereby vested, in trust for such Tribe or Body, and who shall be held in law to be in the occupation and possession of any lands in Lower Canada actually occupied or possessed by any such Tribe or Body in common, or by any Chief or Member thereof or other party for the use or benefit of such Tribe or Body, and shall be entitled to receive and recover the rents, issues and profits of such lands and property, and shall and may, in and by the name aforesaid, but subject to the provisions hereinafter made, exercise and defend all or any of the rights lawfully appertaining to the proprietor, possessor or occupant of such land or property."

and by Section 3 :—

> "That the said Commissioner shall have full power to concede or lease or charge any such land or property as aforesaid and to receive or recover the rents, issues and profits thereof as any lawful proprietor, possessor or occupant thereof might do, but shall be subject in all things to the instructions he may from time to time receive from the Governor, and shall be personally responsible to the Crown for all his acts, and more

especially for any act done contrary to such instructions, and shall account for all moneys received by him, and apply and pay over the same in such manner, at such times, and to such person or officer, as shall be appointed by the Governor, and shall report from time to time on all matters relative to this office in such manner and form, and give such security, as the Governor shall direct and require; and all moneys and movable property received by him or in his possession as Commissioner, if not duly accounted for, applied and paid over as aforesaid, or if not delivered by any person having been such Commissioner to his successor in office, may be recovered by the Crown or by such successor, in any Court having civil jurisdiction to the amount or value, from the person having been such Commissioner and his sureties, jointly and severally."

The rival views which have been advanced before their Lordships touching the construction of these enactments have already been indicated.

In support of the Dominion claim it is urged that, as regards lands "appropriated" under the Act of 1851, the words "shall be and are hereby vested in trust for" the Indians, create a beneficial estate in such lands, which by force of the statute is held for the Indians, and which could not lawfully be devoted to any purpose other than the purposes of the trust, and indeed is equivalent to the beneficial ownership.

While the language of this statute of 1850 undoubtedly imports a legislative acknowledgment of a right inhering in the Indians to enjoy the lands appropriated to their use under the superintendence and management of the Commissioner of Indian Lands, their Lordships think the contention of the Province to be well founded to this extent, that the right recognised by the statute is a usufructuary right only and a personal right in the sense that it is in its nature inalienable except by surrender to the Crown.

By Section 3 the Commissioner is not only accountable for his acts, but is subject to the direction of the Governor in all matters relating to the trust; the intent of the statute appears to be, in other words, that the rights and powers committed to him are not committed to him as the delegate of the Legislature, but as the officer who for convenience of administration is appointed to represent the Crown for the purpose of managing the property for the benefit of the Indians. If this be the correct view, then, whatever be the nature or quantum of the Commissioner's interest, it is held by him in his capacity of officer of the Crown, and his title is still the title of the Crown; and this, it may be observed, is apparently the view upon which the Dominion Government proceeded in accepting the surrender of 1882, the lands surrendered being treated (and their Lordships think rightly treated) for the purposes of that transaction as a "Reserve" within the meaning of the Act of 1882—in other words, as lands "the legal title" to which still remained in the Crown (Section 2 (6)). It is not unimportant, however, to notice that the term "vest" is of elastic import; and a declaration that lands are "vested" in a public body for public purposes may pass only such powers of control and management and such proprietary interest as may be necessary to enable that body to

discharge its public functions effectively (*Tunbridge Wells Corporation* v. *Baird*—1896 A.C. 434), an interest which may become devested when these functions are transferred to another body. In their Lordships' opinion, the words quoted from Section 1 are not inconsistent with an intention that the Commissioner should possess such limited interest only as might be necessary to enable him effectually to execute the powers and duties of control and management, of suing and being sued, committed to him by the Act.

In the judgment of this Board in the *St. Catherine's Milling Company's Case*, already referred to, it was laid down, speaking of Crown lands burdened with the Indian interest arising under the Proclamation of 1763, as follows :-

> "The Crown has all along had a present proprietary interest in the land, upon which the Indian title was a mere burden. The ceded territory was, at the time of the union, land vested in the Crown, subject to 'an interest other than that of the Province in the same,' within the meaning of Section 109, and must now belong to Ontario in terms of that clause, unless its rights have been taken away by some provision of the Act of 1867 other than those already mentioned."

and their Lordships said :—

> "It appears to them to be sufficient for the purposes of this case that there has been all along vested in the Crown a substantial and paramount estate, underlying the Indian title, which became a *plenum dominium* whenever that title was surrendered or otherwise extinguished."

The language of the statutes of 1850 and 1851 must, therefore, be examined in light of the circumstances of the time and of the objects of the legislation as declared by the enactments themselves, for the purpose of ascertaining whether or not the Crown retained in lands appropriated for the use of an Indian tribe a "paramount title" upon which the Indian interest was a mere "burden" in the sense in which these phrases are used in these passages.

The object of the Act of 1850, as declared in the recitals already quoted, is to make better provision for preventing encroachments upon the lands appropriated to the use of Indian tribes and for the defence of their rights and privileges, language which does not point to an intention of enlarging or in any way altering the quality of the interest conferred upon the Indians by the instrument of appropriation or other source of title: and the view that the Act was passed for the purpose of affording legal protection for the Indians in the enjoyment of property occupied by them or appropriated to their use, and of securing a legal status for benefits to be enjoyed by them, receives some support from the circumstance that the operation of the Act appears to extend to lands occupied by Indian tribes in that part of Quebec which, not being within the boundaries of the Province as laid down in the Proclamation of 1763, was, subject to the pronouncements of that Proclamation in relation to the rights of the Indians, a region in which the Indian title was still in 1850, to quote the words of Lord Watson, "a personal and usufructuary right dependent upon the good-will of the Sovereign."

It should be noted also that the Act of 1851, under which the lands in question were set apart, is plainly an Act passed with the object of setting lands apart "for the use" of Indian tribes, and that by the same Act the powers of the Commissioner of Indian Lands under the Act of 1850 are referred to as "powers of management."

Their Lordships do not find it necessary to enter upon a consideration of the precise effect of the words of Section 3, investing the Commissioner with power to "concede," "lease" or "charge" lands or property affected by the statute. It is sufficient to say that, having regard to the recitals of the same statute and the language of the Act of 1851 just referred to, as well as to the policy of successive administrations in the matter of Indian affairs which, to cite the judgment of the Board in the *St. Catherine's Milling Company's Case*, had been

> "all along the same in this respect, that the Indian inhabitants have been precluded from entering into any transaction with a subject for the sale or transfer of their interest in the land, and have only been permitted to surrender their rights to the Crown by a formal contract, duly ratified at a meeting of their chiefs or head men convened for the purpose,"

their Lordships think these words ought not to be construed as giving the Commissioner authority to convert the Indian interest into money by sale or to dispose of the land freed from the burden of the Indian interest, except after a surrender of that interest to the Crown.

It results from these considerations, in their Lordships' opinion, that the effect of the Act of 1850 is not to create an equitable estate in lands set apart for an Indian tribe of which the Commissioner is made the recipient for the benefit of the Indians, but that the title remains in the Crown and that the Commissioner is given such an interest as will enable him to exercise the powers of management and administration committed to him by the statute.

The Dominion Government had, of course, full authority to accept the surrender on behalf of the Crown from the Indians, but, to quote once more the judgment of the Board in the *St. Catherine's Milling Company's Case*, it had "neither authority nor power to take away from Quebec the interest which had been assigned to that Province by the Imperial statute of 1867." The effect of the surrender would have been otherwise if the view, which no doubt was the view upon which the Dominion Government acted, had prevailed, namely, that the beneficial title in the lands was by the Act of 1850 vested in the Commissioner of Indian lands as trustee for the Indians, with authority, subject to the superintendence of the Crown, to convert the Indian interest into money for the benefit of the Indians. As already indicated, in their Lordships' opinion, that is a view of the Act of 1850 which cannot be sustained.

One further point remains. On behalf of the respondent Dame Rosalie Thompson it is contended that her title is validated by reason of the adjudication of the sheriff's sale. Their Lordships concur in the view which prevailed in *Les Commissaires*

d'Ecoles de Saint Alexis v. *Price* (1 Revue de Jurisprudence 122), that Articles 399 and 2213 of the Code of Civil Procedure have not the effect of conferring upon the purchaser at a sheriff's sale a title to Crown property which has not been alienated by the Crown.

The appeal should, therefore, be allowed and the action remitted to the Superior Court to give judgment against the respondent Dame Rosalie Thompson for the amount of the purchase money and of the damages which, if any, she shall be found liable to pay to the appellants the Star Chrome Mining Company, and their Lordships will humbly advise His Majesty accordingly.

The respondent Dame Rosalie Thompson will pay the costs of the Star Chrome Mining Company here and in the Courts below. There will be no order as to the costs of other parties.

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The Committee of the Privy Council have had before them a Report, dated 8th November, 1923, from the Superintendent General of Indian Affairs, submitting that, as forming a portion of the general Federal scheme for the improvement of highways (under The Canadian Highways Act, Chapter 54, 9-10 George V) the Department of Roads of the Province of Quebec having undertaken to construct a road from Caughnawaga to Malone, the Department of Indian Affairs agreed to contribute 10% of the cost of the portion of the road passing through the Caughnawaga Indian reserve.

Upon completion of the road and the receipt of a statement from the Chief Federal Commissioner of Highways as to the cost of the work, the Department of Indian Affairs issued a cheque on the 13th September, 1922, in favour of the Department of Highways of the Province of Quebec for $11,987.18 covering its contribution of 10%, the same having been paid from Ontario and Quebec Vote, No.541.

In view of the fact that the Auditor General has expressed the opinion that authority should have been obtained for making the payment, the Minister recommends that approval be given of the Department's action in issuing the above mentioned cheque for $11,987.18 from the said Ontario and Quebec Vote, No.541, 1922-23/

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P.C. 2460

P.C. 2460

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P.C. 2460

1922-23, to meet the Department's contribution of 10% of the cost of construction of the said road through the Caughnawaga reserve.

The Committee concur in the foregoing and submit the same for Your Excellency's approval.

W. Mackenzie King

Approved.

Byng of Vimy

17 Dec. 1923

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#4005R.C.

DEPARTMENT OF INDIAN AFFAIRS
CANADA

DEPARTMENT OF JUSTICE CANADA JUN 28 1924

OFFICE OF THE
DEPUTY SUPERINTENDENT GENERAL
OTTAWA

26th June, 1924.

Dear Sir,

1919-19

I beg to hand you herewith file No.4005 R.C. with respect to the Church at Caughnawaga Indian Reserve in the Province of Quebec, and would refer you to your opinion of the 13th December, 1918, which dealt with, among other questions, the maintenance of the Church and other buildings. According to General Gage's Judgment of the 22nd day of Maroh, 1762, it is provided that "the said Indians shall thereby find themselves obliged to maintain the said buildings." The said Judgment also provided that the Governor should appoint a receiver of the rents and other seigniorial rights and that "the income of said rents shall be used for the keeping of the Church and other buildings of the Sault, and the remainder placed in the hands of the Indians so that they may do with it what they think fit." The rents received from the seigniory for a great many years have been placed to the credit of the band funds. They have been very small indeed and not sufficient apparently for the keeping of the Church buildings.

For some years the Council of the Caughnawaga band and a certain following have been unsympathetic with, and even hostile to, the Church authorities, and it has been found impossible to induce them to co-operate with the Church authorities in preserving the Church property. Some two or three years ago the Department undertook to make certain repairs but the Indians interfered and the work was abandoned. On the 11th instant we wrote to the Agent enclosing a statement as to required repairs and improvements

The Deputy Minister of Justice,
Ottawa.

