

CHAP. 27.

An Act further to amend "The Indian Act, 1880."

[Assented to 19th April, 1884.]

IN further amendment of "The Indian Act, 1885," Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:-

1. Whoever induces, incites or stirs up any three or more Indians, non-treaty Indians, or half-breeds apparently acting in concert,-

(a.) To make any request or demand of any agent or servant of the Government on a riotous, routous, disorderly or threatening manner, or in a manner calculated to cause a breach of the peace; or-

(b.) To do an act calculated to cause a breach of the peace,-

Is guilty of a misdemeanor, and shall be liable to be imprisoned for any term not exceeding two years, with or without hard labor.

2. The Superintendent General may, when he considers it in the public interest to do so, prohibit, by public notice to that effect, the sale, gift or other disposal, to any Indian in the Province of Manitoba or in any part thereof, or in the North West Territories or in any part thereof, of any fixed ammunition or ball cartridge; and every person who, after such notice, without the permission in writing of the Superintendent General, sells or gives or, in any other manner, conveys to any Indian in the section of country thus prohibited any fixed ammunition or ball cartridge, shall incur a penalty of not more than two hundred dollars, or shall be liable to imprisonment for a term of not more than six months, or to both fine and imprisonment within the limits aforesaid, at the discretion of the court before which the conviction is had; and every offender against the provisions of this section may be tried in a summary manner by two Justices of the Peace or by any stipendiary or other magistrate having the power of two Justices of the Peace.

3. Every Indian or other person who engages in or assists in celebrating the Indian festival known as the "Potlach" or in the Indian dance known as the "Tamanawas" is guilty of a misdemeanor, and shall be liable to imprisonment for a term of not more than six nor less than two months in any gaol or other place of confinement; and any Indian or other person who encourages, either directly or indirectly, an Indian or Indians to get up such a festival or dance, or to celebrate the same, or who shall assist in the celebration of the same is guilty of a like offence, and shall be liable to the same punishment.

4. Sub-section one of the fourteenth section of the said Act is hereby amended by striking out all the words after the word "on," in the tenth line thereof, and substituting therefor the words: "signifying in writing his or her desire so to do,- which signification in writing shall be signed by him or her in the presence of two witnesses, who shall certify the same on oath before some person authorized by law to administer the same."

5. The twentieth section of the said Act is hereby repealed and the following is substituted therefor:-

"20. Any Indian who holds, under location ticket or other duly recognized title, any parcel or parcels of land upon the reserve of his band, or upon a reserve of any other band, upon which he or he and his family or any of them resided at the date of his death, may devise the same by will, as well as his personal effects or other property of which he is the recognized owner, to such member or members of his family or relative or relatives, as to him seems proper, provided the said will, after his death, is consented to by the band owning the said reserve, and approved of by the Superintendent General of Indian Affairs, and provided that he does not devise the same or any part thereof to any relative not entitled to reside upon the reserve of the band on which the property devised is situated, or to any relative farther removed than a second cousin; and the devise may be made subject to such trust or trusts as to the deviser seems proper, provided the same are within the provisions of this or any other Act in force or that may hereafter be enacted respecting Indian Affairs: in case such will is not assented to or approved of as aforesaid the Indian shall be held to have died intestate:

"2. Upon the death of any Indian holding, under location ticket or other duly recognized title, any parcel of land, if such Indian has died intestate, the right and interest therein of such deceased Indian shall, together with his goods and chattels, devolve one-third upon his widow (if any) provided she be a woman of good moral character and that she was living with her husband at the date of his death, and the remainder upon his children (provided that they are Indians within the meaning of "*The Indian Act*, 1880,") in equal shares; and such children have a like estate in such land as their father had: Provided, that the Superintendent General may, in his discretion, direct that the widow, if of the character above described, shall have the right to occupy such parcel of land and to have the use of such goods and chattels during the term of her widowhood:

