

CAP. IX.

An Act respecting Civilization and Enfranchisement of certain Indians.

IN order to encourage the progress of civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and Her Majesty's other Canadian Subjects, and to facilitate the acquisition of property and of the rights accompanying it, by such Individual Members of the said Tribes as are found to desire such encouragement and to have deserved it: Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts of follows:

1. In the following enactments, the term "Indian" means only Indians or persons of Indian blood or intermarried with Indians, acknowledged as members of Indian Tribes or Bands residing upon lands which have never been surrendered to the Crown (or which having been so surrendered have been set apart or are then reserved for the use of any Tribe or Band of Indians in common), and who themselves reside upon such lands, and have not been exempted from the operation of the next section under the other provisions of this Chapter; And such persons and such persons only shall be deemed Indians within the meaning of any provision of this Chapter or of any other Act or Law in force in any part of this Province by which any legal distinction is made between the rights and liabilities of Indians and those of Her Majesty's other Canadian Subjects: And the term "enfranchised Indian" means any person to whom the next section would have been applicable but for the operation of the provisions hereinafter made in that behalf: And the term "Tribe," includes any Band or other recognized community of Indians. 20 V. c. 26, ss. 1 and 2.
2. No person shall take any confession of Judgment or Warrant of Attorney from any Indian within Upper Canada, or by means thereof, or otherwise howsoever obtain any judgment for any debt or pretended debt, or upon any bond, bill, note, promise or other contract whatsoever, unless such Indian is seized in fee simple in his own sole right of real estate in Upper Canada, the title to which is derived directly or through others by Letters Patent from the Crown, and is assessed in respect of such real estate to the amount of twenty-five pounds or upwards. 13, 14 V. c. 74, s. 3.
3. No person shall sell, barter, exchange or give to any Indian, man, woman or child, within Upper Canada, any kind of spirituous liquors in any manner or way, or cause or procure the same to be done for any purpose whatsoever; and if any person so sells, barters, exchanges or gives any such spirituous liquors
- To what persons only section 3, of 13, 14 V. c. 74, shall apply.
- Such persons only to be deemed Indians for certain purposes.
- Interpretation of certain terms in this Act.
- Confessions of Judgment, &c., not to be taken from Indians.
- Exception.
- No spirituous liquors to be furnished to Indians in Upper Canada.

Penalty. liquors to any Indian man, woman or child as aforesaid, or causes the same to be done, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined at the discretion of the Court, not exceeding five pounds for every such offence, and shall forfeit also the sum of one pound five shillings for every such offence, to be recovered as in an action of debt, with costs, in any Court of competent jurisdiction, by any one who will sue for the same, one moiety of every such last mentioned pecuniary penalty or forfeiture to go to the informer or prosecutor, and the other moiety thereof to be paid to Her Majesty, or to some officer acting under Her authority, to be disposed of for the use and benefit of the Indians, as the Governor may direct: but no such penalty shall be incurred by the furnishing to any Indian, in case of sickness, any spirituous liquor, either by a medical man or under the direction of any such medical man. 13, 14 V. c. 74, s. 6.

How recovered and appropriated.

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Pawns not to be taken from Indians in Upper Canada, for liquor.

4. No pawn taken of any Indian in Upper Canada for any spirituous liquor, shall be retained by the person to whom such pawn is delivered, but the thing so pawned may be sued for and recovered, with costs of suit, by the Indian who has deposited the same, before any Court of competent jurisdiction. 13, 14 V. c. 74, s. 7.

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Indian presents not to be purchased from them.

5. And whereas certain tribes of Indians in Upper Canada receive annuities and presents, which annuities, or portions thereof, are expended for and applied to the common use and benefit of the said Tribes, more especially for the encouragement of agriculture and other civilizing pursuits among them, although the articles so required or purchased out of such annuities, may be and often necessarily are, in the possession or control of some particular Indian or Indians of such Tribes, and it is important with a view to the progress and welfare of such Tribes, that the property thus acquired or purchased should be protected from seizure, distress or sale, under or by virtue of any process whatsoever: Therefore, none of such presents or of any property purchased or acquired with or by means of such annuities, or any part thereof, or otherwise howsoever, and in the possession of any of the Tribes or any of the Indians of such Tribes, shall be liable to be taken, seized or distrained for any matter or cause whatsoever. 13, 14 V. c. 74, s. 8.

Certain functionaries to be Commissioners for examining Indians for the purposes of this Act.