1924/06/26

with the estimated cost of the same asking him to call a meeting of the band to consider the question. The Agent replied by letter of the 21st instant stating that he had brought this matter to the attention of the Council and enclosed a copy of a resolution passed at the Council meeting, from which it is evident that the Indians are disposed to offer every obstruction to repairs being made to this property.

It is desired to have your views as to whether the Superintendent General would be warranted in taking from the funds of this band such amount as can be shown to have been received by the band in respect of the seigniorial rents above referred to and apply the same in repairing the property, and also whether in view of the obligation of the Indians to keep this property in repair and of their neglect or refusal to do so, the Superintendent General could take from the funds of the band without the band's formal consent such further sums as may be required to put the said Church and other buildings in a proper state of repair.

Yours truly,

Duncan Scott

~~Deputy~~ Superintendent General.

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DEPARTMENT OF JUSTICE

MEMORANDUM

25th July, 1924.

Mr. Edwards,-

Mr. Williams, Indian Affairs, has just telephoned to say that some days ago a question was submitted for opinion as to whether the Supt. Gen. could take from the funds of the Caughnawaga Band sufficient money to repair the Caughnawaga Church, Letter has been received from the Priest urging haste in the matter, and Mr. Williams would like if a reply to letter could be facilitated. No. of reference is 1206/24, and is charged to Mr. Chisholm.

ELJ.

Wm. Chisholm

A24/07/25

JC/EV

OTTAWA, ... 29th July 192 4

720

MEMORANDUM FOR MR. EDWARDS.

With regard to the question submitted for an opinion as to whether certain funds mentioned could be devoted by the department to the repair of church property at Caughnawaga, I have no doubt the funds of the band can be used for these purposes. The opinion given by the department of the 13th December, 1918, referred to in the reference, is to be found on file 1919-18. The matter received careful consideration at the time and I had an interview with the Deputy regarding the question then under consideration. You will notice that as regards the receipts from the lands referred to in the treaty then under consideration we advised that this money was under the control of the Superintendent General and therefore I think could be devoted to the repair of the church, but it may be that it would not be easy at this time to distinguish this revenue from the other moneys of the band. However, that is a matter for the department to decide. As to the appropriation of the other moneys to the credit of the band the provisions of the Indian Act, namely, sections 87 to 91 seem to apply. Subsection 2 of 89 provides that the Governor in Council may authorise and direct the expenditure of such monies for the construction and repair of school buildings and charitable

1924/07/29

institutions. I think there is no doubt but that a church is a charitable institution and therefore it is within the power of the Governor in Council to appropriate sufficient funds for the repair of the church.

I have examined the authorities very carefully and I find that both Cyc and American and English Encyclopedia supported by many English decisions hold the view that a church for religious purposes is a charitable institution.

I send you herewith two authorities that have been mentioned, namely In Re Darling (1896) 1 Ch. 50 and In Re White (1893) 2 Ch 41.

The next section, namely 90 empowers the Governor in Council with or without the consent of the band to authorise and direct certain expenditures out of the capital of the band to the purposes therein mentioned. Subsec. 2 which was enacted by 8-9 George V, chap 26, s. 4, provides that if the band should refuse to give consent the Superintendent General if he consider it advisable may expend the funds with the authorisation of the Governor in Council without such consent. I have, therefore, no doubt that the funds of the band may be appropriated for the purpose of repairing the church without the consent of the band.

J.C.

JC/EV

OPRU Doc. No. 010402
UBOJ No. de Doc.

721

29th July 24

Dear Sir,-

I beg to acknowledge the receipt of your letter of 26th ultimo -4005RC- submitting the following questions for advice, namely:- Whether the Superintendent General would be warranted in taking from the funds of the Caughnawaga Indians such amount as can be shown to have been received by the band in respect of the seigniorial lands referred to in your letter and apply them in repairing the church property, and also whether in view of the obligation of the Indians to keep this property in repair and of their neglect or refusal to do so, the Superintendent General could take from the funds of the band, without the band's consent, such further sums as may be required to put the church and other buildings in a proper state of repair.

In reply I beg to state that the answer to those questions should be in the affirmative. The opinion of this department, bearing date the 13th December, 1918, to which you refer implies that the Superintendent General is authorised to

"ENC"

Duncan C. Scott, Esq.,
Deputy Superintendent General,
Department of Indian Affairs,
O T T A W A .

.....

1924/07/29

appropriate from the funds of the band for the repair of the church such amount as can be shown to have been received by the band in respect of the seigniorial rents referred to, the Superintendent General being vested with the powers and duties of the Receiver in so far as they remain, and section 89, subsec. 2, empowers the Governor in Council to authorise and direct the expenditure of the moneys referred to in that section for the purposes, among others, of repairing the church, the church being a charitable institution within the meaning of such subsection, and section 90 as amended provides that the Governor in Council may authorise and direct the expenditure of capital moneys with or without the consent of the band for the purposes mentioned in that section. It is possible, however, that the expenditure that may be made under ~~this~~ the last mentioned section would not include the repairs to a church. Expenditures under the two sections referred to, sections 89 and 90, require the authority of our Order in Council.

Papers returned.

Yours very truly,

W. Stuart Edwards

Acting D.M.J.

JUL 31 1924

P.C. 1512

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The Committee of the Privy Council have had before them a report, dated 25th August, 1924, from the Superintendent General of Indian Affairs, stating that in the Supplementary Estimates, 1924-25, an amount of $8,395.02 was voted to repay the Department of Roads of the Province of Quebec for expenses incurred in building an improved road through the Caughnawaga Reserve; known as the La Prairie Valleyfield Highway, which will in future be maintained at the expense of the province of Quebec.

Statements duly certified by the Provincial Department and also the Dominion Commissioner of Highways were submitted to the Department of Indian Affairs in December 1923, covering the total expenditure, being $83,950.24.

The Minister, accordingly, recommends that authority be given for the payment to the province of Quebec of the said amount of $8,395.02, for the above mentioned purpose.

The Committee concur in the foregoing recommendation and submit the same for approval.

Approved.
John Idington

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P.C. 1512

1924/09/03

LES

STATUTS REFONDUS

DE LA

PROVINCE DE QUÉBEC, 1925

PROMULGUÉS ET PUBLIÉS EN VERTU DE LA LOI
15 GEORGE V, CHAPITRE 8

TOME III

QUÉBEC
IMPRIMÉS PAR Ls-A. PROULX,
IMPRIMEUR DE SA TRÈS EXCELLENTE MAJESTÉ LE ROI
Conformément au rôle original desdits Statuts refondus déposé au bureau du greffier de la Législature

1925

CHAPITRE 260

LOI CONCERNANT LES SEIGNEURIES

1. La présente loi peut être citée sous le titre de *Loi des seigneuries.* Titre abrégé.

SECTION I

DES DROITS ET DEVOIRS FÉODAUX

§ 1.—*De l'abolition de ces droits*

2. Depuis l'avis donné dans la *Gazette du Canada* du dépôt des cadastres seigneuriaux, les biens-fonds dans les seigneuries sont possédés en franc-alleu roturier, et francs de tous cens, droits de banalité et de retrait, et autres droits et charges féodales et seigneuriales de quelque espèce que ce soit, excepté la rente constituée qui est substituée à ces droits et charges. Commutation de la tenure des biens-fonds dans les seigneuries.

2. Tout seigneur possède depuis cette date en franc-alleu roturier son domaine et les terres non concédées de sa seigneurie, ainsi que les forces hydrauliques dans les rivières qui lui appartiennent. Effet de cette commutation.

Ces propriétés et les rentes constituées qui lui sont payables par ses censitaires, ou par le seigneur du fief ou de la seigneurie dans lequel il est seigneur dominant, sont possédées par lui quittes et libres de tous droits ou redevances féodales à la couronne ou au seigneur dominant dont son fief ou sa seigneurie relève, sujet cependant, pour ce qui regarde le seigneur et le censitaire, aux dispositions de la présente section. Id., quant aux droits féodaux, etc.

3. Le seigneur comme tel n'est sujet à aucune obligation onéreuse envers ses censitaires et ne peut prétendre à aucun droit honorifique; et nulle terre ou nul fonds n'est concédé par un seigneur pour être tenu autrement que sous la tenure en franc-alleu roturier, ou pour être sujets à des droits de mutation ou autres redevances féodales. S. R. (1909), 7258. Id., quant aux droits honorifiques, etc.

Droits du seigneur d'exploiter forces hydrauliques.

3. Le droit du seigneur, acquis en vertu de stipulations légales faites avant le 18 décembre 1854 (*), par un contrat subséquent au contrat de concession, de prendre un terrain pour exploiter les forces hydrauliques adjoignant ce terrain et lui appartenant, sur paiement de la pleine valeur du terrain et de toutes les améliorations qui y sont faites, reste en pleine force et vigueur.

Droits des voisins si le seigneur ne les exploite pas.

Si le seigneur n'exploite pas les forces hydrauliques ainsi acquises, le propriétaire d'un terrain adjoignant ces forces hydrauliques peut demander le droit de les exploiter, en lui payant la pleine valeur de ce droit.

Détermination de la valeur si elle n'est pas convenue.

Cette valeur, si elle n'est pas convenue, est déterminée par des arbitres, dont l'un est nommé par le propriétaire du terrain, un autre par le seigneur, et le troisième par les deux autres, ou, s'ils ne peuvent s'entendre, alors par un juge de la Cour supérieure; et la sentence rendue par deux d'entre eux est finale.

Droit d'exploitation du propriétaire.

Sur paiement ou offre de paiement au seigneur de la valeur ainsi établie, le propriétaire du terrain a le droit d'exploiter ces forces hydrauliques de la manière mentionnée dans la demande qui en est faite et dans la sentence arbitrale. S. R. (1909), 7259.

Terres non concédées et non commuées, possédées en roture.

4. Les terres non concédées dans une seigneurie dont la tenure n'a pas été commuée lors de l'avis donné du dépôt des cadastres seigneuriaux, sont possédées par le seigneur en franc-alleu roturier, et peuvent être traitées par lui en la même manière que le sont les terres possédées par d'autres personnes sous la même tenure, sauf et excepté que si la seigneurie est substituée ou possédée autrement qu'à titre absolu de propriété, le prix de ces terres forme alors le capital d'une rente constituée, lequel capital n'est payé qu'à une partie possédant la seigneurie à titre de propriété; mais toute personne dont le titre, avant la passation de l'acte seigneurial de 1854, l'a autorisée à concéder ces terres non concédées, peut les vendre pour cette rente constituée et non autrement, S. R. (1909), 7260.

§ 2.—*Du rachat des rentes constituées remplaçant les droits seigneuriaux*

Rentes constituées, rachetables.

5. Toute rente constituée en remplacement des droits seigneuriaux est rachetable à toujours; mais si la seigneurie est substituée ou possédée par un tuteur, curateur ou propriétaire usufruitier, et si une opposition a

(*) La loi décrétant l'abolition des droits et devoirs féodaux, 18 Victoria, chapitre 3, a été sanctionnée le 18 décembre 1854. Elle est reproduite, avec ses amendements, au chapitre 41 des Statuts refondus du Bas-Canada. Le présent chapitre ne reproduit de cette loi que les dispositions qui sont demeurées applicables.

été formée et est en vigueur, la rente et les arrérages seulement sont reçus, sauf l'exception dans l'article 6 qui s'applique à tous les cas de rachat de telles rentes. S. R. (1909), 7261.

Rentes rachetables s'il y a opposition.

6. Toute rente constituée dans une seigneurie, au sujet de laquelle une opposition a été formée, peut, en tout temps, être rachetée, moyennant paiement au trésorier de la province du capital de la rente avec intérêt jusqu'à la date du rachat. S. R. (1909), 7262.