"3. During the minority of such children the administration and charge of such land and goods and chattels as they may be entitled to under this section, shall devolve upon the widow (if any) of such deceased Indian, provided she be a woman of good moral character and that she was living with her husband at the date of his death; as each male child attains the age of twenty-one, and as each female child attains that age, or marries before that age with the consent of the said widow, his or her share shall be handed to him or her: Provided always, that 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 remove such other person and appoint another, and so on as occasion requires:

"4. If any such Indian dies without issue but leaving a widow of the character above described, such lot or parcel of land and his goods and chattels shall be vested in her, and if he leaves no widow, then in the Indian nearest akin to the deceased; but if he have no heir nearer than a cousin, then the same shall be vested in the Crown for the benefit of the band:

"5. Whatever may be the final disposition of the land, the claimant or claimants shall not be held to be legally in possession until he, she or they obtains or obtain a location ticket from the Superintendent General in the manner prescribed in the case of new locations:

"6. 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 remove such person and appoint another, and so on as occasion requires:

"7. The Superintendent General shall have power to decide all questions which may arise respecting the distribution, among those entitled, of the land and goods and may, under the circumstances, think will best give to each claimant his or her share, according to the true meaning and spirit of this Act, whether such share be a part of the lands or goods and chattels themselves, or be part of the proceeds thereof, in case it be thought best to dispose thereof,- regard always being had in any such disposition to restrictions upon the disposition of property in a reserve."

6. The twenty-fourth section of the said Act is hereby amended by inserting after the word "aforesaid" in the second line thereof, the words "or after any cattle or other animals, owned by him, or in his charge, have been removed as aforesaid," and by inserting after the words "parts of lots" in the fourth line thereof the words "or causes or permits any cattle or other animals owned by him, or in his charge, to return to any of the said land, marsh or lots or parts of lots, or returns to any marsh, river, stream or creek, on or running through a reserve, for the purpose of fishing therein;" and also by inserting after the words "parts of lots" in the thirteenth line thereof the words "or has caused or permitted any cattle or other animals owned by him, or in his charge, to return to any of the said land, marsh or lots or parts of lots, or has returned to any marsh, river, stream or creek, on or running through a reserve, for the purpose of fishing therein."

7. Sub-section one of the twenty-seventh section of the said Act is hereby repealed, and the following is substituted therefor:-

"27. If any person or Indian, other than an Indian of the band to which the reserve belongs, without the license in writing of the Superintendent General, or of some officer or person deputed by him for that purpose, trespasses upon any of the said land, roads or allowances for roads in the said reserve, by cutting, carrying away or removing therefrom any of the trees, saplings, shrubs, underwood, timber or hay thereon, or by removing any of the stone, soil, minerals, metals or other valuables off the said land, roads or allowances for roads, the person or Indian so trespassing shall, on conviction thereof before any Stipendiary Magistrate, Police Magistrate or any two Justices of the Peace, for every tree he cuts, carries away or removes, forfeit and pay the sum of twenty dollars,-and for cutting, carrying away or removing any of the saplings, shrubs, underwood, timber or hay, if under the value of one dollar, the sum of four dollars, but if over the value of one dollar, then the sum of twenty dollars,-and for removing any of the stone, soil, minerals, metals or other valuables aforesaid, the sum of twenty dollars,- with costs of prosecution in all cases. And in default of immediate payment of the said penalties and costs, such magistrate, or Justices of the Peace, or the Superintendent General, or such other person as he has authorized in that behalf, 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 liable to pay the same; and similar proceedings may be had upon such warrant issued by the Superintendent General, or such other person aforesaid, as if it had been issued by the magistrate or Justices of the Peace before whom the person was convicted; or such magistrate or Justices of the Peace, or the Superintendent General, or such other person as aforesaid, without proceeding by distress and sale,

may, upon non-payment of the said penalties and costs, order the person 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 when the penalty does not exceed twenty dollars, or for a term not exceeding three months when the penalty exceeds twenty dollars; and upon the return of any warrant for distress and sale, if the amount thereof has not been made, or if any part of it remains unpaid, such magistrate or Justices of the Peace, or the said Superintendent General, or such other 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. All such penalties shall be paid to the Minister of Finance and Receiver General to 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."