6. The Visiting Superintendent of each Tribe of Indians, for the time being, the Missionary to such Tribe for the time being, and such other person as the Governor may appoint from time to time for that purpose, shall be Commissioners for examining Indians, being members of such Tribe, who may desire to avail themselves of the following sections of this Chapter, and for making due enquiries concerning them: And such Commissioners shall meet for the said purposes at such places and times as the Superintendent General of Indian affairs shall from time to time direct, and shall have full power to make such examination and inquiry:

2. And if such Commissioners report in writing to the Governor that any such Indian of the male sex, and not under twenty-one years of age, is able to speak, read and write either the English or the French language readily and well, and is sufficiently advanced in the elementary branches of education, and is of good moral character and free from debt, then the Governor may cause notice to be given in the Official Gazette of this Province, that such Indian is enfranchised under this Chapter; And the provisions of the third section of this Chapter, and all other enactments making any distinction between the legal rights and habilites of Indians and those of Her Majesty's other subjects, shall cease to apply to any Indian so declared to be enfranchised, who shall no longer be deemed an Indian within the meaning thereof. 20 V. c. 26, s. 3.

Names of Indians favorably reported to be published, and the said 3rd section of this Chapter not to apply to them.

7. The said Commissioners may also examine and inquire concerning any male Indian over twenty-one and not over forty years of age, desirous of availing himself of this Chapter, although he be not able to read and write or instructed in the usual branches of school education; and if they find him able to speak readily either the English or the French language, of sober and industrious habits, free from debt and sufficiently intelligent to be capable of managing his own affairs, they shall report accordingly in writing to the Governor:

Indians may be reported in a state of probation.

2. And if such report is approved by the Governor as to any Indian, he shall, by virtue of such approval, be in a state of probation during three years from the date of the report, and if at the end of that term the Commissioners again report in writing to the Governor that such Indian has during such term conducted himself to their satisfaction, then the Governor may cause notice to be given in the Official Gazette that such Indian is enfranchised under this Chapter, and he shall thereupon be so enfranchised. 20 V. c. 26, s. 4.

And after probation may be declared not within the third section.

8. Every Indian examined by the Commissioners under this Chapter, shall, at the time of such examination, declare to them the name and surname by which he wishes to be enfranchised and thereafter known, such name being his baptismal name if he have one, and such surname any one he may choose to adopt which shall be approved by the Commissioners, and the Commissioners shall enter the same in their Report; and if such Indian is thereafter enfranchised under this Chapter, the name and surname so reported shall be those by which he shall thereafter be legally designated and known. 20 V. c. 26, s. 5.

Enfranchised Indian to take a name and surname.

9. Lists of Indians enfranchised under this Chapter and of any lands allotted to them under the authority thereof, shall from time to time be transmitted by the Indian Department to the Clerk of the township or other local municipality in which they reside at the time of such enfranchisement; and any Indian

Lists of Indians enfranchised under this Chapter.

Penalty on Indian falsely representing himself as enfranchised. Indian falsely representing himself as enfranchised under this Chapter when he is not so, shall be liable, on conviction before any one Justice of the Peace, to imprisonment for any period not exceeding six months. 20 V. c. 26, s. 6.

Land, &c. may be allotted to enfranchised Indians; and to what extent.

10. Every Indian enfranchised under this Chapter shall be entitled to have allotted to him by the Superintendent General of Indian affairs, a piece of land not exceeding fifty acres out of the lands reserved or set apart for the use of his Tribe, and also a sum of money equal to the principal of his share of the annuities and other yearly revenues receivable by or for the use of such tribe; such sum to be ascertained and paid to him by the said Superintendent, and due consideration being had in the allotment of such land to the quantity of land reserved for the use of the Tribe and to their means and resources; And such sum of money shall become the absolute property of such Indian, and such land shall become his property, subject to the provisions hereinafter made, but he shall by accepting the same forego all claim to any further share in the lands or moneys then belonging to or reserved for the use of his Tribe, and shall cease to have a voice in the proceedings thereof:

Condition of allotment.

If the tribe surrender other lands to the Crown.

2. But if such Tribe thereafter surrender to the crown other lands either to be sold for their benefit, or in consideration of an annuity, such enfranchised Indian, or his personal representatives (if any) shall be entitled to his share of the proceeds of such lands or of the annuity for which they were surrendered, such share to be ascertained and paid by the Superintendent General of Indian Affairs for the time being, and to be the absolute property of such enfranchised Indian or his said representatives. 20 V. c. 26, s. 7.

Wife and children of enfranchised Indian to be enfranchised.