Mode de disposer des deniers: Si l'opposition est fondée sur une substitution.

7. La manière dont le trésorier de la province dispose de ces deniers est la suivante:

1° S'ils proviennent d'une seigneurie à l'égard de laquelle il a été fait opposition parce que la seigneurie est substituée ou possédée par un curateur, un tuteur ou par toute autre personne la tenant en fidéicommis pour d'autres, et non comme propriétaire absolu, le trésorier de la province paye, le jour de chaque année où la rente devient due, si elle n'a pas été rachetée, et tant que subsiste la substitution ou le fidéicommis, à la personne qui a droit au revenu de la seigneurie, l'intérêt du capital de la rente au taux de six pour cent par année; et il en paye le capital, à l'expiration de la substitution ou du fidéicommis, à la personne qui est désignée par le jugement du tribunal devant lequel l'opposition est faite.

Emploi du capital.

Le tribunal peut, toutefois, sur la pétition du curateur, tuteur ou fidéicommissaire, en tout temps avant l'expiration de la substitution ou du fidéicommis, ordonner que le capital ou toute partie du capital soit, par tel curateur, tuteur ou fidéicommissaire, appliqué et employé à l'acquisition de propriétés immobilières désignées dans le jugement.

Paiement de la somme mentionnée au jugement.

Le trésorier de la province peut payer la somme mentionnée dans le jugement à la personne ou à la partie y désignée, comme étant le vendeur de ces propriétés immobilières, ou comme étant autrement autorisée à en recevoir le prix; ces propriétés sont sujettes ensuite aux mêmes fidéicommis et substitutions que la seigneurie à l'égard de laquelle l'acquisition a été ordonnée.

Si l'opposition est fondée sur des réclamations hypothécaires.

2° S'ils proviennent d'une seigneurie à l'égard de laquelle l'opposition est faite à raison de réclamations hypothécaires et non à raison de ce que ladite seigneurie est substituée ou tenue en fidéicommis, le trésorier de la province agit à l'égard de ces deniers de la même manière que pour les deniers afférant au seigneur sur le fonds spécial approprié en aide aux censitaires. S. R. (1909), 7263.

Rachat de la rente.

8. Dans toute seigneurie dont le seigneur a le droit de recevoir le capital de la rente constituée, cette rente peut être rachetée sans le consentement du seigneur, sur paiement du capital au seigneur ou à son agent le jour où la rente devient annuellement due, ou pendant les sept jours suivant immédiatement; et chaque fois que le capital de cette rente a été ainsi offert au seigneur ou à son agent, et que le capital ou un reçu du capital a été refusé, cette rente devient ensuite rachetable en tout temps. S. R. (1909), 7264.

Rachat par un seul paiement.

9. Les censitaires dans une seigneurie peuvent, en tout temps, racheter par un seul paiement toutes les rentes constituées restant alors dans la seigneurie; et, dans ce cas, le prix du rachat est payé au seigneur, s'il n'y a pas d'opposition formée et en vigueur; s'il y a une telle opposition, il est payé au trésorier de la province, et il en est disposé à tous égards comme de deniers à lui payés en vertu de l'article 7.

Prix du rachat.

Le prix de rachat est toujours la somme capitale dont l'intérêt au taux de six pour cent égale le montant annuel de la rente rachetée, à moins qu'il ne soit convenu d'un autre taux entre les censitaires et un seigneur ayant droit au prix de rachat pour son propre usage. S. R. (1909), 7265.

Personnes qui ont droit de rachat.

10. Tous ceux qui possèdent en mainmorte, les corporations, tuteurs, curateurs et administrateurs possédant des fonds tenus en roture, ou les possesseurs de fonds substitués, dont les rentes constituées peuvent être rachetées avec avantage pour ceux qu'ils représentent, peuvent effectuer le rachat de la rente constituée seigneuriale, en payant le prix du rachat à même les deniers de ceux qu'ils représentent.

Formalités pour l'aliénation des biens par les tuteurs, etc.

Dans le rachat de ces rentes, les tuteurs, curateurs et usufruitiers, et les possesseurs de biens substitués, sont tenus d'observer les formalités prescrites par la loi pour l'aliénation des biens de ceux dont les droits sont représentés par eux.

Par les corporations.

Ceux qui possèdent en mainmorte, et les corporations, ne sont tenus d'observer aucune autre formalité que celles qui sont prescrites par la présente section. S. R. (1909), 7266.

Placement du rachat des rentes, etc.

11. Il est loisible aux diverses communautés religieuses ou ecclésiastiques qui possèdent, dans la province, des fiefs ou seigneuries en mainmorte, de placer, à volonté, sur des biens-fonds ou propriétés, ou sur des

garanties publiques ou privées dans cette province, selon qu'elles le jugent plus convenable ou plus avantageux pour leurs communautés respectives, toutes sommes de deniers qui peuvent leur revenir du rachat de toute rente constituée seigneuriale, ou à même le fonds spécial approprié en aide des censitaires. S. R. (1909), 7267.

§ 3.—*Des rentes constituées sous une tenure libre*

Rachat des rentes et charges.

12. Les biens-fonds tenus en franc et commun soccage, ou en franc-alleu roturier, ne sont chargés d'aucune rente perpétuelle non rachetable; toutes les fois que telle rente est ainsi stipulée, le capital peut, en tout temps, être racheté, au choix du possesseur du bien-fonds qui en est chargé, sur paiement du capital de la rente, calculé au taux légal de l'intérêt; et toute stipulation dans un titre translatif de propriété d'un bien-fonds tendant à le charger d'un droit de mutation ou de paiement en corvées, ou tendant à imposer au possesseur du bien-fonds le devoir de transporter son grain à un moulin particulier, ou toute autre redevance, servitude ou charge féodale quelconque, est nulle et de nul effet. S. R. (1909), 7268.

Capital de la rente, non sujet à prescription.

13. Le capital de la rente constituée n'est en aucun cas sujet à prescription, qu'il y ait ou ou non changement du propriétaire de la terre affectée à la rente. S. R. (1909), 7269.

§ 4.—*De l'effet du dépôt des cadastres seigneuriaux*

Cadastre est un titre final.

14. Le cadastre fait et déposé pour un fief ou une seigneurie est un titre final en faveur du seigneur du fief ou de la seigneurie, pour les rentes constituées établies pour représenter les droits seigneuriaux jusqu'au rachat final de ces rentes, sans qu'en aucun cas, soit pour raison de changement dans la personne du seigneur ou du censitaire, soit pour laps de temps ou autres causes, un titre nouvel puisse être requis du détenteur d'un fond grevé de ces rentes. S. R. (1909), 7270.

Censitaire dont le nom n'est pas porté au cadastre, tenu au paiement de la rente.

15. Tout censitaire dont le nom n'a pas été porté au cadastre seigneurial, tel que complété et déposé, est néanmoins tenu au paiement de la rente, au taux qui y aurait été fixé si son nom n'en eût pas été omis, et le seigneur peut en réclamer le paiement après avoir fait faire un procès-verbal d'arpentage de l'immeuble ainsi omis du cadastre. S. R. (1909), 7271.

Censitaire porté au cadastre pour moins qu'il ne possède, tenu au paiement de toute la rente.

16. Tout censitaire dont le nom a été porté au cadastre seigneurial pour une étendue de terre moins considérable que celle qu'il possède réellement est néanmoins tenu au paiement de la rente pour la totalité de l'étendue qu'il possède; le seigneur sur procès-verbal d'arpentage constatant l'étendue de l'immeuble en question, peut réclamer du censitaire le paiement des rentes dues sur cet immeuble, au taux fixé pour la partie qui en a été porté au cadastre. S. R. (1909), 7272.

Censitaire porté au cadastre pour plus qu'il ne possède peut réclamer une diminution de rente.

17. Le censitaire dont le nom a été porté au cadastre pour une étendue de terre plus considérable que celle qu'il possède réellement, peut, sur procès-verbal d'arpentage, constatant l'étendue véritable de l'immeuble en question, réclamer du seigneur une diminution de rente proportionnée à l'étendue ainsi constatée. S. R. (1909), 7273.

Erreurs peuvent être corrigées.

18. Les erreurs d'omission ou de commission, mentionnées dans les articles qui précèdent, peuvent être corrigées ou rectifiées de consentement et par accord entre le seigneur et le censitaire sans qu'il soit besoin de recourir à un arpentage. S. R. (1909), 7274.

Irrégularités n'affectent pas les cadastres.

19. Les cadastres seigneuriaux restent à tous égards, en pleine force et vigueur, nonobstant tout défaut de formalités ou toutes irrégularités qui peuvent s'y trouver. S. R. (1909), 7275.

§ 5.—*De l'opposition à la distribution des deniers provenant du rachat des droits seigneuriaux*

Personnes qui peuvent faire opposition.

20. Tout propriétaire de seigneurie qui a, sous sa mouvance, un autre ou plusieurs fiefs (à moins que la valeur de ses droits n'ait été entrée dans le cadastre de sa seigneurie), et tout créancier hypothécaire sur une seigneurie dont le cadastre a été déposé au greffe de la Cour supérieure, dans le district où cette seigneurie est située en tout ou en partie, ont été tenus, pour la conservation de leurs droits, de former, dans les six mois à compter de la date de l'avis annonçant dans la *Gazette du Canada* le dépôt du cadastre de la seigneurie, une opposition à la distribution des deniers provenant ou pouvant provenir du rachat des droits seigneuriaux dans telle seigneurie.

Dépôt de l'opposition.

Toute telle opposition a dû être déposée au greffe, et a eu son effet à compter de la date de ce dépôt durant trente ans, à moins d'être retirée plus tôt ou rejetée par jugement du tribunal; et, si toute telle opposition est renou-

Frais si l'op-

velée dans moins de trente ans, l'opposant n'a droit de se faire payer que les frais d'une seule opposition. Opposition est renouvelée.

Pendant que cette opposition est en vigueur, tout censitaire qui paye le capital ou les deniers du rachat de la rente constituée au seigneur, le fait à ses risques et sous peine d'être responsable envers l'opposant de toute perte que celui-ci peut avoir subie à raison de ce paiement. S. R. (1909), 7276. Effet de l'opposition.

SECTION II

DES SEIGNEURIES DE LA COURONNE

§ 1.—*De l'interprétation*

21. Dans la présente section, le mot "fonds" comprend toute propriété immobilière de quelque nature que ce soit; le mot "seigneurie" comprend les arrière-fiefs; le mot "censitaire" comprend toute personne possédant un fonds dans la seigneurie, et les mots "droits et redevances seigneuriales" comprennent toutes charges et obligations féodales et seigneuriales que ce soit. S. R. (1909), 7277. Interprétation.

§ 2.—*De la commutation dans les seigneuries de la couronne*

22. En conformité des sections 31 et 32 de l'acte impérial 3 George IV, chapitre 119, intitulé: "Acte pour régler le commerce des provinces du Bas et du Haut Canada et pour d'autres fins relatives auxdites provinces," toute personne qui possède un fonds à titre de cens et rentes dans la censive d'une seigneurie de la couronne ou appartenant aux biens du ci-devant ordre des jésuites, et désire obtenir une décharge des droits seigneuriaux en provenant, et commuer la tenure de ce fonds en celle de franc et commun soccage, peut le faire en s'adressant dans ce but à l'agent qu'il appartient, tel que ci-dessous mentionné, pour la seigneurie dans laquelle le fonds est situé, en relatant, dans la demande qu'il doit faire par écrit, la désignation que comporte ses titres et exhibant ces mêmes titres et requérant la commutation. Droit des censitaires des seigneuries de la couronne de commuer à certaines conditions.