8. The thirty-sixth section of the said Act is hereby amended by inserting after the word "guardian" in the fifth line thereof, the following words: "or in the cases of Indians engaged in the practice of any one of the learned professions, or in teaching schools, or in pursuing a trade which interferes with their cultivating land on the reserve."

9. The seventy-second section of the said Act is hereby amended by adding thereto the following sub-section:-

"2. An election may be set aside by the Governor in Council, on the report of the Superintendent General, should it be proved by two witnesses before the Indian Agent for the locality or such other person as may be deputed by the Superintendent General to take evidence in the matter, that fraud or gross irregularity was practised as the said election; and any Indian proved to have been guilty of such fraud or irregularity or connivance thereat may be declared ineligible for re-election for six years, if so directed by the Governor in Council, on the report of the Superintendent General."

10. Sub-section seven of the seventy-fourth section of the said Act is hereby amended by adding thereto the words "And the attendance at school of children between the ages of six and fifteen years."

11. The seventy-fifth section of the said Act is hereby amended by adding the following words thereto: "And no taxes shall be levied on the real property of any Indian, acquired under the enfranchisement clauses of this Act, until the same has been declared liable to taxation by proclamation of the Governor General, published in the *Canada Gazette*."

12. The eighty-second section of the said Act is hereby amended by striking out all the words preceding the word "whenever" in the fifth and sixth lines thereof.

13. The ninetieth section of the said Act is hereby amended by adding thereto the words "Any person giving or supplying an intoxicant to an Indian or non-treaty Indian on an order, verbal or written, shall be liable to all the penalties to which he would have been liable if he had sold the same without such order; and any person found drunk in the house, tent, wigwam or other domicile of an Indian, or gambling therein, and any person found within an Indian village, settlement or reserve requested

to do so by an Indian agent or chief, shall be liable to all the fines and penalties to which he would have been liable had he supplied intoxicants to Indians, and under similar process."

14. The ninety-fifth section of the said Act is hereby amended by inserting in the first, third and fourth lines, after the word "house," the words "tent or wigwam," and by adding thereto after the word "months," in the twelfth line, the words "and any Indian man or woman who keeps, frequents or is found in a disorderly house, tent or wigwam used for such a purpose, shall be liable to the same penalty on similar process."

15. The ninety-seventh section of the said Act is hereby amended by adding the following thereto, as subsection two:-

"2. No such conviction shall be quashed for want of form, or be removed by certiorari into any of Her Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it is therein alleged that the person has been convicted, and there is a good and valid conviction to sustain the same."

16. The ninety-ninth section of the said Act is hereby repealed and the following substituted therefor:-

"99. 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, to be made 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 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 had been for at least five years previous, 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:

"2. 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 will be received, to be made before a judge or a Stipendiary Magistrate, containing reasons, if any there be, of a personal character affecting the applicant, why such enfranchisement should not be granted to the applicant:

"3. At the expiration of thirty days aforesaid, the agent shall forward to the Superintendent General all affidavits received by him in the case, of any have been filed with him, as well as one made by himself, also before a judge or a Stipendiary Magistrate, containing his reasons for or against the enfranchisement of the applicant; and if the Superintendent General, after examining the evidence decides in favor of the applicant, he may grant him or her a location ticket as a probationary Indian, for the land occupied by him or her or for such proportion thereof as appears to the Superintendent General fair and proper:

"4. Every Indian who is admitted to the degree 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, or as a barrister or counsellor or 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 Act, 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 Act; and 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 is 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 of Indian Affairs to such allotment."