11. The wife, widow, and lineal descendants of an Indian enfranchised under this Chapter, shall be also enfranchised by the operation thereof, and shall not be deemed members of his former tribe, unless such widow or any such lineal descendant being a female, marries an Indian not enfranchised and a member of such tribe, in which case she shall again belong to it and shall no longer be held to be enfranchised under this Chapter. 20 V. c. 26, s. 8.

Their rights.

12. The wife and children of any Indian enfranchised under this Chapter shall be entitled to their respective shares of all annuities or annual sums payable to the tribe; subject to the provisions hereinafter made as to such shares. 20 V. c. 26, s. 9.

Estate and rights of Indian in land allotted to him under this Chapter.

13. An Indian enfranchised under this Chapter, to whom any of the lands reserved for the use of his Tribe are allotted as aforesaid, shall have a life estate only therein, but he shall have power to dispose of the same by will to any of his children or lineal descendants, and if he dies intestate as to any such lands,

lands, the same shall descend to his children or lineal descendants according to the laws of that portion of the Province in which such lands are situate, and the said children or lineal descendants to whom such land is so devised or descends, shall have the fee simple thereof :

2. But if such Indian dies without leaving any child or lineal descendant but leaving a widow, she shall, instead of Dower, to which she shall not be entitled, have the said land for life or until her re-marriage, but upon her death or re-marriage it shall escheat to the Crown: and if any child or lineal descendant of such Indian takes such land or any part thereof, and dies leaving no lineal descendant and without having disposed of such land or part thereof by will or otherwise, it shall escheat to the Crown. 20 V. c. 26, s. 10.

Land to escheat in certain cases.

14. If any Indian enfranchised under this Chapter dies leaving any child under the age of twenty-one years, the Superintendent General of Indians shall become *ipso facto* the tutor of such child as to property and rights in Lower Canada, and the guardian of such child as to property and rights in Upper Canada, until it attains the age of twenty-one years; And the widow of such Indian, being also the mother of any such child, shall receive its share of the proceeds of the estate of such Indian during the minority of the child, and shall be entitled to reside on the land left by such Indian, so long as in the opinion of the Superintendent General she lives respectably. 20 V. c. 26, s. 11.

Superintendent General to be guardian or tutor of infant children of enfranchised Indians.

15. The capital of the annual share of the wife of any Indian enfranchised under this Chapter in any annuity or annual sum payable to her Tribe, shall be held in trust by the Superintendent General of Indian affairs for the purposes of this section, and the interest thereof shall be paid to her yearly while she is the wife or widow of such Indian, and upon her death or re-marriage one half of such capital sum shall be divided equally among her children, and the other half shall revert to the Tribe to which she belonged; but if she has no children, the whole shall revert to the said Tribe. 20 V. c. 26, s. 12.

As to the share of the wife of any enfranchised Indian in any annuity to her tribe.

16. The capital of the share of each child of an Indian enfranchised under this Chapter, in any annuity or annual sum payable to his Tribe, shall be held in trust by the Superintendent General of Indian Affairs for such child, and the interest thereon shall, except in the case hereinafter mentioned, be left to accumulate until such child shall obtain the age of twenty-one :

As to the shares of the children of enfranchised Indians in such annuity.

2. But if such child is put apprentice to any trade, the money so held in trust for him may be wholly or in part applied to the payment of his apprentice fee or other expenses attending such apprenticeship; And if any such child dies before attaining the age of twenty-one, one half the money then

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then held in trust for him shall revert to his Tribe, and the other half shall go to the other child or children of such Indian, and in equal shares if there is more than one, and if there is no other child, then the whole shall revert to the Tribe. 20 V. c. 26, s. 13. 5

Lands allotted to enfranchised Indians to be liable for taxes.

17. Lands allotted under this Chapter to an Indian enfranchised under it, shall be liable to taxes and all other obligations and duties under the Municipal and School Laws of the section of this Province in which such land is situate, as he shall also be in respect of them and of his other property; and his estate therein shall be liable for his *bond fide* debts, but he shall not otherwise alienate or charge such land or his estate therein; and if such land is legally conveyed to any person, such person or his assigns may reside thereon, whether he is or is not of Indian blood or intermarried with any Indian. 20 V. c. 26, s. 14. 10

Indian Reserves or any part of them may be attached to School Sections or Districts

18. The Council of any Municipality in Upper Canada, or the School Commissioners of any School Municipality in Lower Canada, may, on application of the Superintendent General of Indian affairs, attach the whole or any portion of any Indian Reserves in such Municipality to a neighboring School Section or District, or to neighboring School Sections or Districts, and such land shall thereupon become a portion of the School Section or district to which it is attached, to all intents and purposes. 20 V. c. 26, s. 15. 15