Sur paiement de la somme convenue entre l'agent et le requérant comme prix de la commutation projetée ou constatée tel que ci-dessous prescrit, et sur paiement ou garantie de paiement des droits, charges et redevances seigneuriales dus à la couronne sur le fonds ou dont ce dernier se trouve chargé au profit de la couronne, l'agent est tenu de donner, au nom de la couronne, par acte dûment passé devant notaire, selon la formule 1 de la Paiement du montant convenu ainsi que des redevances.

présente loi, une décharge des droits et redevances seigneuriales dûs à la couronne.

Effet de l'acte de commutation.

L'acte de commutation qui équivaut, à toutes fins quelconques, à une concession du fonds par la couronne, doit déclarer que ce fonds sera commué en vertu de telle décharge pour toujours en la tenure de franc et commun soccage, à compter de la date dudit acte.

Honoraire du notaire qui fait l'acte.

Pour cet acte, le notaire a droit de la part du requérant à un honoraire de quatre dollars et pas davantage. S. R. (1909), 7278.

Prix de commutation.

23. Le prix de commutation des cens et rentes est le capital ou la somme d'argent dont ces cens et rentes seraient l'intérêt annuel, calculé au taux légal.

Soulagement accordé aux censitaires.

Le lieutenant-gouverneur en conseil peut, s'il le juge à propos, accorder aux censitaires, sur commutation de leurs terres, des soulagements égaux à ceux que les censitaires, dans d'autres seigneuries, ont obtenus en vertu de l'acte seigneurial. S. R. (1909), 7279.

Nomination d'agents pour cette fin.

24. Le lieutenant-gouverneur en conseil peut nommer, dans et pour chaque seigneurie qui appartient à la couronne, une personne compétente pour être agent pour les fins de la présente section et lui donner telles instructions qu'il juge convenables, pour sa conduite dans l'accomplissement de ses devoirs. S. R. (1909), 7280.

Leurs honoraires.

25. Pour les devoirs que cet agent remplit relativement à toute telle commutation, il a droit d'exiger de la personne qui demande la commutation un honoraire de six dollars et pas davantage; mais il ne peut agir comme l'agent de cette personne dans aucun cas de commutation. S. R. (1909), 7281.

Extinction des droits seigneuriaux après les formalités observées.

26. Depuis et après l'arrangement volontaire ou le règlement du prix de commutation, et après le paiement ou l'offre de paiement fait à l'agent qu'il appartient, ou depuis et après une déclaration signifiée à l'agent par le censitaire, de son option que le prix de commutation reste chargé et grevé sur le fonds à titre de rente constituée rachetable, et, après l'exécution conformément à cet arrangement, de la décharge par acte devant notaire, tous les droits de cens et rentes, droits de banalité de moulin, droits de rètrait, exhibitions de titres et tous autres droits féodeaux ou seigneuriaux quelconques de la couronne, sur ou touchant le fonds au sujet duquel telle commutation est requise,

deviennent en conséquence commués, déchargés et éteints à perpétuité; et tel fonds est de ce jour et à toujours, tenu et possédé en franc et commun soccage et ne peut être concédé, rétrocédé ou tenu sur aucune tenure féodale ou seigneuriale que ce soit. Tenure du fonds.

Toutefois, rien de ce qui est ci-dessus prescrit ne peut libérer ou décharger le fonds, dont la tenure est ainsi commuée, des droits, privilèges, hypothèques, réserves et réclamations de la couronne, dont il est grevé pour la sureté et le recouvrement du prix de commutation, lequel reste comme charge sur le fonds à titre de rente constituée et rachetable. Privilèges, réservés.

Pour la sûreté et le recouvrement de tel prix de commutation, la couronne possède le même recours légal et les mêmes privilèges et priorité d'hypothèque qu'elle aurait en vertu de tout droit éteint par cette commutation, ou pour la sûreté et le recouvrement de tous arrérages seigneuriaux dus avant la commutation. S. R. (1909), 7282. Recours légal de la couronne.

§ 3.—*Des arrérages dans les seigneuries de la couronne*

27. 1. Il ne peut être reçu ni exigé, pour arrérages de lods et ventes échus et dus à la couronne, avant l'abolition des lods et ventes dans les seigneuries de la couronne, pour chaque mutation de fonds situés dans la cité de Québec, et dont la valeur avec celle des bâtiments y érigés, égalait ou excédait la somme de deux mille dollars, plus du vingtième du prix ou de la considération payé pour chaque vente ou transport. Montant des arrérages des lods et ventes dans la cité de Québec, limité.

2. Pour chaque mutation, avant cette abolition, de fonds situés dans les limites de cette cité, dont la valeur avec les bâtiments y érigés, est de moins de deux mille dollars, il ne peut être exigé plus de la seizième partie du prix ou de la considération payé pour chaque vente ou transport. Montant exigé pour mutation en dedans de la cité.

3. Pour chaque mutation, avant cette abolition, de fonds situés dans une censive de la couronne, en dehors des limites de cette cité, il ne peut être exigé plus de la seizième partie du prix de la considération payé pour chaque vente ou transport de tels fonds. Montant exigé pour mutation en dehors de la cité.

4. Les arrérages des lods et ventes échus et dus à la couronne dans cette cité le ou avant le 27 décembre 1847, suivant les taux ci-dessus mentionnés, n'ont été exigibles d'aucune personne endettée à cet égard personnellement ou hypothécairement, pour une plus grande somme que cent soixante dollars; et aucune personne, ainsi endettée, n'a été obligée de payer autrement que dans l'espace de sept années en sept paiements annuels Réserve quant aux arrérages échus avant le 27 décembre 1847.

égaux; excepté qu'à défaut par toute personne de faire tel paiement, après qu'il est devenu dû, tous les arrérages de lods et ventes dus à ces taux, ou tous les paiements non encore faits, sont devenus immédiatement payables à la couronne par la personne qui les doit. S. R. (1909), 7283.

§ 4.—*Des effets de la commutation*

Lois auxquelles les fonds de commutation sont sujets.

28. Tous biens-fonds dont la tenure a été commuée, en vertu de la présente section ou de toute autre loi, en celle de franc et commun soccage, sont sujets aux lois en force dans la province à l'égard des dispositions testamentaires, de l'octroi et de la vente, de la cession et de l'aliénation, du transport, de la transmission par hérédité des biens-fonds situés dans la province, ainsi que du partage de ces biens-fonds entre les cohéritiers s'il n'en est pas disposé par acte de dernière volonté et testament, ainsi que du douaire et autres droits des femmes mariées sur ces biens-fonds, de la même manière que le sont les biens-fonds possédés en franc-alleu roturier. S. R. (1909), 7284.

Droits de Sa Majesté, sauvegardés.

29. Rien dans la présente section ne peut affecter, en aucune manière, les droits de la couronne, ni des personnes ou corporations, autres que ceux qui y sont spécialement mentionnés, l'intention n'étant pas de changer ou altérer aucune redevance, charge ou obligation quelconque, autres que celles spécifiées ci-dessus et dont le fonds ainsi commué était chargé et grevé avant la commutation. S. R. (1909), 7285.

SECTION III

DE LA LISTE DES MUTATIONS DE PROPRIÉTÉS DANS LES SEIGNEURIES

Liste des mutations.

30. 1. Sur le dépôt d'une certaine somme de deniers par le propriétaire d'un fief ou d'une seigneurie entre les mains du régistrateur de la division d'enregistrement dans les limites de laquelle se trouve le fief ou la seigneurie en tout ou en partie, il est tenu dans chaque bureau, en sus de tout autre livre, une liste exacte des mutations des propriétés qui se font dans chaque fief ou seigneurie.

Contenu de la liste.

2. Cette liste doit contenir la date du contrat ou autre titre de mutation, les noms des parties, celui du notaire et une description sommaire des immeubles aliénés ou transmis.

Accès à cette liste.

3. Le propriétaire du fief ou de la seigneurie a accès à cette liste et peut en prendre ou en faire prendre des

copies ou extraits, pendant la tenue du bureau, sans payer d'honoraires. S. R. (1909), 7286.

SECTION IV

DES VENTES, CESSIONS ET TRANSPORTS DES RENTES CONSTITUÉES REMPLAÇANT LES DROITS SEIGNEURIAUX

Mode, etc., de vendre les rentes représentant les lods et ventes.

31. Peuvent être vendues, cédées et transportées volontairement par simple acte notarié en forme authentique et fait dans la manière ordinaire, les rentes constituées représentant les droits seigneuriaux payables par le trésorier de la province comme représentant des lods et ventes et autres droits casuels, ainsi que celles créées en vertu des cadastres seigneuriaux comme représentant les cens et rentes et autres droits seigneuriaux payables par les propriétaires des fonds qui en sont grevés. S. R. (1909), 7411.

Ventes collectives et partielles représentant des rentes.

32. 1. Les rentes constituées représentant les cens et rentes et autres droits seigneuriaux payables au seigneur ou au créancier de ces rentes par les propriétaires de fonds et les droits de tout tel seigneur ou créancier en ces rentes, soit à titre absolu, pour la vie, pour un nombre d'années ou pour la vie d'un autre, peuvent être vendues, cédées et transportées collectivement ou partiellement.

Vente collective.

La vente collective s'entend de la totalité des rentes pour tout un fief ou toute une seigneurie ou toute une partie de fief ou de seigneurie.

Vente partielle.

La vente partielle s'entend d'une ou d'un plus grand nombre de ces rentes.

Description des terres dans la vente collective.

2. Dans le cas de vente collective, il n'est pas nécessaire d'énumérer ou de décrire les lots de terre particuliers grevés de ces rentes, mais il suffit de décrire, dans l'acte de vente, en termes généraux, par son nom originaire, par le nom qui lui est donné au cadastre, et par ses délimitations générales, le fief ou la seigneurie ou la partie du fief ou de la seigneurie renfermant les fonds sur lesquels ces rentes sont créées.

Description des terres dans la vente partielle.

3. Dans le cas de vente partielle, il suffit de décrire dans l'acte de vente les rentes vendues comme étant les rentes constituées créées sur les lots de terre ou fonds portant le ou les numéros suivants: (*indiquer le ou les numéros*), ou comme étant les rentes constituées créées sur les lots de terre ou fonds portant les numéros suivants dans le cadastre, (*dont il s'agit*), c'est à savoir, sur les lots compris depuis tel ou tel numéro, jusqu'au numéro (*indiquer le dernier numéro de la série*) inclusivement, citant le numéro de référence du cadastre seulement, ou, avec ce numé-

ro, le numéro du terrier ou de la concession spécifiée au cadastre. S. R. (1909), 7412.

Signification des ventes de rentes payables par le trésorier de la province.

33. 1. La signification des ventes, cessions ou transports de rentes constituées payables par le trésorier de la province doit se faire à l'officier du trésor chargé du paiement de ces rentes ou de leur capital, ou à toute personne agissant pour cet officier, par le ministère d'un notaire, d'après le mode usité pour la signification des ventes, cessions et transports en général.

Signification des ventes, etc., dans le cas de vente de toute ou partie d'une seigneurie.

2. Nonobstant les dispositions contraires du Code civil et notamment celles des articles 1571, 1572 et 2127, la signification des ventes, cessions ou transports de rentes constituées représentant les cens et rentes et autres droits seigneuriaux de tout ou partie d'un fief ou d'une seigneurie, peut être faite aux débiteurs de ces rentes et aux propriétaires des fonds qui en sont grevés par la lecture de la vente, de la cession ou du transport, faite par un notaire à la porte de l'église de la paroisse dans l'étendue de laquelle sont situés les fonds grevés de ces rentes, pendant deux dimanches consécutifs, à l'issue du service divin du matin.

Acte de signification.