17. The one hundredth section of the said Act is hereby repealed, and the following substituted therefor:-

"**100.** After the expiration of three years (or such longer period as the Superintendent General deems necessary in the event of such Indian's conduct not being satisfactory), the Governor may, on the report of the Superintendent General, order the issue of letters patent, granting to such Indian the land in fee simple, which had, with this object in view, been allotted to him or her by location ticket, but without power to sell, lease or otherwise alienate the land, unless with the sanction of the Governor in Council; and provisos to such effect shall be inserted in the letters patent conveying the land to the said Indian: and in such cases compliance with the provisions of sections thirty-six and thirty-seven of this Act shall not be necessary."

18. The one hundred and first section of the said Act is hereby amended by adding thereto, after the word "names," in the twenty-sixth line thereof the words "subject to the same restrictions and reservations as are contained in the letters patent issued to their parent."

19. The one hundred and fourth section of the said Act is hereby amended by striking out the words "any band," in the fifth line thereof, and substituting therefor the words "the Superintendent General."

20. The one hundred and fifth section of the said Act is hereby amended by striking out the word "band" in the fifth line thereof, and substituting therefor the words "Superintendent General."

21. The eighth section of the Act forty-fourth Victoria, chapter seventeen, is hereby repealed, and the following is hereby substituted for section twenty-three of "*The Indian Act, 1880*:-"

"**23.** If any person or Indian, other than an Indian of the band, without the license of the Superintendent General (which license, however, he may at any time revoke), settles, resides, or hunts upon, or occupies, or 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 fishes in any marsh, river, stream or creek on or running through a reserve; or settles, resides upon, or occupies any such roads or allowances for roads, on such reserve; or if any Indian is illegally in possession of any land in a reserve,- the

Superintendent General, or such officer or person as he thereunto deposes 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 to remove from the said land or marsh, or roads or allowances for roads, every such person or Indian and his family, so settled, residing or hunting upon or occupying or being illegally in possession of the same,- or to remove such cattle or other animals from such land or marsh,- or to cause such person or Indian to cease fishing in any marsh, river, stream or creek, as aforesaid,- or to notify such person or Indian to cease using as aforesaid the said lands, river, streams, creeks or marshes, roads or allowances for roads; and such person shall accordingly remove or notify every such person or Indian, or remove such cattle or other animals, or cause such person or Indian to cease fishing as aforesaid, and for that purpose shall have the same powers as in the execution of criminal process; and the expenses incurred in any such removal or notification shall be borne by the person removed or notified, or owning the cattle or other animals removed, or having them in charge, and may be recovered from him as the costs in any ordinary suit,- or if the trespasser is an Indian, such expenses may be deducted from his or her share or shares of annuity and interest money, if any such be due to him or her."

22. The twelfth section of the Act forty-fourth Victoria, chapter seventeen, is hereby amended by adding at the end thereof the words," with jurisdiction wheresoever any contravention of the provision of "*The Indian Act, 1880*," occurs, or wheresoever it is considered by him most conducive to the ends of justice that any contravention aforesaid shall be tried."

23. The third section of the Act forty-fourth Victoria, chapter thirty, is hereby amended by adding at the end thereof the words "or in any other matter affecting Indians, with jurisdiction wheresoever any contravention of the provisions of the said Acts occurs, or wheresoever it is considered by him most conducive to the ends of justice that the trial be held:"

And such officer shall have the same powers in respect to infractions of this Act.

24. The fourth section of the Act forty-fifth Victoria, chapter thirty, is hereby amended by striking out all the words after "following words" in the second line of the said section and by inserting the following in lieu thereof:-

"But in any suit between Indians or in a case of assault in which the offender was an Indian or the offenders were Indians, no appeal shall lie from an order made by any District Magistrate, Police Magistrate, Stipendiary Magistrate or two Justices of the Peace, when the sum adjudged, or the fine inflicted, does not exceed ten dollars."

25. This Act shall not come into force until the first day of January, in the year of Our Lord one thousand eight hundred and eighty-five.