Le notaire doit dresser acte de la signification et en garder minute. S. R. (1909), 7413.

Son enregistrement.

34. L'acte de signification doit être enregistré au bureau de la division d'enregistrement où sont situés les fonds grevés de ces rentes. S. R. (1909), 7414.

SECTION V

DE LA SAISIE DES RENTES CONSTITUÉES SEIGNEURIALES

Saisies des rentes.

35. Les rentes constituées représentant les droits seigneuriaux, payables par les propriétaires de fonds comme représentant les cens et rentes ou payables par le trésorier de la province comme représentant les lods et ventes et autres droits casuels, peuvent être saisies et vendues par le shérif en vertu d'une exécution, de la même manière que les autres rentes constituées. S. R. (1909), 7544.

Vente des droits aux rentes.

36. Les droits de toute partie à la rente constituée peuvent être saisis, vendus et transférés, qu'elle soit à titre absolu, ou pour la vie, ou pour un nombre d'années, ou pour la vie d'un autre, mais les droits de telle partie en telle rente doivent être vendus en entier et non par fractoins. S. R. (1909), 7545.

Signification du procès-verbal de saisie.

37. Dans le cas de saisie entre les mains du trésorier de la province, un procès-verbal de la saisie lui est signifié à son bureau, et après cette signification, et tant que la saisie reste en vigueur, il ne doit en faire le paiement à aucune partie que ce soit.

Signification de copie de l'acte de vente.

Lorsqu'une semblable rente est vendue par exécution, une copie authentique de l'acte de vente consenti par le shérif doit être signifiée au trésorier de la province à son bureau, et ce dernier doit alors substituer l'acquéreur aux lieu et place de la partie sur laquelle la rente a été saisie. S. R. (1909), 7546.

Mode de saisir et vendre les rentes constituées représentant les droits seigneuriaux.

38. Les rentes constituées représentant les cens et rentes ou les droits en ces rentes, peuvent être saisies et vendues par le shérif sur exécution, soit collectivement (c'est-à-dire la totalité de ces rentes ou droits et sans qu'il soit nécessaire d'énumérer ou de décrire les lots particuliers ou rentes y compris), en décrivant en termes généraux sous son nom originaire et par des délimitations générales, la seigneurie ou les parties de la seigneurie où sont situés les fonds sur lesquels sont créées ces rentes constituées, soit comme les rentes constituées, créées sur des lots ou fonds portant les numéros suivants dans le cadastre de la seigneurie, et mentionnés dans le bref comme les lots depuis le numéro (*indiquer le numéro*) dans le cadastre, jusqu'au numéro (*indiquer le dernier numéro de la série*), inclusivement. S. R. (1909), 7547.

Signification de l'acte de vente par le shérif.

39. L'acte de vente, par le shérif, de rentes constitués représentant les cens et rentes, ou de droits en ces rentes doit être notifié, en en faisant faire lecture publique par un huissier de la Cour supérieure à la porte de l'église de la paroisse où sont situés les fonds sur lesquels ces rentes constituées sont payables, immédiatement après l'office divin du matin, l'un des dimanches pendant les quatre semaines après la vente du shérif: cette lecture est considérée comme un avis suffisant de cette vente donné à tous les propriétaires de ces fonds. S. R. (1909), 7548.

Transfert des droits de créanciers seulement.

40. Cette vente n'a l'effet de transporter que les droits du créancier de ces rentes constituées; le rachat de ces rentes effectué antérieurement, ou le droit d'opérer ce rachat, n'est pas affecté par la vente, mais ce droit peut être exercé comme si la vente n'eût pas eu lieu. S. R. (1909), 7549.

Espèces de rentes qui

41. Les rentes constituées payables par le trésorier de la province et les rentes constituées représentant les

peuvent être saisies ensemble.

cens et rentes doivent être comprises dans le même bref, si la saisie en est faite en même temps et par la même partie, ou dans des brefs distincts si elles sont saisies à différentes époques ou par différentes parties. S. R. (1909), 7550.

Droit à une seigneurie peut être exécuté sur ces rentes.

42. 1. Tout droit à une seigneurie ou sur une seigneurie, qui a surgi avant ou après l'avis publié dans la *Gazette du Canada* du dépôt du cadastre de telle seigneurie, a continué d'exister et peut être exercé sur les rentes constituées représentant les droits seigneuriaux dans telle seigneurie, et peut être exécuté sur ces rentes.

Ce qu'il comprend si le droit a trait à une partie divise ou indivise.

2. Si ce droit a trait à une partie définie et divise de la seigneurie, il comprend et affecte les rentes constituées payables sur les fonds compris dans cette partie; mais s'il se rapporte à une partie indivise de la seigneurie, il comprend alors et affecte la partie indivise de telles rentes, ainsi que des rentes constituées payables par le trésorier de la province, proportionnellement à cette partie indivise de la seigneurie.

Description des rentes dans des poursuites.

3. Dans toute action ou poursuite pour l'exercice de ces droits, les rentes constituées peuvent être décrites en la manière ci-dessus indiquée pour la saisie, et sans qu'il soit nécessaire d'énumérer ou de décrire les lots particuliers ou rentes y compris.

Publication du jugement qui constate ces droits.

4. Tout jugement constatant ces droits doit être publié aux portes des églises des paroisses où est située la seigneurie ou la partie divise de la seigneurie, par un huissier de la Cour supérieure, immédiatement après l'office divin du matin, l'un des dimanches pendant les quatre semaines après le prononcé du jugement, ou, s'il en est appelé, après que le jugement en appel qui le confirme a été rendu; une copie en est signifiée au trésorier de la province à son bureau.

Effet de la publication.

5. Ce jugement est alors considéré comme ayant été suffisamment notifié aux propriétaires des fonds sur lesquels ces rentes constituées sont payables et au trésorier de la province, lesquels doivent se conduire en conséquence; mais nul semblable jugement ne peut effecter le rachat antérieurement effectué d'aucune de ces rentes constituées ni le droit d'en opérer le rachat, ni avoir l'effet de transporter plus que les droits du créancier de ces rentes constituées. S. R. (1909), 7551.

SECTION VI

DES ACTIONS POUR RENTES CONSTITUÉES REPRÉSENTANT LES DROITS SEIGNEURIAUX

Mode d'intenter des ac-

43. Les actions pour le recouvrement de rentes constituées représentant les droits seigneuriaux ou pour arré-

rages de ces rentes, peuvent être intentées par le propriétaire du capital de la rente, comme actions purement personnelles contre le détenteur du fonds grevé. — Actions et par qui elles peuvent l'être.

Ces actions peuvent être intentées soit devant la Cour de circuit ou devant la Cour de magistrat, et quant à la juridiction du tribunal, la procédure et les frais, elles sont, nonobstant les articles 55, 56 et 1132 du Code de procédure civile, considérées comme des actions purement personnelles et comme n'ayant aucun rapport à des terres ou héritages, rentes annuelles, ou autres matières qui peuvent affecter les droits futurs. — Tribunal où elles peuvent être intentées.

Quel que soit le montant du jugement obtenu dans ces actions, il peut, à défaut de meubles suffisants, être exécuté après un an de délai par la saisie et la vente de l'immeuble grevé. S. R. (1909), 7572; 10 Geo. V, c. 79, s. 16. — Exécution des jugements.

44. Sauf le cas où une saisie-arrêt avant jugement pourrait être émise, une action pour le recouvrement de rentes constituées représentant les droits seigneuriaux ou pour arrérages de ces rentes, ne peut être intentée qu'après un avis de quinze jours donné au censitaire par lettre recommandée. Le certificat d'enregistrement du maître de poste de la localité d'où la lettre a été expédiée fait preuve, à première vue, de l'expédition de cet avis dont les frais de port sont à la charge du débiteur en défaut. S. R. (1909), 7572*a*; 1 Geo. V (1910), c. 35, s. 1. — Avis qui doit précéder la poursuite.

SECTION VII

DE LA REPRISE DES TERRES ABANDONNÉES DANS LES SEIGNEURIES

45. Dans la présente section, le mot "seigneur" comprend tout propriétaire de droits seigneuriaux ou de rentes constituées qui les représentent, et le mot "censitaire" toute personne qui est chargée du paiement de ces droits ou rentes. S. R. (1909), 7560. — Interprétation.

46. Rien dans la présente section ne doit préjudicier aux droits des personnes qui ont des réclamations hypothécaires sur la terre; mais l'exercice de ces droits est sujet au paiement par telles personnes de tous les arrérages de droits seigneuriaux alors dus. — Droits des créanciers hypothécaires, sauvegardés.

Le privilège du seigneur s'étend aux dix années de ces arrérages de droits seigneuriaux et de rentes constituées nonobstant l'article 2012 du Code civil, mais le seigneur ne peut recouvrer dix années d'arrérages que dans le cas prévu en l'article 47. S. R. (1909,) 7409. — Prescription des privilèges du seigneur.

Recouvrement par un seigneur de la possession de son bien.

47. Si une terre assujettie au paiement des droits seigneuriaux ou des rentes constituées qui les représentent, a été abandonnée et est restée abandonnée pendant vingt ans ou plus, et que les arrérages de droits seigneuriaux ou rentes pour plus de dix ans n'ont pas été payés, le seigneur peut reprendre cette terre et entrer en possesion d'icelle en procédant d'une manière sommaire tel qu'il est ci-après déterminé.

Interprétation.

Est censé avoir abandonné sa terre tout censitaire qui a cessé de l'occuper par lui-même ou par sa famille et qui n'a pas transporté ses droits à la terre, ou qui, les ayant transportés, n'a pas donné au seigneur avis par écrit du transport.

La possession actuelle de la terre, par quelque personne que ce soit, n'est pas considérée comme équivalant à un avis de ce transport. S. R. (1909), 7408, 7410, 7561.

Avis à cet effet aux censitaires.

48. Un avis est signifié au censitaire, énonçant qu'aux temps et lieu y mentionnés, le seigneur s'adressera à un juge de la Cour supérieure afin de reprendre la terre, ou, si le censitaire ne peut être trouvé dans le district, il peut être assigné à comparaître en la manière prescrite par l'article 136 du Code de procédure civile.

Signification à l'occupant.

L'avis est également signifié à toute personne qui est alors l'occupant de la terre. S. R. (1909), 7562.

Délai de signification.

49. Le délai qui s'écoule entre la signification de l'avis et le jour auquel la demande est faite, est celui qui est déterminé, pour les causes ordinaires, par l'article 149 du Code de procédure civile, ou celui qui est accordé par l'article 136, selon le cas. S. R. (1909), 7563.

Requête en nullité de la concession.

50. Après que l'avis a été ainsi donné, et aux temps et lieu y mentionnés, le seigneur peut, par une requête énonçant les faits de la cause, et appuyée d'un affidavit et de la production de la preuve écrite de la concession s'il a cette preuve en sa possession, demander à un juge de la Cour supérieure que la concession soit déclarée nulle, et qu'il soit mis en possession de la terre. S. R. (1909), 7564.

Mode de contestation de la requête.

51. Il n'est permis de contester cette requête que par des contre-affidavits produits dans les trois jours qui suivent sa présentation. S. R. (1909), 7565.

Jugement sur la requête.

52. A l'expiration du délai de trois jours, le juge peut, à sa discrétion, rejeter la requête ou rendre un jugement déclarant la concession nulle, et ordonnant la radiation de son enregistrement, et autorisant le re-

quérant à prendre possession de la terre sans préjudice, dans tous les cas, des droits des créanciers hypothécaires, s'ils payent les droits seigneuriaux ou rentes jusqu'à concurrence de dix années auxquelles le privilège du seigneur s'étend.

Réserve. si la requête est rejetée.

Dans le cas où tel jugement rejette la requête, il ne préjudicie pas au seigneur dans le droit qu'il peut avoir par la loi d'intenter une action en la manière ordinaire. S. R. (1909), 7566.

Empêchement à la reddition d'un jugement.

53. Il n'est pas rendu de jugement si le censitaire, ou toute personne agissant par lui ou relevant de lui, paye, soit au seigneur ou au bureau du protonotaire de la Cour supérieure, les droits seigneuriaux ou rentes dus sur la terre, et tous les frais encourus par le seigneur. S. R. (1909), 7567.

Mode d'exécution du jugement.

54. Si le seigneur est empêché par quelque personne de prendre possession de la terre sous l'autorité du jugement, il peut demander au protonotaire de la Cour supérieure, et en obtenir un bref de possession pour expulser cette personne, et le mettre en possession, et l'article 611 du Code de procédure civile s'applique à ce bref. S.R. (1909), 7568.

Appel du jugement par le censitaire. Dispositions applicables.

55. Le censitaire peut appeler du jugement à la Cour du banc du roi, siégeant en appel avec trois juges, et les articles 1209 à 1248 du Code de procédure civile s'appliquent à cet appel. S. R. (1959), 7569; 10 Geo. V, c. 79, s. 58.

Ce qu'il advient des documents.

56. Tous documents formant partie des procédures adoptées en vertu de la présente section forment partie des archives de la Cour supérieure. S. R. (1909), 7570.

Frais de procédures et honoraires des avocats.

57. Les frais dans les procédures prises en vertu de la présente section sont les mêmes que ceux alloués par le tarif de la Cour de circuit pour les causes au-dessus de cent do lars; les honoraires des avocats doivent être, s'il n'y a pas de contestation, les mêmes que ceux accordés par ce tarif, dans le cas où la cause est réglée après l'inscription pour enquête et audition, mais avant la clôture de l'enquête, et, s'il y a contestation, les mêmes que ceux accordés dans le cas où la cause est réglée après la production d'un plaidoyer au fond, mais avant l'inscription sur le rôle des enquêtes et auditions. S. R. (1909), 7571.

Caughnawaga Agency.

MEMORANDUM: -

By direction of Sir John Johnson, in 1824, the Caughnawaga reserve was placed under the management of the officials of the Montreal Superintendency, who received no extra remuneration, thus saving the ten per cent commission which had been paid for the collection and distribution of the seigniorial rents of Sault St Louis.

On the 8th of June 1837 Mr. Joseph Baby was appointed Agent for the collection of these rents on a ten per cent commission.

Mr. E. N. de Lorimier, who had been appointed Interpreter at Caughnawaga by Sir John Colborne in 1839, succeeded Joseph Baby as Agent for the collection of rents on the 2nd of June 1842. For this he received the same commission.

When a reduction of staff was made in the "Establishment in Canada East" on the 30th of June 1845, the office of Interpreter at Caughnawaga was abolished, and E. N. de Lorimier was appointed Interpreter and Clerk, to accompany the Visiting Superintendent (Col. D. C. Napier) with head quarters at Montreal.

On the superannuation of Col. Napier, de Lorimier succeeded him as Superintendent of the Montreal District (18th of March 1858) and, when this office was abolished in 1868, he was appointed Indian Agent at Caughnawaga. He was really the first Indian Agent at Caughnawaga and the office has been continued by his successors to this day.

G. M. Matheson

In Charge of Records.

4th March 1927.

Note - Gage's judgment of 1762 directed that the rents be collected & disbursed by a Govt official.

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for the statutory increases and the other of $3,000 for medical attendance. We find that we are having considerable difficulty in satisfying the communities near these reserves, and we have to spend more money from time to time for medical attention. As my hon. friend will notice in running down the list, there are several increases which are largely for medical attention and for other things of that kind.

Item agreed to.

Indians—Prince Edward Island, $0,035.

Mr. GUTHRIE: Is this increase due to the same reason?

Mr. STEWART (Edmonton): In one case this is for relief and seed grain and in the other for medical attention, $300 additional.

Item agreed to.

Indians—Ontario and Quebec, $274,003.02.

Mr. ROSS (Kingston): There is a decrease of $12,745 here; the Indians must be more healthy in Ontario and Quebec.

Mr. STEWART (Edmonton): We are asking for an additional amount in the supplementary estimates.

Mr. GUTHRIE: This decrease of $12,745 is more apparent than real, then?

Mr. STEWART (Edmonton): Yes. We have an increase of about $19,000 for medical attention and hospitals in Ontario and an increase of $26,725 on repairs to roads, bridges, and drainage. We have a considerable increase for medical attention, but as frequently happens when the provincial highways are being built through the reserves, we have to spend a considerable amount of money to supplement the provincial vote, which is not so high this year.

Mr. PETTIT: How is that vote divided between Ontario and Quebec?

Mr. STEWART (Edmonton): There is $183,358 devoted to Ontario and $91,645 to Quebec.

Mr. ROSS (Kingston): How much is to be expended on the reservation at Deseronto?

Mr. STEWART (Edmonton): I do not know that I can give that to my hon. friend. We have not the totals for the individual reserves.

Mr. McGIBBON: If the minister has the information available, will he tell me how much money the government hold in trust for the Indians in Rama?

Mr. STEWART (Edmonton): We have [illegible] the exact figure [illegible] neighbourhood of about $100,000 of band funds.

Mr. McGIBBON: Is that all the money?

Mr. STEWART (Edmonton): I did not know we would be asked for that, but I will get it for my hon. friend.

Item agreed to.

Indians—Manitoba, Saskatchewan, Alberta and Northwest Territories, $775,057.

Mr. ADSHEAD: Would the minister be good enough to separate these provinces?

Mr. STEWART (Edmonton): Manitoba, $192,578; Saskatchewan $280,828; Alberta $204,640; Northwest Territories $97,611.

Item agreed to.

Indians—British Columbia, $350,970.

Mr. GUTHRIE: I understand from the report that went through the other day that the $100,000 recommended by that committee is in addition to that amount?

Mr. STEWART (Edmonton): Yes, that is true. The recommendation in the report is that the government should spend on increased services for hospitals, education, and the like, an additional $100,000, which it has been suggested, will appear next year as segregated from the regular vote of the department.

Mr. GUTHRIE: That $100,000 is out of the money that belongs to the Indian band themselves?

Mr. STEWART (Edmonton): No, but it will be voted by parliament.

Item agreed to.

Indians—general, $231,500.

Mr. GUTHRIE: How is this money spent?

Mr. STEWART (Edmonton): The details are as follows:

Payments to Indians surrendering their lands under provisions of section 89 of the Indian Act, which will afterwards be repaid from the avails of the land	$ 50,000
Relief to destitute Indians and Eskimo in remote districts	100,000
To prevent the spread of tuberculosis	50,000
Printing and stationery	5,000
Grant to assist Indian Trust Fund Account 310 suppression of liquor	3,000
Surveys, Ontario, Quebec and Maritime provinces	6,000
To provide for expenses in connection with epidemic of smallpox and other diseases	10,000
To provide an amount to pay agents' fees in connection with registration of births, deaths and marriages	500
General legal expenses	7,000

Mr. FRASER: Are there any amounts for survey in British Columbia under this vote?

Mr. STEWART (Edmonton): A considerable amount of survey work is done in British Columbia in connection with the laying out and surveying of reserves.

Mr. FRASER: Does that come under this vote?

Mr. STEWART (Edmonton): No, it appears in the British Columbia vote.

Mr. McGIBBON: Is there any way in which an Indian may become enfranchised? I am asked that question by Indians very often. They would like to become fellow British subjects, and to be able to exercise the franchise.

Mr. STEWART (Edmonton): Generally the difficulty about the enfranchisement of an Indian is that when he leaves the reserve he is regarded as a white man. He takes his share of the band funds and is enfranchised; he is no longer a resident of the reserve. There is another system whereby he can be enfranchised in an allotted portion of the reserve, but that is very seldom resorted to.

Mr. BENNETT: By order in council.

Mr. STEWART (Edmonton): Yes.

Mr. McGIBBON: The band as a whole cannot be enfranchised?

Mr. STEWART (Edmonton): They can be as individuals.

Mr. McGIBBON: And still retain their property rights?

Mr. STEWART (Edmonton): Yes, if they so desire, and have their allotment on the reserve.

Mr. GUTHRIE: But they cannot vote.

Mr. EDWARDS (Frontenac): How many acres of land are there in the Caughnawaga reserve?

Mr. STEWART (Edmonton): I am told there are approximately 25,000 acres.

Mr. EDWARDS (Frontenac): Are any of the lands on that reserve leased, occupied, or operated by white men?

Mr. STEWART (Edmonton): Yes.

Mr. EDWARDS (Frontenac): To whom are the rents paid?

Mr. STEWART (Edmonton): They are paid in through the Indian agent to the band fund in all [illegible]

Mr. EDWARDS (Frontenac): Are any of the lands on that reserve occupied by members of this House?

Mr. STEWART (Edmonton): I am not aware of it, if there are.

Mr. EDWARDS (Frontenac): Does a gentleman by the name of Lanctot occupy any of these lands?

Mr. STEWART (Edmonton): The member? Not that I am aware of.

Mr. EDWARDS (Frontenac): I do not know that he is a member. My information was that his name was spelt the same way Roch Lanctot.

Mr. STEWART (Edmonton): We would be glad to get that information. There are a number of leases, but I have no knowledge of that name.

Mr. EDWARDS (Frontenac): I wish to ask another question, and the minister can get this information probably at his leisure. My information is—I am not giving it as correct; I am trying to find out whether or not it is correct, and I am sure the minister will wish to find out also—that parts of the land on this reserve are occupied by or leased to white men. My information, whether correct or not, is that some of these white men who have occupied these lands have for years absolutely refused to pay one cent of rent. They are years in arrears for the rental, and absolutely refuse to pay a cent. That is something which I think ought to be looked into. And since I have mentioned a name, which happens to be the same as that of a member of this House, perhaps the minister would also look into the matter and find out whether that particular gentleman, or a man of that name, does lease any land from the department, whether he is years in arrears for rent, and whether he has absolutely refused for years to pay one cent of rent.

Mr. STEWART (Edmonton): I shall be very glad to look that up.

Mr. BENNETT: I was struck with the statement made in committee the other day of the very rapid decrease in the number of Indians in British Columbia, and it led me to make certain investigations with respect to the conditions in my own province. I cannot think that the medical service given to the Indians is all that it should be, and I strongly urge the desirability of having better medical service for the Indians in Alberta. They have very valuable property which they occupy, they have substantial funds [illegible]

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be disappearing as rapidly as they are. It is not, to say the least, creditable to us that so many of them have passed away so quickly, and I refer particularly to the children and to the younger men and women. I think that a better nursing service could be established in some of the reserves in Alberta, and more frequent medical attention given. The Indian is not always amenable to our methods of medical care, but I should like to ask the minister if he would have the matter looked into, and see what can be done to improve conditions. On the Sarcee reserve there has been very considerable improvement. I will not go into the details to-night, but I cannot urge too strongly the desirability of more careful supervision and better attention being given to the Indians than they now receive.

Mr. STEWART (Edmonton): I may say for the information of the committee that in my short connection with the Indian Department I have discovered that there is a great deal of tuberculosis amongst the Indians, and we have adopted inspectional work by nurses and strengthened the medical staff. I think the work being done amongst the children will have a very beneficial effect; but undoubtedly if we are going to stamp out the plague of tuberculosis, it will require a great deal more money than we are spending on that work at the present time. However, I hope to get the service strengthened, and see if it is not possible to stamp out, in very large degree, this plague amongst the Indians of Canada.

Mr. McGIBBON: Would the minister be good enough to tell me what steps are taken to cope with this disease when it breaks out? Has the medical man authority to send them to a sanatorium?

Mr. STEWART (Edmonton): Yes.

Mr. EDWARDS (Frontenac): In regard to the reserve I mentioned a moment ago, perhaps the minister can tell us whether or not there was some trouble down there over the obstruction of a right of way which resulted in the shooting of one of the Indians?

Mr. STEWART (Edmonton): Yes, there has been a rather serious dispute, but the matter is now in the court; I do not know what the outcome will be. It threatened to be rather serious at one time.

Item agreed to.

Indian education, including the construction of school buildings, $1,990,080.

Mr. MILLAR: Is this for establishing new schools or renewing old ones, and where are they located?

Mr. STEWART (Edmonton): It includes both. We have constructed quite a number of new schools in the past five years, and have purchased some which were in a good state of repair from the church organizations. What we are trying to do in the matter of Indian education is to provide the plant for the residential schools, and the various churches are carrying on the educational work under a system of grants.

Mr. LANCTOT: I have been informed that in my absence the hon. member for Frontenac-Addington stated that I had leased lands from the Indians. Is that a fact?

Mr. EDWARDS (Frontenac): I did not say it was a fact. I was asking whether it was a fact or not. I am glad the hon. gentleman is here; he can say whether it is a fact or not.

Mr. LANCTOT: I may say to my hon. friend that I have enough land in my parish not to want to lease land from the Indians at the present time.

Mr. EDWARDS (Frontenac): I have no doubt that that is correct, but, of course, it does not answer the question whether the hon. gentleman has leased land from the Indians. He says that he does not now, but he did not say that he had not leased land from them in the past. Perhaps he might make the matter quite clear.

Mr. LANCTOT: I have never leased any land in the Caughnawaga reserve. I am sixty-one, and neither I nor my father before me have ever leased land in the Caughnawaga reserve.

Mr. EDWARDS (Frontenac): I did not make the statement that the hon. gentleman had, but I said the name given to me was exactly the same as the hon. gentleman's, and I asked the minister whether it was the member of the House. I am very glad to have the hon. gentleman's statement—

Mr. LANCTOT: It may have been some other Lanctot, no relation of mine, because none of my relations has leased land from the Indians. If there is a man by the name of Lanctot leasing land in the reserve at the present time, and I do not think there is, I cannot say who he is.

Mr. SMOKE: Is any part of the cost of construction of new school buildings on the Six Nations reserve at Tuscarora borne out of the funds held in trust for the Indians, or is the cost met out of moneys voted by parliament?

Mr. STEWART (Edmonton): They were day schools built by the funds of the band themselves on the Six Nations reserve.

Mr. SMOKE: No portion of this vote is for that purpose?

Mr. STEWART (Edmonton): No.

Mr. SMOKE: Why should not the Six Nations Indians participate in the funds this government expends in building schools for the Indians? Why are they excepted from the benefit of this vote?

Mr. STEWART (Edmonton): In a great many instances where there are day schools, they are erected by the religious organizations who are carrying on the work, sometimes out of the funds of the band, frequently assisted by the department. In the case under discussion the schools were constructed from the band funds of the Six Nations, but the usual assistance is given to the teachers such as is given to any other Indian school in Canada. But the residential schools are all constructed and paid for by the government.

Mr. SMOKE: I think there is some discrimination being shown in this matter against the Six Nations Indians. The fund which is in the hands of the government in trust for the Six Nations Indians was derived from the sale of Indian lands belonging to the Six Nations Indians. I do not think it is fair to the Six Nations Indians that the whole cost of their educational facilities should be borne by the band, when other Indians throughout the Dominion receive grants for education.

Mr. STEWART (Edmonton): There is really no difference between the system in vogue on the Six Nations reserve and that prevailing on many other of the reserves throughout Canada. In addition to that, the institution in Brantford called the Mohawk institute is maintained altogether by the government for the benefit of the Indians.

Mr. SMOKE: But the Mohawk institute is not on the reserve.

Mr. STEWART (Edmonton): No, and many of these residential schools are not on the reserve they are serving. The children are brought from the reserve to the school.

Mr. SMOKE: As I understand it, the department is taking care of the education of all Indians throughout the country except the Six Nations band. They happen to have been fortunate enough in the early days because of the part they took in the revolutionary war, to have had a certain section of land in western Ontario set aside for their use. Certain portions of that land were afterwards surrendered to the government in consideration of a certain sum of money. That money has been held in trust by the government for the Six Nations, except to the extent that it has been encroached upon by expenses paid out of it, and I say the Indians of the Six Nations reserve are entitled to be educated at the cost of the general public of Canada just as much as the Indians in any other portion of the Dominion.

Mr. STEWART (Edmonton): I am informed that they have never made any demand other than for the grant that is paid them. This is one of the oldest reserves, and perhaps one of the most highly civilized, and certainly one of the best cultivated reserves in Canada, and they have been pretty well taking care of themselves not only in an educational way but in an agricultural way as well. I think it is well that they should be encouraged to do so. I hope the day will come when all the Indians will be in a position to take care of themselves. As the days go by, and the effects of education are felt among the Indians there is no reason in the world why they should not take their place along with the white man and bear the same burden.

Mr. SMOKE: If, as the minister says, no complaint has been lodged hitherto, I am lodging a complaint now on behalf of the Six Nations. It is time that there was a complaint lodged. These funds have been set aside for the benefit of the Indians, and the money belongs to the Six Nations; it does not belong to this Dominion. The people on the reserve in the township of Tuscarora are paying, as I understand from the minister, the whole cost of their local education, the Mohawk institute at Brantford being maintained by a New England society formed in the old country many years ago. The Mohawk institute is not on the reserve, and I do not know to what extent the government assists in that, nor am I concerned with that at present, but I do say that if the Indians in other parts of the Dominion are educated entirely at the expense of this country the Indians of the Six Nations should to some extent at least derive assistance from the government.

Mr. EDWARDS (Frontenac): Has any application been made to the government from the Caughnawaga reserve for the building of a Protestant school in that reserve, and if so, what action, if any, has been taken?

Caughnawaga - Local Disputes, 1930

April 26, 1929.

Memorandum.

Dr. Scott.

Pursuant to departmental instructions I left Ottawa for Caughnawaga on the 18th instant to investigate the question of the occupation of sites on the wharf there by certain Indians of the band, who, for the past five years, have been operating combined lunch counters and curio shops under permits from the Marine and Fisheries Department, and who are now asking an extension of the privilege from this department, which has taken over the wharf following a ruling of the Department of Justice, dated the 16th of April,1928.

I spent the night in Montreal and went down to the reserve on the following morning, Friday the 19th.

I went by the ferry of the Industries Generales, Limited, via Lachine, and found the ferry service running on regular schedule, and apparently very well conducted.

Upon arrival at the reserve I first made a careful examination of the buildings on the wharf and approach thereto. I append hereto a very rough sketch showing the present position and occupant of each of these buildings, of which there are six in all, not including the G.T.R.shed which is back towards the highway. The largest of these buildings is that of L.E.Beauvais. It is on the east side of the wharf adjacent to what is known as Meloches' Wharf, and has a frontage of about forty feet by depth of about thirty feet. The next largest is that of Louis A.Corutte, about thirty feet by about fifteen feet depth. The other buildings, those of Michel Curotte, wharfinger, Louis Curotte, Michael Steacy and Derome (deceased), are much smaller, being merely refreshment booths.

Beauvais has a place that would be creditable to any small town. It is neat, clean and well kept. This year he is opening room a dining room with tables and chairs and will operate a regular restaurant. He has also installed a water closet and rest-room which will be open for the convenience of the travelling publis. He has a well and does not use the polluted river water. He is a young man about thirty years of age, the son of a former Chief Councillor. He is neat and well dressed in appearance and seems to be of an unusually enterprising type, as is shown by the fact that in addition to his restaurant and curio shop on the wharf, he acts as an

electrical contractor for the installation of electric lights for houses on the reserve, and also employs some twenty women of the band making Indian wares which he disposes of to shops in Montreal. His place on the wharf represents a capital investment of some five thousand dollars, the net profits being about four thousand dollars per season, according to his own statement supported by the Indian Agent, Mr. Letourneau. Louis A. Curette has an investment of about two thousand dollars and his profits are about half those of Beauvais. The other booths are worth only a few hundred dollars each, and the volume of business transacted by them is proportionately less.

Only three of the above mentioned occupants have been paying rental to the Department of Marine and Fisheries;L.E.Beauvais, $40.00,- Louis A.Curette, $40.00,- and Michel Curette, $20.00,- per annum.

After inspecting these premises I called at the Hospital, the Mission and the Convent. These in charge of these institutions spoke well of the occupants on the wharf, particularly Beauvais. These good reports were confirmed by Agent Letourneau and Constable Jocks.I was unable on the reserve to find any complaints with regard to these people and the manner in which they conducted their business, other than the affair of the slot machines last year which has been disposed of by the provincial authorities.

I made particular inquiry as to the sale of beer and other intoxicants, and I am satisfied that nothing of the kind occurs at any of the establishments on the wharf. On the other hand I am informed that the consumption and sale of intoxicants is rife in the village, a condition that is scarcely possible to control, owing to the proximity to Montreal.

On the afternoon of Friday, the 19th, I attended a meeting of the Council of the band, at which all councillors, the Indian Agent and the Constable were present. A crowd of about a hundred Indians were also in attendance. At the outset I must say that the proceedings of this Council are a very poor commentary upon the operation of our Advancement Act, and certainly fail to indicate that it is fulfilling its purpose, namely, to train the Indians in self government and the responsibilities of citizenship. The Council is dominated by one member, Mr. Peter Delisle, the Secretary. The meeting really narrowed down to a two-hour speech by Mr. Delisle, with occasional interruptions by myself, there being practically no comments from the councillors, most of whom are unable or pretend to be unable to speak English. The Agent remained silent throughout. I think that he should assert his authority a little more. The substance of Mr. Delisle's remarks was, in short, that the occupants of the wharf had no right under the Indian Act and the common By-law of the band to be there, and

consequently should be removed. A resolution is supposed to have been passed at this meeting, requiring the aforesaid occupants to vacate the premises within thirty days. I say supposed to have been passed, because no motion was proposed as it has apparently been the procedure for Mr. Delisle to state the views of the Council at the meetings and then draw up the resolutions at a later date and forward them to the department. I asked the Council if they had any complaints against the occupants and was informed that they had none other than that the Council had been ignored. When I interviewed Mr. Williams, the Chief Councillor, on the subject in Ottawa a week before the meeting, he intimated that it was the wish of the Council that there should be no establishments on the wharf, new or in the future. As a matter of fact I am quite sure that if the present occupants were removed, it will not be long before others take their place, as the situation presents too great an opportunity for financial profit to be neglected. Indeed Mr. Delisle let the cat out of the bag to me by saying,- "Let us clear these people off, and have a new start", and added in a half-jocular manner, "I myself might like to be in business there". While he may not wish his remark to be taken seriously, it is my opinion that he is quite in earnest about it. I think that he means to place friends of his own on the wharf if the present occupants are forced to vacate.

I asked the Councillors if they agreed with what Mr. Delisle said, and they all nodded, with the exception of Councillor Louis Jacobs, who thought that the present occupants should be given thirty days in which to make over to the Council.

I explained to the Council that the department had an open mind in the matter, and only desired to do wht seemed best and reasonable in the circumstances. I added that I had simply come to investigate the facts, that I had no authority to make any decision, and that I would refer everything that transpired fully to the department. I took it upon myself, however, to point out to the Council that aside from the legal points at issue, some consideration was due morally to the present occupants, as they had accepted the permits from the Department of Marine and Fisheries in good faith, and had developed a profitable business and provided themselves with a legitimate means of livelihood, of which it would be very harsh to deprive them without some strong reason. In reply to a question by Mr. Delisle, I stated that the occupants had acquired no title to the land. I had expected this question to be asked, and consequently had taken advice on the point from the departmental solicitor before leaving Ottawa.

I said that if at all possible it would be well if some reasonable and amicable understanding could be reached between the Council and the occupants. It soon became apparent to me, however, that any effort to effect a compromise between the Council and the occupants was a waste of breath, owing to the determined attitude of Mr. Delisle. It was further apparent that the hostility of the Council was chiefly directed against Mr. Beauvais. Mr. Beauvais is undoubtedly the most progressive Indian in a business way on the reserve. As might be expected in view of the Indian, and particularly the Iroquois temperament, he has become an object of envy. He on his part is inclined to be intolerant of the Council, which he regards as backward, and has had no hesitancy in giving expression to his feelings which the Council keenly resents. The discussion with regard to the occupants on the wharf closed with the statement by Mr. Delisle, concurred in by the other Councillors, that a resolution would be forwarded to the department to require the occupants to remove within thirty days.

The Council then requested me to advise the department that in its opinion the band should have a voice in the disposition of the ferry privileges, and added that the Council is opposed to anexclusive permit. The Council considers that the Department of Marine and Fisheries should refund wharf rentals received under a pretended lease improperly given in view of the ruling of the Department of Justice above referred to, which has only benefited a few interested parties. (As you are aware the Industries Generales Limitee has paid the Department of Marine and Fisheries $600.00 per annum for a period of years for the ferry privilege. This applies also to the rentals received from Beauvais, Louis A. Curette and Michel Curette for their privileges on the wharf). A resolution on this subject is to follow.

I informed the Council that I would bring these representations to the attention of the department, and in reply to a question by Mr. Delisle stated that no permit had as yet been issued. Since returning to Ottawa I have been advised that the permit of occupation to the company is to be renewed at the rate of $8 0.00 per annum. This may be sufficient although I would point out that the traffic is very heavy and that on Sundays in summer it is quite usual for as many as four hundred automobiles to cross the river for which the ferry company receives one dollar apiece. This together with other sources of revenue makes their business very profitable indeed, and they should be able to pay well for the use of the wharf. I pointed out to Mr. Delisle that the Government of Canada had spent a considerable sum on the wharf, and that the people of Caughnawaga had enjoyed the benefit thereof, and that this should be taken into consideration when asking a refund from the Department of Marine and Fisheries. It is possible that in law the Marine and Fisheries Department might be required to make the refund, and I suggest that a ruling be obtained on this point. If the money should be paid by the Department of Marine and Fisheries, I think it should be applied towards providing a pure water supply for the reserve.

I am aware that the Departmental Engineer, the Director of Medical Services and the Superintendent of Education have already made representations on the subject of the water supply. While the subject has nothing to do with the object of my visit to the reserve I take the liberty of making a few comments in support of what other officers contend. At the Hospital I was informed that typhoid was on the increase due to the water and that the situation was very serious; the hospital in fact being overcrowded. At the Mission, Father Hauser told me that a number of the Fathers have been made ill through this cause. The Sister Superior of the Convent informed me that some of her most promising pupils, including girls who would otherwise have qualified as teachers this year, are in the hospital with typhoid; one he already died and others are in a very critical condition. That the epidemic, for it is practically such, is due entirely to the water is proven by the fact that the nuns who use well water have all escaped, while the Fathers who have been using river water, were afflicted. In passing I would like to say that I was much impressed with the efficiency and devotion, the progressive character and pleasing personality of the Sisters of the Caughnawaga Convent.

The water supply is undoubtedly the most urgent question at Caughnawaga. These Indians on the whole are well-to-do and should raise funds for a water supply by taxation as provided by the Indian Act. Although the band should raise the funds thus, nevertheless, the situation is so serious that life menaced to such an extent, that I think the department should have recourse to public funds to remedy it. Unless something is done the department will be severely criticized.

They should also raise money for street lights as the present nocturnal condition on the reserve is medieval and conducive to disorder. Lack of public spirit is illustrated by the fact that the Council wholly neglects these important questions while making so much fuss about the refreshment stands on the wharf. I think it would be much better if the ward system were reestablished. It would not only be more effective and representative but it would also stimulate interest in reserve politics which are at present regarded with indifference by the majority of the band.

Before the conclusion of the meeting the Council raised the question of the Electric Light Franchise held by the Beauharnois Company as successors to the United Power Company. The council pointed out that the company charges twelve cents per kilo-watt hour at Caughnawaga as compared with seven cents in surrounding municipalities. They also seemed to doubt that the agreement with the company had been approved by the Council, but I find after

consulting our files that such approval was obtained according to a report received from the Indian Agent dated Agust 27th, 1924, File No. 437748. I gave the Council a copy of the agreement which had been premised to Chief Councillor Williams on a recent visit to Ottawa. I would suggest that the question of the revision of the rates be discussed with the company. The Council also asked in accordance with a previous resolution that the old Grand Trunk Railway shed be removed. I am informed that this shed now belongs to Macomber, representing the de la Ronde Estate. I would suggest that the agent be asked to make a special report on this subject as I did not have time to go into if fully. The Council also complained that they had not been consulted with regard to permits for the sale of Indian wares by Caughnawaga women at the Toronto Exhibition. I had discussed this subject on a previous occasion with Mr. Conley of this department and Chief Councillor Williams, and I advised the Council that it was the intention of the department that henceforward they should be consulted in connection with the allocation of these permits.

After the meeting I drove to Montreal with Constable Jacks and Mr. Delisle. Shortly after my arrival at my hotel I was surprised to find that we had been followed by another car containing the occupants of the premises on the wharf. These waited upon me in the hotel and aired their side of the case at great length. In short, their contention is that they established their business under permits from the Department of Marine and Fisheries which they accepted in good faith and invested considerable money, and they claim that the whole objection to their occupation is envy, "jealousy" as they term it. In this I think they are largely right. Indeed the whole life of Caughnawaga seems to be a tissue of self-interest, a spicism, dissension and concealed motives, but as these conditions are heartily enjoyed by all concerned, I see no prospect of reform. I told Beauvais that he would do well to be more diplomatic in dealing with the Council. Beauvais claims that he received permission from the Council to occupy his present site on the wharf when his father was Chief Councillor. There is no record of this but it may be true in view of the lax manner in which the Council is conducted. If so, it would

strengthen his case materially. I pointed out to Beauvais and the others that even had the leases been properly given by the Department of Marine and Fisheries, they were only from year to year, and that consequently any permanent improvements were made at the owners' own risk. They acknowledged this, but pointed out that they considered it reasonable to believe that they would not be disturbed during good behaviour. Mr. Beauvais has a location on the St. Isidore Road. He suggests that this be given to his brother who has no location and that he in lieu thereof be given his present site on the wharf. This, however, would require the consent of the Council which cannot be obtained under existing conditions. I may mention that Beauvais resides on the premises with his family.

The following day I reviewed the pros and cons of the case thoroughly with Mr. Agent Letourneau and Constable Jocks. They are of the opinion that the majority of the band are not much concerned about the matter, and that indeed if a complete vote were taken, Beauvais and the other occupants would be permitted to remain. Perhaps the matter should effectively be decided by a ballot vote.

In reaching a conclusion on this matter one important question to be considered is the application of the Common By-law of the Caughnawaga band, a copy of which is appended hereto. This By-law provides that the two several pieces of land, commonly known as the "Common and the Grand Park" shall be set aside for common use such as pasturing and so on, and shall not be used for any private purpose by any member of the band. I scarcely think that the wharf and approach thereto properly comprise part of the common. I think it should rather be regarded as part of the village, held for a public utility and therefore, excepted from the application of the By-law by section 3 thereof. If on the other hand it forms part of the common even the Council itself could not grant permits or locations thereon to members of the band who already have locations elsewhere. I consider that the wharf land is in a special category in view of its history.

As you will recall this wharf was built about 1850 by the Grand Trunk Railway Company and held under a ninety-nine year lease, which was rescinded in 1877, the railway project having been abandoned. Subsequently the wharf was rebuilt and repaired by the Department of Public Works about 1907. Later the Department of Marine and Fisheries assumed control, based on the provisions of the Government Harbour and Piers Act. As above mentioned that department leased the ferry privilege and the holdings on the wharf and derived the revenue therefrom, until such control was terminated by the letter from the Deputy Minister of Justice to the Deputy Minister of the Department of Marine and Fisheries of April 16th, 1928, as aforesaid.

In concluding this letter the Deputy Minister of Justice states,- " I have come to the conclusion that the leases made by your department to Beauvais and Curette have not been granted by the proper authorities, which in my opinion is the Department of Indian Affairs".

I may add that the land which Beauvais, Louis A.Curette and Michel Curette are occupying was filled in by the Department of Public Works and was not there when the Common By-law was passed in 1901. Section 21 of the Indian Act provides that no Indian shall be in possession of any land on the reserve unless located thereon by the Council of the band. While the opinion of the Deputy Minister of Justice is that the proper authority to grant the leases is the Department of Indian Affairs, I presume that such authority is always subject to the provisions of the Indian Act. As the Council are unwilling to locate the present occupants on the wharf, I do not think that it would be consistent with the provisions of the Act, or good policy, to have the department grant leases to the applicants at present. On the other hand the above mentioned Section 21 further provides that no Indian shall be dispossessed of improvements without compensation therefor, to be approved by the Superintendent General and paid from band funds or by the Indians who obtain the land. In the present case I think the occupants are entitled to compensation equal to the full value of their buildings and equipment as these would be of little value to them if removed from their present site. I think, moreover, that in making a valuation, consideration should be given to the loss of means of livelihood involved. Under the provisions of the Act, therefore, the present occupants apparently cannot be disturbed until the band is prepared to pay the necessary compensation. This question will take a long time to settle, and indeed I doubt that the band will ever be prepared to pay. In the meantime I think the occupants should not be disturbed in carrying on their business, particularly as the band has no funds for compensation.

The rentals, however, that they have been paying to the Department of Marine and Fisheries seem much too low in view of the profits obtained. I advised the occupants to make the very best offers that they could to the Council in the hope of reaching a friendly compromise. I think that Beauvais could well afford to pay $300.00 a year;-Louis A.Curette $150.00,- and the others say, $75.00 each.

Before concluding my report on the wharf, I may mention that the Sister Superior complained to me that the bigger boys on the reserve were still creating public nuisance by hanging around the wharf in one-piece bathing suits and acting in a noisy way when tourists were passing through. I would recommend that as on previous occasions the agent be instructed to advise those concerned that these practices must be discontinued, and that otherwise the offenders would render themselves liable to prosecution.

In making this report I cannot well avoid dealing with matters extraneous to the purpose of my visit owing to special representations and requests that were made to me.

On the question under particular consideration, namely, that of the status of the occupants on the wharf, I have the honour to recommend that the Council be advised through the Indian Agent, following the receipt of the resolution for the removal of the said occupants, that under the provisions of Section 21 of the Indian Act, dispossession cannot be effected without compensation, and that as the band is without funds for this purpose, the department is not disposed to approve the said resolution at this time.

I would recommend further that the agent be instructed to advise the said occupants that the department will expect them to make suitable offers of payment to the Council for the present use of these valuable sites.

I would also recommend that the department should not issue any permits or leases to the said occupants unless the same are approved by the Council of the band.

I am aware that these recommendations do not provide for a permanent solution, but I submit that in the present circumstances more definite action is not indicated.

T.R.L.MacInnes.